

ARTICLE 21

NONCONFORMITIES

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SECTION 21-1 GENERAL PROVISIONS

21-101. Nonconformities are of three types: nonconforming lots of record, nonconforming structures and nonconforming uses. Special regulations governing nonconforming manufactured homes are set forth at Section 21-5. Each type of nonconformity is defined as follows:

- a. **Nonconforming lots of record:** Means an unimproved lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded with the Linn County Register of Deeds prior to the original adoption by the City of zoning regulations and neither said lot nor parcel complies with the lot width or area requirements for any permitted use in the district in which it is located.
- b. **Nonconforming structure:** Means an existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which it is located.
- c. **Nonconforming use:** Means an existing, lawful use of a structure or land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

SECTION 21-2 NONCONFORMING LOTS OF RECORD

21-201. The Zoning Administrator may issue a zoning certificate for any nonconforming lot of record, provided that:

- a. Said lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations, and

- b. Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulations, and
- c. Said lot can meet all yard regulations for the district in which it is located.

SECTION 21-3 NONCONFORMING STRUCTURES

21-301.

- a. **Authority to continue.** Any structure that is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable intensity of use regulations and/or the applicable yard and height regulations, may be continued, so long as it remains otherwise lawful.
- b. **Enlargement, repair, alterations.** Any nonconforming principal structure may be enlarged, maintained, repaired or remodeled. No such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure. An enlargement which does not extend the nonconformity beyond the existing nonconformity is not an additional nonconformity or an increase in the degree of nonconformity.
- c. **Damage or destruction.** In the event that any nonconforming principal structure is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located.

SECTION 21-4 NONCONFORMING USES

21-401.

- a. **Authority to continue.** Any nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land which was lawful and in existence at the effective date of these regulations and does not involve a structure or only involves a structure which is accessory to such use of land, may be continued, so long as otherwise lawful and so long as it is not specified to be terminated by these regulations.
- b. **Ordinary repair and maintenance.**
 - 1. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use.

2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure.
- c. **Extension.** A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. Such prohibited activities shall include, without being limited to, the following:
1. Extension of such use to any structure or land area other than that actually physically occupied by such nonconforming use on the effective date of these regulations or on the effective date of subsequent amendments to these regulations that cause such use to become nonconforming.
 2. Extension of such use within a building or other structure to any portion of the floor area that was not actually physically occupied by such nonconforming use on the effective date of these regulations or on the effective date of subsequent amendments to these regulations that cause such use to become nonconforming. However, such use may be extended throughout any part of such building or other structure that is found by the Zoning Administrator to have been designed or constructed for such use at the time of such effective date.
 3. No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- d. **Damage or destruction.** In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. When such damage or destruction is fifty (50) percent or less of fair market value, no repairs or restoration shall be made unless a zoning certificate is obtained, and substantial restoration is underway within one year after the date of such partial destruction and repair or restoration is diligently pursued to completion.
- e. **Change in use.** Unless structural alterations are made which will expand the area or change the dimensions of the existing structure, any nonconforming use of a structure, or nonconforming structure and premises, may change to another nonconforming use provided that the Planning Commission either by general rule or by making findings in the specific case, shall find that the proposed nonconforming use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguards to protect surrounding areas and the public welfare. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.

- f. **Abandonment or discontinuance.** When a nonconforming use is discontinued or abandoned for a period of twelve (12) consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land or buildings shall comply with the regulations of the zoning district in which such land is located.
- g. **Nonconforming accessory uses.** No nonconforming use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

SECTION 21-5 NONCONFORMING MANUFACTURED HOMES

21-501. The removal and relocation of manufactured homes, other than residential-design manufactured homes, in the R-1, R-2 and R-3 Districts shall be governed by the following regulations:

- a. Upon removal of a nonconforming manufactured home, unless another manufactured home is moved onto the same lot within thirty (30) days from the date that the previous manufactured home was moved off the lot, such use is forfeited and shall not thereafter be reestablished.
- b. Any manufactured home moved in accordance with a. above shall be placed on a permanent, enclosed perimeter foundation within thirty (30) days from the date it is moved onto the lot.
- c. No manufactured home shall be moved onto the lot if such will result in an increase in nonconformity with respect to lot size, yard or bulk requirements.
- d. No manufactured home shall be moved onto the lot if its location shall place it within twenty feet (20') of a principal building or ten feet (10') of an accessory building.
- e. Upon proper application the Board of Zoning Appeals may grant an exception to the time requirements of subsections a. and b. above upon a finding by the Board of hardship for the party who would reside in the manufactured home upon its relocation.