



Planning Commission Meeting:  
First Wednesday of every Month @ 6:00pm  
Planning & Community Development Department  
1812 Main Street  
Lake Stevens, WA 98258  
(425) 622-9430  
[www.lakestevenswa.gov](http://www.lakestevenswa.gov)

Municipal Code  
Available online:  
[www.codepublishing.com/WA/LakeStevens/](http://www.codepublishing.com/WA/LakeStevens/)

## PLANNING COMMISSION AGENDA

Regular Meeting Date: 08/18/2021

REMOTE ONLY

JOIN HERE <https://us02web.zoom.us/j/89081840442>

Meeting ID: 890 8184 0442 +1 253 215 8782 US (Tacoma)

- **CALL TO ORDER 6:00pm**  
Pledge of Allegiance
- **ROLL CALL**
- **GUEST BUSINESS**
- **ACTION ITEMS**
  1. Approve minutes for 07/07/2021
- **PUBLIC HEARING Impact fees** Planning Manager Levitan
- ***Public hearing presentation will follow the public hearing format listed below:***

### PUBLIC HEARING FORMAT

1. PC Chair Opens Public Hearing
2. Staff Presentation
3. Commission's questions for staff
4. Proponent's comments
5. Comments from the audience
6. Proponent rebuttal comments
7. Close public comments portion of hearing by motion
8. Re-open public comment portion of hearing for additional comments (optional)
9. Close Hearing by motion

10. **COMMISSION ACTION BY MOTION – Recommendation to Council**

- A. Approve
- B. Deny
- C. Continue

### DISCUSSION ITEM

1. Briefing: Permissible Use Table
2. Briefing: Non-Conforming Uses

Assistant Planner Jill Needham  
Senior Planner Melissa Place

### COMMISSIONER REPORTS

### PLANNING DIRECTOR'S REPORT

### ADJOURN

**SPECIAL NEEDS**

*The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact City of Lake Stevens ADA Coordinator, at (425) 622-9419 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.*

# PLANNING COMMISSION MEETING MINUTES



## REMOTE PARTICIPATION 07-07-2021

CALL TO ORDER:	6:00 pm by Chair John Cronin
MEMBERS PRESENT:	John Cronin, Mike Duerr, Janice Huxford, Vicki Oslund, Jennifer Davis
MEMBERS ABSENT:	Todd Welch and Linda Hoult
STAFF PRESENT:	Planning Manager David Levitan, Assistant Planner Jill Needham and Clerk Jennie Fenrich
OTHERS PRESENT:	Councilmembers Gary Petershagen and Steve Ewing

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Chair Cronin called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

**Roll Call:** Commissioners Welch and Hoult were absent. Chair Cronin moved and Commissioner Oslund seconded to excuse their absences. Motion approved. 5-0-0-2.

**Guest business:** None.

**Approval of Minutes:** Minutes of 06/02/2021 were approved 5-0-0-2.

Minutes of 6/16/2021 were approved 5-0-0-2.

### **Discussion Items**

Assistant Planner Needham provided an overview of updates staff had made to the Permissible Uses Chapter (LSMC 14.40) and associated LSMC sections since the last Commission work session on April 21. Commissioners reviewed the three use tables - Residential, Non-Residential, and Special Uses – as well as an updated preamble and supplementary use regulations (LSMC 14.44).

The discussion focused primarily on questions that had been included in the staff report, including whether to continue to allow detached single-family residences and accessory dwelling units in the MFR zone; proposed changes to the storage facility supplementary use regulations that would require the preparation of an economic analysis; requiring an ACUP for retail and restaurant uses in the city's industrial zones; and allowing for home occupations in legal non-conforming residences in non-residential zoning districts. At the end of the discussion, commissioners requested one final work session on August 18 before moving the code amendment to the public hearing stage.

**Commissioner Reports:** Commissioner Duerr inquired as to when Planning Commission may return to in- person meetings. Planning Manager Levitan replied that the City Council had discussed starting in- person or hybrid meetings after their summer break (August 24, but subject to change), and that the Commission would likely follow a similar schedule.

**Planning Manager Report:** Planning Manager Levitan reported the City Council discussed raising marijuana licensing fees during their July 6 workshop meeting.

**Adjourn:** Moved by Chair Cronin, seconded by Commissioner Huxford to adjourn the meeting at 6:59 p.m. On vote the motion carried (5-0-0-2).

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Jennie Fenrich, Planning Commission Clerk



*One Community Around the Lake*

## Staff Report Lake Stevens Planning Commission Planning Commission Public Hearing

Date: **August 18, 2021**

**Subject: Public Hearing for Proposed Amendments to LSMC 14.100 and 14.112 (Impact Fees)**

Contact Person/Department: David Levitan, Planning Manager

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### **ACTION REQUESTED OF PLANNING COMMISSION:**

Planning Commission is asked to hold a public hearing and forward a recommendation to City Council on LUA2021-0133, a city-initiated land use code amendment to LSMC 14.100 (School Impact Mitigation) and 14.112 (Traffic Impact Mitigation Fees) as shown in Attachment 1.

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### **BACKGROUND**

Impacts fees are one-time charges that cities, counties, and special service districts may collect to fund public facility or capital improvements needed to help mitigate the impacts from development. Impact fees may only be used to fund "system improvements" identified in the city's (or district's) capital facilities plan. They must be reasonably related and proportional to the impacts of the proposed development and may not be used to correct existing deficiencies. City and school district impact fees are identified on pages 4/5 of the city's [fee resolution](#), which is updated annually.

Per RCW 82.02.050-110 and WAC 365-196-850, local jurisdictions may impose impact fees on:

- Public streets and roads (traffic)
- Public parks, open space, and recreation facilities
- Schools
- Fire protection facilities

The Lake Stevens Municipal Code (LSMC) currently includes sections related to the following impact fees:

- School Impact Mitigation ([LSMC 14.100](#))
- Traffic Impact Mitigation Fees ([LSMC 14.112](#))
- Park Impact Mitigation Fees ([LSMC 14.120](#))

Staff introduced commissioners to a list of potential amendments to LSMC 14.100, 14.112, and 14.120 during a [June 16 work session](#) which were needed to account for recent and upcoming annexations (most notably the Southeast Interlocal Annexation). Staff noted that the city's recent adoption of higher SEPA flexible thresholds for minor new construction may exempt several projects that the city previously was able to utilize its SEPA substantive authority to evaluate and impose mitigation, including impact fees.

Commissioners reviewed staff's recommended changes to the school and traffic impact fees and suggested several minor revisions, which staff has incorporated into the draft code amendments shown in Attachment 1 (only amended code sections are included). As the city will need to complete

additional research and analysis before it proposes any changes to its park impact fee code language and methodology, LUA2021-0133 does not include any changes to LSMC 14.120.

## **PROPOSAL AND STAFF RECOMMENDATION**

As shown in Attachment 1, staff is recommending the following amendments to the city's school and traffic impact fees:

- School Impact Mitigation (LSMC 14.100)
  - Adds a new definition for "District" to LSMC 14.100.030, so that impact fees can be collected for any school district meeting this definition that is located within city boundaries.
  - Removes specific references to the Lake Stevens School District in LSMC 14.100.040 and 14.100.130 and replaces them with "district", consistent with the definition above.
  - Revises LSMC 14.100.160(b) and 14.100.220 to extend the deadline for expending or encumbering school impact fees from six (6) years to 10 years (consistent with state law) before they must be refunded.
- Traffic Impact Mitigation Fees (LSMC 14.112)
  - Amends LSMC 14.112.050 (Service Areas) to:
    - Update the map of Traffic Impact Zones (TIZs) illustrated in Figure 14.112-I to account for annexations completed through September 14, 2021, including the Southeast Interlocal Annexation. TIZ 3 (South Lake Stevens) would extend north and east while TIZ 1 (East Lake Stevens) would extend south and west, with the boundary between the two zones located just south of 3<sup>rd</sup> Place SE.
    - Add language that automatically assigns the TIZ of directly contiguous areas when properties are annexed into the city.

## **FINDINGS AND CONCLUSIONS**

Per [LSMC 14.16C.075\(f\)](#), the City Council shall make the following findings when approving land use code amendments:

### **1. The amendment is consistent with the Lake Stevens Comprehensive Plan**

- Capital Facilities Element Goal 9.3: Development shall bear its fair share of costs of providing public facilities at the adopted levels of service.
- Capital Facilities Element Policy 9.3.1 – Transportation and park impact fees shall be sufficient to pay the fair share of improvement costs necessitated by new development.

**Conclusions** – Adoption of the city-initiated amendment is consistent with the goals and policies of the city's Comprehensive Plan. Expansion of the city's traffic impact zones will ensure that recent and future annexations will be subject to the city's traffic impact fees and that future growth will pay its fair share of necessary capital improvements. Proposed changes to school impact fee code language will ensure that all school districts located within the boundaries of Lake Stevens can collect school impact fees to help fund school capital improvements.

### **2. The amendment complies with the Growth Management Act (RCW 36.70A.106)**

- Code amendments are subject to review by the Washington State Department of Commerce.
- The city provided a request for expedited review to the Department of Commerce on July 22, 2021 of its intent to amend LSMC 14.100 and 14.112, with a proposed adoption date of

September 14, 2021. The Department of Commerce granted expedited review of the proposed amendment on August 5, 2021.

- If approved by the City Council, staff will file the final ordinance with the Department of Commerce within 10 days of its adoption.

**Conclusions** – The proposed code amendment has met all Growth Management Act requirements.

### **3. The amendment serves to enhance the public health, safety and welfare**

**Conclusions** – The recommended amendments would allow the city to collect traffic impact fees in areas that have or will be annexed into the city, but which are not currently assigned a Traffic Impact Zone on LSMC Figure 14.112-I. The ability to collect traffic impact fees is integral to the city's ability to fund capital improvements necessary to accommodate future growth. Amendments to school impact mitigation (LSMC 14.100) would clarify that any public school district within the boundaries of Lake Stevens (and with a capital facilities plan approved by the City Council) would be eligible to collect school impact fees to fund capital improvements and would align the period during which school impact fees need to be expended or encumbered with state law (10 years). Collectively these amendments serve to enhance public health, safety and welfare.

#### **Public Notice and Comments**

- Land use code amendments are reviewed through the city's Type VI legislative review process identified in [LSMC 14.16B.605-660](#), which requires the Planning Commission to hold a public hearing and make a recommendation to City Council.
- The city published a joint Notice of Public Hearing and SEPA Categorical Exemption in the Everett Herald on August 6 and August 13, 2021. The notice was also posted at City Hall and on the [city's website](#) on or around August 6, 2021.
- No public comments have been received to date. If comments are received prior to the hearing, the comments will be distributed on the night of the hearing.

**Conclusions** – The city has met all public notice requirements per Chapter 14.16B LSMC.

#### **State Environmental Policy Act (SEPA) (Chapter 97-11 WAC and Title 16 LSMC)**

- The proposal is categorically exempt from the State Environmental Policy Act (SEPA) under WAC 197-11-800(19)(b) as a text amendment that will result in no substantive changes respecting use of modification of the environment.
- The city published a Determination of Categorical Exemption concurrently with the Notice of Public Hearing on August 6, 2021.

**Conclusions** – The proposed code amendment has met all local and state SEPA requirements.

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**RECOMMENDATION:** Staff recommends that Planning Commission forward a recommendation to City Council to APPROVE the proposed amendments to LSMC 14.100 and 14.112 (LUA2021-0133), as shown in Attachment 1. City Council is tentatively scheduled to hold a public hearing to consider the Planning Commission's recommendation on September 14, 2021.

#### **ATTACHMENTS**

Attachment 1 – Recommended Amendments to LSMC 14.100 and 14.112

**Attachment 1**

## **Chapter 14.100 SCHOOL IMPACT MITIGATION**

### **14.100.030 Definitions.**



*Development activity* means any residential construction or expansion of a building, structure or use of land, or any other change in use of a building, structure, or land that creates additional demand and need for school facilities, but excluding building permits for remodeling or renovation permits which do not result in additional dwelling units. Also excluded from this definition is “housing for older persons” as defined by [46 U.S.C. Section 3607](#), when guaranteed by a restrictive covenant, and new single-family detached units constructed on legal lots created prior to the effective date of the ordinance codified in this chapter.

[District means any public school district whose geographic boundaries include areas within the city of Lake Stevens.](#)

*District property tax levy rate* means the school district’s current capital property tax rate per \$1,000 of assessed value.

### **14.100.040 Capital facilities plan required.**



The [Lake Stevens School District](#) shall be eligible to receive school impact fees upon approval, by the City Council, of a district capital facilities plan (SDCFP) which meets the requirements of the GMA. Approval of the SDCFP will also constitute adoption the schedule of school impact fees contained therein.

### **14.100.130 Impact Fee Calculation Formula.**



(a) The formula in this section provides the basis for the impact fee schedule for [Lake Stevens School District](#) serving the City of Lake Stevens. District capital facilities plans shall include a calculation of its proposed impact fee schedule, by dwelling unit type, utilizing this formula. In addition, a detailed listing and description of the various data and factors needed to support the fee calculation is included herein and Section [14.100.030](#), Definitions.

### **14.100.160 Impact Fee Limitations.**



(a) School impact fees shall be imposed for district capital facilities that are reasonably related to the development under consideration, shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the development, and shall be used for system improvements that will reasonably benefit the new development.

(b) School impact fees must be expended or encumbered for a permissible use within [six-10](#) years of receipt by the district.

**14.100.220 Refunds.**  SHARE

(a) School impact fees not spent or encumbered within ~~six-10~~ years after they were collected by the school district shall, upon receipt of a proper and accurate claim, be refunded by the school district together with interest to the then-current owner(s) of the property(ies). In determining whether school impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis. The school district shall report annually to the City Finance Director any funds collected by the school district that have not been spent or encumbered. The City shall, based on the annual report received from the school district pursuant to Section [14.100.210\(d\)](#), give notice to the last known address of potential claimants of any funds collected by the school district that have not been spent or encumbered and that a claim for a refund may be made.

## Chapter 14.112 TRAFFIC IMPACT MITIGATION FEES\*

### 14.112.050 Service Areas. SHARE

For the provision of public streets, implementation of the Capital Facilities and Transportation Elements of the Comprehensive Plan and administration of this chapter, three traffic impact zones (TIZ) are established. They consist of TIZ 1 - East Lake Stevens, TIZ 2 - West Lake Stevens, and TIZ 3 - South Lake Stevens. The precise boundaries of these service areas are shown in Figure 14.112-I.

Properties within the Urban Growth Area (UGA) that are annexed into the city shall be automatically assigned the same TIZ (service area) as city properties directly contiguous to the annexation.

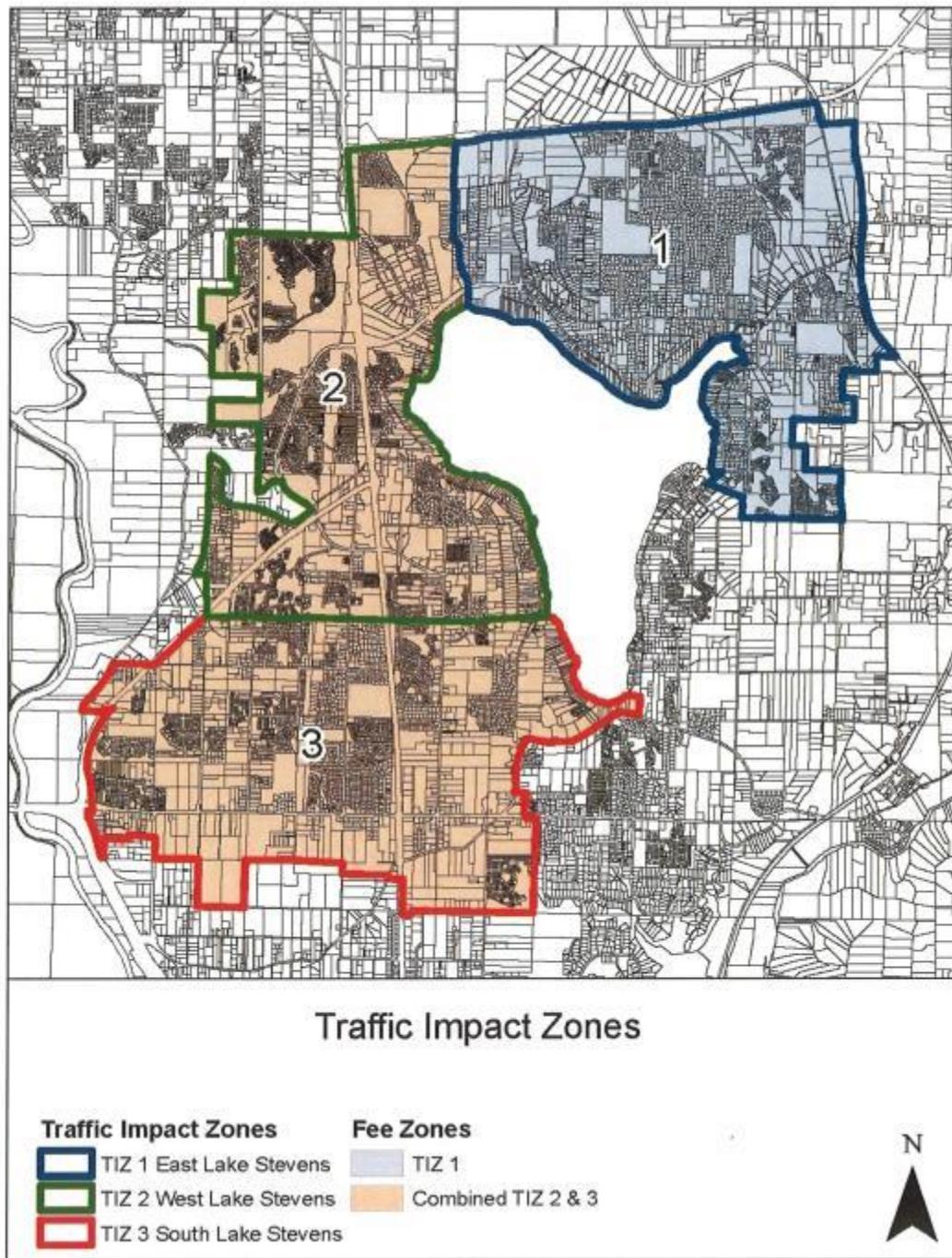


Figure 14.112-I Traffic Impact Zones (DELETED AND REPLACED WITH MAP ON NEXT PAGE)

(Ord. 876, Sec. 6 (Exh. 4), 2012)

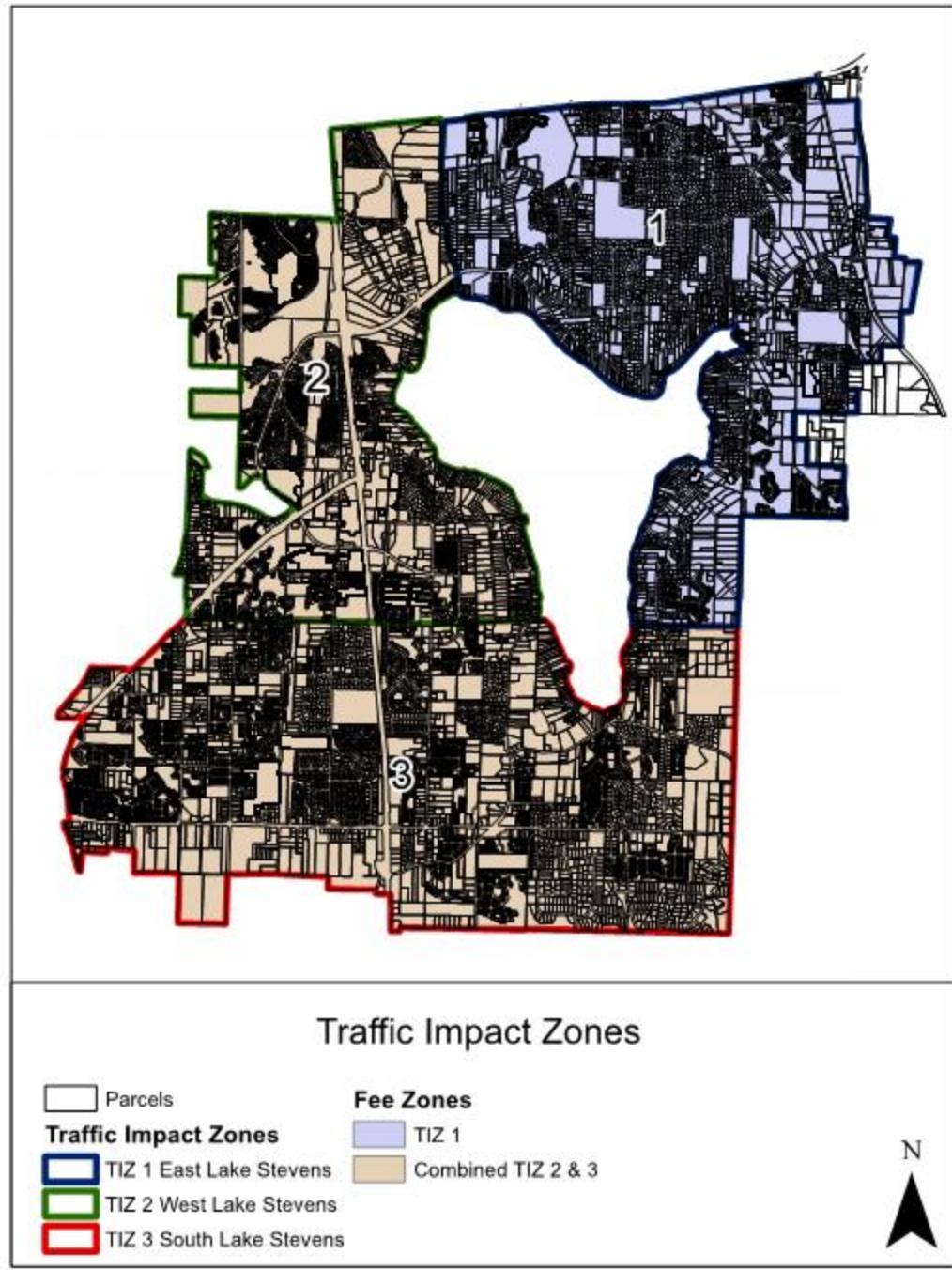


Figure 14.112-I Traffic Impact Zones (NEW MAP)



One Community Around the Lake

## Staff Report Lake Stevens Planning Commission

Planning Commission Briefing

Date: **August 18, 2021**

Subject: **Final Work Session on Permissible Use Chapter Update (LSMC 14.40)**

Contact Person/Department: Jill Needham, *Assistant Planner*

David Levitan, *Planning Manager*

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### **SUMMARY:**

Staff has completed additional research and analysis and is recommending a few changes to proposed code amendments to the city's Permissible Use Chapter (LSMC 14.40) and associated LSMC sections, in response to questions and comments raised by commissioners at their July 7 work session. Staff is asking for Commission feedback before moving on to the public hearing stage.

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### **ACTION REQUESTED OF PLANNING COMMISSION:**

This is an informational briefing. Commissioners are asked to review the updates and indicate whether the proposal is ready for a public hearing on September 14.

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### **BACKGROUND/DISCUSSION:**

The Planning Commission has held six work sessions to date to discuss potential amendments to the Permissible Uses Chapter of the Land Use Code (LSMC 14.40). During the most recent work session on July 7, staff shared updated drafts of the three permissible use tables – Residential, Non-Residential, and Special Uses – as well as associated amendments to the LSMC 14.40 introduction (“preamble”), supplementary use regulations (LSMC 14.44), and other related LSMC sections.

The Commission had a robust discussion on the proposed amendments and requested that staff schedule a final work session to address their questions and comments before moving on to public hearings for the proposal. Staff has provided a summary of the major topics discussed on July 7, as well as staff responses and recommendations.

- 1) Staff is recommending that storage facilities no longer be permitted in the P/SP zone; require an Administrative Conditional Use Permit (ACUP) in the city's industrial zones; and that LSMC 14.44.044 be amended to require storage facilities to provide an economic analysis to demonstrate why other permitted uses are not economically feasible. Commissioners were generally comfortable with the rationale behind the proposed changes (storage uses occupy a lot of land and generate relatively few jobs) but requested more detail on what type of economic analysis/criteria would be required.

Response: Staff has revised LSMC 14.44.044(c)(2) to require the economic analysis to address the city's goal of employment growth and ability to meet employment growth targets.

- 2) Commissioners agreed with staff's recommendation that retail uses require an ACUP in the light and general industrial zones (retail uses were previously outright permitted on lots less than one acre in size) but felt that restaurants were needed in industrial areas and that they should continue to be outright permitted (not require an ACUP).

Response: Staff has updated the table to outright permit restaurants in the city's industrial zones.

- 3) In response to a staff recommendation that detached single-family residences (SFR's) no longer be permitted in the Multifamily Residential (MFR) zone, commissioners asked staff to research how many properties this change would impact.

Response: Staff reviewed zoning and assessor GIS data, and determined that there are 25 MFR-zoned lots with existing detached SFR's on them; another 77 lots sited with detached condominiums ("air condos"); four MFR lots with two detached SFR's on each lot; and 10 vacant MFR lots that under current regulations could be developed with a SFR. Staff is comfortable with continuing to allow detached SFR's in the MFR zone, or amending the code to prohibit them.

- 4) Commissioners were less supportive of staff's recommendation to no longer allow accessory dwelling units (ADUs) in the MFR zone when developed on a lot with an existing single-family residence, even if the code were amended to prohibit detached SFR's in the MFR zone. They generally felt that detached SFR property owners should be allowed to construct an ADU, regardless of the zoning district.

Response: Staff has added ADUs as a permitted use for legal non-conforming single-family residences in the MFR zone. If the Commission recommends allowing new single family residences as an outright permitted use, the footnote will be removed.

- 5) Home occupations are currently permitted in the Local Business, General Industrial, and Light Industrial zones, where residential development is not permitted but several legal non-conforming residences exist. Should new home occupations continue to be permitted in these non-residential zones?

Response: The proposed residential table draft allows new home occupations within these zoning districts.

Following Commission discussion, staff is requesting guidance on whether the proposed amendments are ready to move forward to a public hearing on September 15, or if they warrant another work session. On August 12, staff provided the attached drafts to the the Department of Commerce to begin the 60-day review period for the proposed code amendments. Staff plans to post the amendments to the city website and reach out to local stakeholders such as the Chamber of Commerce on August 16, to allow for a minimum of 30 days of public comment prior to a September 15 public hearing.

## Attachments

Attachment 1: Preamble (LSMC 14.44.010-090)

Attachment 2: Supplementary Use Regulations (LSMC 14.44)

Attachment 3: Other Updated Sections

Attachment 4: Residential Table Draft

Attachment 5: Non-residential Table Draft

Attachment 6: Special Use Table Draft

**Attachment 1**

**14.40.010 ~~Table of Permissible Use Tables~~.**

Tables 14.40-I-III, the ~~Table of~~ Permissible Use ~~Tables~~, sets forth the permissible uses for the various zoning districts in the City ~~established in Chapter 14.36 Part I~~, subject to other applicable provisions in this title. It should be read in close conjunction with the definitions of terms set forth in Section [14.08.010](#) and the other interpretative provisions set forth in this chapter. Permissible uses for the subarea zoning districts are not included in this table, but are included in Section [14.38.020](#). (Ord. 876, Sec. 18, 2012; Ord. 811, Sec. 31, 2010; Ord. 676, Sec. 23, 2003; Ord. 468, 1995)

[14.40.015 Uses within Subareas](#)

Permissible and prohibited uses ~~within~~ ~~for~~ adopted subarea ~~zoning districts~~ ~~plan~~ boundaries (as identified on the Official Zoning Map) are listed in Section 14.38.020. Identified principal and secondary uses are both considered permissible uses, although principal uses are preferred. ~~For development within adopted subareas, see~~ ~~Per Section~~ ~~LSMC~~ 14.38.015 and 14.44.030 (Development within Adopted Subareas), regulations regarding permitted uses in Chapter 14.38 supersede those in other Title 14 chapters, including this one. -

**14.40.020 Use of the Designations P, A, C in ~~Table of Permissible Use Tables~~.**

(a) The ~~Table of~~ Permissible Use ~~Tables~~ (Tables 14.40-I-III) sets forth which uses are permitted in which zones. The letter "P" means the use is permitted or allowed in the indicated ~~zoning~~ district subject to all code requirements of this title. The letter "A" means the use requires an administrative conditional use permit [\(see Section 14.16C.015\)](#), and the letter "C" means the use requires a conditional use permit [\(see Section 14.16C.045\)](#). No letter means that use is not permitted in the indicated ~~zoning~~ district.

(b) ~~When used in connection with residential uses (use classification 1.000), the designation "PAG"~~  
~~means that such developments of less than five dwelling units are a permitted use when code~~  
~~requirements are met, developments of five or more but less than 13 dwelling units need an~~  
~~administrative conditional use permit, and developments of 13 or more dwelling units require a conditional~~  
~~use permit.~~

(c) ~~When used in connection with nonresidential uses, the designation "PA" means that such~~  
~~developments are permitted if the lot to be developed is less than one acre in size and require an~~  
~~administrative conditional use permit if the lot is one acre or larger in area; and the designation "PC"~~  
~~means that such developments are permitted if the lot to be developed is less than one acre in size and~~  
~~require a conditional use permit if the lot is one acre or larger in area.~~

(d) Use of the designation PAC for combination uses is explained in Section 14.40.080. (Ord. 903, Sec. 29, 2013; Ord. 811, Sec. 32, 2010; Ord. 798, Sec. 3, 2009; Ord. 676, Sec. 24, 2003; Ord. 590, 1998; Ord. 468, 1995)

#### **14.40.030 Jurisdiction over Uses Otherwise Permissible.**

Whenever this title provides that a use in a nonresidential zone or a nonconforming use in a residential zone is permissible, an administrative conditional use permit shall nevertheless be required if the Planning Director finds that the proposed use would have an extraordinary impact on neighboring properties or the general public. In making this determination, the Planning Director shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question. (Ord. 811, Sec. 33, 2010; Ord. 676, Sec. 25, 2003; Ord. 468, 1995)

#### **14.40.0340 Permissible and Prohibited Uses.**

(a) The presumption established by this title is that all legitimate uses of land are addressed within the Table of Permissible Use Tables, and are either allowed or not allowed thereby. But because the list of permissible uses set forth at the end of this chapter cannot be all inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.

(b) Tables 14.40-I-III includes a column indicating the most similar classification code under the North American Industrial Classification System (“NAICS code”), where applicable. NAICS codes establish general categories of businesses and land uses, with more detailed subcategories. Consistent with subsection (a), NAICS codes may be used to evaluate whether uses with similar characteristics and impacts that are not explicitly listed in the use tables shall be permitted or permitted conditionally.

(c) Any proposed use not listed in the tables shall be determined as allowed or not allowed within a land use designation based on its consistency with the Comprehensive Plan and the purpose of the zoning district. If allowed, the use shall be classified by the Planning Director as outright permitted or requiring an administrative conditional use or conditional use permit using the most similar listed use. The Planning Director shall make that determination based on the physical characteristics of the use and its supporting structures, including scope, traffic generation, hours of operation, and other impacts.

The determination of the Planning Director shall be appealable pursuant to Section 14.16B.710.

(db) Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:

- (1) Any use that involves the manufacture, handling, sale, distribution, or storage of any highly combustible or explosive materials in violation of the City's fire prevention code.
- (2) Stockyards, slaughterhouses, rendering plants.
- (3) Use of a travel trailer, motor home, or other recreational vehicle as a permanent residence except those permitted in a manufactured/mobile home park as per Section [14.44.070](#).  
Recreational vehicles may be used as a temporary guest residence for up to two weeks without a permit, or up to three months within any one consecutive year upon approval by the Planning Director. Situations that do not comply with this subsection on the effective date of the ordinance codified in this title are required to conform within one year.
- (4) Use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted. This prohibition does not apply to temporary public services, such as bookmobiles, blood donation centers, public service information, etc., or temporary food vendors allowed pursuant to Sections [14.44.085](#) [14.44.400](#) and [14.44.410](#) (situations that do not comply with this subsection on the effective date of the ordinance codified in this title are required to conform within 30 days).
- (5) *Repealed by Ord. 958.*
- (6) Sewage/septic sludge recycling except when approved as an essential public facility pursuant to Section [14.16C.060](#). (Ord. 991, Sec. 5, 2017; Ord. 958, Sec. 2, 2016; Ord. 903, Sec. 30, 2013; Ord. 894, Sec. 2, 2013; Ord. 811, Sec. 34, 2010; Ord. 676, Sec. 26, 2003; Ord. 468, 1995)

#### **14.40.0450 Accessory Uses.**

(a) ~~Tables 14-40-I-III|The Table of Permissible Uses (referenced in Section 14.40.010 and found at the end of this chapter) classifies different principal uses according to their land uses, potential different impacts and NAICS codes. Whenever an activity, use or structure exists that is (which may or may not be separately listed as a principal use in this table) is conducted in conjunction with incidental and subordinate to another principal use and constitutes only an incidental or insubstantial part of the total activity that takes place on the same lot, or is commonly associated with the principal use and integrally related to it, then it may be regarded as accessory to the principal use, and may be carried on underneath the umbrella of the permit issued for the principal use.~~ For example, a swimming pool/tennis court complex ~~is customarily~~ associated with ~~and integrally related to~~ a residential subdivision or

multifamily development ~~and would be~~ is regarded as accessory to such principal uses, even though ~~such facilities, if developed apart from a residential development, they~~ would require an administrative conditional use permit ~~if developed as a principal use. (use classification 6.210). A use cannot be approved an accessory use without a primary use to which it is subordinate.~~

(b) For purposes of interpreting subsection (a) of this section:

(1) ~~A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use;~~

(2) ~~To be "commonly associated" with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.~~

(be) Without limiting the generality of subsections (a) and (b) of this section, the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:

(1) Home occupations, subject to the standards of LSCM 14.44.010.

(2) Hobbies or recreational activities of a noncommercial nature.

(3) The renting out of ~~one or two rooms within a single family residential unit to (which one or two rooms do not themselves constitute a separate dwelling unit) other than on a daily or weekly basis to not more than two persons who are not part of the family that resides in the single family dwelling for a period of 30 or more days, consistent with the definition of "family" in LSCM 14.08.010.~~

(4) Yard sales or garage sales, so long as such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any 30-day period.

(d) Without limiting the generality of subsections (a) and (b) of this section, the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts.

(1) Storage outside of a substantially enclosed structure of more than one motor vehicle that is unlicensed and nonoperational for a period of more than three months.

(2) Parking outside a substantially enclosed structure or a legally established vehicle accommodation area (as defined in LSMC 14.72.060) of more than four motor vehicles between the building setback of the principal building and the street on any lot used for purposes that fall within the following principal use classifications: 1.100, 1.200, or 1.400single-family or multifamily residential development. Parking on non-approved surfaces is prohibited.

(e) When a land use permit is applied for, all anticipated accessory uses shall be explicitly disclosed, and made part of the findings. Subsequent accessory uses not disclosed shall be subject to the permit modification requirements of Section 14.16A.235 prior to commencing. (Ord. 811, Sec. 35, 2010; Ord. 676, Sec. 27, 2003; Ord. 468, 1995)

#### **14.40.0560 Use of Supplementary Use Regulations**

The city has established specific supplementary use regulations that establish performance standards and requirements for certain types of land uses. Tables 14.40-I-III utilize footnotes to indicate those uses for which supplementary use regulations or another performance standards apply, and apply and provide citations and links to the applicable LSMC sections.

##### **Permissible Uses Not Requiring Permits.**

Notwithstanding any other provisions of this title, no land use approval, administrative conditional use, or conditional use permit is necessary for the following uses:

(1) Streets.

(2) Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right of way.

(3) Neighborhood utility facilities located within a public right of way with the permission of the owner (State or town) of the right of way. (Ord. 811, Sec. 36, 2010)

#### **14.40.0670 Change in Use.**

A change of use of property shall be reviewed pursuant to Section 14.16C.030. (Ord. 811, Sec. 37, 2010; Ord. 468, 1995)

#### **14.40.0780 Combination Uses.**

(a) When a combination use comprises two or more principal uses that require different types of permits (permitted use, administrative conditional use, or conditional use), then the permit authorizing the combination use shall be:

- (1) A conditional use permit if any of the principal uses combined requires a conditional use permit.
- (2) An administrative conditional use permit if any of the principal uses combined requires an administrative conditional use permit but none requires a conditional use permit.
- (3) A permitted use requiring Planning Director approval in all other cases. [This is indicated in the Table of Permissible Uses by the designation PAC in a column.](#)

~~(b) When a combination use consists of a single-family detached residential subdivision and two-family or multifamily uses, the total density permissible on the entire tract shall be determined by having the developer indicate on the plans the portion of the total lot that will be developed for each purpose and calculating the density for each portion as if it were a separate lot.~~

~~(c) When a combination use consists of a single-family detached and two-family or multifamily uses, then the total density permissible on the entire tract shall be determined by dividing the area of the tract by the minimum square footage per dwelling unit specified in Section 14.48.020. (Ord. 811, Sec. 38, 2010; Ord. 676, Sec. 28, 2003; Ord. 468, 1995)~~

**14.40.090 More Specific Use Controls.**

~~Whenever a development could fall within more than one use classification in the Table of Permissible Uses~~  
~~Permissible Use Tables~~ (referenced in Section 14.40.010 and found at the end of this chapter), the classification that most closely and most specifically describes the development controls. For example, a small doctor's office or clinic clearly falls within the 3.110 classification (office and service operations conducted entirely indoors and designed to attract customers or clients to the premises). However, classification 3.130, "office or clinics of physicians or dentists with not more than 10,000 square feet of gross floor area," more specifically covers this use and therefore is controlling. (Ord. 1020, Sec. 3, 2018; Ord. 468, 1995)

**Attachment 2**

**14.44.01016C.070 Home Occupations. (Moved from Land Use Actions to Use Regulations)**

(a) The purpose of this section is to allow small-scale commercial occupations incidental to residential uses to be located in residences while guaranteeing all neighboring residents freedom from excessive noise, traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential neighborhoods.

(b) Procedure. A home occupation permit is approved by the Planning Director or their designee for each home occupation. ~~Home occupations shall be reviewed in the manner and following the procedures established in Chapters 14.16A and 14.16B for a Type I review.~~

(c) Home occupations shall require a city business license and shall be reviewed for compliance with the provisions of this section during the business license review. Home occupations may require the submittal of additional information beyond the standard business license application.

(d) Standards. Home occupations are permitted as an accessory use to the residential use of a property only when all of all the following conditions are met:

- (1) The total area devoted to all home occupation(s) shall not exceed 25 percent of the floor area of the dwelling unit or 500 square feet, whichever is less. Areas within attached garages and storage buildings shall not be considered part of the dwelling unit for purposes of calculating allowable home occupation area but may be used for storage of goods associated with the home occupation;
- (2) If the home occupation is located in an accessory structure, the area devoted to the occupation, as described in subsection (c)(1) of this section, shall be based upon the floor area of the dwelling only; Areas accessible to customers shall be legally established. Additional building permits may be required.
- (3) No business activity may occur outside of any buildings on site, including displays of goods, stock in trade or other commodities;
- (4) Not more than one person outside of the family shall be employed on the premises;
- (5) The home occupation shall in no way alter the normal residential character of the premises;
- (6) No objectionable noise, fumes, odor, or dust shall be allowed;
- (7) The home occupation(s) shall not use electrical or mechanical equipment that results in:

- (i) A change to the fire rating of the structure(s) used for the home occupation(s);
- (ii) Visual or audible interference in radio or television receivers, or electronic equipment located off-premises; or
- (iii) Fluctuations in line voltage off-premises;

(8) No equipment or material may be stored, altered or repaired on any exterior portion of the premises;

(9) Sales shall be limited to:

- (i) Products accessory to the home occupation (e.g., shampoo for beauty shop, etc.);
- (ii) Merchandise which is produced on the premises; and/or
- (iii) Mail order, online internet and telephone sales; and
- (iv) With appointment for pick up or off-site delivery;

(10) Services to patrons shall be arranged by appointment or provided off site;

(11) In addition to required parking for the dwelling unit, one on-site parking stall shall be provided when services are rendered on-site;

(12) The home occupation(s) may use or store a vehicles for pickup of materials used by the home occupation(s) or the distribution of products from the site, provided:

- (i) No more than two such vehicles shall be allowed;
- (ii) Such vehicles shall not be parked within the public right of way or in any yard areas and must be parked in allowed vehicle accommodation areas such as driveways and garages.  
parked within any required setback areas of the lot or on adjacent streets; and
- (iii) Such vehicles shall be commonly associated with residential development. Vehicles not commonly associated with residential development such as dump trucks, box trucks, and commercial vans are not allowed. not exceed the weight capacity of one ton;

(13) Signs in connection with the home occupation shall comply with the restrictions of Chapter 14.68, Signs; and

(14) No sales or services will be conducted on the premises which will generate more than 10 average daily round trips per day by customers except for day care.

(15) Food related business shall be required to possess and maintain a food handler's card from the Snohomish Health District.

(16) Food related businesses shall comply with all applicable WSDA cottage food operation regulations in RCW 69.22.

(ee) The following is a non-exhaustive list of examples of enterprises that may be ~~granted~~approved as a home occupation ~~permit~~ if they meet the foregoing standards:

- (1) Office or studio of a physician, dentist, artist, musician, lawyer, architect, engineer, teacher, or similar professional;
- (2) Workshops, greenhouses, or kilns;
- (3) Dressmaking or hairdressing studios; and
- (4) Day care.

(fe) Prohibited home occupations are enterprises which may create objectionable noise, fumes, odor, dust or electrical interference and may involve hazardous materials or on-site storage of petroleum products, and which are not compatible with residential development. The following is a non-exhaustive list of examples of such prohibited enterprises:

- (1) Automobile, truck and heavy equipment repair;
- (2) Autobody work or painting;
- (3) Parking and storage of heavy equipment;
- (4) Storage of building materials for use on other properties;
- (5) Marijuana production, processing or retail facility; or
- (6) Similar types of enterprises.

(gf) Transferability. A home occupation ~~permit issued to~~approved for one ~~applicant~~person shall not be transferable to any other person; nor shall a home occupation ~~permit~~ be valid at any other address than the one listed on the business license~~permit~~.

(g) Additional Conditions. In granting approval for a home occupation, the Planning Director or their designee may attach additional conditions to ensure the home occupation will be in harmony with, and not detrimental to, the character of the residential neighborhood.

(h) Inspections. Any home occupation authorized under the provisions of this chapter shall be open to inspection and review at all reasonable times by enforcement officials for purposes of verifying compliance with the conditions of approval and other provisions of this title.

(i) Modification. The Planning Director shall have authority to grant an administrative modification to the standards listed in subsection (c) of this section, provided the use is consistent with the purposes of this chapter and will be operated in harmony with the character of and create no significant impact to the residential neighborhood. The Planning Director is authorized to approve administrative modifications only in cases of unique circumstances, such as large property acreage, remote site access or site location, or small scale of use, when these circumstances ensure the commercial operation remains incidental to the dwelling and in no way alters the normal residential character of the premises. No modification shall be granted which would be detrimental to the public health, or welfare or the environment.

(j) In-Home Day Care Standards.

(1) Home day care and adult family care facilities shall meet State licensing requirements, including those pertaining to building, fire safety, and health codes. A copy of the required State license, if applicable, shall be furnished by the applicant with the City business license application.

(2) There shall be minimal, if any, change in the outside appearance of the residence.

(3) Where outdoor recreation facilities are provided for children in day care facilities, they shall be screened by a fence at least four feet high, where abutting residentially zoned property.

(4) The facility shall provide a safe passenger loading area.

(5) The day care provider shall provide written notification to immediately adjoining property owners of the intent to locate and maintain a facility and provide a copy of the notification to the Planning Department. (Ord. 908, Sec. 5, 2014; Ord. 811, Sec. 4 (Exh. 3), 2010)

#### **14.44.044 Storage Facilities**

(a) Intent. Storage facilities include characteristics common to commercial and industrial uses. This section provides regulations to help guide appropriate siting of storage facilities ~~in the Local Business zoning district~~, while maintaining the desired character and function of that district. If designed appropriately, storage facilities can emulate the exterior architecture and site design of commercial or mixed-use developments, reducing inconsistencies with Comprehensive Plan goals or zoning district intent and limiting impacts to surrounding neighborhoods. Storage facilities in the Local Business zoning district shall adhere to the additional special restrictions and development standards of this section.

(b) Applicable Location of Section [14.44.044](#) Regulations. Storage facilities shall be ~~outright permitted~~allowed in the Local Business zoning districts on roads designated as State routes or State highways.

(c) Special Restrictions.

- (1) The storage use shall be limited in size to 25 percent coverage or less per development.
  - (i) Each development is defined as the area of contiguous Local Business parcels.
  - (ii) The use coverage is defined as the amount of space solely devoted to supporting the storage use on each development. This ~~shall may~~ include building footprints, drive aisles between storage facilities, loading bays, parking, landscape screening, offices and associated appurtenances. The ~~total~~ use coverage percentage ~~shall may~~ exclude critical areas and features shared within a development like pedestrian facilities, internal access and circulation roads, and shared parking.
- (2) ~~With each storage facility application, the proponent must submit an economic analysis with the development application, supporting the need for additional self-storage facilities rather than more intensive commercial uses that generate higher employment density. The analysis, at a minimum, shall demonstrate that the storage use does not diminish the City's overall economic viability as set forth in the goals, policies, and strategies of the Comprehensive Plan given preference to non-land intensive uses and will not contribute to the city's inability to meet its long-term employment growth targets.~~

(d) Design Standards.

(24) Storage facilities shall have an outward appearance that more closely resembles a commercial or mixed-use development than a warehouse or single-story linear shed design, and shall be subject to the design review requirements of Section [14.16C.050](#).

(32) Storage facilities shall include architectural and design features that promote visual compatibility with commercial or mixed-use developments. Examples of these features may include providing facade modulation; using varied or contrasting exterior building materials and detailing; screening blank walls; incorporating varied roof-lines among other features.

(43) Storage facilities shall shield exterior lighting so as not to directly illuminate or create visible glare from adjacent residential properties subject to the requirements of Section [14.38.080](#).

(54) Storage facilities are subject to the screening requirements of a Type A screen, as described in Chapter [14.76](#), when abutting residential zoning districts.

(i) Open storage facilities must provide an additional Type C screen that includes trees, shrubs and ground cover or similar vegetation to screen the exterior of the open storage facility's enclosure. (Ord. 1016, Sec. 2, 2018)

#### **14.44.065 Accessory Apartment in Industrial Zones**

Any accessory apartments permitted in the Light or General Industrial Zone ~~pursuant to Use Class 1.115~~ shall meet the following standards:

- (a) The total number of accessory dwellings on a site shall not exceed one.
- (b) The gross floor area of an accessory apartment site shall not exceed 1,000 square feet.
- (c) The accessory apartment shall be integrated into a larger building which also houses activities for the principally permitted use.
- (d) The apartment use shall not enjoy the protection of the Manufacturing and Processing Performance Standards as contained in Part III of this chapter. (Ord. 1030, Sec. 2 (Exh. B), 2018; Ord. 606, 1999)

#### **14.44.070 Recreational Park Trailers and Recreational Vehicles (RV) Regulations**

(a) Recreational park trailers and recreational vehicles as defined in WAC [296-150P-0020](#) and [296-150R-0020](#) and Chapter [14.08](#) shall be permitted in manufactured/mobile home parks. Existing recreational park trailers and RVs within existing manufactured home/mobile home parks on or prior to the effective date of this section are exempt from the requirements listed below. As allowed by State law the following additional standards shall apply when housing governed by this section is sited:

(1a) Recreational park trailers and recreational vehicles may be installed within a manufactured home park pursuant to RCW [35A.21.312](#) and the requirements listed below:

- (i1) Utility hookups shall meet local, State, and federal building code standards;
- (i2) Recreational park trailers and recreational vehicles shall be equipped with an internal toilet and an internal shower; or the manufactured/mobile home park shall provide a common toilet and shower facility for the residents of the park;
- (i3) Recreational park trailers or recreational vehicles shall be connected to the sanitary sewer system provided within the park if used as permanent residence; otherwise, waste from the unit must be disposed of at an appropriate receiving location;
- (i4) The unit shall be placed on an impervious pad made of cement concrete or asphalt concrete; and
- (i5) Any steps, landings, stairways, decks, and balconies (not originally attached) shall meet the requirements of the International Residential Code, shall be independently supported, and require a building permit.

(2b) Approvals.

- (1) If a recreational park trailer or recreational vehicle is to be used as a temporary residence, it must comply with the standards of Section [14.16C.110](#).
- (2) If a recreational park trailer or recreational vehicle is to be used as a permanent residence, it must comply with the standards of Section [14.16C.105](#) for a site plan review, but will be considered a Type I review. Recreational park trailers or recreational vehicles used as permanent residences are considered dwelling units subject to all applicable impact fees that apply per Chapters [14.110](#), [14.112](#) and [14.120](#).

(3e) Inspections. The City and/or affected agency shall inspect the installation of each recreational park trailer or recreational vehicle to determine that its installation complies with this section before residency begins.

(4e) Insignia Required. All recreational park trailers or recreational vehicles, installed within the City, shall contain the insignia of approval of the State of Washington or be exempt from said insignia, pursuant to the standards of the State of Washington for the manufacture of such homes. (Ord. 991, Sec. 2, 2017)

#### **14.44.075 Farm Animals**

Farm animals are permitted in single-family residential zoning districts, provided the following standards are met:

- (a) The keeping of animals complies with the animal regulations contained in Title 5 of the Lake Stevens Municipal Code.
- (b) Farm animals may be kept only on lots of two and one-half acres or larger except small farm animals such as rabbits, fowl, miniature goat breeds, and household pets (including pot-belly pigs) may be kept on residential lots of any size, provided they are kept in a manner so as not to constitute a nuisance pursuant to Chapter 9.60 (Nuisance Activity).
- (c) Farm animals may be kept only for the personal use, whether it be for recreational, personal enjoyment, social and educational purposes or food production. Keeping of animals for commercial purposes is prohibited in residential zones, except where specifically allowed pursuant to Table 14.40-I.
- (d) Farm animals must be kept a minimum of 50 feet from any stream buffer or wetland buffer. (Ord. 903, Sec. 32, 2013; Ord. 607, Sec. 2, 1999; Ord. 468, 1995)
- (e) Properties annexed into the city that do meet the provisions of subsections (b) and (d) but which can demonstrate an existing vested use of the property under county regulations at the time of annexation may maintain said use, but may not materially increase the number of animals kept, reduce the existing wetland or stream buffer, or otherwise expand the scope or scale of the nonconformance to LSCM 14.44.075.

#### **14.44.210 Noise.** SHARE

- (a) All uses shall comply with the maximum noise levels outlined in Chapter 173-60 WAC No 4.000 classification use in any permissible business district may generate noise that tends to have an annoying or disruptive effect upon (1) uses located outside the immediate space occupied by the 4.000 use if that use is one of several located on a lot, or (2) uses located on adjacent lots.
- (b) Except as provided in subsection (f) of this section, the table set forth in subsection (e) of this section establishes the maximum permissible noise levels for 4.000 classification uses in the Light Industrial and General Industrial districts. Measurements shall be taken at the boundary line of the lot where the 4.000 classification use is located, and, as indicated, the maximum permissible noise levels vary according to the zoning of the lot adjacent to the lot on which the 4.000 classification use is located.

(e) A decibel is a measure of a unit of sound pressure. Since sound waves having the same decibel level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles per second (i.e., whether the pitch of the sound is high or low) an A-weighted filter constructed in accordance with the specifications of the American National Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches, shall be used on any sound level meter taking measurements required by this section. And accordingly, all measurements are expressed in dB(A) to reflect the use of this A-weighted filter.

(d) The standards established in the table set forth in subsection (e) of this section are expressed in terms of the equivalent sound level (Leq), which must be calculated by taking 100 instantaneous A-weighted sound levels at 10-second intervals (see the administrative guideline entitled "Guide for Noise Levels," Section F-1) and computing the Leq in accordance with the table set forth in the administrative guideline entitled "Guide for Noise Levels," Section F-2.

(e) Table 14.44-I: Maximum Permitted Sound Levels, dB(A).

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**Table 14.44-I: Maximum Permitted Sound Levels, dB(A)**

<b>Zoning of Lot Where 4.000 Use Located</b>	<b>(re: 0.0002 Microbar) Zoning of Adjacent Land</b>				
	<b>Residential and PND</b>		<b>NC, LB, CBD, MU, PBD, SRC</b>	<b>LI</b>	<b>GI</b>
	<b>7:00 a.m. - 9:00 p.m.</b>	<b>9:00 p.m. - 7:00 a.m.</b>			
<b>LI &amp; GI</b>	<b>60</b>	<b>50</b>	<b>65</b>	<b>70</b>	<b>70</b>

(f) Impact noises generated by sources that do not operate more than one minute in any one-hour period are permissible up to a level of 10 dB(A) in excess of the figures listed in subsection (e) of this section, except that this higher level of permissible noise shall not apply from 9:00 p.m. to 7:00 a.m. when the adjacent lot is zoned residential. The impact noise shall be measured using the fast response of the sound level meter.

(g) Noise resulting from temporary construction activity that occurs between 7:00 a.m. and 9:00 p.m. shall be exempt from the requirements of this section. (Ord. 811, Sec. 46, 2010; Ord. 590, 1998; Ord. 468, 1995)

#### 14.44.220 Vibration. SHARE

(a) No subject 4.000 classification use in any permissible business district may generate any ground-transmitted vibration that is perceptible to the human sense of touch measured at (1) the outside boundary of the immediate space occupied by the enterprise generating the vibration if the enterprise is one of several located on a lot, or (2) the lot line if the enterprise generating the vibration is the only enterprise located on a lot.

(b) No subject 4.000 classification use in a Light Industrial or General Industrial district may generate any ground-transmitted vibration in excess of the limits set forth in subsection (e) of this section. Vibration shall be measured at any adjacent lot line or residential district line as indicated in the table set forth in subsection (d) of this section.

(c) The instrument used to measure vibrations shall be a three-component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions.

(d) The vibration maximums set forth in subsection (e) of this section are stated in terms of particle velocity, which may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency.

When computed, the following formula shall be used:

$$PV = 6.28 F \times D$$

Where:

PV Particle velocity, inches per-  
= second

F = Vibration frequency, cycles per-  
second

D = Single amplitude displacement of  
the vibration, inches.

The maximum velocity shall be the vector sum of the three components recorded.

(e) Table 14.44 II: Table of Maximum Ground Transmitted Vibration.

**Table 14.44-II: Maximum Ground-Transmitted Vibration**

Zoning District	Particle Velocity, Inches Per Second	
	Adjacent Lot Line	Residential District
M-1	0.10	0.02
M-2	0.20	0.02

(f) The values stated in subsection (e) of this section may be multiplied by two for impact vibrations, i.e., discrete vibration pulsations not exceeding one second in duration and having a pause of at least one second between pulses.

(g) Vibrations resulting from temporary construction activity that occurs between 7:00 a.m. and 9:00 p.m. shall be exempt from the requirements of this section. (Ord. 811, Sec. 92, 2010)

**14.44.230 Odors.**  SHARE

(a) For purposes of this section, the "odor threshold" is defined as the minimum concentration in air of a gas, vapor, or particulate matter that can be detected by the olfactory systems of a panel of five healthy observers.

(b) No subject 4.000 classification use in any district may generate any odor that reaches the odor threshold, measured at:

- (1) The outside boundary of the immediate space occupied by the enterprise generating the odor.
- (2) The lot line if the enterprise generating the odor is the only enterprise located on a lot.

**14.44.240 Smoke and Air Pollution.**  SHARE

(a) Any subject 4.000 classification use that emits any "air contaminant" as defined in Regulations I4, II2, or III3 of the Puget Sound Clean Air Agency shall comply with applicable state standards concerning air pollution, as set forth in Regulations 1, 2, or 3 of the Puget Sound Clean Air Agency.

(b) No Planning Director approval, administrative conditional use, or conditional use permit may be issued with respect to any development covered by subsection (a) of this section until the Puget Sound Clean Air Agency has certified to the permit-issuing authority that the appropriate state permits have been received by the developer, or that the developer will be eligible to receive such permits and that the development is otherwise in compliance with applicable air pollution laws.

(Ord. 903, Sec. 35, 2013; Ord. 811, Sec. 47, 2010).

#### **14.44.250 Disposal of Liquid and Hazardous Wastes.**

(a) No subject 4.000 classification use in any district may discharge any waste contrary to the provisions of Chapter [70.105](#) RCW (Hazardous Waste Management) or Chapter [90.48](#) RCW (Water Pollution Control).

(b) No subject 4.000 classification use in any district may discharge into the City sewage treatment facilities any waste that cannot be adequately treated by biological means.

#### **14.44.260 Water Consumption.**

No subject 4.000 classification use shall consume and/or use water supplied by the Snohomish County Public Utility District No. 1 in a manner inconsistent with the requirements and water service policies of the Snohomish County Public Utility District No. 1.

#### **14.44.270 Electrical Disturbance or Interference.**

No subject 4.000 classification use may:

- (a) Create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance; or
- (b) Otherwise cause, create, or contribute to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

## **Part V. Multifamily Apartments Annexed into the City**

#### **14.44.500 Authority.**

This chapter contains the City's procedures and policies related to the expansion or replacement of existing multifamily structures located in [WR, R4, R6, or R8-12](#) Zoning Districts, annexed into the City on or after January 1, 2006. (Ord. 871, Sec. 3, 2012)

**14.44.510 Conditional Use Permit Required.**  SHARE

Any requests to expand and/or replace existing multifamily structures (regardless of reason), located in WR, R4, R6, or R8-12 Zoning Districts, annexed into the City on or after January 1, 2006, shall require a Conditional Use Permit per Section [14.16C.045](#) prior to approval of the expansion and/or replacement. (Ord. 871, Sec. 3, 2012)

Attachment 3

NAICS Code	Use	R4	WR	R6	R8-12	MFR	LB	MU <sup>1</sup>	PBD <sup>2</sup>	BD	C B D	C D	LI	GI	P/SP
<b>GENERAL RESIDENTIAL</b>															
N/A	Single-Family Detached, site built or modular	P	P	P	P	P									
N/A	Class A or B mobile home	P	P	P	P	P									
N/A	Mobile/ manufactured home park	A	A	A	A	P									
N/A	Apartment(s) above permitted nonresidential use					A	P	P	P		P <u>P</u>	P <u>P</u>	P <u>P</u>	P <u>P</u>	
N/A	Cottage housing development <sup>3</sup>	P	P	P	P	P			P			P <u>P</u>			
N/A	Duplexes	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P			P						
N/A	Apartments <u>(five or more attached units)</u>	P <sup>4</sup> / C <sup>2</sup>				P			P						
N/A	Townhomes/rowhouses				P	P			P						
N/A	Triplexes	P <sup>5</sup>		P <sup>5</sup>	P <sup>5</sup>	P									
N/A	Fourplexes	P <sup>5</sup>		P <sup>5</sup>	P <sup>5</sup>	P									
N/A	Any residential use above a permitted non-residential use							P <u>P</u>	P <u>P</u>	P <u>P</u>					



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- <sup>1</sup> [Subject to Section 14.44.010 \(Mixed Use\)](#)
- <sup>2</sup> [Subject to Section 14.44.090 \(Planned Business District\)](#)
- <sup>3</sup> [Subject to Section 14.46 Part II](#)
- <sup>4</sup> [Subject to Section 14.48.020 \(Duplexes in Single-Family Zones\)](#)
- <sup>5</sup> [Subject to Section 14.46 Part III](#)
- <sup>6</sup> [Subject to Section 14.44.045 \(Accessory Dwelling Units\)](#)
- <sup>7</sup> [Subject to Section 14.44.065 \(Accessory Apartments in Industrial Zones\)](#)
- <sup>8</sup> [Subject to Section 14.44.010 \(Home Occupations\)](#)
- <sup>9</sup> [Subject to Section 14.44.075 \(Farm Animals\). Requires a Pasture Plan to be submitted pursuant to Chapter 5.18.](#)
- <sup>10</sup> [Subject to Section 14.18.300 \(Planned Residential Developments\)](#)
- <sup>11</sup> [Subject to Section 14.44.038 \(Temporary Encampments\)](#)

Attachment 4

NAICS Code	Use	LB	MU <sup>1</sup>	PBD <sub>2</sub>	BD	CBD	CD	LI	GI	P/SP	
	<b>RETAIL<sup>3</sup></b>										
N/A	Retail, small/medium scale (<10,000 sf floor area)	P	P	P	A	P	P	PA	PA	P	
N/A	Retail, large scale (>10,001 sf floor area)		P	P			P	PA	PA	P	
N/A	Outdoor retail displays accessory to a retail use	P		P		P	P	P	P	P	
N/A	Marijuana retail <sup>4</sup>						P	P			
N/A	Open air markets	P	P	P	P	P	P	P	P	P	
444220	Outdoor plant nurseries, commercial greenhouses, farm supply stores	P					P	P	P	P	
423	Wholesale						P	P	P	P	
4411, 4412,	Vehicle sales, new and used	P					P	P	P		
453930	Mobile home sales	P					P	P	P		
	<b>PERSONAL &amp; GENERAL SERVICES</b>										
531130	Personal storage facilities <sup>5</sup>	A <sup>6</sup>					A	PA	PA	P	
447110, 447190	Gas station	P				P	P	P	P		
812910	Pet care, except veterinary and kennels	P	P	P	P	P	P	P	P	P	
812910	Kennel				A	A	P	P	P		
6244	Daycare / preschool	P	P	P	P	P	P				
8111	Automotive repair, except car washes	P					P	P	P		
811192	Carwashes	P	P	P	P	P	P	P	P		
8121	Barber shops, beauty salons	P	P	P	P	P	P				
812220	Crematorium							P	P	C	
812210	Funeral homes						P	P	P	P	
8123	Dry-cleaning, laundry services	P	P	P	P	P	P	P	P		
8113	Heavy equipment rental						P	P	P		
76	Miscellaneous repair	P	P	P	P	P	P	P	P		
53211	Automobile rental	P					P	P	P		
53212, 5322-3	Miscellaneous equipment rental	P	P		P	P	P	P	P		
81293	Automobile parking	P	P	P		P	P	P	P	P	

<b>HEALTHCARE &amp; SOCIAL SERVICES</b>										
N/A	Level III Healthcare Facility	P	<b>PA</b>	P	P	P	P	P	P	A
6211,	Medical, dental or other healthcare clinic	P	P	P	P	P	P	<b>AP</b>	<b>AP</b>	
6212,										
6213										
<b>OFFICE &amp; PROFESSIONAL SERVICES</b>										
561920	Conference center <sup>3</sup>				P	P	P	P	P	P
N/A	Offices, business or professional, (<4,000 sf floor area) <sup>3</sup>	P	P	P	P	P	P	P	P	P
N/A	Offices, business or professional, medium scale (>4,001 sf floor area) <sup>3</sup>		P	P	P	P	P	A	A	P
5211	Banks, including banks with drive-up windows <sup>8</sup>	P	P	P	P	P	P	P	P	P
<b>MANUFACTURING &amp; INDUSTRIAL</b>										
N/A	Light manufacturing <sup>9</sup>				P		<b>P</b>	P	P	
N/A	Heavy manufacturing <sup>9</sup>							A	P	
31212,	Wineries, distilleries, and breweries				P		P	P	P	
31213,										
31214										
493	Warehousing				P		P	P	P	
423930	Salvage yards, junkyards, automobile graveyards, tow yards							A	P	
N/A	Marijuana processing/production							A	A	
N/A	Soil processing						<b>A</b>	P		
<b>LEISURE, ACCOMODATION &amp; FOOD SERVICES</b>										
N/A	Mobile Food Vending Units (Food Trucks or Similar Vehicles, Vending Carts) <sup>10</sup>	P	P	P	P	P	P	P	P	P
N/A	Mobile Sales and Delivery (Ice Cream Trucks, Mobile Delivery, Peddlers, and Similar Uses) (See Section <a href="#">14.44.080</a> )	P	P	P	P	P	P	P	P	P
722320	Catering	P	P	P	P	P	P	P	P	
7224	Restaurants	P	P	P	P	P	<b>P</b>	<b>PA</b>	<b>PA</b>	P
7225	Bars, taverns, wine bars	P	P	P	P	P	P	A	A	
721110	Hotels, motels	P		P	P	P	<b>P</b>			A
713950, 713990, 713120	Indoor amusement or recreation facility	P	P	P		P	P	A	A	P
N/A	Outdoor amusement, recreation, athletic, or exercise facility	<b>AP</b>	<b>AP</b>	P		<b>AP</b>	P	A	A	A
N/A	Automobile and motorcycle racing tracks								A	<b>A</b>

N/A	Horseback riding or stable							A	A	A
713940	Indoor athletic and exercise facility	P	P	P		P	P	A	A	A
512131, 711110, 711130	Movie theatres or other indoor theaters	A	A	P		A	P	A	A	A
N/A	Public places of adult entertainment							C	A	

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<sup>1</sup>[Subject to Section 14.44.010 \(Mixed Use\)](#)

<sup>2</sup>[Subject to Section 14.44.090 \(Planned Business District\)](#)

<sup>3</sup>[A retail or office use in a commercial zone is permitted, except adjacent to or across the street from a residential zone shall require an administrative or conditional use permit.](#)

<sup>4</sup>[Subject to Section 14.44.097 \(Marijuana Facilities\)](#)

<sup>5</sup>[Subject to Section 14.44.044 \(Storage Facilities\)](#)

<sup>6</sup>[Permitted outright in the Local Business Zone on a road designated as a State route or State highway, per LSMC 14.44.044\(b\)](#)

<sup>7</sup>[When accompanying a cemetery use](#)

<sup>8</sup>[Subject to Section 14.44.350 \(Drive Thru Windows\)](#)

<sup>9</sup>[A manufacturing or industrial use is permitted, except adjacent to or across the street from a residential zone will require an administrative or conditional use permit.](#)

<sup>10</sup>[Subject to Section 14.44.085](#)

## Attachment 5

NAICS Code	Use	R 4	W R	R6	R8-12	MFR	LB	MU 1	PBD 2	B D	C B D	C D	LI	GI	P/SP
<b>PARKS &amp; OPEN SPACE</b>															
N/A	Public parks and playgrounds	<u>C</u> A	<u>C</u> A	<u>AC</u>	<u>CA</u>	<u>CA</u>	P	P	P	<u>A</u>	<u>A</u>	<u>A</u>	A	A	P
71290	Nature parks, preserves	P	P	P	P	P	<u>PA</u>	<u>PA</u>	<u>PA</u>		<u>A</u>	<u>A</u>	A	A	P
712130	Zoos, botanical gardens, arboretums														A
812220	Cemeteries												P	P	<u>PE</u>
<b>CULTURAL</b>															
813110	Places of worship	A	A	A	A	A	P	P	P	P	<u>P</u>	<u>P</u>			
514120	Libraries	A	A	A	A	A	P	P	P	<u>P</u>	<u>A</u>	<u>A</u>			P
712110	Museums, art gallery						<u>P</u>				<u>P</u>	<u>P</u>			<u>P</u>
813410	Social, fraternal clubs and lodges, union halls						<u>P</u>				<u>P</u>	<u>P</u>			
N/A	Community centers									P		<u>P</u>			P
N/A	Indoor stadium												A	A	<u>A</u>
N/A	Amphitheater												P	P	P

<sup>1</sup> Subject to Section [14.44.010](#) (Mixed Use).

<sup>2</sup> Subject to Section [14.44.090](#) (Planned Business District).

<sup>3</sup> See regulations in Chapter [14.62](#) for specific regulations. See Chapter [14.38](#) for wireless facilities within subareas.

<sup>4</sup> See specific regulations in Section [14.62.160](#).

<sup>5</sup> Only allowed as an essential public facility pursuant to Section [14.16C.060](#)

<b>GOVERNMENTAL &amp; REGIONAL</b>													
922110	Court							C	C	C			C
N/A	Civil defense operations										C	C	C
N/A	Military reserve, National Guard centers										C	C	
491110	Post offices					P	P	P	P		P	P	P
	Temporary mobile or modular structures used for public services	P	P	P	P	P	P	P	P		P	P	P
N/A	Penal and correctional facilities, work release, pre-release, or similar facilities										C	C	C
<b>ESSENTIAL PUBLIC FACILITIES</b>													
611110	Elementary and secondary schools	C	C	C	C	C							P
6115, 6116	Trade and vocational schools					C	P	P		P		A	
611310	Colleges and universities,	C	C	C	C	C			P			C	C
922160, 922120, 611910	Fire stations, police stations, ambulance services, rescue squads	C	C	C	C	C	C	P	P	P	P	P	C
458199, 458103	Airports											C	
562111, 562212	Solid waste transfer stations, recycling centers, sanitary landfills											C	C
221320	Sewage/septic sludge recycling center <sup>5</sup>												
N/A	Community/Neighborhood or regional utility facilities										P	P	
4851, 4821	Bus stations, train stations, park and rides								P	P	P		

<b>WIRELESS COMMUNICATION FACILITIES</b>														
N/A	Small wireless facilities (towers/antennas 50 feet or less in height) <sup>3</sup>	P	P	P	P	P	P	P	P	P		P	P	P
N/A	Large wireless facilities (towers/antennas 50 feet or more in height) <sup>3</sup>	C		C	C	C	A	A				A	A	A
N/A	Macro facilities collocation on existing structures <sup>4</sup>	P	P	P	P	P	P	P				P	P	P
N/A	Eligible facility modifications	P	P	P	P	P	P	P				P	P	P
<b>RESOURCE &amp; AGRICULTURAL</b>														
1131, 1132, 1133	Silvicultural Operations											P	P	

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#### 14.08.010 Definitions of Basic Terms

*Community Center: An institution used for athletic, social, civic, or recreational purposes, operated by a nonprofit or government organization, and open to the general public on an equal basis.*

*Covered Animal. Any hooved animal usually found on farms, such as horses, ponies, mules, bovine animals, sheep and goats.*

*Essential Public Facility. Any facility owned, operated or contracted to be operated by a unit of local or State government, by a public utility or transportation company, or by any other entity providing a public service as its primary mission may qualify as an essential public facility. In general, an essential public facility is a necessary component of a system or network which provides a public service or good; and may be difficult to site because of potential significant opposition. A complete list of essential public facilities can be found in Table 14.40-III.*

*Farm Animals. Any animal typically found on farms and kept predominantly outdoors, including but not limited to horses, ponies, mules, cows, sheep, goats and fowl, and rabbits. Includes but is not limited to covered animals, poultry and rabbits.*

*Miscellaneous Equipment Rental.: An area or building used to store equipment (excluding automobiles) to be rented to the general public. Such area may include customer service and support space.*

*Miscellaneous Repair.: An area or building used to repair equipment (excluding automobiles and heavy equipment) to be rented to the general public. Such area may include customer service and support space.*

*Indoor Recreational Facility.: An entertainment or recreation facility under private ownership and operated by a for-profit or nonprofit organization, and providing one or more of the following types of entertainment activities, including but not limited to; cinemas, billiard parlors, nightclubs, coin-operated arcades, bowling alleys, ice skating and roller skating.*

*Outdoor Recreational Facility. An entertainment or recreation facility under private ownership and operated by a for-profit or nonprofit organization and providing one or more of the following types of entertainment activities: ice skating; skate park and swimming; or commercial outdoor recreation, including golf courses, archery range, or similar use.*

*Residence, Duplex. A building designed exclusively for occupancy by two families containing two dwelling units with separate entrances and sharing a common wall that may include side walls, floors or ceilings.*

~~Duplexes may be located either on one lot or on separate lots. This definition does not include single-family dwellings within an approved accessory dwelling unit. A two-family residence containing two dwelling units. Units may be stacked or side-by-side, and occupy one single lot. A duplex or separate lots.~~

*Residence, Triplex.* A building containing three dwelling units. Units may be stacked or side-by-side, and occupy one single lots or separate lots. Triplexes meeting the definition for townhomes may be considered as such.

*Residence, Single-Family Attached, One Dwelling Unit Per Lot.* A residential use consisting of a single building containing two dwelling units which share a common wall (including without limitation the wall of an attached garage or porch), but located on two separate lots containing no other dwelling units in such a manner that a lot line bisects the building along the common wall and that each dwelling unit is completely on a separate lot.

*Residence, Single-Family.* A building containing one dwelling unit. Unit may also have an attached or detached Accessory Dwelling Unit.

*Residence, Fourplex.* A building containing only four dwelling units. Units may be stacked or side-by-side, and occupy one single lots or separate lots. Fourplexes meeting the definition for townhomes may be considered as such.

*Residence, Two-Family.* A residential use consisting of a building containing two dwelling units. If two dwelling units share a common wall, even the wall of an attached garage or porch, the dwelling units shall be considered to be located in one building.

*Residence, Two-Family Conversion.* A two-family residence resulting from the conversion of a single building containing at least 2,000 square feet of gross floor area that was in existence on the effective date of this provision and that was originally designed, constructed and occupied as a single family residence.

Delete two family conversion definition.

*Utility Facilities: Publicly, privately, or cooperatively owned facilities other than professional offices that contribute to the provision of utility services, including water, wastewater (sewer), stormwater, electricity, telecommunications, and natural gas.*

## 14.72 Parking

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

Use	Parking Requirement
<a href="#">1.110</a> Single family detached residences.	2 spaces per dwelling unit plus one space per room rented out (see Accessory Uses, Section <a href="#">14.40.050</a> )
<a href="#">1.200</a> <u>Duplex</u> <u>Two family</u> residences.	2 spaces for each dwelling unit, except that one-bedroom units require only one space.
<a href="#">1.220</a> Accessory dwelling units.	Single-family detached residences with accessory dwelling units require 1 space in addition to the 2 spaces required for the principal dwelling.
<a href="#">1.300</a> Multifamily residences.	2 spaces per unit plus 1 additional space for every four units in the development, except multifamily units limited to senior citizens require only 1 space per unit.
<a href="#">1.410</a> Level I health and social service facility.	3 spaces for every five beds except for uses exclusively serving children under 16, in which case 1 space for every three beds shall be required.
<a href="#">1.420</a> Level II and III health and social service facility.	To be determined by the Planning Director on a case by case basis.
<a href="#">1.440</a> Group Homes for Juvenile Offenders	1 space for each staff person on site during the maximum shift plus 1 space for each facility vehicle plus 1 space for every three beds.
<a href="#">1.510</a> Rooming and boarding houses.	1 space for each bedroom.
<a href="#">1.520</a>	
<a href="#">1.530</a> Tourist homes, hotels and motels.	1 space for each room to be rented plus additional space (in accordance with other sections of this table) for restaurant or other facilities.

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

Use	Parking Requirement
<a href="#">1.700</a> Temporary emergency, construction, and repair residences.	2 spaces per dwelling unit plus one space per room rented out (see Accessory Uses, Section <a href="#">14.40.050</a> )
<a href="#">2.111</a> <a href="#">2.210</a> Retail sales high volume traffic.	1 space per 200 square feet of gross floor area.
<a href="#">2.112</a> Convenience stores.	1 space per 150 square feet of gross floor area.
<a href="#">2.120</a> <a href="#">2.130</a> <a href="#">2.220</a> <a href="#">2.230</a> Retail sales low volume traffic, wholesale sales.	1 space per 400 square feet of gross floor area.
<a href="#">3.110</a> <a href="#">3.120</a> <a href="#">3.130</a> <a href="#">3.210</a> <a href="#">3.220</a> Offices.	1 space per 400 square feet of gross floor area.
<a href="#">3.230</a> Banks.	1 space per 200 square feet of area within main building plus reservoir land capacity equal to 5 spaces per window (10 spaces if window serves two stations).
<a href="#">4.110</a> Manufacturing: majority of business from walk in trade.	1 space per 400 square feet of gross floor area.
<a href="#">4.120</a> <a href="#">4.200</a> Manufacturing: majority of business does not come from walk in trade.	1 space for every employee on the maximum shift except that, if permissible in the commercial districts, such uses may provide 1 space per 200 square feet of gross floor area.
<a href="#">5.110</a> Elementary and secondary schools.	1.75 spaces per classroom in elementary schools, 5 spaces per classroom in high schools.
<a href="#">5.120</a> Trade and vocational schools.	1 space per 100 square feet of gross floor area.

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

<b>Use</b>		<b>Parking Requirement</b>
<b>5.130</b>	Colleges and universities.	1 space per 150 square feet of gross floor area.
<b>5.200</b>	Churches, synagogues and temples.	1 space for every four seats in the portion of the church building to be used for services plus spaces for any residential use as determined in accordance with the parking requirements set forth above for residential uses, plus 1 space for every 200 square feet of gross floor area designed to be used neither for services nor residential purposes.
<b>5.300</b>	Libraries, museums, art galleries, art centers.	1 space per 300 square feet of gross floor area.
<b>5.400</b>	Social, fraternal clubs and lodges, union halls.	
<b>6.110</b>	Bowling alleys, skating rinks, indoor tennis and squash courts, billiard and pool halls, indoor athletic and exercise facilities.	1 space for every three persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion—example, tennis courts or bowling alleys) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation.
<b>6.120</b>	Movie theaters.	1 space for every four seats.
<b>6.130</b>	<u>Coliseums, stadiums, and amphitheaters all other facilities in the 6.100 use class designed to seat or accommodate more than 1,000 people at a time.</u>	
<b>6.210</b>	<u>Privately owned outdoor recreational facilities.</u>	1 space per 200 square feet of area within enclosed buildings, plus 1 space for every three persons that the outdoor facilities are designed to accommodate when used to the maximum capacity.
<b>6.220</b>	<u>Publicly owned <u>O</u>utdoor recreational facilities.</u>	

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

	Use	Parking Requirement
<a href="#"><b>6.230</b></a>	Golf driving ranges not accessory to golf courses, par 3 golf courses, miniature golf courses, skateboard parks, water slides.	Miniature golf course, skateboard park, water slide, and similar uses--1 space per 300 square feet of area plus 1 space per 200 square feet of building gross floor area; Driving range--1 space per tee plus 1 space per 200 square feet in building gross floor area; Par Three Course—2 spaces per golf hole plus 1 space per 200 square feet of building gross floor area.
<a href="#"><b>6.240</b></a>	Horseback riding stables.	1 space per horse that could be kept at the stable when occupied to maximum capacity.
<a href="#"><b>6.250</b></a>	Automobile and motorcycle racing tracks.	1 space for every three seats.
<a href="#"><b>6.260</b></a>	Drive-in movie theater.	1 space per speaker outlet.
<a href="#"><b>6.300</b></a>	Recreational activities compatible with regional recreation facilities and/or intended to cater to users of such facilities.	1 space for every three persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion example, tennis courts or bowling alleys) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation. (Ord. 501, Sec. 13, 1995)
<a href="#"><b>7.100</b></a>	Secure community transition facilities	1.5 spaces for each staff person on site during the maximum shift plus 1 space for each facility vehicle plus 1 space for every three beds.
<a href="#"><b>7.400</b></a>	Penal and correctional facilities.	1 space for every two employees on maximum shift.
<a href="#"><b>8.100</b></a>	Restaurants without substantial carry-out or	1 space per 100 square feet of gross floor area.

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

Use	Parking Requirement
<b>8.200</b> <b>8.300</b> Restaurant without substantial carry-out or delivery service, no drive-in service, but with outdoor seating. Restaurants with carry-out and delivery service, and outside seating.	<u>1 space per 100 square feet of gross floor area, Same as 8.100</u> plus 1 space for every four outside seats.
<b>8.400</b> Restaurants with carry-out and delivery service, drive-in and outside seating.	<u>1 space per 100 square feet of gross floor area Same as 8.200</u> plus reservoir lane capacity equal to 5 spaces per drive in window.
<b>9.100</b> <b>9.200</b> <b>9.300</b> <b>9.400</b> Motor vehicle sales or rental; mobile home sales. Sales with installation of motor vehicle parts or accessories. Motor vehicle repair and maintenance.	1 space per 200 square feet of gross floor area.
<b>9.500</b> Gasoline sales.	1 space per 200 square feet of gross floor area of building devoted primarily to gas sales operation, plus sufficient parking area to accommodate vehicles at pumps without interfering with other parking spaces.
<b>9.600</b> Car wash.	Conveyer type--1 space for every three employees on the maximum shift plus reservoir capacity equal to five times the capacity of the washing operation. Self-service type--2 spaces for drying and cleaning

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

<b>Use</b>		<b>Parking Requirement</b>
		purposes per stall plus two reservoir spaces in front of each stall.
<b>10.210</b>	<u>Personal storage facilities</u>	1 space for every two employees on the maximum shift
<b>10.220</b>	<u>Storage of goods not being sold on the same site.</u>	but not less than 1 space per 5,000 square feet of area devoted to storage (whether inside or outside).
<b>11.000</b>	Scrap materials, salvage yards, junkyards, automobile graveyards.	1 space per 200 square feet of gross floor area.
<b>12.000</b>	Veterinarian, kennel.	1 space per 200 square feet of gross floor area.
<b>13.000</b>	Emergency services (Police Stations, Fire Stations).	1 space per 200 square feet of gross floor area.
<b>14.000</b>	<u>Agriculture, silviculture, mining, quarrying, soil processing</u> .	1 space for every two employees on maximum shift.
<b>15.100</b>	Post office, airport.	1 space per 200 square feet of gross floor area.
<b>15.200</b>		
<b>15.300</b>	Solid waste facilities.	1 space for every two employees on maximum shift.
<b>15.400</b>	Military reserve, national guard centers.	1 space per 100 square feet of gross floor area.
<b>16.000</b>	Dry cleaner, <u>I</u> Laundromat.	1 space per 200 square feet of gross floor area.
<b>19.000</b>	Open markets and horticultural sales.	1 space per 1,000 square feet of lot area used for storage, display, or sales.
<b>20.000</b>	Funeral home.	1 space per 100 square feet of gross floor area.
<b>21.200</b>	Crematorium.	1 space per 200 square feet of gross floor area.
<b>22.000</b>	Commercial nursery schools, day care centers.	1 space per employee plus 1 space per 200 square feet of gross floor area.

**TABLE 14.72-I: TABLE OF PARKING REQUIREMENTS**

<b>Use</b>	<b>Parking Requirement</b>
<b>24.000</b>	Bus and train stations. 1 space per 200 square feet of gross floor area.
<b>25.000</b>	Commercial greenhouse. 1 space per 200 square feet of gross floor area.

(Ord. 1030, Sec. 2 (Exh. B), 2018; Ord. 811, Sec. 92, 2010; Ord. 666, Sec 11, 2002; Ord. 468, 1995)

**5.08.010 Definitions.**

**I. Covered Animal.** Any hoofed animal usually found on farms, such as horses, ponies, mules, bovine animals, sheep and goats.

**M. Farm Animals.** Includes but is not limited to covered animals, poultry, and rabbits Any animal typically found on farms and kept predominantly outdoors, including but not limited to horses, ponies, mules, cows, sheep, goats, fowl, and rabbits. (See 14.44.075).



One Community Around the Lake

## Staff Report Lake Stevens Planning Commission

Planning Commission Briefing

Date: **August 18, 2021**

Subject: **Briefing on Proposed Amendments to the Nonconforming Code (LSMC 14.32)**

Contact Person/Department: Melissa Place, *Senior Planner*

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### **SUMMARY:**

Staff has prepared draft code to replace LSMC 14.32 and other associated sections of LSMC Title 14. Commissioners are asked to review and provide feedback on the proposed amendments and provide staff direction on when to move forward on a public hearing.

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### **ACTION REQUESTED OF PLANNING COMMISSION:**

No formal action is required; this is an informational discussion. Commissioners are asked to respond to the draft code and specific questions/items raised by staff.

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### **SUMMARY:**

The purpose of this briefing is to discuss proposed amendments to the city's nonconforming regulations ([Chapter 14.32 LSMC](#)). Staff first introduced the scope and goal of the amendments on [June 2, 2021](#). Staff would like to have a detailed discussion on the proposed draft code and share additional research on nonconforming code language.

At the Commission's June 2<sup>nd</sup> meeting, commissioners discussed and provided feedback on several approaches for consideration including abandonment, enlargement, reconstruction/restoration, termination, amortization, vested rights, and benign versus detrimental nonconformities. Staff has drafted a new nonconforming code, striking out LSMC 14.32 entirely and starting new (**Attachment 1**). The other associated sections of LSMC 14 that contain nonconforming language are also attached with their proposed revisions (**Attachment 2**).

Based on Commissioner comments and project goals, the new code incorporates the following provisions:

- Does not allow a nonconforming use to be enlarged or expanded which aligns with the city's current SMP language.
- Does allow a nonconforming structure to be altered or enlarged so long as the extent of nonconformity is not increased.
- Allows a single-family residence to be rebuilt in the same footprint if destroyed but not enlarged or expanded as the current code allows.
- Revises the terminology of nonconformities including revised and new definitions under LSMC 14.08.010.

- Revises the improvement threshold for repaired or altered nonconforming structures to be 25% (similar to the City of Marysville's) and revises the destruction threshold to be 75% as per the Commission's feedback.
- Revises the abandonment/termination period of nonconformities from six months to 12 months as per the Commission's feedback.<sup>1</sup>

## **DISCUSSION:**

In regulating nonconformities, the city can determine where it wants to be stricter for eventual elimination of nonconformities and where it wants to be more flexible in order to accommodate property owner interests and reuse/redevelopment of properties. Nonconforming regulations are really a balance of property rights and incorporating the city's vision for areas. To that extent, staff is looking for feedback from the Commission on the following topics and questions:

- The city has three subareas where more specific visions are to be implemented: 20th St SE Corridor, Lake Stevens Center, and the Downtown. Through this code amendment process, staff has identified that these areas warrant further discussion on whether the city wants to be stricter on nonconformities in the subareas in order to effect change more quickly in accordance with the subarea plans.
- Staff researched the benign versus detrimental nonconforming issue discussed at the last meeting. While the intent and reasoning behind differentiating between the two is logical, it may be more challenging to implement than previously thought. Staff has identified two cities in Michigan that have such distinctions in their code (**Attachment 3**). In both cases, the cities classify a use as either a Class A or Class B nonconformity. The classification is assigned based on criteria and sets forth a specific designation process. In a less direct way, the City of Milwaukie, Oregon also distinguishes between benign and detrimental nonconformities but terms them low-impact or high-impact nonconforming uses (**Attachment 3**) according to the intensity of the use.
- In the draft code, staff is proposing to not allow expansion of nonconforming uses. This is a simplified way of collectively treating them. If the city would like to be more flexible, we could consider creating a process whereby nonconforming uses could be enlarged or expanded if they met certain criteria through a special review process. Typically, other jurisdictions do this through a conditional use permit or other hearing body process. If the Commission desires such, staff can revise the code accordingly.

## **SPECIFIC QUESTIONS:**

Specific questions for the Commission to consider and provide feedback to staff on are the following:

1. Should the subareas be treated differently? Do we want to be stricter in the subareas where we want change?
2. How to distinguish benign vs. detrimental nonconformities? List them? Set up criteria? Low impact versus high impact?
3. Should we have a hearing body process for expansion of a nonconforming use? And if so, what process should that take – Conditional Use Permit, Planning Commission, etc?
4. Amortization clauses have not been included in the draft code; is this a tool the city would like to pursue?

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<sup>1</sup> Significant case law in the State of Washington exists that the vested property rights period isn't unlimited.

5. The current nonconforming code provides great deference to the retention and enlargement/expansion of single-family residences. The draft code revises that, how does the Commission feel about this change?
6. Is the city agreeable with adding a story (or stories) to a building if it doesn't expand the existing building footprint?
7. Does the Commission want to add specific language about substandard septic systems (i.e. detrimental nonconformity)?

**NEXT STEPS:**

Staff will revise the draft code incorporating the Commission's input and refine the details of the code. Staff will bring back an updated version of the proposed amendments in September for a final discussion prior to public hearing.

As a Type VI land use code amendment, the Planning Commission will be required to hold a public hearing (which will require notice to the public and Department of Commerce) to make a recommendation to City Council. Before moving on to the public hearing stage of the project, staff also intends to hold a work session with the City Council to discuss the proposed amendments.

**Attachments**

Attachment 1: Draft Code LSMC 14.32

Attachment 2: Draft Code LSMC Title 14 – other applicable sections

Attachment 3: Benign vs. Detrimental Nonconforming Code Examples

[Eveline Township, MI](#)

[Lapeer, MI](#)

[Milwaukie, OR](#)

# ATTACHMENT 1

## Chapter 14.32

### ~~N□NC□N□□RMIN□ SI□□A□I□NS N□NC□N□□RMI□IES~~

#### Sections:

- 14.32.010 Purpose and Intent
- 14.32.020 General Provisions
- 14.32.030 Nonconforming Uses
- 14.32.040 Nonconforming Structures
- 14.32.050 Nonconforming Development
- 14.32.060 Abandonment and Termination of Nonconformities

#### **14.32.010 Purpose and Intent.**

The purpose of this chapter is to provide for the continuation, modification or eventual elimination of nonconforming uses, structures, and development in accordance with the standards and conditions in this chapter. While nonconformities may continue, the provisions of this chapter are designed to encourage the improvement or elimination of nonconformities in order to better achieve the purposes of these regulations. In general, a nonconformity that was lawful at the time it was established is permitted to continue to exist. A nonconformity shall not be permitted to continue to exist if it was unlawful at the time it was established. Most nonconforming uses and development may be maintained, but may not be altered, without land use review. It is the purpose of the city to ultimately have all structures and uses brought into conformity with the land use codes and regulations adopted by the city, as completely and as speedily as possible with due regard to the special interests and property rights of those concerned.

#### **14.32.020 General Provisions.**

The following provisions apply to all nonconforming uses and development:

- (a) Changes in ownership may occur and do not affect the status of a nonconforming use, structure, or development.
- (b) A nonconforming use, structure, or development is allowed to change to a conforming use or development. Once a conforming use, structure, or development occupies the site, the nonconforming status is lost, and the nonconforming use, structure, or development may not be reestablished.
- (c) Routine maintenance and repair, as defined in Section 14.08.010, is allowed. Alteration, as defined in Section 14.08.010 and further described in Section 14.32.040, or destruction, as described in Section 14.32.040, may require land use review and/or may result in the loss of the nonconforming status of the use or development.
- (d) Where other sections of the Lake Stevens Municipal Code require nonconforming uses or development to come closer to conformance, those provisions apply instead of the provisions of this chapter.
- (e) Provisions of this chapter do not apply to signs. Nonconforming signs are regulated by Title 14.68.150 Signs.
- (f) The provisions of this chapter do not supersede or relieve a property owner from compliance with:

- (1) The requirements of the International Building and Fire Codes; or
- (2) The provisions of this code beyond the specific nonconformance addressed by this chapter.

(g) For additional requirements related to other nonconformities, see the following sections of this title:

- (1) Definitions—see Chapter 14.08.010 LSCM;
- (2) Boundary line adjustments—see Chapter 14.18.200 LSCM;
- (3) Subarea nonconforming situations—see Chapter 14.38.017 LSCM;
- (4) Signs—see Chapter 14.68.150 LSCM;
- (5) Critical areas—see Chapter 14.88.330 LSCM;
- (6) Uses within shoreline jurisdiction—see shoreline master program.

#### **14.32.030 Nonconforming Uses.**

(a) Continuation

Except as may be provided for elsewhere in these regulations, a nonconforming use lawfully existing at the time of the adoption of the city code may be continued subject to the standards and conditions of this chapter.

(b) Repair or Maintenance

Repair or maintenance of a nonconforming use is allowed so long as the repair or maintenance does not increase the extent of any nonconformity. Repair or maintenance is defined in Section 14.08.010.

(c) Enlargement or Expansion

- (1) A nonconforming use shall not be enlarged or increased nor expanded to occupy a greater area of land than was occupied at the adoption or subsequent amendment of the city code; unless such use is changed to a use permitted in the district in which such use is located.
- (2) Any structure used for single-family residential purposes and maintained as a nonconforming use may be repaired, maintained, or replaced so long as the repair or replacement does not result in an expansion or enlargement of such use or structure.
- (3) No additional structures which do not conform to the requirements of the city code shall be erected in connection with such nonconforming use of land.

(d) Change of Use

In general, a nonconforming use may be changed to a conforming use. If a nonconforming use, building or structure is changed to a more conforming use, building or structure or is replaced by a conforming use, building or structure, the nonconforming use, building or structure shall not revert to its original nonconforming status.

#### **14.32.040 Nonconforming Structures.**

(a) Continuation

Except as may be provided for elsewhere in these regulations, a non-conforming structure lawfully existing at the time of the adoption of the city code may be continued subject to the standards and conditions of this chapter.

(b) Repair or Maintenance

Repair or maintenance of a nonconforming structure is permitted. Repair or maintenance is defined in Section 14.08.010. The interior of said structures may be restored, remodeled and improved to the extent of not more than 25 percent of the assessed value of the structure at the

time of building permit in any consecutive period of 12 months in accordance with required permits.

(c) Alteration or Expansion

Nonconforming structures may be enlarged or altered in a way which does not increase the extent of any nonconformity. An increase in nonconformity would be a change that increases the bulk of the structure encroaching on setbacks or exceeding maximum height or maximum impervious area requirements. Additional stories on a building are permitted so long as they meet all other applicable provisions of city and state code including height limitations, septic limitations, and do not increase the extent of any nonconformity.

(d) Destruction

A nonconforming structure or nonconforming portion of a structure that is destroyed to an extent exceeding 75 percent of the assessed value of the structure at the time of damage shall not be reconstructed except in conformity with these regulations. In order for this reconstruction to occur, application must be made for all necessary permits within twenty-four months of the date the damage occurred, and all reconstruction must be completed within two years of permit issuance. All residential structures (including accessory uses and structures) located in a residential district may be reconstructed if destroyed to any extent, provided that such reconstruction does not enlarge the prior building footprint nor increase the extent of the nonconformity(ies) existing prior to destruction.

**14.32.050 Nonconforming Development.**

Nonconforming development means a lot or site improvement, such as an off-street parking facility, landscaping, or access that does not conform to the city's current development ordinances. Nonconforming development that was legally established and is used for a legal use but which does not meet the current regulations may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of noncompliance with the regulations by further encroaching upon or extending into areas where construction or use would not be allowed for new development. A lot that is nonconforming by virtue of not meeting the minimum lot area required for the zone in which it is located may be used the same as if it were conforming, except that any use that requires a greater lot size than the established minimum lot size for a particular zone (e.g., a two-family residence) is prohibited. LSCM 14.16C.078 further details the legal lot status determination process.

**14.32.060 Abandonment or Termination of Nonconformities.**

Whenever a nonconforming use, structure, or development of property has been abandoned or discontinued for a period of 12 consecutive months or for twelve months during any two-year period, such nonconformity shall lose its nonconforming status and not thereafter be re-established, and the future use of the property shall be in conformity with the provisions of these regulations. A discontinued or abandoned nonconformity shall not be resumed.

**Sections:**

~~14.32.010 Continuation of Nonconforming Situations and Completion of Nonconforming Projects~~

~~14.32.020 Nonconforming Lots~~

~~14.32.030 Extension or Enlargement of Nonconforming Situations~~

~~14.32.040 Repair, Maintenance and Reconstruction~~

~~14.32.050 Change in Use of Property Where a Nonconforming Situation Exists~~

~~14.32.060 Abandonment and Discontinuance of Nonconforming Uses~~

**~~14.32.010 Continuation of Nonconforming Situations and Completion of Nonconforming Projects.~~**

~~Nonconforming situations that were otherwise lawful on the effective date of this chapter may be continued subject to the restrictions and qualifications of this chapter and, if applicable, of an adopted subarea plan. (Ord. 876, Sec. 15, 2012)~~

**~~14.32.020 Nonconforming Lots.~~**

~~(a) This section applies only to legal nonconforming lots which have no substantial structures upon it.~~

~~(b) A lot that is nonconforming by virtue of not meeting the minimum lot area required for the zone in which it is located may be used the same as if it were conforming, except that any use that requires a greater lot size than the established minimum lot size for a particular zone (e.g., a two family residence) is prohibited.~~

**~~14.32.030 Extension or Enlargement of Nonconforming Situations.~~**

~~(a) No person may engage in any activity that causes an increase in the extent of a nonconformity, except as specified below. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:~~

~~(1) An increase in the total amount of space devoted to a nonconforming use, or~~

~~(2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, parking or density requirements.~~

~~(b) A legal nonconforming use may be extended throughout any portion of a completed building that was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.~~

~~(c) A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if 10 percent or more of the earth products had already been removed on the date on which it became nonconforming and where the proposed expansion conforms to all applicable Federal, State, and local regulations concerning the use.~~

(d) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other subsections of this section occur.

(e) Any structure used for single family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

(f) Whenever: (1) there exists a lot with one or more structures on it, and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (3) the additional parking or loading spaces required by Chapter 14.72 cannot be satisfied because there is not sufficient area available on the lot, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land. (Ord. 676, Sec. 21, 2003; Ord. 468, 1995)

#### **14.32.040 Repair Maintenance and Reconstruction.**

(a) Minor repairs to and routine maintenance of property where nonconforming situations exist are allowed. Major renovation and repairs, i.e., work valued at more than 25 percent of the appraised valuation of the structure, may be done only in accordance with required permits issued pursuant to this section.

(b) If a structure housing a nonconforming use is damaged by fire, accident or natural disaster to an extent that the value of repair or replacement would exceed 50 percent of the appraised valuation of the structure prior to the fire, accident or natural disaster, then the nonconforming use shall not be re-established. This subsection does not apply to structures used for single family residential purposes, which structures may be reconstructed pursuant to a building permit.

(c) For purposes of subsections (a) and (b) of this section:

(1) The "value" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.

(2) No person may seek to avoid the intent of subsections (a) or (b) of this section by doing such work incrementally.

(3) The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.

(d) The Planning Director shall issue a permit authorized by subsection (a) of this section if it is found that, in completing the renovation, repair or replacement work:

(1) This proposal meets the requirements of this chapter; and

(2) The permittee will comply to the extent reasonably possible with all provisions of this title applicable to the proposal.

Compliance with a requirement of this title is not reasonably possible if it cannot be achieved without adding land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. That an applicant is facing financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. (Ord. 811, Sec. 23, 2010)

**14.32.050 Change in Use of Property where a Nonconforming Situation Exists.**

(a) A change in use of property (where a nonconforming situation exists) that requires a new Planning Director approval, administrative conditional use, or conditional use permit in accordance with Section 14.16C.030 may not be made except in accordance with subsections (b) through (d) of this section.

(b) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this title applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this title is achieved, the property may not revert to its nonconforming status.

(c) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this title applicable to that use cannot reasonably be complied with, then the change is permissible if the permitting entity issues a permit authorizing the change. This permit may be issued if it is found that:

(1) The proposal meets the requirements of this chapter; and

(2) All of the applicable requirements of this title that can reasonably be complied with will be complied with. Compliance with a requirement of this title is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. That an applicant is facing financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. In no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

(d) No change in use to another use that is not permissible in the district in which it is located shall be allowed. (Ord. 811, Sec. 24, 2010)

**14.32.060 Abandonment and Discontinuance of Nonconforming Uses.**

(a) When a nonconforming use is discontinued for a consecutive period of 180 days, subsequent uses on the property must be permitted in the zone in which the property is located. (Ord. 676, Sec. 21, 2003; Ord. 590, 1998; Ord. 468, 1995)

**14.04.050 Relationship to Existing Zoning, Subdivision and Flood Control Ordinances.**

To the extent that the provisions of this title are the same in substance as the previously adopted provisions that they replace in the City's zoning, subdivision, streets and sidewalks, parking, landscaping, flood control, building and construction, sign, shoreline management, drainage, sewer, or fee ordinances and/or titles, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this title merely by the repeal of the zoning ordinance.

**14.04.070 No Use or Sale of Land or Buildings Except in Conformity with Title Provisions.**

(a) Subject to Chapter 14.32 (Nonconforming Situations), no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this title.

(b) For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

**14.08.010 Definitions of Basic Terms.**

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this title.

*Effective Date of This Chapter.* Whenever this title refers to the effective date of this chapter, the reference shall be deemed to include the effective date of the chapter as originally adopted, or the effective date of an amendment to it if the amendment creates a nonconforming situation.

*Effective Date of This Title.* Whenever this title refers to the effective date of this title, the reference shall be deemed to include the effective date of any amendments to this title if the amendment, rather than this title as originally adopted, creates a nonconforming situation.

*Nonconforming Sign.* See *Sign, Nonconforming*.

*Nonconforming Use.* A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use.) The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with operating a retail clothing store in a residentially zoned area constitutes a nonconforming use.)

*Sign, Nonconforming.* A sign that, on the effective date of this title, does not conform to one or more of the regulations set forth in this title, particularly Chapter 14.68, Signs.

*Nonconformity.* Uses, structures, lots, or development sites that do not conform to one or more of the requirements of this Ordinance, or any subsequent amendment, which were lawfully established prior to the effective date of this Ordinance, or any subsequent amendment.

*Nonconforming development.* A lot or site improvement, such as an off-street parking facility, landscaping, or access that does not conform to the city's current development ordinances either because it was established prior to the enactment of city ordinances governing the structure or improvement or because the structure or improvement conformed at the time it was established but applicable city ordinances have since changed.

*Nonconforming structure.* Any structure or portion thereof lawfully existing on the effective date of this Ordinance or amendments thereto which does not conform after the passage of this Ordinance or amendments thereto with the dimensional restrictions of the district in which it is situated.

*Nonconforming use.* The use of land or the use of any building or portion thereof lawfully existing at the effective date of this Ordinance or amendments thereto which does not conform after the passage of this Ordinance or amendments thereto which does not conform to the use regulations of the zoning district in which it is located.

Repair or maintenance - TBD

Abandonment- TBD

Termination - TBD

**14.18.200 Boundary Line Adjustments.**

(a) Minor lot line adjustments and lot consolidations are exempt from the subdivision regulations. Minor lot line adjustments to existing legal lots and lot consolidations are permitted when no new lots are created through the process and the adjusted lots must either meet all requirements of this title and/or other City regulations. In the case of existing legal nonconforming lots, the adjustment shall not create a new or greater nonconformity with respect to any City regulations.

(b) Application for a boundary line adjustment (BLA) is made by submitting to the Planning Director a land use development application, with a survey of the subject property showing existing and proposed lot lines, before and after legal descriptions, owner's certificate, surveyor's certificate, and Planning Director's approval certificate.

(c) To finalize an approved boundary line adjustment, it shall be recorded with the Snohomish County Auditor's office no later than one year after final approval has been issued by the Planning Director or the application and approval shall lapse, and a new application must be submitted.

(d) Recording fees and applicable State fees shall be paid by the applicant. Immediately after recording, copies of the recorded BLA documents shall be provided to the City. The BLA shall not take effect until recorded with the Snohomish County Auditor and copies returned to the City.

(e) The Director or designee may grant up to a one-year extension of a BLA for good cause, if a written request for extension, including a description of reason for request, is submitted to the Planning Director at least two weeks before approval lapses.

(f) If the BLA affects more than one property owner, a conveyance document(s) shall be recorded at the same time as the BLA documents. The conveyance document(s) shall establish ownership consistent with the approved, adjusted boundaries.

(g) When a BLA is recorded subsequent to a record of survey for the same property, the recording number of the record of survey shall be noted on the BLA map. (Ord. 1069 § 4, 2020)

**14.38.017 Nonconforming Situations.**

The City will allow legal nonconforming situations to continue within the subareas subject to Chapter 14.32. Legal nonconforming signs may continue subject to Section 14.38.100(i). (Ord. 876, Sec. 5 (Exh. 3), 2012)

**14.68.150 Nonconforming Signs.**

(a) Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of the ordinance codified in this chapter may be continued.

(b) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition. Nor may illumination be added to any nonconforming sign.

(c) A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this title.

(d) If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this title, and the remnants of the former sign structure shall be cleared from the land. For purposes of this section, a nonconforming sign is "destroyed" if damaged to an extent that the cost of repairing the sign to its former stature or replacing it with an equivalent sign equals or exceeds the value (tax value if listed for tax purposes) of the sign so damaged.

(e) The message of a nonconforming sign may be changed so long as this does not create any new nonconformities (for example, by creating an off-premises sign under circumstances where such a sign would not be allowed).

(f) Subject to the other provisions of this section, nonconforming signs may be repaired and renovated so long as the cost of such work does not exceed within any 12-month period 50 percent of the value (tax value if listed for tax purposes) of such sign.

(g) If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 30 days after such abandonment by the sign owner, owner of the property where the sign is located, or other party having control over such sign.

(h) If a nonconforming billboard remains blank for a continuous period of 180 days, that billboard shall be deemed abandoned and shall, within 30 days after such abandonment, be altered to comply with this chapter or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this section, a sign is "blank" if:

- (1) It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
- (2) The advertising message it displays becomes illegible in whole or substantial part; or
- (3) The advertising copy paid for by a party other than the sign owner or promoting an interest other than the rental of the sign has been removed.

(i) The burden of establishing a sign to be legally nonconforming or not destroyed under this section rests upon the person or persons, firm, or corporation claiming legal status for a sign.

(j) As soon as reasonably possible after the effective date of the ordinance codified in this title, the Planning Director shall make every reasonable effort to identify all the nonconforming signs within the City's planning jurisdiction. He shall then contact the person responsible for each such sign (as well as the owner of the property where the nonconforming sign is located, if different from the former) and inform such person (1) that the sign is nonconforming, (2) how it is nonconforming, (3) what must be done to correct it and by what date, and (4) the consequences of failure to make the necessary corrections. The Planning Director shall keep complete records of all correspondence, communications, and other actions taken with respect to such nonconforming signs. However, performing these actions in no way releases the sign owner from the burden established in subsection (i) of this section. (Ord. 811, Sec. 65, 2010; Ord. 799, Sec. 2, 2009; Ord. 661, Sec. 4, 2002; Ord. 497, 1995; Ord. 468, 1995)

#### **14.88.330 Nonconforming Activities.**

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to the following:

- (a) No such activity shall be expanded, modified, or substituted in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter;
- (b) Except for cases of discontinuance as part of normal agricultural practices, if a nonconforming activity is discontinued for 180 days, any resumption of the activity shall conform to this chapter;
- (c) If a nonconforming use or activity is destroyed by human activities or a natural occurrence, it shall not be resumed except in conformity with the provisions of this chapter;
- (d) Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities. (Ord. 984 Sec. 3 (Exh. C), 2019; Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

# ATTACHMENT 3

Planning Commission Meeting

08-18-2021

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Article 9 Nonconforming Uses, Structures and Lots

Sections 9.1-9.4

## ARTICLE 9

### NONCONFORMING USES, BUILDINGS, STRUCTURES AND LOTS OF RECORD

#### SECTION 9.1 PURPOSE:

Nonconformities are uses, buildings, structures or lots that do not conform to one or more of the requirements of this Ordinance, or any subsequent amendment, which were lawfully established prior to the effective date of this Ordinance, or any subsequent amendment. The purpose of this Article is to specify the terms and conditions under which a nonconformity is permitted to continue to exist. A nonconformity that was lawful at the time it was established is permitted to continue to exist. A nonconformity shall not be permitted to continue to exist if it was unlawful at the time it was established. To that end nonconforming uses, buildings, and structures shall be placed into two classifications, a Class A nonconformity and a Class B nonconformity. The purpose of this Article is to reduce or eliminate Class B nonconformities over a period of time, while permitting Class A nonconformities to be used, repaired, replaced and enlarged under less stringent regulations.

#### SECTION 9.2 NONCONFORMING USE PERMITTED; COMPLETION OF NONCONFORMING BUILDINGS OR STRUCTURES:

- A. If a nonconforming building or structure, a building that contains a nonconforming use, or a nonconforming use of land was lawful at the time of enactment of this Ordinance, or any subsequent amendment, then that nonconformity may be continued although it does not conform to the provisions of this Ordinance, or any subsequent amendment, under the terms and conditions of this Article.
- B. To avoid undue hardship, nothing in this Ordinance is deemed to require a change in the plans, construction, or designated use of a building or structure on which substantial construction has been lawfully begun prior to the effective date of this Ordinance, or any subsequent amendment.

#### SECTION 9.3 REGULATIONS PERTAINING TO ALL LEGALLY EXISTING NONCONFORMITIES (CLASS A & CLASS B)

- A. Normal maintenance and incidental repairs, including repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed on any nonconforming building or structure or on any building containing a nonconforming use.
- B. A nonconforming building or structure or a building that contains a nonconforming use which is unsafe or unlawful due to lack of repairs or maintenance, as determined by the Zoning Administrator or County Building Official, may be restored to a safe condition.

#### SECTION 9.4 CLASSIFICATION OF NONCONFORMITIES

- A. All nonconforming uses, buildings and structures shall be designated either a Class A nonconformity or a Class B nonconformity. Unless designated a Class A nonconformity under subsection 9.4B, the nonconforming use, building or structure shall be deemed a Class B nonconformity. If a Class B nonconformity is damaged or destroyed, the property owner may seek a Class A designation under subsection 9.4B after such damage or destruction. The Class B nonconformity shall then be judged for the Class A designation on the nonconformity as it existed prior to the damage or destruction.
- B. A property owner who desires that his or her property be designated a Class A nonconformity shall file an application with the Zoning Administrator requesting the designation. The application shall include the names and addresses of all people and legal entities with an interest in the property, the legal description of the property, the facts that establish the standards for approving a Class A designation have been met, and the fee as provided in Section 5.3 of this

Section 9.1 Purpose

Section 9.2 Nonconforming Use

Section 9.3 & 9.4 Class A & B Nonconformities

Ordinance. After the Zoning Administrator receives a completed application, he or she shall forward the application to the Planning Commission for consideration. The Planning Commission shall hold at least one (1) public hearing on the application. The notice of the public hearing shall be the same as for a special use permit before the Planning Commission. The Planning Commission's decision whether to grant the Class A designation shall be based on written findings of fact made pursuant to the standards contained in subsection 9.4C. The Planning Commission may attach reasonable conditions to a Class A designation to assure compatibility of the nonconforming use, building or structure with the surrounding property uses. The property owner shall receive no vested interest rights in the Class A designation, since that designation may be revoked by the Planning Commission under subsection 9.4D.

C. The Planning Commission shall grant a Class A designation for a nonconforming use, building, or structure if it finds that all the following standards have been met:

1. The nonconforming use, building, or structure was lawful at the time of its inception
2. The continuation of the nonconforming use, building or structure will not significantly and adversely affect surrounding properties and will not significantly depress property values in the immediate area.
3. The nonconforming use, building or structure is not located within a wetland regulated by the State of Michigan.
4. The nonconforming use, building or structure is not located in the Waterfront Greenbelt as regulated by Section 4.6.A, UNLESS located in either the Village Commercial or Village Mixed Use zoning district and approved under the water quality protection alternatives per Section 4.6B.
5. The nonconforming use, building, or structure is of economic benefit to the Township.

D. Upon the filing of a request by the Zoning Administrator or by the Planning Commission's own action, a Class A designation shall be revoked by the Planning Commission following the same procedure required for the initial designation upon a finding that as a result of any change of conditions or circumstances the standards for the Class A designation under subsection 9.3C no longer qualify the nonconforming use, building or structure for the Class A designation.

## SECTION 9.5 REGULATIONS CONCERNING CLASS A NONCONFORMITIES

The following regulations shall apply to all Class A nonconforming uses, buildings and structures:

- A. If a nonconforming building or structure or a building that contains a nonconforming use is damaged or destroyed by any means or is removed by the owner, then such nonconforming building or structure may be restored, rebuilt or repaired to its original configuration and on its original footprint.
- B. A nonconforming building or structure or a building that contains a nonconforming use may be enlarged or altered in any way, provided such enlargement does not increase the degree or extent of any nonconformity on both the horizontal and vertical planes.
- C. A nonconforming use shall not be extended to any part of the lot that was not lawfully occupied by such nonconforming use on the effective date of this Ordinance, or any subsequent amendments, unless in conformity with the requirements of this Ordinance. However, a nonconforming use may be extended throughout any part of the building, which was designed for such use, and which existed at the time the use became nonconforming.
- D. A Class A nonconforming use, building or structure may be replaced by another Class A nonconforming use, building, or structure if the Planning Commission finds (following the procedures of subsection 9.4B above), that the new nonconforming use, building or structure qualifies for a Class A designation and the new nonconforming use, building or structure will not increase the extent or intensity of the nonconformity on the property.

## SECTION 9.6 REGULATIONS CONCERNING CLASS B NONCONFORMITIES

The following regulations shall apply to all Class B nonconforming uses, buildings and structures:

- A. A Class B nonconforming use, building or structure that is damaged by fire, collapse, explosion, an act of God, or an act of the public enemy following the effective date of this Ordinance, or any subsequent amendment, may be reconstructed, repaired or restored, and resumed under the terms and conditions of this subsection. Except as provided herein, if a nonconforming building or structure can be reconstructed, repaired or restored in complete conformance with this Ordinance, then such complete conformance shall be required. However, if the Planning Commission finds that the cost of complete conformance with this Ordinance would be unreasonable under the circumstances, then the nonconforming building or structure shall be reconstructed, repaired or restored to the greatest degree of conformance found by the Planning Commission to be reasonable. In addition, any such reconstruction, repair and restoration, or resumption shall be completed within thirty-six (36) months following the damage, or other reasonable time as determined by the Planning Commission.
- B. Except for repairs and maintenance authorized under Section 9.3 above, a nonconforming building or structure or a building containing a nonconforming use shall not be enlarged or altered, unless such enlargement or alteration is in complete conformity with the provisions of this Ordinance.
- C. A nonconforming use shall not be extended to any portion of the lot or extended throughout any part of a building in which it is located that was not lawfully occupied by such a nonconforming use on the effective date of this Ordinance, or any subsequent amendments, unless such extension is in complete conformity with the requirements of this Ordinance.
- D. A Class B nonconforming use, building or structure may not be replaced by another Class B nonconforming use, building or structure. However, a Class B nonconforming use, building or structure may be replaced with a Class A nonconforming use, building or structure if the Planning Commission finds, (following the procedures in subsection 9.4B above), that the new nonconforming use, building or structure qualifies for a Class A designation and that the new nonconforming use, building or structure will not increase the extent or intensity of the nonconformity on the property.

## SECTION 9.7 CHANGE OF NONCONFORMING USE, BUILDING OR STRUCTURE

If a nonconforming use, building or structure is changed to a more conforming use, building or structure or is replaced by a conforming use, building or structure, the nonconforming use, building or structure shall not revert to its original nonconforming status.

## SECTION 9.8 NONCONFORMING LOTS OF RECORD

The following regulations shall apply to nonconforming lots of record.

- A. Except as provided in subsection 9.8B below, any lot which does not meet the dimensional requirements of the district in which it is located may be used for any purpose authorized within that district. Any required variances may be requested pursuant to the procedures and standards of this Ordinance.
- B. If two (2) or more contiguous lots, parcels or portions of lots or parcels are under the same ownership and do not individually meet the lot width, depth and/or area requirements of this Ordinance, then those contiguous lots, parcels or portions of lots shall be considered an undivided lot or parcel for the purposes of this Ordinance, and no portion of such undivided lot or parcel shall be used or divided in a manner that diminishes compliance with the lot width, depth and/or area requirements established by this Ordinance.

## SECTION 9.9 ABANDONMENT OF NONCONFORMING USE, BUILDING OR STRUCTURE

If a property owner has an intent to abandon a nonconforming use, building or structure and in fact abandons this nonconforming use or structure for a period of one (1) year or more, then any subsequent use of the property or structure shall conform to the requirements of this Ordinance. When determining the intent of the property owners to abandon a nonconforming use, building or structure, the zoning administrator shall consider the following factors:

- A. Whether utilities, such as water, gas, and electricity to the property have been disconnected.
- B. Whether the property, buildings, and grounds have fallen into disrepair.
- C. Whether signs or other indications of the existence of the nonconforming use have been removed.
- D. Whether equipment or fixtures necessary for the operations of the nonconforming use have been removed.
- E. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use, building or structure.

**§ 7-20.01. Intent.**

- A. It is the intent of this chapter to permit legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival.
- B. For definitions and illustrations of nonconforming lots, structures, and uses, see Article XXIV, Definitions.

**§ 7-20.02. Class A and Class B nonconforming uses or structures.**

Although it is the intent of this chapter to discourage the continuation of nonconforming uses and structures, it is recognized that allowing the continuation of certain nonconformities may be appropriate. To address these circumstances, the Zoning Ordinance establishes procedures for the Planning Commission to designate specific nonconforming uses or structures as "Class A." Such uses or structures will have less stringent standards for expansion or resumption.

A. Class A nonconforming uses or structures.

- (1) Effect of Class A designation.
  - (a) Class A nonconforming uses may be reestablished if the structure housing it is damaged or destroyed.
  - (b) Class A nonconforming uses may be reestablished when otherwise meeting the criteria in § 7-20.07, Standards for determining abandonment. The Class A nonconforming use may not be reestablished if it is replaced with a conforming use.
  - (c) Class A nonconforming uses, structures housing nonconforming uses and nonconforming structures may be expanded or improved, after review and approval by the Planning Commission.
  - (d) Class A nonconforming structures may be rebuilt if the structure is damaged or destroyed.
  - (e) Rights granted nonconforming uses and structures listed above are contingent on compliance with any standards imposed by the Planning Commission as part of the Class A designation, including compliance with any approved site plan.
- (2) Class A designation process.
  - (a) An applicant for Class A designation shall submit a request in writing to the Planning Department.
  - (b) Notice of a public hearing shall be provided as outlined in § 7-21.07 of this chapter.
  - (c) The Planning Commission shall hold a public hearing on the Class A designation.

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- (d) The Planning Commission shall approve, approve with conditions or deny the request for Class A designation.
- (e) The Planning Commission may impose conditions on an approval. The condition may include compliance with a site plan of the site.
- (3) Standards for approval of Class A designation. In order to approve a use for Class A designation, the use or structure must have been lawful at its inception. In addition, the following criteria shall be used by the Planning Commission in evaluating a use to determine if continuation of the use or structure would be appropriate:
  - (a) Continuance of the use or structure does not significantly depress property values of nearby properties.
  - (b) Continuance of the use or structure would not be contrary to the public health, safety or welfare or the spirit of the chapter.
  - (c) No useful purpose would be served by strict application of the provisions of this chapter with which the use or structure does not conform.
  - (d) The property cannot be reasonably used as currently zoned.
- (4) Revocation of Class A designation.
  - (a) Revocation of a Class A designation may be initiated by the Planning Department or the Planning Commission.
  - (b) Revocation of Class A designation shall comply with the procedures outlined in § 7-20.02A(2) of this chapter.
  - (c) Class A designation may only be revoked if the nonconforming use or structure violated a condition of approval.

B. Class B nonconforming uses or structures. All nonconforming uses or structures, not designated Class A, shall be Class B, nonconforming uses or structures. Class B nonconforming uses and structures shall comply with all the provisions of this chapter relative to nonconforming uses and structures set forth hereinafter.

### **§ 7-20.03. Nonconforming lots.**

A. Single-family dwellings. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this chapter. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Yard requirement variances may be obtained through approval of the Zoning Board of Appeals.

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- B. Changes in nonconforming lots. A nonconforming lot may not be modified in a way that increases its nonconformity.
- C. Contiguous nonconforming lots. Where two or more nonconforming lots of record are adjacent and under the same ownership as of the date of this chapter, they shall be considered one parcel and may not be divided except in compliance with this chapter.
- D. Determining lots of record. The City Assessor shall have the power to make "Lot of Record" determinations in accordance with the following:
  - (1) Upon application of any person claiming to be the owner of the legal or equitable title to a parcel of land which was the subject to a deed or land contract, not recorded in the Office of the Register of Deeds on the effective date of this chapter, the City Assessor is authorized to determine whether an owner is entitled to have the parcel treated as a "Lot of Record" in accordance with § 7-20.03A of this chapter.
  - (2) The City Assessor shall allow the parcel to be treated as a "Lot of Record" when he/she finds by a preponderance of the evidence that the instrument purporting to transfer title to the parcel of said owner was executed prior to the effective date of this chapter. In making his/her determination, the Assessor is authorized to consider all matters it deems relevant, including but not limited to the tax roll of the City, the relationship of the parties to the purported transfer, the degree of formality of the purported document of transfer, and the testimony of the applicant and his witnesses.
  - (3) Such a determination shall have only the effect of equating such an owner with the owner of a lot of record and shall not relieve such owner from complying with the other conditions set forth in this chapter.

#### **§ 7-20.04. Nonconforming uses of land.**

Except as provided under the provisions of § 7-20.02, where, at the effective date of adoption or amendment of this chapter, lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. Expansion. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter. Expansion includes the addition of accessory structures, including signs.
- B. Moving use. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this chapter.
- C. Abandonment. A use that the ZBA has determined is abandoned following the standards in § 7-20.07 of this chapter shall not be reestablished and any new use must comply with the Zoning Ordinance.

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D. Change in use. A nonconforming use of land may be changed to another nonconforming use of land use that the ZBA has determined is not more nonconforming than the current use following the standards in § 7-20.08 of this chapter and does not require expansion of the area of land used for the use. A nonconforming use that changes to a conforming use may not revert back to a nonconforming use.

E. Medical marihuana nonconforming use. **[Added 2-19-2018]**

- (1) No marihuana facility operating or purporting to operate prior to February 19, 2018, shall be deemed to have been a legally existing use, nor shall the operation of such marihuana facility be deemed a legal nonconforming use under this chapter.
- (2) A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this chapter or any amendment thereto.
- (3) Discontinuation of a state medical marihuana facility license shall constitute *prima facie* evidence that a nonconformity has been discontinued.

F. Recreational marihuana nonconforming use. **[Added 10-5-2020]**

- (1) No marihuana facility operating or purporting to operate prior to October 5, 2020, shall be deemed to have been a legally existing use nor shall the operation of such marihuana facility be deemed a legal nonconforming use under this chapter.
- (2) In accordance with Michigan law and this chapter, a property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this chapter or any amendment thereto.
- (3) Discontinuation of a state license shall constitute *prima facie* evidence that a nonconformity has been discontinued.

### **§ 7-20.05. Nonconforming structures.**

Except as provided under the provisions of § 7-20.02, where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

A. Definition of structure. For the purpose of this section:

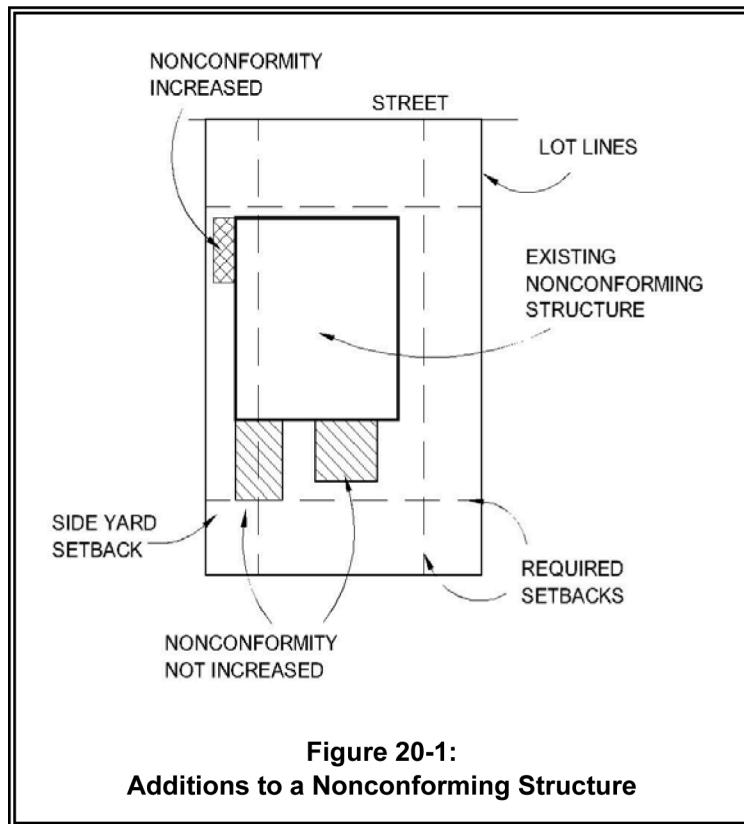
STRUCTURE — Includes both permanent physical improvements such as buildings and fences, and other improvements such as driveway, parking spaces and landscaping.

B. Expansion or alteration. No nonconforming structure may be enlarged or altered in a way which increases its nonconformity. An increase in nonconformity would be

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a change that increases the bulk of the structure encroaching on setbacks or exceeding maximum height or lot coverage requirements. Nonconforming structures may be enlarged or altered in a way which does not increase its nonconformity. (See Figure 20-1.)



- C. Moving structure. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is removed.
- D. Destruction of structure. Should such structure be destroyed by any means to an extent of more than 60% of its replacement costs, exclusive of the foundations, it shall be reconstructed only in conformity with the provisions of this chapter. This provision does not apply to nonconforming single-family homes, which may be replaced even if completely destroyed, provided the new structure does not increase the nonconformity. Construction to repair or replace a nonconforming structure must commence within one year of its destruction.

#### **§ 7-20.06. Nonconforming uses of structures and land.**

Except as provided under the provisions of § 7-20.02, if a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this chapter, that would not be permitted in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the

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following provisions:

- A. Expansion or alteration. No existing structure devoted to a use not permitted by this chapter 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 a use permitted in the district in which it is located.
- B. Extending use. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any additional land outside such building.
- C. Change in use. A nonconforming use of a structure, or structure and land in combination, may be changed to another nonconforming use of land use that the ZBA has determined is not more nonconforming than the current use following the standards in § 7-20.08 of this chapter and does not require expansion of the area of land used for the use. A nonconforming use that changes to a conforming use may not revert back to a nonconforming use.
- D. Abandonment. A use that the ZBA has determined is abandoned following the standards in § 7-20.07 of this chapter shall not be reestablished and any new use must comply with the Zoning Ordinance.
- E. Destruction of structure. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure to an extent of more than 60% of its replacement costs, exclusive of the foundations shall eliminate the nonconforming status of the land. Construction to repair or replace a structure housing a nonconforming use must commence within one year of its destruction.

#### **§ 7-20.07. Standards for determining abandonment.**

If the Planning Department identifies a legal nonconforming use that they believe has been abandoned, they shall submit the property to the ZBA for a determination of abandonment. The ZBA shall hold a public hearing, following notice as outlined in § 7-21.07 of this chapter. The ZBA shall determine whether or not intent to abandon the nonconforming use was demonstrated based on a preponderance of the following factors:

- A. Reports such as from the building inspection or health department indicating the property is or has not been suitable for occupation.
- B. Disconnection of utilities.
- C. Evidence that the use was relocated to a new site.
- D. Evidence of a "going out of business" sale.
- E. Signs advertising the business has been removed.
- F. The use has been discontinued for one year, except where government action such as road construction has prevented access to the premises, or where a clear intent to

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discontinue has not been demonstrated.

- G. Removal of the equipment or fixtures necessary for the operation of the nonconforming use.
- H. Request by the property owner for changes in their property tax designation inconsistent with the nonconforming use.
- I. Other actions by the property owner or lessee that demonstrates an intent to abandon the nonconforming use.

#### **§ 7-20.08. Standards for allowing change in nonconforming use.**

A property owner may request approval from the ZBA to change a nonconforming use to another nonconforming use. The ZBA shall hold a public hearing following notice as outlined in § 7-21.07 of this chapter. The ZBA shall approve the request if it determines that the proposed use is not more nonconforming than the current use based on the following factors:

- A. The similarity of zoning districts each use is permitted in and whether they are permitted by right or by special land use (SLU).
- B. The anticipated off-site impact of each use due to traffic, hours of operation, and generation of noise, dust or odors or general intensity of the proposed use.

#### **§ 7-20.09. Repairs and maintenance.**

- A. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of one year on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50% of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this chapter shall not be increased.
- B. Nothing in this chapter 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 such official.

#### **§ 7-20.10. Status of uses requiring special land use approval.**

A use established legally without special land use approval which now requires SLU approval due to a text change or rezoning is a nonconforming use until it receives SLU approval. Any existing use approved as a special exception previously under this chapter shall be deemed a conforming use.

#### **§ 7-20.11. Change of tenancy or ownership.**

There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, of structures or of structures and land in combination.

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**§ 7-20.12. Purchase or condemnation.**

In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, the City of Lapeer, pursuant to Section 208, Public Act 110 of 2006, as amended,<sup>1</sup> may, but is not required to, acquire by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses.

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1. Editor's Note: See MCLA § 125.3208.

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## Milwaukie Municipal Code

### TITLE 19 ZONING

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#### CHAPTER 19.800 NONCONFORMING USES AND DEVELOPMENT

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##### 19.801 PURPOSE

Nonconforming uses and development are uses and development that do not conform to the City's current land use and development regulations either because they were established prior to the enactment of such regulations or because they conformed at the time they were established but applicable City regulations have since changed.

Most nonconforming uses and development may be maintained, but may not be altered, without land use review. Nonconforming uses and development may be rebuilt if destroyed in some instances. In general, however, nonconforming uses and development shall be brought into conformance with applicable land use and development regulations when redevelopment occurs. In particular, the City does not support the continuation of high-impact nonconforming uses in perpetuity. (Ord. 2025 § 2, 2011)

##### 19.802 GENERAL PROVISIONS

###### 19.802.1 Nonconforming Uses and Development

A specific site may be nonconforming because it contains a nonconforming use, nonconforming development, or both, as defined in Section 19.201. Determination of the legal status of a nonconforming use or development may be requested by the property owner pursuant to Section 19.903.

###### 19.802.2 Provisions

The following provisions apply to all nonconforming uses and development:

- A. Changes in ownership may occur and do not affect the status of a nonconforming use or development.
- B. A nonconforming use or development is allowed to change to a conforming use or development. Once a conforming use or development occupies the site, the nonconforming status is lost and the nonconforming use or development may not be reestablished.
- C. Routine maintenance and repair, as defined in Section 19.201, is allowed. Alteration, as defined in Section 19.201 and further described in Section 19.804, or destruction, as described in Section 19.805, may require land use review and/or may result in the loss of the nonconforming status of the use or development.
- D. Where other sections of the Milwaukie Municipal Code require nonconforming uses or development to come closer to conformance, those provisions apply instead of the provisions of this chapter.
- E. Provisions of this chapter do not apply to signs. Nonconforming signs are regulated by Title 14 Signs. (Ord. 2025 § 2, 2011)

##### 19.803 CONTINUATION OF NONCONFORMING USES AND DEVELOPMENT

###### 19.803.1 Provisions

A nonconforming use or development may continue indefinitely pursuant to the provisions in Subsection 19.802.2 unless it is discontinued as described in this section, altered as described in Section 19.804, destroyed as described in Section 19.805, or amortized as described in Section 19.806.

### 19.803.2 Loss of Nonconforming Use Status

If a nonconforming use is discontinued or abandoned, as defined in Section 19.201, for more than 1 year, the site will lose its nonconforming status and any subsequent use on the site shall conform to all applicable land use and development regulations. (Ord. 2025 § 2, 2011)

## 19.804 ALTERATION OF NONCONFORMING USES AND DEVELOPMENT

### 19.804.1 Nonconforming Uses

#### A. Provisions

The following provisions apply to the alteration of nonconforming uses:

1. A nonconforming use shall not be moved, in whole or in part, to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.
2. No additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Additional development or physical alterations not associated with the nonconforming use and that conform to Title 19 are allowed.
3. No intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.

#### B. Land Use Review Required

1. A nonconforming use shall not be moved, altered, or intensified unless such move, alteration, or intensification is approved by the Planning Commission through a Type III review per Section 19.1006. The applicant shall demonstrate that the proposed move, alteration, or intensification would result in no more of a detriment to surrounding properties than the existing nonconforming use.
2. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to Title 19 unless the Planning Commission determines that such structure is suitable only for another nonconforming use through a Type III review per Section 19.1006. The applicant shall demonstrate that the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.

### 19.804.2 Nonconforming Development

The following provisions apply to the alteration of nonconforming development:

- A. Alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to Section 19.911.
- B. Alterations or expansions that conform to Title 19 are allowed. For example, development that does not conform to height, yard requirements, or lot coverage may be altered provided that the alteration does not exceed the height, yard requirements, or lot coverage requirements of Title 19. (Ord. 2025 § 2, 2011)

## 19.805 REBUILDING OF NONCONFORMING USES AND DEVELOPMENT

### 19.805.1 Provisions

The following provisions establish when a nonconforming use or development may be reestablished or rebuilt following its intentional or accidental destruction:

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A. When a nonconforming use or development is intentionally destroyed to an extent less than or equal to 50% of its replacement value, restoration is allowed. The restoration shall not result in an increase in the nonconformance of the use or development. 79

B. When a nonconforming use or development is intentionally destroyed to an extent exceeding 50% of its replacement value, restoration of the use or development shall conform to all applicable land use and development regulations.

C. If a nonconforming use or development is partially or totally destroyed by fire or other causes or natural hazards beyond the control of the owner, the use or development may be restored or replaced. The restoration or replacement shall not be more out of conformance with the land use or development regulations than the original use or development.

#### 19.805.2 Loss of Nonconforming Status

Restoration or replacement of nonconforming uses or development that have been partially or totally destroyed, whether intentional or by accident, must commence within 1 year from the date of destruction. If restoration or replacement does not commence within the 1-year period, the use or development will lose its nonconforming status, and any subsequent use or development on the site shall conform to all applicable land use and development regulations. (Ord. 2025 § 2, 2011)

### 19.806 AMORTIZATION OF NONCONFORMING USES

#### 19.806.1 Purpose

The purpose of this section is to provide a process whereby the City could require the discontinuance of nonconforming uses through amortization in a manner that is fair, predictable, and transparent.

#### 19.806.2 Applicability

A. All legally established high-impact nonconforming uses, as defined in Section 19.201 and as identified on the City's inventory pursuant to Subsection 19.806.3.B, are subject to amortization and discontinuance. Illegally established uses are subject to enforcement proceedings by the City if not immediately discontinued or converted to a conforming use.

B. The following nonconforming uses are not subject to amortization and discontinuance:

1. Nonconforming uses that can be made conforming within 6 months, where the owner also enters into an agreement with the City to bring the use into conformance within 6 months.
2. Nonconforming uses that are protected under the Religious Land Use and Institutionalized Persons Act.
3. Nonconforming uses that are identified as low-impact nonconforming uses, as defined in Section 19.201.

#### 19.806.3 Identification of Nonconforming Uses

A. The City Council may direct the Planning Director to evaluate existing land uses within the city for the purpose of compiling an inventory of uses subject to amortization and discontinuance. Such direction shall be made by resolution at a public meeting.

B. The Planning Director's evaluation shall be undertaken as follows:

1. Create a list of all nonconforming uses pursuant to City Council direction as provided in Subsection 19.806.3.C below.
2. Remove all properties that are exempt under Subsection 19.806.2.B from the list.

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3. Determine which nonconforming uses that remain on the list are high-impact nonconforming uses, as defined by Section 19.201.

4. Compile an inventory of all properties containing a high-impact nonconforming use.
- C. At the time of a vote directing the Planning Director to perform an evaluation of nonconforming uses, the Council shall specify the following:
  1. The amount of time the Planning Director has to perform the evaluation, which shall be no less than 60 days.
  2. Whether the Planning Director shall evaluate all uses in the entire City or whether the evaluation should be limited to a specified geographic area, type of use, or zoning district.
- D. No less than 60 days after the Planning Director's completion of the inventory, City Council shall review and adopt the inventory by resolution. Upon review of the Planning Director's evaluation and inventory, Council may add or remove properties from the inventory prior to its adoption.
- E. No more than 30 days after the adoption of the inventory by City Council, the Planning Director shall provide notice to all property owners listed in the nonconforming use inventory. Such notice shall include the following:

1. A statement that the City has determined that the subject property contains at least one nonconforming use that is subject to discontinuance through amortization.
2. The findings from the Planning Director's evaluation.
3. A copy of this section.
4. The date of the first evidentiary hearing before the Planning Commission to determine the schedule of amortization and discontinuance. Such a hearing shall be scheduled no less than 60 days after the mailing of the notice.

#### 19.806.4 Review Process

A. For all properties with identified nonconforming uses that are included in the adopted nonconforming use inventory, the City shall require the discontinuance of such uses under a plan whereby the full value of any use-dependent structures and facilities are amortized within a definite and reasonable period of time. This action is a quasi-judicial action and shall utilize the Type IV review process pursuant to Section 19.1007. A separate hearing shall be conducted for each nonconforming use to determine the appropriate amortization schedule.

1. The approved amortization schedule shall be adopted by ordinance and shall commence upon the effective date of the ordinance.
2. The hearings conducted under this subsection, per Section 19.1007 Type IV Review, shall be limited to the determination of the following:
  - a. Whether the use is properly included on the inventory.
  - b. Whether the use is exempt from amortization and discontinuance under Subsection 19.806.2.B.
  - c. The duration of a reasonable amortization period and all terms associated therewith, based on the evaluation criteria in Subsection 19.806.5.

B. The City Council may, by ordinance, execute a compliance agreement with the owner of any property found to contain a high-impact nonconforming use. Such an agreement shall include a schedule for the property owner to bring the property into conformance through discontinuance of all nonconforming uses in a certain amount of time or by other means acceptable to the City. Such an agreement shall alleviate the City's obligation to schedule a hearing to determine an amortization period pursuant to Subsection 19.806.4.A or, alternatively, shall supersede the established amortization period for the subject property.

C. The City shall record in the Clackamas County real estate records all ordinances adopted pursuant to  
Tools  Links    this subsection.<sup>81</sup>

#### 19.806.5 Evaluation Criteria

The City's review authorities shall consider the following criteria, at a minimum, in determining a reasonable length of time for the amortization period:

- A. Nature of the use, its operations, and structures.
- B. Character of the land and land uses in the surrounding area.
- C. Location of the use in relation to surrounding uses.
- D. Value of the land and its improvements.
- E. Length of time the use has been in existence and the length of time the use has been nonconforming.
- F. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming.
- G. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period.
- H. Existence or nonexistence of lease obligations.
- I. Removal costs that are directly attributable to the establishment of a discontinuance date.
- J. Other costs and expenses that are directly attributable to the establishment of a discontinuance date.
- K. Burden on the property owner resulting from discontinuance of the use.
- L. Benefit to the public resulting from discontinuance of the use. (Ord. 2025 § 2, 2011)