

Chapter 22.10. Nonconformities

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22.10.01. General Provisions

A. **Purpose.** The purpose of this Chapter is to:

1. Bring as many nonconforming lots, buildings, structures, site elements, signs, and uses into conformance or closer to conformance as feasible or reasonably practical to further City goals and promote safety and consistency with new development standards,
2. Recognize the existing investments made and interests of property owners in continuing to use nonconforming lots, buildings, structures, site elements, uses, and signs, and
3. Limit the expansion, restoration, reconstruction, or replacement of nonconforming lots, buildings, structures, site elements, uses, or signs, except as specifically authorized by this Code, to ensure consistency with the overall purpose of this Code and public interest.

B. **Applicability.**

1. The standards of this Chapter apply to nonconforming lots, buildings, structures, site features, uses, and/or signs created by initial adoption of, or amendments to, this Code or due to existing conditions of areas brought into the City's jurisdiction, unless otherwise expressly provided in this Code.
2. The standards of this Chapter do not apply to nonconforming lots, buildings, structures, development improvements, uses, and/or signs that were not legally established pursuant to the laws and regulations that were in effect at that time; those situations are deemed illegal and not protected under the allowances of this Chapter.
3. The standards of this Chapter do not prohibit the exercise of statutory or common law vested rights while the approval is valid.

4. Maintenance and Minor Repair.

- a. Nothing in this Chapter shall be construed to prevent or prohibit the routine maintenance and minor repair of nonconforming lots, nonconforming buildings or structures, buildings or structures containing nonconforming uses, nonconforming site elements, or nonconforming signs in conformance with all other applicable Chapters of the City of Waukesha Municipal Code, Wisconsin Statutes, and federal regulations. This includes strengthening or restoring to a safe condition any building, structure, or part thereof declared to be unsafe by any public official charged with protecting the public safety, health and welfare pursuant to orders of such official or modifications necessary for ADA compliance.
- b. Nonconforming lots, buildings, site elements, signs, and uses in floodplain areas shall comply with all applicable requirements of Chapter 24 (Floodplain Zoning) of the Municipal Code.

5. Change in Ownership or Tenancy. A change of ownership or tenancy shall not, in and of itself, affect the nonconformity status of a lot, building, structure, site elements, use, or sign.

6. Nonconformity Due to Right-of-Way Expansion Through Eminent Domain. A lot, building, structure, site elements or signs made nonconforming due to right-of-way expansion as a result of eminent domain shall be exempt from the standards of this Chapter.

22.10.02. Nonconforming Lots

A. Applicability.

1. The standards of this Section apply to nonconforming lots. A nonconforming lot is a lot of record that does not meet the lot standards of Chapter ##### and the lot area and lot width requirements for Chapter ##### in which it is located.
2. The standards of this Section shall not apply to a nonconforming lot located in a subdivision that has a valid subdivision or final plat approval but has not yet been recorded.

B. Regulations.

1. A nonconforming lot may be used for allowable uses or structures provided that all applicable dimensional and use requirements for the district in which the lot is located are met.
2. A conforming building or structure on a nonconforming lot may undergo a change of use, so long as any redevelopment activity or required improvements associated with the new use do not create any new or expanded nonconformities, and the change of use otherwise complies with the regulations of this Code.

- C. **Discontinuance.** If a nonconforming lot is consolidated with an adjoining lot to create a single conforming lot or to reduce the extent of the nonconformity, it may not later be subdivided in a nonconforming manner.

22.10.03. Nonconforming Buildings and Structures

- D. **Applicability.** The standards of this Section shall apply to nonconforming buildings and structures. A nonconforming building or structure is an existing, legally established building or structure that does not comply with the dimensional, design, locational, or other standards of this Code.

E. **Regulations.**

1. **Principal Buildings and Structures.**

- a. A nonconforming principal building or structure shall not be moved or relocated over any distance unless it is listed in the Local, State or National Registries of Historic Places, or it is moved in a manner that complies with the regulations of this Code.
- b. A nonconforming building or structure shall not be enlarged or expanded in any way that increases or adds to the nonconformity.
- c. A nonconforming building or structure may be modified only if the modification does not increase any existing dimensional nonconformity. Modifications that increase a dimensional nonconformity shall require compliance with this Code.
- d. The use of a nonconforming building or structure may be changed to another use, provided the proposed use complies with all applicable regulations of this Code.

2. **Accessory Buildings and Structures.**

- a. No nonconforming accessory building or structure shall become or replace any terminated principal nonconforming building or structure.

F. **Damage or Destruction.**

1. A nonconforming building or structure, or nonconforming portion of a building or structure, that is damaged or destroyed on or after March 2, 2006, by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation may not be restored or replaced unless restored or replaced at the size, location, and use that it had immediately before the damage or destruction occurred, in accordance with the provisions of Wis. Stats. 62.23(7)(h), (hb), and (hc), which govern the restoration of nonconforming buildings and structures.
2. The above requirement does not apply to primary and accessory buildings or structures listed on the National or State Registers of Historic Places. Structures meeting these classifications may be reconstructed if such reconstruction does not increase the nonconformity of the original structure, except that the size may be larger if necessary for the building or structure to comply with applicable state or federal requirements.

22.10.04. Nonconforming Site Elements

- A. **Applicability.** The standards of this Section shall apply to nonconforming site elements. A nonconforming site element is any fence, wall, retaining wall, berm, screening, vision triangle obstruction, utility, buffering, landscaping, parking, loading, driveway, bicycle parking, pedestrian infrastructure, or outdoor lighting that does not comply with the standards of this Code.
- B. **Regulations.** When a nonconforming site element is modified, expanded, or redeveloped, only the portion affected by the modification shall be brought into compliance, unless the modification affects more than 50 percent of the area of the site element, in which case the entire site element shall be brought into compliance with this Code.
- a. **Compliance.** Where full compliance with the requirements of this Section is precluded by a lack of sufficient developable area due to the size of the lot; the layout of existing development; or the presence of significant wetlands, floodplains, watercourses, or other significant environmental constraints on development the applicant shall comply with the requirements of this Section to the maximum extent practicable, as determined by the Community Development Director or their designee is repaired or altered, the costs of which exceed 50 percent of the sign's current replacement cost, the sign's legal non-conforming status terminates, and the sign shall be brought into compliance with Chapter #####.
 - a. Replacement of sign copy, which involves changing the text or graphic on the sign without altering the sign's structure, dimensions, or lighting, shall not be considered an alteration, and the sign shall retain its nonconforming status.
 - 2. **Redevelopment.** As a part of major redevelopment, nonconforming signs shall be brought into compliance with #####.
 - 3. **Change of Use.** As a part of a change of use, nonconforming signs shall be brought into compliance with #####.
 - 4. **Discontinuance.** If the use of a nonconforming sign is discontinued for a period of 12 months or more, its nonconforming status terminates, and the sign shall be removed or brought into compliance with Chapter #####.
- B. **Damage or Destruction.**
- 1. A nonconforming sign that is damaged by less than 50 percent of its current replacement value or cost may be reconstructed if:
 - a. The applicant provides a written damage assessment and repair cost estimate prepared by #####.
 - b. The documentation is submitted as part of the Sign Permit application;
 - c. A Sign Permit is obtained within 90 days of the damage; and

- d. The reconstructed sign does not increase any aspect of the existing nonconformity.
2. If a nonconforming sign is damaged by 50 percent or more of its current replacement value or cost, such sign may be reconstructed only in compliance with the regulations of this Code. Prior to reconstruction, the damaged sign shall be removed.

22.10.05. Nonconforming Uses

- A. **Applicability.** The standards of this Section shall apply to nonconforming uses. A nonconforming use is any use that does not comply with the standards of this Code.
- B. **Regulations.**
 1. **Continuation.**
 - a. No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area or volume of a development site, building, or structure than was occupied by such use at the time it became nonconforming.
 - b. No building or structure devoted to a nonconforming use shall be enlarged, extended, or moved unless such building or structure is thereafter devoted to a conforming use.
 - c. Accessory uses to nonconforming uses shall be considered extensions, expansions, or enlargements of nonconforming uses.
 - d. If a nonconforming use is discontinued for more than a 12-month period, subsequent use of the development site, building, or structure previously devoted to such use shall not be used for any nonconforming uses and shall thereafter be devoted to conforming uses only, including accessory uses.
 2. **Change of Use.**
 - a. **Principal Uses.**
 - i. As a part of change of use, the principal use of a tenant space or building shall comply with the allowances established in Table ##### (Principal Uses).
 - ii. Should the change of use occur on a multi-use site, nonconforming uses of currently occupied tenant spaces and buildings may continue.
 - b. **Accessory Uses.** As a part of change of use, nonconforming accessory uses shall be discontinued.
 3. **Damage or Destruction.** If a building or structure (whether conforming or nonconforming) containing a nonconforming use is damaged to an extent less than 50 percent of its current replacement value or cost, the structure may be restored or replaced and used as before, provided a Building Permit for the reconstruction is secured within 12 months after such damage. Restoration or replacement shall occur at the same size, location, and use as before

the damage or destruction, in accordance with Wis. Stats. 62.23(7)(h), (hb), and (hc), which govern the restoration of nonconforming uses.

- a. Nonconforming uses within damaged landmarked properties may not be extended or intensified through the repair or reuse of the damaged structure unless approved as a Conditional Use Permit by the Plan Commission.
 - i. The applicant must receive approval of the repairs to the damaged property pursuant to Chapter 2.65 either prior to the application to the Plan Commission or as a condition of the grant of the Conditional Use.
 - ii. These provisions shall only apply to individual landmarked properties and properties within a landmarked district that are pivotal or contributing to them.
- C. **Floodland Nonconforming Uses.** Nonconforming uses within floodplain areas shall be subject to the provisions outlined in Chapter 24 (Floodplain Zoning) of the City of Waukesha Municipal Code.