

CHAPTER 30 - NONCONFORMING USES

30.05. Purpose.

1. Within the districts established by this ordinance or amendments that may later be adopted there are lots, structures, uses of land and structures, and characteristics of uses that were lawful when established, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district except as specifically provided elsewhere in this ordinance. [ORD 4696; December 2016]
2. Nonconforming uses are declared by this ordinance to be incompatible with Permitted uses in the district involved.

30.10. Pending Building Permits and Certain Existing or Approved Nonconforming Uses.

1. In order to avoid undue hardship, nothing in this ordinance shall require any change in the location, plans, construction, size, or designated use of any building, structure or part thereof, for which there exists a vested right to continue the development notwithstanding the enactment or amendment of this ordinance; for which a required City building permit was granted prior to the enactment or amendment of this ordinance, or was lawfully permitted at the time the required building permit was issued, or for which the required building permit was issued within an area annexed to the City prior to annexation thereof. If a building permit is revoked or for any reason becomes void, all rights granted by this subsection are extinguished and the project shall thereafter be required to conform to all the provisions of this ordinance. [ORD 4696; December 2016]
2. The City Council may, by resolution duly passed prior to the effective date of this ordinance, establish certain classes of development which, notwithstanding the fact that building permits had not been issued prior to the effective date of this ordinance, shall be treated for the purpose of Section 30.10.1. as if such permit had been issued.

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3. A lawful use that would have been allowed pursuant to a master site plan or other development plan approved prior to the effective date of this ordinance by the decision making authority which has become a nonconforming use by this ordinance, or any other lawfully established use which has become nonconforming as a result of amendment of this ordinance, may be allowed, completed, or altered, as the case may be, as a Conditional Use, notwithstanding its nonconforming character, pursuant to the provisions stated below and the provisions and procedures of Section 40.15., except Sections 40.15.15.1.C, .2.C., and .3.C., as now or hereafter constituted. [ORD 4071; November 1999] [ORD 4584; June 2012] [ORD 4696; December 2016]

Nonconforming uses are not favored by the City and therefore, the application for a Conditional Use permit pursuant to this section may be denied as inappropriate under the circumstances. In order for it to be granted, the decision making authority, upon review or appeal, shall make special findings of fact, in lieu of those required under Section 40.15.15.1.C., .2.C., and .3.C., herein, to support the following conclusions: [ORD 4584; June 2012]

- A. That the location, size, design and functional characteristics of the nonconforming use are such that it will be reasonably compatible with and not have a significant impact upon the livability of and development of other properties in the surrounding area, nor will it be significantly offensive or disruptive to residents or other persons acting pursuant to a conforming use allowed by this ordinance.
- B. That the nonconforming use, while not specifically permitted within the zone in which it is located, is generally consistent with the underlying general zoning classification (i.e., a residential, commercial or industrial use in corresponding Residential, Commercial or Industrial district) and is found not to be totally inconsistent with the comprehensive plan;
- C. That the allowance, completion or alteration will result in the City attaining one or more of the objectives set forth in Section 40.20.05. herein and that the benefit of meeting such objective(s) outweigh(s) any detriment of allowing or perpetuating a nonconforming use; and

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- D. That the allowance, completion or alteration does not constitute an expansion or increase in activity over and above that previously approved by a master site plan, site plan or other development plan or of that existing within an established use. [ORD 3124; May 1979] [ORD 4696; December 2016]

30.15. Nonconforming Lots of Record. [ORD 4584; June 2012]

1. In any district, Permitted Principal Uses and Structures, and accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. Nonconforming lots of record shall be subject to all other applicable provisions of this code. [ORD 4696; December 2016]
2. If two or more lots, or combinations of lots and portions of lots in single ownership are of record at the effective date of this ordinance and are made nonconforming as to lot width or area by this ordinance the lots involved shall be considered to be an undivided parcel for the purposes of this ordinance. No portion of said undivided parcel which does not meet the appropriate lot area and width requirements established by this ordinance shall be conveyed, transferred or used in any manner. No division of the parcel shall be made which leaves any lot remaining with the width or area of the lot below the requirements of this ordinance; provided, however, that if a series of two or more lots or portions of lots are in single ownership and can be used or subdivided in such a manner that each comes within 10% of meeting lot area and lot width requirements for the district, each may be used as an individual lot.
3. Except as provided in Section 20.05.15 of this ordinance and notwithstanding the provisions of subsections 1. and 2., above, the use of a lot in any Residential district which has an area deficiency shall be limited to a single family dwelling. [ORD 4696; December 2016]

30.20. Nonconforming Uses. [ORD 4696; December 2016]

1. Except as provided in Section 30.10. where a use of land or of a structure exists that was lawful at the time it was established, but that would not be permitted by this ordinance or subsequent amendments to this ordinance, the use may be continued so long as it remains otherwise lawful, provided:
 - A. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land or of a structure than it occupied at the time it became nonconforming due to the adoption or amendment of this ordinance, except that any nonconforming use may be extended to parts of a structure that were arranged or designed for such use prior to such adoption or amendment;
 - B. No such 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 time it became nonconforming due to the adoption or amendment of this ordinance;
 - C. If any such nonconforming use of land or of a structure is discontinued for any reason for a period of more than one year, any subsequent use of land shall conform to requirements of this ordinance in the zoning district where such land is located;
 - D. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with a nonconforming use of land.
2. To show that a use was allowed when established, a property owner may rely on evidence such as land use applications, building, land use or development permits, zoning codes and maps. To show that a use has not been discontinued for more than one year, a property owner may rely on evidence such as utility bills; income tax records; business licenses; listings in telephone, business, or Polk directories; advertisements in dated publications; building, land use, or development permits; insurance policies; leases; and dated aerial photos.

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3. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming use of land or any structure associated with that use that would be adversely impacted or destroyed as a result of a government agency action, such as where the agency takes property through its exercise of eminent domain, requires dedication of property for public purposes or restricts the use of property by requiring a reservation of property for right-of-way purposes, may be moved to or reconstructed on the same lot and, if necessary, may be extended to an abutting lot in the same ownership, provided that the use or structure does not occupy an area greater than that occupied prior to the move. Such modification of the use or structure shall be subject to Modification of a Nonconforming Use Permit review by the Director. Other required land use applications shall be requested concurrently with the Modification of a Nonconforming Use request. The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]

30.25. Nonconforming Structures. [ORD 4696; December 2016]

1. Except as provided in Section 30.10., if a lawful structure exists at the effective date of adoption or amendment of this ordinance, that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may remain so long as it is otherwise lawful, subject to the following provisions:
 - A. No such nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered in a way that will not change or will decrease its nonconformity;
 - B. Should such nonconforming structure be damaged by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance;
 - C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

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2. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming structure that would be destroyed as a result of a government agency action such as where the agency takes property through its exercise of eminent domain or requires dedication of property for public purposes, may be moved or reconstructed on the same lot, and if necessary, may be extended to an abutting lot in the same ownership provided that the resulting placement of the structure does not increase the nonconformity of the structure. Such modification of the structure shall be subject to Modification of a Nonconforming Use Permit review by the Director. Other required land use applications shall be applied for concurrently with the Modification of a Nonconforming Use request, The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]
3. Where an existing street setback or required landscaping must be reduced by a public dedication, rendering an existing structure nonconforming, the setback or landscaping requirements of this ordinance which are no longer met as a result of the dedication shall not apply to the structure or landscaping. Further encroachment into the setback or reduction of landscaping beyond the reduction caused by the public dedication is not permitted. [ORD 4782; April 2020]

30.30. Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, normal repairs or replacement on non-bearing walls, fixtures, wiring, or plumbing may be performed in a manner not in conflict with the other provisions of this section. However, nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

30.35. Uses Under Conditional Use Provisions Not Nonconforming Uses.

A use that was permitted before this ordinance required a Conditional Use Permit shall not be deemed a nonconforming use despite the failure to obtain a Conditional Use Permit, but shall without further action be considered a conforming use. [ORD 4696; December 2016]

30.40. Nonconforming Parking, Loading, Signs or Other Characteristics of Use.

If the characteristics of a use, such as signs, off-street parking, off-street loading, lighting or other matters required by this ordinance in relation to specified uses of land, water areas, structures or premises, are not in accord with the requirements of this ordinance, no change shall be made in such characteristics of use which increases nonconformity with such requirements. Change shall be permitted in the direction of conformity with such requirements. Non-conforming signs may be subject to additional conformance standards as described in Section 60.40 of the Development Code. [ORD 4696; December 2016]

30.45. Determination of Nonconforming Status.

Determination of nonconforming status shall be processed as a Director's Interpretation. If the owner of a lot, structure or use is denied nonconforming status by the Director, the owner may appeal the Director's decision to the City Council. The appeal shall be heard in the manner set forth in Section 50.65. [ORD 4462; January 2008] [ORD 4696; December 2016]