

LEGISLATIVE #
140818A-12

1 **ARTICLE X. NONCONFORMITIES AND VESTED RIGHTS**

2 **DIVISION 1. NONCONFORMITIES**

3 **Section 30-10.1. Purpose.**

4 The purpose of this division is to provide regulations for the continuation and elimination of lots,
5 structures, and uses that are deemed legal nonconformities, subject to the restrictions set forth herein.

6 **Section 30-10.2. Generally.**

- 7 A. *Legal nonconformity status.* A legal nonconformity means an existing lot, structure or use that was
8 in compliance with the Land Development Code requirements that were in effect when the lot,
9 structure or use was established, but which no longer conforms to one or more requirements of the
10 Land Development Code or amendments thereto in effect. Legal nonconformity status shall be
11 determined by the City Manager or designee and the burden shall be on the property
12 owner/developer to establish such status.
- 13 B. *Right to continue legal nonconformity.* Unless otherwise provided in this chapter and subject to the
14 restrictions set forth herein, legal nonconformities existing on the effective date of this chapter or
15 amendments thereto may be continued.
- 16 C. *Nonconformities other than legal nonconformities.* All nonconformities that are not deemed legal
17 nonconformities shall be brought into compliance with this chapter and may be enforced as a
18 violation of this chapter.
- 19 D. *Nonconformities created by eminent domain proceedings.* A lot, structure or site improvement that
20 has or will be rendered nonconforming because of a taking through eminent domain proceedings or
21 by the voluntary conveyance of a portion of land under the threat of eminent domain proceedings
22 by a governmental authority shall be deemed conforming.

23 **Section 30-10.3. Nonconforming Lots.**

- 24 A. *Certain lots deemed conforming.* A legally nonconforming lot that meets the following criteria
25 shall be deemed conforming:
- 26 1. The lot is not a substandard lot; and
- 27 2. The lot is located within 500 feet of two or more lots that:
- 28 a. Are developed with a principal structure, and
- 29 b. Share a substantially similar degree of the same nonconformity (lot area, lot depth, or
30 lot width).
- 31 B. *Combining lots.* If a nonconforming lot abuts one or more other lots in the same ownership,
32 such lots shall be legally combined to eliminate the nonconformity before the city may approve
33 any development permits for the lots.
- 34 C. *Dwellings on nonconforming lots.* A legally nonconforming lot that is not a substandard lot and
35 that does not abut another lot in the same ownership may be used for a single-family dwelling
36 in zoning districts that allow the use, provided that all other applicable regulations of the

1 zoning district can be met. No multiple-family dwellings shall be allowed on nonconforming
2 lots in any district that allows single-family dwellings.

3 D. *Buildings on nonconforming lots.* Provided that all other applicable regulations of the zoning
4 district can be met, the City Manager or designee may authorize the issuance of a building
5 permit for a building to be located on a legally nonconforming or substandard lot if the
6 applicant can demonstrate both:

- 7 1. That the impacts of the nonconforming lot are minimal upon the surrounding land uses and
8 are not detrimental to the public health, safety, and welfare; and
- 9 2. That the impacts of the nonconforming lot may be substantially mitigated through measures
10 including but not limited to: buffering; screening; landscaping; architectural treatment;
11 additional setbacks; access limitations; limitations on use; sufficient parking designed to
12 provide safe internal traffic circulation and off-site access; and site plan design to minimize
13 off-site impacts of service and delivery areas, refuse and recycling collection areas, and
14 outdoor storage and work areas.

15 **Section 30-10.4. Nonconforming Structures and Site Improvements.**

16 A. *Applicability.* This section applies to all nonconforming structures and site improvements
17 within the city. However, when another section of this chapter imposes more specific
18 provisions for a particular nonconforming structure or site improvement, such as
19 nonconforming signs, the provisions of that section shall govern.

20 B. *Repair, maintenance, reconstruction, remodel.* Any structure or site improvement legally
21 nonconforming as to dimensional requirements, site improvement requirements, or
22 development standards may receive the following work without being made to conform to this
23 chapter, provided such work neither contributes to nor increases the specific legal
24 nonconformity and provided it is otherwise in conformance with the requirements of this
25 chapter. With the exception of single-family buildings or structures which have no such
26 limitation, the cost of the work shall not exceed 50% of the structural value (the present cost of
27 replacing the structure or site improvement); otherwise, the structure or site improvement
28 shall be made to fully comply with this chapter.

- 29 1. Repair and maintenance, meaning any actions that correct defects in, extend the useful life
30 of, or bring the structure or site improvement into conformance with applicable building,
31 electrical, mechanical, fire, health, safety or related regulations;
- 32 2. Reconstruction, meaning the rebuilding of a structure or site improvement that has been
33 damaged or destroyed; and
- 34 3. Remodel, meaning any change to or modification of the physical appearance of a structure
35 or site improvement.

36 C. Nothing in this section shall be deemed to prevent the strengthening of or restoring to a safe
37 condition any structure or site improvement or part thereof declared to be unsafe by an order
38 of a city or state official charged with protecting the public health or safety.

Section 30-10.5. Nonconforming Uses.

- A. *Limitation on enlarging, increasing or extending use.* A legally nonconforming use shall not be enlarged, extended or intensified, including to cover more area of the land or building or structure than was occupied by that use when it became legally nonconforming, except a legally nonconforming use may be extended throughout any parts of a building or structure that were manifestly arranged or intended for such use at the time the nonconformity status was established.
- B. *Alterations to structures and site improvements associated with legally nonconforming uses.* A structure associated with a legally nonconforming use may receive the following alterations, provided such work otherwise complies with the provisions of this chapter:
1. Ordinary repair and maintenance, meaning any actions that correct defects in, extend the useful life of, or bring the structure or site improvement into conformance with applicable building, electrical, mechanical, fire, health, safety or related regulations;
 2. Site improvements to the premises of structures associated with legally nonconforming uses, including landscaping, drainage, lighting, and the provision of buffering and screening along property boundaries; and
 3. Alterations made to comply with the requirements of law, including making a nonconforming structure or site improvement conforming to the requirements of this chapter.
- C. *Change of use.* A legally nonconforming use shall not be changed to another use unless such use is permitted by and complies with all applicable requirements of this chapter. If a legally nonconforming use is changed to any other use, said use shall lose its legally nonconforming status and any subsequent use shall conform to all applicable requirements of this chapter.
- D. *Abandonment.* If a legally nonconforming use is deemed abandoned in accordance with the procedures set forth in this section, said use shall lose its legally nonconforming status and any subsequent use shall conform to all applicable requirements of this chapter.
1. *Review criteria.* Abandoned means to cease the use for a continuous period equaling or exceeding nine months. Evidence, including public records, utility records, property records, verified personal records, or other general research and documentation, shall demonstrate that a use or activity has not been abandoned. The intent of the owner or user shall not be relevant in determining whether the use has been abandoned. The time period of any legal proceedings related to change of ownership, including foreclosures or bankruptcies, shall not be used in any calculation of the time period for abandonment.
 2. *Review procedure.*
 - a. The burden shall be on the property owner/developer to establish that a use has not been abandoned.
 - b. At such time as city staff or the City Plan Board determines that reasons exist for a property to lose its legal nonconformity status, notice of such determination shall be given to the property owner by the city. The notice shall be given by certified mail, return receipt requested, shall clearly state the reasons for the determination, and shall advise the property owner that a hearing to consider the determination shall be held by the City Plan Board on a date not less than 30 calendar days following the date of the notice. The time and place of the hearing shall be specified in the notice.

- 1 c. A quasi-judicial public hearing shall be conducted by the City Plan Board with respect to
2 all proceedings regarding loss of legal nonconformity status. A staff report shall be
3 prepared and shall contain a recommendation as to the appropriate course of action.
4 Where such proceedings have been instituted against a group of similarly situated
5 nonconformities, such proceedings may be consolidated for hearing purposes.
- 6 d. Following the close of the public hearing, the City Plan Board shall render its decision
7 no later than 30 calendar days after the date of the hearing. The decision shall be
8 supported by written findings and a record of the proceeding shall be kept.
- 9 e. *Appeals.* The determination of the City Plan Board shall be final, subject to such
10 remedies as may be provided in this chapter or at law.
- 11 E. *Reinstatement of abandoned legally nonconforming use.* A legally nonconforming use that was
12 deemed abandoned in accordance with Subsection D. above, and thereby lost its status as a
13 legally nonconforming use, may be reinstated as a legally nonconforming use in accordance
14 with the terms of this Subsection E. The process set forth herein shall be applicable only to the
15 status of legally nonconforming uses of land and shall not apply to any other development
16 criteria or regulation in this chapter.
- 17 1. *Review criteria.* The applicant shall bear the burden of demonstrating each of the
18 following:
- 19 a. That the use requested to be reinstated is the same as the former legally
20 nonconforming use that was deemed abandoned, and is therefore not a change in use;
- 21 b. That the impacts of the nonconforming use are minimal upon the surrounding land uses
22 and are not detrimental to the public health, safety, and welfare; and
- 23 c. That the impacts of the nonconforming use may be substantially mitigated through
24 measures including but not limited to: buffering; screening; landscaping; architectural
25 treatment; additional setbacks; access limitations; limitations on use; sufficient parking
26 designed to provide safe internal traffic circulation and off-site access; and site plan
27 design to minimize off-site impacts of service and delivery areas, refuse and recycling
28 collection areas, and outdoor storage and work areas.
- 29 2. *Review procedure.*
- 30 a. Upon application of the property owner, a staff report shall be prepared and shall contain
31 a recommendation as to the appropriate course of action. The City Plan Board shall
32 conduct a quasi-judicial public hearing and shall apply the criteria set forth above to grant,
33 grant with conditions, or deny an application for reinstatement. The notice and hearing
34 procedure shall be the same as for rezonings.
- 35 b. Following the close of the public hearing, the City Plan Board shall render its decision no
36 later than 30 calendar days after the date of the hearing. The decision shall be supported
37 by written findings and a record of the proceeding shall be kept.
- 38 c. *Appeals.* The determination of the City Plan Board shall be final, subject to such remedies
39 as may be provided in this chapter or at law.

DIVISION 2. VESTED RIGHTS

Section 30-10.6. Purpose.

This division establishes the administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the Comprehensive Plan or this chapter, and therefore development on said private property may continue notwithstanding that the development does not conform to the requirements of the Comprehensive Plan or this chapter.

Section 30-10.7. Vested Rights Criteria.

A. *Presumptive vested rights.* The following categories shall be presumptively vested:

1. All active and valid final development orders issued by the city prior to the effective date of the Comprehensive Plan or this chapter or any applicable amendments thereto, provided all material requirements, conditions, limitations and regulations of the development order have been met.
2. All complete building permit applications that are approvable in their submitted form, and received by the building official prior to the effective date of this chapter or any applicable amendments thereto. This provision shall not be used to find any presumptive vested rights against the provisions of the Comprehensive Plan or amendments thereto.
3. All lots within a subdivision that has been recorded prior to the effective date of the Comprehensive Plan or this chapter or any applicable amendments thereto, or lots in approved unrecorded subdivisions for which streets, stormwater management facilities, utilities and other infrastructure required for the development have been completed prior to the effective date of the Comprehensive Plan or this chapter or any applicable amendments thereto.
4. Lots of record not located within a subdivision, but only to the extent of one single-family residence per lot. Such lots of record shall: 1) conform to the provisions of the Comprehensive Plan and this chapter that are currently in effect; 2) have legally conformed under previously effective provisions of the Comprehensive Plan or this chapter; or 3) have existed prior to any applicable provisions of the Comprehensive Plan or this chapter. Certified copies of deeds and subdivision plats recorded in the office of the clerk of circuit court, or records of lot splits maintained by the city, will prove the time of a lot's existence.
5. Any structure for which construction has been completed and a certificate of occupancy has been issued, if a certificate of occupancy was required at the time of permitting.

B. *Nonpresumptive vested rights.* The appropriate reviewing authority shall consider all of the following factors, as well as any other relevant factors, to determine whether an applicant has nonpresumptive vested rights:

1. Whether there was a valid and unexpired act or omission of the city.
 - a. An "act" of the city may include but is not limited to an issued permit or authorization to commence development. An "omission" of the city means more than government silence or inaction, but rather a negligent or culpable omission where the party failing to act was under a lawful duty to act.

2. Whether the applicant, in reasonable and good faith reliance on the above act or omission, has made a substantial change in position or incurred extensive obligations and expenses.
 - a. An applicant does not act in good faith when the applicant made a substantial change in position or incurred extensive obligations and expenses in a situation where the applicant knew or reasonably should have known that changes to applicable provisions of the Comprehensive Plan or this chapter were pending, whereby “pending” means: 1) there were active and documented efforts in the normal course of municipal action that would culminate in the change of applicable provisions of the Comprehensive Plan or this chapter, and 2) the City Commission or the City Plan Board knew of such efforts.
 - b. The appropriate reviewing authority shall not consider the following as development expenditures or obligations:
 - i. Expenditures for legal and other professional services that are not related to the design or construction of improvements.
 - ii. Expenditures related to a rezoning action.
 - iii. Taxes paid.
 - iv. Expenditures for initial acquisition of the land.
3. Whether, because of the above substantial change in position or extensive obligations and expenses incurred, it would be highly inequitable and unjust to deny the applicant’s right to develop or to continue the development of the property. In making this determination, the appropriate reviewing authority shall consider the following as well as any other relevant factors:
 - a. Whether the development activity has commenced and is continuing in good faith.
 - b. Whether the expense or obligations already incurred can be substantially used, including use and application of any plans, materials, studies, permits, approvals and services acquired, for a development that is allowable and in compliance with the provisions of this chapter.

C. Limitations.

1. If vested rights were determined based on the possession of a final development order or other unexpired city action, vested rights shall expire with expiration of that final development order or action.
2. Any vested rights determination shall not create vested rights for additional phases or additional development not expressly authorized by the final development order. This section does not apply to any other subsequent final development order that may also be required for project completion, provided the densities and intensities allowed under the initial final development order are not increased and the specific development plan approved under the initial final development order remains substantially unchanged.
3. All development subject to a vested rights determination shall not deviate from the terms of the development orders or actions upon which the vested rights determination was based.
4. A vested rights determination shall run with the land and is therefore transferable to subsequent owners of the subject property.

Section 30-10.8. Vested Rights Determination Process.

A. *Application for vested rights determination.* Any person claiming vested rights to develop property shall submit to the city a sworn application for a vested rights determination. The application shall be on a form provided by the city, and shall include the following information:

1. The name, signature and address of all owners of the property;
2. The name and address of the applicant(s), who shall be the owner(s) or an agent authorized by affidavit to apply on behalf of the owner(s);
3. A legal description and survey of the subject property;
4. A copy of any approved and unexpired final development orders, which may include a final site plan, final subdivision plat or building plan;
5. Identification by specific reference to any ordinance, resolution or other action of the city, or failure by the city to act, upon which the applicant relied and which the applicant believes supports the vested rights claim;
6. A statement of facts that the applicant intends to prove in support of the application; and
7. Such other relevant information that the city may request.

B. *Staff determination.*

1. *Complete applications.* No later than 10 calendar days following the date of receiving an application, the City Manager or designee shall make a written determination as to whether the application is complete in accordance with this division.
2. *Staff decision.* No later than 30 calendar days following the date of the City Manager or designee's determination that an application is complete, the City Manager or designee shall review the application and make a written determination whether the application clearly and unequivocally has vested rights in accordance with the criteria for presumptive or nonpresumptive vesting. No later than seven calendar days following the date of the City Manager or designee's written determination of vested rights, the City Manager or designee shall provide the applicant written notification of the determination. The applicant shall have the right to rely upon such written notification that the proposed development is vested; such determination that the development is vested shall be final and not subject to administrative appeal, revocation or modification.

C. *Appeals.*

1. *Purpose.* It is the purpose of this section to provide an administrative process for appealing a written decision of the City Manager or designee that denies vested rights. In particular, it is intended that such administrative relief be provided in the most professional, objective, and equitable manner possible through the adjudication of matters as provided herein by the Land Use Hearing Officer (Hearing Officer) provided by this chapter. No party shall be deemed to have exhausted his or her administrative remedies for the purpose of seeking judicial review unless the party first obtains review by a hearing officer as provided herein.
2. *Standard of review.* The Hearing Officer's review shall be de novo, meaning the review is not limited to the record that was before the City Manager or designee or limited to the first-tier certiorari standard of review. However, if the record that was before the City Manager or designee is full and complete, the Hearing Officer may determine that the record is the only

evidence that is necessary. The Hearing Officer may also determine that additional evidence and oral or written testimony, including cross examination, is necessary to properly evaluate the City Manager or designee's decision.

3. *Appeal process.* The applicant may appeal to a Hearing Officer a decision of the City Manager or designee that denies vested rights. The appeal process shall be as follows:

- a. No later than 30 calendar days following the date of the City Manager or designee's written determination of vested rights, the applicant may appeal to a Hearing Officer by filing a Notice of Appeal with the City Manager or designee together with a nonrefundable filing fee of five hundred dollars (\$500.00). The notice of appeal shall set forth in detail the basis of the appeal.
- b. All expenses associated with the Hearing Officer appeal process, except attorney fees, shall be the responsibility of the nonprevailing party.
- c. The city shall accurately and completely preserve all testimony in the proceeding, and, at the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost.
- d. In any case where a Notice of Appeal has been filed, the decision of the City Manager or designee shall be stayed pending the final determination of the case.

4. *Hearing process.* The hearing before the Hearing Officer shall be conducted as follows:

- a. The Hearing Officer shall set forth at the outset of the hearing the order of the proceedings and the rules under which the hearing will be conducted.
- b. The order of presentation at the hearing shall be as follows:
 - i. Receipt of any exhibits or records of the City Manager or designee.
 - ii. Opening statements by the parties.
 - iii. Appellant's case.
 - iv. Respondent's case.
 - v. Rebuttal by appellant.
 - vi. Summation by respondent.
 - vii. Summation by appellant.
 - viii. Conclusion of the hearing by the Hearing Officer.
- c. The City Manager or designee's records, including all exhibits, shall be received and constitute a part of the record.
- d. The Hearing Officer shall have the authority to determine the applicability and relevance of all materials, exhibits, and testimony and to exclude irrelevant, immaterial, or repetitious matter.
- e. The Hearing Officer shall administer oaths to witnesses.
- f. The cross examination of witnesses shall be permitted, in a reasonable amount as determined by the Hearing Officer.
- g. The time for presentation of a case shall be determined by the Hearing Officer.

1 h. The Hearing Officer may allow the parties to submit written findings of fact and conclusions
2 of law following the hearing, and shall advise the parties to the timetable for so doing if
3 allowed.

4 5. *Hearing Officer decision.* No later than 30 calendar days following the date of the appeal
5 hearing, the Hearing Officer shall file with the City Manager or designee, with a copy to the
6 applicant and the Clerk of the Commission, a written determination that includes appropriate
7 findings of fact, conclusions of law, and decisions in the matter of the appeal. The decision of
8 the Hearing Officer, which may affirm, affirm with conditions, or reverse the decision of the City
9 Manager or designee, shall be based upon the criteria for presumptive or nonpresumptive
10 vesting as established in this division, and shall be guided by the Comprehensive Plan, this
11 chapter, and established case law. The decision of the Hearing Officer shall be final, subject to
12 judicial review.

13 6. *Judicial review.* Judicial review of the Hearing Officer's decision is available to the property
14 owner and the city and shall be by common-law certiorari to the Eighth Judicial Circuit Court. In
15 any case where judicial review is sought, the decision of the Hearing Officer shall be stayed
16 pending the final determination of the case.