



Article 6

NONCONFORMITIES AND VESTED RIGHTS

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Section 6.010 Definitions

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this Section shall have the meaning set forth in this Section when used in this Article.

1. Effective Date of This Chapter. For purposes of determining the existence of nonconformity, the effective date of this Chapter shall be the effective date of this Chapter or amendment creating the nonconformity.
2. Nonconforming Lot. A lot lawfully existing on the effective date of this Chapter (and not created for purposes of evading the restrictions of this Chapter) that does not meet the minimum area requirement of the zoning district in which the lot is located.
3. Nonconforming Project. Any lawful structure, development, or undertaking that is incomplete on the effective date of this Chapter and would be inconsistent with one or more of the regulations applicable to the zoning district in which it is located if completed as proposed or planned.
4. Nonconforming Sign. A sign lawfully existing on the effective date of this Chapter that does not conform to one or more of the regulations set forth in this Article.
5. Nonconforming Site Improvement. An improvement required on a property by this Chapter and which, on the effective date of this Chapter, lawfully is absent on the property or lawfully does not fully comply with this Chapter, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping.
6. Nonconforming Use. A primary use of or structure on a property lawfully existing on the effective date of this Chapter which is in any manner made unlawful by the regulations in this Article or any development, design or performance standards applicable to the zoning district in which the property is located. Nonconforming uses shall not include ancillary uses that are not the primary use of the property or structure.
7. Nonconformity. A nonconforming lot, project, sign, site improvement, or use as defined in this Article, or other condition lawfully existing on a property on the effective date of this Chapter that does not fully comply with the requirements of this Chapter.

Section 6.020 Continuation of nonconformities

Unless otherwise specifically provided in this Article and subject to the restrictions and qualifications set forth herein, nonconformities that were lawful on the effective date of this Chapter may be continued. However, it is the intent of this Article that nonconformities are not to be expanded, and they should be abolished or reduced to conformity as quickly as the fair interest to the parties will permit. **Nonconformities made unlawful by generally applicable public health, safety or welfare ordinances of the City, enacted in whole or in part pursuant to authority other than the City's zoning authority, shall not be governed by this section and shall have no right of being continued unless otherwise provided by law.**



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Section 6.030 Extension or enlargement of nonconformities

A. Prohibition on enlargement of nonconformity. Except as specifically provided in this Section, no person may engage in an activity that causes or facilitates an increase in the extent or scope of a nonconformity, including but not limited to, physical alteration of structures or the placement of new structures on open land if such activity results in:

1. An increase in the total amount of space or building area devoted to a nonconforming use; or
2. A greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements, or other requirements such as parking requirements.

B. Prohibition on expansion of area of nonconformity. Except as otherwise provided in this Section, a nonconformity may not be expanded to cover more land than was occupied by that nonconformity when it became nonconforming, or such reduced area to which the nonconformity may have been lawfully converted as provided herein.

C. Prohibition on increase of intensity of nonconformity. The volume, intensity, or frequency of use of the property, where a nonconformity exists, may not be increased and the equipment or processes used at a location where a nonconformity exists may not be changed if these or similar changes cause an increase in the degree of activity.

Section 6.040 Repair, maintenance and restoration

A. Minor repairs. Minor repairs to and routine maintenance of structures and property, where nonconformities exist, are permitted. Work estimated to cost more than ten percent (10%) of the structural value of the structure to be renovated shall be prohibited unless authorized by a special use permit for alteration of the Nonconformity pursuant to Section 6.100

B. Repair of unintended damage. If a structure located on a lot where a nonconformity exists is damaged by fire, explosion, an act of God, or the public enemy, to an extent that the costs of repair or restoration would not exceed fifty percent (50%) of its structural value, then the damaged structure may be repaired or restored only in accordance with a written zoning authorization permit by the Director.

C. Authorization required. Any repairs, renovation or restoration of a structure pursuant to subsections a and b of this Section which requires the issuance of any permit under the City's Building Codes, Subdivision and Development Control Ordinance, or site plan approval process shall also require the prior issuance of a zoning authorization permit by the Director authorizing the repair or alteration. In support of the application for the permit, the applicant shall submit sufficient information as may be required to satisfy the Director that the cost of the proposed repairs, renovation or restoration will not exceed fifty percent (50%) of the value of the structure prior to the repair, renovation or restoration.



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Section 6.050 Change of nonconforming use

- A. Prohibition on change of use. A change in use of property where a nonconformity exists may not be made except in accordance with this Section.
- B. Change to permitted use. If the intended change in the nonconforming use is to a use that is a permitted use or a use subject to conditions in the zoning district in which the property is located, and all of the other requirements of this Chapter applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this Chapter is achieved, the nonconformity status is terminated.
- C. Change to permitted use where all Chapter requirements not satisfied. If the intended change in the nonconforming use is to a permitted use or conditionally permitted use in the district where the property is located but all of the requirements of this Chapter applicable to that use cannot reasonably be complied with, then the change is allowed only if the Commission issues a special use permit for alteration of the nonconformity authorizing the change pursuant to section 6.100 of this Chapter.

Section 6.060 Abandonment, discontinuance or reduction of nonconformity

- A. Effect of nonconforming use discontinuation. When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter only be used for conforming uses.
- B. Effect of violation of this Article. A prohibited expansion of a nonconformity or other violation of the legal requirements of this Article shall constitute an abandonment of the right to continue the nonconformity.
- C. Effect of nonconformity discontinuance. If the primary use on property where a nonconformity other than a nonconforming use exists is discontinued for a consecutive period of one hundred eighty (180) days or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with any of the regulations applicable to the preexisting use unless the Commission issues a special use permit for alteration of the Nonconformity pursuant to Section 6.100 of this Chapter to allow the property to be again used for this primary purpose without remedying the nonconforming situations.
- D. Effect of reducing intensity, scope, or area of nonconformity. If a nonconformity is lawfully reduced in scope, area or intensity, but not discontinued or abandoned, no right shall exist to thereafter restore the original scope, area or intensity of the nonconformity.
- E. Determination for property as a whole. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this Section, all of the structures, 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 nonconforming apartment building for



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one hundred eighty (180) days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

Section 6.070 Nonconforming signs

- A. Compliance with this Chapter. Nonconforming signs shall also be subject to the additional regulations established in this Section.
- B. Prohibition on alteration of nonconforming signs. A nonconforming sign may not be enlarged, moved, or replaced, nor may the face appearance be altered, nor illumination added, except to lawfully bring the sign into complete conformity with the provisions of this Chapter or for maintenance authorized herein.
- C. Maintenance and repair. Subject to the other provisions of this Section, nonconforming signs may be maintained and repaired so long as the cost of such work within any twelve-month (12-month) period does not exceed fifty percent (50%) of the value (tax value if listed for tax purposes) of such sign. No such work shall be done without the person proposing to do such work first submitting such information as may be required to satisfy the Director that the cost of such work would not exceed fifty percent (50%) of the value of the sign and receiving an authorization from the Director for such work.
- D. Abandonment of nonconforming sign. If a nonconforming sign other than a billboard is blank or advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that has not been operated, offered or conducted for a continuous period of twelve (12) months, the nonconforming sign aspect of that shall be deemed abandoned and shall be removed within thirty (30) days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over such sign. (Ord. 3569 passed 4-21-8)
- E. Nonconforming billboard. If a nonconforming billboard remains blank for a continuous period of twelve (12) months, that billboard shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this and all applicable provisions of Article 12 or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. (Ord. 3569 passed 4-21-8)
- F. For purposes of this section, a sign is "blank" if:
 - 1. It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
 - 2. The advertising message it displays becomes illegible in whole or substantial part; or



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3. The advertising copy paid for by a person other than the sign owner or promoting an interest other than the rental of the sign has been removed.
4. Failure to pay any applicable tax or license fee on any billboard shall also constitute abandonment requiring its removal.

Section 6.080 Undeveloped Nonconforming lots

- A. Definition. This Section applies only to undeveloped nonconforming lots, which shall include all nonconforming lots that do not have a structure in excess of six hundred (600) square feet in floor area constructed for a main permitted use in the zoning district at the time of construction.
- B. Effect of nonconforming lot area. Except as provided herein, when a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum lot area applicable to that zoning district, then the lot may be used as proposed just as if it were conforming. However, no use that requires a greater lot size than the established minimum lot size for a particular district is permissible on a nonconforming lot.
- C. Prohibition on grouping of nonconforming lots. Subject to the following sentence, if, on the effective date of this Chapter, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this Section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within five hundred (500) feet of the lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the existing neighborhood.

Section 6.090 Completion of nonconforming projects -- vested rights

- A. Administrative Permits: All permits issued by an administrative official or body, or legislative body acting in an administrative capacity, prior to the effective date of this Chapter shall be valid until their expiration under the previously existing regulations. Applications for administrative permits submitted after the effective date of these regulations shall be reviewed and evaluated pursuant to the requirements of this Chapter except as further specified below.
- B. Completion of initiated projects. All nonconforming projects on which construction was lawfully commenced at least thirty days before the effective date of this Chapter may be completed in accordance with the terms of their permits, so long as those permits were validly issued and remain unrevoked and unexpired, and a vested rights permit is obtained from the Director. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.



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- D. Requirement to obtain vested right permit. Except as provided in paragraph "A" through "B" of this Section, all work on any nonconforming project shall cease on the effective date of this Chapter, and all work on nonconforming projects may be continued only pursuant to a vested rights permit issued in accordance with this Chapter by the City Council. The City Council shall approve a permit if it finds that the applicant has proven (1) it has in good faith made unrecoverable substantial expenditures or incurred substantial binding obligations or (2) that applicant otherwise has changed position in some substantial way in reasonable reliance on the regulations as they existed before the effective date of this Chapter and thereby would be unreasonably prejudiced if not allowed to complete the project as proposed, or (3) is otherwise entitled to a vested rights permit as a matter of law. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a person shall not be considered prejudiced by having made the expenditures.
- E. Completion of phases. When a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the person shall be allowed to complete only those phases or segments with respect to which the person can make the showing required under subsection B.
- F. Limitation on vested right permit applications. The City Council shall not consider any application for a vested rights permit authorized by paragraph B of this Section that is submitted more than sixty (60) days after the effective date of this Chapter. The Commission may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one (1) year from the effective date of this Chapter.

Section 6.100 Special Use Permit authorizing alteration of the Nonconformity

Whenever a special use permit is required by this Article to alter a Nonconformity, such permit may be issued by the Commission subject to the provisions of this section. Such special use permit shall be subject to the same procedures and standards for the granting of a special use permit pursuant to Article 7 of this Chapter, including the imposition of appropriate conditions for approval, and with the additional required findings that:

- (1) the intended change in use, alteration or repair of structure or property, or continuation of nonconformity will not result in a violation of the purposes of the applicable provisions,
- (2) all of the applicable requirements of this Chapter are met to the extent reasonably possible, and
- (3) the proposed use would be otherwise lawful.

Compliance with a requirement of this Chapter is not reasonably possible if compliance cannot be achieved without purchase of additional land to the lot where the nonconforming situation exists or without moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. Further, in no case



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may an applicant be given permission, pursuant to this subsection, to construct a building or add to an existing building if in doing so additional nonconformities would be created. Nothing in this subsection shall be interpreted to require the granting of a special use permit for a Nonconformity authorized under this Section where all requirements or standards are not determined to exist. Multiple contiguous lots in common ownership shall not be considered independent lots in determining a hardship. The permit shall specify which nonconformities need not be corrected.