

Article 12. Nonconformities & Enforcement

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12.1 NONCONFORMITIES

12.1.1 General

- A. Authority to Continue.** Any use, structure, lot, or sign that was lawfully established prior to, and has been made nonconforming as of, the effective date or subsequent amendment of this Ordinance, may continue so long as the nonconformity remains otherwise lawful and complies with this section. Any rights conferred upon a nonconformity run with the property and are not affected by changes in tenancy or ownership.
- B. Proof of Nonconformity.** The burden of establishing the prior existence of a nonconformity is on the applicant. When applying for any permit or approval related to a nonconformity, the applicant may be required to submit evidence of a prior permit or other documentation showing that the nonconformity existed prior to the date on which it became nonconforming.
- C. Determinations of Nonconformity.** If there is a question as to whether a nonconformity exists, the matter will be decided by the Zoning Administrator with a written interpretation in accordance with Section 11.3.11.
- D. Relationship to Other Regulations.** All nonconforming uses, structures, lots, and signs must meet any applicable federal, state, and local requirements, including, but not limited to, licensing, health, safety, and building and fire code requirements.
- E. Illegality.** Any use, structure, lot, or sign that was illegal prior to the effective date of this Ordinance remains illegal if it does not conform to the provisions of this Ordinance.

12.1.2 Nonconforming Uses

- A. Description.** A nonconforming use is the use of a structure or land that was lawfully established prior to the effective date or subsequent amendment of this Ordinance, but which has been made nonconforming.

- B. Expansion.** A nonconforming use may not be expanded in area or increased in intensity.
- C. Alteration.** The structure containing the nonconforming use may be altered only if the alterations constitute ordinary repairs or maintenance or are designed to eliminate a nonconformity, provided it will not create any new nonconformity or increase the area or intensity of a nonconforming use.
- D. Change of Use**
 - 1.** A nonconforming use may not be changed to another nonconforming use. When a nonconforming use has been changed, in whole or part, to a conforming use, the part that has come into conformance may not be changed back to a nonconforming use.
 - 2.** A change of use is deemed to occur when an existing nonconforming use has been terminated and another use has commenced. Any change of use in violation of this Ordinance is deemed an abandonment of the nonconforming use.
- E. Discontinuance.** Whenever the active and continuous operation of any nonconforming use, in whole or part, has been discontinued for one year, it constitutes an abandonment of the nonconforming use or part of that use, regardless of any intent to resume operation. The discontinued nonconforming use may not be re-established.
- F. Restoration of Damaged Structures and Uses**
 - 1.** When a structure containing a nonconforming use is damaged or destroyed, and the cause of damage was not by any means within the control of the owner, the nonconforming use may be reestablished provided that no new nonconformities are created and the degree of the previous nonconformity is not increased. If the structure containing the nonconforming use is a nonconforming structure, such structure must be rebuilt, restored, repaired, or reconstructed in accordance with Section 12.1.3.

2. A building permit must be obtained for such rebuilding, restoration, repair, or reconstruction within one year of the date of damage or destruction. The Zoning Board of Appeals may grant a one-year extension of this period.
3. In the event that a building permit is not obtained within one year of the date of damage or destruction, and no extension is requested, then the nonconforming use may not be reestablished unless it conforms to all regulations of the zone.

12.1.3 Nonconforming Structures

- A. Description.** A nonconforming structure is a structure that was lawfully erected prior to the effective date or subsequent amendment of this Ordinance, but which has been made nonconforming.
- B. Alteration.** A nonconforming structure may be altered in the following circumstances:
1. The alteration or replacement is required by law or is necessary to restore the structure to a safe condition upon the order of any official charged with protecting public safety.
 2. The alteration constitutes routine repair or maintenance, or is designed to eliminate a nonconformity.
 3. The alteration conforms to the provisions of this Ordinance, and does not expand the existing or create a new nonconformity.
 - a. In the case of a structure that is nonconforming due to the width of one or more storefronts, such structure is not required to conform to the required maximum storefront width, so long as such nonconforming storefront width is not expanded.
- C. Relocation.** A nonconforming structure may not be moved in whole or part to another location unless the structure conforms to the standards of the zone to which the structure is moved.

D. Restoration of Damaged Structures

1. When a nonconforming structure is damaged or destroyed to the extent of 50% or more of its replacement value, the structure may be repaired or rebuilt only if it conforms to the provisions of this Ordinance.
2. When a nonconforming structure is damaged or destroyed to the extent of less than 50% of its replacement value, it may be repaired and rebuilt to its previous condition, so long as the cause of damage was not by any means within the control of the owner, the nonconformity is not expanded, and no new nonconformity is created.
3. A building permit for repairs or reconstruction must be granted within one year of the date of damage or destruction, unless an additional one year extension is granted by the Zoning Board of Appeals.
4. The replacement value of the structure is based on: a) the sale of that structure within the previous year or, if that is not available; b) an appraisal within the last two years or, if that is not available; c) the amount for which the structure was insured prior to the date of the damage or destruction or, if that is not available; d) an alternative method determined acceptable by the Zoning Administrator.
5. In the event that a building permit is not obtained within one year of the date of damage or destruction, and no extension has been applied for, the structure may be repaired or rebuilt only if it conforms to the provisions of this Ordinance.

12.1.4 Nonconforming Lots

- A. Description.** A nonconforming lot is an existing lot of record that does not comply with the lot dimension standards of this Ordinance, created either prior to the effective date of this Ordinance or, as of the effective date of this Ordinance and any subsequent amendment, is made nonconforming.

- B. Alteration.** No nonconforming lot may be subdivided to increase the nonconformity.
- C. Permitted Development.** A lot that is nonconforming due to insufficient lot width or insufficient lot area may be developed, so long as any applicable setback standards are met. Where any setback standard is based on a percentage of the lot dimensions, the setback standard will be based on the minimum required dimension, rather than the actual dimension, of the lot.
- E. Removal of Abandoned Signs.** Any nonconforming sign that is located on a property that becomes vacant and unoccupied for a period of one year or more is deemed abandoned. Abandoned nonconforming signs must be removed by the owner of the sign or the property owner of the premises. No permits or approvals may be issued for properties with nonconforming abandoned signs until such signs are removed.

12.1.5 Nonconforming Signs

- A. Description.** A nonconforming sign is a sign that was lawfully erected prior to the effective date or subsequent amendment of this Ordinance, but which has been made nonconforming. Heritage signs, designated according to the provisions in Section 9.1.7, are not considered nonconforming signs.
- B. Alteration.** A nonconforming sign may remain in use, so long as the sign is not altered to expand or create a new nonconformity. A nonconforming sign may be otherwise be maintained and repaired, and the sign face and sign message may be changed, so long as these alterations do not increase the size, height, or degree of illumination of the sign.
- C. Relocation.** No nonconforming sign may be relocated in whole or part to any other location on the same or any other lot, unless the sign conforms to the standards of this Ordinance.
- D. Restoration of Damaged Signs**
 - 1.** When a nonconforming sign is damaged or destroyed to the extent of 50% or more of its replacement value, the sign may be repaired or rebuilt only if it conforms to the provisions of this Ordinance.
 - 2.** When a nonconforming sign is damaged or destroyed to the extent of less than 50% of its replacement value, it may be repaired and rebuilt to its previous condition, so long as the nonconformity is not expanded and no new nonconformity is created.

12.2 ENFORCEMENT

12.2.1 Enforcement

A. Authority. The Commissioner of Permit and Inspection Services has the authority to enforce the Unified Development Ordinance with respect to property outside of public rights-of-way and parks. The Commissioner of Public Works, Streets, and Parks has the authority to enforce the Unified Development Ordinance with respect to public rights-of-way and parks. The Commissioner of Permit and Inspection Services and the Commissioner of Public Works, Streets, and Parks may institute any appropriate inspection, action, or proceeding to:

1. Prevent the unlawful erection, relocation, extension, enlargement, or alteration of any structure or sign.
2. Prevent the unlawful use or occupancy of structures or land.
3. Prevent any illegal act, business, or use in or about the premises.
4. Restrain, correct, or abate violations of this Ordinance.

B. Permits. The Commissioner of Permit and Inspection Services may issue no permit for the construction or alteration of any structure or the use or occupancy of any premises unless the plans, specifications, and proposed use of the structure or premises conform to the provisions of this Ordinance. Any permit issued for the construction or alteration of any structure or for the use or occupancy of any premises contrary to the provisions of this Ordinance will be void. Any material misstatement of fact by an applicant for a permit or any material misrepresentation in his or her plans or specifications will render void the permit.

C. Certificates of Occupancy. No structure may be used or changed in use, nor premises occupied or used, until a certificate of occupancy has been issued by the Commissioner of Permit and Inspection Services.

D. Stop-Work Orders. Whenever the Commissioner of Permit and Inspection Services has reasonable grounds to believe that work on any structure or lot is being performed in violation of the provisions of the applicable building laws, ordinances, and regulations; is not in conformity with the provisions of the approved permit application, plans, specifications, and revisions; is in an unsafe and dangerous condition; or is without a required permit, the Commissioner will notify the owner of the property or the owner's agent to suspend all work, and any of these persons must stop work and suspend all building activities until the stop-work order has been rescinded. The order and notice must be in writing, must state the conditions under which the work may be resumed, and may be served either by delivering it personally or by posting it conspicuously where the work is being performed, and sending a copy of it by mail to the address set forth in the permit application.

12.2.2 Fines and Penalties

Any person, firm, or corporation who violates, disobeys, omits, neglects, refuses to comply with, or resists the enforcement of any of the provisions of this Ordinance will be liable to pay a fine per City Code, Chapter 175, Fees, for each offense. Each day that a violation continues to exist constitutes a separate offense. The accumulation of penalties for violations, but not the obligation for payment for previous violations, ceases upon correction of the violation.

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