

CHAPTER 1130
Nonconforming Uses

- 1130.01 Nonconforming uses.**
- 1130.02 Preexisting zoning use permits.**
- 1130.03 Nonconforming use of land.**
- 1130.04 Nonconforming use of structures.**
- 1130.05 Nonconforming use of structures and land.**
- 1130.06 Alterations of nonconforming uses.**
- 1130.07 Vacant, Abandoned or Discontinued Use.**
- 1130.08 Nonconforming Signs.**
- 1130.09 Repairs, Maintenance, Alterations, or Improvements.**

1130.01 NONCONFORMING USES.

- (a) The districts established by this Zoning Code constitute the proper location for the permitted, conditional, and accessory uses and structures identified herein. Within such districts there may exist nonconforming uses that were lawful prior to the enactment of these regulations, but that would be prohibited under the provisions of the current Zoning Code. Future amendments to this Zoning Code may also create additional nonconforming uses.
- (b) The legitimate interests of those lawfully established nonconforming uses are recognized in this Zoning Code by allowing such nonconforming uses to continue, subject to specific requirements for, and limitations upon, their completion, restoration, alteration, perpetuation and/or substitution. It is recognized that nonconforming uses substantially and adversely affect the orderly development, maintenance, use and taxable value of other properties in the district, property that is itself subject to the regulations of this Zoning Code.
- (c) In order to secure eventual compliance with the standards of this Zoning Code it is necessary to strictly regulate nonconforming uses and to prevent the reestablishment of nonconforming uses that have been discontinued.
- (d) The following sections divide nonconforming uses into four categories and provide appropriate regulations for each category:
 - (1) Preexisting Zoning Use Permits that no longer comply with the requirements of this Zoning Code.
 - (2) Nonconforming land: lots, including vacant lots, having an area smaller than the minimum size required under Section 1125.14.
 - (3) Nonconforming structures or use thereof: structures which do not comply with the lot size or building bulk limitations required under Section 1125.14.
 - (4) Nonconforming uses of structures and land that do not comply with the requirements of this Zoning Code.

1130.02 PREEXISTING ZONING USE PERMITS.

Nothing contained in this Zoning Code shall require any change in the plans, construction, size or designated use of a building, structure or part thereof for which a Zoning Use Permit has been granted and the construction of which according to such permit or plans and specifications shall have been started prior to the enactment of this Zoning Code or such amendment. If any building construction for which a building permit has been granted is discontinued for a period of ninety (90) calendar days, any further construction shall be in conformity with the provisions of this Zoning Code. Any non-conforming use existing prior to November 01, 2020 shall still be considered non-conforming and shall comply with the same perpetuation of use or structure code adherence in place prior to November 01, 2020. The Zoning Administrator may revoke the Zoning Use Permit and require a new site plan to be submitted showing compliance with **Chapter 1135** and require non-conformance be abated or corrected.

1130.03 NONCONFORMING LAND.

- (a) In any district, notwithstanding limitations imposed by other provisions of this Code, where an existing lot of record fails to meet the requirements for area, width, or both, that are generally applicable in the district, such lot may be used for the permitted uses of the zoning district, including permitted accessory uses. However, all yard dimensions and other requirements, not involving area or width of the lot, must conform to the regulations for the district in which such lot is located.
- (b) If two (2) or more lots or combinations of lots of record with continuous frontage and in single ownership and use at the time of passage or amendment of this chapter, irrespective of whether all or part of the lots meets the chapter requirements, the lands involved will be considered to be an undivided parcel. No portion of said parcel or lot can be used or sold that does not meet lot, width, and area requirements, nor can any division of the parcel or lot be made which leaves remaining any parcel or lot with a width or area below the requirements stated in this chapter. The Zoning Administrator may require that some or all lots be combined into a single lot of record prior to issuing a Zoning Use Permit for the properties.
- (c) If a current permitted use contains improvements, including but not limited to driveways, accessory structures, parking areas, etc. which extend beyond a single lot, the Zoning Administrator may require that all improved lots be combined into a single lot prior to issuing additional Zoning Use Permits for the properties.

1130.04 NONCONFORMING STRUCTURES.

A lawfully existing structure which contains no nonconforming use, but which does not comply with the applicable lot size requirements, building bulk regulations, or off-street parking requirements may be continued so long as it remains otherwise lawful. Such "nonconforming structures" shall be subject to the following requirements:

- (a) A nonconforming structure may be maintained and repaired. However, no maintenance or repair shall either create any additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure; and damaged or destroyed structures shall be subject to the restrictions in subsection (b) hereof.
- (b) In the event that a nonconforming structure is damaged or destroyed, by any means, to such an extent that the cost of restoring it to the condition in which it was prior to such damage or destruction exceeds sixty (60) percent of the current assessed value of the entire structure, such structure shall not be restored unless it thereafter conforms to the regulations for the district in which it is located.

- (c) No nonconforming structure shall be moved in whole or in part, for any distance whatever, to any other location on the same or any other lot unless the entire structure thereafter conforms to the regulations of the district in which it is located after being moved.
- (d) The Zoning Administrator may, at their discretion, require the elimination of all, or a portion of, any nonconformity as a condition of the issuance of a Zoning Use Permit for the property.

1130.05 NONCONFORMING USE OF STRUCTURES AND LAND.

When the applicable district regulations of this Zoning Code do not allow as a permitted use either a use of part or all of a structure lawfully existing at the time of the adoption of this Zoning Code, or a use of land not involving a structure lawfully existing at the time of the adoption of the Zoning Code, such existing use may be continued so long as otherwise lawful. Such "nonconforming uses" shall be subject to the following requirements:

- (a) Work may be done on ordinary maintenance and repairs, or on repair of walls, minor electrical fixtures, wiring, minor plumbing or minor mechanical. However, this paragraph shall not be deemed to authorize any violation of this section or to in any way perpetuate the future existence of the nonconformance of use, structure, or land.
- (b) Nothing in this chapter shall be deemed to allow the strengthening or restoring to a safe condition of a structure, other than a damaged or destroyed structure subject to the provisions of Section 1130.06 (b) hereof, in accordance with the order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.
- (c) Nonconforming residential structures in a business or industrial district may be maintained and repaired. However, no increase in the number of dwelling units shall be permitted.

1130.06 ALTERATIONS OF NONCONFORMING USES.

No structural alteration shall be made unless the entire structure and the use of such structure thereafter conforms to the regulations of the district in which such structure is located, except as provided herein.

- (a) The Board of Zoning Appeals may permit a nonconforming structure to be repaired subject to the following conditions:
 - (1) A nonconforming structure may be repaired, provided the structure is not enlarged or extended and the non-conformance is not increased or perpetuated.
 - (2) A nonconforming use of land may not be extended, enlarged or increased in intensity.
 - (3) Any existing nonconforming use which adds the sale of beer and/or alcoholic beverages for consumption on the premises, or, if the existing nonconforming use includes the sale of beer and/or alcoholic beverages for consumption on the premises, and a change would include a later closing hour and/or the sale of beer or alcoholic beverages with the greater alcoholic content than the existing nonconforming use, it shall be deemed to extend, enlarge or increase in intensity such existing nonconforming use.

- (b) In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to such an extent that the cost of restoration to the condition in which it was before such damage or destruction exceeds sixty (60) percent of the current assessed value of the entire structure, exclusive of foundation, such structure shall not be restored unless such structure and the use thereof thereafter conforms to the regulations of the district in which it is located. Moreover, even if such damage is sixty (60) percent or less, no repair or restoration shall be made unless a Building Permit and Zoning Use Permit are obtained, and restoration is actually begun, within six months after the date of such partial destruction and is diligently pursued to completion. In the event of a work stoppage of more than 30 days, the Zoning Administrator may, at their discretion, revoke the Zoning Use permit and require that the structure and use thereafter conforms to the regulation of the district in which it is located.
- (c) No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part, for any distance whatever, to any other location on the same lot or any other lot unless the entire structure and the use thereof thereafter conforms to the regulations of the district in which it is located after being so moved. Moreover, no nonconforming use of land shall be moved, in whole or in part for any distance whatever, to any other location on the same or any other lot unless such use thereafter conforms to the regulations of the district in which it is located after being moved.
- (d) The Board of Zoning Appeals shall have no authority to allow a nonconforming use to be re-established once it has become vacant, abandoned or a discontinued use under **Section 1130.07** and no nonconforming accessory use shall continue after the principal use to which it is accessory has been discontinued.
- (e) The Zoning Administrator may, at their discretion, require the elimination of all, or a portion of, any nonconforming issues as a condition of the issuance of a Zoning Use Permit for the property.

1130.07 VACANT, ABANDONED OR DISCONTINUED USE.

- (a) Residential structure. The structure may not continue in its current form without complying with all requirements of this **Part 11** if it is considered vacant, abandoned, or the use has been discontinued for more than three (3) consecutive months by the Chief Building Official, Zoning Administrator, and City Administrator. Also, should the same individuals determine that the structure's condition requires complete replacement, the structure will lose its legal non-conforming status, and conformance will be required. Any subsequent use of the building referred to in this section shall also conform to the requirements of this **Part 11**.
- (b) Commercial structure. The structure may not continue in its current form without complying with all requirements of this **Part 11** if it is considered vacant, abandoned, or the use has been discontinued for more than nine (9) consecutive months by the Chief Building Official, Zoning Administrator, and City Administrator. Also, should the same individuals determine that the structure's condition requires complete replacement, the structure will lose its legal non-conforming status, and conformance will be required. Any subsequent use of the building referred to in this section shall also conform to the requirements of this **Part 11**.

- (c) Industrial structure. The structure may not continue in its current form without complying with all requirements of this **Part 11** if it is considered vacant, abandoned, or the use has been discontinued for more than nine (9) consecutive months by the Chief Building Official, Zoning Administrator, and City Administrator. Also, should the same individuals determine that the structure's condition requires complete replacement, the structure will lose its legal non-conforming status, and conformance will be required. Any subsequent use of the building referred to in this section shall also conform to the requirements of this **Part 11**.
- (d) Determination of abandonment, discontinuance and vacancy. Nonconforming lots, nonconforming buildings and structures, nonconforming uses of buildings and structures, and nonconforming uses of land will be considered abandoned, discontinued, or vacant if one (1) or more of the following conditions exists, and will be deemed to constitute intent on the part of the property owner to abandon, discontinue or vacate:
- (1) Utilities, such as water, gas or electricity to the property, have been disconnected;
 - (2) The property, buildings, or grounds, have fallen into disrepair thus requiring full replacement;
 - (3) Signs or other indications of the existence of the nonconforming use have been removed;
 - (4) Equipment or fixtures that are necessary for the operation of the nonconforming use have been removed; or
 - (5) Other actions, which in the opinion of the Chief Building Official, Zoning Administrator, and City Administrator constitute an intention on the part of the property owner or lessee to abandon the nonconforming use.

1130.08 NONCONFORMING SIGNS.

The goal is to eliminate nonconforming signs, except as otherwise specifically set forth in this section. Any lawfully erected sign, which is made unlawful by this chapter, may continue exactly as the sign existed at the time when the sign became unlawful under the provisions of this chapter. However, following ninety (90) days after the discontinuance of the previously approved use associated with the sign, sign panels shall be replaced with blank panels and any interior lighting shall be disconnected. Twelve (12) months after discontinuance, the sign structure shall be removed.

- (a) No nonconforming sign shall:
- (1) Be changed to another nonconforming sign without a variance;
 - (2) Be structurally altered so as to change the shape, size, type or design of the sign;
 - (3) Be re-established after the activity, business or use to which it relates has been discontinued for ninety (90) days or longer.
- (b) Ordinary repair/maintenance.
- (1) The provisions of this chapter shall not apply to the ordinary repair/maintenance of existing signs or changing of sign panels or to the altering of a sign specifically designed for periodic change of message without change in sign structure, such as a bulletin board or similar type of sign. The replacement of a manual changeable message sign with a digital message sign is specifically excluded from this provision.

- (2) Repairs may be done to a nonconforming sign to an extent not exceeding thirty (30%) percent of the value of the sign, provided that:
 - (i) The dimensional characteristics of the sign as it existed at the time of passage or amendment of this chapter is not increased; and
 - (ii) The sign has not lost its nonconforming status due to vacancy, discontinuance or abandonment.
- (c) In the event that any nonconforming sign requires ordinary repair/maintenance for any reason and in any manner that exceeds thirty (30%) percent of the value of the sign, such repairs shall be permitted only in conformity with the provisions of this chapter. However, if complying with this chapter is unfeasible and/or impractical, a property owner may seek a variance from the zoning board of appeals (see **Chapter 1105**), assuming it can also be demonstrated that the original structure was consistent with the established character of the area.

1130.09 REPAIRS, MAINTENANCE, ALTERATIONS, OR IMPROVEMENTS.

The following regulations apply to all nonconforming structures and structures devoted to nonconforming uses as regulated by this **Chapter 1130**.

- (a) Residential use: Repairs, maintenance, alterations or improvements totaling less than fifty (50%) percent of the assessed value of the building may be completed on any building or structure that is determined to be devoted to a nonconforming use or is itself a nonconforming structure. However, the work is limited to ordinary repair/maintenance, or repair or replacement of non-bearing walls, minor electrical fixtures, wiring, minor plumbing or minor mechanical and requires the approval of the Chief Building Official, Zoning Administrator, and City Administrator, provided that:
 - (1) The dimensional characteristics of the building as it existed at the time of passage or amendment of this chapter is not increased. This does not allow for the separation or expansion of utility systems for nonconforming residential uses; and
 - (2) The building, structure or use has not lost its nonconforming status due to vacancy, discontinuance or abandonment.
- (b) Commercial or industrial use: Repairs, maintenance, alterations or improvements totaling less than seventy-five (75%) percent of the assessed value of the building may be completed on any building or structure that is determined to be devoted to a nonconforming use or is itself a nonconforming structure. However, the work is limited to ordinary repair/maintenance, or repair or replacement of non-bearing walls, minor electrical fixtures, wiring, minor plumbing or minor mechanical and requires the approval of the Chief Building Official, Zoning Administrator, and City Administrator, provided that:
 - (1) The dimensional characteristics of the building as it existed at the time of passage or amendment of this chapter is not increased. This does not allow for the separation or expansion of utility systems for nonconforming commercial or industrial uses; and
 - (2) The building, structure or use has not lost its nonconforming status due to vacancy, discontinuance or abandonment.
- (c) Residential use: Repairs or maintenance totaling greater than fifty (50%) percent of the assessed value of the building may be completed for any reason and on any nonconforming structure or structure devoted to a nonconforming use. However, such repairs or maintenance will be permitted only in conformity with the

provisions of the chapter. If deemed unfeasible and/or impractical, a property owner may seek a variance from the Board of Zoning Appeals (see **Chapter 1105**), assuming it can also be demonstrated that the original structure was consistent with the established character of the area.

- (d) Commercial or industrial use: Repairs or maintenance totaling greater than seventy-five (75%) percent of the assessed value of the building may be completed for any reason and on any nonconforming structure or structure devoted to a nonconforming use. However, such repairs or maintenance will be permitted only in conformity with the provisions of the chapter. However, when deemed unfeasible and/or impractical, a property owner may seek a variance from the Board of Zoning Appeals (see **Chapter 1105**), assuming it can also be demonstrated that the original structure was consistent with the established character of the area.
- (e) Nonconforming landscaping and screening. Landscaping and screening must be brought into conformance with the requirements of **Chapter 1145**, to the satisfaction of the Zoning Administrator and City Administrator, whenever:
 - (1) The projected cost of repairs, maintenance, alterations or improvements exceeds thirty-five (35%) percent of the assessed value of the building for residential use;
 - (2) The projected cost of repairs, maintenance, alterations or improvements exceeds twenty-five (25%) percent of the assessed value of the building for commercial or industrial use;
 - (3) There is a change in use or occupancy of the building;
 - (4) The residential use of the building has been vacant, abandoned or discontinued for more than three (3) consecutive months;
 - (5) The commercial use of the building has been vacant, abandoned or discontinued for more than three (3) consecutive months;
 - (6) The industrial use of the building has been vacant, abandoned or discontinued for more than three (3) consecutive months.

The continuation of substandard landscaping and screening must be considered by the zoning board of appeals through the variance process established under **Chapter 1105**.

- (f) Assessed value. For the purposes of enforcing the regulations contained in this section, the value of the structure will be determined by the most recent valuation of the structure for the purposes of taxation.
- (g) Ordinary repair/maintenance. Nothing in this section prevents ordinary repair/maintenance, or the strengthening or restoring to a safe condition of any structure or part thereof deemed to be unsafe by an official charged with protecting the public safety, upon order of such official.
- (h) Unsafe or unlawful structure. A nonconforming structure, or portion of a structure, or a structure containing a nonconforming use that is physically unsafe or unlawful due to lack of repairs and maintenance, as determined by the Chief Building Official and Zoning Administrator, shall not be restored unless such structure and the use thereof thereafter conforms to the regulations of the district in which it is located.