

Chapter 134. Zoning

ARTICLE 7. NONCONFORMITIES

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134-7. NONCONFORMITIES

General

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134-7.1 General

7.1.1 INTENT

Nonconformities are created when the zoning regulations that apply to a particular property are changed to no longer allow uses, structures or other development features that have already been lawfully established. The nonconformity regulations of this article are intended to explain the effect of this nonconforming status and help differentiate nonconformities, which have legal status under this zoning ordinance, from zoning violations, which are illegal and subject to penalties and enforcement action. The regulations of this article are also intended to:

- A. Recognize the interests of landowners in continuing to use their property for uses that were lawfully established;
- B. Promote maintenance, reuse and rehabilitation of existing buildings; and
- C. Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties.

7.1.2 AUTHORITY TO CONTINUE

Any nonconformity that existed on the effective date specified in section [134-1.3 of this chapter](#) or any lot, structure use or situation that becomes nonconforming upon adoption of any amendment to this zoning ordinance or any amendment of the zoning map after the effective date specified in section [134-1.3 of this chapter](#) may be continued, subject to the regulations of this article.

7.1.3 DETERMINATION OF NONCONFORMING STATUS

- A. The burden of proving that a nonconformity exists, as opposed to a zoning ordinance violation, rests entirely with the subject property owner.
- B. The community development director is authorized to determine whether reliable evidence of nonconforming status has been provided by the subject property owner.
- C. Building permits, lawfully recorded plats, lawfully recorded instruments of conveyance, aerial photography owned by a governmental agency and other official government records that indicate lawful establishment of the use may constitute conclusive evidence of nonconforming status. If such forms of evidence are not available, the community development director is authorized to consider whether other forms of evidence provided

by the subject owner are reliable and adequate to document nonconforming status. Common examples of evidence that may be determined to be reliable and adequate include:

1. Professional registrations or business licenses;
 2. Rent records;
 3. Advertisements in dated publications;
 4. Listings in telephone or business directories; and
 5. Notarized affidavits affirming the date of lawful establishment of the use or structure.
- D. The community development director's determination of nonconforming status may be appealed in accordance with section [134-6.9 of this chapter](#).

7.1.4 REPAIRS AND MAINTENANCE

- A. Repairs and normal maintenance necessary to keep a nonconformity in sound condition are permitted unless the work increases the extent of the nonconformity or is otherwise expressly prohibited by this zoning ordinance.
- B. If a nonconforming structure or a structure occupied by a nonconforming use becomes unsafe or dangerous, or when a structure is found unfit for human occupancy or otherwise deemed to be a public nuisance, it may not thereafter be used, restored, or repaired, or rebuilt except in conformity with the provisions of the district in which it is located.
- C. Nothing in this section is intended to prevent nonconformities from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized public official, or to prevent re-establishment of a nonconforming household use in a structure which has been repaired or constructed so as to not be unsafe, dangerous, or found unfit for human occupation, and which does not constitute a public nuisance, when allowed by section 134-7.2.5 of this article.

7.1.5 CHANGE OF TENANCY OR OWNERSHIP

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

134-7.2 Nonconforming Uses

7.2.1 DESCRIPTION

A nonconforming use is a use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the district in which the use is located. Lawfully established uses that do not comply with separation distance requirements are also deemed to be nonconforming uses.

7.2.2 CHANGE OF USE

- A. Any change of use is subject to design review and compliance pursuant to chapter 135 of this code.
- B. A nonconforming use in any district may be changed only to a use that is allowed in the subject district. Once changed to a conforming use, a nonconforming use may not be re-established.
- C. A nonconforming use located in a district other than an N district, may also be changed to another nonconforming use only if approved in accordance with the Type 1 zoning exception procedures of section [134-6.5 of this chapter](#). In order to approve an administrative exception for a nonconforming use substitution, the community development director must determine that the proposed use substitution will not result in any increase in adverse impacts on the surrounding area when compared to the previous nonconforming use of the property. In making such a determination, the community development director must consider all of the following factors, as applicable:
 1. Traffic to and from the site;
 2. The amount of parking required;
 3. Hours of operation,
 4. Outdoor display, storage and work activities; and
 5. Other factors likely to have an effect on the surrounding area.

7.2.3 EXPANSION

Unless otherwise expressly stated, nonconforming uses may not be expanded or extended to occupy a greater area than was occupied at the time the use became nonconforming unless the expansion reduces or eliminates the nonconformity. A nonconforming use of a portion of a building may be expanded or extended into the remaining portions of the building if the community development director determines that the area of the building in which the expansion is proposed was manifestly arranged and designed for the use. No such use shall be extended to occupy any land outside

any such structure.

7.2.4 MOVEMENT

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

7.2.5 DAMAGE OR DESTRUCTION

- A. If a structure containing a nonconforming one-household or two-household use, which household use was a conforming use pursuant to the city of Des Moines' zoning ordinance and zoning map in effect on December 14, 2019, is damaged or destroyed to any extent and by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming one-household or two-household use may be re-established to the extent that such use existed before the damage, provided that a building permit application to allow the re-establishment is filed with the community development department within six months of the damage or date of inspection finding a public nuisance.
- B. If a structure containing a nonconforming use, other than a nonconforming one-household or two-household use which was a conforming use pursuant to the city of Des Moines' zoning ordinance and zoning map in effect on December 14, 2019, is damaged or destroyed to the extent of 50% or more of its replacement cost at time of damage or destruction, by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming use may not be re-established. If the structure is damaged or destroyed to the extent of less than 50% of its replacement cost at the time of damage or destruction by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming use may be re-established to the extent that such use existed before the damage, provided that a building permit application to allow the re-establishment is filed with the community development department within six months of the damage.
- C. This section does not apply to properties designated a historic district or landmark under chapter 58 of this code or under the National Register of Historic Places.

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7.2.6 LOSS OF NONCONFORMING STATUS

- A. If a nonconforming use is changed to a conforming use, no matter how short the period of time, the nonconforming use is deemed abandoned, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.
- B. If a nonconforming use of a structure is abandoned, the use may not be re-established. A nonconforming use is deemed to have been abandoned if during the time that the use is not in place the subject property owner makes any change to the property inconsistent with the resumption of the use. Examples of changes that are inconsistent with the resumption of a use expressly include: combining two or more household units under one water, gas or electric meter or creating an opening between two household units.
- C. If a nonconforming use in an N district is discontinued for more than one year for any reason whatsoever, the nonconforming use is deemed abandoned and may not be re-established. If a nonconforming use in any district other than an N district is discontinued for more than six months for any reason whatsoever, the nonconforming use is deemed abandoned and may not be re-established.

7.2.7 USE OF OPEN LAND

- A. Nonconforming uses of open land are land uses and activities that meet the definition of a nonconforming use but that include structures that are merely accessory or incidental to the principal use and in the aggregate do not cover more than 10% of the lot. Common examples include storage yards, construction debris sites, vehicle sales lots, vehicle impound yards, auto wrecking, junkyards, and similar open-air uses. Nonconforming uses of open land are subject to the nonconforming use regulations of section [134-6.2 of this article](#), except as modified by the specific regulations of this subsection [134-7.2.7 of this article](#).
- B. A nonconforming use of open land may not be enlarged, increased or extended to occupy a greater area of land than was occupied at the time the use became nonconforming.
- C. If a nonconforming use of open land ceases for any reason for a period of more than six months, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

7.2.8 USES IN FLOODPLAIN AND FLOODWAY

Nonconforming uses, or existing structures in F districts that are occupied in whole or in part by a nonconforming use, may not be enlarged, extended, reconstructed or structurally altered, unless the use is changed to a use permitted in the F district. Such uses or structures may not be moved or relocated unless the movement or relocation eliminates the nonconformity.

7.2.9 NONCONFORMING USE WITHIN MANUFACTURED HOME COMMUNITY OR MOBILE HOME PARK

- A. This section applies to replacement of a pre-existing manufactured, modular, or mobile home, or a pre-existing site-built household unit, within a manufactured home community or a mobile home park.
- B. Unless subsection D of this section applies, a pre-existing manufactured, modular, or mobile home may be replaced with another manufactured, modular, or mobile home, containing no more than the original number of dwelling units, within a manufactured home community or a mobile home park, and the property owner may continue the lawful nonconforming use that had existed relating to the pre-existing home.
- C. Unless subsection D of this section applies, a pre-existing site-built household unit (dwelling) may be replaced with a manufactured, modular, or mobile home or site-built household unit (dwelling) within a manufactured home community or a mobile home park, and the property owner may continue the lawful nonconforming use that had existed relating to the pre-existing home.
- D. A pre-existing manufactured, modular, or mobile home or site-built household unit (dwelling) may not be replaced, and the lawful nonconforming use that had existed relating to the pre-existing home may not be continued, as set forth in this section if any of the following conditions apply:
 1. A discontinuance of the pre-existing use is necessary for the safety of life or property;
 2. The nonconforming use of the pre-existing manufactured, modular, or mobile home, or pre-existing site-built household unit, has been discontinued for at least one year for any reason whatsoever, unless such discontinuance is caused by circumstances outside the control of the property owner;

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3. The replacement results in the overall nature and character of the present use being substantially or entirely different from the original lawful pre-existing nonconforming use; or
4. The replacement results in an obstruction to a shared driveway or shared sidewalk providing vehicular or pedestrian access to other homes and uses unless the property owner makes modifications to such shared driveway or sidewalk that extinguishes such obstruction or the effects of such obstruction.

If any of said conditions apply, sections 134-7.1-5 and 134-7.2.1-8 of this article are applicable to the nonconforming use.

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134-7.3 Nonconforming Signs

A nonconforming sign is a sign that was lawfully established on commercial corridors but that no longer complies with applicable zoning ordinance regulations because of the adoption or amendment of regulations after the sign was established.

7.3.1 USE

Nonconforming signs may continue subject to the

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regulations of this section.

7.3.2 MOVEMENT

- A. A nonconforming sign may be moved in whole to another location on the same lot only if the movement or relocation eliminates the nonconformity.
- B. A nonconforming general advertising sign may be moved in whole to another lot only if the placement on the new lot conforms with this chapter and subject to credit requirements of section [134-5.8.9 of this chapter](#).

7.3.3 ALTERATION, ENLARGEMENT OR EXPANSION

Nonconforming signs may not be enlarged or altered in a way which increases their nonconformity.

7.3.4 EARNED CREDIT SYSTEM

- A. The owner of a nonconforming general advertising sign may apply to the community development director for an earned credit for the removal of the nonconforming sign. The application may be approved and an earned credit allowed for the removal of the non-conforming general advertising sign only if the following conditions are met:
 1. The sign and the entire supporting structure above grade are removed; and,
 2. The parcel from which the sign was removed may not again be used for the placement of a general advertising sign because of any non-compliance with this chapter; or the recording of a restrictive covenant in a form approved by the city legal department that prohibits the use of the parcel for general advertising.
- B. The amount of approved credits earned for each removed nonconforming general advertising sign face, excluding supporting structure, is limited, as follows:
 1. Two credits are earned for each electronic or multi-vision display sign face that was at least 600 square feet in area;
 2. One credit is earned for each electronic or multi-vision display sign face that was at least 300 square feet in area and less than 600 square feet in area;
 3. Two credits are earned for each non-electronic or non-multi-vision display (static) sign face that was at least 600 square feet in area;

- 4. One credit is earned for each non-electronic or non-multi-vision display (static) sign face that was at least 300 square feet in area and less than 600 square feet in area.

7.3.5 USE OF EARNED CREDITS FOR CONVERSION TO ELECTRONIC DISPLAY

An applicant for a permit to convert a nonconforming non-electronic or non-multi-vision display (static) general advertising sign on a lot with frontage on a major commercial corridor to an electronic or multi-vision display shall relinquish previously earned credits in the amounts set forth in [Table 7.3-1](#) of this article for each sign face converted to an electronic display or multi-vision display. The total area utilized for an electronic display or multi-vision display on each face of the sign may be no larger than the area of the previously existing sign face.

TABLE 7.3-1. USE OF EARNED CREDITS FOR CONVERSION TO ELECTRONIC DISPLAY

Area of Electronic Display on Converted Sign Structure	Earned Credits to be Relinquished for Converted Sign Face
A digital or multi-vision display sign face at least 300 square feet and less than 450 square feet	2.0 conversion credits
A digital or multi-vision display sign face at least 450 square feet and less than 672 square feet	4.0 conversion credit

7.3.6 DAMAGE OR DESTRUCTION

- A. If a nonconforming sign is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to the extent of 50% or more of its replacement cost at the time of damage or destruction, exclusive of the foundation and supporting elements below the bottom of the sign, the nonconforming sign must be removed.
- B. If a nonconforming sign is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to an extent of less than 50% of its replacement cost at the time of the damage or destruction, exclusive of the foundation and supporting elements below the bottom of the sign, the nonconforming sign may be re-established to the extent it existed before the damage, provided that a building permit application to re-establish the sign is filed within six months of the date of damage or destruction.
- C. For purposes of this subsection as it applies to all signs, other than general advertising signs containing

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electronic or multi-vision display sign faces, the phrase "damaged or destroyed" includes removal of the sign face for repair, alteration, replacement or upgrade.

- D. For purposes of this subsection as it applies to general advertising signs containing electronic or multi-vision display sign faces, the phrase "damaged or destroyed" does not include removal of the electronic or multi-vision display sign face for repair or replacement if the sign structure and the sign face type (electronic or multi-vision display) are neither modified nor altered and if the size of the repaired or replacement electronic or multi-vision sign face remains the same as the size of the previously existing electronic or multi-vision sign face.

7.3.7 LOSS OF NONCONFORMING STATUS

- A. If the use of the property containing a nonconforming pole sign or general advertising sign is discontinued for a period of more than six months, or if a new or amended site plan or alternate plan documentation is required by a change in the use or building expansion on the premises, the pole sign or general advertising sign loses its nonconforming status and must be removed immediately.
- B. If a pole sign, other similar sign, or general advertising sign is not used to display a message for a period of six months or more, the sign loses its non-conforming status and must be removed immediately.
- C. When removal of a sign is required, the entire sign structure, including the cabinet, mounting structure, base or supports, must be removed. Free-standing and monument signs must be removed to a depth of at least six inches below grade.

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