

## **50-38 NONCONFORMITIES**

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This Section clarifies how this Chapter applies to those buildings, structures and land uses that do not comply with this Chapter, including without limitation (a) those that do not comply with the Chapter on the date it is adopted, and (b) those that comply with the Chapter on the date it is adopted but become nonconforming due to the adoption of an amendment to this Chapter. This Section is intended to comply with the provisions of MSA 462.357, subd. 1.e as amended, and shall be interpreted to comply with those provisions wherever possible. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

### **50-38.1 Types of nonconformities.**

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The city recognizes five different types of nonconformities, each of which is addressed in the subsections below.

- A. Nonconforming buildings;
- B. Nonconforming uses;
- C. Nonconforming lots;
- D. Nonconforming on-premises signs;
- E. Nonconforming off-premises signs. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

### **50-38.2 General provisions.**

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#### **A. Airport hazards.**

1. The owner of any nonconforming structure or tree within the Airport Overlay is required to allow the installation, operation and maintenance on the structure or tree those markers and lights deemed necessary by the building official to indicate to aircraft the presence of the airport hazards. Any required markers and lights shall be installed, operated and maintained at the expense of the owner;
2. The regulations in Section 50-18.2 A-O Airport Overlay shall not:
  - (a) Require the removal, lowering or other alteration of any structure or tree not conforming to the regulations regarding Duluth International Airport on June 18, 1988, or not conforming to the regulations regarding Sky Harbor Municipal Airport on September 26, 1994;
  - (b) Interfere with the continuance of any nonconforming use as permitted by this Section 50-38;
  - (c) Require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun before September 26, 1994 and completed on or before September 25, 1996;

#### **B. Flood hazard areas.**

A structure or the use of a structure or premises located in a flood plain or flood fringe area as defined and shown in Section 50-18.1.B that was lawful before February 1, 1980, or before an amendment to the flood plain management regulations of Section 50-18.1.B, but that is not in conformity with the provisions of this Chapter may be continued subject to the following conditions. Historic structures, as defined under "substantial improvement" in Section 50-41, are subject to the provisions of subsections 1 through 5 of this Section:

1. No such use or structure shall be expanded, changed or altered in a way that increases its nonconformity. Expansion of uses or structures within the floodway district is prohibited;
2. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 3 and 6 below;

3. The cost of all structural alterations to any nonconforming structure over the life of the structure shall not exceed 50 percent of the assessed market value of the structure as determined by the city assessor unless the conditions of this Section are satisfied. The cost of all structural alterations must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the assessed market value of the structure as determined by the city assessor, then the structure must meet the standards of this Chapter for new structures depending upon whether the structure is in the floodway or flood fringe district, respectively;
4. If any nonconforming use, or any use of a nonconforming structure, is discontinued for one year, any future use of the premises shall conform to this Chapter;
5. If any nonconformity is substantially damaged, as defined in Section 50-41, it shall not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new uses or new structures in Section 50-18.1.C will apply, depending upon whether the use or structure is in the floodway, flood fringe or general flood plain district;
6. Any substantial improvement, as defined in Section 50-41, to a nonconforming structure requires that the existing structure and any additions must meet the applicable requirements of Section 50-18.1.C for new structures, depending upon whether the structure is in the floodway, flood fringe or general flood plain district. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10285, 3-10-2014, § 4.)

#### **50-38.3 Nonconforming buildings.**

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- A. A nonconforming building may continue to be used, and may be expanded provided that the expansion does not increase or extend any nonconformity horizontally or vertically. All additions must comply with the dimensional requirements in Article II and Section 50-21 or 50-22, as applicable, and the parking requirements of Section 50-24 must be satisfied for the expansion area;
- B. A nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 60 percent or more of its assessed market value at the time of the damage shall not be restored, except in conformity with this Chapter, unless the owner obtains a variance pursuant to Section 50-37.9. When damaged by less than 60 percent of its assessed market value as determined by the city assessor, a nonconforming building may be repaired or reconstructed, provided that a building permit is applied for within 180 days and such repairs or reconstruction are completed within one year of the date of the damage. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10285, 3-10-2014, § 4.)

#### **50-38.4 Nonconforming uses of buildings and land.**

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- A. Any building existing on July 14, 1958, or existing on the date of the adoption of a city ordinance making it nonconforming, may continue to be used for the purposes it was used when it became nonconforming, even though that use does not conform to this Chapter, but may not be expanded or changed in a way that would increase any nonconformity;
- B. The nonconforming use of a building may be extended throughout those parts of the building that were clearly arranged or designed for such use on the date the building became nonconforming;
- C. A nonconforming use of a building or portion of a building that is discontinued for a continuous period of one year shall not again be used except for a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
- D. A building containing a nonconforming use shall not be enlarged, extended, reconstructed or structurally altered, unless the use is changed to a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
- E. A nonconforming use of land existing on July 14, 1958, may be continued but may not be expanded or extended, either on the same or adjoining property. If the nonconforming use of land or any portion of the use is discontinued for a continuous period of one year or changed, any future use of the land shall comply with this Chapter;
- F. If no structural alterations are made to a nonconforming building, a nonconforming use of a building or land may be changed to another nonconforming use with fewer adverse impacts on surrounding properties, as determined by the land use supervisor;

- G. Whenever a nonconforming use of a building or land has been changed to a use with fewer adverse impacts, as determined by the land use supervisor, the use shall not later be changed to a nonconforming use with greater adverse impacts on surrounding properties, as determined by the land use supervisor;
- H. Within the Airport Overlay, whenever the building official determines that a nonconforming structure or tree has been abandoned or more than 80 percent torn down, deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit in Section 50-18.2. Whether or not an application for a permit is filed, the building official may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct or to equip the same in the manner necessary to conform to the provisions of Section 50-18.2;
- I. Whenever a nonconforming use of a building or land has been changed to a conforming use, all nonconforming uses expire, and the property may only be used for a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
- J. A nonconforming use of a building or land existing on the date this Chapter is adopted shall remain a nonconformity unless it complies with all applicable provisions of this Chapter;
- K. The adoption of this Chapter shall not validate any temporary use beyond the expiration date of any temporary permit issued under prior approvals. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

#### **50-38.5 Nonconforming lots.**

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- A. A lot that existed on November 18, 2010, and was held in separate ownership from adjoining lots on that date and does not meet the minimum lot area or frontage requirements for the zone district in which it is located may nevertheless be used for the construction of a primary structure permitted in that zone district. All other applicable dimensional standards in Article II and Section 50-21 apply unless the applicant obtains a variance from those dimensional standards pursuant to Section 50-37.9;
- B. Nonconforming lots that are not provided with public sewer shall comply with county individual sewage treatment systems ordinance and standards. However a lot or parcel of record that was lawful as to lot area requirements and under separate ownership from any adjoining lot or parcel on May 23, 1993, shall not be deemed nonconforming as to lot area requirements unless subdivided after that date. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 56; cited only by Ord. No. 10285, 3-10-2014, § 4.)

#### **50-38.6 Nonconforming on-premises signs.**

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- A. A legal nonconforming on-premises sign that was previously permitted may remain in use, so long as it remains otherwise lawful, and may be restored, repaired, or altered in the following ways: replacing lamps, replacing ballast, replacing transformers, painting the pole(s) and the cabinet, replacing or repairing the sign face(s), including H-bars and retainers behind the face(s), replacing trim, and replacement of sign fasteners, nuts, and washers. The following are not considered repair or restoration and shall require the legal nonconforming on-premises sign to be brought into conformance with this Chapter, except as provided in subsection F below: change or replacement in poles, structural supports, bases or shrouds, footings, moving the sign for any reason, change or replacement of the interior and/or exterior cabinet frame (excluding trim) and any changes made to the size, height, light intensity or bulk of the sign or the temporary or permanent removal of the sign for the repair or replacement of the cabinet or any part thereof, not including the face, Temporary removal of the sign cabinet for the replacement of the sign face(s) is permitted and will not require that the sign be brought into conformance with all requirements of this Chapter;
- B. No legal nonconforming sign may be relocated, in whole or in part, to any other location on the same or other lot, unless the entire sign conforms to all regulations of the zoning district in which the sign is relocated;
- C. A legal nonconforming on-premises sign may not be altered in any way that would create any new nonconformity or increase the degree of any previously existing nonconformity;

- D. In the event that any legal nonconforming sign is damaged or destroyed to the extent of more than 50 percent of its value prior to the damage, the sign cannot be restored or repaired unless it conforms to all applicable regulations for the district;
- E. All sign illumination, electronic message signs, and electronic billboards that do not conform with the display requirements of this Chapter, including brightness, message duration and similar performance requirements for the electronic component, are required to conform to the standards of this Chapter for the electronic component within 90 days of this date: March 11, 2013;
- F. A legal nonconforming on-premises sign that does not meet the standards for sign area or sign height is being altered in such a way as to reduce the nonconformity, the alteration may be approved by the land use supervisor. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10204, 3-11-2013, § 2; cited only by Ord. No. 10285, 3-10-2014, § 4.)

#### **50-38.7 Nonconforming off-premises signs.**

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In order to bring nonconforming off-premises signs into closer conformance with the purposes of Chapter, the following system is established to enable the reconstruction, structural alteration or relocation of certain nonconforming off-premises signs. Once rebuilt, the sign shall retain its status as a nonconforming off-premises sign.

##### **A. Reconstruction of existing signs.**

1. A sign permit for reconstruction on the same site of a nonconforming off-premises sign that either exists or has been destroyed no more than six months prior to written sign permit application, may be issued after the building official certifies that the sign to be reconstructed has less of an adverse impact on the area near the site than the sign being replaced. A reconstructed sign may be enlarged, up to the maximum size of an off-premises sign permitted within the applicable zone district, by use of an exception credit pursuant to subsection 2. For purposes of this subsection the "same site" shall mean contiguous property owned by one person or entity, or a related person or entity, and not divided by an improved street;
2. No permit shall be issued until the sign to be reconstructed is removed;
3. All signs shall be constructed and placed in strict conformance with the permit and the failure to do so shall constitute a violation of this Chapter, and if not corrected shall be grounds for revocation of the permit and an order for removal of the sign;

##### **B. Exception credit system.**

1. The owner of a nonconforming off-premises sign may receive an exception credit if it is determined by the building official that a nonconforming off-premises sign is to be removed, or has been removed, due to a termination of lease for reasons beyond the reasonable control of the applicant, or other forced removal (not including destruction or other situations rendering the sign unusable). Such reasons include but are not limited to the refusal of a lessor to renew a lease or the applicant's inability to obtain a lease renewal on reasonable terms and conditions (including lease rent at a fair market rate). An exception credit may be issued for each such sign that has been removed no more than 30 days prior to written application for the exception credit;
2. The building official shall determine if the applicant is eligible to receive an exception credit and shall certify and keep a log of all such credits documenting the owner of the credit, cumulative square footage of sign area credited and number of locations available for sign structures. After approving the use of an exception credit, the building official shall notify the owner, in writing, of the owner's remaining credited total of available square footage of sign area and remaining credited number of locations available for sign structures;

C. Use of exception credits.

1. Exception credits may be used to permit the relocation of certain nonconforming off-premises signs that do not meet site, location or other requirements of this Chapter;
2. An application for an exception credit shall include a statement identifying the exception credit(s) to be used for the permit for the new location. No holder of a credit shall be granted a permit under this Section 50-38.7 for more locations than it lost or for more square footage of sign area than it lost. No sign permit shall be issued until the sign(s) that is the basis for the credit is first removed;
3. All signs shall be constructed and placed in strict conformance with the sign permit and the failure to do so shall constitute a violation of this Section, and if not corrected, shall be grounds for revocation of the sign permit and an order for removal of the sign. No sign permit issued under this Section shall be valid until the applicant has complied with all applicable requirements of the NR-O, Natural Resources Overlay district, and MSA Chapter 173. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10047, 8-30-2010, § 4; Ord. No. 10204, 3-11-2013, § 3; cited only by Ord. No. 10285, 3-10-2014, § 4.)