

CHAPTER 11

NON-CONFORMING USES

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10-11-1: INTENT: It is the intent of this Ordinance to permit non-conforming uses to continue until they are removed, discontinued, or abandoned, but not to encourage their survival. It is further the intent of this Ordinance that non-conforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

10-11-2: INCOMPATIBILITY OF NON-CONFORMING USES: Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the district in which such use is located. A non-conforming use may be extended or enlarged after passage of this Ordinance only if thereafter the entire structure is devoted to a conforming use.

10-11-3: AVOIDANCE OF UNDUE HARDSHIP: To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building or land which was lawfully begun prior to the effective date of adoption or amendment of this Ordinance.

10-11-4: (Rescinded by City Ordinance 547 June 26, 2012)

10-11-5: NON-CONFORMING USES OF STRUCTURES OR OF STRUCTURES AND LAND: If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:

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- (A) No existing structure devoted to a use not permitted by this Ordinance 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) No non-conforming use of land, structure or combination of land and structure shall be extended to occupy any additional area;
- (C) If no structural alterations are made, any non-conforming use of a structure or structure and land may, upon the issuance of a Special Use Permit by the Commission, be changed to another non-conforming use provided the Commission shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Commission may require appropriate conditions and safeguards in accordance with other provisions of this Ordinance;
- (D) Any structure or structure and land in combination in or on which a non-conforming use is followed by a permitted use shall thereafter conform to the regulations of the district and the non-conforming use may not thereafter be resumed;
- (E) Except as otherwise governed by Idaho Code Section 67-6538, when a non-conforming use of a structure, or of land, or of a structure and land in combination is discontinued or abandoned for more than one (1) year (except when government action impedes access to the premises), the structure, or land, or the structure and land in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
- (F) When a change of ownership of property takes place upon property which enjoys the grandfather provisions of this Chapter, the change of ownership shall constitute a discontinued use of the non-conforming use and upon the change of ownership the non-conforming use will no longer be allowed pursuant to this Chapter.

10-11-6: REPAIRS AND MAINTENANCE: 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.

10-11-7: USES UNDER SPECIAL USE PROVISIONS NOT

Title 10-11-2

NON-CONFORMING USES: Any use which is permitted as a special use in a district under the provisions of this Ordinance shall not be deemed a non-conforming use in such district; but shall, without further action, be considered a conforming use.

10-11-8: EXCEPTION TO NON-CONFORMING USE PROVISIONS:
The Commission may recommend to the Council exceptions to non-conforming use provisions upon a finding that unnecessary and extraordinary hardship will likely result to the applicant from strict compliance with the non-conforming use provisions of this chapter.

Regardless whether the Commission recommends granting an exception or denying an exception, the Commission shall deliver its recommendation, including its reasoning and findings, to the Council. After receiving the Commission's recommendation, the Council shall consider the matter at the next regularly scheduled Council meeting to determine whether to allow the exception. The applicant may address the Council in support of the application. The Council may permit the exception to the non-conforming use provisions of this chapter upon a finding that unnecessary and extraordinary hardship will likely result to the applicant from strict compliance with the non-conforming use provisions of this chapter.

At all times, both before the Commission and the Council, the presumption shall be against the continuation of the non-conforming use and the applicant shall bear the burden of showing by clear and convincing evidence that such exception to the non-conforming use provisions should be allowed. (Ordinance 604 07/28/20)