

Section 22.10. Nonconformities

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22.10.01. General Provisions

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

1. Continue the use of feasible or reasonably practical nonconforming lots, buildings, structures, site elements, signs, and uses 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 Chapter, to ensure consistency with the overall purpose of this Chapter and public interest.

B. **Applicability.**

1. The standards of this Section apply to nonconforming lots, buildings, structures, site features, uses, and/or signs created by initial adoption of, or amendments to, this Chapter or due to existing conditions of areas brought into the City's jurisdiction, unless otherwise expressly provided in this Chapter.
2. The standards of this Section 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 Section.
3. The standards of this Section 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 Section 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 Sections 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 Waukesha Municipal Code.

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

6. **Nonconformity Due to Right-of-Way Expansion Through Eminent Domain.** Any nonconformity of a lot, building, structure, site element, sign, or use created due to right-of-way expansion through eminent domain shall be considered a legal nonconformity.

22.10.02. Nonconforming Lots

A. Applicability.

1. The standards of this Subsection apply to nonconforming lots. A nonconforming lot is a lot of record that does not meet the lot standards of the zoning district in which it is located, including the lot area and lot width requirements applicable to that district.
2. Any lot for which a Preliminary Subdivision Plat, Final Subdivision Plat, or Minor Subdivision has been approved by the Council prior to (date of Chapter adoption #####), but has not yet been recorded, shall not be considered nonconforming upon recordation.

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 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 Chapter.
- 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

- A. **Applicability.** The standards of this Subsection 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 Chapter.
- B. **Regulations.**
1. **Principal Buildings and Structures.**
 - a. If a nonconforming principal building or structure is moved or relocated, it shall meet all applicable regulations of this Chapter.
 - 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.
 - 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 Chapter.
 2. **Accessory Buildings and Structures.**
 - a. No nonconforming accessory building or structure shall become or replace any terminated principal nonconforming building or structure.
- C. **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, except that the size may be larger if necessary for the building or structure to comply with applicable state or federal requirements.
 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 Subsection shall apply to nonconforming site elements. A nonconforming site element is any fence, wall, retaining wall, berm, screening, vision triangle obstruction, buffering, landscaping, parking, loading, driveway, bicycle parking, pedestrian infrastructure, or outdoor lighting that does not comply with the standards of this Chapter.
- 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 Chapter.
- C. **Compliance.** Where full compliance with the requirements of this Subsection is not feasible due to the size or configuration of the lot; the layout of existing development; or the presence of wetlands, floodplains, watercourses, or other significant environmental constraints, the site element shall comply with the requirements of this Subsection to the maximum extent practicable, as determined by the Plan Commission.
- D. **Routine Maintenance and Minor Repair.** Routine maintenance and minor repair of nonconforming site elements that do not increase the degree of nonconformity are permitted.

22.10.05. Nonconforming Signs

- A. **Applicability.** The standards of this Subsection apply to nonconforming signs.
- B. **Continuation and Alteration.**
1. Replacement of sign copy, which involves changing text or graphics without altering the structure, dimensions, or lighting, shall not be considered an alteration, and the sign shall retain its nonconforming status.
 2. Nonconforming signs shall not be enlarged, expanded, or modified in a manner that increases the degree of nonconformity.
- C. **Redevelopment.** As part of a major redevelopment, nonconforming signs shall be brought into compliance with Section 22.09.
- D. **Discontinuance.** If the use of a nonconforming sign is discontinued for 12 consecutive months, its nonconforming status terminates, and the sign shall be removed or brought into compliance with Section 22.09.
- E. **Damage or Destruction.**
1. If an existing sign is damaged to less than 50 percent of the replacement value of the sign structure, reconstruction is permitted, subject to the following:
 - a. Damage assessment, and
 - b. No increase in nonconformity.

2. If an existing sign is damaged by 50 percent or more, the sign shall be removed or reconstructed in compliance with this Chapter.

22.10.06. Nonconforming Uses

- A. **Applicability.** The standards of this Subsection shall apply to nonconforming uses. A nonconforming use is any use that does not comply with the standards of this Chapter.
- 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 a period of 12 consecutive months, 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 part of a change of use, the principal use of a tenant space or building shall comply with the allowances established in Table 22.03.03 (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 in accordance with the provisions in Subsection 22.10.06(B)(1) above.
 - b. **Accessory Uses.** As a part of change of use, nonconforming accessory uses shall be discontinued.
- C. **Floodplain Nonconforming Uses.** Nonconforming uses within floodplain areas shall be subject to the provisions outlined in Chapter 24 (Floodplain Zoning) of the Waukesha Municipal Code.