

(Note to be removed later – Council-approved items are green; items underlined in green are staff-proposed language prepared at Council’s request but not yet approved by Council)

ARTICLE 17. NONCONFORMITIES

- 17.1 NONCONFORMING BUILDINGS, STRUCTURES AND USES OF LAND
- 17.2 NONCONFORMING SIGNS

17.1 NONCONFORMING BUILDINGS, STRUCTURES AND USES OF LAND

Land uses which existed legally upon the effective date of a zoning change, but which are not in conformance with all the applicable provisions of the adopted or amended zoning regulation, **shall be** subject to the provisions of this section to the fullest extent permitted by state law.

A nonconforming building, structure or use of land lawfully existing at the time of the adoption or amendment of this ordinance may be continued and maintained as provided in this article; provided, however, that nothing herein **shall** be construed to authorize the continuation of any illegal or nonconforming use which was illegal prior to the adoption of this ordinance.

A. Alteration or enlargement of buildings and structures.

1. **Nonconforming use and/or structure/building.** The board of zoning appeals may, in appropriate cases and after public notice and hearing, permit the extension of an existing building and the existing use thereof upon the lot occupied by such building, or permit the erection of an additional building. The addition or extensions **shall be** subject to the following requirements:
 - a. Yard requirements **shall** not be permitted which are less than those required for the district in which the nonconforming use is located.
 - b. Percentage of lot covered by building **shall** not be greater than the maximum stated for the district.
 - c. The architectural style of any new building or additions permitted under this section **shall** be similar to that which exists in the area.
 - d. Off-street parking **shall** be provided and **shall** be screened from adjacent property by landscaping or a solid screening fence or wall not less than five (5) nor more than six (6) feet in height.
 - e. Landscaping may be required where the board deems it necessary.
 - f. Signs used in conjunction with the nonconforming use **shall be** governed by the regulations of the district in which it is located.
 - g. These requirements **shall be** binding on the property regardless of succession of ownership, unless the use is changed to one generally permitted in the district, or the zoning is changed to make the use conforming. Performance bonds or other sureties acceptable to the city may be required where appropriate to the circumstances of the case.
 - h. Applications **shall** be accompanied by site and building plans, and photographs of present conditions of the property and surrounding property.
2. **Nonconforming structures/buildings only.** Where a building or structure is conforming as to use, but nonconforming as to yard, height, or off-street parking requirements, such building or structure may be enlarged or added to along existing building lines providing:
 - a. Addition or enlargement does not extend into any other required yard or exceed the existing height of the building or structure.
 - b. Existing building together with addition or enlargement does not exceed the maximum lot coverage permitted in the district in which it is located.
 - c. All off-street parking requirements for both existing building and addition or enlargement are complied with.

B. Outdoor advertising signs and structures.

No outdoor advertising sign or outdoor advertising structure which, after the adoption of this ordinance, exists as a nonconforming use in any Residential Neighborhood zoning district, **shall** continue, as herein provided for nonconforming uses, but every such sign or structure **shall** be removed or changed to conform to the regulations of said district within a period of two (2) years.

When the building inspector finds that a portable or movable business or advertising sign is not in conformance with these regulations, he **shall will** notify the owner or lessee of the sign, whose business or service is benefitted by the sign. If the violation is not corrected within twenty-four (24) hours, the building inspector **shall will** have the sign removed from the premises at the expense of the owner or lessee thereof.

C. Discontinuation or Abandonment

If a nonconforming use is discontinued for a continuous period of 24 months, and is not actively marketed, the nonconforming use terminates automatically. Any subsequent use of such land or structure must comply with all regulations of the zoning district in which the structure or land is located.

D. Nonconforming uses of land.

1. A nonconforming use of land, where the aggregate value of all permanent buildings or structures is less than one thousand dollars (\$1,000.00), existing at the time of adoption of this ordinance, may be continued for a period of not more than three (3) years therefrom, provided:

- a. Said nonconforming use may not be extended or expanded.
- b. If said nonconforming use or any portion thereof is discontinued for a period of six (6) months, or changed, any future use of such land **shall** be in conformity with the provisions of the district in which said land is located.

2. The following regulations **shall** apply to any automobile wrecking, junk or salvage yard, building material storage yard, contractor's yard, or any similar, more or less temporary, use of land when located as a nonconforming use in any residential district.

- a. Any such use is hereby declared to be a public nuisance in any residential district established by this ordinance and **shall** be abated, removed or changed to a conforming use within a period of one (1) year after the date of passage of this ordinance.
- b. Whenever any district **shall have** been changed to a residential district from any other district, the date of abatement, removal or change of such nonconforming use **shall** be within a period of one (1) year after the date of change of such district.

3. Any nonconforming automobile wrecking, junk or salvage yard in any nonresidential district **shall** be, after the adoption of this ordinance, abated, removed or changed to a conforming use within three (3) years.

4. Notwithstanding other provisions of this ordinance any automobile wrecking, junk or salvage yard, lawfully existing in an I-H Heavy Industrial District (previously zoned I-2, or I-3t) on January 17, 1964, may be continued and maintained as a nonconforming use provided that:

- a. Such nonconforming use **shall be** subject to all the requirements of this section relating to extension or expansion of use, and discontinuance of such use for a period of six (6) months.
- b. Such nonconforming use **shall be** subject to all applicable requirements of this article.
- c. Within ninety (90) days from the effective date of this amendment, all such nonconforming uses **shall** be brought into full compliance with all applicable requirements of this ordinance not herein excepted.

5. Nonconforming parking areas may be continued and counted towards the total parking requirements for any new activity, addition or extension placed on the site; provided, however, that the existing parking design does not pose a threat to traffic safety. The department of engineering may require redesign of such areas if a traffic safety hazard can be eased or eliminated. Loss of parking spaces resulting from the required redesign will be considered by the building inspection department in determining the minimum parking requirements.

F.—Damage.

~~With the exception of houses or duplexes, a building which by reason of the passage of this ordinance has become nonconforming, which has been damaged by fire, explosion, act of God or the public enemy to the extent of more than fifty (50) percent of its value at the time of damage, shall not be restored except in conformity with the regulations of the district in which it is located.~~

~~When damaged by less than fifty (50) percent of its value, a nonconforming building may be repaired or reconstructed, and used as before the time of damage, provided such repairs or reconstruction are completed within one (1) year of the date of such damage. (Staff-proposed)~~

F. Pending applications for building permits.

Nothing herein contained shall require any change in the overall layout, plans, construction, site or designated use of any development, building, structure or part thereof, for which official approvals and required building permits have been granted before the enactment of this ordinance, the construction of which, conforming with such plans, shall have been started prior to the effective date of this ordinance, and completion thereof carried on in a normal manner within the subsequent six (6) months' completion except for reasons beyond the builder's control.

17.2 NONCONFORMING SIGNS

A. Effect of Change in Use for On-Premise Signs

The utilization of a nonconforming on-premise sign and/or sign structure may continue subject to the conditions and requirements of this Section. When the use of a property changes (including but not limited to the redevelopment of the site or a change in the use of the business), the signs on that property must be brought into compliance with the provisions of this Article; provided, however, that this change in use provision is not construed to require conformity of a legally existing, nonconforming development directory sign or on-site directory sign upon changes in the use of individual businesses or tenants advertised on the directory sign.

1. Change Defined

A change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. For the purposes of this Article, a change in use occurs under the following circumstances:

- a. When the principal use occupying the property changes from a use permitted or permitted on review, as designated or enumerated for the district, to another use permitted or permitted on review designated or enumerated for the district.
- b. When there is an expansion, an increase in the gross square footage or number of dwelling units of an existing use, or in its operating characteristics (such as an expansion of operations, previously conducted within a fully enclosed building to operations conducted outside an enclosed building) such that the resulting use is a designated or enumerated use separate from the designated or enumerated previous use, then this constitutes a change in use.
- c. A change in the ownership or management of a use or establishment, without the type of changes noted above, is not considered a change in use.

2. Determination of Change by Building Official

If a use is not designated or enumerated in this Code, the Building Official has the discretion to determine whether there is a change in use.

3. Illegal Use Excluded

A use prohibited by the district or an otherwise illegal use is not allowed to continue use of a nonconforming sign.

B. Regulations for Off-Premise Signs Approved Prior to 1984

1. Size, Location, and Structure Restrictions

Off-premise signs must be placed on a unipole structure and cannot be double-decked (either one above the other, or side by side on the same structure). The total sign area per face cannot exceed 48 feet by 14 feet (672 square feet) with a 20% nonpermanent extension, except within 500 feet of interstate arteries where the total sign area per face may be 775 square feet.

2. Spacing Requirements on Primary and Secondary Arteries

No off-premise sign structure may be established within 750 feet of any other off-premise sign structure on either side of the same street. The minimum distance between sign structures is measured along a straight line and

between the two nearest points of the structures. The minimum spacing applies to off-premise sign structures located on either side of the same street or highway. Official and on-premise signs as well as any other sign which does not constitute an off-premise sign structure as defined herein, is not counted nor are measurements made from them for the purpose of determining compliance with these spacing requirements.

3. Spacing Requirements on Interstate Arteries

No off-premise sign structure may be established within 1,000 feet of any other off-premise sign structure on the same side of the same interstate artery. The minimum distance between sign structures is measured along a straight line and between the two nearest points of the structures.

4. Setback Requirements

All off-premise sign structures, including billboards, must be erected in conformity with the front, side and rear yard requirements of the district in which located.