

revision, or amendment and which has lawfully operated as such continuously since said adoption, revision, or amendment. The area or dimensions of a particular parcel or lot, for purposes of determining its conformity to the applicable zoning district requirements, may be established by reference to Orange County Property Appraiser records or tax maps prior to the effective date of this article. Specifically excluded from this definition are parcels or lots zoned PUD, R-1, R-1B, R-2, and RNC when said parcels or lots are within said zoning classifications and are used for and which permit the development of a single-family residential dwelling.

Lawful nonconforming use. A "lawful nonconforming use" or "legally nonconforming use" means a use or activity which was, prior to the adoption, revision, or amendment of this chapter, legally established and in compliance (i.e., conformed) with the requirements of this chapter as it existed prior to such adoption, revision, or amendment and which, by virtue of such adoption, revision, or amendment thereafter fails to conform with this chapter after such adoption, revision, or amendment and which has lawfully operated as such continuously since said adoption, revision, or amendment. The date on which a lawful nonconforming use was commenced may be established by occupational licenses issued by the city.

Legally established. "Legally established" means a use, building, accessory structure or parcel which was lawfully and continuously conforming (i.e., in compliance) with the regulations and standards of this chapter in effect at the time said use, building, accessory structure or parcel was opened for business, constructed, erected, created or otherwise in operation. The date or dates a use, building, accessory structure or parcel was legally established may be established based on occupational licenses or building permits issued by the city, historical photographs, public records, or such other evidence as may be considered by the planning director or the planning and zoning board.

Not self-created. "Not self-created", by way of example, not limitation, includes circumstances which create a nonconformity resulting from eminent domain, condemnation, Act of God. Lack of

maintenance, dry rot, or termite infestation do not constitute conditions which were not self-created.

Replacement cost. "Replacement cost" means a cost estimate to construct an equally desirable, substitute improvement, which may not necessarily be constructed with similar materials or to the same specifications. Evidence of replacement costs for buildings, accessory structures or improvements may be provided by a licensed contractor, licensed appraiser or by use of cost estimating services.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-199. Conditions for continuation of nonconformities.

(a) *Lawful nonconformities.* A lawful nonconforming commercial, industrial, or multi-family parcel, a lawful nonconforming building or accessory structure, or a lawful nonconforming use, which:

- (1) Was legally established prior to the effective date of this chapter,
- (2) Was legally established prior to the effective date of an amendment to this chapter; or
- (3) Has been rendered nonconforming due to circumstances which were not self-created,

may only be continued or maintained in accordance with this article.

(b) *Unlawful nonconformities.* A nonconforming commercial, industrial, or multi-family parcel, a nonconforming building or accessory structure, or a nonconforming use which:

- (1) Was not legally established prior to the effective date of this chapter,
- (2) Was not legally established prior to the effective date of an amendment to this chapter, or
- (3) Has been rendered nonconforming due to circumstances which were self-created,

constitutes an unlawful nonconforming use, building, accessory structure or parcel and must be immediately brought into conformity with this

chapter, discontinued or otherwise terminated. For purposes of application, a nonconforming commercial, industrial, or multi-family parcel, a nonconforming building or accessory structure, or a nonconforming use which does not meet the definition of a lawful nonconforming commercial, industrial, or multi-family parcel, a lawful nonconforming building or accessory structure, or a lawful nonconforming use shall constitute an unlawful nonconforming use, building, accessory structure or parcel and be subject to the provisions of this subparagraph.

(c) *Burden of establishing legality of nonconformity.* The burden of establishing:

- (1) That any nonconforming use, building, accessory structure or parcel was legally established;
- (2) When such nonconforming use, building, accessory structure or parcel was legally established;
- (3) That the circumstances which rendered a building, accessory structure or parcel nonconforming were not self-created;
- (4) The extent and limits of the nonconformity;
- (5) The applicable amortization period; and
- (6) Otherwise establishing that such use, building, accessory structure or parcel constitutes a lawful nonconformity under the provisions of this article shall, in all cases, be upon the owner of such use, building, accessory structure or parcel based on substantial competent evidence.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-200. Vacant lawful nonconforming commercial, industrial, or multi-family parcels.

Any vacant lawful nonconforming commercial, industrial, or multi-family parcel which was legally established prior to the effective date of this chapter, or which was legally established prior to the effective date of an amendment to this chapter, or which has been rendered nonconforming

due to circumstances which were not self-created, may be continued, developed or maintained subject to the following:

- (1) *Development and permitted uses of vacant lawful nonconforming commercial, industrial, or multi-family parcels.* A lawful nonconforming commercial, industrial or multi-family vacant parcel may be developed for any of the uses permitted in the zoning district in which said parcel is located, provided that the proposed commercial, industrial or multi-family building and its accessory structure(s) meets all applicable yard and setback requirements for the zoning district in which the commercial, industrial or multi-family parcel is located. All other zoning requirements shall also be met, unless variances to said requirements are granted through action of the planning and zoning board pursuant to section 118-200(3). Any existing commercial, industrial, or multi-family building and its accessory structures on a lawful nonconforming commercial, industrial, or multi-family parcel which is razed or is altered or restored beyond the limits provided for in section 118-202(1) or (3) after the effective date of this article must comply with this section 118-200(1).
- (2) *Prohibition on establishment of nonconforming commercial, industrial, or multi-family parcels.* A commercial, industrial or multi-family parcel may only be established after the effective date of this article if such parcel conforms with the applicable requirements of this chapter, unless a variance is obtained through action of the planning and zoning board.
- (3) *Obtaining a variance for vacant lawful nonconforming commercial, industrial, or multi-family parcels.* Subject to the requirements of this section, the granting of a variance in conjunction with the development of a vacant lawful nonconforming commercial, industrial, or multi-family parcel may only be granted by the planning and zoning board in accordance with section 118-126, et seq., and upon a finding that:
 - a. The vacant lawful nonconforming commercial, industrial or multi-fam-

- ily parcel cannot be reasonably developed for any of the permitted uses within the underlying zoning district without such variance;
- b. The variance is necessitated by the size and shape of the vacant lawful nonconforming commercial, industrial or multi-family parcel; and
 - c. The vacant lawful nonconforming commercial, industrial, or multi-family parcel can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

For purposes of this subparagraph, compliance with the applicable building setback requirements is not reasonably possible if none of the permitted commercial, industrial, or multi-family buildings, as applicable, within the underlying zoning district for a vacant lawful commercial, industrial or multi-family parcel cannot practicably be constructed and located on said parcel in conformity with such setback requirements. Mere financial hardship nor maximum developmental potential do not constitute grounds for finding that compliance is not reasonably possible.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-201. Reserved.

Sec. 118-202. Existing lawful nonconforming commercial, industrial, or multi-family buildings and accessory structures.

Under this chapter, existing lawful nonconforming commercial, industrial, or multi-family buildings and accessory structures which were legally established prior to the effective date of this chapter, or which were legally established prior to the effective date of an amendment to this chapter, or which have been rendered nonconforming due to circumstances which were not self-created, may be altered, maintained, restored, relocated or continued, subject to the following:

- (1) *Alterations.* A lawful nonconforming commercial, industrial or multi-family build-

ing or accessory structure shall not be enlarged, replaced, or altered in a way which increases its nonconformity, but any commercial, industrial or multi-family building or accessory structure or portion thereof may be altered to decrease its nonconformity. A lawful nonconforming commercial, industrial or multi-family building may be restored to a safe condition if declared unsafe by the administrative official or other official with jurisdiction, provided such restoration does not constitute more than 60 percent of the said building's replacement cost. Further, unless a variance is obtained, a lawful nonconforming commercial, industrial or multi-family building or accessory structure which undergoes a change in use which increases the need for parking to service the new use when compared to the previous use of said building or accessory structure or expands the floor area of said building or accessory structure more than 50 percent of the combined floor area of said building and accessory structure prior to expansion requires that said property be brought into compliance with the city code, including, but limited to, the property's parking, signage, sidewalk and landscaping.

- (2) *Maintenance.* A lawful nonconforming commercial, industrial or multi-family building or accessory structure may undergo normal maintenance and repair, including repair of plumbing, electrical systems, structural members, changing of partitions and other interior alterations. However, no such maintenance or repair shall have the effect of increasing the nonconformity, or expanding a nonconforming use, nor shall the floor area of such building or accessory structure be increased within the area of nonconformity, except in accordance with the requirements of this chapter.
- (3) *Restoration ("build-back provision").* A lawful nonconforming commercial, industrial or multi-family building or accessory structure damaged or destroyed by an Act of

God, or by any means not self-created, to an extent of more than 60 percent of its replacement cost immediately prior to such damage or destruction shall not be restored or reconstructed except in conformity with the provisions of this chapter. A lawful nonconforming commercial, industrial, or multi-family building or accessory structure damaged or destroyed by an Act of God, or by any means not self-created, wherein such damage or destruction is 60 percent or less of its replacement cost prior to such damage or destruction may be restored or reconstructed provided that the nonconformity is neither enlarged or increased and such restoration or reconstruction is made to conform with this chapter to the extent practicable, as determined by the city planner. If there is doubt concerning the amount of damage or the cause of damage or destruction, or the extent of practicability of restoration or reconstruction in conformance with this chapter, the city planner or property owner may request an interpretation by the planning and zoning board, which may consider expert advice on the matter.

- (4) *Construction approved prior to adoption or amendment of chapter.* Proposed commercial, industrial or multi-family buildings or accessory structures for which building permits have been issued prior to their designation as nonconforming by the adoption of the ordinance from which this chapter or amendment of this chapter derives may be completed and used as originally intended, provided they are complete and in use within one year from the date the permit was issued and shall thereafter be considered a lawful nonconforming commercial, industrial or multi-family building or accessory structure subject to the provisions of this article.
- (5) *Discontinuance of nonconforming accessory structures.* All nonconforming accessory structures, with the exception of lawful nonconforming commercial, industrial or multi-family buildings, shall be elimi-

nated or otherwise made to conform with this chapter within two years from the effective date of the ordinance from which this subsection derives or, unless otherwise provided for as a condition of annexation, within two years of its annexation. Notwithstanding the foregoing, a nonconforming accessory use shall not continue after the principal use, building or structure is terminated by abandonment, damage, destruction, or cessation of use unless such accessory use or structure thereafter is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use shall become or replace any terminated principal nonconforming use or building.

- (6) *Relocation.* A nonconforming commercial, industrial or multi-family building or accessory structure shall not be moved in whole or in part to any other location within the city unless every portion of such commercial, industrial or multi-family building or accessory structure and the use thereof is made to conform with all requirements of this chapter and applicable ordinances.
- (7) *Pre-existing structures with prior approvals ("grandfather clause").* Subject to section 118-209, lawful nonconforming commercial, industrial or multi-family buildings, for reasons other than use, which have been issued a building permit prior to the effective date of this article by the city shall be permitted under the conditions of said permit and shall be considered a lawful nonconforming commercial, industrial or multi-family building or accessory structure subject to this article.
- (8) *Applicability to single-family dwellings.* The provisions provided for in this section 118-202, as it pertains to accessory structures, shall not be applicable to the accessory structures of single-family dwellings.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-203. Existing lawful nonconforming single-family dwellings and its accessory structures.

Under this chapter, any existing lawful nonconforming single-family dwelling and its accessory

structure(s) which was legally established prior to the effective date of this chapter, or which was legally established prior to the effective date of an amendment to this chapter, or which has been rendered nonconforming due to circumstances which were not self-created, may be altered, maintained, restored, relocated or continued, subject to the following:

- (1) *Alterations.* A lawful nonconforming single-family dwelling and its accessory structure shall not be enlarged, replaced, or altered in a way which increases its nonconformity (unless a variance is obtained), but any single-family dwelling and its accessory structure or portion thereof may be altered to decrease its nonconformity. A lawful nonconforming single-family dwelling and its accessory structure may be restored to a safe condition if declared unsafe by the administrative official or other official with jurisdiction.
- (2) *Maintenance.* A lawful nonconforming single-family dwelling and its accessory structure may undergo normal maintenance and repair, including repair of plumbing, electrical systems, structural members, changing of partitions and other interior alterations. However, no such alteration shall have the effect of increasing the nonconformity, or expanding a nonconforming use, nor shall the floor area of such building or accessory structure be increased within the area of nonconformity, except in accordance with the requirements of this chapter.
- (3) *Restoration ("build-back provision").* If a lawful nonconforming single-family dwelling or its accessory structure is damaged or destroyed by an Act of God, or by any means not in the control of the owner thereof, said single-family dwelling or its accessory structure may be rebuilt only after the issuance of a permit from the planning and zoning department. Damage or destruction resulting from lack of maintenance, dry rot or termite infestation is considered, for purposes of this article, to be within the control of the owner and not an Act of God. If there is

doubt concerning the cause of damage or destruction, the city planner shall request an interpretation by the planning and zoning board, which may consider expert advice on the matter. A building permit for reconstruction of such single-family dwelling or accessory structure must be applied for no later than 180 days from the date of the destruction. In the issuance of the permit, the following standards shall apply:

- a. If the single-family dwelling or accessory structure can be rebuilt on the same lot and meet all setback requirements, it shall be so rebuilt.
- b. If the single-family dwelling or accessory structure cannot be rebuilt at the same size (i.e., ground floor area) in accordance with the minimum standards of the district in which it is located, then it shall be placed on the lot in as conforming a manner as possible and a variance must be obtained to the extent of any nonconformity.
- c. A lawful nonconforming building or structure shall not be rebuilt in a manner which increases its nonconformity, unless a variance is obtained.
- d. Construction must commence within one year from the date of destruction.

- (4) *Construction approved prior to adoption or amendment of chapter.* Proposed single-family dwellings or its accessory structures for which building permits have been issued prior to their designation as nonconforming by the adoption of the ordinance from which this chapter or amendment of this chapter derives may be completed and used as originally intended, provided they are complete and in use within one year from the date the permit was issued and shall thereafter be considered a lawful nonconforming single-family dwelling or attendant accessory structure subject to the provisions of this article.

- (5) *Discontinuance.* A nonconforming accessory structure attendant to a single-family dwelling shall be eliminated within 180 days, unless a building permit is applied for as provided in subparagraph (3) above, of the termination by abandonment, damage, destruction, or cessation of use of the single-family dwelling unless such accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory structure shall become or replace any terminated nonconforming single-family dwelling.
- (6) *Relocation.* A nonconforming single-family dwelling or its accessory structure shall not be moved in whole or in part to any other location within the city unless every portion of such single-family dwelling or its accessory structure and the use thereof is made to conform with all requirements of this chapter and applicable ordinances.
- (7) *Pre-existing structures with prior approvals ("grandfather clause").* Subject to section 118-209, nonconforming single-family dwellings and its accessory structures, for reasons other than use which are legally nonconforming, which have been issued a building permit prior to the effective date of this article by the city shall be permitted under the conditions of said permit and shall be considered a lawful nonconforming single-family dwelling and accessory structure subject to this article.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-204. Existing lawful nonconforming uses.

Under this chapter, any lawful nonconforming use which was legally established prior to the effective date of this chapter, or which was legally established prior to the effective date of an amendment to this chapter, or which has been rendered nonconforming due to circumstances which were not self-created, may be continued or maintained subject to the following:

- (1) *Extension.* The planning and zoning board shall not allow the enlargement or exten-

sion of a lawful nonconforming use beyond the scope and area of its operation at the time the regulation which made the use nonconforming was adopted. Extension of hours of operation, addition of new uses, and changes in character of the nonconforming use are considered to be extensions and are not permitted.

- (2) *Discontinuance.* If the actual operation or use of a lawful nonconforming use on any premises (or portion thereof) has been discontinued for a continuous period of six months, no nonconforming use may be reestablished on those premises (or portions thereof) without further action by the city and the use of the land, buildings and accessory structures (or portions thereof) shall be subject to all regulations specified by this chapter for the district in which such land is located. Vacating of premises or a building or non-operative status shall be evidence of a discontinued use. If there is doubt concerning the discontinuance of a lawful nonconforming use, the city planner shall request a determination by the planning and zoning board wherein the legal owner must provide competent substantial evidence to support a finding that such use has not been discontinued for a continuous period of six months.
- (3) *Changes in nonconforming use.* Upon petition by the property owner, the planning and zoning board may allow a lawful nonconforming use to change into an alternative lawful nonconforming use, provided that the latter use does not increase the need for parking to service the new use when compared to the previous use and that the latter use is determined by the planning and zoning board not to be more intense. The planning and zoning board shall not approve an alternative lawful nonconforming use beyond the amortization period as measured from the prior lawful nonconforming use.
- (4) *Amortization schedule.* Except as provided in section 118-202(5), the schedule below shall be followed in terminating

lawful nonconforming uses of commercial, industrial or multi-family buildings and accessory structures which were legally established prior to the effective date of this chapter, or which were legally established prior to the effective date of this article, or which have been rendered nonconforming due to circumstances which were not self-created prior to the effective date of this article. For purposes of this section, the time allowance before termination shall commence upon the earlier of: the effective date of the adoption of this chapter if such adoption created the nonconformity, the effective date of an amendment to this chapter which created the nonconformity, the date upon which the non self-created circumstances occurred which created the nonconformity, or the effective date of this article.

<i>Assessed Valuation of Improvements (in dollars)</i>	<i>Time Allowance Before Termination (in years)</i>
\$0.00—\$2,500.00	5
\$2,500.01—\$5,000.00	10
\$5,000.01—\$10,000.00	20
\$10,000.01—\$25,000.00	30
\$25,000.01—\$50,000.00	40
\$50,000.01 and over	50

- (5) *Principal use of structure not involved.* Nonconformities not involving the use of a principal structure, e.g., open space storage, building supplies, vehicles, mobile homes, implement and machinery storage, signs, junkyards, commercial animal yards and the like, shall be discontinued within two years from the effective date of the ordinance from which this chapter or amendment to this chapter derives, or, unless otherwise provided for by written agreement or as a condition of annexation, within two years of annexation into the city.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-205. Inventories and certificates of nonconformity.

- (a) *Inventory of nonconformities.* The city planner, may inventory nonconformities within the city and determine the names and addresses of

the owners of record. For each such nonconformity inventoried, the city planner may determine the nature and extent of the nonconformity and the date, if applicable, on which such nonconformity is required to be terminated pursuant to the provisions of this article.

(b) *Duty to terminate nonconformity.* Compilation of the inventory and giving notice pursuant to subsection (a) and subsection (c), respectively, shall not be deemed conditions precedent to the running of any amortization period specified in this article, nor shall the failure of the planning and zoning department or the city planner to carry out such tasks in any manner relieve the owner of a nonconformity of his duty to terminate such nonconformity in accordance with the provisions of this article.

(c) *Notice and statement of nonconformities; appeals.* Upon the city's planner's determination of the existence of a nonconformity, the city planner shall notify the aforesaid owner of record in writing of the city planner's determination of the nature and extent of the nonconformity, and, if applicable, the date on which the nonconformity is to be terminated.

Any person receiving a notice of nonconformity pursuant to this subsection (c) may, within 60 days of the receipt of such notice, dispute any or all of the city's planner's determinations in writing and provide such information to the city planner, by way of example not limitation, to establish that the nonconformity exists lawfully, a nonconformity does not exist or that the termination provisions are inapplicable or were improperly determined.

Within 60 days of receiving such additional information, or in the case of no response by the property owner within 60 days of the property owner's receipt of the notice of nonconformity, the city planner shall issue a statement of nonconformity setting forth the nature and extent of the nonconformity and the date, if any, upon which such nonconformity is required to be terminated.

Within 60 days of the receipt of the statement of nonconformity by the property owner, the property owner may appeal the determination of the city

planner as contained in the statement of nonconformity to the planning and zoning board. Appeals from the decision of the planning and zoning board shall be as provided in section 98-31 of the Code.

(d) *Public record.* Such inventory, notices of nonconformity and statement of nonconformity prepared pursuant to this section 118-205 shall be kept on file by the city planner and shall be a matter of public record.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-206. Variances and special exceptions.

The limitations of this article shall not apply to uses, buildings, accessory structures or parcels whose nonconforming features are the subject of a variance or a special exception, to the extent such use, building, accessory structure or parcel is in compliance with such variance or special exception that has been granted or subsequently modified.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-207. Construction beginning prior to effective date of ordinance.

To avoid undue hardship, nothing in this article shall be deemed to require a change in the plans, construction or designated use of any building or accessory structure on which actual construction was lawfully begun prior to the effective date of adoption of this article and upon which actual building construction has been carried on diligently. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-208. Unsafe buildings or structures.

If a nonconforming building or accessory structure, or portion thereof, becomes physically unsafe or unlawful due to a lack of repairs or maintenance or is declared by a duly authorized official of the city to be a condemned building or

accessory structure, unfit for occupancy, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located, unless such restoration, repairing or rebuilding is provided for in section 118-202 or 118-203. However, nothing in this article shall be deemed to prevent the strengthening or restoration to a safe condition of any building or accessory structure or part thereof in accordance with an order of any official charged with protecting the public safety who declares such building or accessory structure or portion thereof to be unsafe and orders its restoration to a safe condition, provided such restoration is not otherwise in violation of the various provisions of this article prohibiting the repair or restoration of partially damaged or destroyed building or accessory structure.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-209. Voluntary annexation.

(1) *Disclosure.* Prior to voluntary annexation into the city, the owner of the lands to be annexed must identify in writing to the city all current uses and businesses existing and operating on the lands and any and all non-conformities and pending code enforcement proceedings applicable to said lands. Failure of the property owner to identify non-conformities as required will result in such non-conformities being treated as illegal non-conformities and subject to termination. To the extent non-conformities are identified, the owner of said lands shall obtain a variance for such non-conformities, terminate the non-conformity upon annexation into the city, or the city and owner of said lands shall enter into an agreement which provides for the amortization, termination or continuation of the non-conformities. The foregoing shall not operate in any way to limit the city's power to impose any other terms as a condition of annexation.

(2) *No zoning.* Upon annexation of a parcel of land into the city, the city may choose not to initially assign a zoning district classification to such parcel. In such event, the city may identify such parcel of land as having no zoning (NZ) on the city's zoning map. The only permitted uses for a parcel of land with no zoning (NZ) shall be those legally conforming uses that were operat-