## CHAPTER 65

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CHAPTER 65
NONCONFORMITIES

65.100 LEGISLATIVE INTENT:

Subdivision 1. It is the purpose of this chapter to provide for the regulation of uses, buildings, structures or lots which lawfully existed prior to the effective date of this ordinance but which fail to comply with one or more of the applicable regulations or standards established by this ordinance or subsequent amendment of this ordinance, or which have been rendered nonconforming due to circumstances which were not self-created. It is the intent of these regulations to specify those circumstances and conditions under which such nonconformities shall be permitted to continue. Buildings or structures which are now in existence and which were constructed in compliance with the terms of the regulations of some other public entity but became nonconforming upon the annexation to the City, and which are not in compliance with the terms of this code are hereby designated as legal nonconforming buildings or structures.

Subd. 2. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety.

Subd. 3. The basic policy of this chapter is to allow the continuation of any nonconformity and the normal repair, replacement, restoration, maintenance, or improvement thereof, and to encourage their move toward conformity when the opportunity arises through discontinuance or destruction. In certain cases nonconformities may be permitted to be upgraded when it can be shown that such action will not be harmful and will be beneficial to the surrounding properties, the neighborhood, or the community; and that the goals of local plans will not be impeded by the continuation of the nonconformity.

65.110 DEFINITIONS:

For the purposes of this chapter, the following definitions are established:

Nonconforming Appearance: Any nonconforming use. Any conforming use located on a lot which: (1) is zoned nonresidential; (2) abuts a lot in a residential district; (3) in existence at the time this ordinance was adopted; and (4) that does not meet the appearance control standards of this ordinance.

Nonconforming Lot of Record: Any validly recorded lot existing at the time this ordinance was adopted which does not comply with the minimum lot area or frontage requirements of the district in which it is located.

Nonconforming Parking: Any development which does not provide the number of off street parking spaces that would be required by this Code for a new development of the same type. The existence of parking spaces located outside of an approved driveway in the front or side street side yard on a property in a residential district that were not approved through a lot and site development approval procedure do not constitute legal, nonconforming parking.
**Nonconforming Sign**: Any sign established prior to the effective date of this ordinance or subsequent amendment to it which is not in full compliance with the regulations herein.

**Nonconforming Structure**: A structure which does not comply with the height, setback, density or floor area ratio requirements of the district in which it is located. Included in this definition are structures that do not comply with the flood proofing and elevation regulations of the flood plain overlay districts.

**Nonconforming Use**: An activity using land or structures which would not be permitted to be established as a new use in the zone in which it is located by the regulations of this ordinance.

65.120 **AUTHORITY TO CONTINUE:**

Except as otherwise provided for in this chapter, any nonconforming use, structure, lot of record, sign or appearance or parking existing on the effective date of this ordinance or subsequent amendment thereto may be continued so long as it remains otherwise lawful, unless (1) the nonconformity or occupancy is discontinued for a period of more than one year; or (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. All nonconformities shall be encouraged to convert to conformity whenever possible.

65.130 **MAINTENANCE AND REPAIR OF NONCONFORMITY:**

The repair, replacement, restoration, maintenance or improvement of any nonconformity is permitted subject to Section 65.340 and the issuance of a zoning certificate by the zoning administrator. Any repair or modification cannot increase the number of dwelling units or the amount of floor area of a nonconforming use.

65.140 **BRINGING A NONCONFORMITY INTO COMPLIANCE**

The owner of a nonconformity may bring it into compliance by securing any permit or approval which would have been required for the initial development of the property.

65.150 **TRANSITIONAL DEVELOPMENT:**

Developments approved under the regulations of Section 62.730 (Transitional Development) authorizing the use of structures or land for uses not normally permitted in the applicable zoning district shall be not classified as nonconformities as long as they meet the requirements applicable to transitional uses.

65.160 **LANDSCAPE AREA APPEARANCE AND STANDARDS:**

Developments existing on the effective date of this ordinance which do not meet Landscape Area or Appearance Control requirements are not considered nonconforming. However, alterations or changes to such developments shall not further reduce the current level of compliance with appearance related requirements, unless approval through the Type II Review Procedure is obtained. In reviewing such a request, the Zoning Administrator shall find that the reduction in landscape area or level of appearance will have no adverse impact on surrounding properties.
65.200 NONCONFORMING LOTS OF RECORD:

Any nonconforming lot of record may be used for any principal use permitted in the zone in which the lot is located, provided that all other requirements of the ordinance are met. Any conforming use of a conforming structure may be enlarged, extended, altered, or moved so long as it remains in compliance with the other requirements of this ordinance.

65.300 NONCONFORMING USES: GENERAL POLICY:

No nonconforming use of a parcel of land or a structure shall be enlarged, increased, or extended to occupy a greater area than was occupied on the effective date of this ordinance except as provided herein.

65.310 NONCONFORMING USES, PERMITTED MODIFICATIONS:

The following modifications to a nonconforming use may be permitted subject to approval through the identified procedure:

1) The addition or expansion of nonstructural off-street parking facilities to serve an existing nonconforming use of land in order to relieve on-street parking or loading pressures caused by the development may be permitted through the Type II review procedure.

2) The establishment of nuisance abatement measures such as fences, screening, landscaping, drainage controls, or the permanent all weather surfacing of yards or parking areas may be permitted through the Type I review procedure;

3) The addition of security features such as lighting and temporary buildings that would reduce security risks to the general area or to the nonconforming use may be permitted through the Type I review procedure.

65.320 NONCONFORMING USES, EXPANSION:

Subdivision 1.
A. In all districts except the TOD District, nonconforming uses may be expanded in certain situations subject to approval through the Type III review procedure, utilizing a Phase III hearing process.
B. In the TOD District, nonconforming uses may be expanded in certain situation subject to approval through the Type I process, provided the proposal brings the property closer to compliance with the standards in the TOD District.
C. In acting on an application for modifying a nonconforming use, the Commission and Council, or staff in the TOD District, shall use the criteria contained in Section 65.330 to compare the impact of the proposed change against the existing development. A proposal where the Commission or staff finds significant injurious impact should be denied or approved with conditions which will mitigate the impact of the proposal.

Subd. 2. Potential expansions which the Commission may include:

A. Expanding a nonconforming use of structure to a portion of the structure not clearly arranged or designed for such use at the time the use became
nonconforming. Such expansion shall not increase the intensity of use (i.e., increasing the number of residential units or increasing amount of nonresidential floor area devoted to the public).

B. The addition of new principal buildings or accessory structures on the same parcel of land occupied or under the same ownership on the effective date that the use became nonconforming. The new structures added must be for such purpose that if not associated with the nonconforming use they would be permitted by the zoning district on the property. The applicant must show that the intensity of use will not substantially increase over the current level of activity with the addition of the new structures.

65.330 CHANGE IN USE:

Subdivision 1. Any nonconforming use of land or structure may be changed to another nonconforming use of the same nature or less intensive nature if no structural alterations are involved and if it is found that the relation of the structure and proposed use to surrounding property is such that adverse effects on occupants and neighboring property will not be greater than if the original nonconforming use continued.

Subd. 2. Approval for such a change shall be processed through the Type III review procedure with a Phase III hearing process utilized and the criteria that shall be considered in making the determination on the permit shall include:

A. The character and history of the use and of development in the surrounding area.

B. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

C. The comparative numbers and kinds of vehicular trips to the site.

D. The comparative amount and nature of outside storage, loading and parking.

E. The comparative visual appearance.

F. The comparative hours of operation.

G. The comparative effect on existing vegetation.

H. The comparative effect on water drainage.

I. Other factors which tend to reduce conflicts of incompatibility with the character or needs of the area.

65.340 CONTINUATION AND TERMINATION OF NONCONFORMITIES:

Subdivision 1. Any nonconformity, including but not limited to a nonconforming use of land or structure, may be continued, including through repair, replacement, restoration, maintenance or improvement, but not including expansion, unless:
A. The nonconformity or occupancy is discontinued for a period of more than one year; or

B. Any nonconformity use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value so long as no building permit has been applied for within 180 days of when the property is damaged.

Subd. 2. Any subsequent use or occupancy of the land or premises shall conform to all provisions of local ordinance.

Subd. 3. Any nonconforming use located in any zoning district which has been discontinued for a period of 365 days or more may be resumed, reestablished or changed to another nonconforming use, regardless of the length of discontinuance, upon approval through the Type III review procedure utilizing a Phase I hearing process with the Council as the designated hearing body. The Council must apply the criteria found at Section 65.330 when proceeding under this subdivision.

Subd. 4. Where a structure housing a nonconforming use has been damaged to an extent greater than 50 percent of its market value and the owner fails to make application for a building permit within the required 180 days, the nonconforming use shall be terminated unless approval to rebuild is obtained under Section 65.320.

Subd. 5. A nonconforming structure may be used for occupancy by any use permitted in the applicable zoning district.

65.360 NONCONFORMING USE CREATED BY FLOOD DISTRICT REGULATIONS:

Except as may be provided by federal rules and regulations, the modification, expansion or termination of a nonconforming use created by flood district regulations, where the structure is conforming, is subject to this chapter. Any expansion, modification or reconstruction shall not increase the flood damage potential of the use or structure and, if located in a floodway, shall not increase the degree of obstruction to the flood flow.

65.370 CONTINUED EXCAVATION:

For purposes of this section, continued excavation on a parcel of land being legally excavated at the time of ordinance adoption and adhering to the requirements of any applicable permits shall not constitute an expansion of a nonconforming use. Excavation of adjoining parcels or parcels not a part of the original approval shall constitute a new use not included in a site plan covered by applicable permits.
ENLARGEMENT OR ALTERATION:

A nonconforming structure shall not be enlarged or altered in any way which increases its nonconformity except under the process outlined in Sections 65.330 and 65.320. If the structure is located in a TOD district, the expansion of a non-conforming structure by 25% or less would be exempt from the minimum height requirement.

NONCONFORMING STRUCTURE CREATED BY FLOOD DISTRICT REGULATION:

Subdivision 1. A lawful nonconforming use, structure or occupancy created by flood district regulations may be continued in the same manner as other nonconformities subject to the following additional standards that are necessary to protect the public health, welfare or society. Historic structures, as defined in Section 60.200 of this ordinance, are subject to the provisions of Sections A through I of this ordinance.

A. A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its nonconformity. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.

B. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in C and D below.

C. Whenever any alteration, addition or repair to a nonconforming structure exceeds 50 percent of its current market value as determined from the records of the Olmsted County Assessor, the entire structure shall be made to conform to all applicable flood plain regulations. This requirement shall also apply at such time the cumulative effect of all additions, alterations or major repairs since the date the structure became nonconforming exceed 50 percent of the current market value.

D. The alteration, addition or repair to a nonconforming structure, when the value of such work does not exceed 50 percent of its current market value as determined from the records of the Olmsted County Assessor, shall not increase the flood damage potential of the use or structure. Repair of a nonconforming structure, if located in the floodway, shall not increase the degree of obstruction to the flood flow.

E. Any nonconforming use, or any use of a nonconforming structure, that is discontinued for more than one year, must conform to the floodplain provisions of this ordinance.

F. If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.

G. If any nonconformity is substantially damaged, as defined in Section 60.200 of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new

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structures will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or Flood Prone Districts, respectively.

H. If any nonconforming use or structure experiences a repetitive loss, as defined in Section 60.200 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.

I. Any substantial improvement, as defined under “substantial improvement” in Section 60.200 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of this ordinance for new structures.

### 65.500 NONCONFORMING SIGNS:

The maintenance and minor repair of nonconforming signs is permitted. No such sign shall be moved in whole or in part to any other location where it would remain nonconforming.

### 65.510 TERMINATION OF NONCONFORMING SIGNS:

Subd. 1. This section governs the termination and removal of nonconforming signs within the city.

Subd. 2. Signs which are now in existence and which were constructed in compliance with the terms of any prior ordinance of the City of Rochester or which were constructed in compliance with the regulations of some other public entity but became nonconforming upon the annexation of the sign location to the City, and which are not in compliance with the terms of this code are hereby designated as legal nonconforming signs and shall be subject to removal in accordance with this section.

A. Any advertising sign contained in an annexed area which conforms to the current city ordinance regulating advertising signs at the time of annexation shall increase the number of the cap set forth in Section 63.224 Subd. 1 (E).

B. Any signs in annexed areas which did not conform to the regulations of the public entity previously responsible for administering the location of the sign are deemed illegal and must be removed immediately upon notice to the sign owner. Any such signs which are advertising signs will not increase the number of the cap set forth in Section 63.224 Subd. 1 (E).

Subd. 3. **Termination by Abandonment.** Any nonconforming sign, the use of which has been discontinued for a period of one year, regardless of any intent to resume or not to abandon such use, shall be presumed to be abandoned and shall not thereafter be reestablished except in full compliance with this ordinance.

Subd. 4. **Termination by Damage or Destruction:** If any nonconforming sign requires change, repair or maintenance which would constitute an expense of more than fifty percent of the market value cost of the sign and no building permit has been applied for within 180 days of when the property is damaged, the sign must either be removed or brought within the requirements of this section. Any sign which must be removed shall be removed within 60 days of the date of receipt of notice from the Zoning Administrator. Any sign requiring change, repair or maintenance to become conforming must be restored within six months of the date of the need for restoration becomes apparent.
Subd. 5. **Sign Credits:** Any person or entity wishing to erect a new advertising sign that owns a legal nonconforming advertising sign must remove an equal or greater amount of legal nonconforming advertising sign area than the advertising sign area of the new advertising sign to be erected.

A. Once the advertising sign owner has furnished proof of the total area of nonconforming advertising sign removed and proof of removal of the supporting structure, the owner will be issued a sign credit. This sign credit must be furnished to the Zoning Administrator before a sign permit to erect the new advertising sign will be issued. The sign permit shall allow the erection of a new advertising sign so long as the number of the cap set forth in Section 63.224 Subd. 1 (E) is not exceeded and the amount of area of the new advertising sign does not exceed the area of the nonconforming advertising sign which was removed.

B. Except as provided in Subdivision 5(C), sign credits shall expire two years from the date of issuance. A complete sign permit shall be submitted to and approved by the zoning administrator prior to the sign credit’s date of expiration. If the sign credit expires, the person or entity seeking to erect a new advertising sign must remove an additional equal or greater amount of legal nonconforming advertising sign area in order to erect a new advertising sign. In addition, if the sign credit expires, the number of the cap set forth in Section 63.224 Subd. 1 (E) shall decrease by the number of expired credits. However, the period of time during which an interim ordinance on the erection of new advertising signs is in effect will not be counted in determining whether a sign credit has expired.

C. A sign credit issued to a sign company involving a location that is adversely affected by the Trunk Highway 52 or Trunk Highway 63 reconstruction projects will expire on December 31, 2012.

D. Where a sign credit permit has been issued for an advertising sign by the zoning administrator and the sign permit expires as specified in Section 61.131(2), the sign credit will also expire. No advertising sign may be erected following the sign permit’s expiration.

E. This replacement requirement applies to all persons or entities that own legal nonconforming signs and wish to erect new advertising signs until the person or entity no longer owns any more legal nonconforming signs.

F. In addition, even if an advertising sign owner would otherwise qualify to erect a new advertising sign pursuant to this subdivision, the advertising sign owner may not erect the sign if doing so would cause the number of the cap on advertising signs as set forth in Section 63.224 Subd. 1 (E) to be exceeded.

G. Multiple sign credits may be used to obtain a single sign permit for the erection of a single advertising sign. The amount of the area of the new advertising sign may not exceed the area of the nonconforming advertising signs the removal of which resulted in the issuance of the sign credits. Furthermore, the number of the cap set forth in Section 63.224
Subd. 1 (E) must be reduced by the number of sign credits submitted to the zoning administrator, minus one, in order to obtain the single permit for the new advertising sign. (For example, the use of three sign credits to obtain one new sign permit will reduce the cap by two.)

H. If an advertising sign has been removed as a result of public purchase or condemnation initiated by the City of Rochester, then the sign owner will be entitled to either financial compensation or a sign credit, but not both alternatives. When the City is not otherwise legally obligated to pay financial compensation, the City retains the right to designate whether the sign owner will receive financial compensation or a sign credit.

(1) If, however, an advertising sign is removed by a public entity other than the City, the sign owner will not be entitled to a sign credit although the sign owner may still qualify for financial compensation from the other public entity.

(2) Advertising signs which are taken as a result of purchase or condemnation where the sign owner does not receive a sign credit will reduce the number of the cap set forth in Section 63.224 Subd. 1 (E) by the number of advertising signs purchased or condemned.

I. Persons or entities wishing to erect an advertising sign that do not own any legal nonconforming signs may purchase a sign credit from a current sign owner. However, even if a person or entity purchases a sign credit, that person or entity is not entitled to erect an advertising sign if doing so would cause the cap on advertising signs as set for in Section 63.224 Subd. 1 (E) to be exceeded.

J. A sign credit may only be used in a location that meets all standards of this Code.

K. Credits may be transferred between parties through legal means.

65.600 NONCONFORMING PARKING:

The maintenance, repair and alterations of a use with nonconforming parking in such a manner so as not to increase the need for off-street parking is permitted without limitation subject only to the other applicable requirements of this ordinance. Alteration, addition or expansion which results in an increased need for off-street parking shall provide additional parking according to the following guidelines:

1) Where the modifications result in an increase in the applicable unit of measurement (dwelling unit, floor area, capacity, number of seats, etc.) which is 50 percent or less of the original total, additional parking shall be required only for this new or modified part of the development.

2) Where the modifications result in an increase in the applicable unit of measurement which is over 50 percent of the original total, sufficient off-street parking shall be provided to bring the entire development into conformance with the requirements of this ordinance.
65.700 NONCONFORMING APPEARANCE:

Whenever any nonconforming use or conforming nonresidential use on a lot abutting a residential zoning district is expanded, or a nonconforming use is proposed for re-establishment after one year of discontinuance, or a change of use to a use with a higher bufferyard indicator is proposed for the property, such development shall, to the extent practical, provide the bufferyards required by this ordinance.

65.710 ALTERNATIVE BUFFERYARDS:

Alternative bufferyards may be approved by the Zoning Administrator, where, due to existing structure placement, lot dimensions, or other improvements, it is not possible to provide the bufferyard required by this ordinance, according to the following rules:

1) If the applicant’s land is able to provide 60 percent or more of the land, then that shall be provided along with all required structures and a percentage of plant material equal to that of the land area provided.

2) If the applicant’s parcel is not able to provide 60 percent or more of the land required for the bufferyard, but the adjacent landowner agrees to an arrangement whereby 60 percent of the required land can be provided jointly by the applicant and the adjacent owner, the applicant shall:

   a) Where no structures are required, provide 100 percent of the plant material.

   b) Where a structure is required, provide the next most intensive structure along the 60 percent of the required plant material.

3) If the applicant is unable to comply with either of the above conditions, the minimum acceptable bufferyard as specified in paragraph 65.720 shall be provided.

65.720 MINIMUM ACCEPTABLE BUFFERYARDS:

The following table describes the minimum acceptable requirement for each class of bufferyard.

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**NOTES:**

“RA” indicates only width needed for plantings is required
“*” indicates that no planting is required
65.800 NONCONFORMITIES WITHIN SHORELAND AREAS

1) Construction on nonconforming lots of record:

   a) Lots of record in the office of the County Recorder on the date of enactment of local shoreland controls that do not meet the minimum lot area and width standards of the underlying zoning district may be allowed as buildable lots, provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements are met.

   b) A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

   c) If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the underlying zoning district lot area and width standards the lot must not be considered as a separate parcel of land for sale or purposes of development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the lot area and width standards to the extent possible.

2) Additions/expansions to nonconforming structures:

   a) All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback and height requirements of this ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Section 60.410.

   b) Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:

      1) The structure existed on the date the structure setbacks were established;

      2) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;

      3) The deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and

      4) The deck is constructed primarily of wood, and is not roofed or screened.