

## **SECTION 10 NON-CONFORMING USES**

### **Subdivision 1: INTENT**

Within the City's Zoning Districts established by this Ordinance or later amendments, there may exist lots, structures or land uses that were lawful before this Ordinance was passed or amended but which are prohibited, regulated or restricted under the Ordinance or a future amendment of this Ordinance. The City intends to permit nonconformities to continue until they are removed but not to encourage their survival. This Section's intent is that non-conforming uses not be enlarged, extended, or expanded, and that additions not be used as a basis for adding other prohibited uses.

### **Subdivision 2: CONTINUED USE OF EXISTING STRUCTURES.**

The lawful use of a building or structure existing at the time of this Ordinance's adoption or amendment that does not conform with the applicable district's provisions may be continued if it remains otherwise lawful subject to the following provisions:

1. No Structural Alteration. No existing structure devoted to a use not permitted by this Ordinance in the District in which it is located, shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
  
2. Extended Use. A non-conforming use may be extended throughout the building or structure, provided no structural alterations or changes are made to the building, except those required by law or ordinance or that may be required for safety or necessary to secure or insure the building's continued advantageous use during its natural life.

3. Change to Another Nonconforming Use. If no structural alterations are made to any structure or premises involving a nonconforming use, the use may be changed to another nonconforming use if the City Council, either by general rule or by making findings in the specific case, finds that the proposed use is as appropriate or more appropriate to the District. In permitting the change, the City Council will consider the Planning Commission's recommendations and may require appropriate conditions and safeguards.
4. Replacement by Permitted Use. If a structure's nonconforming use is replaced by a permitted use, the nonconforming use may not be resumed.
5. Discontinued Use. If a nonconforming use is discontinued for twelve (12) consecutive months, the use must not be resumed except in conformance with the regulations of the District where the use is located.
6. Removal or Destruction. Where nonconforming use status applies to a structure or structure and land in combination, the removal or destruction of 50% or more of the structure will eliminate the nonconforming status of the land and/or building. The structure may not be reconstructed as a nonconforming use.

### **Subdivision 3: MAINTENANCE AND REPAIRS.**

On any building devoted in whole or in part to any nonconforming use, normal maintenance, including but not limited to the repair or replacement of non-bearing walls, fixtures, wiring, and plumbing, may be performed if the maintenance, repairs or replacement does not exceed 50% of the building's current assessed value (as determined for property tax purposes) in any 5-year period. No load-bearing walls may be replaced nor may the cubic content of the building be increased.

#### **Subdivision 4: NON-CONFORMING STRUCTURES.**

Where a lawful structure exists that could not be built under this Ordinance because of restrictions on area, lot coverage, height, setbacks or other characteristics of the structure or its location on the lot, the structure may remain and continue to be used so long as it remains otherwise lawful, subject to the following provisions:

1. No Increased Nonconformity. A nonconforming structure may not be enlarged or altered in a way which increases its non-conformity.
2. Damage. Any non-conforming building or structure damaged more than fifty (50) percent of its then assessed value (as determined for property tax purposes), exclusive of foundations at the time of damage by fire, collapse, explosion or acts of God or public enemy, may not be restored or reconstructed and used as before such happening; however, if less than fifty (50) percent of the building's value (based upon assessed value) is destroyed, the building may be restored, reconstructed or used as before provided that it is reconstructed within twelve (12) months of such happening and that it is reconstructed using similar materials and architectural design. Alternative materials or design may, however, be used provided Planning Commission approval is obtained.

#### **Subdivision 5: NON-CONFORMING LAND USES.**

Where land uses exist that are not permitted under this Ordinance's terms as enacted or amended, the use may be continued if it remains otherwise lawful, subject to the following:

1. No Increased Nonconformity. A non-conforming use may not be enlarged or increased, nor extended to occupy a greater area of land.

2. Discontinued Use. If any non-conforming use of land ceases, for any reason, for a period of more than thirty (30) days, any subsequent use of the land must conform to the requirements of this Ordinance.
3. Moving Use. A non-conforming use may not be moved in whole or in part to any other portion of the lot or parcel not occupied by the use at the effective date of this Ordinance's adoption or amendment.

### **Subdivision 6: ABANDONMENT.**

A non-conforming use of a building or premises which has been abandoned must not be returned to the non-conforming use. A non-conforming use will be presumed abandoned when all or substantially all of the equipment and/or furnishings have been removed from the premises and have not been replaced or the use ceases, for any reason, for a period of more than thirty (30) days.

### **Subdivision 7: UNSAFE STRUCTURES.**

Nothing in this Ordinance is intended to prevent the strengthening or restoring to a safe condition any portion of a building or structure declared unsafe by the City Building Inspector.

### **Subdivision 8: CONSTRUCTION STARTED BEFORE ENACTMENT.**

Any proposed structure which will, under this Ordinance, become non-conforming but for which a building permit has been lawfully granted prior to the effective date of this Ordinance, may be completed in accordance with the approved plans; provided construction is started within sixty (60) days of the effective date of this Ordinance, is not abandoned for a period of more than one hundred twenty (120) days, and continues to completion within one (1) year. Such structure and use must thereafter be a legally non-conforming structure and use.

**Subdivision 9: EXPANSION OF STRUCTURE.**

No structure existing at this Ordinance's adoption may be expanded, enlarged, or reconstructed to increase its floor area by 25% or more without bringing the site into compliance with this Ordinance's requirements, including but not limited to businesses and industrial properties providing sufficient parking for the entire building, paving the parking lot area if not previously paved, providing fencing as may be required by this Ordinance, and providing screening for refuse storage.