

CHAPTER 19.10: NONCONFORMITIES

19.10.1. GENERAL

A. INTRODUCTION

This Chapter governs uses, structures, lots, signs, and other situations that came into existence legally, but do not comply with one or more requirements of this Code.

B. APPLICABILITY

This Chapter applies to nonconformities created by initial adoption of or amendments to this Code. It also applies to nonconformities that were legal nonconformities under previously applicable ordinances, even if the type or extent of nonconformity is different.

C. CONTINUATION PERMITTED

Any nonconformity that legally existed on March 1, 2010, or that becomes nonconforming upon the adoption of any amendment to this Code may be continued in accordance with the provisions of this article.

D. DETERMINATION OF NONCONFORMITY STATUS

The burden of establishing that any nonconformity is a legal nonconformity shall, in all cases, be solely upon the owner of such nonconformity.

E. REPAIRS AND MAINTENANCE

Incidental repairs and normal maintenance of nonconformities shall be permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by this Code. Nothing in this chapter shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

F. TENANCY AND OWNERSHIP

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

19.10.2. NONCONFORMING USES

A. EXPANSION

1. General

A nonconforming use may be enlarged or expanded only if reviewed and approved in accordance with the conditional use permit procedures of Section 19.6.6.A, *Conditional Use Permits*.

2. Single-Family Homes

Existing single-family homes located in the CO, CC, CH, CT, and CA districts may be expanded or accessory structures added without obtaining a conditional use permit, provided the expansion or accessory structure is developed in accordance with the standards of Section 19.5.7, *Accessory Uses and Structures*, and the previous density and dimensional standards of the original zoning district in which the single-family home was constructed.

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B. CHANGE OF USE

1. Except in the DX district, a nonconforming use may only be changed to a use allowed in the zoning district in which it is located. In the DX district, an existing single-family residential dwelling unit may be converted to a commercial use, subject to compliance with all provisions of the Building Code, Fire Code, and this Code.
2. Once a nonconforming use is converted to a conforming use, it shall not be changed back to a nonconforming use.

C. COMPLIANCE WITH PERFORMANCE STANDARDS REQUIRED

A use that does not comply with the performance standards of Section 19.7.8, *Operational Performance*, shall not be enlarged or extended unless the enlargement or extension increases the degree of compliance with the performance standards.

D. LOSS OF LEGAL NONCONFORMITY STATUS

1. Abandonment

Except for single-family dwelling units, if a nonconforming use ceases for any reason for a period of more than 180 days or other period of time as specified by the City Council as part of a closure plan, the use shall be considered abandoned. Once abandoned, the legal nonconforming status shall be lost, and re-establishment of the use shall be prohibited. Any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

2. Damage or Destruction

- (a) If a building or structure housing a nonconforming use is destroyed by a fire or other natural cause, the nonconforming use may be reestablished within six months after the fire or other natural cause. The reestablishment of the building or structure must occur after design review approval and shall begin within six months of the date of the destruction or damage. Any new structure shall be reviewed for compliance with all applicable regulations of Title 19.
- (b) This damage or destruction provision shall not apply to single-family dwelling units in residential zoning districts or for single-family dwelling units in the Downtown Redevelopment Area, which may be reconstructed with substantially the same floor area, provided there is no increase in any other nonconformity.
- (c) The extent of damage or destruction shall be based on the ratio of the estimated cost of restoring the structure to its condition prior to such damage or destruction to the estimated cost of duplicating the entire structure. Estimates for this purpose shall be made by or shall be reviewed and approved by the building official.

19.10.3. NONCONFORMING LOTS

A. RESIDENTIAL LOTS

1. General

- (a) In the residential districts, notwithstanding limitations imposed by other provisions of this Code, a single-family dwelling and customary accessory structures may be developed on any single lawfully-established nonconforming lot existing on March 1, 2010. This provision applies even though the lot fails to comply with the standards for area or width in the district where it is located.

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SECTION 19.10.4 NONCONFORMING Structures | 19.10.4.D LOSS of Nonconforming Status; Damage or Destruction

- (b) The lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership.
- (c) Development of a single-family dwelling on the lot shall comply with the other zoning district standards, to the maximum practical extent.

2. Combination of Lots

If two or more nonconforming lots of record are in single ownership on March 1, 2010, or on the date they become nonconforming, and if all or part of these lots do not comply with the lot area standards for the zoning district where located, the lots involved shall be considered to be an individual lot for the purposes of this Code. No portion of these lots shall be used or sold that does not comply with the lot area standards in this Code, nor shall any division of the lots be made that leaves remaining any lot that fails to comply with this Code's lot area standards.

B. NONRESIDENTIAL DISTRICTS

In the nonresidential districts, notwithstanding limitations imposed by other provisions of this Code, a permitted use may be developed on any single nonconforming lot existing on March 1, 2010, or the date the lot of record became nonconforming, subject to approval of a conditional use permit in accordance with Section 19.6.6.A, *Conditional Use Permits*. This provision shall apply even though the lot of record fails to comply with the standards for lot area that are applicable in the district. In considering the application for a conditional use permit, the Planning Commission shall ensure the design and location of the proposed use is compatible with surrounding uses. Development of the permitted use on a nonconforming lot shall comply with the other intensity and dimensional standards of the district, to the maximum practical extent.

19.10.4. NONCONFORMING STRUCTURES

A. USE

Except where prohibited by this Chapter, a nonconforming structure may be used for any use allowed in the underlying zoning district, including a legal nonconforming use.

B. EXPANSION

A nonconforming structure may be expanded as long as the expansion does not increase the degree of nonconformity.

C. MOVING

A nonconforming structure shall not be moved in whole or in part to any other location unless the move results in the entire structure being brought into compliance with all applicable zoning district regulations and development standards of this Code.

D. LOSS OF NONCONFORMING STATUS; DAMAGE OR DESTRUCTION

1. If a nonconforming structure is destroyed by any means to the extent of more than 50 percent of its current replacement value, it may not be re-established except in compliance with all regulations applicable to the zoning district in which it is located. This provision shall not apply to single-family dwelling units in residential or DR zoning districts, which may be reconstructed with substantially the same floor area, provided there is no increase in any other nonconformity.

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2. The extent of damage or destruction shall be based on the ratio of the estimated cost of restoring the structure to its condition prior to such damage or destruction to the estimated cost of duplicating the entire structure. Estimates for this purpose shall be made by or shall be reviewed and approved by the building official.

19.10.5. NONCONFORMING SIGNS

A. DETERMINATION OF NONCONFORMING STATUS

1. Criteria

Existing signs that do not conform to the specific provisions of this Development Code are considered “nonconforming” and will be permitted to remain, provided that:

- (a) The sign was lawfully installed in conformance with any required permit and complied with all regulations and laws in effect at the time of installation; and
- (b) The Community Development and Services Director determines that such signs are properly maintained and do not endanger the public in any way.

2. Burden of Proof

In any matter in which a property owner, sign owner, sign user, or other person seeks the protection provided to nonconforming signs under this section, the burden of proof is on the person seeking such protection to prove:

- (a) The date of erection or installation of the sign;
- (b) That the sign fully conformed to the sign ordinance then in effect;
- (c) That the person erecting the sign obtained all necessary permits for the erection of the sign; and
- (d) That any changes to the sign have been made in accordance with the requirements of this Chapter and in compliance with all applicable permit requirements.

B. OWNERSHIP

The status of a nonconforming sign or sign structure is not affected by changes in ownership.

C. MAINTENANCE AND REPAIR

Sign maintenance, sign repair, and changing of permanent sign faces are allowed so long as structural alterations are not made and the sign is not increased in size.

D. LOSS OF NONCONFORMING STATUS

A nonconforming sign must be removed or otherwise brought into conformance with this Development Code if:

1. The sign is relocated or replaced;
2. The structure or size of the sign is altered in any way except toward compliance with the sign regulations of this chapter;
3. The sign is damaged or deteriorated by more than 50 percent of its material structural value, as determined by the Community Development and Services Director; or

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4. A nonconforming billboard sign fails to meet the requirements of Section 19.8.10.A, Billboards.

E. ALTERATIONS

Except for message changes authorized by this Development Code, no nonconforming sign may be altered unless a building permit to do so is issued and the sign is brought into conformance with the requirements of this Development Code at the time of alteration.

19.10.6. NONCONFORMING SITE FEATURES

A. PURPOSE

The purpose of this section is to provide a means by which the City may require certain nonconforming site features to come into compliance with the standards of this Code as part of major reinvestment on the site.

B. APPLICABILITY

1. For purposes of this section, the term “nonconforming site features” includes the following:
 - (a) Nonconforming signs;
 - (b) Nonconforming screening of mechanical equipment;
 - (c) Nonconforming screening walls or fences;
 - (d) Nonconforming driveway surfacing;
 - (e) Nonconforming landscaping; and
 - (f) Nonconforming urban design and architecture standards in the DX, DR, and DP zoning districts.
2. If an application is filed for a building permit(s) for the reconstruction, remodeling, expansion, or other improvements of a building or site that has one or more nonconforming site features, and the value of the proposed improvements totals at least 25 percent of the assessed value of the existing structure as listed on the latest tax rolls, the applicant shall be required to address the nonconforming site features as provided in this section.
3. The Community Development and Services Director may develop administrative guidelines to assist in the implementation of this section, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site features to be brought into conformance with the requirements of this Code because of particular site constraints or impacts upon adjacent properties.

C. EXTERIOR REMODELING OF BUILDINGS

1. Off-Street Parking, Driveway Surface, Landscaping, Perimeter Buffers, and Screening

- (a) More Than 25 Percent but Less Than 75 Percent of Structure Value

Remodeling in any continuous 12-month period that costs more than 25 percent but less than 75 percent of the current assessed value of the structure shall require that a corresponding percentage of the off-street parking, driveway surface, landscaping, perimeter buffer, and screening standards of this Code be installed or upgraded on the site, until the site achieves 100 percent compliance.

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(b) 75 Percent or More of Structure Value

Remodeling projects that cost 75 percent or more of the current assessed value of the structure shall require 100 percent compliance with the off-street parking, driveway surface landscaping, perimeter buffer, and screening standards of this Code.

(c) One Additional Parking Space Required

When only one additional off-street parking space is required under this subsection as a result of a remodeling project, such additional off-street parking is not required to be installed.

COMMENTARY

For example, if a site has 20 of 30 required parking spaces and the cost of the remodeling is 30 percent of the value of the building, then 30 percent of the deficiency in required off-street parking spaces (three spaces) shall be provided.

2. Signage

Remodeling in any continuous 12-month period that costs more than 25 percent of the current assessed value of the structure (at the option of the applicant) shall require 100 percent compliance with the signage standards of this Code.

3. Physically Constrained Properties- Comply to Maximum Practical Extent

(a) Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply, to the maximum practical extent, as determined by the Community Development and Services Director.

(b) For purposes of determining when a correction is required, the cost of the remodeling shall be as shown on the approved building permit application. Assessed value shall be based upon Clark County Assessor information.

D. ADDITIONS AND EXPANSIONS

Additions and expansions to structures on nonconforming sites shall require correction of existing onsite nonconforming off-street parking, driveway surface, landscaping, perimeter buffer, screening, and signage standards in accordance with this section.

1. Off-Street Parking, Driveway Surface, Landscaping, Perimeter Buffers, and Screening

(a) Expansion of 50 Percent or Less of Gross Square Footage Over Five Years

Expansions that result in a 50 percent or less increase in the gross square footage of the existing structure require that a corresponding percentage of the off-street parking, driveway surface, landscaping, perimeter buffer, and screening standards of this Code be installed or upgraded on the site, until the site achieves 100 percent compliance. Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.

COMMENTARY

For example, if the addition is 25 percent of the area of the existing structure and the site contains only 50 percent of the required landscaping, the missing landscaping must be provided to bring landscaping on the site to 62.5 percent of the total required.

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(b) Expansion of Greater Than 50 Percent of Gross Square Footage Over Five Years

Expansions that result in a greater than 50 percent increase of the gross square footage of the existing structure, require the entire property to meet all of the off-street parking, driveway surface, landscaping, perimeter buffer, and screening standards of this Code.

2. Signage

Any expansion shall require 100 percent compliance with the signage standards of this Code or an approved master sign plan.

3. Physically Constrained Properties- Comply to Maximum Extent Practical

Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply to the maximum practical extent as determined by the Community Development and Services Director.

4. Addition of Outdoor Storage Area Only

When only outdoor operations/storage/display areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in perimeter buffers and screening. Perimeter buffer and screening augmentation shall be located so as to achieve the performance objectives in Section 19.7.5, *Landscaping and Screening*, with priority given to screening the impacts of outdoor operations.

5. Building Design/Architecture Standards

Additions or expansions to nonresidential buildings in the DX, DR, and DP zoning districts shall require compliance with the building design standards for the opportunity districts where located.