

# Article 17

## Non-Conformities

### Section 17.1. Purpose

~~The purpose of this Article is to regulate and limit the continued existence of non-conforming uses as defined in Article 19 that were and structures established prior to the effective date of this Code Ordinance, or any amendment thereto, and that do not conform to this Code Ordinance. Any non-conformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this Article. Many non-conformities may continue, but the provisions of this Article are designed to curtail substantial investment in non-residential non-conforming uses non-conformities and to bring about their eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located and the intent of this Ordinance.~~

### Section 17.2. Non-conforming Uses of Land

~~Non-conforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this Article. This Article shall only apply to the extent said non-conformities fully and clearly meet the definition of "non-conforming use" in Article 19 of this Ordinance.~~

- (a) Non-conforming Residential Uses. Normal Structural Repair and Maintenance. Normal structural repair and maintenance to structures may be performed to allow the continuation of a non-conforming residential use in that structure. The structure may be modified, enlarged, or rebuilt as permitted by current regulations provided that residential density is not increased and that no new non-conforming uses are created. Note the following special requirements in this code:
- (1) Changes to the exterior of any residential structure that has been listed on the Local Register of Historic Places must first obtain a certificate of appropriateness in accordance with Section 16.3.
  - (2) All residential structures in the designated floodplain that are being modified or rebuilt at a cost above 50% of the market value of the existing structure are subject to special provisions that may require elevating the lowest floor above the base flood elevation for that property. See Article 5 of Chapter 7 for the entire floodplain management code, including certain exceptions for structures listed in the Local Register of Historic Places that

~~are within the floodplain. A nonconforming use may be re-established in case of damage to an extent of less than 50 percent of its assessed value, or other formula accepted by City Council, due to fire or other disaster event pursuant to the issuance of a permit by the City Council, upon recommendation of the Planning Commission. This shall include, as well, the repair or reconstruction of any structure or on-site utility, parking or street infrastructure in support of said nonconforming use. If said structure was also nonconforming, the reconstruction shall meet the setback requirements of the applicable district. An application must be filed for such building permit no later than 180 days after the use has been destroyed or damaged, or other period as approved by City Council, otherwise the use will not be allowed to be rebuilt.~~

(b) Non-conforming Non-Residential Uses.

- (1) ~~A non-conforming non-residential use shall not be expanded, changed or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the non-conforming non-residential use is located, either attached or detached; and the continued existence of the non-conforming non-residential use cannot be the basis for creating additional non-conforming uses in the structure.~~
- (2) However, if a non-conforming non-residential use can expand within the existing structure, it may do so as long as the Zoning Official determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Any occupation of additional lands beyond the boundaries of the lot on which said non-conforming non-residential use is located is prohibited. ~~An existing nonconforming residential use located in a non-residential district may, however, be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the specific district.~~
- (3) Changes to the exterior of any non-residential structure that has been listed on the Local Register of Historic Places must first obtain a certificate of appropriateness in accordance with Section 16.3.
- (4) All non-residential structures in the designated floodplain that are being modified or rebuilt at a cost above 50% of the market value of the existing structure are subject to special provisions that may require elevating the lowest floor above the base flood elevation for that property. See Article 5 of Chapter 7 for the entire floodplain management code, including certain exceptions for listed historic structures in the floodplain.

- (c) Less intense Non-Conforming Use. A non-conforming use may be changed to another equal or less intense non-conforming use pursuant to approval by the City Council, upon review and recommendation of the Planning Commission, when such change is not detrimental to the health, safety, and welfare of the surrounding area.
- (d) Changed to a Conforming Use. Once a non-conforming use has been changed to a conforming use, it shall not thereafter be used for any non-conforming use.
- (e) Non-conforming Use is Abandoned. If a non-conforming use is abandoned for 365 ~~180~~ days or more, the use shall not be allowed to re-establish. All new uses in said structure shall thereafter be conforming. ~~If said use is located in a structure which is destroyed [i.e. received damage to an extent of more than 50 percent of its assessed value at the time of destruction], a use may only be allowed to re-establish in accordance with the regulations in effect in the district in which it is located. Assessed value shall be determined by using tax assessment records provided by the Tax Assessor's Office for the year in which the structure was destroyed.~~

**Section 17.3. Reserved Principal Structures**

~~A nonconforming principal structure containing a use permitted in the district in which it is located may continue only in accordance with the provisions of this Article. Normal repair and maintenance may be performed to allow the continuation of nonconforming principal structures:~~

- ~~(a) Nonconforming Principal Structures. A nonconforming principal structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.~~
- ~~(b) Nonconforming Non-Residential Principal Structures. If a nonconforming non-residential principal structure is damaged to an extent greater than 50 percent of its assessed value for tax purposes it shall be rebuilt only after the issuance of a permit from the Zoning Official. A building permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction, or other period as approved by City Council,. In the issuance of said permit, the Zoning Official shall follow these standards:
 
  - ~~(1) If the structure can be rebuilt on the same lot and meet all setback requirements, it shall be allowed.~~
  - ~~(2) A nonconforming structure shall not be rebuilt in a manner, which increases its nonconformity.~~~~

- ~~(3) The reconstruction of a nonconforming structure, at the same or smaller size, shall require the installation of sufficient parking, landscaping or buffering.~~

**Section 17.4. Reserved Accessory Uses and Structures**

~~A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.~~

**Section 17.5. Reserved Signs**

~~Except as herein provided, nonconforming signs that were otherwise lawful on the effective date of this Ordinance may be continued with the limitations below:~~

- ~~(1) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming.~~
- ~~(2) A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Ordinance.~~
- ~~(3) Once a nonconforming sign is removed from the premises or otherwise taken down or moved, said sign may only be replaced with a sign which is in conformance with the terms of this Ordinance.~~
- ~~(a) Minor Repairs and Maintenance of Non-Conforming Signs: [this subsection deleted entirely]~~
- ~~(b) Message Changes: [this subsection deleted entirely]~~
- ~~(c) Change of Use: [this subsection deleted entirely]~~
- ~~(d) Blank Signs: [this subsection deleted entirely]~~
- ~~(e) Notwithstanding any provision of this subsection 26-17.5, the Urban Design Manager or his/her designee may grant an extension of the time limits proposed by this subsection for an additional period of time where it is found that such additional period of time is necessary in order to avoid unnecessary hardship not caused by the petitioner and such extension is not contrary to the public interest~~

**Section 17.6. Non-conforming Lots of Record**

- (a) When a non-conforming lot of record can be used in conformity with all the regulations applicable to the intended use, except the lot is smaller than the required minimums set forth in Article 3, the lot may be used as proposed just as if it were conforming. However, no use that requires a greater lot size than the minimum lot size for a particular zone is permissible on a non-conforming lot.
- (b) When the use proposed for a non-conforming lot of record is one that is conforming in all respects but the applicable setback requirements cannot be reasonably complied with, the Board of Zoning Appeals may allow variances ~~deviations~~ from the applicable setback requirements based upon conditions found in Article 16.10.