

CHAPTER 14

NONCONFORMITIES

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SECTION 1400. GENERAL

- A. Within the Zoning Districts established by this Code there are uses, structures, and lots which were lawful before this Code was adopted or amended. However, under the terms of this Code and its future amendments where these uses, structure and lots are not permitted, such uses, structures, and lots, are referred to as Nonconformities and may continue as regulated by this Chapter.
- B. A use lawfully existing prior to the effective date of this Code, which does not comply with a Parking, Loading, Screening, Bulk and Area, Sign, or Enclosure requirement or requirements, but which is otherwise lawful shall be deemed Nonconforming and may continue as regulated by this Chapter.

SECTION 1401. NONCONFORMING USES OF UNIMPROVED LAND

- A. When at the effective date of this Code or amendment thereto a lawful use of land exists which would not be permitted by the terms of this Code or amendments thereto, and the only structures employed in connection with the use are all accessory or incidental to such use and in the aggregate do not cover more than 10% of the lot area devoted to the Nonconforming use, such use shall be deemed a Nonconforming use of unimproved land and shall terminate as follows:
 - 1. If the replacement cost of the accessory structures, other than fences, is less than \$1,000.00, the Nonconforming use shall terminate within five (5) years from the effective date of this Code or from the date the use became Nonconforming, whichever is later.

2. If the replacement cost of the structures, other than fences, is \$1,000.00 or more, the Nonconforming use shall be terminated on the basis of amortization of the replacement cost of the accessory structures at a rate of \$200.00 per year from the effective date of this Code or from the date the use became Nonconforming, whichever is later.

B. Pending termination, the Nonconforming use of unimproved land may be continued provided:

1. No such Nonconforming use shall be changed to another Nonconforming use, nor enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Code or amendment hereto.
2. No Nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of this Code or amendment hereto.
3. No additional structures, other than screening fences or walls, shall be constructed in connection with such Nonconforming use of land.
4. If any such Nonconforming use of land ceases for any reason for a period of more than 90 days, except when government action impedes access to or use of the premises, any subsequent use of such land shall conform in all respects to the current regulations of the Zoning District in which it is located.

SECTION 1402. NONCONFORMING USES OF BUILDINGS, OR BUILDINGS AND LAND IN COMBINATION

When at the effective date of this Code or amendment, there exists a lawful use of a building, or use of a principal building and land, or use of land and accessory structures, such structures covering more than 10% of the lot area, and such use would not be permitted by the terms of this Code or amendment hereto, such use shall be deemed Nonconforming and may continue subject to the following provisions:

- A. No building devoted to a Nonconforming use shall be enlarged or extended, except in changing the use of the building to a use permitted in the Zoning District in which it is located.
- B. A Nonconforming use of a portion of a building may be extended to the remaining portions of the building if such portions were clearly arranged, as determined by the Zoning Officer, and designed for such use but such use shall not be extended to occupy any land outside the building.
- C. A Nonconforming use of a building, or building and land in combination, if superseded by a permitted use, shall not from that day on be resumed.

- D. A Nonconforming use of a building, or building and land in combination, if discontinued for six (6) consecutive months or for six (6) months during any two (2) year period, except when governmental action impedes access to or the use of the premises, shall not subsequently be resumed.
- E. When Nonconforming use status applies to a building and land in combination, termination of use of the building within the meaning of Section 1402 shall eliminate the Nonconforming status of the use of the land.
- F. A Nonconforming use of a building or of a building and land in combination when located within an Agricultural or Residential Zoning District shall not be changed unless changed to a use permitted in the Zoning District in which the Nonconforming use is located.
- G. A Nonconforming use of a building or of a building and land in combination when located within a Zoning District other than an Agricultural or Residential District, may, as a Special Exception, be changed to a use permitted in such district by Right or Special Exception. Approval of the Special Exception may be granted by the Board of Adjustment after a finding that the proposed use will not result in any increase of incompatibility with the present and future use of the proximate properties.
- H. Should the structure containing a Nonconforming Use be damaged or partially destroyed to the extent of more than 50%, but less than 75% of its current replacement cost at time of damage, the restoration of the structure shall be subject to the Board of Adjustment's findings after adherence to the procedural requirements for a Special Exception, that the contemplated restoration is necessary for the continuance of the Nonconforming use, and will not result in any increase of incompatibility with the present or future use of proximate properties. Should the structure containing a Nonconforming Use be damaged or destroyed to the extent of more than 75% of its replacement cost at time of damage, the Nonconforming Use shall not continue or be resumed. In the context of this Zoning Code, the terms "damaged" or "partially destroyed" shall not be interpreted to include such conditions caused by neglect, nor shall such neglected Nonconforming Uses be eligible for replacement as a Special Exception by the Board of Adjustment.
- I. Nonconforming manufactured homes approved and zoned RSMH (Residential Single Family Manufactured Home) and subsequently rezoned RS-6 (Residential Single Family High Density) shall be eligible to be replaced by Right. However, all manufactured homes shall be certified and shall conspicuously display such certification that they have been constructed and comply with the National Manufacturing Home Construction and Safety Standards, as of 1995.

SECTION 1403. NONCONFORMING SIGNS

- A. Outdoor Advertising Signs lawfully existing on the effective date of this Code or amendment or revision, but which would be prohibited by the terms of this Code or future amendment, shall be deemed Nonconforming and may continue subject to the following provisions:
1. The Sign shall be maintained in good repair and visual appearance;
 2. Should the Sign be damaged or partially destroyed to the extent of more than 50% of its current replacement cost at the time of damage, the Sign shall be removed, or made to conform;
 3. If the Sign is not used for advertising purposes for a period of six (6) consecutive months, the Sign shall be deemed abandoned and shall be removed; and
 4. The Sign shall remain as a static copy display and shall not be changed, altered or converted to digital display LED or similar technology.
- B. Other Signs lawfully existing at the effective date of this Code or amendment hereto but which would be prohibited by the terms of this Code or amendment thereto shall be deemed Nonconforming and may continue subject to the following requirements:
1. A Sign which is Nonconforming by reason of restrictions on the use of strobe or beacon lights incident thereto may continue so long as the strobe or beacon lights are removed immediately unless such lights are otherwise required by law; (See Section 1410, Strobe and Beacon Lights)
 2. The Sign shall be maintained in good repair and visual appearance;
 3. Should the Sign be damaged or partially destroyed to the extent of more than 50% of its current replacement cost at the time of damage, the Sign shall be removed or made to conform; and
 4. If the Sign is not used for advertising purposes for a period of six (6) consecutive months, the Sign shall be deemed abandoned and shall be removed.
 5. The Sign shall remain as a static copy display and shall not be changed, altered or converted to digital display LED or similar technology.

SECTION 1404. NONCONFORMING LOTS

A. Residential Zoning Districts

In Residential Zoning Districts on any lot filed of record on or before Sept 20, 1971, or on any lot within a subdivision approved by the Planning Commission or on any lot of record for which a recorded instrument of conveyance bears the endorsement of the Planning Commission and such lot is Nonconforming by reason of failure to meet Zoning Code requirements for size or average width, a single-family detached dwelling may be constructed without complying with the required lot area, land area per dwelling unit, lot width, livability space per dwelling unit or the required side yard which abuts a public street; provided, however, no side yard may be less than five (5) feet, and Livability Space shall not be less than 50% of the lot area. All other requirements of the Zoning District shall be complied with.

B. Nonresidential Zoning Districts

On any lot filed of record on or before Sept. 20, 1971, or on any lot within a subdivision having received approval of the Planning Commission, or any lot of record for which a recorded instrument of conveyance bears the endorsement of the Planning Commission the permitted use may be located on such lot without regard for its area or width provided that other requirements of the Zoning District shall be complied with.

SECTION 1405. STRUCTURAL NONCONFORMITIES

A structure lawfully existing at the effective date of the adoption or amendment of this Code, but which would be prohibited by the terms of this Code by reason of restriction on floor area, density, intensity, height, yards, its location on the lot, or other requirements concerning the structure, shall be deemed Nonconforming and may continue subject to the following provisions:

- A. No such Nonconforming structure may be enlarged or altered in any manner which increases its nonconformity provided that the addition of a mezzanine or similar alteration which does not increase the cubic content of the structure shall not constitute an increase in Nonconformity.
- B. Should such structure, except Antennas and Antenna Supporting Structures, be damaged or partially destroyed by any means to the to the extent of more than 50% of its current replacement cost at the time of damage, the restoration as a Nonconforming structure shall be subject to the Board of Adjustment's findings, after adherence to the procedural requirements for a Special Exception, that its restoration to a conforming structure cannot reasonably be made in view of the nature and extent of the nonconformity and the nature and extent of the damage.
- C. Antenna and Antenna Supporting Structures, if damaged or destroyed by any means may be reconstructed by obtaining a Building Permit issued in compliance with the

original conditions of approval. The reconstructed Antenna and Antenna Supporting Structure shall be placed at the same location and have less than or equivalent height and mass.

- D. Should such Nonconforming structure be moved for any distance whatever, it shall conform to the provisions of the Zoning District in which located.

SECTION 1406. REPAIRS

- A. On any building containing a Nonconforming use or any Nonconforming structure, ordinary repairs and maintenance may be made. However, the cubic content of the building and the structural nonconformity shall not be increased.
- B. If a Nonconforming structure or a structure containing a Nonconforming use becomes physically unsafe or unlawful due to lack of maintenance, and a final order of vacation or demolition is entered by any authorized official by reason of physical condition, it shall not thereafter be used, restored, or repaired, or rebuilt except in conformity with the provisions of the Zoning District in which located.

SECTION 1407. PARKING, LOADING AND SCREENING NONCONFORMITIES

A use lawfully existing at the effective date of this Code, or amendment thereto except for an Adult Entertainment Establishment as listed in Use Unit 1213 and a Dance Hall as listed in Use Unit 1220, (See Sections 1408 and 1409), but which does not comply with a parking, loading or screening requirement or requirements of this Code, shall be deemed Nonconforming and may continue subject to the following provisions:

- A. No such use shall be enlarged or extended unless parking and loading is provided as required for the enlargement or extension.
- B. No such use shall be enlarged or extended unless screening is provided as required for the use.
- C. No such use shall be changed unless parking, loading and screening is provided as required for such use. However, the Board of Adjustment may modify such parking and loading requirements as a Special Exception after finding that the proposed use meets the standards contained in Subsection 1601.D.3 and the proposed use will not result in any increase of incompatibility with the present and future use of the proximate properties.
- D. A Use Unit 29 use shall be screened in accordance with the provisions of Section 1229 of this Code on or before the expiration of 12 months from the effective date of this Code. However, existing storage racks that do not meet minimum setback requirements may remain.

SECTION 1408. ADULT ENTERTAINMENT ESTABLISHMENTS

An Adult Entertainment Establishment, as listed in Use Unit 13, lawfully existing at the effective date of this Code or amendment thereto, but which does not comply with a parking, loading, spacing or screening requirement or requirements of this Code, shall be deemed Nonconforming and may continue subject to the following provisions:

- A. Sexually-Oriented Businesses shall be regulated by Section 604.C, Nonconforming Uses.
- B. Adult Entertainment Establishments located in an AG or R District shall not be changed to another use except that such use is in compliance with all provisions of said AG or R District.
- C. In other than AG or R Districts, Adult Entertainment Establishments shall be subject to the following provisions:
 - 1. No such use shall be enlarged or extended;
 - 2. No such use shall be changed to another use which would not meet parking, loading, screening and spacing requirements, unless changed to a use within Use Unit 11, Offices, Studios and Support Services, Use Unit 14, Convenience Goods and Services or Use Unit 15, Shopping Goods and Services. However, the Board of Adjustment may permit by Special Exception other uses permitted by Right or Special Exception within the Zoning District, even though such use may be Nonconforming as to parking, loading, screening or spacing;
 - 3. No such use which contains a public entrance door that is within 50 feet of an AG or R District, as set forth in Section 1213.C, shall continue more than one (1) year from the date this provision first became effective; and
 - 4. No such use that is less than 300 feet from an AG or R District and is Nonconforming as to Off-street Parking or Loading Requirements as stated in Section 1213.D shall continue for more than one (1) year from the date this provision first became effective provided:
 - a. The 300 feet is to be measured in a straight line from the nearest building wall of the Adult Entertainment Establishment to the nearest point on a residential Zoning District boundary line, excluding residentially zoned expressway right-of-way.
 - b. The Board of Adjustment may, as a Special Exception, reduce the number of required off-street parking spaces on a lot, or may allow the required Off-street Parking on a lot other than on the lot which

contains the business.

For Off-site Parking to be considered the proposed lot shall be within the owner's control, within 200 feet of the lot containing the business, accessible, convenient and safe for patrons.

Additionally, for the Special Exception to be approved, the Board shall find that the use is not injurious to the neighborhood or otherwise detrimental to the public safety and welfare.

5. The change of a nonconforming Adult Entertainment Establishment from a Non-Sexually-Oriented Business to a Sexually-Oriented Business is considered a change of use and the new Sexually-Oriented Business shall comply with all of the requirements of this Code.
6. If the use of a nonconforming Sexually-Oriented Business is discontinued for any reason whatsoever for a period of 189 days or more, such use shall not be reestablished unless it complies with all of the requirements of this Code.
7. In the event that two (2) or more Adult Entertainment Establishments are separated by a lesser distance than required by this Code, the first such Adult Entertainment Establishment licensed and continually operating at a particular location shall be considered the conforming use and the later Establishment(s) shall be nonconforming.

SECTION 1409. DANCE HALL ESTABLISHMENTS

A Dance Hall lawfully existing at the effective date of this Code or amendment thereto, but which does not comply with a parking, loading, spacing or screening requirements of this Code, shall be deemed Nonconforming and may continue subject to the following provisions:

- A. Dance Hall Establishments located in an AG or R District shall not be changed to another use except that such use is in compliance with said AG or R District.
- B. In other than AG or R Districts, Dance Hall Establishments shall be subject to the following provisions:
 1. No such use may be enlarged or extended;
 2. No such use shall be changed to another use which would not meet parking, loading screening and spacing requirements, unless changed to a use within Use Unit 11, Office, Studios and Support Services, Use Unit 14, Convenience Goods and Services or Use Unit 15, Shopping Goods and Services; provided, however, the Board of Adjustment may permit by Special Exception other uses permitted by Right or Special Exception within the

Zoning District even though such use may be Nonconforming as to parking, loading, screening or spacing; and

3. Such use which is Nonconforming as to Off-street Parking and Loading Requirements, as set forth in Section 1220 and/or setback and location standards from AG or R Districts as set forth in Section 1220, shall terminate within one (1) year from the effective date of this Code.
4. The Board of Adjustment may, as a Special Exception, reduce the number of Off-street Parking Spaces (See Section 1220.D) on a lot or allow the required Off-street Parking on a lot other than the lot which contains the business. For the off-site parking to be considered the proposed lot shall be within the owner's control, within 200 feet of the lot containing the business, accessible, convenient and safe for patrons. Additionally, for the Special Exception to be approved, the Board shall find that the use is not injurious to the neighborhood or otherwise detrimental to the public safety and welfare.

SECTION 1410. STROBE AND BEACON LIGHTS

Strobe and beacon lights if visible from a public street shall be removed immediately unless otherwise required by law.

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