

4.08. Nonconformities

A. Intent of Provisions

1. Existence of Nonconformities

- a. A nonconformity describes a use, structure, or lot that does not conform to the current standards of the Zoning Ordinance, but that was in conformance with the standards in place at the time of its inception, and have been rendered nonconforming due to a change in the applicable standards and regulations.
- b. The [City Council](#) has determined that it is in the best interest of the City for [Nonconformities](#) to be brought into conformance with the Zoning Ordinance at the earliest reasonable time. The purpose of this Section [4.08 Nonconformities](#) is to establish provisions for the allowance and potential alteration of uses, structures and lots that do not conform to currently applicable zoning standards or regulations.
- c. [Nonconformities](#) occur in three general categories, or combination thereof.
 - i. [Nonconforming Uses](#).
A nonconforming use can occur when an existing use is no longer allowed in a zoning district.
 - ii. [Nonconforming Structures](#).
A nonconforming structure can have a lesser setback, yard, or height lot area or dimension requirement than required by the Zoning Ordinance.
 - iii. [Nonconforming Lots](#).
A nonconforming lot can be nonconforming as to lot area or dimension requirements.
- d. It is the declared intent of this section that [Nonconforming Uses](#) and [Nonconforming Structures](#) eventually be eliminated and be required to comply with the regulations of the Zoning Ordinance, having due regard for the property rights of the person affected, the public welfare, and the character of the surrounding area.

2. Incompatible Uses

[Nonconformities](#) are hereby declared incompatible with the permitted uses in the districts involved.

B. Establishment of Legal or Illegal Nonconformities

1. Legal Nonconformities

- a. Those uses, structures, or lots which in whole or part do not conform to current zoning standards, but were legally established prior to the effective date of this Zoning Ordinance, at which time they were in conformance with applicable standards shall be considered "Legal Nonconformities."
- b. Such uses, structures, or lots may be maintained or potentially altered subject to the provisions of this Section [4.08 Nonconformities](#).

2. Illegal Nonconformities

- a. Those uses, structures, or lots, other than residential accessory buildings, which in whole or part are not in conformance with current zoning standards and were not in conformance with applicable standards at the time of their inception shall be considered "Illegal Nonconformities."
- b. Such uses, structures, or lots and shall be subject to the penalties established in [1.06 Zoning Violations](#).

C. Single-Family Residential Uses

Previously conforming single-family residential uses on platted lots approved prior to the Zoning Ordinance effective date, which may now be nonconforming due to stricter standards, shall be deemed in conformance with this Zoning Ordinance.

D. Existing Platted Lots are Conforming Lots

Any existing vacant lot platted prior to the Zoning Ordinance effective date that was legally conforming shall be deemed a conforming lot.

E. Changing Uses

1. Nonconforming Use to Conforming Use

Any nonconforming use may be changed to a conforming use, and once a change is made, the use shall not be changed back to a nonconforming use.

2. Nonconforming Use to another Nonconforming Use

A nonconforming use shall not be changed to another nonconforming use.

3. Conforming Use in a Nonconforming Structure

Where a conforming use is located in a Nonconforming Structure, the use may be changed to another conforming use by the process outlined in [4.08.F Expansion of Nonconforming Uses and Structures](#).

F. Expansion of Nonconforming Uses and Structures

An expansion of a Nonconforming Use or Nonconforming Structure is allowed in accordance with the following.

1. Prohibited Expansion or Reoccupation

A [Nonconforming Use](#) or [Nonconforming Structure](#) shall not be expanded, reoccupied with another Nonconforming Use, or increased as of the effective date of this Zoning Ordinance, except as provided in [4.08.F Expansion of Nonconforming Uses and Structures](#).

2. Nonconforming Use Expansion in Existing Building

A [Nonconforming Use](#) may be enlarged, increased, or extended within an existing building provided:

- a. No structural alteration may be made on or in the existing building except those required by law to preserve the building in a structurally sound condition.
- b. Work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of the current replacement value of the building.
- c. The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing at the time the use became a nonconforming use.

3. Nonconforming Use Prohibited from Expansion beyond Existing Building

A [Nonconforming Use](#) located within any building shall not be extended to occupy any land outside the building.

4. Residential Lot Exemption

The minimum residential lot areas for the various zoning districts shall be in accordance with their respective districts except that a lot having less area than required by the Zoning Ordinance that was an official Lot of Record prior to the effective date may be used for a single-family dwelling.

5. Expansion of Nonconforming Structures with Conforming Uses

Buildings or structures that do not conform to the area regulations or development standards in the Zoning Ordinance but where the uses are deemed conforming shall not increase the gross floor area greater than 10 percent from the date when the building became nonconforming.

6. Reuse of Nonconforming Structure by Conforming Uses Allowed

- a. Nonconforming Structures that have been abandoned and do not meet the current area regulations or development standards shall be allowed to be re-occupied by a conforming use.
- b. If re-occupied by a conforming use, then the new conforming use shall meet the applicable parking (Section [6.02](#)), and fire lane requirements for health, safety, and welfare reasons.

G. Restoration of Nonconforming Structures

1. Total or Partial Destruction

If a [Nonconforming Structure](#) is destroyed by fire, the elements, or other natural catastrophic event, it may be rebuilt, but the existing square footage or function of the Nonconforming Structure cannot be expanded. The construction must comply with all current building codes, and zoning regulations in effect at the time the structure received its building permit. The construction must commence within 12 months of the date of destruction. The failure of the owner to start such reconstruction within 12 months shall forfeit the owner's right to restore or reconstruct the structure except in conformance with the Zoning Ordinance. If the regulations cannot be determined or if the regulations are disputed for the time the structure received its building permit, then the [Board of Adjustment](#) shall hold a hearing and shall take evidence, such as previously adopted ordinances, photographs, and tax records, to determine the standards that apply.

2. If the owner of a [Nonconforming Structure](#) has a [Nonconforming Use](#) and fails to begin reconstruction of the destroyed structure within 12 months of the date of destruction, then the [Nonconforming Structure](#) and [Nonconforming Use](#) shall be deemed to be discontinued or abandoned.

H. Movement of Nonconforming Structure

A Nonconforming Structure may be relocated within the same platted lot, and shall comply with all setback and screening requirements.

I. Completion of Structures

Nothing in the Zoning Ordinance shall require any change in the plans, construction, or designated use of the following:

1. Approved Building Permit

A building or structure for which a Building Permit has been issued or a [Site Plan](#) approved prior to the effective date, provided that the permit or [Site Plan](#) shall expire in accordance with the time periods set forth in this Zoning Ordinance.

2. Building in the Approval Process

A building or structure for which a complete Application for a Building Permit was accepted by the [Planning Division Manager](#) on or before the effective date, provided however, that such Building Permit shall comply with all applicable ordinances in effect on the date such application was filed.

J. Abandonment of Nonconforming Uses

1. Once a [Nonconforming Use](#) has been abandoned, the [Nonconforming Use](#) shall not be allowed to be reintroduced within the applicable zoning district. This prohibition of the reoccupation or reintroduction of an abandoned [Nonconforming Use](#) shall be enforced by the denial of building permit or certificate of occupancy applications.

2. A [Nonconforming Use](#) shall be considered abandoned and surrendered, forfeited, and lost when evidence presented to the [Planning Division Manager](#) indicates that a structure designed or arranged for a [Nonconforming Use](#) has ceased to be used in a bona fide manner as a [Nonconforming Use](#) for a period of six consecutive calendar months. For purposes of calculating the six-month period, a use is abandoned upon the occurrence of the first of any of the following events:
 - a. On the date when the use of land is physically vacated;
 - b. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
 - c. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
 - d. On the date a final reading of water or power meters is made by the applicable utility provider(s).
 3. A [Nonconforming Use](#), when abandoned, shall not be resumed and any further use shall be in conformity with the provisions of this Zoning Ordinance.
 4. Any [Nonconforming Use](#) that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been abandoned.
 5. Abandonment of a [Nonconforming Use](#) requires intent.
 6. Any [Nonconforming Use](#) that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been abandoned.
 7. Unless the nonconforming use status is reinstated pursuant to [4.08.K Loss of and Reinstatement of Nonconforming Use Status](#), an abandoned use shall not be instituted on that parcel or other parcel in any district which does not permit the abandoned use.
- K. Loss of and Reinstatement of Nonconforming Use Status
1. Loss of Nonconforming Use Status

If the [Planning Division Manager](#) determines that a [Nonconforming Use](#) has met the definition of abandonment and has lost its nonconforming use status, the use shall not be instituted on that parcel or other parcel in any district that does not permit the discontinued use.
 2. Application for Nonconforming Use Status Reinstatement
 - a. The owner or operator of the abandoned Nonconforming Use may submit a written application to the [Board of Adjustment](#) to have the nonconforming rights reinstated.
 - b. Written application for reinstatement of nonconforming rights must be made within 30 days after the denial of building permit or certificate of occupancy application for the [Nonconforming Use](#).
 3. Board of Adjustment Hearing
 - a. The [Board of Adjustment](#) shall hold a hearing on the requested reinstatement of a [Nonconforming Use](#) status within 30 calendar days of the request or the next scheduled [Board of Adjustment](#), whichever is greater.
 - b. The applicant and the [Planning Division Manager](#) shall submit any evidence or findings to the [Board of Adjustment](#) for consideration in the case.
 - c. The [Board of Adjustment](#) shall use the above abandonment criteria in deliberating the case.
 4. Board of Adjustment Decision

The [Board of Adjustment](#) may reinstate the [Nonconforming Use](#) status and thus allow the building permit or certificate of occupancy application to be processed only if the [Board of Adjustment](#) finds

that the use was not discontinued for six months or more. The failure of the owner or operator to remove on-premise signs shall not be considered (on its own) evidence of a continuing use.

L. Nonconforming Use Created by Acquisition of Right-of-Way

1. Lawful Conforming Structure

Where a lot, tract, or parcel is occupied by a lawful structure, and where the acquisition of [Right-of-Way](#) by eminent domain proceedings, dedication, or purchase by the City, the county, the state, or a federal agency creates a Nonconforming Structure, lot, or setback, the structure shall be deemed a lawful conforming structure, to the extent the nonconformity results from the acquisition of the [Right-of-Way](#). In the event the structure is partially or totally destroyed by natural causes, the structure may be rebuilt.

2. Cases in which the Owner Receives Compensation for Fencing or Landscaping

In the event the owner of an interest in real property receives compensation for fencing or landscaping in the form of curative measures or damages to the remainder in a [Right-of-Way](#) acquisition, the owner shall relocate required fencing or landscaping originally located on the acquired property to the remainder of the tract as closely as practicable to the required setback.

3. Cases in which the Owner Receives Compensation for Demolition

A Certificate of Occupancy and Compliance shall not be issued for any structure for which compensation has been paid for the demolition of the structure or for other curative measures until such time that the structure meets all applicable ordinances or the curative measures for which the compensation was paid have been completed. For purposes of this section, “curative measures” are those actions, corrections, repairs or improvements identified in an appraisal or similar valuation analysis prepared in the context of considering damages to the remainder suffered as a result of the acquisition of a portion of property.