

**Department of Community Planning and Economic Development – Planning Division
Zoning Code Text Amendment**

Date: October 31, 2005

Initiator Of Amendment: Council Member Schiff

Date of Introduction at City Council: September 2, 2005

Ward: All

Planning Staff And Phone: Michael Cronin, (612) 673-2297

Intent Of The Ordinance: To bring the provisions of the Zoning Ordinance regulating nonconforming uses, their continued use and investment, their expansion and the loss of nonconforming rights into conformance with recent changes in State Statute.

Appropriate Section(s) of the Zoning Code: Chapters 520, 531, 543 and 544

Background: Nonconforming uses are pre-existing uses, structures and lots that do not conform with the provisions of the present zoning code by the adoption of a code or amendments to the code that changed the rules after the use was established. Recognition of this condition, and the rights it provides, is important and essential to many property owners and occupants in a built city like Minneapolis. Many of the buildings, and entire districts of the City, were constructed prior to adoption of the first Zoning Ordinance in the mid 1920's and certainly before adoption of the present Ordinance in 1999. While respecting these important rights, the City also expects the nonconformity will not continue forever, and at the time of a significant investment in either maintenance or improvement, the use, structure or lot would be upgraded to comply with the present city wide standard. This balance and limit on nonconforming rights, and the City's goal of bringing about their gradual elimination by regulation is found in section 531.10 of the Code:

531.10. Purpose. Regulations governing nonconforming uses and structures are established to control the continued existence of legal nonconforming uses and structures by bringing about their gradual elimination, by regulating their enlargement, intensification, expansion or reconstruction, and by prohibiting their reestablishment after abandonment or destruction, and to regulate the use of, and construction on, nonconforming lots.

The balance of the permissions and constraints for the continued use, the expansion of and investment in nonconforming uses, and the conditions that cause the loss of this status and these rights are established by the State Statutes and the City Code. This balance was changed during the Legislature's 2004 Session by amendments to Chapter 462.357 affecting each element of the regulation of nonconforming uses. Table One Nonconforming Use Status highlights the amendments adopted by the Legislature and the affected sections of the City Code. The Statute sets the standard for regulation in Minnesota and the purpose of this text amendment is returning the City code to consistency with the State Statute.

Purpose For The Amendment:

What is the reason for the amendment?

What problem is the amendment designed to solve?

The purpose of the amendment is bringing the provisions of the Zoning Code back into compliance with the provisions of the recently amended State Statute. Amendments to the Statute require complementary amendments to the City's Code in three areas: (a) continued use and investment in nonconforming uses; (b) the ability to expand nonconforming uses; and (c) the conditions resulting the loss of nonconforming status when the nonconforming use is damaged or destroyed. These changes require amendments of the following sections of the Code.

A. Continued Use and Investment

The inclusion by the Legislature of *replacement, restoration and improvement* as allowed repair and maintenance creates a specific and general conflict with section 531.20 General Prohibition; authority to continue (c) *Interpretation* of the present Code. Section (c) provides:

(c) *Interpretation*. This chapter imposes a general prohibition on the enlargement, expansion, *restoration*, relocation, *structural alteration* or intensification of nonconforming uses and structures, and . . .

and, 531.90 Maintenance and Repair:

Normal maintenance and repair, including cosmetic changes, may be performed on any nonconforming structure or on any conforming structure containing a nonconforming use, provided however, that no such maintenance or repair shall result in an expansion or enlargement of the use or structure or increase the extent of the nonconformity, except as otherwise provided by this chapter. *Normal maintenance and repair shall not include a structural alteration.*

Directly, restoration, which is specifically prohibited by 531. 20 (c) as part of ongoing repair and maintenance of nonconforming uses by the City's Code, is now specifically permitted by State Statute. More fundamental, and going to the heart of the changes in the constraints on what can be done to nonconforming uses, is the conflict created by the Legislature's amendments with the City's definition of structural alteration.

Section 520.160 Definitions provides:

Structural alteration. Any change other than normal maintenance and repair, or any change which would *prolong the life* of the supporting members of a structure, such as bearing walls, columns, posts, beams, girders, footings or foundations.

Replacement, restoration and improvement, now permitted as allowed repair and maintenance of nonconforming uses by the Legislature, will prolong the life of any nonconforming structure or

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use. The Code's definition and then prohibition of "structural alternation" is no longer a permitted test when applied to the continued use of and investment in nonconforming structures or uses. The policy represented by the Legislature's 2004 amendments encourages prolonging rather than diminishing the life of nonconforming structures or uses in Minnesota. Given this change, the definition and use of "structural alteration" no longer serves a purpose in regulating normal maintenance and repair of nonconforming structures or uses.

Review by the City Attorney's office of the testimony provided at the hearings on the amendment at the Legislature and the consensus of other municipal attorneys polled on this question supports an understanding of the intent of permitting replacement in these amendments was providing the right to an owner of a nonconforming structure or use to completely rebuild or resume a nonconforming use. Section 531.90 Maintenance and Repair is amended to recognize this understanding and assure that any rebuilding under this right is a replica of the original structure or use and does not result in increased nonconformity or intensity. This amendment also encourages moving to conformance when substantially or completely rebuilding or reestablishing the nonconforming structure or use.

B. Expansion

Sections 531.50. Expansion or alteration of nonconforming uses and structures, 531.60. Exceptions to enlargement limitations, 531.70. Equipment replacement, and 531.80. Change of use, provide a process to consider and allow changes to nonconforming uses. The present "does not prolong the life" test of the present process for this discretionary decision is eliminated.

C. Loss of Nonconforming Status

Nonconforming rights can be extinguished by abandonment of the nonconforming use, changing to a conforming use, or by damage or destruction. The 2004 Legislative amendments require amendments to the Code's damage and destruction regulations.

The effect of the Legislature's amendment is suspension of the "one/half of market value" test for 180 days after the damage occurs. This allows any nonconforming use, even if completely destroyed, to be rebuilt or repaired and reused as long as a building permit for that work is applied for in the first 180 days after the damage occurs.

D. Signs

Maintenance and repair, but not replacement if damaged or destroyed, of on premise signs is specifically regulated in Chapter 543, On-Premise Signs, section 543.70, (b) and (c). Maintenance and repair, and replacement of off-premise if damaged or destroyed, are regulated in Chapter 544, Off Premise Advertising Signs and Billboards, section 544.30. Nonconforming signs.

The amendment of the on premise sign section (a) incorporates new additional activities now permitted as maintenance and repair; (b) removes the list of specific activities and parts that are or not permitted to be replaced or changed as normal maintenance and repair, distinctions no

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longer required due to breath of activities now permitted by the Legislature, and to introduce the 180 day suspension of the restoration test discussed in Section C above.

The off premise sign section is amended to delete the references to structural alternation discussed at the end of Section A above, and to introduce the 180 day suspension of the restoration test discussed in Section C above.

What public purpose will be served by the amendment?

The public purpose served by the amendment is assuring owners of nonconforming uses in the City and City officials through their interpretation of the Zoning Code understand and correctly administer the nonconforming rights provided by State Statute.

What problems might the amendment create?

Staff notes the policy represented by the Legislature's 2004 amendments encourages prolonging rather than diminishing the life of nonconforming uses in Minnesota. This is inconsistent with the City's policy expressed in the Code of bringing about their gradual elimination. But, this is a policy change the City must accept and implement.

Timeliness:

Is the amendment timely?

The amendments were effective last year and the changes they provide are effective throughout the State.

Is the amendment consistent with practices in surrounding areas?

The amendment by the Legislature creates the practice all communities in the State must be consistent with.

Are there consequences in denying this amendment?

Failure to adopt these amendments will deny Minneapolis owners and tenants of nonconforming uses the expanded rights provided them by the amendments to the State Statute without confusion, delay, threat of lawsuit, and potentially litigation.

Comprehensive Plan:

How will this amendment implement the Comprehensive Plan?

The goals and policies stated in the *Minneapolis Plan* primarily address patterns and outcomes of new investment in development and redevelopment. These amendments, by providing consistency with State Statute, assure the continued competency of the Code and its ability to implement the direction of Policy 9.18.

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Policy 9.18. Minneapolis will establish land use regulations, in order to achieve the highest possible development standards, enhance the environment, promote flexibility in approaches and otherwise carry out the comprehensive plan.

Recommendation of the Department of Community Planning and Economic Development – Planning Division:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **approve** the zoning code text amendment.

**Proposed Ordinance
of the
City of Minneapolis**

By Schiff

Amending Title 20, Chapter 520, of the Minneapolis Code of Ordinances relating to Zoning Code: Introductory Provisions, Definitions.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Chapter 520.160 of the above-entitled ordinance be amended by deleting the definition of "Structural alteration" in its entirety to read as follows:

~~*Structural alteration.* Any change other than normal maintenance and repair, or any change which would prolong the life of the supporting members of a structure, such as bearing walls, columns, posts, beams, girders, footings or foundations.~~

**Proposed Ordinance
of the
City of Minneapolis**

By Schiff

Amending Title 20, Chapter 531, of the Minneapolis Code of Ordinances relating to Zoning Code: Nonconforming Uses and Structures

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Chapter 531.20 of the above-entitled ordinance be amended to read as follows:

531.20. General prohibition; authority to continue. (a) *Uses and structures.* No structure or use, or part thereof, shall hereafter be erected, constructed, altered, enlarged, relocated, used or intensified in character or operation except in conformity with the provisions of this zoning ordinance. Legal nonconforming uses and structures shall be allowed to continue so long as they remain otherwise lawful, subject to the provisions of this chapter. Nonconforming uses and structures which were not lawfully in existence on the effective date of this ordinance shall be prohibited.

(b) *Nonconforming lots.* No nonconforming lot shall be used, nor any structure erected thereon, except in conformance with section 531.100.

(c) *Interpretation.* This chapter imposes a general prohibition on the enlargement, expansion, ~~restoration,~~ relocation, ~~structural alteration~~ or intensification of nonconforming uses and structures, and on the change of any nonconforming use to a use other than one allowed in the district in which the use is located. Nothing in this chapter shall be construed to provide a property owner with any property right or other legal right to compel the city to grant an exception to this general prohibition.

Section 2. That Section 531.40 of the above-entitled ordinance be amended to read as follows:

531.40. Loss of nonconforming rights.

(c) *Damage or destruction.*

- (1) *Legal nonconforming structure containing a conforming use.* When a legal nonconforming structure is damaged or destroyed by any cause or means, to the extent that the cost of restoration exceeds one-half (1/2) of its market value, and no building permit for reconstruction or replacement of the nonconforming structure is applied for within one hundred eighty (180) days of date the property is damaged or destroyed, reconstruction of the nonconforming structure shall be prohibited. A new structure may be built on the parcel, but only in full conformity with the regulations of the district in which it is located. When a building permit to reconstruct or replace the nonconforming structure in its pre-existing conditions and not enlarge, relocate or

expand the nonconforming structure is applied for within one hundred eighty (180) days of the date the property is damaged or destroyed, such permit shall be approved notwithstanding the cost of the restoration and its relationship to the market value of the structure. Reasonable conditions may be imposed by the zoning administrator to mitigate any newly created impact on adjacent property.

- (2) *Legal nonconforming use.* When a legal nonconforming use is damaged or destroyed by any cause or means, to the extent that the cost of restoring or reestablishing the nonconforming use, including structural repairs and equipment and fixture replacement, exceeds one-half (1/2) of its market value, and no building permit for reconstruction or replacement of the nonconforming structure is applied for within one hundred eighty (180) days of date the property is damaged or destroyed, then the nonconforming use shall not be reestablished or resumed. A new structure may be built on the parcel and new uses established, but only in full conformity with the regulations of the district in which it is located. When a building permit to reconstruct or replace the nonconforming use in its pre-existing conditions and not enlarge, relocate or expand the nonconforming use is applied for within one hundred eighty (180) days of the date the property is damaged or destroyed, such permit shall be approved notwithstanding the cost of the restoration and its relationship to the market value of the structure. Reasonable conditions may be imposed by the zoning administrator to mitigate any newly created impact on adjacent property.

Section 3. That Section 531.50 (b) of the above-entitled ordinance be amended to read as follows:

531.50. Expansion or alteration of nonconforming uses and structures.

(b) Structure (conforming or nonconforming) containing a legal nonconforming use.

Structures containing one (1) or more legal nonconforming uses shall not be moved to a new location on the zoning lot, expanded, enlarged or ~~structurally altered~~ in any way, nor shall such use be intensified, except that the city planning commission may permit the relocation, expansion, enlargement, ~~structural alteration~~ or intensification of such use or structure or any accessory structure, if it makes the following findings, and the relocation, expansion, enlargement, ~~structural alteration~~ or intensification meets all other applicable regulations of this zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

- (1) A rezoning of the property would be inappropriate.
- (2) The enlargement, expansion, relocation, ~~structural alteration~~ or intensification will be compatible with adjacent property and the neighborhood.
- (3) The enlargement, expansion, relocation, ~~structural alteration~~ or intensification will not result in significant increases of adverse off-site impacts such as traffic, noise, dust, odors and parking congestion.

(4) The enlargement, expansion, relocation, ~~structural alteration~~ or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

(5) In districts in which residential uses are allowed, the enlargement, expansion, relocation, ~~structural alteration~~ or intensification will not result in the creation or presence of more dwelling units or rooming units on the subject property than is allowed by the regulations of the district in which the property is located.

(6) The enlargement, expansion, relocation, ~~structural alteration~~ or intensification will not be located in the floodway district.

(c) *Expansion of a nonconforming outdoor use.* No nonconforming, principal outdoor use of land shall be expanded to occupy a greater area of land than was occupied on the date such use first became a legal nonconforming use, nor shall such outdoor use be moved, in whole or in part, to any other portion of the lot or parcel than was occupied by such use on the date the use first became a legal nonconforming use or otherwise intensified, except as provided in section 531.70.

(d) *Process.* Any person having a legal or equitable interest in land may file an application for an expansion, enlargement, relocation, ~~structural alteration~~ or intensification under subdivision (b) on a form approved by the zoning administrator. Application procedures shall be as specified in Chapter 525, Administration and Enforcement. The city planning commission shall hold a public hearing on each complete application as specified in Chapter 525, Administration and Enforcement.

(e) *Conditions and guarantees.* The city planning commission may impose such conditions on any proposed enlargement, expansion, relocation, structural alteration or intensification under subdivision (b) and require such guarantees as it deems reasonable and necessary to protect the public interest and to ensure compliance with the standards and purposes of this zoning ordinance and policies of the comprehensive plan.

(f) *Appeal.* All findings and decisions of the city planning commission under this section shall be final subject to appeal to the city council as specified in Chapter 525, Administration and Enforcement.

(g) *Enlargements, expansions, relocations, structural alterations or intensifications in the FP Floodplain Overlay District.* Any enlargement, expansion, relocation, ~~structural alteration~~ or intensification of a nonconforming use or structure which would result in increasing the flood damage potential of the use or structure shall be protected to the regulatory flood protection elevation or floodproofed in accordance with any of the elevation on fill or floodproofing techniques (FP-1 through FP-4) allowed in the state building code. However, if the cost of all enlargements, expansions, relocations, structural alterations and intensifications exceeds fifty (50) percent of the assessor's current market value of the structure, then the entire structure shall be made to conform to the elevation and floodproofing standards of the FP Floodplain

Overlay District.
(2000-Or-037, § 2, 5-19-2000)

Section 4. That Section 531.90 of the above-entitled ordinance be amended to read as follows:

531.90. Maintenance and repair. *(a) In general.* Normal maintenance and repair, including cosmetic changes and replacement, restoration and improvement may be performed on any nonconforming structure or on any conforming structure containing a nonconforming use, provided however, that no such maintenance or repair shall result in an expansion, relocation or enlargement of the use or structure or increase the extent of the nonconformity, except as otherwise provided by this chapter. ~~Normal maintenance and repair shall not include a structural alteration.~~

(b) Replacement. Following damage or destruction, replacement of a nonconformity shall mean that the structure and site, if reinstated with a nonconformity as allowed under the terms of this chapter, shall be reconstructed to match the pre-existing conditions that preceded damage or destruction. Reasonable conditions may be imposed by the zoning administrator to mitigate any newly created impact on adjacent property. Nonconformities that are completely or substantially reconstructed that include changes to building placement or design shall be subject to section 531.50, Expansion or alteration of nonconforming uses and structures.

(c) Safety of operation. Except as governed by section 531.70, for the purpose of this section, maintenance and repair shall include the replacement of above ground storage tanks where safety of operation of the installation requires such replacement, and other replacements of, or substitutions for, indoor machinery or equipment not involving structural alterations which will increase the bulk of the building or structure, and replacement of underground tanks, provided any such replacement of an underground tank complies with the provisions of this ordinance and all other applicable regulations.

(d) Exceptions. The zoning administrator may authorize minor changes in the placement and size of improvements provided such changes decrease the extent of the nonconformity.

**Proposed Ordinance
of the
City of Minneapolis**

By Schiff

Amending Title 20, Chapter 543 of the Minneapolis Code of Ordinances relating to Zoning Code: On-Premise Signs

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 543.370 of the above-entitled ordinance be amended to read as follows:

543.370. Maintenance and repair. (a) *Maintenance required.* All signs shall be kept in good repair and free from peeling paint, rust, damaged or rotted supports, framework or other material, broken or missing faces or missing letters.

(b) *Activities considered normal maintenance and repair.* Normal maintenance and repair shall include activities such as ~~replacing lamps, replacing ballast in freestanding signs, replacing transformers in building signs, painting the pole of freestanding signs and the cabinet of freestanding or building signs, replacing or repairing the sign face, including H-bars and retainers behind the face, replacing trim and replacement of sign fasteners, nuts and washers.~~ replacement, restoration or improvement. Following damage or destruction, replacement of a nonconformity shall mean that the sign face or sign structure and site, if reinstated with a nonconformity as allowed under the terms of this chapter, shall be reconstructed to match the conditions of the sign face or sign structure that preceded damage or destruction. Reasonable conditions may be imposed by the zoning administrator to mitigate any newly created impact on adjacent property. Nonconformities that are completely or substantially reconstructed that include changes to building placement or design shall be subject to section 531.50, Expansion or alteration of nonconforming uses and structures.

(c) *Items not considered normal maintenance and repair.* ~~The following items~~ Changes made to the location, size, height or bulk of the sign or addition of illumination are not considered normal maintenance and repair and shall require that a nonconforming sign be brought into conformance with all requirements of this chapter.

~~(1) Changes made to the size, height or bulk of the sign or the removal of the sign for the repair or replacement of the cabinet or any part thereof, not including the face, or addition of illumination.~~

~~(2) Changes in poles, structural supports, bases or shrouds, footings or anchor bolts, moving the sign for any reason change or replacement of the interior or exterior cabinet frame and removal of any part of the sign for maintenance, except the sign face.~~

**Proposed Ordinance
of the
City of Minneapolis**

By Schiff

Amending Title 20, Chapter 544 of the Minneapolis Code of Ordinances relating to Zoning Code: Nonconforming Uses and Structures

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 544.30 of the above-entitled ordinance be amended to read as follows:

544.30. **Nonconforming signs.** The following provisions shall apply to nonconforming advertising signs and billboards:

- (1) Advertising signs and billboards lawfully existing at the time of adoption of this chapter which do not conform to the regulations of this chapter may continue to exist, but shall not be ~~structurally altered or enlarged~~.
- (2) Maintenance, and repair, including replacement, restoration, improvement, and changing of sign messages is allowed, provided no structural alterations shall be made. Following damage or destruction, replacement of a nonconformity shall mean that the sign face or sign structure, if reinstated with a nonconformity as allowed under the terms of this chapter, shall be reconstructed to match the conditions that preceded damage or destruction. Nonconformities that are completely or substantially reconstructed that include changes to the placement or design of the sign face or sign structure shall be subject to section 531.50, Expansion or alteration of nonconforming uses and structures. A new painted wall sign with changed advertising copy or graphics-painted over an existing painted wall sign shall be prohibited by this chapter.
- (3) Advertising signs and sign structures which are moved, ~~or replaced, or structurally altered~~ shall be brought into compliance with all applicable regulations of this chapter.
- (4) A nonconforming sign which is damaged or destroyed by any cause or means to the extent that the cost of restoration exceeds one-half (1/2) of its replacement cost and no building permit for reconstruction or replacement of the nonconforming structure is applied for within one hundred eighty (180) days of date the property is damaged or destroyed, shall not be reconstructed except in conformity with all applicable regulations of this chapter. When a building permit to reconstruct or replace the nonconforming sign face or sign structure in its pre-existing design and not enlarge, relocate or expand the nonconforming sign face or sign structure is applied for within one hundred eighty (180) days of the date the property is damaged or destroyed, such permit shall be approved notwithstanding the cost of the restoration and its relationship to the market value of the structure. Reasonable conditions may

be imposed by the zoning administrator to mitigate any newly created impact on adjacent property.

- (5) A nonconforming advertising sign which is discontinued for a continuous period of more than one (1) year shall be deemed to be abandoned and may not thereafter be reestablished or resumed except in conformity with all applicable regulations of this chapter. (2002-Or-019, § 1, 3-1-02)

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