

ARTICLE 6. - NONCONFORMITIES

DIVISION 1. - GENERAL

Sec. 6-101. - Purpose and applicability.

The purpose of this article is to provide for the continuation, modification or eventual elimination of nonconforming uses, and structures and signs in accordance with the standards and conditions in this article. While nonconformities may continue, the provisions of this article are designed to encourage the improvement or elimination of nonconformities in order to better achieve the purposes of these LDRs.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

DIVISION 21. - NONCONFORMING USES AND STRUCTURES

A. Purpose and intent. The purpose of this article is to regulate and limit the development and continued existence of uses, structures, and lawful lots established prior to the effective date of these regulations and subsequent amendments hereto, which do not conform to the requirements of these regulations. Many nonconformities may continue, but the provisions of this article are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement or elimination in order to preserve the integrity of these regulations and the character of the city.

B. Applicability. Any nonconforming use, structure, or lot which lawfully existed as of the effective date of the ordinance from which this chapter is derived and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of these regulations or any subsequent amendment to these regulations may be continued or maintained only in accordance with the terms of the following provisions regarding nonconformities.

C. Continuation of nonconforming use or structure. Except as may be provided elsewhere in this article, a lawful use or structure that is made no longer permissible as of the date of enactment of these LDRs shall be permitted to continue, so long as it remains otherwise lawful and subject to the standards and conditions contained herein.

D. Expansion of nonconforming use or structure. A nonconforming use or structure shall not be expanded or extended beyond the floor area, lot area or both that it occupied on the effective date of these LDRs or the effective date of any amendment to the ordinance

from which this chapter is derived rendering such use or structure nonconforming, except as follows:

- 1) Development determined to have vested rights pursuant to Article Article 3, Division 12 of these LDRs are not subject to the limitation on expansion in this subsection.
- 2) The nonconforming structure shall not be expanded, enlarged, or increased beyond 25 percent of the existing gross floor area of the building; providing that all other nonconformities either created as a result of the expansion or existing shall be brought into conformity to the best extent physically possible as set forth in this article.
- 3) The nonconforming use shall not be expanded, enlarged, so as to increase the degree of nonconformity of the use by adding related nonconforming principal uses or accessory uses.
- 4) Where such alteration or modifications are interior to the structure and do not create any additional gross floor area.

E. Discontinuation or abandonment of a nonconforming use; nuisances and hazards prohibited. If a nonconforming use is discontinued and abandoned, for a period of 180 consecutive days, including any period of discontinuation and abandonment before the effective date of these regulations, then that use or structure shall not be renewed or re-established and any subsequent use of the lot or structure shall conform to all applicable district regulations to the best extent physically possible as set forth in this article. A nonconforming use shall not be continued if it produces odors, noxious fumes, smoke, noise or other external impacts that become a nuisance or hazard to residents.

F. Change of use, general. A nonconforming use may be changed to a permitted use, related permitted use or special exception use for the zoning district in which the property is located as set forth subject to the review and approval requirements of the appropriate zoning district.

G. Change from one nonconforming use to another nonconforming use. When a nonconforming use is changed to a more restrictive nonconforming use, the new nonconforming use shall not be permitted to subsequently change back.

H. Ordinary repair and maintenance. Ordinary repairs and maintenance may be made to a nonconforming structure. The administrative official shall determine what constitutes "ordinary repairs and maintenance," in accordance with the criteria that such repairs and maintenance do not substantially alter the structure, result in a change of occupancy of the structure or contravene or circumvent other provisions herein.

I. Destruction of a lawful nonconforming structure. If a nonconforming structure is destroyed or damaged by a fire, flood, windstorm, or similar abnormal and identifiable event, then the structure may be restored or reconstructed to its original height and density upon a filing and approval of a vested rights determination application, pursuant to Article 3, Division 12 of these LDRs, and consistent with Policy 1.2.7 of the Comprehensive Plan.

Sec. 6-201. Continuation of nonconforming uses.

Except as may be provided elsewhere in this article, a lawful use that is made no longer permissible as of the date of enactment of these LDRs shall be permitted to continue, so long as it remains otherwise lawful and subject to the standards and conditions contained herein.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-202. Extensions and expansions of nonconforming uses.

A. A nonconforming use shall not be enlarged, increased or extended to occupy a greater area of land than was occupied as of the date of adoption of these LDRs;

B. A nonconforming use shall not be moved in whole or in part or extended to include any other portion of the lot or parcel occupied by such use as of the date of adoption of these LDRs;

C. Notwithstanding the foregoing, an increase in the level of activity of a nonconforming use in any portion of a building that was arranged or designed for such nonconforming use shall not be considered to be an expansion or extension of a nonconforming use.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-203. Change from one nonconforming use to another nonconforming use.

A. A nonconforming use may be changed to either a more restrictive nonconforming use or a conforming use.

B. When a nonconforming use is changed to a more restrictive nonconforming use, the new nonconforming use shall not be permitted to subsequently change back.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-204. Nuisances and hazards prohibited.

A nonconforming use shall not be continued if it produces odors, noxious fumes, smoke, noise or other external impacts that become a nuisance or hazard to residents.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

~~Sec. 6-205.— Discontinuance of nonconforming use.~~

~~If a nonconforming use ceases operations for any reason for a period of more than one hundred eighty (180) consecutive days, such nonconforming use shall not thereafter be re-established and any subsequent use of the land shall conform to these LDRs for the district in which it is located.~~

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

~~DIVISION 3.— NONCONFORMING STRUCTURES~~

~~Sec. 6-301.— Continuation of nonconforming structures.~~

~~Except as may be provided elsewhere in these LDRs, a nonconforming structure may be continued so long as it remains otherwise lawful, subject to the standards and conditions of this division 3.~~

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

~~Sec. 6-302.— Destruction of nonconforming structures.~~

~~A nonconforming structure that is destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at the time of the damage or destruction shall not be reconstructed except in conformity with these LDRs; provided however that a nonconforming residential structure that is involuntarily destroyed either partially or totally may be restored to its original height and density upon a finding by the city council that the structure, as rebuilt, would be consistent with the intent of the comprehensive plan.~~

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

~~Sec. 6-303.— Expansions and alterations to nonconforming structures.~~

~~Routine repairs and maintenance may be done on nonconforming structures but no nonconforming structure may be enlarged or altered in a way which increases the nonconformity. Should any nonconforming structure be moved, it shall thereafter conform to these LDRs.~~

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

~~DIVISION 4.— NONCONFORMING SIGNS **(Relocated to Article 5, Signs)**~~

~~Sec. 6-401.— Continuation of nonconforming signs.~~

~~A. All signs issued permits, or that were otherwise lawfully existing at the time of adoption of these LDRs, but which are not in conformance with the requirements of article 5 division 15, may continue as nonconforming signs, subject to the standards and conditions of this division 4.~~

~~B. Nonconforming signs shall be maintained in safe condition and may be repaired or otherwise maintained provided the copy or advertising illustration is not altered as to shape, size, design, style and/or content, and provided the sign structure is not moved, altered or replaced.~~

~~(Ord. No. 1278, § 1(exh. 1), 4-28-09)~~

~~Sec. 6-402. Alteration or relocation of nonconforming signs or buildings or structures upon which they are mounted.~~

~~A. Nonconforming signs shall not be enlarged, increased, relocated, or extended to occupy a greater area than was permitted on the date of adoption of these LDRs.~~

~~B. The noncommercial speech copy or illustrations of nonconforming signs may be changed at any time. The commercial copy or illustrations of nonconforming signs may be changed with regard to any sign to reflect changes in tenancy or ownership of the enterprise owning such sign provided the total face area and/or height of the sign is not increased.~~

~~C. All changes to nonconforming signs provided for above shall require approval from the building and zoning department.~~

~~D. If a nonconforming sign is removed from a wall or facade of a building in order to substantially renovate, enlarge, and/or structurally alter such wall or facade, the sign shall not be replaced unless it is made to comply with these LDRs; provided however that this shall not prevent routine maintenance or repair to either the sign or the wall or facade on which it is mounted.~~

~~(Ord. No. 1278, § 1(exh. 1), 4-28-09)~~

~~Sec. 6-403. Discontinuance of nonconforming signs.~~

~~Except as otherwise provided in this division 4, whenever a nonconforming sign is discontinued or the premises to which the sign relates vacated for a period of more than one hundred eighty (180) days, the property owner shall remove all nonconforming signs with their structures from the premises. After a nonconforming sign is removed, any subsequent sign shall conform to these LDRs.~~

~~(Ord. No. 1278, § 1(exh. 1), 4-28-09)~~

~~Sec. 6-404. Destruction of nonconforming signs.~~

~~Nonconforming signs that are damaged by any cause may be repaired if the cost of the repair does not exceed fifty (50) percent of the current replacement value of the sign. Such repairs shall be limited to routine painting, repair and replacement of components.~~

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-405. Nuisances and hazards prohibited. [RELOCATED TO ARTICLE 5, SIGNS]

Any nonconforming sign that creates a nuisance or poses a hazard to the public shall be either repaired, removed or brought into compliance with these regulations within ten (10) days of notification of the nuisance or hazard.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

DIVISION 52. - NONCONFORMING LOTS

Sec. 6-501201. - Existing Nonconforming lots of record.

A. Nonconforming lots of record may be utilized for any permitted use within the applicable zoning district, provided that all such use and all development shall comply with all regulations of this chapter, other than those regulations applicable to lot size, ~~and dimension, and/or including but not limited to setbacks, which are nonconforming.~~

B. When two or more contiguous, vacant, nonconforming lots of record are in a single ownership, if such lots are subdivided, they shall only be used or developed in such manner as will make them both conforming.

~~A single family structure may be constructed on any lot in any residential district if the lot is less than the minimum area required for building lots in the residential districts in which it is located, providing that the following conditions exist or are met:~~

~~A. Availability of adjacent vacant land. No structure shall be erected on any nonconforming lot if the owner of the lot owns any adjoining vacant land which would create a conforming lot if the vacant land were combined with the lot deficient in area.~~

~~B. Side setbacks. No structure, other than a permitted fence, wall, or other similar structure, shall be constructed on a nonconforming lot unless it has a minimum side setback of seven and one half (7½) feet, or a minimum side yard of fifteen (15) feet where adjacent to any street.~~

C. Front and rear setback. No structure other than a permitted fence, wall or other similar structure shall be constructed on a nonconforming lot unless it shall have front and rear setbacks conforming to the minimums required for the residential district in which the lot is located, or is in conformity with the front and rear yard setback lines on the same side of the street on which the lot is located.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

DIVISION **63**. - NONCONFORMING ACCESSORY USES AND ACCESSORY STRUCTURES

Sec. 6-~~601~~**301**. - Termination after principal use or structure is discontinued.

Nonconforming accessory uses or accessory structures shall not continue after the principal use or structure is terminated by abandonment, damage or destruction unless such accessory use or accessory structure conforms to the standards for the zoning district in which it is located.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-~~602~~**302**. - Substantial improvement to principal use or structure.

Any nonconforming accessory use or accessory structure shall be brought into conformity with these LDRs whenever a substantial improvement to, addition to, or change in the principal use or structure on the property is proposed and approved.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

DIVISION **74**. - TERMINATION OF STATUS AS A NONCONFORMITY

Sec. 6-~~701~~**401**. - General.

A nonconforming use or structure may be deemed to be in conformity with these LDRs, and may thereafter be allowed to continue and to expand as a lawfully existing use or structure, if such use or structure is granted special exception approval in accordance with the provisions of this division and the procedures in article 3.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-~~702~~**402**. - Standards for terminating nonconforming status.

Special exception approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved in a way that will reduce the impact of the nonconformity on the neighborhood. The impact of the nonconformity can be reduced as follows:

- A. Significant upgrading and improvement to the building facades; or
- B. Addition of substantial landscaping to buffer the property; or
- C. Upgrading or improving onsite parking to minimize overflow parking to the extent possible on the property.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)