

ARTICLE XI Non-Conforming Situations

The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform to the provisions of this Ordinance. However, this Article is also established to require that non-conforming situations be terminated under certain circumstances.

11.1 Continuation of Non-Conforming Situations

Non-conforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Sections 11.2 through 11.9 of this Article.

11.2 Non-Conforming Lots of Record

Where the owners of a lot of record at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the area or lot width requirements of this Ordinance, such lot may be used as a building site provided all other dimensional requirements are met and provided that the use to be made of the property is not one to which larger than minimum lot area requirements are called for in the list of Permitted and Special Uses and the Special Requirements.

11.3 Extension or Enlargement of Non-Conforming Situations

- A.** Except as specifically provided in this Section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation.
- B.** Subject to Paragraph 4 of this Section, a non-conforming use may be extended through any portion of a completed building that, when the use was made non-conforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building.

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- C. A non-conforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became non-conforming.
- D. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this Section occur.
- E. Physical alteration of non-conforming structures or structures containing a non-conforming use is unlawful if it results in:
 - 1. An increase in the total amount of space devoted to a non-conforming use;
 - 2. Greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements; or
 - 3. The enclosure of previously unenclosed areas, even though those areas are or were used in connection with the non-conforming activity.
- F. Minor repairs to and routine maintenance of property where non-conforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than ten (10%) percent but less than sixty (60%) percent of the taxed value of the structure to be renovated may be done provided that the work will not result in a violation of any other paragraphs of this subsection particularly Paragraph 5. In no case, however, shall work costing more than sixty (60%) percent of the taxed value of the structure be done, singularly or cumulatively, within any five (5) year period.

Provided, nothing herein shall prevent the maintenance, repair and extension of a single-family dwelling that is non-conforming as to use, provided it is done in conformance with the dimensional requirements of the R-6 Residential District.

11.4 Reconstruction (*amended 11/15/2018*)

- A. Reconstruction or renovation of any non-conforming building or structure or any building or structure containing a non-conforming use for which major repair or reconstruction is proposed in any amount equal to sixty (60%) percent or more of the taxed value of the building or structure shall only be reconstructed and/or renovated and used as a conforming structure and a conforming use.
- B. Reconstruction or renovation of any non-conforming building or structure damaged or destroyed by lightning, flood, wind, explosion or casualty is allowed with a Zoning Compliance Permit, provided the permit is issued within one-hundred twenty (120) days after the event that caused destruction of the building or structure and provided such reconstruction is begun within one-hundred eighty (180) days after the Zoning Compliance Permit issue date.
- C. Provided, nothing herein shall prevent the reconstruction of a single-family dwelling that is non-conforming as to use provided such reconstruction conforms to the dimensional requirements of the R-15 or R-20 residential districts.

11.5 Change in Kind of Non-Conforming Use

- A. A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.
- B. A non-conforming use shall not be changed to another non-conforming use except upon a finding by the Board of Adjustment that the use is more in character with the uses permitted in the district than the previous use.
- C. If a non-conforming use and a conforming use, or any combination of non-conforming uses exist on one lot, the use made of the property may be changed only to a conforming use.
- D. Conforming uses, except adult-oriented businesses, may be established or re-established in non-conforming buildings or structures provided that off-street parking is provided as required by this Ordinance and provided no other provision of this Ordinance for the establishment of new uses is violated.

11.6 Replacement of Non-Conforming Mobile Homes and Mobile Homes in Non-Conforming Mobile Home Parks *(amended 07/19/2018)*

- A. A non-conforming single-wide mobile home on an individual lot in a residential (R) zoning district may be replaced with a Class A or Class B mobile home within one-hundred twenty (120) days from the date of removal. The replacement mobile home shall meet the requirements of SR 4 (B) thru (F) or SR 5 (A) thru (F).
- B. A non-conforming double-wide mobile home on an individual lot in a residential (R) zoning district may be replaced with a Class A mobile home within one-hundred twenty (120) days from the date of removal. The replacement mobile home shall meet the requirements of SR 5 (A) thru (F).
- C. A non-conforming single-wide or double-wide mobile home on an individual lot in a non-residential zoning district may not be replaced except by a conforming use.
- D. Individual mobile homes in non-conforming mobile home parks may be replaced on a one-to-one basis provided that no new non-conforming situation is created. In no event shall any non-conforming mobile home park be allowed to expand unless the entire park is brought into full conformance with this Ordinance.

11.7 Discontinuance of Non-Conforming Uses

- A. When active operation or occupancy of a non-conforming use is discontinued regardless of the purpose or reason for a consecutive period of one-hundred twenty (120) days or removed for any period of time, the property involved may thereafter be used only for conforming uses.
- B. For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a non-conforming apartment building for one-hundred twenty (120) days shall not result in a loss of the right to rent that apartment thereafter so long as the apartment building as a whole is continuously maintained. If a non-conforming use is maintained in conjunction with a

conforming use, cessation of operation or occupancy of the non-conforming use for the one-hundred twenty (120) day period or removal for any period of time, shall terminate the right to maintain it thereafter.

11.8 Discontinuance of Non-Conforming Adult Oriented Businesses

Notwithstanding the provisions of Section 11.7 above, adult-oriented businesses shall be governed by the following:

- A. Any adult-oriented business that fails to comply with the use and locational requirements of this Ordinance but which was lawfully operating before the effective date of this Ordinance shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business, which ceases active operation for a period of thirty (30) days regardless of the purpose or reason, shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
- B. Any adult-oriented business lawfully operating as of the effective date of this Ordinance but which subsequently fails to comply with the use and locational requirements of this Ordinance as the result of changes within the vicinity or amendment to this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business, which ceases active operation for a period of thirty (30) days regardless of purpose or reason, shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
- C. Any adult-oriented business that is rendered a non-conforming use as a result of the conditions described in A. and B. above shall either cease to operate or meet all of the requirements of this Ordinance for the use no later than sixty (60) days from the date that the adult-oriented business becomes a non-conforming use.

11.9 Nonconforming Signs *(removed 11/15/2018, See Article IX)*