

## ARTICLE X. NONCONFORMITIES

### 10-101: PURPOSE.

- A. This Article regulates and limits the continued existence of uses, structures, including pre-code structures in Section 10-104, lots and signs established prior to the effective date of this Code that do not conform to the regulations of this Code applicable in the zoning districts in which such uses, structures, lots and signs are located.

The zoning districts established by this Code are designed to guide the future use of land within the City by encouraging the development or maintenance of desirable residential, commercial, office and industrial areas with appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes for which such districts are established and thus the gradual elimination of such nonconformities is generally desirable.

- B. General Scope and Scheme of Regulation. Separate restrictions are established for nonconforming uses of land and nonconforming uses of structures designed for a permitted use, nonconforming uses of structures not designed for a permitted use, nonconforming “pre-code” structures, nonconforming lots of record, and nonconforming signs. The degree of restriction made applicable to each category of nonconformity is generally related to the degree of incompatibility with permitted uses and the amount of investment typically associated with nonconformities of that type. Pursuant to Section 11-503 of this Code, provision is made for relief from some of the restrictions of this Article where practical difficulties exist.

In the cases of nonconforming uses of land, nonconforming uses in structures designed for a permitted use and nonconforming signs, the degree of incapability is frequently great, the investment is comparatively small and the economic life is short. In these cases, elimination of the nonconformity is required after a relatively short, but reasonable, amortization period. In the case of nonconforming uses in structures not designed for any conforming use, the degree of incompatibility is also frequently great, but so too is the investment and economic life of the structure.

In such cases, while eventual elimination is required, a more extended period is allowed in which to amortize the investment. While the regulations of this Article allow such nonconformities to continue without specific limitation of time, they restrict further investment that would make more permanent their location in inappropriate districts.

- C. Exception for Repairs Pursuant to Public Order. Nothing in this Article shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety who declares such structure to be unsafe and orders its restoration to a safe condition, provided such restoration is not otherwise in violation of the various provisions of this Article prohibiting the repair or restoration of partially damaged or destroyed structures or signs.

D. Nonconforming Accessory Uses and Structures. No use, structure or sign that is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have been terminated, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.

E. Inventories and Certificates of Nonconformity.

1. Burden of Owner to Establish Legality of Nonconformity Burden of Owner to Establish Legality of Nonconformity. The burden of establishing that any nonconformity is lawfully existing under the provisions of this Article shall, in all cases, be upon the owner of such nonconformity and not upon the City.

2. Inventory and Notice of Nonconforming Uses and Signs Subject to Termination. Within a reasonable time after the effective date of this Code, or any amendment thereto creating new nonconformities, and pursuant to Subsection 11-101 M of this Code, the Community Development Director shall inventory all nonconforming uses and determine the names and addresses of the owners of record thereof and shall also inventory all signs and determine the names and addresses of the owners thereof or, in any case where such a determination is impractical, the owner or lessee of the premises on which such signs is located.

For each such nonconformity inventoried, the Community Development Director shall determine the nature and extent of the nonconformity and the date, if any, on which such nonconformity is required to be terminated pursuant to the provision of this Article.

Upon making such determination, the Community Development Director shall notify the aforesaid owner or lessee in writing of his determination. Such inventory and notices shall be kept on file by the Community Development Director and shall be a matter of public record.

Compilation of the inventory required pursuant to this Paragraph and giving notice pursuant to this Paragraph shall not be deemed conditions precedent to the running of any amortization period specified in this Article, nor shall the failure of the Community Development Director to carry out such tasks in any manner relieve the owner of a nonconformity of his duty to terminate such nonconformity in accordance with the provisions of this Article.

The determinations of the Community Development Director made pursuant to this paragraph shall be subject to appeal to the Zoning Board of Appeals in the same manner as other rulings and interpretations.

3. Certificate of Occupancy for Legal Nonconformities. The owner, or any person receiving notice, of any nonconforming use, structure, lot or sign may at any time apply to the Community Development Director for a Certificate of Occupancy to confirm the legality of such nonconformity as of a specified date. Such application shall be filed and processed pursuant to the provisions of Section 11-402 of this Code.

Any person receiving a notice of a nonconforming use or sign pursuant to Paragraph E2 above shall be required, within sixty (60) days of the receipt of such notice, to apply to the Community Development Director for such a Certificate of Occupancy with respect to the nonconformity identified in said notice. Unless an appeal from the determination of the Community Development Director contained in said notice has been filed, such application shall be accompanied by an affidavit admitting such determination. Such affidavit shall be kept on file by the Community Development Director and shall be a matter of public record.

If, upon reviewing an application for a Certificate of Occupancy for a nonconformity, the Community Development Director shall determine that the use, structure, lot or sign in question was lawfully existing at the time of the adoption of the provision creating the nonconformity in question, and remains lawful existing subject only to such nonconformity at the time of such application, and that any required affidavit is in order, the Community Development Director shall issue a Certificate of Occupancy evidencing such facts and setting forth the nature and extent of the nonconformity and the date, if any, upon which such nonconformity is required to be terminated; otherwise, the Community Development Director shall decline to issue such Certificate and shall declare such building, structure, lot or sign to be in violation of this Code.

#### **10-102: NONCONFORMING USES OF LAND AND NONCONFORMING USES IN STRUCTURES DESIGNED FOR A PERMITTED USE**

- A. Authority to Continue. Except as provided in Subsection 1 of this Section, any lawfully existing nonconforming use not involving the use of a structure or involving only a structure that is accessory to a nonconforming use of land or located in a structure designed for a use permitted in the district in which it is located may be continued so long as it remains otherwise lawful, subject to the regulations contained in Subsections B through H of this Section, and in Subsections D and E of Section 10-101.
- B. Ordinary Repair and Maintenance. Normal maintenance and incidental repair replacement, and installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is accessory to a nonconforming use of land or that is designed for a permitted use but devoted in whole or in part to a nonconforming use; provided, however, that this Subsection shall not be deemed to authorize any violation of Subsections C through I of this Section.
- C. Structural Alteration. No structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use shall be structurally altered unless the use thereof shall thereafter conform to the use regulations of the zoning district in which it is located. No such alteration shall create a new parking, loading, bulk, yard or space nonconformity or increase the degree of any existing parking, loading, bulk, yard or space nonconformity of such structure. In determining whether a parking or loading nonconformity has been created or increased, the provisions of Paragraph 9-104 B(1) and 9-105B(1) shall control.

- D. Enlargement of Structure. No structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner, including the interior addition of floor area, unless the use of such structure shall thereafter conform to the use regulations of the district in which it is located. No such enlargement shall create any new parking, loading, bulk, yard or space nonconformity or increase the degree of any existing parking, loading, bulk, yard or space nonconformity of such structure. In determining whether a parking or loading nonconformity has been created or increased, the provisions of paragraphs 9-104 B(1) and 9-105 B(1) shall control.
- E. Extension of Use. A nonconforming use of land or of a structure that is accessory to a nonconforming use of land or a nonconforming use in a structure designed for a permitted use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activity shall include, without being limited to:
1. An extension of such use, including its accessory uses, to any structure or land area other than that occupied by such nonconforming use on the effective date of this Code or any amendment hereto that causes such use to become nonconforming.
  2. An extension of such use, including its accessory uses, within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Code or any amendment thereto that causes such use to become nonconforming; and
  3. An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code, or any amendment hereto that causes such use to become nonconforming.
- F. Moving. No structure that is accessory to a nonconforming use of the land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.
- G. Change in Use. A nonconforming use of land not involving a structure or involving only a structure that is accessory to the nonconforming use of land, or a nonconforming use in a structure designed for a use permitted in the district in which it is located, shall not be changed to any use other than a use permitted in the zoning district in which the use or structure is located. When such a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this Subsection G, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and a permitted use shall have commenced and continued for a period of five (5) days. Any change of use in violation of this Subsection shall be deemed to be an abandonment of the lawfully existing nonconforming use.

- H. Damage or Destruction. Any structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use and that is damaged or destroyed, by any means, to the extent of more than 25 percent (25%) of the cost of replacement of such structure new shall not be restored unless the use of such structure shall thereafter conform to the use regulations of the zoning district in which it is located and unless such restoration is accomplished without creating any new parking, loading, bulk, yard or space nonconformity or increasing the degree of any parking, loading, bulk, yard or space nonconformity existing prior to such damage or destruction. In determining whether a parking or loading nonconformity has been created or increased the provisions of Paragraphs 9-104 B(1) and 9-105B(2) shall control.

Where any such structure is damaged or destroyed by any means not within the control of the owner thereof to the extent 25 percent (25%) or less of the cost of replacement of the current assessed value of the structure new, repair or restoration of such structure may be made; provided, however, that no repairs or restorations shall be made that would create any new parking, loading, bulk, yard or space nonconformity or increase the degree of any parking, loading, bulk yard or space nonconformity existing prior to such damage or destruction, nor shall any repairs or restoration except in conformity with the applicable zoning district regulations be made unless a Certificate of Zoning Compliance is obtained and restoration is actually begun within one (1) year after the date of such partial damage or destruction and is diligently pursued to completion.

In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsections B, C and D of this Section.

I. Termination of Certain Uses.

1. Termination by Abandonment. When a nonconforming use of land not involving a structure or involving only a structure that is accessory to the nonconforming use of land, or when a nonconforming use of a part or all of a structure that was designed for a use that is permitted in the zoning district in which such structure is located, is discontinued or abandoned for a period of three consecutive months, regardless of intent to resume or not to abandon such use, such use shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of such land or structure shall comply with the use regulations of the zoning district in which such land or structure is located.

Any period of such discontinuance caused by government action, strikes, material shortages, or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this Paragraph.

2. Termination of Amortization. Any nonconforming use of land not involving a structure or involving only a structure that is accessory to the nonconforming use of land, or any nonconforming use in a structure located in any residential district and designed for a use permitted in that district that has not been terminated pursuant to any other provision of this Code shall be terminated no later than five (5) years after the effective date of this Code.

**10-103: NONCONFORMING USES IN STRUCTURES NOT DESIGNED FOR A PERMITTED USE.**

- A. Authority to Continue. Except as provided in Subsection I of this Section, any lawfully existing nonconforming use located in a structure not designed or intended for any use permitted in the district in which it is located may be continued so long as it remains otherwise lawful, subject to the regulations contained in Subsections B through H of this Section and in Subsections D and E of Section 10-101.
- B. Ordinary Repair and Maintenance. Normal maintenance and incidental repair or replacement, and installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located; provider, however, that this Subsection shall not be deemed to authority any violation of Subsections C through I of this Section.
- C. Structural Alteration. No structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located shall be structurally altered unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. No such alteration shall create a new parking, loading, bulk, yard or space nonconformity nor increase the degree of any existing parking, loading, bulk, yard or space nonconformity of such structure. In determining whether a parking or loading nonconformity has been created or increased the provision of Paragraphs 9-104 B(1) and 9-105 B(1) shall control.
- D. Enlargement of Structure. No structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the distinct in which such structure is located shall be enlarged or added to in any manner, including the interior addition of floor area, unless the entire structure and the use thereof shall thereafter conform to all the regulations of the district in which it is located. No such alteration shall create a new parking, loading, bulk, yard or space nonconformity or increase the degree of any existing parking, loading, bulk, yard or space nonconformity of such structure. In determining whether parking or loading nonconformity has been created or increased, the provisions of Paragraphs 9-104 B(1) and 9-105 B(1) shall control.
- E. Extension of Use.
1. Prohibited Extensions. A nonconforming use in a structure not designed or intended for any use permitted in the district in which such structure is locates shall not be extended, expanded, enlarged or increased in intensity by:
    - (a) An extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of this Code, or any amendment hereto that causes such use to become nonconforming; or
    - (b) An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code or any amendment hereto that causes such use to become nonconforming.

2. Permitted Extensions. A nonconforming use in a structure not designed or intended for any use permitted in the district in which such structure is located may be extended throughout any part of such structure lawfully existing on the effective date of this Code or any amendment hereto that causes such use to become nonconforming; provided, however, that such extension shall not be allowed unless off-street parking and loading spaces required for such extension can be, and are, provided in accordance with the requirements and restrictions of Section 104 and 9-105 of this Code. No such extension shall be deemed to affect the duty to terminate such use pursuant to Subsection 1 of this Section.
- F. Moving. No structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located shall be moved, in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.
- G. Change in Use. A nonconforming use in a structure not designed or intended for use permitted in the district in which such structure is located shall not be changed to any use other than a nonconforming use of a more restricted classification or a use permitted in the zoning district in which the structure is located. When a nonconforming use has been changed to a more restricted nonconforming use or to a permitted use, it shall not thereafter be changed back to a less restricted nonconforming use. For purposes of this Subsection G, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and a more restricted nonconforming use or a permitted use shall have commenced and continued for a period of five days. Any change of use in violation of this Subsection shall be deemed to an abandonment of the lawfully existing nonconforming use.
- H. Damage or Destruction. Any structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located that is damaged or destroyed, by any means, to the extent of more than 50 percent (50%) of the cost of replacement of such structure new shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located and unless such restoration is accomplished without creating a new parking, loading, bulk, yard or space nonconformity or increasing the degree of any existing parking, loading, bulk, yard or space nonconformity of such structure existing prior to such damage or destruction. In determining whether a parking or loading nonconformity has been created or increased, the provisions of Paragraphs 9-104B(1) and 9-105B(1) shall control.

Where any such structure is damaged or destroyed by any means not within the control of the owner thereof to the extent of 50 percent (50%) or less of the cost of replacement of the current assessed value of the structure new, repair or restoration of such structure may be made; provide, however, that no repairs or restorations shall be made that would create any new parking, loading, bulk, or space nonconformity or increase the degree of any parking, loading, bulk, yard or space nonconformity of such structure existing prior to such damage or destruction nor shall any repairs or restoration except in conformity with the applicable zoning district regulations be made unless a Certificate of Zoning Compliance

is obtained and restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.

In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsections B, C and D of this Section.

I. Termination of Certain Uses.

1. Termination by Abandonment. When a nonconforming use of a part or all of a structure that was not designed or intended for any use permitted in the zoning district in which such structure is located is discontinued or abandoned for a period of six (6) consecutive months, regardless of any intent to resume or not to abandon such use, such use shall not thereafter be re-established or resumed. Any subsequent use or occupancy of such structure shall comply with the use regulations of the district in which such structure is located.

Any period of such discontinuance caused by government actions, strikes, material shortages, or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this Paragraph.

2. Termination by Amortization. Any structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located that has not been terminated pursuant to any other provision of this Code shall be either converted to a conforming use or shall be demolished and removed no later than the date provided in the following schedule:

<u>Assessed Valuation on the Effective Date Of this Code or any Amendment hereto Creating such Nonconformity</u>	<u>Conversion or Removal Within Following Stated Period after Said Effective Date</u>
Less than \$5,000	5 years
\$5,000 more:	25 years or 40 years from date of building permit, whichever is later
• Fireproof or non-combustible Construction	
• Exterior Masonry Wall Construction	20 years or 30 years from date of building permit
• Frame Construction	10 years or 20 years from date of Building permit, whichever is later



## 10-104: PRE-CODE STRUCTURES

- A. Authority to Continue. Any pre-code structure that is devoted to a use that is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in Subsections B through E of this Section and Subsection D of Section 10-101.
- B. Repair and Maintenance. Normal maintenance and incidental repair may be performed on any pre-code structure; provided, however, that this Subsection shall not be deemed to authority any violation of Subsections C through E of this Section.
- C. Structural Alterations and Enlargements.
1. All Districts. Any pre-code structure may be altered or enlarged, provided that such alteration or enlargement conforms to all applicable height, yard, setback, floor area ratio, and all other requirements of the zoning district in which the structure is located.
  2. Exceptions for Single-Family Detached Dwellings in Single-Family Residential Districts. Notwithstanding the preceding sentence, in the case of single-family detached dwellings in single-family residential districts, the following exceptions shall apply:
    - (a) Side yard vertical extensions. Any portion of a pre-code structure that is nonconforming with respect to a required side yard may be altered or enlarged by extending vertically within its existing perimeter walls; provided, however, that (i) no such extension shall be located nearer to the side lot line than the minimum side yard requirement for such yard in the zoning district in which it is located, and (ii) if all of the side yards that are provided for the pre-code structure do not comply with all of the applicable side yard requirements, including any minimum total side yard requirement, of the zoning district in which it is located, then the maximum height of such alteration or enlargement shall not exceed thirty (30) feet in the R2, R3 and R4 Districts and 27 feet in the R5 District; and
    - (b) Side yard horizontal extensions. Any portion of a pre-code structure that is nonconforming with respect to a required side yard may be altered or enlarged by extending horizontally between the required front and rear yard lines at a distance from the side lot line equal to at least the minimum existing distance between said side lot line and said nonconforming portion; provided, however, that (i) no such extension shall be located nearer to the side lot line than the minimum side yard requirement for such yard in the zoning district in which it is located, and (ii) if all of the side yards that are provided for the pre-code structure do not comply with all of the applicable side yard requirements, including any minimum total side yard requirement, of the zoning district in which it is located, then the maximum height of such alteration or enlargement shall not exceed thirty (30) feet in the R2, R3 and R4 Districts and 27 feet in the R5 District.

The exceptions in this Paragraph 2 shall not apply to any alteration or enlargement of any pre-code structure that requires the removal of more than forty percent (40%) of the total linear feet of the existing exterior walls of the pre-code structure as measured around the exterior perimeter of the structure.

- D. Moving. No pre-code structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
- E. Damage or Destruction. Any pre-code structure that is damaged or destroyed, by any means not within the control of the owner thereof, to any extent, may be repaired or restored, provided, however, that no repair or restoration shall be made that would create any new nonconformity unless a Certificate of Zoning Compliance is obtained and restoration is actually begun within one year after the date of such damage or destruction and is diligently pursued to completion; and further, provided, that if such pre-code structure is within the flood plain, it must comply with the requirements of Part II of Article VIII of this Code.

In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsection C of this Section.

#### **10-105: NONCONFORMING LOTS OF RECORD**

- A. Authority to Utilize for Dwellings. In any district in which dwellings are a permitted dwelling of the type permitted in the district in which the lot is located and that complies with the requirements of the district in which the lot is located, including floor area ratio, lot coverage and yard requirements, except the lot area, lot width and lot depth requirements, may be erected a legal nonconforming lot of record or any parcel or tract of land created by real estate tax divisions prior to \_\_\_\_\_.
- B. Other Uses of Nonconforming Lots. In any district in which dwellings are not permitted, a legal nonconforming lot of record may be used for any use permitted in the district in which it is located if, but only if, the development of such lot meets all requirements of the district in which it is located, including floor area ratio except lot area, width and depth requirements.