

**CHAPTER 16.48
NONCONFORMING USE AND DEVELOPMENT**

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16.48.010 EFFECT ON OTHER REGULATIONS. Where this title imposes a greater restriction on a use, structure, or development established prior to the adoption of this title, the provision of this title controls except that this title shall not take precedence over the zoning requirements applied to land use applications granted under preceding zoning ordinances. The provisions of this chapter relate exclusively to the use and development conditions and regulations imposed directly and not by reference or implication in this title. Nothing in this chapter shall be deemed a waiver, relaxation or abrogation of any provision of any other applicable law, ordinance, or regulation controlling the use or development of buildings, structures or land.

16.48.100 TERMINATION OF NONCONFORMITY.

- A. The nonconforming use of a building, structure, vehicle or land shall be deemed to have terminated if the building, structure, vehicle or land ceased to be occupied for that use, for any reason, for a continuous period of one year.
- B. Any nonconforming use dependent upon a building or structure which is substantially damaged or becomes deteriorated to the extent that it has been declared a “dangerous building” and ordered demolished pursuant to the Uniform Building Code, shall be deemed terminated upon such destruction or declaration and order.
- C. Any nonconforming use or development dependent upon a building, structure or vehicle located on the premises which is substantially damaged or destroyed by any cause shall be deemed terminated upon the date of such damage or destruction. For the purpose of this subsection a building, structure, or vehicle is substantially damaged if the cost of repair or restoration of the building, structure or vehicle would exceed 60 percent of its replacement cost using new materials and conforming to current building codes. Reestablishment of a nonconforming use or development dependent on a substantially damaged building, structure, or vehicle shall require a conditional use permit. Application for replacement or reestablishment shall occur within 12 months of termination. Findings on the cost of repair or restoration, replacement cost, and dependency of the use on the damaged building or structure, shall be included in the decision.
- D. No nonconforming use or development which has terminated as provided in this section shall thereafter be re-established, except as provided in subsection (C) of this section.

16.48.120 CONTINUATION AND EXPANSION OF NON-CONFORMITY. Except as provided in MCC 16.48.140 and 16.48.180, any lawfully established nonconforming use, structure or development may be continued as a lawful use, structure or development unless and until terminated as provided in MCC 16.48.100, subject to the following restrictions as to expansion, alteration, change, and replacement of the use, structures, or development:

- A. A legal nonconforming use of a portion of a conforming or nonconforming building may be expanded into other portions of that building existing prior to this title as provided in subsection (C) of this section.
- B. A conforming or nonconforming building, structure, or vehicle occupied by a legal nonconforming use may be altered, enlarged or replaced for the benefit of such use as provided in subsection (C) of this section, provided that the alteration, enlargement or replacement is otherwise lawful under the development standards of this title and the provisions of all other applicable laws, ordinances, and regulations.
- C. The nonconforming uses specified in this chapter are treated as conditional uses in the applicable zone. However, unlike conditional uses, they are not deemed permitted uses. Nonconforming uses may be expanded or changed to a use of the same or more restricted nature where such use is granted a conditional use permit. The procedures and criteria set forth in Chapters 16.37 and 16.40 MCC shall apply. In addition, the applicant shall have the burden of showing that the alteration of the use or structure is necessary to comply with a lawful requirement or will not result in a greater adverse impact on the neighborhood. Granting of a conditional use allowing the alteration does not remove the nonconforming status of the use or structure.
- D. An applicant may not be required to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of the application.

16.48.140 NONCONFORMING RESIDENTIAL USES IN COMMERCIAL AND INDUSTRIAL ZONES.

- A. Notwithstanding the provisions of MCC 16.48.120, any legally established nonconforming residential use in any commercial or industrial zone may be continued unless and until terminated. Such uses may be expanded and their buildings structurally altered provided such expansion or structural alteration complies with all applicable development standards in this title, and with all applicable provisions, of other laws, ordinances and regulations. Changes of use from a nonconforming residential use to a nonconforming nonresidential use or another nonconforming residential use shall be allowed as provided in MCC 16.48.120(B) and (C).
- B. Notwithstanding the provisions of this title, any legally established nonconforming single-family dwelling or mobile home in any commercial or industrial zone which is substantially damaged or destroyed by fire, or other casualty or natural disaster may be restored or replaced if it is determined: (1) the dwelling or mobile home meets the setback and height standards of the CO (commercial office) zone, or is no more non-conforming than the existing dwelling or mobile home; (2) there is only one dwelling or mobile home on the lot or parcel; (3) in the case of replacement, the dwelling or mobile home, if not placed on the same footprint, shall be located in such a manner that any significant unused portion of the property has adequate development options, and development options on adjacent properties are not significantly restricted. Consideration shall be given to the planned location of public facilities and services in siting a replacement dwelling or mobile home. A mobile home may be replaced only with a mobile home and the replacement mobile home meets the requirements in MCC 16.26.020(A)(1) or (2) and (3).

Application for restoration or replacement shall be commenced within 12 months of the occurrence of fire, casualty or natural disaster. After the 12 month period restoration or replacement may occur only if consistent with the provisions of the title.

16.48.180 NONCONFORMING PERMITTED AND CONDITIONAL USES. Any legally established use existing prior to this title which is listed in this title as a permitted or conditional use in the applicable zone, shall be a conforming use even though it does not conform to the requirements for such uses in this title provided:

- A. A conditional use permit shall be required for any use other than a single-family dwelling or mobile home if the use is expanded or if primary structures or buildings occupied by the use are expanded.

- B. Pre-existing uses and related structures and buildings conform to any condition imposed at the time the use was approved unless modified as part of a conditional use permit approved pursuant to the requirements of this title.
- C. Replacement of a mobile home in the UT, UD, and RS zones shall be with a mobile home that meets the requirements in MCC 16.26.903(A). Replacement of a mobile home in any other zone shall be with a mobile home that meets the requirements in MCC 16.26.903 (A).
- D. Legally established structures accessory to a dwelling, mobile home, farm or forest use existing when the UT zone in this title is applied shall be considered in conformance with the UT zone and may be repaired, altered, enlarged or replaced provided the alteration, enlargement, or replacement does not encroach into any vision clearance area or special street setbacks.

16.48.200 COMPLIANCE WITH FORMER REGULATIONS. Except as provided under MCC 16.48.120 to 16.48.180 for expansion, change, alteration, or replacement of nonconforming uses and development, every use and premises which is nonconforming shall maintain compliance with all applicable regulations, including conditions on land use actions, by which it was governed at the time it became nonconforming.

16.48.220 REPAIRS AND MAINTENANCE. Except as otherwise provided in this chapter nonconforming structures and developments and premises occupied by nonconforming uses may be repaired and maintained without restriction.

16.48.300 UNLAWFUL LOTS, USES, STRUCTURES AND DEVELOPMENT. Any lot, parcel, use or structure existing prior to this title which was established in violation of prior zoning ordinances or the subdivision and partition ordinance then in effect, and which is unlawful under this title, shall not be classified as a nonconforming lot, parcel, use or structure by virtue of the repeal of any such prior ordinances, and such lot, parcel, use or structure shall constitute a violation of this title.

16.48.320 USE OF NON-CONFORMING LOTS. Lots or parcels lawfully established prior to this title may be used and developed as provided in this title even though such lot or parcel does not conform to the requirements of this title provided all other development standards are met.

16.48.400 EFFECT OF ZONE CHANGES. Wherever the zoning on any lot or parcel or portion thereof is changed, the provisions in this chapter shall apply to any use, structure or development made nonconforming by the zone change.