

ARTICLE 16: NONCONFORMING USES AND AMORITIZATION

17-16-1. ADMINISTRATION AND DEFINITIONS. An application for a Nonconforming Use Certificate shall be submitted on forms approved by the Director of Community Planning and Development along with a fee in an amount established by City Council Resolution. Any nonconforming use may be revoked subject to Section 17-16-10. Any appeal of the decision regarding Nonconforming Use Certificates under this Section shall be to the Planning Commission.

For the purpose of this Article 16 the following definitions shall apply:

- (1) "Public Project" means any project undertaken by a public entity or private entity to provide improvements that will be owned by a public entity for use by the general public. Said project may include acquisition of private property, construction of public improvements or both. (As amended by O-2009-32)
- (2) "Nonconforming use" means a use which lawfully occupied a building or land at the time this Ordinance applied to the property, or at the time of any amendment hereto, and which does not conform to the use regulations of the zone district in which it is located.
- (3) "Nonconforming building or structure" means a building or structure, or portion thereof, lawfully existing at the time this Ordinance applied to the property, or at the time of any amendment hereto, which does not conform to all the height, setback, lot coverage, lot width, and lot area regulations of the zone district in which it is located.
- (4) "Nonconforming vacant lot" means a parcel of land which meets all of the following requirements:
 - a) No main building is constructed thereon;
 - b) On the effective date of this Ordinance, the lot did not meet the minimum lot area or lot width requirements of this Ordinance; and
 - c) The lot was lawfully established prior to the adoption of this Ordinance.

17-16-2. NONCONFORMING USE OF BUILDING OR STRUCTURE.

- (1) The nonconforming use of a building or structure may be continued, except as otherwise provided herein.
- (2) A conforming building or structure containing a nonconforming use may be repaired, but it may not be structurally altered, except as allowed in Section (5) below, unless the building, structure, or a portion thereof, is declared unsafe by the City building inspector, in which case the building, structure, or portion thereof declared unsafe may be strengthened, altered, or restored to a safe condition.

- (3) The nonconforming use shall not be changed to a different nonconforming use.
- (4) The nonconforming use, if changed to a conforming use, may not thereafter be changed to any nonconforming use.
- (5) The nonconforming use shall not be extended or expanded, except for single household dwelling units or duplexes in the 4-R, and 5-R Zone Districts. An "extension or expansion" shall include any increase in the floor area of the building or structure in which the nonconforming use is conducted, and any expansion or relocation of the nonconforming use, in whole or in part, to a different part of the building or structure.
- (6) Except as provided herein, if the nonconforming use is discontinued for a period of one hundred eighty (180) days or more, regardless of any intent to resume operations, any future use of the building or structure must be a conforming use.
- (7) If a conforming building or structure containing a nonconforming use is destroyed or damaged to the extent of more than sixty (60) percent of its value, as determined pursuant to the method of valuation of buildings for permit issuance in the Building Code, any future use of the rebuilt or restored building or structure shall be a conforming use. However, a legal nonconforming single household dwelling unit, on August 30, 1980, located in a 4-R, or 5-R Residential District may be rebuilt or reconstructed and used as a single household dwelling unit if a building permit for the single household dwelling unit is applied for within one year after the destruction or damage occurred. A legal conforming two household dwelling unit, on August 30, 1980, located in a 1-R or 2-R Residential District may be rebuilt or reconstructed and used as a two household dwelling if a building permit for the two household dwelling unit is applied for within one year after the destruction or damage occurred. Further, a legal nonconforming multiple household dwelling in existence on or before August 27, 1989, located in a 4-R, or 5-R Zone District may be rebuilt or reconstructed and used as a multiple household dwelling containing a maximum of the same number of dwelling units that existed prior to the destruction or damage if a building permit for the structure(s) is applied for within one year after the destruction or damage occurred.

17-16-3. NONCONFORMING BUILDING OR STRUCTURE.

- (1) A nonconforming building or structure may continue to be used, except as otherwise provided herein.
- (2) A nonconforming building or structure may be repaired, structurally altered, or expanded only if the alteration, repair or expansion complies with this Ordinance. If the nonconforming building or structure, or any portion thereof, is declared unsafe by the City building inspector, the building may be strengthened or restored to a safe condition even if compliance with the requirements of this Ordinance is impossible.

- (3) No nonconforming building or structure which is destroyed or damaged to the extent of more than sixty (60) percent of its value, as determined pursuant to the method of valuation of buildings for permit issuance in the Building Code, shall be repaired or rebuilt except in compliance with the requirements of this Ordinance.
- (4) If a nonconforming building or structure becomes conforming, it shall not be changed back to a nonconforming building or structure.

17-16-4. NONCONFORMING USE OF LAND.

- (1) A nonconforming use of land may be continued, except as otherwise provided herein.
- (2) Such nonconforming use of land shall not be extended or expanded, either on the same or adjoining properties. An "extension or expansion" shall include any increase in the area of land used for the nonconforming use, and any relocation of the nonconforming use, in whole or in part, to an area of land different from the area used on the date the use became nonconforming.
- (3) If the nonconforming use of land is discontinued for a period of one hundred eighty (180) days or more, regardless of any intent to resume operations, any future use of the land must conform to the requirements of this Ordinance.
- (4) The nonconforming use of land shall not be changed to a different nonconforming use.
- (5) The nonconforming use of land, if changed to a conforming use, may not thereafter be changed to any nonconforming use.

17-16-5. NONCONFORMING VACANT LOT.

- (1) A nonconforming vacant lot may be used only for a use permitted in the zone district in which the lot is located, or at the discretion of the Director, a detached single household dwelling unit consistent with the provisions of the 2-R Zone District. The Director may waive or vary minimum open space, parking lot area, setback, and lot width requirements. The Director may grant said waiver or variance only if he finds that:
 - a) The property cannot otherwise be used for any purpose permitted within the zone district applicable to the property;
 - b) The property was included in the applicable zone district during the initial comprehensive city-initiated rezonings occurring subsequent to the effective date of this Ordinance; and
 - c) The waiver, if granted, is necessary to afford relief with the least modification possible of this Ordinance.

- (2) Any appeal from the Director's decision shall be to the Board of Adjustment which shall apply the same criteria as set forth in this Section 17-16-5 in determining the appropriateness of granting said waiver.

17-16-6. NONCONFORMING KEEPING OF DOMESTIC LIVESTOCK AND PERMITTED DOMESTIC LIVESTOCK IN THE 3-R AND 4-R ZONE DISTRICTS.

- (1) For property in the 3-R or 4-R Zone Districts the keeping of horses, cattle, sheep, goats, poultry, pigeons, rabbits, and chinchillas shall be permitted to continue as a permitted use only if they legally existed on the property at any time in 1987 and the keeping of such animals is in conformance with Section 17-5-9(5)(b).
- (2) The nonconforming keeping of horses, cattle, sheep, goats, poultry, pigeons, rabbits, and chinchillas may continue on a property in any other zone district by obtaining a Nonconforming Use Certificate.

The criteria and standards outlined in this Article shall be met prior to issuance of any certificate and the Nonconforming Use Certificate shall run with the property and be permitted to continue if the subject property is sold, transferred, or bequeathed so long as the criteria below continues to be met.

Criteria.

- a) Nonconforming Use Certificate may be issued if a complete application is submitted within ninety (90) days of the effective date of this Ordinance and if the application meets the following criteria:
1. The property contains an occupied legally conforming or legally nonconforming single household dwelling unit.
 2. The keeping of such animals is in conformance with the domestic livestock standards listed in Section 17-5-9(5)(b)(1).
 3. A scaled site plan of the property is submitted.
 4. If an adjacent property is not allowed to keep livestock and a house on that property is located within fifty (50) feet of the common property line and a six (6) foot solid fence is not existing on the common property line between the adjacent property and where animals are kept, the applicant requesting approval of the nonconforming use of domestic livestock shall construct and maintain a six (6) foot solid fence along the common property line between the adjacent property and where the animals are kept. For the purpose of this paragraph, solid fence means a fence with five (5) percent or less open space in its vertical surface.
 5. Number of animals allowed. The nonconforming use application shall not be granted for more animals than the property is entitled to as regulated in Section 17-5-

9(5)(b)(1). If a Nonconforming Use Certificate is issued it shall state the number of animals allowed on the property and such number shall not exceed the number permitted.

6. Species of animals allowed. The applicant shall submit evidence to clearly establish the specific species and number of animals that legally existed on the subject property at any time in 1987. The determination of what domestic livestock was on the property shall be made by the Director of Community Planning and Development or his designee after reviewing all evidence submitted in relation to the application for a Nonconforming Use Certificate for domestic livestock. The Nonconforming Use Certificate shall be designated the allowance to have only the species of domestic livestock determined to have legally existed on the property at any time in 1987.

17-16-7. NONCONFORMING MOBILE HOME PARKS AND NONCONFORMING MOBILE HOMES.

- (1) If a mobile home park was in existence in the City on the date this Ordinance applied to the property on which the park is located, or was in existence on property annexed to the City after the effective date of this Ordinance, and such mobile home park complied with all applicable legal requirements then in effect, the mobile home park shall be considered legally nonconforming and shall not be subject to the requirements of this Ordinance except:
 - a) Any expansion or extension of the mobile home park shall be subject to all applicable requirements of this Ordinance; and
 - b) Any individual mobile home may be replaced or relocated within a legally nonconforming mobile home park.
- (2) If a mobile home is used for residential purposes in the City on the date this Ordinance applied to the property on which the mobile home is located, or is located on property annexed to the City after the effective date of this Ordinance and the mobile home complied with all applicable legal requirements then in effect, the mobile home shall be considered legally nonconforming and shall not be subject to the requirements of this Ordinance, except:
 - a) If the mobile home is moved from its location, the mobile home shall not be replaced or relocated except within a mobile home park; and
 - b) If the use of the mobile home is discontinued for a period of one hundred eighty (180) days or more, the mobile home shall not be reoccupied until it is relocated within a mobile home park.

17-16-8. EXPANSION OF CHILD CARE FACILITIES. Any child care facility which was in existence on the date this Ordinance applied to the property on which the child care facility is located, and which by this Ordinance becomes a nonconforming use, may not expand to care for

a larger number of children than the maximum licensed capacity as authorized by the State of Colorado on the effective date of this Ordinance.

17-16-9. PROPERTY AFFECTED BY ACQUISITIONS FOR OR CONSTRUCTION OF PUBLIC PROJECTS:

- (1) If, as a direct result of a public project, a parcel and/or structure would become non-conforming with regard to any applicable zoning standard, the owner of the real property so affected may elect, one time and in writing, to proceed under either Subsection (2) or Subsection (3), below.
- (2) If a portion of a parcel of land is taken for public use such that the remaining portion of the parcel does not conform to the requirements of this Ordinance, the following shall apply:
 - a) If the taking causes a variance of no greater than twenty (20) percent in one or more numerical requirements, then the use shall be considered a legal, conforming use and a permanent variance shall be granted by the Board of Adjustment.
 - b) If the taking of land causes a variance of more than twenty (20) percent in one or more numerical requirements and, in the judgment of the Board of Adjustment, would not create a hazardous situation or be otherwise unreasonable, the use shall be considered a legal nonconforming use and shall be subject to the applicable nonconforming use regulations set forth in this Article 16.
- (3) If, as a direct result of a Public Project, a parcel and/or structure would become non-conforming with regard to any applicable zoning standard, said standard shall be adjusted as follows. The extent of the adjustment shall be the minimum amount necessary to ensure the existing parcel and/or structure conforms to said standard. The adjustment shall be effective upon completion of the property acquisition and/or construction that would have made the parcel and/or structure non-conforming. The change shall apply only to the affected parcel and/or structure.
 - a) Adjustments to zoning standards pursuant to this Subsection (3) shall no longer apply to any parcel that is rezoned after the application of this Subsection. However, this Subsection (3) shall be applied should an additional Public Project occur after said rezoning.
 - b) Future modifications shall be allowed to any parcel and/or structure to which this Subsection (3) applies, provided the property has not been rezoned after the Public Project occurs, if the modifications comply (i) with the zoning standards in effect at the time of the Public Project as modified by this Subsection; and (ii) with all other City requirements applicable at the time of the modifications. Notwithstanding the foregoing, future modifications to a structure to which 17-16-9(1) applies are subject to the following restrictions:

- (1) If a structure is intentionally modified, damaged, demolished or destroyed to the extent of more than sixty percent (60%) of its value any modifications must comply with the zoning standards in effect at the time of the modifications. For purposes of this paragraph, the structure's value shall be as determined by the method of valuation of buildings for permit issuance in the adopted Building Code.
- (2) If a structure is intentionally modified, damaged, demolished or destroyed to the extent of sixty percent (60%) or less of its value and the Director determines that the proposed modification would create a hazard to the public health, safety or welfare, the Director may deny the proposed modification. Any such denial may be appealed to the Board of Adjustment in accordance with Section 17-4-6 of this Code. For purposes of this paragraph, the structure's value shall be as determined by the method of valuation of buildings for permit issuance in the adopted Building Code.
(As amended by O-2009-32)

17-16-10. REVOCAION OF ANY NONCONFORMING USE. Any nonconforming use may be revoked by the Director of Community Planning and Development if:

- (1) Violations of the Lakewood Municipal Code related to the nonconforming use are not resolved within thirty (30) days of issuance of an official notice of violation, and/or
- (2) There are recurring violations related to the nonconforming use to the property owner or persons in association with the nonconforming use.
 - a) Procedures. The Director shall notify the property owner in writing stating the time and place for an administrative hearing. The purpose of the hearing shall be for the Director to determine whether revocation of the nonconforming use or other legal action should be pursued. Written notice of the hearing shall be provided at least ten (10) days prior to the hearing to the person owning the property on which the nonconforming use is located.

Following the hearing, the Director shall issue a decision either revoking or allowing continuance of the nonconforming use. This decision may be appealed to the Planning Commission only upon written request. The request shall be filed with the Secretary to the Planning Commission no later than thirty (30) days after the Director's decision. The appeal shall be conducted as a public hearing in accordance with Section 17-6-2(10)(a). The revocation of the nonconforming use shall require the use to terminate. After revocation, the property owner or any other person may not apply for a Nonconforming Use Certificate or be allowed to continue the nonconforming use on the property.

The City, in addition to any other remedies provided in this Ordinance or by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such violation.

17-16-11 AMORTIZATION. Uses which are made nonconforming by Ordinance O-2002-42, regulating the number of unrelated individuals in a single family dwelling unit, shall be brought into conformance by December 31, 2005.