

..Title

Amending Chapters 60 and 62 of the Legislative Code pertaining to nonconforming lots, uses, and structures.

..Body

STATEMENT OF FINDINGS BY THE COUNCIL

WHEREAS, the City of Saint Paul has established zoning definitions and regulations for nonconforming lots, uses, and structures in Chapters 60 and 62 of the Legislative Code, and for nonconforming signs in Chapter 64; and

WHEREAS, amendments to Minnesota Statutes, Section 462.357, subdivision 1e, in 2004 and 2005, changed the laws for replacement and restoration of nonconforming uses; and

WHEREAS, the Planning Commission, in Resolution 10-43, initiated a zoning study to amend Saint Paul's nonconforming use regulations in order to achieve statutory compliance, clarify and update language, and simplify existing regulation where possible; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on a draft of the nonconforming use text amendments on April 20, 2012, and revised the proposed amendments based on the oral and written testimony received at the public hearing, the recommendations of staff, and extensive discussion; and

WHEREAS, a public hearing before the City Council having been conducted on October 17 and November 7, 2012, at which all interested parties were given an opportunity to be heard, the Council having considered all the facts and recommendations concerning the proposed zoning amendments, pursuant to the authority granted by and in accordance with the procedures set forth in Minnesota Statutes Sec. 462.357;

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

SECTION 1

Section 60.215. - N. of the Saint Paul Legislative Code is hereby amended to read as follows:

~~*Nonconforming building.* A lawful building existing on the effective date of adoption (October 24, 1975) or amendment of this code but that does not now comply with the area, width, height, yard, percent of lot coverage, or other regulations concerning bulk or location on the lot, or spacing requirements from another use, off-street parking and loading requirements, or other regulations of the district in which it is located.~~

~~*Nonconforming use.* A lawful use existing on the effective date of adoption (October 24, 1975) or amendment of this code but that is not now permitted in the district in which it is located.~~

SECTION 2

Chapter 62 - Nonconforming Lots, Uses and Structures of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 62.101. Intent.

There exist within the districts established by this code and subsequent amendments lots, structures, and uses of land and structures that were lawful before this code was passed or amended that would be prohibited, regulated or restricted under the terms of this code or future amendments. It is the intent of this code to permit legal nonconforming lots, structures or uses to continue until they are removed and not replaced in accordance with Minnesota Statutes, section 462.357, subdivision 1e.

The code recognizes that in some circumstances allowing nonconforming uses to be changed to similar or less intense nonconforming uses, or allowing nonconforming uses to be reestablished in vacant buildings may benefit the city and surrounding neighborhood. Some buildings have a long useful life and allowing their continued occupancy for nonconforming uses can be more desirable than requiring them to be vacant if they cannot be converted to conforming uses. Consequently, the code allows conversion of nonconforming uses to similar nonconforming uses and allows the planning commission to reestablish nonconforming uses in vacant buildings if regulated so as to be compatible with the surrounding neighborhood.

~~The code recognizes provides, under limited circumstances, for that enlargements, expansions or relocations of nonconforming uses which improve the appearance and functioning of the use can benefit the surrounding neighborhood. The code allows the enlargement of nonconforming uses when found to be compatible with the surrounding neighborhoods.~~

Sec. 62.102. Legal nonconforming uses and structures.

~~For the purposes of this section, "use" means the principal purpose for which land or a building is being occupied. A use or structure will be presumed legally nonconforming if it can be demonstrated by clear and convincing evidence that prior to October 25, 1975, the use or structure was established, converted, or enlarged expanded and occupied pursuant to building permits issued by the city; if the use or structure was allowed in its location at the time it was established; or if it can be demonstrated by clear and convincing evidence that the particular use or structure had been in existence continuously for twenty (20) years prior to since December 13, 1956-1976. The burden of proof shall be on the property owner. For the purposes of this chapter, "use" means the principal purpose for which land or a building is being occupied. A legal nonconforming structure is one that lawfully existed when created but does not now comply with the area, width, height, yard, percent of lot coverage, or other regulations concerning bulk or location on the lot, off-street parking and loading requirements, or other regulations of the district in which it is located. The planning commission may approve permits granting legal nonconforming ~~use~~ status to uses or structures that do not meet these standards, as set forth in section 62.109(a) and (b).~~

Sec. 62.103. Nonconforming lots.

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Sec. 62.104. Nonconforming uses of land.

Nonconforming uses of land are subject to the following provisions:

- (a) A legal nonconforming use of land may continue unless it is discontinued for a period of more than one (1) year.
- (b) A legal nonconforming use shall not be enlarged expanded to a greater height nor ~~extended~~ to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this code unless the planning commission

approves a permit for the expansion as set forth in section 62.109(d).

- (c) A nonconforming use shall not be moved in whole or in part to any other portion of the lot unless the planning commission approves a permit for the relocation as set forth in section 62.109(d).
- (d) If ~~such a legal~~ nonconforming use of land ceases for any reason for a period of ~~ninety (90) days or more than one (1) year~~, any subsequent use of such land shall conform to the regulations specified by this code for the district in which such land is located. ~~This is not intended for those uses which remain on the land but whose activity may cease for a period longer than ninety (90) days due to reasons associated with the customary operation of such use.~~
- ...
- (f) An existing off-street parking space for one- and two-family dwellings in a required front or side yard shall be considered a legal nonconforming use provided the parking space was established pursuant to a curb cut permit issued by the department of public works prior to October ~~15-25~~, 1975, and the parking space has ~~been existed~~ existed continuously since the permit was issued or it can be demonstrated by clear and convincing evidence that the parking space has been in existence and used continuously since October 25, 1975. The burden of proof shall be on the property owner.
- (g) Any replacement of equipment shall not result in an increase in noise, vibration, glare, dust, or smoke.

Sec. 62.105. Nonconforming structures with conforming uses.

Nonconforming structures with conforming uses are subject to the following provisions:

- (a) A legal nonconforming structure may continue, including through repair, replacement, restoration, maintenance, and improvement, unless the nonconformity is discontinued for a period of more than one (1) year.
- (b) A nonconforming structure may be ~~enlarged~~ physically expanded or altered so long as such ~~enlargement~~ expansion or alteration does not increase its nonconformity and the use in the expanded or altered area of the structure meets any zoning separation requirement. ~~Accessory buildings may be added so long as they conform in all respects to the requirements of section 63.501, accessory buildings.~~ A structure with a nonconforming setback shall not be expanded horizontally or vertically within the setback area.
- (c) When a nonconforming structure is removed or destroyed by any means, including by fire or other peril, to an the extent of more greater than sixty (60) fifty (50) percent of its estimated market value, as indicated in the records of the county assessor ~~replacement cost, exclusive of the foundation, at the time of destruction, the removal or damage, and no building permit for repair or replacement of the structure has been applied for within one hundred-eighty (180) days of the removal or damage,~~ it shall not be reconstructed except in conformity with the provisions of this code. ~~A nonconforming residential garage,~~

~~however, may be rebuilt in a rear yard with the same nonconforming setback within one (1) year of its destruction, provided that it is within the maximum height and size limits for an accessory structure outlined in section 63.501(c) and (d).~~

Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.

Nonconforming uses of structures, or structures and land in combination, are subject to the following regulations:

- (a) A legal nonconforming use of structures, or structures and land in combination, may continue, including through repair, replacement, restoration, maintenance, and improvement of structures, unless the nonconformity is discontinued for a period of more than one (1) year.
- (b) A legal nonconforming use may be changed to a use permitted in the district in which it is located or to a new nonconforming use if the new nonconforming use is also listed in on the same clause line of the use tables in Chapter 66 of the code as the most recent nonconforming use. A legal nonconforming use may be changed to a use permitted in the district in which the most recent nonconforming use is first allowed, or a principle principal use permitted in a district that is more restrictive than the district in which the most recent nonconforming use is first allowed, provided the planning commission approves a permit for the change as set forth in section 62.109(c).
- (c) The number of legal nonconforming uses on a zoning lot shall not be increased unless the planning commission approves a change of nonconforming use permit as set forth in section 62.109(c).
- ~~(e-d)~~ When a nonconforming use changes to a use permitted in the district in which the property is located, a nonconforming use may not thereafter be resumed. When a nonconforming use changes or to a use first permitted in a more restrictive district, the nonconforming uses first permitted in less restrictive districts shall not thereafter be resumed.
- ~~(d e)~~ A legal nonconforming residential use may be extended throughout any parts of a residential structure provided that no additional units are added that were manifestly arranged or designed for the use, but it shall not be extended expanded to occupy any land or a larger area of land outside the structure, unless the planning commission approves a permit for the expansion as set forth in section 62.109(d).
- ~~(e f)~~ A nonconforming use shall not be moved to a new location on the zoning lot or enlarged expanded in any way, including increased cubic content, unless the planning commission approves a permit for an enlargement the expansion or relocation as set forth in section 62.109(d).
- ~~(f)~~ ~~A structure containing a nonconforming use shall not be moved to another location on its lot.~~
- (g) Any replacement of equipment shall not result in an increase in noise, vibration, glare, dust, or smoke.

- (g-h) When a legal nonconforming use is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days more than one (1) year, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be re-established at the number of units for which it was originally constructed provided that it has not been physically converted to a fewer number of units. If the building has been converted to fewer units, the use may be re-established up to the reduced number of units. The zoning administrator shall determine the number of units at the time of original construction by any of the following methods: an onsite inspection, building permit records, county assessor records, or similar public records. If the original number of units cannot be clearly established by the zoning administrator, the process for reestablishment of a nonconforming use in section 62.109(e) shall be followed.
- (h-i) When a building structure containing a nonconforming use is removed or destroyed by any means, including by fire or other peril, to an the extent of more than sixty (60) fifty (50) percent of its replacement cost estimated market value as indicated in the records of the county assessor, exclusive of the foundation, at the time of the destruction, and no building permit for repair or replacement of the structure has been applied for within one hundred eighty (180) days of the time of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code.
- ~~(i) On a building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair of walls, roofs, fixtures, wiring, or plumbing, provided that the cubic content of the building as it existed at the time of adoption or amendment of this code shall not be increased.~~
- ~~(j) Where nonconforming use status applies to a building and land in combination, removal or destruction of the building shall eliminate the nonconforming status of the land.~~
- (k-i) ~~Accessory off-street parking lots or structures spaces or garages~~ may be constructed on the site of a nonconforming use, so long as they comply with the requirements of sections articles 63.200, 63.300, and 63.501500 and 65.900 and the setbacks required in the district where the use is first permitted.
- (k) Any nonconforming residential use with four (4) or fewer dwelling units, may construct an accessory building other than a garage provided the building complies with the requirements for accessory buildings and uses in articles 63.500 and 65.900. For all other nonconforming uses, an accessory building shall be considered an expansion of the nonconforming use and may be constructed provided it complies with articles 63.500 and 65.900 and the planning commission approves a permit for the expansion as provided in Sec. 62.109(d).
- (l) In any RM3, T4, OS, B1, B2, B3, I1, or VP district, nonconforming residential uses may be enlarged expanded, extended, or reconstructed or altered provided that in the B1, B2, B3, I1, and VP districts no additional dwelling units are added

on the lot. Any business operated out of a residence must meet all home occupation standards. Expansion or reconstruction of Nonconforming residential uses must also in these districts shall meet the T2 height and minimum yard setback requirements for the use (except for lot area per dwelling unit) of section 66.230, residential district density and dimensional standards, for the district in which the use is first permitted and the requirements for off-street parking, section in article 63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.

- (m) In RL--R4 districts, existing legal nonconforming two-family residential uses may be enlarged expanded, extended, reconstructed or altered. The two-family uses expansion must meet the yard setbacks and the percentage of lot coverage requirements of the schedule of regulations, section 61.101, as required in the zoning district in which located or in the RT1 district, whichever is greater; the height limit of the district in which located; and the requirements for off-street parking, section in article 63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.
- (n) In any residential district, existing commercial greenhouses may be enlarged expanded, extended, reconstructed or altered. The greenhouses must meet the height, yard setbacks, and percentage of lot coverage of section 66.230, residential district density and dimensional standards, for the district in which they are located and the requirements for off-street parking, section article 63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.
- (o) Existing auto body shops located in zones other than industrial zones shall be considered, for purposes of changes in nonconforming uses, as B3 uses. Auto body shops that are legally nonconforming in T2-T4 and B3 zoning districts may expand even though they are not permitted uses in these zoning districts. Auto service stations in T2, T3 and B2 zoning districts which remove their gas tanks and pumps will be regarded as legal nonconforming auto repair stations. Auto repair stations and auto specialty stores that are legally nonconforming in T2-T4 zoning districts may expand even though they are not permitted uses in these zoning districts.
- ~~(p)~~ In RL ~~RT1~~ residential districts, a second one-family or two-family dwelling on a single lot is exempt from paragraph (h) above and may be reconstructed provided that the number of total dwelling units on the lot is not increased and the building is not enlarged or extended unless it meets the setback and lot coverage requirements for principal structures of the district. Reconstruction of the building must begin within one (1) year of the removal of the building, unless the board of zoning appeals grants an extension for reconstruction.
- ~~(q)~~(p) Existing gun shops that are legally nonconforming, and are not pawn shops, shall be considered, for purposes of changes in nonconforming uses, as permitted uses and may expand even though gun shops are not permitted uses in the district, provided that the amount of floor area devoted to the display and sale of firearms is not increased and that any new public entrance is not located within one thousand (1,000) radial feet of any "protected use," as defined in section 65.520(a) of this Code.

- (+) (g) Existing municipal yard waste sites that are legally nonconforming in the IR Light Industrial Restricted Districts may expand as a conditional use under the provision of section 61.501-61.504 and section 65.331 even though new municipal yard waste sites are not permitted in IR light industrial restricted districts.

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Sec. 62.109. Nonconforming use permits.

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- (a) *Establishment of legal nonconforming use status.* The planning commission may grant legal nonconforming status to ~~the uses of or structures when such use fails to~~ that do not meet the standards of for legal nonconforming status in section 62.102 if the commission makes the following findings:

~~(1)~~ The use occurs entirely within an existing structure;

~~(2)~~ The use or a nonconforming use of similar or greater intensity first permitted in the same ~~clause of the zoning code~~ district or in a ~~more~~ less restrictive zoning district has been in existence continuously for a period of at least ten (10) years prior to the date of the application.

~~(3)~~ The off-street parking is adequate to serve the use;

~~(4)~~ Hardship would result if the use were discontinued;

~~(5)~~ Rezoning the property would result in "spot" zoning or a zoning inappropriate to surrounding land uses;

~~(6)~~ The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;

~~(7)~~ The use is consistent with the comprehensive plan; and

~~(8)~~ A notarized petition of the owners of two-thirds of the described parcels of real estate ~~two-thirds of the property owners~~ within one hundred (100) feet of the subject property has been submitted stating their support for the use.

...

- (b) *Nonconforming commercial and industrial parking use.* The planning commission may grant legal nonconforming status to allow the use of land without completely enclosed buildings as a parking lot to serve abutting property in OS-B5 Business and IR-I1 industrial districts if the commission makes the following findings:

...

(6) A notarized petition of the owners of two-thirds of the described parcels of real estate ~~two-thirds of the property owners~~ within one hundred (100)

feet of the subject property has been submitted stating their support for the parking lot.

...

- (c) *Change of nonconforming use.* The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:

...

- (d) *Enlargement Expansion or relocation of nonconforming use.* The planning commission may permit the enlargement expansion or relocation of a legal nonconforming use if the commission makes the following findings:
- (1) In residential districts, tThe enlargement expansion, or relocation will not result in an increase in the number of dwelling units;
 - (2) For enlargements expansion of a structure, the enlargement expansion will meet the yard, height and percentage of lot coverage requirements of the district;
 - (3) The appearance of the enlargement expansion or relocation will be compatible with the adjacent property and neighborhood;
 - (4) Off-street parking is provided for the enlargement expansion or relocation that meets the requirements of section article 63.200 for new structures uses;
 - (5) Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use; ~~and~~
 - (6) After the enlargement expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;
 - (7) The use is consistent with the comprehensive plan; and
 - (8) A notarized petition of the owners of two-thirds of the described parcels of real estate ~~two-thirds of the property owners~~ within one hundred (100) feet of the subject property has been submitted stating their support for the enlargement expansion or relocation.

...

- (e) *Reestablishment of nonconforming use.* When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of ~~three hundred sixty five (365) days~~ more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

- (1) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose;
- (2) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use;
- (3) The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare;
- (4) The proposed use is consistent with the comprehensive plan; and
- (5) A notarized petition of two-thirds of of the owners of the described parcels of real estate ~~two-thirds of the property owners~~ within one hundred (100) feet of the subject property has been submitted stating their support for the use.

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SECTION 3

This ordinance shall become effective thirty (30) days after its passage, approval, and publication.