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CHAPTER 15.22: NONCONFORMITIES

15.22.000 GENERAL PROVISIONS

15.22.000.A Purpose

The purpose of this chapter is to regulate and restrict uses, structures, lots, and signs that were established legally prior to the effective date of this Code, that no longer conform to the requirements of this Code or future Code amendments. All such situations are collectively referred to in this chapter as “nonconformities.” While nonconformities may continue, this chapter is intended to curtail substantial investment in nonconformities and bring about their eventual elimination, in order to preserve and enhance the integrity of this Code and the character of the City.

15.22.000.B Authority to Continue

1. Generally

Except as provided in this chapter, the lawful use and location of any structure, dwelling or land existing at the time of enactment of the ordinance codified in this chapter may be continued even though the use or location does not conform to the requirements of this chapter. (Ord. 1699 § 1, 2016)

2. Exception Due to Variances or Minor Modifications

Notwithstanding subsection 15.22.000B.1 above, this chapter shall not apply to any development standard or feature that is the subject of a variance or minor administrative modification granted under this Code. Where a variance or minor modification has been granted that results in a development standard or feature that does not otherwise conform to the requirements of this Code, that development standard or feature shall be deemed conforming.

15.22.000.C Determination of Nonconformity Status

In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon the owner of the nonconformity, not the City.

15.22.000.D Nonconformities Created Through Government Action

If a structure, use of land, use of structure, or characteristic of use does not comply with the requirements of this Code solely as a result of an acquisition of land or other non-regulatory action by a government agency for a public purpose, then such structure, use of land, use of

structure, or characteristic of use on land not acquired by the government shall be deemed conforming.

15.22.000.E Change of Ownership or Tenancy

Changes of ownership, tenancy, or management of property with an existing nonconformity are permitted, but such nonconformities shall continue to be subject to the provisions of this chapter. (Ord. 1699 § 2, 2016)

15.22.000.F Maintenance and Minor Repair

Minor repairs or maintenance of nonconformities that are required to keep structures or sites in a safe condition are permitted, provided that the minor repair or maintenance does not increase the extent of nonconformity. For purposes of this section, “maintenance or minor repair” shall mean:

1. Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure;
2. Maintenance of land areas to protect against health and environmental hazards and promote the safety of surrounding land uses; and
3. Repairs that are required to remedy unsafe conditions that cause a threat to public safety.

15.22.000.G Nonconforming Parking Lots

1. Any existing non-conforming parking lot containing ten or more parking spaces that is being reconstructed is subject to subsection 15.06.060.O (Site Plan Review). For purposes of this subsection, the term “reconstruction” shall include removal of asphalt and/or base or replacement of drainage facilities that necessitate removal of asphalt and/or base; provided, however, that minor repairs or maintenance as specified in subsection 15.22.000.F shall not in and of themselves be deemed reconstruction so long as not more than 25% of the existing pavement surface area is removed to remedy the unsafe condition. In addition, reconstruction or repairs involving the removal of more than 25% of the existing pavement surface area within a non-conforming parking lot shall be subject to the following (Ord. 1671 § 21, 2014):
 - a. For reconstruction projects involving the removal and replacement of between 25% and 50% of the existing pavement area within a non-conforming parking lot, perimeter parking lot landscaping shall be required along any portion of the parking

specified in 15.12.010.A.1.a shall apply. Such lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership (Ord. 1596 § 52, 2011).

15.22.020 NONCONFORMING USES

15.22.020.A Nonconforming Use of Structure

If a lawful use of a structure, or of a structure and premises in combination, exists at the effective date of adoption or amendment of this Code, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Code in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
2. Any nonconforming use may be extended throughout parts of a structure which were manifestly arranged or designed for such use at the time of adoption or amendment of this Code, but no such use shall be extended to occupy any land outside such structure.
3. A structure, or a structure and land in combination, that is currently dedicated to a nonconforming use may incrementally transition into conformance by allowing any use that is permitted or conditionally permitted within the zoning district or overlay zone to occupy a portion of the structure or site. This is permitted provided that all the following conditions are met:
 - a. The newly occupied portion complies fully with all applicable use and development standards of the district or overlay zone;
 - b. The area occupied by the conforming use is distinct and functionally separate from the nonconforming portion;
 - c. The nonconforming use does not expand into areas previously transitioned to conforming use;
 - d. The resulting configuration does not intensify or expand the nonconforming use or structure in violation of other applicable sections of this code.
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district

in which such structure is located, and the nonconforming use may not thereafter be resumed.

5. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for eighteen (18) months, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.
6. Where nonconforming use status applies to a structure and premises in combination, removal, or destruction of the structure shall eliminate the nonconforming status of the land.
7. A nonconforming use shall not be changed to a use of the same or less restrictive classification; a nonconforming use may, however, be changed to another use of a more restrictive classification.

15.22.020.B Nonconforming Use of Land

Where, at the effective date of adoption or amendment of this Code, lawful uses of land exist that are no longer permissible under the terms of this Code as enacted or amended, such uses may be continued, so long as they remain otherwise lawful, subject to the following provision:

1. No such nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Code.
2. No such nonconforming use shall be moved in whole or in part of any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Code.
3. If any such nonconforming use of land ceases for any reason for a period of more than eighteen (18) months, any subsequent use of such land shall conform to the regulations specified by this Code for the district in which such land is located.

15.22.030 NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

15.22.030.A Enlargement, Alteration, or Movement

1. No such structure shall be enlarged or altered in a way that increases its nonconformity unless the structure is located in the DC district and the Planning Commission determines that changes made to the structure that increase conformance with district and development standards provide an offset to changes that increase the nonconformity.
2. 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.

15.22.030.B Damage or Destruction

Where a nonconforming structure is damaged or destroyed in part or in whole, it may be repaired or restored, provided a building permit for such repair or restoration is obtained within eighteen (18) months. Expiration or abandonment of such building permit prior to completion shall have the effect of removing the structure's legally nonconforming status.

15.22.040 NONCONFORMING SIGNS

15.22.040.A Refer to subsection 15.14.120.H, Nonconforming and Abandoned Signs, of this Title. (Ord. 1622 § 6-11, 2012).

(Ord. 1699 § 3, 2016)