

**WAYNE PLANNING COMMISSION  
MEETING AGENDA  
Monday, February 6, 2012**

**7:00 p.m.**

**Call to Order**

**Roll Call**

**Approval of Minutes —  
December 5, 2011**

Anyone desiring to view the Open Meetings Act may do so. The document is available for public inspection and is located on the south wall of the City Council Chambers.

Anyone desiring to speak on an agenda item is invited to do so, and should limit themselves to three minutes. After being recognized by the Chair, proceed to the rostrum and state your name and address for the record.

**Public Hearing —  
Amending Section 90-10 Definitions**

**Public Hearing —  
Amending Section 90-482 Permitted Principal Uses  
And Structures in the I-1 Light Industrial Zone**

**Public Hearing —  
Amending Section 90-484 Exceptions in the  
I-1 Light Industrial Zone**

**Public Hearing —  
Amending Section 90-512 Permitted Principal Uses  
And Structures in the I-2 Heavy Industrial Zone**

**Adjourn**

**Wayne Planning Commission Meeting Minutes**  
**Monday, December 5, 2011**

Chair Pat Melena called the regular meeting of the Wayne Planning Commission to order at 7:00 P.M., on Monday, December 5, 2011, in the Council Chambers of the Municipal Building. Roll call was taken with the following members present: Mark Sorensen, Derek Hill, Jeff Carstens, Lee Brogie, Breck Giese, Jessie Piper, Chair Pat Melena, and Inspector/Planner Joel Hansen. Absent: Jill Sweetland and Bill Kranz.

Motion was made by Commissioner Sorensen and seconded by Commissioner Carstens to approve the minutes for November 14, 2011, as presented. Chair Melena stated the motion and second. All were in favor; motion carried unanimously.

Chair Melena read the Open Meetings Act and advised that anyone desiring to speak should limit themselves to three minutes and wait until being recognized by the Chair.

Chair Melena stated the next item on the agenda is the discussion of Section 90-10 Definitions, specifically Family.

Inspector Hansen stated for the Commission that this particular topic came about due to a complaint the Police Department received. There was a house and a number of vehicles were being called in for over night parking on the street. A phone call was made to the residence and they were asked how many reside there and the number was six and the occupant who answered stated all the names of those residing there.

The typical letter was sent to the property owner regarding the number of occupants at the structure and that city zoning only allows no more than four unrelated adults to reside at a structure. The letter also asked the property owner to contact the city to schedule an inspection of the structure to determine the number of bedrooms in the house.

The property owner phoned and she was very willing and upfront with what was going on. When the owner had purchased the structure, it originally had eight bedrooms in it and two of those were in the basement. The owner has elected not to rent out the two bedrooms in the basement because they do not have egress windows in them and she did not want to rent out the basement. But at the time, the realtor who sold her the property did not tell her that city zoning does not allow more than four unrelated adults to reside in a structure.

When the house was inspected, two of the bedrooms were lacking smoke detectors. The owner complied with that and they have been installed. There

are two people moving out after the semester is over. Therefore, in the mean time, the property owner is asking to allow those other two people to stay there for the remaining two months of the semester and then she is willing to comply. The property owner did ask what it would take to change that number from four to increase it up to possibly six occupants. Inspector Hansen stated that the property owner could fill out the request for a change in zoning text and come before the Planning Commission for a recommendation and then go before the City Council. Inspector Hansen opined that he also told the property owner that he did not feel comfortable necessarily with the property owner submitting the language because he knew this was a highly debated discussion item when it came up before. Inspector Hansen opined that he felt the language should be something developed by the city if it was going to have any type of chance passing. Inspector Hansen felt the Commission should discuss this matter and give staff some direction as was to what they want done.

Inspector Hansen stated he took the current definition of family out of the zoning code and he also provided the Commission with the definition of family as proposed by RDG. RDG streamlined the definition of family more than what is presently in the code. If the definition of family were to stay as it is, then it would remain that no more than four unrelated could reside in the same structure.

Chair Melena questioned what constitutes a house or unit in this discussion. For example, if he has a large home and it has a basement apartment and on the main floor are four bedrooms. Is this considered one or two units?

Inspector Hansen stated that it depends on how the structure was constructed. If the basement apartment has been an existing building for several years and has its own water meter and electric meter, then you could consider it to be a two-family dwelling. If it was new construction, it would need fire separation as determined by the State Fire Marshal, such as a one or two hour wall, which is why townhomes are generally side by side and not one on top of the other. So if in this instance if there was one landlord paying the utility bill for the entire structure and then renting out a basement apartment with the utilities paid, that would be considered a single family dwelling. If it had separate utilities to it and there was, for new construction the fire separation, then it could be considered a two-family dwelling and you could have up to eight people in it, all unrelated. Inspector Hansen opined that most of the rentals in town are considered single-family rentals because they just have one meter. There are some older homes in town where years ago they were divided and there might be a basement apartment, the main floor is another apartment, and there is another means of egress to the upstairs that has a third apartment, so there is actually multi-family cause there are three units. One of the other items noted by Inspector Hansen is

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that each unit would need to have its own means of egress into it. One could not go through a downstairs apartment to get to the upstairs apartment.

Commissioner Sorensen questioned what zoning district the structure was located in.

Inspector Hansen stated the structure is located at 8<sup>th</sup> and Nebraska Street, which is R-3.

Commissioner Sorensen questioned if R-3 was the higher density of housing and if there was any higher density housing than R-3.

Inspector Hansen stated there is a little bit of R-4 zoning which allows one to put a few more people per lot.

Commissioner Sorensen questioned where the complaints were coming from.

Inspector Hansen stated the complaint came from the police department, just because the tenants made the city aware of how many were living in the structure. It was not so much a complaint but an acknowledgement of more than four living in the structure. Once the city became aware of it, once we (the city) know someone is violating the zoning code, we have a responsibility to see it through and enforce the code.

Chair Melena questioned for clarity that the owner was not being called for parking violations.

Inspector Hansen stated that what was actually happening is that they were pouring more concrete in the front terrace for parking. The tenants could not park there but they were moving in for the fall semester. They now have room to park eight cars on the terrace. It is a corner lot so there is sufficient room.

Commissioner Hill questioned what the original rationale was for the four unrelated adults.

Inspector Hansen opined that he was still at the street shop and that he was not the zoning administrator at the time discussions took place. He did get in on some of the conversations. At that time, Lance and George were working together to draft some language and he did not know if they were directed by the city council or not, so he was not for sure why they went that way. It was really a parking issue. There were places where cars were pulled up over the grass and everywhere because if you have a house located in the middle of the block and

you do not have all that terrace room, you obviously can't fit all those cars in there. So the tenants were asking to park in the street all the time or they were pulling up and parking in the grass. Council then chose to deal with limiting the number in the house rather than dealing with the parking.

Commissioner Brogie opined that maybe they are using the definition of family to take care of occupancy issues. So you could have a small four bedroom, one bath and maybe a small living area and four people could live there. Or you could have a huge home that has six bedrooms and lots of living area and a couple bathrooms and you could still only allow four people to live there. So the language might need to look at actual occupancy, square footage, or something similar.

Chair Melena opined that he agreed with Commissioner Brogie, in that the zoning is using the definition of family to define occupancy and that is not correct.

Commissioner Sorensen opined that maybe it should be zoning specific.

Chair Melena opined that he did not believe the Commission could differentiate between a newer nicer neighborhood, like R-1, or not. There are families around town that have a mother and father and three teenage kids and there may be five cars sitting on the driveway. As long as they have the safety codes met, such as egress windows, etc, and enough off-street parking why should they be treated any different than four college age students who don't share the same last name.

Commissioner Brogie opined that when you are renting to people who are not a family, it should be one person per bedroom. So that would limit it, unless you would have an eight bedroom home.

Inspector Hansen opined that when you change these single-family dwellings into two-family dwellings, is almost financially not worth it to get an extra two or four kids into the structure to do that fire separation. If it has been that way for thirty years, it is considered grandfathered in, but if you take a house that has been a single-family with four kids living in it with mom and dad and you sell it and someone says I am going to move in and make it a two-family dwelling to do that construction and to change it is very difficult. Most people would probably find something else to invest in before that.

Chair Melena opined that he was of the opinion that they should just increase the number to six occupants, as long as there is adequate bedrooms and off-street parking and the inhabitant safety is being met, what is wrong with six. However, Chair Melena further opined that what is his logic for choosing six. Just like, what

is the logic for choosing four? Well if six is okay why not eight? Chair Melena opined that he is really struggling with why he came to the number six other than they are unrelated.

Inspector Hansen stated that it does not matter if three of them are brothers and two are not related, any number of them are unrelated, the total number goes to four.

Commissioner Carstens questioned if there was a bigger issue with residential use or residential areas that just in terms of property values that a property where it could be rented to more than four people can generate more revenue therefore could draw a higher sales price. What impact would these regulations have on property values and sales and what impact does that have on the community and who can buy a house in the community and who is living here. These things have an impact. If the number goes to six and then if a real estate agent / landlord / investor, they look at the house and see they can have six people there, they can generate this much revenue, therefore, they can pay this amount on the loan and still make a profit. That may be higher than that house might sell otherwise and so it has an impact on property values throughout the community and who can buy a house in the community and who is living here. These have an impact on the community and it has a relation to the four unrelated.

Inspector Hansen informed the Commission that he did have one realtor visit with him on this issue, in particular the house which brought this discussion to light. Inspector Hansen stated that he had informed the realtor that someone wanted to change the four unrelated to six unrelated. The realtor responded that they did not want it increased as they had a difficult time with four.

Inspector Hansen further opined that the other issue he heard with this issue when it first came up, along with the parking, was that there was a real concern with the number of house parties. Inspector Hansen opined that if there were fewer kids living in the house there would be fewer house parties. Inspector Hansen opined that it is the kids living in the house; if they want one they will and if not they wont.

Inspector Hansen informed the Commission that he did hand out the parking schedule for them to review. With the city's definition of off-street parking, actually means it can't even be on the terrace. Means it has to be on the owner's own private property, because streets are defined as the entire right-of-way. There may be several properties that are violating the zoning. Inspector Hansen opined that if you want something simple and clean as if you go up from four to six, put a stipulation that they have to provide so many parking spaces per

tenant, either on their property or on the terrace; then that can address the parking issue. For example, if you have a small fifty foot wide lot in the middle of the block and they don't have much terrace to work with and they don't have any driveway, the property owner won't be able to get six in the structure because they can't provide the parking. This is what seems to really impact the neighbors, is the cars. That is where the majority of the complaints come from. The one's that involve the neighbors are usually parties at night or parking calls during the day.

Inspector Hansen opined that if the Commission wants to go by zoning district, it will be a little more complicated because it won't just be changing a definition; they will need to actually go into the specific zoning district and change some of that language as well. Inspector Hansen stated it could be done. The only issue is that there is some R-1 that is right across the west side of Highway 15, so you are two blocks from campus and you have the same kind of use and neighbor as you do on the south side of campus that is R-1, so if you don't allow things in R-1 you are going to have some consequences.

Chair Melena stated back to the meeting's purpose is to give staff some ideas, to allow staff to better draft some language for them.

Inspector Hansen stated that was correct so that he does not take something to the Commission, they don't agree and then there are two more meetings before it goes to Council. Then they find out Council does not agree with the language; which may happen anyway.

Commissioner Carstens opined that he would like to hear from someone who was in on the initial decision making for the four unrelated, so the Commission knows what they might be undoing.

Commissioner Brogie opined that one concern was multiple families living in one unit as well. So there needs to be some stipulations on what is considered a family and maximum number of unrelated. For example you could have a family of four living there and another person comes in and now there are five and out of compliance.

Commissioner Sorensen opined that if it is R-2 or R-3, he believes they need to be more zoning specific. Basically the homes in the R-2 and R-3 most of those homes are not as high of dollar houses. There is no question that the more income you can get from a house the higher someone can appraise that house.

Commissioner Carstens opined that a more expensive house that maybe has been a single-family use property a landlord could make a cash flow so it might get converted or they might get converted into rentals.

Commissioner Sorensen opined that he did not see the upper-end houses changing any; they would not get bought for rentals. It would be the lower to medium range houses.

Inspector Hansen opined that if you tied the parking to it somehow and you allowed six, almost the only homes that would be able to do that are going to be corner lots and the old two-story homes on them. You get a ranch style house in the newer neighborhood that is in the middle of a block, they would not be able to provide the parking. You would not be able to park six or eight cars in Vintage Hill, even if the entire terrace was paved and there is no alley in the back. The same is in the Westwood Addition, no alleys. Then to get the six bedrooms you would need to have a completely finished basement.

Commissioner Sorensen opined that most ranch style homes had two or three bedrooms on the main level, but with a finished basement, maybe add one more.

Commissioner Carstens questioned how many instances such as this have come up with six people in one house.

Inspector Hansen stated that he had one come up last spring. Someone who was living up close to campus was living there and had four other people living there as well. It was discovered when the Police went to break up a party. Through the process of interviewing people, they found out there were more people living there than what should be. The owner had piled two people in the basement in rooms that did not have egress windows so right then and there he had to make two of them go because the owner could not have them there due to life safety issues. The owner had one week to move the two tenants out of the structure.

Inspector Hansen stated this is the first one he has dealt with. As he was going through the language, he thought there was at one time discussion regarding creating a definition for boarding house or something similar. That was based on discussion with the Pair-a-Dice building across from the college. The other one was the house owned by Corby and Amy Schweers at 9<sup>th</sup> and Nebraska. That is a great big two-story house. They thought they could get up to eight people in the house. There are a few houses in town, but Inspector Hansen opined that those structures will be few and far between that will go up to six. It may be some of the older parts of town with the bigger houses and the ones in the

middle of the block will only have a 50 foot frontage. There is just no way the owner could accommodate the parking. Not unless the Commission would lower the parking requirement. But in most instances for rentals, you will end up needing one and a half stalls per bedroom because most people have an overnight visitor.

Commissioner Sorensen questioned if that was what Inspector Hansen was referring to, was one and a half stalls per bedroom.

Inspector Hansen opined that is the number the Commission would need to look at, if the Commission wanted to tie parking to allowing more than four. It would be one per bedroom or 1.25 or 1.5 per bedroom or whatever the Commission and Council thought was adequate. Inspector Hansen opined that it would be his recommendation as staff, is that if you wanted to keep things clean, you need to change that definition to no more than six unrelated individuals provided so many stalls are provided either on the terrace or on the property per bedroom.

Commissioner Hill questioned why they would want to require more than one stall per bedroom.

Commissioner Sorensen opined for overnight guests.

Inspector Hansen opined that most of the college students have boyfriends/girlfriends and that is usually that calls that come in to the PD for people parking on the street overnight.

Chair Melena questioned if they were approved?

Inspector Hansen stated most of the time they are approved unless there is a snow emergency.

Chair Melena questioned if the rules were written to be bent? Chair Melena opined that if there was a reason, it should be very seldom that a house would call and ask permission to park overnight, death in the family, car not working, etc. Chari Melena opined that if you say six cars then you need to enforce six.

Commissioner Carstens opined that if you say up to six, but you have to have more than one parking stall per bedroom, you are not really saying six. You are saying six in unusual circumstances. You would need more parking than what you really need or typically need for your tenants. It seems like if they say that, there really is a need to accommodate overnight guests okay.

Commissioner Piper opined that some tenants may have more than one vehicle; they may have a car and motorcycle.

Chair Melena opined that they need to try and be respectful of the neighbors around them and if the number one concern with the neighbors around the building is parking, then the Commission needs to address that to try to keep it in check. Because truly the Commission has talked about multi-family or two-family dwellings, does the neighbor care if you have two power meters and two water meters, no, they are only concerned with the noise level of the house and what it looks like on the outside.

Commissioner Sorensen opined that as a neighbor if you back out and need to worry about a party or turning the corner, etc. Commissioner Sorensen opined that if they use the 1.25 spaces, for a little bit of cushion to try to accommodate. Commissioner Sorensen stated that Commissioner Carstens stated that some may have more than one vehicle. But even a typical unit of four would take five parking spaces. Can most units accommodate something like this?

Commissioner Brogie opined that she takes the stand that she is renting a residential unit and not parking and if parking happens to come with the residential unit, then the tenants are lucky. Commissioner Brogie opined that they are two separate issues. Commissioner Brogie further opined that there are some residential areas where there is just a single car garage and single car driveway and no room to expand off-street parking.

Commissioner Sorensen questioned if they allow terrace parking, wouldn't that alleviate some of issues.

Inspector Hansen stated for the Commission that is what Benscoter is doing with the two four-plex units on Windom. That is considered multi-family so he will need 1.5 spaces per dwelling unit. There are eight units so he will need twelve on-lot spaces, which he will need to do back in the alley and he is also paving additional stalls out on the front terrace as he knows that even that requirement will not meet how many will be living there.

Commissioner Sorensen clarified that it is per dwelling unit and not per bedroom.

Inspector Hansen stated that was correct.

Commissioner Carstens, as a landlord, takes a different approach than Commissioner Brogie knowing that in Wayne where you live and where you park is the same thing because there are no reasonable options, unless you buy an

on-campus parking sticker; therefore, he provides a space per tenant. If they have guests, the tenants need to work that out.

Chair Melena opined that he is not a landlord but he agrees with Commissioner Carstens. If he owned a four bedroom home and he is going to rent it out to four people, but he only provided them with four parking stalls, that is understood on the front end and the tenants knew when they pulled up that there are four bedrooms and four parking stalls. If there are two vehicles there, and a third tenant pulls up, they should understand that there is going to be a problem, unless the other roommates do not drive.

Commissioner Sorensen questioned how much extra work does it create for the police department getting calls?

Inspector Hansen opined that unless you go to two stalls per bedroom you are always going to have issues. That high of a number would be burdensome on the landlords, it is almost unreasonable then. As long as Wayne is a college town there will probably always be that problem.

Chair Melena stated that every house is going to have its own set of unique circumstances.

Inspector Hansen opined that if the number is 1 per bedroom or 1.25 per bedroom, the fact is that one per bedroom, there will still be a lack of adequate parking for that unit, because of the overnight guest issue. You could argue that is the individual's responsibility if you want your significant other stay the night then you need to go pick them up and take them back in the morning.

Commissioner Piper questioned if you are coming in from out of town where does that leave you to park if you cannot park on the street and there is not enough room to park at the place you are staying the night.

Commissioner Brogie stated they could call the Police Department to get an exception for overnight parking.

Commissioner Carstens questioned should the parking regulations drive the occupancy policy. They are really two separate things and they deal with one at a time, they are competing with the other.

Commissioner Sorensen questioned if the two weren't inter-related.

Inspector Hansen opined it was more of a matter of opinion. Inspector Hansen opined that the real issue which came before the Council the first time was parking, instead they chose to deal with occupancy because the community had the vote and said they want to keep the midnight to five parking they don't want cars parked on the streets overnight for the most part. So the only option then was they cannot have this many people live in these homes because there is no place for the cars to park and at the time they did not want to require landlords to go and pave additional parking. Council did pass the requirement that if the cars were going to park in the terrace that it had to be hard-surfaced and not just parked on the grass. Now most people comply and there may be one or two out there that the city may not know about but for the most part that complaint seemed to go away.

Commissioner Sorensen questioned the street department not wanting gravel right next to the concrete if the property owners could help it.

Inspector Hansen opined it was more Council that they were going to do it all one way and not make certain people do it because there were rocked places that were on perfectly level ground that never got into the street and then you had the next one where the rock was on a side hill and instead of digging the dirt down, they just threw rock on top and it was continuously running out into the street. So that was really a property by property issue and the Council did not really want to go that route. They said they were going to make everyone do it or not at all.

Commissioner Brogie questioned if they change the parking in the zoning will that affect future construction as well. So then if someone is building a new house, will they now need two parking spaces per bedroom?

Inspector Hansen opined that is why he does not want to change that part of the code. Because that is what would happen if you were building a house in Vintage Hill and you have four bedrooms, all of a sudden you need six parking stalls in this house and the owner says no. Inspector Hansen further opined that is why he would recommend to the Commission, that unless they are willing to go zone by zone, to just change the definition and having no more than six, but if having more than four, you need to provide a certain number of parking stalls and put it in the definition so it specifically deals with only the instance where you are renting a structure to more than four people. That way it won't impact the people who are currently renting a house to four people; they won't need to go in and add more parking stalls because of the change. It will only affect those people who want to do more than four people but no more than six. It may only affect a handful of properties in town.

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Commissioner Sorensen questioned that it shouldn't be any more work for the public works folks if they changed the requirement to 1.25 and not 1.

Inspector Hansen opined it would be more hit and miss. The properties on the corner would not have any problem, but it is the properties in the middle of the block that will have difficulty and the entire front terrace would be paved and you may not even get six parking stalls.

Chair Melena questioned if the Commission changed the definition to no more than six un-related occupants and add but must be one off-street parking stall or terrace parking stall per occupant.

Inspector Hansen opined he wanted to get some feedback from the Commission. His concern was that if they did something that would affect over half the houses in the community.

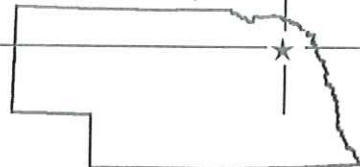
There being no further discussion, motion was made by Commissioner was made by Commissioner Sorensen and seconded by Commissioner Carstens to adjourn the meeting. All were in favor; motion carried unanimously; meeting was adjourned.

# City of Wayne

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Incorporated - February 2, 1884



## REQUEST FOR AMENDING ZONING TEXT

Applicant GRACIE, LLC Date 9/09/11

Section of Ordinance to be Amended 90-10

Reason for Amending Text ALLOW FOR MORE THAN FOUR (4) UNRELATED ADULTS TO OCCUPY A SINGLE FAMILY USE DWELLING PROVIDED ADEQUATE PARKING IS AVAILABLE.

GRACIE, LLC  
BY: Shawn E. Nick, MEMBER  
Applicant's Signature

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### Application Process:

1. An application requesting the amendment of the zoning ordinance and the reason for such amendment.
2. An application fee must be included with the request – current fee is \$200, which would cover the Planning Commission public hearing and the City Council public hearing.
3. Request for amendment of zoning language will be placed on the agenda of the Planning Commission for their next available meeting date and then a recommendation of approval or denial forwarded onto the City Council for their approval or denial of the same.

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Public Hearing by: Planning Commission 2-6-12 City Council \_\_\_\_\_

Request Approved / Denied by Planning Commission \_\_\_\_\_

Request Approved / Denied by City Council \_\_\_\_\_

Date Fee Paid: \_\_\_\_\_



Home of Wayne State College



Equal Housing Opportunity

## **Sec. 90-10. Definitions**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Agricultural Industry:** Establishments which include the storage, manufacture, sale, or distribution of agricultural supplies or products that create major external effects, including substantial truck or rail traffic and/or significant potential for hazard. Typical uses include grain elevators, storage of agricultural chemicals such as anhydrous ammonia. Agricultural industries do not include retailers of farm equipment or other, generally non-hazardous agricultural supplies.

**Light Industry:** Establishments engaged in the manufacture or processing of finished products from previously prepared materials, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution. These establishments are characterized by having no major external environmental effects across property lines and include no unscreened or un-enclosed outdoor storage. Typical uses include commercial bakeries, butcher shops, soft drink bottling, apparel assembly from fabrics, electronics, manufacturing, print shops, and publishing houses.

**General Industry:** Enterprises engaged in the processing, manufacturing, compounding, assembly, packaging, treatment, or fabrication of materials and products from prepared materials or from raw materials without noticeable noise, odor, vibration, or air pollution effects across property lines, but often including outdoor storage of materials or products.

**Heavy Industry:** Enterprises involved in the basic processing and manufacturing of products, predominately from raw materials, with noticeable noise, odor, vibration, or air pollution effects across property lines; or a use or process engaged in the storage of or processes involving potentially or actually hazardous, explosive, flammable, radioactive, or other commonly recognized hazardous materials, except for those uses defined as agricultural industries. This would include concrete mixing and concrete manufacturing.

## **Sec. 90-482. Permitted principal uses and structures**

The following shall be permitted as uses by right in an I-1 district:

46. Agricultural Industry

47. Light Industry

48. General Industry

## **Sec. 90-484. Exceptions**

In accordance with article XI of this chapter, the following exceptions are allowed in an I-1 district:

5. Heavy Industry, provided that the entire property is not located within 500 feet of the following:
  - a. a public or private educational facility including but not limited to child day care facility, nursery school, preschool, kindergarten, private school, elementary, intermediate, junior high, middle, or high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, community colleges, universities, and shall include the school grounds of the above identified schools

b. any park, children's playground area, or youth sports complex including a community activity center and a recreational trail

c. a property line of any lot devoted to a residential use

### **Sec. 90-512. Permitted principal uses and structures**

The following shall be permitted as uses by right in an I-2 district:

56. Agricultural Industry

57. Light Industry

58. General Industry

59. Heavy Industry, provided that the entire property is not located within 500 feet of the following:

a. a public or private educational facility including but not limited to child day care facility, nursery school, preschool, kindergarten, private school, elementary, intermediate, junior high, middle, or high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, community colleges, universities, and shall include the school grounds of the above identified schools

b. any park, children's playground area, or youth sports complex including a community activity center and a recreational trail

c. a property line of any lot devoted to a residential use

### **Sec. 90-754. Nonconforming uses**

(a) Authority to continue. Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued so long as otherwise lawful.

(b) Ordinary repair and maintenance.

1. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use.
2. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of public official who is charged with protecting the public safety who declares such structure to be unsafe and orders its restoration to a safe condition.

(c) Extension. A nonconforming use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities shall include without being limited to the extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of the ordinance from which this chapter derives (or on the effective date of subsequent amendments that cause such use to become nonconforming).

**(d) Enlargement.** No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and its use shall thereafter conform to the regulations of the district in which it is located.

**(e) Damage or destruction.** If any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, no repairs or restoration shall be made unless a building permit is obtained within six months and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion. When a residential structure is damaged to the extent of 60 percent of its current property tax assessed value or more, no repairs or restoration shall be made unless such use is in conformance with this chapter.

**(f) Moving.** No structure that is devoted in whole or in part to a nonconforming use and no nonconforming use of land shall be moved in whole or in part for any distance whatever, to any location on the same or any other lot, unless the entire structure and its use or the use of land shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

**(g) Change in use.** If no external structural alterations are made which will expand the area or change the dimensions of the existing structure, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided the planning commission, by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. More appropriate shall mean creating less traffic, noise, glare, odor or other characteristics of the proposed use. In permitting such change, the planning commission may require appropriate conditions and safeguards to protect surrounding areas and properties. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.

**(h) Abandonment or discontinuance.** When a nonconforming use is discontinued or abandoned for a period of 12 consecutive months, such use shall not thereafter be reestablished or resumed; and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.

**(i) Nonconforming accessory uses.** No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

**(j) Nonconforming residential uses.** Any structure which is devoted to residential uses which is located in a business or industrial district may be remodeled, extended, expanded and enlarged up to 40 percent of the present residential structure; but after any such remodeling, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.

**(k) Outside storage.** The outside storage of unlicensed, inoperable vehicles or salvaged or junked materials not in conformance with this chapter shall be discontinued, and such inoperable vehicles or salvaged or junked materials shall be removed within six months after September 28, 1993.

**(l) Heavy Industry.** The use of land for Heavy Industry that is not in conformance with this chapter shall be discontinued by May 1, 2013.

## **Sec. 90-714. Performance standards for industrial uses**

**(a)** Generally. The performance standards given in this section shall apply as minimum standards in those districts where compliance with the standard is required.

**(b)** Limited industrial performance standards. To be a permitted industrial use in an I-1 district, whether as a permitted use or as an exception, such use must meet the following performance standards:

1. Physical appearance. All operations shall be carried on within an enclosed building, except that new materials or equipment in operable condition may be stored in the open. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from the street.
2. Fire hazard. No operation shall involve the use of highly flammable gases, acid, liquids, grinding processes or other inherent fire hazard. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with other city regulations.
3. Noise. No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line; and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used, and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
4. Sewage and liquid wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.
5. Air contaminants. There shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health or safety to any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
6. Odor. The emission of odors that are generally agreed to be obnoxious to any considerable number of persons shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor, it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of this section.
7. Glare and heat. All glare, such as welding arcs and open furnaces, shall be shielded so that they shall not be visible from the property line. No heat from furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five degrees Fahrenheit.

(Ord. No. 93-11, § 1014, 9-28-1993)

**Cross references:** Environment, ch. 34; health and sanitation, ch. 42.

**Family** means:

**(1)**

1. a. One, two, three, or four persons occupying a dwelling unit; or
2. b. Five or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.

**(2)** It shall be presumptive evidence that five or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family.

**(3)** In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:

1. a. The group is one which in theory, size, appearance, structure and function resembles a traditional family unit;
2. b. The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family;
3. c. The group shares expenses for food, rent or ownership costs, utilities and other household expenses;
4. d. The group is permanent and stable. Evidence of such permanency and stability may include:
  1. The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
  2. Members of the household have the same address for purposes of voter registration, drivers license, motor vehicle registration and filing of taxes;
  3. Members of the household are employed in the area;
  4. The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;
  5. Common ownership of furniture and appliances among the members of the household; and
  6. The group is not transient or temporary in nature;
5. e. Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

*Family* means one or more persons living together and sharing common living, sleeping, cooking, and eating facilities within an individual housing unit, and meeting one of the following criteria:

- (a) Persons related by blood, marriage, or adoption;
- (b) No more than 6 unrelated individuals provided:
  - i) 1.25 parking spaces are provided per occupant as defined by city code
  - ii) The lot must be of sufficient size to provide 1,200 s.f. per occupant
- (c) Persons residing with a family for the purpose of adoption;
- (d) Not more than eight persons under 19 years of age, residing in a foster house licensed or approved by the State of Nebraska.
- (e) Not more than eight persons 19 years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the State of Nebraska.
- (f) Person(s) living with a family at the direction of a court