

Chapter 18.760
NONCONFORMING SITUATIONS

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18.760.010 Purpose

- A. Creation of nonconforming situations. Within the districts established by this title or amendments that may later be adopted, there may exist lots, structures, uses of land, and structures which were lawful before the effective date of the ordinance codified in this title, but which would be prohibited, regulated or restricted under the terms of the ordinance codified in this title or future amendments.
- B. Purpose. It is the purpose and intent of this chapter to permit these nonconforming lots, structures, and uses to continue but to prohibit the enlargement, expansion or extension of such uses. Single-family residences in the CBD zone are exempt from this requirement.
- C. Incompatibility with comprehensive plan. Nonconforming uses are incompatible with the comprehensive plan and with permitted uses in the zoning district involved.

18.760.020 Determination of Nonconforming Use Status

- A. Director's determination. The Director shall make a determination regarding the legal status of a nonconforming use by means of a Type I procedure, governed by Section 18.390.030, using the following criteria:
 - 1. Proof that the use was permitted by this title at the time it was established, by any of the following:
 - a. Copies of building and/or land use permits issued at the time the use was established;
 - b. Copies of zoning code provisions and/or maps;
 - c. Demonstration that the use was established before the first development code for the community was adopted.
 - 2. Proof that the use has been maintained over time. This includes copies of one or more of the following evidence for every other year from the time the use was established until the current year. Standard evidence that the use has been maintained over time includes:
 - a. Utility bills;
 - b. Income tax records;
 - c. Business licenses;
 - d. Listings in telephone, business and Polk directories;

- e. Advertisements in dated publications, e.g., trade magazines; and/or
- f. Building, land use or development permits.

B. Director's responsibilities. The Director shall:

- a. Maintain a file of registered nonconforming uses and use classifications; and
- b. Approve a business tax request involving a change of use upon finding the provisions of this chapter are satisfied.

C. Other regulations affecting nonconforming situations. The following regulations apply to all nonconforming situations described in this chapter:

- 1. Ownership: The status of a nonconforming situation is not affected by changes in ownership;
- 2. Change to a nonconforming situation: A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and the nonconforming situation may not be re-established;
- 3. Change to a conditional use: A nonconforming use may be changed to a conditional use permitted in the underlying zone if approved through a conditional use review. Once a conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.

18.760.030 Pending Building Permits

- A. Vesting of building permit. To avoid undue hardship, nothing in this chapter except as provided in Section 18.760.040.C.2 requires any change in the location, plans, construction, size or designated use of any building, structure or part thereof, for which a required City building permit has been granted prior to enactment of this title.
- B. Revocation of building permit. If a building permit is revoked or for any reason becomes void, all rights granted by this chapter are extinguished and the project shall thereafter be required to conform to all the provisions of this title.

18.760.040 Criteria for Nonconforming Situations

A. Development of nonconforming lots of record.

- 1. Except as provided in Subsections A.2, B and C below, no nonconforming lot of record at the effective date of this title or amendment thereto shall be developed for any use, and no existing use on a nonconforming lot of record shall be enlarged, extended or reconstructed, except that the enlargement or expansion of a single-family residence will be allowed in the CBD zone only.
- 2. If on the date of adoption of this title a lot does not meet the lot size requirements of the applicable zoning district in which the property is located, the lot may:
 - a. Be occupied by one use permitted outright in a commercial zoning district, if the lot is located within a commercial zoning district; or

- b. Be occupied by single-family residential units and accessory structures if located in a residential zoning district.
 3. In any district, construction on a single nonconforming lot of record existing at the effective date of this title or amendment thereto, notwithstanding limitations imposed by other provisions of this title, are subject to the following:
 - a. The nonconforming lot shall be in a separate ownership and not contiguous with other lots in the same ownership; and
 - b. All setback, height and other applicable provisions of the zoning district shall be satisfied unless appropriate variances and/or adjustments are obtained.
 4. 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 title and are made nonconforming as to lot area, width or depth by this title the lots involved shall be considered to be an undivided parcel for the purposes of this title; and:
 - a. No portion of the aggregated parcels shall be conveyed, transferred or used in any manner which violates or creates a violation of this title; and
 - b. No division of the parcel shall be made which creates any lot remaining with the area, width or depth which does not meet the requirements of this title.
- B. Nonconforming uses. Where at the time of adoption of this title a lawful use of land exists which would not be permitted by the regulations imposed by this title, and where such use involves no structure or building other than a single sign or accessory structure, the use may be continued as long as it remains otherwise lawful, provided:
 1. No such nonconforming use is enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this title;
 2. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this title;
 3. The nonconforming use of land is not discontinued for any reason for a period of more than six months;
 4. If the use is discontinued or abandoned for any reason for a period of six months any subsequent use of land shall conform to the regulations specified by this title for the zone in which such land is located; and
 5. For purposes of calculating the six-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
 - a. On the date when the use of land is 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, and
 - d. On the date a request for final reading of water and power meters is made to the applicable utility districts;
6. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.

C. Nonconforming development.

1. Where a lawful structure exists at the effective date of adoption or amendment of this title that could not be built under the terms of this title by reason of restrictions on lot area, lot coverage, height, yard, equipment, its location on the lot or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - a. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity but any structure or portion thereof may be enlarged or altered in a way that satisfies the requirements of this title or will decrease its nonconformity; or
 - b. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 60% of its current value as assessed by the Washington County assessor, it shall not be reconstructed except in conformity with the provisions of this title; and
 - c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.

D. Nonconforming use of structures.

1. If a single lawful use contained in a single structure involving that structure or structure and premises in combination (except for a single, accessory structure) existed as of March 16, 1983, it would not be allowed in the zoning district in which it is located, or which is nonconforming because of inadequate off-street parking, landscaping or other deficiency (under the terms of this title or amendment thereto), the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - a. No existing structure devoted to a use not permitted by this title in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except to accommodate a changing of the use of the structure to a use permitted in the zone in which it is located.
 - b. Any nonconforming use may be extended throughout any existing parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this title, but no such use shall be extended to occupy any land outside such building.
 - c. A change of use for a single use in a single structure may occur under the following conditions:

- (1) The nonconforming use status was registered with the Director in the manner provided by Subsection 3 for the purpose of establishing the use classification as listed in any of the permitted use subsections of this title;
 - (2) The new use is within the registered permitted use classification; and
 - (3) The new use conforms to the zoning ordinance provisions.
 - d. When a nonconforming use of a structure and premises is discontinued or abandoned for six months the structure and premises shall not thereafter be used except in full conformity with all regulations of the zoning district in which it is located. For purposes of this section, a use shall be deemed to be discontinued or abandoned upon the occurrence of the first of any of the following events:
 - (1) On the date when the structure or premises is vacated;
 - (2) On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
 - (3) On the date of termination of any lease or contract under which the nonconforming use has occupied the premises; or
 - (4) On the date a request for final reading of water and power meters is made to the applicable utility districts.
 - e. Where a nonconforming use status applies to a structure and premises, removal or destruction of the structure shall eliminate the nonconforming use status of the land:
 - (1) Destruction for the purpose of this subsection is defined as damage to an extent of more than 60% of its current assessed value by the Washington County assessor; and
 - (2) Any subsequent use shall conform fully to all provisions of the zoning district in which it is located.
2. If a single structure or a structure and premises containing a number of lawful uses (except for a single accessory structure) existed as of March 16, 1983, and those uses would not be allowed in the zoning district in which they are located, or which are nonconforming because of inadequate off-street parking, landscaping or other deficiency (under the terms of this chapter or amendment thereto), the lawful uses may be continued so long as they remain otherwise lawful, subject to the following provisions:
 - a. No existing structure devoted to a use not permitted by this title in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except to accommodate a changing of the use of the structure to a use permitted in the zone in which it is located.
 - b. Any nonconforming use may be extended throughout any existing parts of a building which was manifestly arranged or designed for such use as of March 16, 1983, but no such use shall be extended to occupy any land outside such building except as limited by Subsection (e) below.

- c. A change of use may occur as follows:
 - (1) The nonconforming use status was registered with the Director in the manner provided by Subsection 3 below for the purpose of establishing the use classification as listed in any of the permitted use subsections of this title;
 - (2) The new use is within the registered use classifications;
 - (3) The new use does not cause an increase in the total number of square feet in the registered use classification; or
 - (4) The new use conforms to the zoning ordinance provisions.
 - d. Where a structure had vacant units as of March 16, 1983, such vacant spaces shall be classified with the most restrictive use classification applicable to the structure; and
 - e. When the use of the structure, including all uses, is discontinued or abandoned for three months, the structure and premises shall not thereafter be used except in full conformity with all regulations of the zoning district in which it is located.
3. The provisions of Section 18.760.040 shall not be interpreted as granting an owner of a nonconforming use a vested right. The provisions of the section may be revised in a manner which does not change the rights granted by this section under this chapter.
- E. Nonconforming situations in Washington Square Regional Center. For nonconforming uses and developments in the Washington Square Regional Center, the standards of Section 18.630.030 apply. (Ord. 09-13)

18.760.050 Repairs and Maintenance

- A. Routine repairs and maintenance permitted. On any nonconforming structure or portion of a structure containing a nonconforming situation, normal repairs, or replacement of roofs, non-bearing walls, fixtures, wiring or plumbing may be performed in a manner not in conflict with the other provisions of this chapter.
- B. Restoration to safe condition permitted. Nothing in this chapter prevents 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. ■