



# LAND DEVELOPMENT CODE

## Chapter 10 Hardship Relief

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### CHAPTER 10 HARDSHIP RELIEF

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**10.00.00 PURPOSE:** The purpose of this chapter is to provide mechanisms for obtaining relief from the provisions of this code where hardship would otherwise occur.

#### 10.01.00 NON-CONFORMING USES AND STRUCTURES.

##### 10.01.01 Intent:

1. Within the districts established by this ordinance, or amendments that may later be adopted there exists:
  - a. Lots;
  - b. Structures;
  - c. Uses of land and structures; and
  - d. Characteristics of use which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, or be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
2. Non-conforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.
3. Wherever the words or phrases "this ordinance was passed", "effective date of adoption" or similar phrases are used in this ordinance regarding the zoning district regulations, the meaning shall be the effective date of adoption, which is March 11, 1974 for Residential zoning districts, and July 10, 1990 for the Agricultural zoning districts.
4. The requirements of this chapter shall only apply to that structure where the nonconformity actually exists. In situations where a legal, nonconforming accessory structure exists on the same lot or parcel with a conforming principle structure the conforming principle structure may be expanded or enlarged without regard to the nonconformity of the accessory structure; provided such enlargement or expansion meets the zoning requirements of the zoning district involved. Any accessory structure constructed or installed before March 11, 1974 is a legal, nonconforming structure. There shall be no expansion or enlargement of any nonconforming structure unless and until a variance is obtained as prescribed in Chapter 11 of this Code.

##### 10.01.02 Non-Conforming Lots.

1. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record, that was



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divided in compliance with the ordinance in effect at the time of its division, in a recorded subdivision or a lot in an unrecorded plat that was surveyed and described by a metes and bounds description prior to the effective date of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. This provision shall apply even though such lot fails to meet the requirements for an area or width, or both, that are generally applicable in the district. Variance of setback requirements shall be obtained only through action of the Board of Adjustment.

2. Reference other chapters of this ordinance for requirements for subdivisions and exceptions.
3. No such non-conforming lot may be enlarged or altered in a way which increases its non-conformity, but any lot or portion thereof may be altered to decrease its non-conformity.

**10.01.03 Non-Conforming Uses of Land (or Land with Minor Structures Only):** Where at the time of the effective date of this ordinance, lawful uses of land existed which would not be permitted by the regulations imposed by this ordinance, and where such use involved no individual structure with a replacement cost exceeding one thousand (1,000) dollars, the use may be continued so long as it remains otherwise lawful, provided:

1. No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption of this ordinance;
2. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of the adoption of this ordinance;
3. If any such non-conforming use of land ceases for any reason for a period of more than six (6) months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located; and
4. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such non-conforming use of land.

**10.01.04 Non-Conforming Structures and Lots:** Where a lawful structure existed at the effective date of this ordinance that could not be built under the terms of this ordinance by reason of restrictions of area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity. Such non-conforming structure may only be enlarged or altered if all proposed changes or additions conform to the regulations specified by ordinance for the residential zoning district in which both structure and lot are located, provided the structure was erected prior to the effective date of ordinance 74-4, which is March 11, 1974. Should the nonconforming structure be located in an Agricultural zoning district, the effective date of ordinance 91-1, as amended will apply which is July 10, 1990. The burden of proof shall be on the applicant to provide such documentation to the Planning and Inspection Department. Documentation shall include all or a combination of the following:



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- a. Property Appraiser's official statement or record.
  - b. Aerial photographs prior to the effective date, which clearly depict the structure.
  - c. Utility service connection and/or proof of service to the structure for water, sewer, gas, or electricity.
  - d. Affidavits from previous owners identifying approximate date of construction of the structure.
2. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than seventy-five (75) percent of its replacement cost at time of destruction, it shall not be reconstructed except in the exact dimensions as it existed on the date of its destruction with due diligence, provided, however, if and when the principal place of residence is destroyed by accidental fire, hurricane, tornado, or other act of God, the homeowner may rebuild the residence to original type and size of structure; or the home owner or mobile home owner may rebuild or replace with a superior type of material; provided the new construction conforms to dimensions previously existing.
  3. Should such structure be moved for any reason to any district whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
  4. No such non-conforming lot may be enlarged or altered in a way which increases its non-conformity, but any lot or portion thereof may be altered to decrease its non-conformity.

**10.01.05 Non-Conforming Uses of Land Involving Mobile Homes:** Where, at the time of passage of this ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this ordinance and where such use involves mobile homes, the use may be continued so long as it remains otherwise lawful, provided:

1. No additional mobile homes shall be located on any parcel in excess of the number of mobile home sites, consisting of the appropriate slabs and utility connections which were in existence at the effective date of this ordinance. When replacing mobile homes the applicant must ensure that the new mobile home will meet the current setback requirements applicable for the zoning district in which the property is located. All mobile homes manufactured on or after July 13, 1994 must be approved for Wind Zone II or III found on the data sheet affixed to mobile homes. Mobile homes shall be skirted, anchored, and connected to utilities in accordance with manufacturer requirements or with current requirements of applicable building and construction codes.
2. If any individual mobile homes located on any parcel or lot of record shall be moved for more than a period of six (6) months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located;
3. These regulations are not intended to prohibit the continued operation of existing mobile home or trailer parks as of the effective date of this ordinance and such parks are expressly permitted to continue operation in the manner conducted prior to the effective date of this ordinance;

**10.01.06 Non-Conforming Uses of Structures and Premises in Combination:** If lawful use involving individual structures with a replacement cost of one thousand (1,000) dollars or more, or



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if structures and premises in combination exist at the effective date of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to use permitted in the district in which it is located.
2. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for the use at the time of adoption or amendment of this ordinance, but no use shall be extended to occupy any land outside the building.
3. If no structural alterations are made, any non-conforming use of a structure or structure and premises, may be changed as a special exception to another non-conforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting the change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this ordinance.
4. When a non-conforming use of a structure, or structure and premises in combination is discontinued or abandoned for six (6) consecutive months (except when government action impeded access to the premises), the structure or structures and premises in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.
5. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this section is defined as damage to an extent of more than seventy-five (75) percent of the replacement cost at the time of destruction.

### **10.01.07 Repairs and Maintenance.**

1. On a non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty-five (25) percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.
2. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located, and except residential structures may be rebuilt to the same dimensions in accordance with current building codes.



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3. Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of the official.

**10.01.08 Uses Under Special Exception Provisions:** Any use which is permitted as a special exception in a district under the terms of this ordinance (other than a change through the Board of Adjustment action from a non-conforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.