

ARTICLE XII. NON-CONFORMING SITUATIONS

The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform with the provisions of this Ordinance. However, this Article is also established to require that non-conforming situations be terminated under certain circumstances.

Section 12.1 Continuation of Non-conforming Situations

Non-conforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Sections 12.2 through 12.9 of this Article.

Section 12.2 Non-conforming Lots of Record

Where the owners of a lot of record at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the area or lot width requirements of this Ordinance, such lot may be used as a building site provided all other dimensional requirements are met and provided that the use to be made of the property is not one to which larger than minimum lot area requirements are called for in the list of Permitted and Conditional Uses and the Special Requirements.

Section 12.3 Extension or Enlargement of Non-conforming Situations

1. Except as specifically provided in this Section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation.
2. Subject to Paragraph 4 of this Section, a non-conforming use may be extended through any portion of a completed building that, when the use was made non-conforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building.
3. A non-conforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became non-conforming.
4. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this Section occur.
5. Physical alteration of non-conforming structures or structures containing a non-conforming use is unlawful if it results in:

- a) An increase in the total amount of space devoted to a non-conforming use.
 - b) Greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements.
 - c) The enclosure of previously unenclosed areas, even though those areas are or were used in connection with the non-conforming activity.
6. Minor repairs to and routine maintenance of property where non-conforming situations exist are permitted and encouraged. Major renovation - i.e., work estimated to cost more than ten percent (10%) but less than sixty percent (60%) of the taxed value of the structure to be renovated may be done provided that the work will not result in a violation of any other paragraphs of this Subsection particularly Paragraph 5. In no case however shall work costing more than sixty percent (60%) of the taxed value of the structure be done, singularly or cumulatively, within any five (5) year period.

Section 12.4 Reconstruction Prohibited

Any non-conforming building or structure or any building or structure containing a non-conforming use for which major repair or reconstruction is proposed in any amount equal to sixty percent (60%) or more of the taxed value of the building or structure or which has been damaged by any cause to an extent equal to sixty percent (60%) or more of its taxed value shall only be repaired and/or reconstructed and used as a conforming structure and a conforming use.

Section 12.5 Change in Kind of Non-conforming Use

- 1. A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.
- 2. A non-conforming use shall not be changed to another non-conforming use except upon a finding by the Board of Adjustment that the use is more in character with the uses permitted in the District than the previous use.
- 3. If a non-conforming use and a conforming use, or any combination of non-conforming uses exist on one lot, the use made of the property may be changed only to a conforming use.
- 4. Conforming uses, except Sexually Oriented Businesses, may be established or re-established in non-conforming buildings or structures provided that off-street parking is provided as required by this Ordinance and provided no other provision of this Ordinance for the establishment of new uses is violated.

Section 12.6 Discontinuance of Non-conforming Uses

- 1. When active operation or occupancy of a non-conforming use is discontinued regardless of the purpose or reason for a consecutive period of one hundred eighty (180) days, the property involved may thereafter be used only for conforming uses.

2. For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a non-conforming apartment building or one space in a non-conforming mobile home park for one hundred eighty (180) days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or mobile home park as a whole is continuously maintained. But if a non-conforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the non-conforming use for the required period shall terminate the right to maintain it thereafter.

Section 12.7 Discontinuance of Non-conforming Adult Oriented Businesses

Notwithstanding the provisions of Section 12.6 above, Adult Oriented Businesses shall be governed by the following:

1. Any Adult Oriented Business that fails to comply with the use and locational requirements of this Ordinance but which was lawfully operating before the effective date of this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business which ceases active operation for a period of thirty (30) days regardless of the purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
2. Any Adult Oriented Business lawfully operating as of the effective date of this Ordinance but which subsequently fails to comply with the use and locational requirements of this Ordinance as the result of changes within the vicinity or amendment to this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business which ceases active operation for a period of thirty (30) days regardless of purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.

Section 12.8 Replacement of Non-conforming Mobile Homes

1. Mobile Homes may be placed and replaced in non-conforming mobile home parks so long as the mobile home park retains its non-conforming status and so long as the space was designed and arranged as a mobile home space prior to the adoption of this Ordinance. Any such mobile home shall meet the definition of a Mobile Home Class A or B.
2. Individually established non-conforming mobile homes may be replaced provided that a Class A mobile home shall only be replaced with a Class A mobile home and provided that any other mobile home shall only be replaced with a Class A or B mobile home.
3. Non-conforming mobile homes, located in mobile home parks, that cannot be defined as either class "A" or class "B" and which have been unoccupied for a period of 180 days; shall be either removed or replaced with mobile homes that can be defined as either class "A" or class "B".

Section 12.9 Non-Conforming Signs

1. Subject to the restrictions of this Section, nonconforming signs that were otherwise lawful on the effective date of this Ordinance may be continued.
2. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign, or causes a previously conforming sign to become nonconforming.
3. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Ordinance. Once a nonconforming sign is removed from the premises or otherwise taken down or moved, said sign may only be replaced with a sign which is in conformance with the terms of this Ordinance.
4. Minor repairs and maintenance of nonconforming signs necessary to keep a nonconforming sign in sound condition are permitted.
5. If a nonconforming sign is destroyed by/for any cause, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this Ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this Section, a nonconforming sign shall be considered "destroyed" if it receives damage to an extent of more than fifty (50) percent of the current replacement cost of the total sign structure.
6. Except as otherwise provided in this Section, the message of a nonconforming sign may be changed so long as this does not create any new nonconformities.
7. If a nonconforming sign which advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, property owner, or other party having control over such sign within thirty (30) days after the use has ceased operation or the service or commodity has ceased being offered.

If there is a change of use or name of business on a particular piece of property, and there were one or more on-premise signs which advertised the business, any new signs placed for the new use or business name must meet all sign requirements of the underlying zoning district. An example of this is as follows:

A restaurant has an on-premise free-standing sign having an area of one-hundred (100) square feet. The maximum allowable area for said sign in that particular zoning district is sixty-four (64) square feet. If said restaurant ceases operation and is replaced by another principal use or by another restaurant (either of which uses new sign structures), any new free-standing sign advertising the new principal use or business name shall have a maximum area of sixty-four (64) square feet. If the same sign structure used

to advertise the former restaurant is used to advertise the new use, said sign structure may remain.

8. If a nonconforming sign remains blank for a continuous period of one hundred eighty (180) days, that sign shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Ordinance or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this ordinance, a sign shall be deemed "blank" if:
 - a. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or;
 - b. the advertisement message it displays becomes illegible in whole or part; or
 - c. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent", "Sign For Lease", "Sign For Sale", etc. shall not be deemed to be an advertising message.)
9. Notwithstanding the provisions of Subsection 1-8 above, all nonconforming signs which are prohibited by the provisions of Section 10.5 (1), (2), (3), (4), (5), (6), (7), (8) and/or (9) shall be immediately removed or otherwise brought into conformity with the provisions of this Article.

Section 12.10 Amusement Video Game Arcades including Internet Cafes and Businesses (Including Retail) with Sweepstakes Gaming Machines and the Like

Notwithstanding the provisions of Section 12.6, Amusement Video Game Arcades shall be governed by the following:

1. Any existing amusement video game arcades that do not have a valid conditional use permit for such are considered non-conforming and must obtain a conditional use permit by January 31, 2001. An application for such must be submitted not less than sixty (60) days prior to January 31, 2001.
2. Any amusement video game arcade not having a valid conditional use permit on January 31, 2001 must immediately cease to operate and remove all amusement video equipment devices from the premises.
3. Internet Cafes and Businesses (Including Retail) with Sweepstakes Gaming Machines and the Like that do not have a valid conditional use permit for such are considered non-conforming and must obtain a conditional use permit by November 30, 2010. An application for such must be submitted not less than sixty (60) days prior to November 30, 2010.
4. Internet Cafes and Businesses (Including Retail) with Sweepstakes Gaming Machines and the Like not having a valid conditional use permit on November 30, 2010 must immediately cease to operate and remove all amusement video equipment, including sweepstake gaming machines and the like devices from the premises.

Any amusement video game arcade obtaining a conditional use permit must comply with all conditions within sixty (60) days of issuance of permit. Failure to do shall result in immediate revocation of the conditional use permit.