

# ARTICLE 8 | NONCONFORMITIES AND ENFORCEMENT

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# 14-800 NONCONFORMITIES

## **14-800-01 SCOPE**

The regulations of this article govern nonconformities, which are lots, uses, developments or signs that were lawfully established but—because of the adoption of new or amended regulations—no longer comply with one or more requirements of this development ordinance.

## **14-800-02 INTENT**

Sometimes uses, buildings, structures and other development features that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) have been made nonconforming by rezonings or amendments to the text of this development ordinance. The regulations of this Article are intended to clarify the effect of such nonconforming status and avoid confusion with illegal buildings and uses (those established in violation of zoning and development regulations). The regulations of this article are also intended to:

**14-800-02-A.** recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;

**14-800-02-B.** promote maintenance, reuse and rehabilitation of existing buildings; and

**14-800-02-C.** place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

## **14-800-03 AUTHORITY TO CONTINUE**

Any nonconformity that existed on the effective dates specified in Section 14-100-02 or any situation that becomes nonconforming upon adoption of any amendment to this development ordinance may be continued in accordance with the regulations of this article.

## **14-800-04 DETERMINATION OF NONCONFORMITY STATUS**

The burden of proving that a NONCONFORMITY exists (as opposed to a violation of this development ordinance) rests with the subject landowner. The owner may satisfy this burden by submitting documentary evidence establishing the initial date of the nonconforming situation and its continued use thereafter to the present. Once such adequate documentary evidence has been provided, the burden shifts to the city to demonstrate that the nonconforming situation is not lawful.

## **14-800-05 REPAIRS AND MAINTENANCE**

**14-800-05-A.** Nonconformities must be maintained to be safe and in good repair.

**14-800-05-B.** Incidental repairs and normal maintenance necessary to keep a NONCONFORMITY in sound condition are permitted unless otherwise expressly prohibited by this development ordinance.

## **14-800-06 CHANGE OF TENANCY OR OWNERSHIP**

Nonconforming status runs with the land and is not affected by changes of tenancy, ownership, or management.

## **14-800-07 NONCONFORMING USES**

### **14-800-07-A. CHANGE OF USE**

1. A nonconforming use may be changed to any use that is allowed in the subject zoning district. Once changed to a conforming use, a nonconforming use may not be re-established.

2. The City Council is authorized to approve a use substitution allowing one nonconforming use to be changed to another nonconforming use through the special use permit process of Sec. 14-704. In order to approve a use substitution, the City Council must determine that the substituted use will have fewer adverse impacts on the surrounding area than the previous use. In making such a determination, the City Council must consider all of the following factors: hours of operation, vehicular traffic, the number of employees, customers and guests expected to be attracted to the use, and other factors likely to affect the neighborhood in which it is located.
3. A nonconforming use of open land may not be changed to any other nonconforming use of open land.

#### **14-800-07-B. EXPANSION OF USE**

1. A nonconforming use may not be enlarged or expanded unless such expansion eliminates or reduces the nonconforming aspects of the situation, or the expansion is into a part of a building or other structure that was lawfully and manifestly designed or arranged for such use.
2. Expansion for the sole purpose of providing off-street parking will not be considered expansion of a nonconforming use. Any such parking lot expansion must meet all current city standards for construction, landscaping, setbacks, parking for persons with disabilities, stormwater management and other applicable regulations.

#### **14-800-07-C. LOSS OF NONCONFORMING STATUS**

##### **1. DISCONTINUANCE**

Once a nonconforming use is discontinued, its nonconforming status is lost and any subsequent use of the property must comply with the regulations of the zoning district in which it is located. Other nonconforming uses will be considered discontinued when any of the following occurs:

- (a) the use ceases to operate for a period of six consecutive months;
- (b) required business licenses have lapsed;
- (c) no use has been maintained in the structure for a period of six months or more;
- (d) a demolition permit has been applied for;
- (e) all equipment and furnishings have been removed from the premises and have not been replaced by similar or other equipment and furnishings within six months;
- (f) the use was required to obtain a certificate of legal nonconformance and did not obtain such certificate within the timeframe required;
- (g) the property has been used for illegal activities or the use has failed to comply with city ordinances or with state or federal law; or
- (h) if required by the City health code, the property has not had water and/or electrical service for six consecutive months.

(History: Ordinance No. 17988)

##### **2. CHANGE TO A CONFORMING USE**

Where a nonconforming use is changed to a conforming use, no matter how short the period of time, all nonconforming use rights are lost and the re-establishment of the nonconforming use is prohibited.

**3. ACCESSORY USES AND STRUCTURES**

No use or structure that is accessory to a principal nonconforming use or structure may remain after the principal use has been discontinued, unless the accessory use or structure complies with all applicable regulations of this development ordinance.

**14-800-07-D. REHABILITATION OF STRUCTURE CONTAINING NONCONFORMING RESIDENTIAL USE**

Any structure that is occupied by a nonconforming residential use may be remodeled or renovated, subject to compliance with all other provisions of this section. After such remodeling or renovation, such structure may not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated before such work.

**14-800-08 SCREENING OF CERTAIN NONCONFORMING USES**

All nonconforming open storage yards, junk or salvage yards or other outdoor display or storage of merchandise in connection with an auction establishment, or any other open use of land that was lawfully operating in any R district as of August 30, 2001 may be continued. However, by August 30, 2002 such uses must comply with the following regulations:

**14-800-08-A.** All such uses are required to be surrounded with a uniform solid, opaque fence or wall meeting the following requirements:

1. be at least one foot taller than the highest elevation of the material stored up to a maximum of 10 feet;
2. utilize steel or metal columns/posts as supports throughout with concrete footings; and
3. be maintained in good condition at all times.

**14-800-08-B.** No storage areas are permitted in the required front or side yards. No merchandise may be stored or stacked higher than the screening fence or wall.

**14-800-09 NONCONFORMING USE CERTIFICATION**

**14-800-09-A.** The Community Development Director is authorized to grant a Nonconforming Use Certificate when it has been determined, upon review of all competent evidence, that a use was lawfully established.

**14-800-09-B.** The subject property owner may seek a Nonconforming Use Certificate in a manner consistent with this section. In granting such a Nonconforming Use Certificate, the Community Development Director is authorized to impose such conditions as deemed necessary to protect the health, safety and welfare of the surrounding area.

**14-800-09-C.** Every right or privilege authorized by a Nonconforming Use Certificate may continue so long as the conditions set forth in the permit and this development ordinance are met, provided that the certificate was not obtained by fraud or misrepresentation.

**14-800-09-D.** The Community Development Director has continuing jurisdiction over all Nonconforming Use Certificates and may revoke, modify, or suspend the approved permit after a public hearing and notice given in the same manner as required for special use permits (see Section 14-704), under the following conditions:

1. The certificate was obtained by fraud or misrepresentation; or
2. The certificate has been exercised contrary to this section, or to other conditions of its approval.

**14-800-10 NONCONFORMING STRUCTURES****14-800-10-A. USE**

A nonconforming structure may be used for any use allowed in the underlying zoning district.

**14-800-10-B. ENLARGEMENT OR EXPANSION**

A nonconforming structure may be enlarged or expanded if the expansion does not increase the extent of the nonconformity. In case of an enlargement or expansion, the standards of this development ordinance apply only to the enlargement or expansion, and not to the entire structure.

**14-800-11 NONCONFORMING LOTS**

**14-800-11-A.** This section applies only to undeveloped, vacant nonconforming lots.

**14-800-11-B.** 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 it were conforming. However, no use that requires a greater lot size than the established minimum lot size for a particular district is allowed on a nonconforming lot, except as follows:

1. Lots of record prior to March 19, 1962 that are at least 3,000 square feet in area may be used for the erection of a detached house.
2. Lots of record prior to March 19, 1962, that are at least 50 feet in width and that are zoned R-12, R-18, or R-30 may be used for the erection of a two-unit house.
3. Lots of record prior to March 19, 1962, that are at least 50 feet in width and that are zoned R-30 may be used for the erection of a multi-unit house, multiplex or apartment/condo containing up to four dwelling units.
4. Lots of record prior to March 19, 1962, that are located in an R-12, R-18 or R-20 district, that are not corner lots, that are at least 7,200 square feet in area may be used for the erection of a two-unit house.
5. Lots of record prior to March 19, 1962, that are located in R-30 districts, that are not corner lots, that are at 7,200 square feet in area may be used for the erection of multi-unit house, multiplex or apartment/condo containing up to four dwelling units.

**14-800-11-C.** When a use proposed for a nonconforming lot is one that is conforming in all respects, except the applicable setback standards cannot be met, then property owners may seek approval of administrative adjustments or zoning variances in accordance with Article 14-706.

**14-800-12 DAMAGE OR DESTRUCTION**

If a nonconforming use, a structure containing a nonconforming use, or a nonconforming structure is destroyed by any means, including, but not limited to neglect, to the extent of more than 50% of its market value, as determined by the Jackson County Assessment Department, immediately prior to damage, the nonconforming use, structure containing a nonconforming use, or nonconforming structure may not be restored unless it is in full compliance with the provisions of this development ordinance. If a nonconforming use, structure containing a nonconforming use, or a nonconforming structure is destroyed by any means, including, but not limited to neglect, to the extent of less than 50% of its market value, as determined by the Jackson County Assessment Department, immediately prior to damage, the nonconforming use, structure containing a nonconforming use, or nonconforming structure may be re-established to the extent that existed before the time of damage, provided that such repairs, restoration or reconstruction is completed within 12 months of the date of such damage. Any litigation period will not be counted as part of the 12-month period allowed for restoration.

**14-800-12-A.** Reconstruction of single-family detached house; minimum square footage  
All single family detached homes in existence at the time of adoption of this chapter may be reconstructed after damage to their original square footage even if the structure does not meet the minimum floor area as established by Section 14-505-03 provided that the proper permits for reconstruction of the house is obtained within three years after the date of the damage or destruction of the building. All other City codes (i.e., building setbacks) must be met with the reconstruction.

### **14-800-13 NONCONFORMING SIGNS**

#### **14-800-13-A. CONTINUATION OF NONCONFORMING SIGNS**

Nonconforming signs may remain in use, subject to the applicable regulations of this Article. Nonconforming signs must be maintained in good repair, and must comply with all other requirements of this development ordinance.

#### **14-800-13-B. ALTERATIONS**

Change of copy or the substitution of panels or faces on nonconforming signs is permitted without affecting the legal status of a sign as a nonconforming sign (subject to requirements for building and electrical permits). No other alterations are allowed, except for routine maintenance and repair.

#### **14-800-13-C. ABANDONED NONCONFORMING SIGNS**

See Section 14-504-16.

(History: Ordinance No. 17642)

#### **14-800-13-D. LEGAL NONCONFORMING BILLBOARDS**

Any billboard which was lawfully erected or affixed prior to the adoption of this ordinance and which complied with all regulations in force at the time it was erected or affixed, but which fails to conform to all applicable regulations and restrictions of this ordinance, shall be considered a legal nonconforming billboard. A legal nonconforming billboard may be continued and shall be maintained in good condition, but shall not be:

1. Structurally altered (except to meet safety requirements) so as to prolong the life of the sign;
2. Altered so as to increase the degree of nonconformity of the sign;
3. Expanded;
4. Re-established after damage or destruction if the estimated cost of reconstruction exceeds 75 percent of the appraised replacement costs at the time such damage occurred.

### **14-800-14 OTHER NONCONFORMITIES**

When an otherwise lawfully existing use is allowed generally in any given zoning district but where, due to the adoption and amendment of this development ordinance, required off-street parking, paving of parking area, landscape screening, and similar regulations are not provided, such deficiencies attributable to the use will be considered lawful, nonconforming characteristics of such use. These deficiencies must be brought into conformance with current standards when the use they are associated with is expanded or enlarged.

## 14-801 VIOLATIONS, PENALTIES AND ENFORCEMENT

### 14-801-01 RESPONSIBILITY FOR ENFORCEMENT

It is the duty of the Community Development Director to administer and enforce this development ordinance.

### 14-801-02 INSPECTIONS

The Community Development Director is authorized to make inspections as necessary to enforce this article and investigate any complaints of alleged violations.

### 14-801-03 AUTHORITY TO ISSUE CITATIONS

The Community Development Director is authorized to issue complaints and serve citations on persons charged with a violation of this development ordinance.

### 14-801-04 VIOLATIONS

All buildings and land used, and all buildings and structures erected, converted, enlarged, reconstructed, moved or structurally altered, must comply with all applicable provisions of this development ordinance. Failure to comply with applicable provisions constitutes a violation of this development ordinance. Express violations include but are not limited to the following:

**14-801-04-A.** using land or buildings in any way not consistent with the requirements of this development ordinance;

**14-801-04-B.** erecting a building or other structure in any way not consistent with the requirements of this development ordinance;

**14-801-04-C.** engaging in the development of land in any way not consistent with the requirements of this development ordinance;

**14-801-04-D.** developing or subdividing land inconsistent with the standards and procedures of this development ordinance;

**14-801-04-E.** subdividing, transferring or selling land unless the subdivision has been approved and recorded, as provided in this development ordinance;

**14-801-04-F.** installing or using of a sign in any way not consistent with the requirements of this development ordinance;

**14-801-04-G.** failing to maintain any building, structure, landscape feature or natural resource area required to be maintained by this ordinance;

**14-801-04-H.** engaging in the use of a building or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under this development ordinance without obtaining all such permits or approvals;

**14-801-04-I.** failing to comply with any permit or approval granted under this development ordinance;

**14-801-04-J.** failing to comply with any condition imposed on a permit or approval, specifically including conditions of approval on a planned unit development, special use permit, site plan, administrative adjustment or variance; and

**14-801-04-K.** obscuring, obstructing, removing or destroying any notice required to be posted or otherwise given under this development ordinance.

**14-801-05 ENFORCEMENT PROCEDURE**

Upon determination that a violation exists written notice must be provided to the property owner and lessee. Such notice must include:

**14-801-05-A.** a description of the property involved,

**14-801-05-B.** applicable sections of the City code upon which the violation is based,

**14-801-05-C.** a statement of the nature of the violation; and

**14-801-05-D.** the time allowed for correction of the violation, at the discretion of the city.

**14-801-06 LIABILITY**

The property owner, tenant or occupant of any land or structure, or part thereof, or any design professional, builder, contractor, vendor, authorized agent or other person who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this development ordinance is jointly and severally liable for the violation and subject to all available penalties and remedies.

**14-801-07 REMEDIES AND ENFORCEMENT POWERS**

**14-801-07-A. APPLICABILITY**

The city may use any lawful remedy or enforcement powers.

**14-801-07-B. REMEDIES CUMULATIVE**

The remedies and enforcement powers established in this development ordinance are cumulative. All remedies and penalties provided in this development ordinance are in addition to all other provisions of this code, and not in lieu or exclusive thereof.

**14-801-07-C. WITHHOLD PERMIT**

The city may deny or withhold all permits, certificates or other forms of authorization on any parcel of land or structure or improvements thereon upon which there is an uncorrected violation of a provision of this development ordinance.

**14-801-07-D. FORFEITURE AND CONFISCATION OF SIGNS**

See Section 15-504-02 for further information.

(History: Ordinance No. 17942)

**14-801-07-E. PENALTIES**

1. Any violation of this development ordinance is punishable as a misdemeanor with an associated fine of not less than \$10.00 and not more than \$100.00 for each and every day that the violation continues.
2. If the violation is willful, the punishment upon conviction will be a fine of not less than \$100.00 or more than \$250.00 for each and each and every day that the violation continues.

**14-801-08 CONTINUATION OF PREVIOUS ENFORCEMENT ACTIONS**

Nothing in this development ordinance will be interpreted to prohibit the continuation of previous enforcement actions, undertaken by the city under previous, valid ordinances and laws.