

## **10.0 Nonconformities**

### **10.1 PURPOSE**

The purpose of this Article is to provide for the following:

- A. Continuing maintenance of nonconforming uses, buildings, structures and site elements, uses which do not conform to the provisions of this development code but which complied with applicable laws when established;
- B. Provide for the gradual replacement of nonconforming uses with uses that conform to the provisions of this development code;
- C. Provide for the expansion of nonconforming uses by the City Council;
- D. Provide for the continuance of nonconforming use of land; and
- E. Provide for the continuance and expansion of nonconforming buildings, structures and site elements.

### **10.2 GENERAL PROVISIONS**

#### **10.2.1 Burden of Establishing Nonconformity**

The burden of establishing any nonconformity is to be met by the owner or party seeking to continue the use, or any person applying for a zoning certificate. Such persons shall provide sufficient proof in a form acceptable to the Zoning Administrator of the following:

- A. Date of construction of the building or structure or date the use was established (proof may consist of a certified copy of the business license or building permit).
- B. Continuous operation of the nonconforming use (proof may consist of affidavits signed by persons having personal knowledge of the use of the premises since the use was established).
- C. Such other proof as may be deemed necessary by the Zoning Administrator.

#### **10.2.2 Relocation of Building or Structure**

No building or structure shall be moved in whole or in part to any other location on the same or any other lot unless every portion of such building or structure which is moved and the use made thereof is made to conform to all of the regulations of the district in which it is to be located.

#### **10.2.3 Exception for Repairs Pursuant to Public Order**

In order to accomplish the objectives of the Ordinance without posing any hazard to the public or occupants of buildings and structures, nothing in this Article shall be deemed to prevent the strengthening or restoration of an unsafe structure in accordance with any order of a public official who is charged with protecting the public safety, and who finds that the structure which is the subject of the order is unsafe in its then present condition, and that repair or restoration is not in violation of the provisions of this Article governing the restoration of partially damaged or destroyed structures and signs.

### **10.3 NONCONFORMING USE OF A BUILDING OR STRUCTURE**

The nonconforming use of a building or structure may be continued, subject to the provisions of this section.

#### **10.3.1 Accessory Buildings**

The requirements for nonconforming uses of nonconforming buildings, structures, or uses shall apply to all accessory buildings, structures, or buildings located on the same zoning lot.

#### **10.3.2 Discontinuance of Abandoned Nonconforming Use**

Except as otherwise provided in this Article, the voluntary abandonment of any nonconforming use of a building, structure, or premises for a period longer than one year shall terminate any rights conferred by this Article to continue such use. However, any structure originally designed and intended for more than one dwelling unit may have its use continued provided the original structure has not been altered to diminish the number of original dwelling units. Additional units cannot be added to the original design.

### 10.3.3 Expansion of Nonconforming Use

- A. No changes or structural alterations shall be permitted which would increase the bulk of a building or structure housing a nonconforming use, unless such changes conform to all the provisions of the zoning district in which such building is located.
- B. Any expansion of a nonconforming use shall be permitted only after it has been reviewed by the reviewing body having jurisdiction and approved by the City Council as a special use.
- C. Expansion of hours of operation of any class of nonconforming use beyond the hours of operation on July 15, 2007 is prohibited when such expansion would cause the use to become nonconforming.

### 10.3.4 Change in Nonconforming Use

A nonconforming use may be changed to another nonconforming use provided that the new nonconforming use is less intense than the existing nonconforming use. Such change shall be permitted only after it has been reviewed and approved by the City Council as a special use. The jurisdiction over such change, the review of proposals and approval standards and procedures shall be the same as those which are applied for special uses; however the proposed changed use need not be specifically listed as a special use in the district in which it is sought. For the purpose of this paragraph, the standards in 5.1B, Uses Not Specifically Listed, shall be considered in determining whether or not a use is less intense.

## 10.4 NONCONFORMING USE OF LAND

The nonconforming use of land may be continued, subject to the provisions of this section.

### 10.4.1 Nonconforming Use of Land Accessory to Nonconforming Use of Building

The nonconforming use of land which is accessory to the nonconforming use of a building or structure may be continued for such time as the nonconforming use of the building or structure is permitted under the provisions of this Article.

### 10.4.2 Nonconforming Use of Land Not Involving a Building

A nonconforming use of land not involving a building or structure shall not be expanded or extended beyond the area it occupies at the time it became nonconforming.

## 10.5 NONCONFORMING BUILDINGS, STRUCTURES AND SITE ELEMENTS

Nonconforming buildings, structures or site elements may be continued, subject to the provisions of this section.

### 10.5.1 Improvements Underground

No accessory improvements which are 1) underground or substantially underground, 2) which have a current market value in excess of \$5,000.00, and 3) which comprise substantially all the improvements enjoyed in nonconforming use of land shall be deemed nonconforming structures and subject to the applicable provisions of this Article.

### 10.5.2 Restoration of Buildings or Structures

- A. A nonconforming building or structure, except one identified by City Council action as being of historic significance, which is destroyed or damaged by fire or other casualty or act of God may be restored only if the cost of reconstruction to a condition in which it was prior to the casualty does not exceed 50% of the replacement cost of the entire building, and further providing no restoration or reconstruction shall be undertaken unless it is started within one year from the date of notice by the Zoning Administrator of this provision or the date of partial destruction whichever is later and completed within 24 months from the date of partial destruction.
- B. The time and cost limitations set forth herein shall not apply to any single-family dwelling located in a residential district, provided reconstruction of the dwelling begins within two years from the date of partial destruction and is thereafter diligently pursued. A nonconforming building, identified by City Council action as being of historic significance may be restored in conformance with these provisions without respect to cost or replacement cost.

### 10.5.3 Nonconforming Site Elements

- A. When a proposed or completed repair, change in use, expansion of use, or change in a building or structure already existing on June 1, 2007 occurs with or results in nonconforming elements of the site such as parking, yards or landscaping, on property that has an existing building or structure that will be retained as a part of the proposed or completed repair, change in use, expansion of use, or change in said building or structure, any person interested in the use or structure may petition for a waiver of any portion or all of the landscaping, yards or parking requirement resulting from such change or proposed change. Such waivers shall be granted by the Zoning Administrator or Site Plan Review Board as part of the review process for the issuance of zoning certificates only when they are in the interest of the City, or when conformance with the parking, yards and landscaping requirements poses some practical difficulty or particular hardship. In determining whether there is a practical difficulty or hardship, the decision maker shall make findings of practical difficulty or particular hardship based upon the standards for variations (see 2.6, Variations). Conditions or restrictions may be imposed by the decision maker at the time any waiver is granted.
- B. Any nonconformity to Section 8.2.12A. must be in compliance with Section 8.2.12A. within one year of official notification of nonconforming status by the Zoning Administrator.

*(Ordinance No. 16,416, § 1, 04-21-09; Ordinance No. 16,626, § 1, 11-23-10)*

## 10.6 NONCONFORMING USE OF LOTS OF RECORD

- A. Erection of new single-family dwellings in residential districts on nonconforming lots of record shall be permitted. The new single-family dwelling shall be placed on the lot so as to provide a yard on each side of the dwelling such that the sum of the widths of the two side yards shall be not less than the minimum required, or the greater of the following: 20% of the width of the lot or three feet.
- B. The erection of new structures or buildings in nonresidential districts shall be permitted on nonconforming lots of record if such proposed structure meets all of the requirements of the district in which it is sought to be located except for lot area.
- C. Structures and buildings on nonconforming lots in existence at the time this development code was adopted may be maintained as nonconforming uses subject to the general provisions of this Article.

## 10.7 NONCONFORMING SIGNS SUBJECT TO AMORTIZATION

### 10.7.1 Nonconforming Portable and Temporary Signs

Nonconforming portable and temporary signs shall be removed or converted to a permitted sign within ninety days of official notification of a nonconforming status by the Zoning Administrator.

### 10.7.2 Nonconforming Off-Premise Signs

- A. Nonconforming off-premise signs that are nonconforming due to being located in a residential district; or wall or roof construction shall be removed within seven years of official notification of a nonconforming status by the Zoning Administrator.
- B. Other types of nonconforming off-premise signs may be continued until any of the following activities affect the subject sign, at which time the nonconforming sign must be removed or comply with the requirements of 8.3, Signs:
  - 1. Replacement or repair of any portion of the sign in excess of 50% of the replacement value; or
  - 2. Removal or replacement of the entire sign structure, except that replacement of the nonconforming off-premise sign at the same location, of the same dimensions, with a design known as uni-pole construction will be permitted.

### 10.7.3 Nonconforming Signs

In addition to the above regulation for amortization of portable and off-premise signs, other types of nonconforming signs may be continued until any of the following activities affect the subject sign or sign

location, at which time the nonconforming sign must be removed or comply with the requirements of 8.3, Signs:

- A. Change of use classification;
- B. Replacement or repair of any portion of the sign in excess of 50% of the replacement value;
- C. Removal or replacement of the entire sign structure; and
- D. Building permit application review by the Site Plan Review Board or Zoning Administrator. However, a nonconforming on-premise sign that would require a special permit (rooftop, historic, projecting, residential, ground, and marquee signs) under this development code may be replaced without a special permit when the Zoning Administrator finds that the sign has been destroyed by an act of God.