

Memorandum 11-037 Definitions in Zoning Code

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E M O R A N D U M 11-037

TO: MAYOR HORNADAY AND HOMER CITY COUNCIL
WALT WREDE, CITY MANAGER

FROM: RICK ABBOUD, CITY PLANNER

DATE: March 4, 2011

SUBJECT: Ordinance 11-03, Amending Definitions in Zoning Code

RE: Clarification

Due to public testimony at the February 28th City Council Meeting, this item was amended and reconsidered. The intent of the ordinance is to simplify enforcement and make it much easier to determine if a violation has occurred. I wish to further clarify some concepts of the ordinance including the issue it is designed to address, the changes that are suggested, explanation of the provision of termination, and an estimation on the amount of parcels it would affect.

The primary purpose of the ordinance is the creation of a tool to better clarify and address the storage of 'dead' vehicles. Currently, junk vehicles are not allowed to be stored in any of the districts in question. Junk vehicles include those that are "wrecked, scrapped, partially or fully dismantled ..." (not too difficult to determine) or those that are "inoperable" (could be difficult to determine). So instead of gaining a warrant and sending a mechanic out to a site to determine if a vehicle is actually inoperable, it was thought to have an easily identifiable standard to determine if the vehicles (up to five) are in compliance. All that has to be done to refute the claim is for the vehicles in question to move within 240 days.

This ordinance does not change what can be currently stored outside, only how much is acceptable. Current code addresses outdoor storage of "commercial fishing gear, noncommercial equipment including noncommercial trucks, boats, and not more than one recreational vehicle... provided no stored equipment, boat or vehicle exceeds 36 feet in length." All of this is currently allowed as private outdoor storage (reminder: junk is not allowed) and it was kept in the proposed code and would be regulated by the 1500 square foot allowance. To my knowledge, we have never had a compliant and not enforced anything related to the "accessory" private outdoor storage commercial fishing gear or fishing boats.

It was recommended that the grandfather provision of outdoor storage be terminated after one year. Our attorney is scheduled to be present and should be able to further clarify this provision. My take on this provision is that it is inherently difficult to establish a nonconformity of this sort (what type of documentation is available?). It also seems quite problematic to apply standards of the continuation of a nonconforming use which include provisions that, among other things (HCC 21.61.040), "No nonconforming use shall be moved in whole or in part to any other portion of the lot that was not occupied by the nonconforming use as of the date it became nonconforming" and "If at any time a nonconforming use is abandoned, changed, discontinued, or ceases to be the primary use of a lot, the use of that lot shall thereafter conform to the code provisions applicable in the zone in which the lot is located, and the nonconforming use shall not thereafter be resumed or allowed to continue." A few issues that come to mind is the consequence of moving or changing the storage, especially when expanding and the fact that storage of this sort is never going to be the primary use of the lot. Again perhaps the attorney will comment on this.

Finally, this ordinance as presented only affects a small amount of properties (perhaps less than half a dozen). 1500 feet is as large as or larger than the average house footprint. Storage encompassing an area greater than the existing house (principle use) would technically make storage the principle use and then would be outside of the

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provision of code to lawfully continue. This ordinance was intended to maintain the integrity of the residential neighborhoods as suggested in the newly adopted comprehensive plan. If the primary concern is the effect of this ordinance on the annexed areas, I would recommend passage as presented except to exclude the Rural Residential District where one would expect to find all of the area subjected to annexation in this ordinance and much larger lots. The higher density areas of the Urban Residential and Residential Office District would be well served by such an ordinance and all of the proposed provisions.

Related Ordinances **Memorandum - Related Ordinances:** [Ordinance 11-03\(A\) Amending Definitions in Zoning Code](#)

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