

## Chapter 36 Nonconforming Uses, Structures, and Lots

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### 11-36-1: Purpose and Applicability

This chapter establishes provisions for the regulation of nonconforming structures, uses, lots, and sites that were legally in compliance before the adoption or amendment of this Zoning Ordinance or previously adopted City ordinances or annexations into the City, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Ordinance or future amendments to the Zoning Ordinance or the Zoning Map.

### 11-36-2: Establishment of Legal Nonconforming Uses, Structures, and Lots

- A. **Nonconformity.** Nonconforming status may result from any inconsistency with the requirements of this ordinance including, but not limited to, location, density, floor area, height, yards, usable open space, buffering, screening, landscaping, provision of parking, performance standards, or the lack of an approved use permit or other required authorization.
- B. **Nonconforming Uses, Structures, and Lots.** Any legally established use, structure, or lot that is in existence on the effective date of this ordinance, or any subsequent amendment, but does not comply with all of the standards and requirements of this ordinance shall be considered legally nonconforming. Legally nonconforming uses, structures, and lots may only be continued subject to the requirements of this Chapter. This term means any building, structure, or use that was lawfully established and in compliance with all applicable ordinances and laws, but no longer complies with all applicable regulations and standards of development in the zone in which it is located.

**11-36-3: Expansion of Nonconforming Uses**

- A. **Expansions to Other Structures and/or Lots.** A nonconforming use shall not be expanded to any other structure or lot that it did not occupy on the enactment date of this Ordinance.
- B. **Expansion Within a Conforming Structure.** A nonconforming use may be allowed to expand within the conforming structure it occupied on the enactment date of this Ordinance, subject to a SUP or CUP where required for the specific use, provided the subject structure complied with the requirements of this Ordinance and the requirements of the Building Code in effect on the date of the expansion.
- C. **Expansion within a nonconforming structure.** A nonconforming use shall not be allowed to expand in a structure that is nonconforming under this Ordinance.

**11-36-4: Abandonment of Nonconforming Uses**

- A. No legal nonconforming use may be resumed, reestablished, or reopened after it has been abandoned or vacated for a period of one (1) year or more.
- B. The Zoning Administrator shall determine whether the use was abandoned or vacated for a period of one year or more. The owner/operator of the use may provide evidence of continual operation of the use, such as monthly business receipts or tax returns showing business activity during the time period in question.

**11-36-5: Continuation and Maintenance of Nonconforming Uses or Structures**

- A. **Right to Continue.** Any use or structure that was legally established prior to the effective date of this ordinance or of any subsequent amendments to its text or to the Zoning Map may only be continued and maintained provided there is no alteration, enlargement, or addition to any building or structure; no increase in occupant load; nor any enlargement of the area, space, or volume occupied by or devoted to such use, except as otherwise provided in this Chapter. The right to continue a nonconforming structure shall attach to the land and shall not be affected by a change in ownership. No substitution, expansion, or other change, alteration or other change in structures is permitted, except as otherwise provided in this Chapter. Legal nonconforming structures may be repaired and/or maintained in compliance with the requirements of this Section unless deemed to be a public nuisance because of health or safety conditions.

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- B. **Structural Repairs.** Structural repairs that do not enlarge or extend a nonconforming structure or nonconforming use, including modification or repair of bearing walls, columns, beams, or girders, may be undertaken only when the Building Official determines that such modification or repair is immediately necessary to protect public health and safety, occupants of the nonconforming structure, or occupants of adjacent property, and when the cost of such work does not exceed 50 percent of the construction value, exclusive of foundation, of the nonconforming structure. No other structural repairs may be made to nonconforming structures.

#### **11-36-6: Damaged or Partially Destroyed Structures**

- A. A lawful nonconforming building or structure that is damaged or partially destroyed may be restored or rebuilt if the cost of repair or reconstruction does not exceed 50 percent of the construction value, exclusive of the foundation, of the building or structure. Replacement of the damaged portions of the building is allowed by right provided that the replaced portions do not exceed the size, extent, and configuration that previously existed.
- B. If the cost of repair or reconstruction exceeds 50 percent of the construction value, exclusive of the foundation, of the building or structure replacement, the land and building shall be subject to all of the requirements of this Ordinance. However, the Zoning Administrator may approve a Special Use Permit for the structure to be rebuilt to less than the size, extent, and configuration as previously existed as long as the previous use is continued or the original use is reestablished, as provided for in this Chapter.

#### **11-36-7: Alterations and Enlargements to Nonconforming Structures**

Nonconforming structures may be enlarged, extended, structurally altered, or repaired in compliance with all applicable laws, subject to the following provisions.

- A. The Zoning Administrator may approve alterations and enlargements that comply with the following:
1. Alterations or enlargements necessary to meet City or state requirements; and
  2. Alterations or enlargements necessary to meet current requirements of the zone in which the structure is located.

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- B. Alterations and enlargements that extend into a nonconforming yard or height limit may be approved through a Special Use Permit where the alteration or enlargement would not:
  - 1. Further reduce any existing nonconforming yard;
  - 2. Exceed applicable building height limits;
  - 3. Further reduce existing nonconforming lot coverage or floor area ratio requirements; and
  - 4. Increase the required number of off-street parking spaces unless parking is provided under current standards for the addition of the use only.
- C. Alterations or enlargements up to 50 percent of floor area of a legal, nonconforming single residence or duplex residence may be made without providing any additional parking space or changes to an existing driveway, provided that such alterations do not increase the number of dwelling units on the lot and a Special Use Permit is approved.
- D. Notwithstanding the requirements of subsection C, a second unit in compliance with this Ordinance may be developed on a lot that contains a nonconforming single-residence. If the single residence is nonconforming because it does not meet current parking standards, the second unit may only be established when parking is provided to meet the applicable requirements of this Ordinance for both the primary dwelling and the second unit.

**Chapters 37 through 40 (Reserved for future use.)**

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