

## **Article 14. Nonconformities**

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### **Section 14.01 General**

#### **14.01.01 Scope**

The regulations of this article govern uses, structures, and lots that came into existence legally but that do not conform to one or more requirements of this zoning ordinance. These are referred to as “nonconformities.” Nonconformities are legal situations and have legal status under this zoning ordinance.

#### **14.01.02 General Policy**

To encourage development consistent with this zoning ordinance and provide landowners with reasonable use of their land, it is the general policy of the city to allow uses, structures, and lots that came into existence legally prior to adoption of the city’s first zoning ordinance or in conformance with then-applicable requirements to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible. While allowing such nonconformities to remain, it is not necessarily the policy of the city to encourage their long-term survival.

#### **14.01.03 Purpose**

The regulations of this article are intended to:

- A. recognize the interests of landowners in continuing to use their property for purposes and activities that were legally established;
- B. allow ongoing maintenance and upkeep of nonconforming situations until such time as the nonconforming situation is abandoned; and
- C. prohibit the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

#### **14.01.04 Authority to Continue**

Any nonconformity that exists before August 15, 2006 or that becomes nonconforming upon the adoption of any amendment to this zoning

ordinance may be continued in accordance with the provisions of this article.

**14.01.05 Determination of Nonconformity Status**

The burden of proving that a nonconformity exists rests with the subject landowner.

**14.01.06 Repairs and Maintenance**

- A. Incidental repairs and normal maintenance necessary to keep a nonconforming structure in sound condition are permitted unless such repairs are otherwise expressly prohibited by this zoning ordinance.
- B. Nothing in this article will 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.

**14.01.07 Change of Tenancy or Ownership**

Nonconformity status runs with the land and is not affected by changes of tenancy, ownership, or management.

**Section 14.02 Nonconforming Lots of Record**

**14.02.01 Description**

A “nonconforming lot of record” is a legally created lot, shown on a plat or survey map recorded in the office of the Kenton County Clerk, that complied with applicable lot area and lot width standards at the time of the lot’s creation, but does not comply with applicable lot area and lot width standards of the zone in which it is now located.

**14.02.02 Single Lots of Record**

Any single nonconforming lot of record may be used for any use or building type allowed by the zone in which it is located, whether or not the subject lot complies with minimum lot area and/or lot width standards, provided that:

- A. the lot is located on an existing and improved public street;
- B. the lot is in separate ownership from all adjacent and contiguous parcels, thereby precluding acquisition of the additional land area needed to comply with lot size standards; and

- C. development on the lot complies with setback, height and other applicable standards of this zoning ordinance (other than lot area and/or width).

#### **14.02.03 Two or More Contiguous Lots of Record**

- A. If 2 or more lots of record or combinations of nonconforming lots of record or portions of lots of record with continuous frontage on the same street are in single ownership, the lots involved are to be considered an undivided parcel.
- B. No portion of such an undivided parcel that does not meet the applicable lot area and/or width standards of the zone in which it is located may be conveyed, transferred, subdivided, or used in any manner.
- C. Any division of the parcel must create lots that comply with minimum lot area and width standards of the zone in which it is located.

### **Section 14.03 Variances Authorized**

The Board of Adjustment is authorized to approve variances for the construction of structures on nonconforming lots of record or variances from the requirements of this Section, in accordance with the variance procedures of Section 12.08.

### **Section 14.04 Nonconforming Structures**

#### **14.04.01 Description**

A nonconforming structure is any building or structure, other than a sign, that was legally established but no longer complies with the lot and building standards of this zoning ordinance. Nonconforming structures may remain, subject to the regulations of this section.

#### **14.04.02 Alterations and Expansions**

Structural alterations, including enlargements and expansions, are permitted if the proposed structural alteration complies with all applicable lot and building standards. For example, a building with a nonconforming front setback may be expanded to the rear as long as such rear expansion complies with applicable rear setback standards and all other applicable lot and building standards.

#### **14.04.03 Use**

A nonconforming structure may be used for any use allowed in the zone in which it is located.

#### **14.04.04 Moving**

A nonconforming structure may be moved in whole or in part to another location on the subject parcel only if the movement or relocation eliminates the nonconformity.

#### **14.04.05 Loss of Nonconforming Status**

##### **A. Abandonment**

Once a nonconforming structure is abandoned or made to conform, its nonconforming status is lost and the structure, or any replacement, must comply with the regulations of the zone in which it is located. A nonconforming structure will be considered abandoned when any of the following occurs:

1. the intent of the owner to discontinue all uses in the structure is apparent;
2. no use has been maintained in the structure for a period of 12 months or more;
3. a demolition permit has been applied for; or
4. all equipment and furnishings have been removed from the premises and have not been replaced by similar or other equipment and furnishings within 180 days, unless other facts show intention to resume use of the structure.

##### **B. Intentional Damage or Destruction**

When a nonconforming structure is intentionally destroyed or damaged by causes within the control of the property owner or tenant, all nonconforming structure rights are lost and re-construction of the nonconforming structure is prohibited.

##### **C. Accidental Damage or Destruction**

1. When a nonconforming structure is accidentally destroyed or damaged by causes that are not within the control of the owner, to the extent of more than 50 percent of its fair market value, the structure may not be restored except in conformity with the regulations of the zone in which it is located.
2. When a nonconforming structure is accidentally destroyed or damaged by causes that are not within the control of the property owner or tenant, to the extent of 50 percent or less of its fair market value, the structure and use may be restored or repaired provided that no new nonconformities

are created and the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 12 months of the date of occurrence of such damage, and once issued, construction must be diligently pursued.

## **Section 14.05 Nonconforming Uses**

### **14.05.01 Description**

A nonconforming use is a land use that was lawfully established in accordance with zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zone in which it is now located.

### **14.05.02 Continuance of Use**

The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it, may be continued although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

### **14.05.03 Change of Use**

The Board of Adjustment is authorized to permit a change from one nonconforming use to another if the new nonconforming use is in the same or a more restrictive zoning classification as the previous nonconforming use, subject to the following criteria:

- A. The Board of Adjustment can permit the substitution of one nonconforming use for another nonconforming use only after holding a public hearing in accordance with the conditional-use procedure contained in Section 12.07.
- B. In granting a substitution of nonconforming uses, the Board of Adjustment may attach conditions as it deems necessary and proper.
- C. If the nonconforming use substitution has not occurred within one year after the date of approval, the approval will lapse and be of no further effect.
- D. The change of a nonconforming use, as may be granted by the Board of Adjustment, applies to the property for which it is granted and not to the individual who applied, and therefore, cannot be transferred by the applicant to a different property.

#### **14.05.04 Enlargements and Expansions**

- A. Except in accordance with subsection 14.05.04, B., the Board of Adjustment cannot allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulations which makes it nonconforming was adopted.
- B. However, the Board of Adjustment may grant approval, effective to maintain nonconforming use status, for enlargements or extensions of the facilities of a nonconforming use that consists of presenting of a major public attraction(s) (e.g. sports events), which meets the following criteria:
  - 1. It has been presented at the same site over a period of years;
  - 2. It has such attributes and public acceptance that it has attained international prestige and has achieved the status of a public tradition;
  - 3. It contributes substantially to the economy of the community and state;
  - 4. With respect to the prestige and status of the attraction or event, the site is an essential element, and the enlargement or extension was or is designed to meet the increasing demands of participants and patrons.
- C. The Board of Adjustment can permit the enlargement or extension of a nonconforming use in accordance with this subsection, only after holding a public hearing in accordance with the conditional-use procedure contained in Section 12.07.
- D. In approving enlargement or extension of a nonconforming use, the Board of Adjustment may attach conditions as it deems necessary and proper.

#### **14.05.05 Nonconforming Use Status Deemed**

Pursuant to KRS 100.253(3), any use that has existed illegally and does not conform to the provisions of the city's zoning regulations, has been in continuous existence for a period of 10 years, and has not been the subject of any adverse order or other adverse action by the administrative official during this period is deemed a nonconforming use. Thereafter, the use will be governed by the provisions of this article.

### 14.05.06 Loss of Nonconforming Status

#### A. Discontinuance

##### 1. Uses within Buildings

If a nonconforming use within a building is discontinued for 12 consecutive months or for 24 months during any four-year period, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited. (As used herein, the word “discontinued” means that one owner or responsible party for the use of the property cannot demonstrate that he or she had clear intent to continue using the property for the nonconforming purpose and that he or she had augmented that intent by making every reasonable effort to continue to have the property so used.) Intent may be demonstrated by providing substantive documentation or evidence that:

- (a) The owner has made reasonable continuous effort to have the property rented or sold for the nonconforming purpose;
- (b) The property has been vacant as a result of legal proceedings; or
- (c) The owner, by reason of age or infirmity, was unable to manage or cope with the responsibility of a tenant.

##### 2. Use of Open Land

If a nonconforming use of open land is discontinued for six continuous months or more, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited. This section does not apply to periods of inactivity for nonconforming agriculture uses.

#### B. Change to Conforming Use

If a nonconforming use is changed to a conforming use, no matter how short the period of time, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

- C. **Intentional Damage or Destruction**  
When a structure containing a nonconforming use is intentionally destroyed or damaged by causes within the control of the property owner or tenant, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.
- D. **Accidental Damage or Destruction**
1. When a structure containing a nonconforming use is accidentally destroyed or damaged by causes that are not within the control of the owner, to the extent of more than 50 percent of its fair market value, the use may not be restored except in conformity with the regulations of the zone in which it is located.
  2. When a structure containing a nonconforming use is accidentally destroyed or damaged by causes that are not within the control of the property owner or tenant, to the extent of 50 percent or less of its fair market value, the structure and use may be restored or repaired provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 12 months of the date of occurrence of such damage, and once issued, construction must be diligently pursued.
- E. **Reuse of Historic Commercial Structures**  
To encourage the reuse of historic commercial structures, the Board of Adjustment is authorized to approve continuance or re-establishment of the last legal use of historic commercial structures regardless of the period of discontinuance or vacancy. In approving such continuance or re-establishment, the Board of Adjustment must follow the conditional-use procedures of Section 12.07.