

ARTICLE III. NONCONFORMANCES

Sec. 110-91. Purpose and intent.

- (a) It is the intent of this article to provide for the continuance of lawful nonconformities, without unduly restricting the owners ability to maintain or improve their property, but to restrict further investment which would make the nonconformity more permanent. This article is intended to permit lawful nonconforming uses and structures created by the adoption of this Code to continue, until removed by economic or other forces. This article is intended to discourage the continuation of nonconformities as they are incompatible with the provisions of the city comprehensive plan and this Code.
- (b) All rights and obligations associated with a nonconforming status run with the property, are not personal to the present ownership or tenant, and are not effected by a change of ownership or tenancy, unless abandoned.

(Code 1983, § 20-611(A))

Sec. 110-92. Classification.

- (a) Nonconformities are classified as follows:
 - (1) Lots.
 - (2) Uses of land and structures.
 - (3) Structures.
 - (4) Characteristics of use.
- (b) A nonconformity may also be created where lawful public taking or actions pursuant to a court order create violations of the land development regulations.

(Code 1983, § 20-611(B))

Sec. 110-93. Intent concerning nonconforming property, structures and uses.

It is the intent of the land development regulations that these nonconformities shall be considered to be incompatible with the permitted uses within the city districts. Such nonconformities shall not be enlarged or extended in any respect.

- (1) *Nonconforming lots.*
 - a. *Use of single, nonconforming lots for residential districts.* Notwithstanding the maximum density requirements of the comprehensive plan, in residential districts, the single-family and customary accessory structures may be erected, reconstructed, occupied and used on separate nonconforming lots of record which are not in continuous frontage with other lots in the same ownership in accord with other requirements applying in the separate districts.
 - b. *Use of single, nonconforming lots for nonresidential uses.* In other than residential districts, a nonconforming lot of record which is not in continuous frontage with other lots in the same

ownership, may accommodate uses permitted within that district in accordance with other requirements applying in that district.

- c. *Rules concerning combination of contiguous nonconforming lots in same ownership and with continuous frontage.*
 - 1. *Where nonconforming status was created at enactment or amendment of this Code or of the comprehensive plan.* Where more than one nonconforming lot of record in single ownership and with continuous frontage exists, they shall be combined and considered a single zoning lot. The zoning administrator shall authorize their use only when the lot area and lot width requirements for the district in which the lots are located are satisfied. Full setback requirements shall apply to all of the newly created lots.
 - 2. *Combination not required where nonconformity created by public taking or court order.* Where the nonconforming lots were created by public taking action or as a result of a court order, a combining of the individual lots shall not be required.
- (2) *Nonconforming uses.* Nonconforming uses of land shall be brought into conformance as soon as reasonably possible, but may continue provided:
- a. There shall be no replacement, enlargement, increase in activity or alterations to any nonconforming use, permanent structure or both.
 - b. No such nonconforming use shall be relocated or moved to any portion of the lot other than that occupied at the time that the nonconforming status was created.
 - c. When a nonconforming use is changed, modified or diversified to meet requirements of a conforming use, the building or structure in which the use is located shall conform to the development standards and regulations as set forth in this Code.
 - d. If any nonconforming use, or any portion thereof, ceases for any reason for more than one year (365 days), the grandfather status of the nonconforming use shall terminate and all subsequent uses shall conform to the regulations of the district in which such use is located.
- (3) *Nonconforming structures.* Where a lawful structure exists at the time of the passage or amendment of the land development regulations which could no longer be built under the terms of the land development regulations by reason of restrictions on area, lot coverage, height, or other characteristics of the structure or location on lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
- a. That any addition, alteration or renovation to the structure shall not increase the degree of nonconformity or result in the conversion of a nonconforming carport, garage, screen enclosure, patio roof, storage area or other non-habitable area into a habitable area unless specifically approved by the special magistrate. Structural changes which decrease the degree of nonconformity shall be permitted. Structures that are nonconforming due solely to their flood elevation may be altered in accordance with the provisions of chapter 94.
 - b. A nonconforming structure or portion thereof, if damaged by fire, natural elements or force to an amount equal to or greater than 50 percent of its current fair market value as of the day immediately preceding such damage, may only be reconstructed in accordance with the provisions of article V of this chapter regarding district regulations for the district in which it is located and the floodplain management regulations established in chapter 94 of this Code or as otherwise provided in section 110-95.
 - c. Should the damage be less than 50 percent of its current fair market value, then repairs may be made under the "grandfathered" zoning district regulations, provided that they shall be made within 18 months after such damage. All repairs must be made to comply with current building

codes and not be in violation of the provisions of the floodplain management regulations and other applicable codes of the city. In the event that the repairs have not been completed within 18 months, the structure shall not be further repaired or rebuilt, except in conformity with the entire requirements of this Code.

- d. Routine repairs and maintenance of nonconforming structures, fixtures, wiring and plumbing, or the repair or replacement of non-load bearing walls shall be permitted.
- e. Owners of nonconforming residential structures in an R-1, R-2 or R-3 zoning district that wish to elevate their existing structure with the lowest habitable floor at or above base flood elevation shall be exempt from the setback provisions of article V of this chapter regarding district regulations, so long as the structure remains within the existing footprint.
- f. In recognition of the narrow lot dimensions and the preexisting development patterns in some older neighborhoods, the following exceptions can be considered by the planning commission for approval for lots of 50 feet in width or less:
 - 1. Legal nonconforming residential structures in an R-2 or R-3 zoning district with side yard encroachments may extend along the line of the existing encroachment without increasing the depth of the encroachment into the setback as long as a minimum of three feet of setback from the structural wall is retained on one side of the house and a minimum of five feet of clearance remains on the other side of the house (no permanent improvement of any kind, including mechanical equipment or storage units may exist or be placed or installed in the five feet clearance along the entire side of the structure nor can the area be obstructed by landscaping that prevents access across/through the clear area, although the area may be fenced as long as it is accessible by way of a gate). Additionally, the property that is the subject of reduced setbacks must be improved with drainage systems including but not limited to roof gutter systems adequate to carry all runoff and direct it away from the neighboring property in a manner that ensures no impact upon the neighboring property. The required clearance area is not a reduction of setback but a minimum clear path of access between the front and rear yard. Furthermore, extensions along an existing encroachment line can be approved only if the neighbor on the extending encroached side indicates support for the extension by notarized statement. Nothing in this provision can be used to approve the creation of a new nonconformity.
 - 2. Legal nonconforming uses and structures in an R-1, R-2 or R-3 zoning districts with a front or rear yard setback encroachment may extend the encroachment to an average of that encroachment on lots adjoining and facing it.
 - 3. Additions of a second floor to legal nonconforming structures in the R-1, R-2 and R-3 districts is permitted as long as the extension/addition does not create any new encroachment, does not violate the height restrictions, provides a minimum of 18" clearance between any building element and the property line, and does not increase the depth into any existing encroachment. Approval of such additions require the neighbor on the side or facing property where the encroachment is proposed to be heightened to indicate by notarized statement their support for the addition.
 - 4. Approval of such additions require pre-hearing notice to adjoining property owners who may indicate their support for the addition by notarized statement or submittal of written or oral objections prior to or during the planning commission hearing.
 - 5. Appeals of planning commission approvals may be brought to the city commission by filing a notice of appeal within 30 days of the signed planning commission decision.

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- (4) *Nonconforming characteristics of use.* Nonconforming characteristics of use which may include, but not limited to inadequate parking and loading facilities, inappropriate landscaping, lighting, emissions, etc., may continue to operate but shall not be expanded, altered, changed or relocated in such a manner as to increase the degree of nonconformity.

(Code 1983, § 20-611(C); Ord. No. 918, § 6, 12-7-99; Ord. No. 1051, § 1, 8-9-05; Ord. No. 1071, § 3, 2-28-06; Ord. No. 1143, § 1, 1-27-09; Ord. No. 1166, § 1, 8-10-10; Ord. No. 2018-04, § 1, 6-12-18; Ord. No. 2022-20, § 1, 9-14-22)

Sec. 110-94. Nonconforming structures unsafe for reasons other than lack of maintenance.

Nonconforming structures or portions thereof which are declared unsafe by the building and zoning official or other competent authority, but not because of lack of maintenance, may be repaired and restored except as provided in subsection 110-94(3).

(Code 1983, § 20-611(D))

Sec. 110-95. Reestablishment of uses after an involuntary loss.

- (a) In the event that any residential or hotel/motel structure is damaged greater than 50 percent or destroyed by a hurricane, tornado, fire, flood, wind, storm, natural disaster, or other unintended, involuntary action; it can be repaired or reconstructed in a manner which guarantees that each dwelling unit, tourist unit and all permitted accessory uses can be restored to the same square footage which existed the day immediately preceding such damage.
- (b) Nothing contained herein shall be construed to permit more dwelling units or an increase in square footage of the structure than existed prior to the day immediately preceding such damage. The burden of proof as to what existed prior to the disaster shall rest with the property owner. Each property owner shall provide the city with a site plan, as-built surveys, or architecturally-sealed floor plans. The plans or surveys shall provide enough information to determine the existing legally permitted development on the site prior to the day immediately preceding such damage.
- (c) Local business tax receipt required. Failure to have a current required local business tax receipt, where applicable, in force at the time of declared disaster will prevent this section from applying to that property.

(Ord. No. 1051, § 2, 8-9-05; Ord. No. 1111, § 7, 5-8-07)

Editor's note(s)—Ord. No. 1051, §§ 2, 3, adopted August 9, 2005, added a new § 110-95 and subsequently renumbered the former § 110-95 as § 110-96. The historical notation has been preserved for reference purposes.

Sec. 110-96. Rebuilding after a catastrophic loss.

- (a) *Declaration of disaster area.* A disaster area is any area of major multiple property loss in which the board of commissioners, county board of county commissioners, the governor of the state or the federal government declares the loss a disaster area.
- (b) *Rebuilding regulations.* Rebuilding regulations shall be as follows:
- (1) *Single-family.* May be rebuilt within the same footprint if it complies with all other existing regulatory codes and provisions of the land development regulations.

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- (2) *Duplexes and triplexes on a nonconforming lot.* Duplexes [and triplexes] on a nonconforming lot may be rebuilt to existing nonconformity if the new structure complies with required front setback, height, parking requirements and floodplain regulations effective at the time of building permit application.
 - (3) *Multifamily in R-1 and R-2 on a nonconforming lot.* Multifamily in R-1 and R-2 on a nonconforming lot shall be the same as duplexes and triplexes, except they must comply with the parking regulations as contained in their pre-damage certificate of occupancy.
 - (4) *Multifamily, hotel, motel, motor lodges.* Multifamily, hotel, motel and motor lodges may be rebuilt to same density, height and side setbacks, but must comply with the front setback, the county coastal construction control line, floodplain regulations, fire codes, and parking regulations as contained in their certificate of occupancy and any other requirements effective at the time of building permit application.
 - (5) *Commercial.* Commercial may be rebuilt within the same footprint and having the same parking spaces available at the time of disaster, but would have to meet minimum FEMA regulations for elevated structures and/or floodproofing to the required height per the National Flood Rate Insurance Map for its commercial location.
 - (6) *Occupational license required.* Failure to have a current required occupational license in force at the time of declared disaster will prevent this section from applying to that property.

(Code 1983, § 20-612; Ord. No. 918, § 7, 12-7-99; Ord. No. 1051, § 3, 8-9-05)

Editor's note(s)—See note at § 110-95.

Sec. 110-97. Redevelopment planning process.

- (a) *Purpose and intent.* It is the intent of this section to provide for the reconstruction of nonconforming residential and transient properties, except for those in an R-1 zoning district, for the purposes of redevelopment provided that the following steps shall be taken prior to the demolition of any units or buildings:
 - (1) *Existing dwelling unit verification.* The verification of the number of existing legal dwelling units and their type shall be through the city manager or designee.
 - (2) *Preliminary site plan review of redevelopment plan.* Preparation by the applicant of a redevelopment site plan for preliminary redevelopment site plan review by the city manager or designee. It must be demonstrated that the site can adequately accommodate the requested number of units by meeting the rebuilding regulations outlined in the process of this section of the Code. The applicant will meet the existing code to the maximum extent possible. This redevelopment site plan shall comply with the site plan requirements of chapter 110, article II, Site plans, of this Code. In addition to the standard site plan review requirements, all redevelopment site plans shall include the dimensions and floor area in square feet of all rooms and units.
 - (3) *Fee.* The application fee shall be the same as the regular site plan review fee found in article III, Community development, section D, Site plan, numbers 2 and 3, as adopted in the most recent edition of the city's fees and collection procedure manual.
 - (4) *Plan review.* The review of the redevelopment Plan shall be through the quasi-judicial public hearing process outlined in chapter 2, Administration, article I, In general, division 2, Quasi-judicial proceedings before the board of commissioners. The notification procedure shall follow subsection 2-503(c), Notification, found in chapter 2, article VIII, Special magistrate, of this Code.

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- (5) *Changes in the redevelopment plan.* The redevelopment plan may be amended by mutual consent of the city and applicant, provided the notification and public hearing process of this article are followed.
- (b) *Rebuilding regulations for the redevelopment of existing dwelling units.* The rebuilding regulations for the redevelopment of existing dwelling units except for those in an R-1 zoning district, through the redevelopment planning process shall be as follows:
- (1) *Single-family.* May be rebuilt within the same footprint if it complies with all other existing regulatory codes and provisions of the land development regulations.
 - (2) *Duplexes and triplexes on a nonconforming lot.* Duplexes (and triplexes) on a nonconforming lot may be rebuilt to existing nonconformity if the new structure complies with required front setback, height, parking requirements and floodplain regulations effective at the time of building permit application.
 - (3) *Multifamily on a nonconforming lot.* Multifamily, except for those in an R-1 zoning district, on a nonconforming lot shall be the same as duplexes and triplexes, except they must comply with the parking regulations as contained in their pre-demolition certificate of occupancy.
 - (4) *Multifamily, hotel, motel, motor lodges.* Multifamily, hotel, motel and motor lodges may be rebuilt to same density, height and side setbacks, but must comply with the front setback, the county coastal construction control line, floodplain regulations, fire codes, and parking regulations as contained in their certificate of occupancy and any other requirements effective at the time of building permit application.
 - (5) *Commercial.* Commercial may be rebuilt within the same footprint and having the same parking spaces available at the time a redevelopment plan is sought, but would have to meet minimum FEMA regulations for elevated structures and/or flood proofing to the required height per the National Flood Rate Insurance Map for its commercial location.
 - (6) *Business tax receipt required.* Failure to be current with respect to full payment of the required annual business tax at the time a redevelopment plan is sought will prevent this section from applying to that property.
- (c) *Planning commission and board of commissioners review.* The planning commission shall conduct one public hearing to consider any application to review or change a redevelopment plan. The board of commissioners shall conduct a second public hearing to consider any application to review or change a redevelopment plan. Upon conclusion of the second public hearing, the board of commissioners shall review the proposed redevelopment plan, the recommendations of the city manager or his/her designee, the recommendations of the planning commission and the testimony at the public hearings. The board of commissioners shall thereafter approve, approve with conditions, or deny the application approve or change a redevelopment plan.

(Ord. No. 2012-14, § 1, 12-11-12)

Secs. 110-98—110-120. Reserved.