

**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

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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.