

CHAPTER 1370

Nonconforming Uses

The intent of this Zoning Code is to allow to continue a lawful use of any building or land existing on the effective date of this Zoning Code, or any amendment thereto, although it may not conform with this Zoning Code or amendment, but to encourage their improvement if it enhances the neighborhood.

1370.01	Classifications.	1370.04	Illegal uses.
1370.02	General regulations.	1370.05	District boundary changes.
1370.03	Loss of nonconforming use status.	1370.06	Elimination.

CROSS REFERENCES

Zoning and planning in home rules cities - MCLA 117.4i

Regulation of location of trades, buildings and uses by local authorities - MCLA 125.581

Regulation of buildings; authority to zone - MCLA 125.582

Regulation of congested areas - MCLA 125.583

Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property - MCLA 125.583a

Signs - B & H Chapter 1476

1370.01 CLASSIFICATIONS.

There shall be the following classes of nonconforming uses:

- (a) **Class 1.** Those where the use of the building or land does not conform to the zoning district use regulations; and
- (b) **Class 2.** Those where the use of the building or land does comply with the zoning district use regulations, but such use does not meet the dimensional or parking regulations of this Code. Where the only reason for a nonconforming use being Class 2 is noncompliance with current off-street parking regulations, the provisions of this Zoning Code regarding off-street parking and powers of the Board of Zoning Appeals shall take precedence over this section to the extent they are inconsistent. (See Chapters 1324, *Board of Zoning Appeals* and 1374, *Circulation and Parking*.)
- (c) **Class 3.** Those where the use of the building or land was a use as of right or a legal nonconforming use, but is later allowed only by special land use permit in the zone in which located. (Ord. 476. Passed 7-6-99.)

1370.02 GENERAL REGULATIONS.

- (a) **Enlargement or structural alterations.** Nonconforming uses of property shall be subject to the following regulations:
 - (1) A Class 1 nonconforming use shall not be enlarged or structurally altered when such alteration requires a building permit, nor shall they be expanded or increased in intensity of use, unless the Board of Zoning Appeals or Planning Director grants an exception as described in this Zoning Code.

- (2) A Class 2 nonconforming use shall not be enlarged or structurally altered when such alteration requires a building permit, unless the resultant building creates no further violation of this Zoning Code than lawfully existed at the time of the enlargement or alteration. However, upon approval of the Planning Director, a Class 2 nonconforming use may be expanded to add floor space above the first floor level to the extent of the first floor encroachment, and a porch or other architectural feature which once existed and encroached in the required setback may be reconstructed, subject to the following conditions:
- A. Prior to the issuance of a building permit, the building plans for the addition shall be approved by the Planning Director, who will consider the relationship of the addition with the scale, materials and architectural style of the existing structure.
 - B. The addition shall not substantially degrade the light and air available to the neighboring properties.
 - C. The addition shall not include or utilize window or wall air conditioning units or other appliances or devices which may unnecessarily disturb neighbors due to their proximity to adjacent structures.
 - D. Ice, snow and stormwater from the addition shall be maintained within the boundaries of the subject property and shall not present a safety hazard to residents, guests or neighbors.
- (3) A Class 3 nonconforming use shall not be enlarged or structurally altered without first obtaining a special land use permit for the existing use and the alteration, if enlargement or alteration would result in any of the following:
- A. An increase or decrease in the square footage of the building by more than ten per cent,
 - B. Introduction of a new use on the site which is anticipated to increase daily motor vehicle trip-ends,
 - C. Addition of a separate building or structure occupied on a regular basis,
 - D. Addition or deletion of parking spaces, or
 - E. Significant alteration of traffic patterns adjacent to the site.
- (4) A Class 2 nonconforming use shall not be enlarged or structurally altered when such alteration requires a building permit, unless the resultant building creates no further violation of this Zoning Code than lawfully existed at the time of the enlargement or alteration. However, a Class 2 nonconforming use may be expanded to extend an existing sidewall of a one or two-family dwelling that encroaches in the required side setback, subject to the conditions listed in subsection (a)(2) above and the notice and appeal provisions of subsection (c) below, subject to front and rear setback requirements and impervious surface restrictions and providing such expansion or extension meets all applicable building codes.
- (b) **Repair or improvement of nonconforming buildings.** A nonconforming use may be repaired or improved provided that such repair or improvement to a Class

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1 nonconforming use is approved by the Planning Director and will do one or more of the following:

- (1) Improve the structure only to add an unenclosed porch or another similar architectural feature that is in keeping with the surrounding architectural style.
 - (2) Improve the structure only to provide barrier free access or accommodation.
 - (3) Improve the structure only to accomplish changes recommended by the Historic Districts Commission.
 - (4) Clearly and convincingly improve the health, safety or welfare of the neighborhood.
- (c) **Notice** Before deciding on the request for enlargement of a Class 2 nonconforming use or for repair or improvement of a Class 1 nonconforming use, the Planning Director shall notify all persons to whom real property is assessed within 300 feet of the boundary of the property in question. Notice shall be mailed and shall describe the request and indicate the deadline for written comments to be received by the Planning Director. The Planning Director's decision may be appealed to the Board of Zoning Appeals by an aggrieved person.
- (d) **Reconstruction and Restoration.** A nonconforming use damaged by fire, explosion, act of God or other similar causes may be restored or rebuilt, provided that such restoration for a Class 1 nonconforming use does not exceed fifty percent of its true cash value, exclusive of land and foundations, as determined for property tax assessment purposes.
- (e) **Change of Use.** A Class 1 nonconforming use shall not be changed to other than a permitted use unless the Board of Zoning Appeals grants an exception as described earlier in this Zoning Code.
- (f) **Prior Construction Approval.** Nothing in this Zoning Code shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been properly issued and substantial construction commenced prior to the effective date of this Zoning Code, provided that the entire building shall have been completed according to plans filed with the permit application within one year after the issuance of the building permit.
- (g) **Conconforming Land Uses.** The nonconforming uses of land, where no building is located, may be continued, provided that the nonconforming land use shall not in any way be expanded or extended either on the same property or adjoining property.
- (h) **Nonconforming Use Certificate.** A nonconforming use certificate may be issued by the Zoning Administrator for a nonconforming use. The certificate shall specify the nature of the nonconformity and such other pertinent matters as may be deemed appropriate by the Zoning Administrator. Upon application for a nonconforming use certificate by all owners of record of the land in question, the Zoning Administrator shall issue or deny such certificate within thirty days or such greater time as may be mutually agreed upon. The application shall be in writing upon a form prepared by the Zoning Administrator and shall be accompanied by such information as the applicant deems pertinent or as the Zoning Administrator may request. An applicant may appeal the denial of a

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certificate to the Board of Zoning Appeals. This administrative remedy shall be exhausted before a person alleges the existence of a nonconforming use by defense to a zoning enforcement action or otherwise.

(Ord. 476. Passed 7-6-99. Ord. 494. Passed 5-1-00. Ord. 593. Passed 1-06-03.)

1370.03 LOSS OF NONCONFORMING USE STATUS.

(a) **Loss.** Status as a nonconforming use shall be lost and the nonconformity shall be deemed a violation of this Zoning Code if any of the following occur:

- (1) **Increasing the non-conformity.** Unless otherwise allowed or except where permitted by the Board of Zoning Appeals, expansion or change of the use or structure in such a way so as to increase the size, degree or intensity of the nonconformity;
- (2) **Zoning violation.** Except for the initial nonconformity, any violation of the Zoning Code; or
- (3) **Abandonment of the use.** Intent to abandon a nonconforming use may be presumed where the use ceases for more than a year and the owner has not expressed in writing an intent to maintain the use within thirty days after being requested in writing to do so. If nonconforming use status is lost, all future use shall be in conformity with this Zoning Code and the initial nonconforming use may not be continued or re-established.
- (4) **Reduction.** If a nonconforming use or structure is reduced or changed in such a way so as to decrease the size, degree or intensity of the nonconformity, the use or structure may not thereafter be expanded or changed to cause an increase in the nonconformity.

(Ord. 476. Passed 7-6-99.)

1370.04 ILLEGAL USES.

Nonconforming uses of buildings or land established without a required building permit or land use permit, or those nonconforming uses which cannot be proven conclusively as existing prior to the effective date of the section upon which the nonconformity is based, are declared illegal uses and shall be discontinued.

(Ord. 476. Passed 7-6-99.)

1370.05 DISTRICT BOUNDARY CHANGES.

Whenever the boundaries of a district are changed so as to transfer an area from one district to another district of another classification, this chapter shall also apply to any existing uses or structures that become nonconforming as a result of the boundary changes.

(Ord. 476. Passed 7-6-99.)

1370.06 ELIMINATION.

In accordance with Act 207 of the Public Acts of 1921, as amended (M.C.L. 125.581 et seq.), the City may acquire properties on which nonconforming uses or structures are located, by condemnation or other means, and may remove such uses and structures. The resultant property may be leased or sold for a conforming use or may be used for a public use. The net cost of such acquisition may be assessed against a benefit district, may be

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paid from other sources of revenue, or may be paid by a combination of special assessments and other revenue.

(Ord. 476. Passed 7-6-99)