

CHAPTER 1149
Nonconforming Uses, Lots, and Structures

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1149.01 INTENT.

The purpose of this Section is to recognize the existence of uses, buildings, lots and structures that lawfully existed at the time of this Planning and Zoning Code's enactment, or amendment thereto, but which now do not conform with one or more of the regulations contained in this Planning and Zoning Code. Nonconforming uses of structures and/or land are declared by this Code to be incompatible with the provisions applicable in the district in which such uses are located. In addition, it is recognized that there are lots, buildings, parking lots, signs, and other structures that do not conform to the zoning requirements. Regulations for the continuance, maintenance, repair, restoring, moving and discontinuance of nonconforming uses, nonconforming buildings and nonconforming lots are established in order to achieve the following purposes:

- (a) To permit the continuance but control of nonconforming uses so as to minimize any adverse effects the uses might have on the adjoining properties and development.
- (b) To regulate their maintenance and repair.
- (c) To restrict their rebuilding if substantially destroyed.
- (d) To require their permanent discontinuance if not operated for certain periods of time; and
- (e) To require conformity if a nonconforming use is discontinued, to bring about eventual conformity of all uses in accordance with the objectives of the Comprehensive Plan and Zoning Code of the City.
- (f) To establish regulations for the development of nonconforming lots.
- (g) To establish regulations for the use, restoration, reconstruction, and expansion of structures that do not conform to the standards set forth in the Planning and Zoning Code. (Ord. 2005-49. Passed 5-21-07.)

1149.02 LAWFUL NONCONFORMANCE.

- (a) The lawful use of any dwelling, building or structure and of any land or premises as existing and lawful at the time of enacting this Code, or any

amendments thereto, may be continued although such use does not conform to the provisions of this Code. The completion, restoration, reconstruction, extension or substitution of nonconforming uses shall be subject to the provisions and conditions set forth in this Chapter.

- (b) The provisions of this Chapter shall also apply to any building, structure, land or other use hereafter becoming nonconforming as a result of amendments made to this Planning and Zoning Code or Zoning Map.
- (c) A nonconforming lot, use, building or structure does not include nonconformity with regulations pursuant to a legally granted variance from a zoning regulation.
- (d) Ordinary repairs, or repair or replacement of non-bearing walls, fixtures, wiring, or plumbing may be performed on a nonconforming structure or on any portion of a structure that contains a nonconforming use provided that the cubic content shall not be increased and no structural parts shall be replaced except when required by law to restore such building or structure to a safe condition or to make the building or structure conform to the regulations of the district in which it is located. (Ord. 2006-49. Passed 5-21-07.)

1149.03 NONCONFORMING USES OF BUILDINGS, STRUCTURES, OR LAND.

A nonconforming use may be continued so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following regulations:

- (a) Change or Substitution to Another Nonconforming Use. A nonconforming use of a building, structure or land shall not be changed or substituted to another nonconforming use unless:
 - (1) The Board of Building and Zoning Appeals, on appeal, finds that the use proposed is equally appropriate or more appropriate to the district than the existing nonconforming use, and that the use proposed is in less conflict with the character of uses permitted in the applicable zoning district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in accordance with other provisions of this Planning and Zoning Code and when made a part of the terms under which the change is granted.
 - A. Whenever a nonconforming use is changed to a less intensive use, such use shall not thereafter be changed to a more intensive nonconforming use.
 - B. Whenever a nonconforming use is changed to a use permitted in the district in which the lot is located, it shall cease to be considered nonconforming use. Upon such compliance, no nonconforming use shall be made, resumed or reinstated.
 - C. Violation of any conditions and/or safeguards prescribed shall be deemed a violation of this Planning and Zoning

Code and shall be punishable under Chapter 1117,
Enforcement and Penalty.

- (2) An application is filed with the Board of Building and Zoning Appeals and such application includes payment of the fee established by the City and the items required in Chapter 1115, Submission Requirements.
- (b) Land Occupied by Nonconforming Use.
- (1) Expansion of Nonconforming Use of Land. A nonconforming use of land shall not be physically enlarged, increased, nor extended to occupy a greater area of land than was occupied by the use at the time it became nonconforming, unless otherwise specified.
 - (2) Relocation of Nonconforming Use of Land. A nonconforming use of land shall not be moved in whole or in part to any portion of the lot or parcel other than those portions occupied by the use at the time it became nonconforming.
 - (3) The nonconforming use of land as a site for a mobile or manufactured home may be continued so long as the site is not unused for one year and so long as replacement mobile homes which occupy the site are no larger in floor area than the one existing at the time of adoption of this Code or 1000 square feet whichever is larger.
- (c) Structures Occupied by Nonconforming Use.
- (1) Extension of Nonconforming Use within Building. A nonconforming use of an existing structure may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment to this Planning and Zoning Code. However, no such use shall be extended to occupy any land outside such building not previously occupied by such nonconforming use.
(Ord. 2009-27. Passed 10-19-09.)
 - (2) Expansion of Building(s). No such building shall be enlarged or expanded to increase the nonconforming use. No additional structures shall be constructed in connection with such nonconforming use, except as follows:
 - A. The construction of a detached accessory structure related to a nonconforming residential use shall be permitted subject to complying with the accessory use lot coverage & setback regulations of the zoning district in which the nonconforming residential use is located. The maximum height of such accessory structure shall not exceed 20 feet.
 - B. For nonconforming residential uses, non-habitable attached garages, porches and decks, although requiring zoning clearance and a zoning permit, shall not be considered expansions of non-conforming uses. Such additions to non-conforming residential uses shall comply with the lot coverage & setback requirements of the zoning district in

which the nonconforming residential use is located. The maximum height of such addition shall not exceed 35 feet.

- (3) Alteration or Reconstruction of a Building Occupied by a Nonconforming Use. No building or structure occupied by a nonconforming use shall be altered, improved, or reconstructed except when the use is changed to a permitted use in the district in which it is located, or upon prior approval of the Board of Building and Zoning Appeals provided the cumulative cost of the alteration, reconstruction, or improvement permitted by the Board does not exceed 50% of the building's replacement value. (Ord. 2012-24. Passed 8-20-12.)
- (4) Damage or Destruction.
- A. Except as provided in Section 1149.03(c)(4)B. below, in the event a building or structure that is occupied by a nonconforming use is destroyed by any means to the extent of more than 50% of its replacement value, it shall not be rebuilt, restored or reoccupied for any use unless such use conforms to the use regulations of the district in which the building or structure is located.
- B. Notwithstanding Section 1149.03(c)(4)A., above, in the event that a residential building or structure that is occupied by a legal nonconforming use is damaged or destroyed by any means (excluding arson or negligence attributable to the property owner) to the extent of more than 50% of its replacement value, the owner may apply to the Planning Commission for a permit to rebuild or restore and reoccupy the premises in accordance with the use that existed at the time of the construction thereof, provided that the Planning Commission, after issuing notice and conducting a public hearing on the application in accordance with the process set forth in Section 1107.26, finds that all of the following criteria have been met:
1. The number of dwelling units is not increased; and
 2. The footprint and floor area of the building or structure shall be restored only to the original footprint and floor area that existed prior to the damage or destruction, unless the Planning Commission determines that insignificant increases are needed to comply with the building and/or fire codes; and
 3. The proposed building or structure shall be architecturally compatible with the surrounding neighborhood; and
 4. The location, materials used, and screening of parking is appropriate for the neighborhood.

- C. If the Planning Commission approves an application as referenced in Section 1149.03(c)(4)B., above:
1. The reconstruction shall be commenced within six (6) months of the date of the approval thereof," and
 2. The reconstruction shall be completed within one (1) year after it has been commenced.
(Ord. 2012-21. Passed 7-23-12.)
- (d) Discontinuance of Use. Whenever a nonconforming use of a building, part of a building, lot or part of a lot is discontinued for more than one year, such discontinuance shall constitute voluntary abandonment of such use and any subsequent use of the building, part of a building, lot or part of a lot shall conform to the use regulations specified by this Code for the district in which such land is located. (Ord. 2009-27. Passed 10-19-09.)

1149.04 NONCONFORMING BUILDINGS AND STRUCTURES.

A nonconforming building or structure may continue to be used or occupied by a use permitted in the district in which it is located so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:

- (a) Additions and Moving. A nonconforming building or structure shall not be added to, enlarged or moved unless the addition(s) or part(s) moved is made to conform to the regulations of the district in which it is located.
- (b) Restoration of Damaged Building or Structure. If a nonconforming building or structure is damaged or destroyed by any means, those portions so destroyed or damaged may be restored to the original footprint and floor area of the building or structure, provided the reconstruction is begun within 12 months of the damage or destruction and the cumulative replacement costs do not exceed 50% of the replacement cost of the building or structure at the time of such damage. Any restoration that exceeds the original footprint and/or floor area shall comply with subsection 1149.04(a).
- (c) Change in Principal Use of Building. The principal use of a nonconforming building may be changed to any other use permitted in the district in which it is located so long as the new use complies with all regulations of this Planning and Zoning Code specified for such use, except the regulations to which the building did not conform prior to the change in use.
- (d) Variances from district regulations on area, lot coverage, lot width, height, yards, location on the lot may be granted by the Board of Appeals where necessary and where such appeal for a variance meets the requirements of Section 1111.09 (c) (1), Area Variance. The Zoning Administrator may allow the extension of an existing nonconforming building line if the extension maintains the same or creates a greater distance from the lot line. (Ord. 2006-49. Passed 5-21-07.)

1149.05 NONCONFORMING LOTS.

A lot of record that, on the effective date of this Planning and Zoning Code, or any amendment thereto, does not comply with the lot area and/or lot width regulations of the district in which the lot is located may be used as follows:

- (a) Existing Buildings on Lots of Record.
 - (1) Existing Building on a Nonresidential Lot. If the lot is occupied by a building, such building shall be maintained and may be repaired, modernized or altered, provided that the building shall not be enlarged in floor area unless the enlarged section(s) complies with all regulations of this Planning and Zoning Code, except the lot area and lot width regulations of the district in which the lot is located.
 - (2) Existing Dwelling on a Residential Lot. If the lot is occupied by a dwelling, such dwelling shall be maintained and may be repaired, modernized or altered, provided that the building shall not be enlarged in floor area unless the enlarged section(s) complies with all regulations of this Planning and Zoning Code, except for the lot area and lot width regulations of the district in which the lot is located.
 - A. Structural alterations or extensions of a residential structure which is nonconforming only by reason of lot size or lot width shall be permitted upon approval of the Zoning Administrator.
 - B. The number of dwelling units shall not be increased unless all regulations, including lot area, are complied with.
- (b) Vacant Single Nonconforming Lot of Record.
 - (1) Single Nonconforming Lot of Record in a Residential District. A nonconforming lot in a Single-family Residential District that is in separate ownership and not of continuous frontage with other lots in the same ownership shall be permitted to be developed as a site for a single-family dwelling and customary accessory buildings.
 - A. Such dwelling and its accessory uses shall comply with all regulations of this Planning and Zoning Code, except for the lot area and lot width regulations of the district in which the lot is located.
 - B. Review and approval of development on such lots of record shall be conducted according to the procedures set forth in Section 1107.04, Zoning Certificate for a Single-family Dwelling or Use Accessory Thereto.
 - C. Variances of requirements from district regulations other than lot area or lot width shall be obtained through action of the Board of Zoning Appeals as provided in this Chapter.
 - (2) A vacant nonconforming lot in a Multi-family or non-residential district may be used for any use permitted in the district in which it is located when the development of such lot meets all requirements

of the district in which it is located, including the maximum lot coverage and minimum setback requirements, except for the minimum lot area and lot width requirements. No use that requires a greater lot size than the established minimum lot size for a particular district shall be permitted on a nonconforming lot. Review and approval of development on such lots of record shall be conducted according to the development plan review requirements set forth in Chapter 1107.

- (c) Lots in Combination. If a vacant nonconforming lot in any district adjoins one or more lots in common ownership on the effective date of this Planning and Zoning Code, or applicable amendment thereto, such lots shall be replatted to create conforming lots as a prerequisite for development.
(Ord. 2006-49. Passed 5-21-07.)

1149.06 NONCONFORMING PARKING FACILITIES.

A building or use existing lawfully at the time of this Planning and Zoning Code, or an amendment thereto, became or becomes effective, but which does not comply with the off-street parking regulations for the use may continue without such parking facilities. In the event an existing building is altered or a use is changed or substituted, in accordance with these regulations, then additional off-street parking spaces shall be provided in compliance with Chapter 1169, Off-Street Parking and Loading Regulations, if this Code requires such additional parking spaces as a result of the proposed changes.
(Ord. 2006-49. Passed 5-21-07.)

1149.07 NONCONFORMING SIGNS.

A sign, lawfully existing at the time this Planning and Zoning Code, or any amendment thereto, became or becomes effective, but which fails to conform to the sign regulations of the district in which it is located is a nonconforming sign. Nonconforming signs shall comply with the regulations set forth in Section 1171.09, Regulations for Nonconforming Signs.
(Ord. 2006-49. Passed 5-21-07.)

1149.08 NONCONFORMING SITE CONDITIONS EXISTING AT TIME OF DEVELOPMENT PLAN REVIEW.

If a nonconforming site condition(s) exists when a revised development plan is required pursuant to Chapter 1107, then such site condition(s) must be brought into compliance with district regulations, unless the Planning Commission determines that such conformance cannot be reasonably achieved because of existing site conditions. In such case, the Planning Commission shall approve a development plan that reduces the existing nonconforming site condition(s) to the maximum extent practicable.
(Ord. 2006-49. Passed 5-21-07.)

1149.09 EXISTING USE DEEMED CONDITIONAL USE; PERMIT REQUIRED FOR CHANGE.

Any lawfully existing use that, at the time of its establishment, was not classified as a conditional use, but which now, because of the passage of this Planning and Zoning Code, or amendment thereto, is listed as a conditional use in the district in which it is located, shall be deemed without further action to be a conditional use. Any change, modification, enlargement or alteration of such use, site development conditions or signs, or change in operations shall only be permitted upon review and approval by the Planning Commission according to the procedures for conditional uses set forth in Chapter 1107. (Ord. 2006-49. Passed 5-21-07.)

1149.10 DETERMINATION OF NONCONFORMING STATUS.

At the time of application for a zoning certificate or request for variance, or upon the request of the Zoning Administrator regarding a nonconforming lot, building, structure or use, the property owner shall submit sufficient evidence to verify that such lot, building, structure, or use was lawfully created or established in accordance with the zoning regulations in existence at that time. If the evidence submitted indicates the lot, building, structure or use was legally established and has since become nonconforming because of the establishment of or amendment to this Planning and Zoning Code, the Zoning Administrator shall issue a Certificate of Nonconforming Use. This certificate shall specify the reason why the use, building, structure or lot is nonconforming, and for nonconforming uses shall also include a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are nonconforming. (Ord. 2006-49. Passed 5-21-07.)

1149.11 COMPLETION OF CONSTRUCTION WITH ZONING CERTIFICATE.

Nothing in this Planning and Zoning Code shall prohibit the completion of the construction and use of buildings for which a zoning certificate has been issued prior to the effective date of this Planning and Zoning Code, or amendments thereto, provided that construction is carried on diligently and without interruption and the entire building is completed within two years after the issuance of the zoning certificate. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction. (Ord. 2006-49. Passed 5-21-07.)