

SECTION 10 NONCONFORMITIES

10.1. GENERAL APPLICABILITY

- A. **Intent.** Due to the establishment of this UDO, there exists uses of land, structures, lots of record, and site features that were lawfully established prior to the adoption of this UDO that may not be conforming. The purpose and intent of this Section is to allow and regulate the continued existence of such instances that do not conform to the provisions of this UDO.
- B. **Determination of a Nonconformity.** The burden of establishing that a nonconformity lawfully exists shall be the responsibility of the person who owns or rents the property upon which the nonconformity exists. Evidence that may be used to prove the legal status as a lawful nonconformity may include approved permits, construction plans, and records of previously approved regulations.
- C. **Ownership Changes.** No change of title or possession of property shall be construed to prevent the continuance of a nonconformity.
- D. **Increases in a Nonconformity.** A nonconformity shall not be expanded, intensified, or enlarged except as provided by this Section.

10.2. NONCONFORMING LOTS

- A. **Generally.** No use or structure shall be located on a nonconforming lot of record established after the adoption of this UDO except in accordance with this Section.
- B. **Nonconforming Lot Area or Width.** Legally established lots (including platted lots) predating the adoption date of this UDO that do not conform to the minimum lot standards set forth in this UDO may be used as if they are conforming. However, no new use that has a greater lot size requirement than the UDO established minimum lot size is permissible on a nonconforming lot. Development on a nonconforming lot shall comply with the following standards:
 - 1. **Conforming Structures on Nonconforming Lots.** If a structure is legally conforming and meets all standard requirements in this UDO, the structure may be continued, enlarged, or reconstructed in any way that is in conformance with this UDO.

2. **Nonconforming Structures on Nonconforming Lots.** Nonconforming structures established on nonconforming lot(s) shall follow the provisions of Section 10.4: Nonconforming Structures.
- C. **Changes to Nonconforming Lot.** The boundaries, lot lines, shape, or size of a nonconforming lot may only be changed if it makes the lot more conforming.

10.3. NONCONFORMING USES

- A. **Generally.** Any lawfully existing nonconforming use may continue on the same land area and on the same floor area. Except as provided in this Section, nonconforming uses may not be increased in extent (either in square footage or intensity of use).
- B. **Change of Use.** A nonconforming use may not be changed to any use other than a permitted use in the zoning district where located. A use shall be deemed to have been changed when an existing nonconforming use has been terminated and a permitted use has commenced. A change of use from an existing nonconforming use to a permitted use shall require the following:
 - a. Parking and loading areas shall be improved to the minimum standards specified in Section 8.4: Parking and Loading, of this UDO.
 - b. Landscaping and buffering shall be provided, as defined in Section 8.3: Landscaping, Buffering, Fences and Walls, of this UDO, to the greatest extent possible.
 - c. Nonconforming signs shall be removed from the property and replaced with conforming signs.
- C. **Nonconforming Uses Within a Completed Building.** Nonconforming uses may be extended throughout any portion of a completed building if the building was designed to accommodate such a use. A nonconforming use may not be extended to additional structures or to land area outside the structure.
- D. **Abandonment or Discontinuance.** If a nonconforming use is discontinued or abandoned for 365 days or more, the use shall not be reestablished or resumed. Operation of the use without a license or permit required by the City or State, for 365 days or more, shall constitute a termination of nonconforming use.

10.4. NONCONFORMING STRUCTURES

- A. Nonconforming Structures Containing a Conforming Use.** Any lawful nonconforming structure containing a conforming use may continue in accordance with this Section. Any enlargement of a nonconforming structure containing a conforming use shall comply with all required setbacks in this UDO and other applicable regulations, and may not create any additional dwelling units, create new nonconformities, or increase the extent of existing nonconformities. A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless upon relocation it conforms to the requirements of this UDO.
- B. Nonconforming Structures Containing a Nonconforming Use.** A nonconforming use that is contained within a nonconforming structure is subject to subsection 10.3: Nonconforming Uses. Nonconforming structures shall meet the requirements defined in Section 10.4.A above.
- C. Minor Repairs and Maintenance.** Minor repairs to, and routine maintenance on, nonconforming structures shall be allowed. Minor repairs and routine maintenance shall mean repairs and maintenance that are necessary to maintain a nonconforming structure in a safe condition and to protect against hazards to the safety of surrounding areas and uses. Major repairs, defined as repairs exceeding fifty (50) percent or more of the value of the nonconforming structure, are subject to Section 10.4.D below.
- D. Major Repair, Damage or Destruction.** Reconstruction of a nonconforming structure that is in need of more than a minor repair as defined in 10.4.C above, or is destroyed, is subject to the following standards:
- 1. Damage of 50% or More of Value.** Except for single family dwellings, if the nonconforming structure is damaged or destroyed to an extent which constitutes fifty (50) percent or more of its assessed value, the structure may be repaired or rebuilt, and the use re-established, only in conformity with the regulations of this UDO. Any related new construction, including off-street parking, landscaping, signage and other similar features shall be in accordance with this UDO.
 - 2. Damage of Less Than 50% of Value.** If the nonconforming structure is damaged to an extent which constitutes less than fifty (50) percent of the assessed value, the structure may be repaired or rebuilt to its previous form, and the previous

use re-established, if a building permit is obtained. The building permit must be obtained and repairs must begin within one (1) year of the damage. Repairs should be active and diligently pursued to completion, with a maximum two (2) years to complete.

3. **Single Family Dwellings.** A nonconforming single family dwelling which is damaged or destroyed to an extent of fifty (50) percent of assessed value or more may be rebuilt to its previous permitted form.

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