

**§ 118-153. Nonconforming uses.**

- (a) Defined. The term "nonconforming" shall be deemed to mean that a use or structure was lawful at the time it was begun, but could not presently be so begun, used or constructed under current ordinances and zoning.
- (b) Continuation. The lawful use of any building, structure, sign or land existing at the time such property was more restrictively zoned may be continued except as this chapter may require abatement within a given period of time; provided, however, the right to continue such nonconforming uses shall be subject to regulations prohibiting nuisances and shall be terminated when such use constitutes a nuisance. Such nonconforming uses shall be subject to such reasonable regulations as the zoning board of adjustment may require to protect adjacent property and shall be subject to the specific nonconforming use regulations contained in this section.
- (c) Accidental damage to building. If a building or structure occupied by a nonconforming use is destroyed by fire or any other cause, it shall not be reconstructed or rebuilt except to conform with provisions of this chapter. In the case of partial destruction by fire or other causes where the cost of repair does not exceed 50 percent of its current value, according to the most recent appraisal roll of the tax appraisal district, the building official is authorized to issue a permit for reconstruction. If greater than 50 percent and less than total, the zoning board of adjustment may grant a permit for repair but not for enlargement of the building or structure.
- (d) Determination of replacement cost. In determining the replacement cost of any nonconforming structure, there shall not be included therein the cost of land or any factors other than the nonconforming structure itself, including foundation.
- (e) Repairs and alterations. Repairs and alterations may be made to an undamaged nonconforming building or structure; provided, however, no structural alterations shall be made except those required by law or ordinance, unless the building is changed to a conforming use; and provided that no additional dwelling units shall be added where the nonconforming use results from there being more dwelling units on the lot than is permissible in the district in which the building is located. No enlargement or extension of a nonconforming use shall take place except as the zoning board of adjustment may grant, as a special exception, an application to extend or enlarge a building occupied by a nonconforming use or that portion of the lot occupied by such use, provided such grant does not serve to prevent the return of such property to a conforming use.
  - (1) For homes permitted for construction on or before January 9, 1984, a reduction in the number of covered and enclosed parking spaces shall not be deemed to create or enlarge a nonconformity under this section, and a garage enclosure may be permitted for such homes, provided the site provides paved parking that is compliant with the city's development standards outlined in this Chapter and covers sufficient area to accommodate the number of converted parking spaces plus one. Parking space calculation for this purpose shall be determined by the City's Schedule of minimum parking and maneuvering dimensions.
- (f) Continuance of nonconforming use. Except as this section may otherwise require, any nonconforming use may be continued in operation on the same land area and on the same floor area in a structure or structures which were occupied by the nonconforming

use on the effective date of these regulations or on the effective date of any amendment by which the use became nonconforming, but such land area or floor area shall not be increased.

- (g) Registration of nonconforming use. It shall be the right of the joint tenants and owners of a nonconforming use to register the same by securing a certificate of occupancy as herein provided. The certificate shall not be issued unless the applicant can prove that the use in question was lawful at the time that it commenced and was not discontinued for more than six months after it became nonconforming. Absence of a certificate during proceedings before the zoning board of adjustment shall constitute prima facie proof that such use was not nonconforming.
- (h) Changing a nonconforming use. Any nonconforming use may be changed to a use conforming with the regulations established in this chapter for the district in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not thereafter be changed back to a nonconforming use. A nonconforming use shall not be changed to another nonconforming use.
- (i) Discontinuation. A nonconforming use of any building or structure which has been discontinued shall not thereafter be returned to any nonconforming use. A nonconforming use shall be considered discontinued when:
  - (1) It has been replaced with a conforming use;
  - (2) Such building or structure is or hereafter becomes vacant and remains unoccupied or out of use for a continuous period of six months, or the special equipment and furnishings peculiar to the nonconforming use have been removed from the premises and have not been replaced within such six-month period; or
  - (3) Water service has been discontinued for six months.
- (j) Notice, appeal. The building official shall notify in writing the owner and user of any nonconforming use of a loss of nonconforming status, together with an order that such use is no longer lawful and notice of a right of appeal of such determination and order to the zoning board of adjustment. Any such appeal must be filed with the building official within the time provided for appeals under section 118-87 using the procedure for variance appeals set out in division 2 of article II of this chapter.
- (k) Appeal, burden of proof, power of board. The property owner shall have the burden of proof to establish either that the use was not discontinued for the time which would result in loss of nonconforming status or that the loss of nonconforming status would amount to an unconstitutional taking, considering the original cost of the improvements to the property, their adaptability to conforming use, and the length of time the owners have had to recoup the capital cost of such improvements since originally constructed. In establishing a taking, the owner or user shall have the burden of proof of establishing such costs, nonadaptability and length of time required to capitalize the investment. The board shall have the power to reverse the determination and order of the building official if the use was not discontinued for the requisite time, to sustain the determination and order of the building official, or to modify the order by establishing a time for the nonconforming use to be allowed to be continued in order to amortize the capitalized investment in the improvements. The intent of the property owner or use shall not be considered in the appeal. If the property owner fails to meet his burden of proof, the action of the building official shall be sustained.

(Ordinance 1874, art. 1, § 175(C), adopted 3/22/1993; Ordinance 2977, § 1, adopted 1/14/2008)