

SECTION 81 – NONCONFORMING USES, LOTS OR STRUCTURES

81.1 STATEMENT OF LEGISLATIVE INTENT AND PURPOSE

The Zoning Districts established in these regulations are designed to guide the future use of the City's land by encouraging the development of desirable residential, commercial and manufacturing areas with appropriate groupings of compatible and related uses and thus, to promote and protect the public health, safety and general welfare through the establishment of minimal area and bulk standards which are determined in conformity with the intended, permitted use of the property and surrounding properties.

As a necessary corollary, in order to carry out such purposes, non-conforming or non-complying uses which adversely affect the development of such areas must be subject to certain limitations. The regulations governing **non-conforming** and **non-complying uses** set forth in this Article are therefore adopted in order to provide a gradual remedying of existing undesirable conditions resulting from such incompatible use of property which is detrimental to the achievement of the purposes of these regulations. When such **uses** are generally permitted to continue, these regulations are designed to restrict further investment in such uses which would make them more permanent establishments in inappropriate locations.

In the case of **buildings, structures** and/or lots not complying with the applicable area and bulk requirements of the regulations, the regulations governing same set forth in this Article are adopted to permit the appropriate use of such buildings, but prevent the creation of additional non-compliances, increases in the degree of existing noncompliance or expansions which would be detrimental to the safety and welfare of the surrounding neighborhood.

These regulations are thus designed to preserve the character of the Districts established in these regulations in the light of their particular suitability to specified uses, and thus to promote and protect public health, safety and general welfare.

81.2 DEFINITIONS

Each of the following definitions shall apply to situations which will arise from time to time in the interpretations of these regulations with respect to **non-conforming uses** and **non-complying lots or structures**. Each definition is intended to define a specific situation and is therefore mutually exclusive.

ABANDONMENT: The voluntary discontinuance of the use of the property in a non-conforming manner for a period of three (3) months.

CHANGE OF USE: The change or modification of a use type as determined by the discretion of the Planning and Zoning Commission (e.g.: retail store to wholesale warehouse, two family to three family dwelling, assembly to fabrication, etc., but not to include shoe store to book store, tool and die shop to grinding shop, etc.).

DAMAGE OR DESTRUCTION: The removal, destruction or demolition, whether intentional or unintentional, of existing floor space such that such floor space whether or not continuous, is unusable. For the purpose of this Article, any such damage or destruction which occurs over an extended period of time (but within two years from first occurrence) shall be deemed to be a single event.

DISCONTINUANCE: The intentional or unintentional cessation of a nonconforming use of the property on a daily basis.

ENLARGEMENTS OR EXTENSIONS: An increase in the building or structure size or the increase in lot coverage.

EXPANSION OF USE: 1) The change of a non-conforming use to a use determined to be less-conforming, 2) The addition of another non-conforming use to an existing non-conforming use, or 3) The increase in the intensity of an existing nonconforming use (including additional dwellings).

INCIDENTAL REPAIRS OR ALTERATIONS: The replacement, upgrading or renovation of existing building characteristics or systems, provided that such work does not create any additional units, rooms, or a greater degree of lot coverage.

MERGER OF LOTS: The combined use, including use by accessory uses, of one or more recognized lots.

81.3 NON-CONFORMING USES

81.3.1 **Intent.** It is the intent of these Regulations to develop cohesive zoning districts which have compatible **uses**. It is therefore recognized that any use which pre-exists these Regulations that does not conform to its requirements shall be encouraged to phase itself out and be replaced by **conforming**, or at least more conforming **uses** that would be more compatible with the **uses** in the district in which the property lies.

81.3.2 **Non-Conforming Residential Uses.** Except as otherwise provided herein, no property which presently being utilized for residential purposes shall be required to terminate because of its non-conforming status, provided said **use** was **conforming** at the time of its origination.

81.3.3 **Discontinuance of Dangerous Uses in Residential Districts.** In all Residence Districts, any **non-conforming use** providing objectionable to public health, safety, or general welfare by creating danger of fire, explosion, toxic and noxious matter, radiation or other hazards of offensive noise, vibration, smoke dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable influences, shall be discontinued upon order of the Commissioner of Planning and Development. Such order may be appealed to the Zoning Board of Appeals under Section 88.3.

81.3.4 **Abandonment.** In all districts, if over a period of six (6) months, either the **non-conforming use** of land with minor improvements is abandoned, or the active operation of substantially all the **non-conforming uses** in any **building** or other **structure** is abandoned, such land or **building** or other **structure** shall thereafter be used only for a **conforming use**. Intent shall establish the act of **abandonment**.

81.3.5 **Change of Non-Conforming Use** for the purpose of this section is a change to another **use** not of the same **use** type, as determined by the Planning and Zoning Commission. A change in ownership or occupancy shall not by itself constitute a **change of use**.

A **non-conforming use** may be changed to a **conforming use** and the applicable district bulk regulations and accessory **off-street parking** and **loading** requirements shall apply to such change of use or to alterations made to accommodate such **conforming use** wherever possible, but shall apply to an enlargement or expansion. A formerly **nonconforming use** shall not again be changed to a **non-conforming use**. However, no **change of use** shall be permitted without application to the Planning and Zoning Commission, who shall review such application as is it were a Special Permit application and follow relevant procedures.

In addition the Commission shall determine whether the proposed **use** is either **conforming** or less **nonconforming** than the use that is being replaced.

81.4 DAMAGE OR DESTRUCTION

- 81.4.1 **Residential Uses.** No residential use of property in any district which is legally **nonconforming** shall be required to be terminated. However, no such **use** may be extended to provide additional **dwelling units**, and any residential **use** which is **nonconforming** because it contains too many **dwelling units** which is damaged or destroyed by more than 50 percent of its total **floor area** shall be required, as a condition of rebuilding, to either comply with the units per area standard existing at the time of reconstruction or rebuild no more than 90 percent of the **units** previously existing, whichever may be greater unless damage or destruction was caused by a natural disaster.
- 81.4.2 **Non-Residential Uses.** Any **building** or other **structure**, in any district which is substantially occupied by a non-residential, non-conforming **use** is damaged or destroyed by any means to the extent of 50 percent or more of its total floor area, such **building** or other **structure** shall not be repaired or reconstructed except for a conforming **use**, and shall comply with all applicable district bulk regulations.
- 81.4.3 **Minor Damage.** When such damage is less than 50 percent of its total floor area, the **building** or other **structure** may be restored and the **nonconforming** use of the **building** or other **structure** or tract or land may be continued, provided that such restoration shall not create a new **non-conforming use**, or increase the degree of non-compliance if any, with all applicable district bulk regulations.
- 81.4.4 **Notice of Intent to Rebuild.** In all districts if any **nonconforming use** is interrupted as a result of damage or destruction due to a natural disaster such **nonconforming use** shall not be permitted to be reinstated, notwithstanding any other provision of this Article, unless within six (6) months of such damage or destruction, such **nonconforming use** is reinstated or a Notice of Intent to resume operations is filed with the Planning and Development Department.

81.5 DISCONTINUANCE

In all districts, if over a period of six (6) months, either the **nonconforming use** of land with minor improvements is discontinued or the active operation of substantially all the **nonconforming uses** in any **building** or other **structure** is discontinued, such land or **building** or other **structure** shall thereafter be used only for a **conforming use**. Intent to resume active operations, shall not affect the foregoing.

The provisions of this Section shall not apply where such discontinuance of active operations is directly caused by damage of destruction, strike or labor difficulties or construction of a public improvement or public utility project.

81.6 ENLARGEMENTS OR EXTENSIONS

Any residential **nonconforming use** may be enlarged or extended provided such enlargement or extension does not create any additional dwelling units, does not create a new non-compliance or increase the degree of any existing non-compliance. Non-residential **nonconforming uses** shall not be extended or enlarged.

81.7 EXPANSIONS

Expansion of a **nonconforming use** is not permitted.

81.8 INCIDENTAL REPAIRS OR ALTERATIONS

Repairs and incidental alterations may be made in a building or other structure substantially occupied by a non-conforming use if such repair or alteration:

1. is made in order to comply with requirements of law;
2. is made in order to accommodate a **conforming use**;
3. does not diminish the extent of the **conforming use**;

4. is made in order to made a **non-conforming use** more compatible and less objectionable to the surrounding area;
5. does not create a non-compliance or increase the degree of non-compliance with applicable district bulk regulations except in change of a **non-conforming use** to a **conforming use**.