

CHAPTER 22.40
NONCONFORMANCE AND REUSE STANDARDS

Sections:

22.40.010	Purpose.
22.40.020	Applicability.
22.40.030	General Provisions.
22.40.040	Preexisting Legal Lots of Record.
22.40.050	Nonconforming Lots.
22.40.060	Nonconforming Structures.
22.40.070	Nonconforming Uses.
22.40.080	Nonconforming Sites.
22.40.090	Enforcement.

22.40.010 Purpose.

The purposes of this chapter are established as follows:

- A. To establish the legal status of a nonconforming use, site, or structure by creating provisions through which a nonconforming use, site, or structure may be maintained, altered, reconstructed, expanded, or terminated.
- B. To establish the legal status of nonconforming lots and create provisions through which a nonconforming lot may be maintained or developed.
- C. To encourage the adaptive reuse of existing structures.
- D. To identify standards for determining which nonconforming structures, sites, lots, and uses must be brought into conformance with the provisions of all applicable code requirements.

22.40.020 Applicability.

All nonconformances shall be subject to the provisions of this chapter. The provisions of this chapter do not supersede or relieve a property owner from compliance with the following:

- A. The requirements of the International Building and Fire Codes; and
- B. The provisions of this code beyond the specific nonconformance(s) addressed by this chapter.

22.40.030 General Provisions.

- A. Any legally established nonconformance may be maintained in legal nonconforming status as long as no new nonconformances are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost under any of the circumstances set forth in this section. If legal nonconforming status is lost, the structure, site, lot, or use must be brought into conformance with all applicable code requirements.
- B. Development or modification of a legal nonconforming structure, site, lot, or use shall not increase or expand the degree of nonconformity.
- C. A tract created to protect critical areas, provide open space, or as a public or private access tract shall not be considered legally buildable.
- D. No nonconforming structure, site, lot, or use shall be created as a result of the division of land or any modification of a lot line through any subdivision or lot line revision.
- E. Change of tenancy, ownership, or management shall not affect legal nonconforming status.
- F. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any legal nonconforming building or part thereof declared to be unsafe by order of the city to protect the public safety.
- G. This chapter shall govern nonconforming structures, sites, lots, and uses within any critical area, unless Chapter 22.80 MMC, Critical Areas, establishes more specific standards.
- H. Legal nonconforming signs are regulated pursuant to MMC 22.50, Signs.

22.40.040 Preexisting Legal Lots of Record.

A lot, tract, or parcel is considered a legal lot of record if it was subdivided in compliance with applicable laws regarding platting at the time of its creation.

- A. A lot, tract, or parcel shall be deemed a legal lot of record if it meets one of the following criteria:
1. Any lot platted or legally created under a Monroe subdivision ordinance on or after December 31, 1968; or
 2. Any lot that was a legal lot of record under the regulations and standards of Snohomish County prior to annexation into the City of Monroe; or
 3. Any parcel divided by metes and bounds, or fractional section description, or platted and recorded with the Snohomish County auditor prior to December 31, 1968; or
 4. Any parcel defined by metes and bounds, or fractional section description, and conveyed by notarized deed prior to December 31, 1968.
- B. Pursuant to subsection 58.17.210 RCW, the City shall not issue any building or development permits for lots, tracts, or parcels divided in violation of state or local land use regulations. The applicant shall bear the burden of proving that a lot, tract, or parcel is legal.

22.40.050 Nonconforming Lots.

- A. Legal Nonconforming Lots. Legal lots of record that do not meet the requirements set forth in this title are considered legal nonconforming lots.
1. Alterations. Legal nonconforming lots may be altered or changed, provided such change does not increase the degree of nonconformity.
 2. Consolidation. Where two or more contiguous legal nonconforming lots of record are under common ownership and will result in legal lots in conformance with bulk requirements and critical area regulations, the owner shall consolidate the subject lots into one lot. An approved and recorded boundary line adjustment shall be required prior to issuance of any development permits.
 3. Development. To be deemed buildable, a legal nonconforming lot must shall meet all of the following requirements:
 - a. The lot must exceed a minimum gross area of 3,000 square feet
 - b. The lot must have a minimum width of 30 feet
 - c. The property owner shall provide evidence to the City that establishes that the lot was:
 - i. Legally created, pursuant to MMC 22.40.040;
 - ii. Intended to be a building site at the time of its creation; and
 - iii. Is not is not subject to consolidation pursuant to MMC 22.40.050(A)(2).
 4. Exemptions. A lot, tract, or parcel established in conformance with the requirements of RCW 58.17.040 shall be exempt from the provisions of this chapter.
- B. Illegal Nonconforming Lots. A lot that was not legally created in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming lot and will not be recognized for development.

22.40.060 Nonconforming Structures.

- A. Legal Nonconforming Structures. A legal nonconforming structure is a structure that conformed to the applicable code requirements that were in effect at the time of its construction, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Legal nonconforming structures may be altered, repaired, enlarged, added to or moved only as regulated by this section.
1. Enlargement. A structure that is legal nonconforming solely by reason of substandard yard, height, area or other bulk requirements, and is not occupied by a nonconforming use, may be enlarged. The enlargement shall conform to the regulations for the zoning district in which the building is located.
 2. Interior Remodel. An interior remodel of a legal nonconforming structure is permitted and will not result in loss of legal nonconforming status regardless of the cost or extent of the interior remodel, provided no exterior alteration or enlargement is involved.
 3. Repairs and Maintenance. Repairs and/or maintenance necessary and incidental to meeting requirements of law regarding building safety, including but not limited to the International Building Code, International Residential Code, or International Fire Code, may be performed on a building or structure. In no event shall the repair of a building or structure may any repair or maintenance result in the expansion of any existing nonconformity or the creation of any new nonconformity.

4. Relocation. Legal nonconforming structures that are moved to another location, either within the same zoning district or to another zoning district, must conform to all the rules and regulations of the zoning district to which it is moved.
5. Reconstruction. Legal nonconforming structures, when destroyed by accidental causes, may be rebuilt to the original building footprint and bulk requirements, and may be occupied by the same use after reconstruction subject to the following conditions:
 - a. The extent of the previously existing nonconformance is not increased;
 - b. No new nonconformities are created;
 - c. A complete building permit application for repair or reconstruction is submitted to the City by the owner of the property within 12 months of the date of the occurrence of damage or destruction;
 - d. The structure has not been damaged or destroyed beyond 75 percent of its assessed value;
 - e. Legal nonconforming residential structures located in any single-family or multifamily residential zoning district may be rebuilt to their original dimensions and bulk after destruction by accidental causes. However, legal nonconforming residential structures may not be altered except as provided in this section;
 - f. If a change in ownership of a structure subject to restoration under this section occurs after the date of the occurrence of damage or destruction, but prior to completion of such restoration, the legal nonconforming status of the structure shall be lost and it shall not be reconstructed except in conformity with the provisions of this chapter;
 - g. For the purposes of this chapter, accidental causes include accidental fire, storm, earthquake, or any other natural disaster, or an act of vandalism, terrorism, or war. Reconstruction shall not be permitted for a structure subject to the National Flood Insurance Program (NFIP) unless it complies with all applicable NFIP requirements.

B. Illegal Nonconforming Structures. A structure that was not legally constructed in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming structure and will not be allowed by the City to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances.

22.40.070 Nonconforming Uses.

A. Legal Nonconforming Uses. A legal nonconforming use of land and/or structures is a use that conformed to the applicable code requirements that were in effect at the time of the establishment of the use, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Nonconforming uses are regulated subject to the requirements of this section.

1. Expansion of Use. A legal nonconforming use shall not be enlarged, expanded, or extended to occupy a greater area of building or land than was occupied at the effective date of adoption or amendment of that portion of this code which rendered the use nonconforming. Expansion includes increasing the size of the structure in which the use occurs or significantly enlarging the scope, volume, area, or intensity of the use.
 - a. Alterations to or expansion of a legal nonconforming use that are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed to legal nonconforming uses.
 - b. Improvements, expansions, or additions to existing single-family dwellings including accessory buildings, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:
 - i. Does not change the existing use, as established, from the effective date of the nonconformance;
 - ii. Does not increase the land area devoted to the nonconforming use by more than twenty-five percent from the effective date of the nonconformity;
 - iii. Does not create additional dwelling units;
 - iv. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;
 - v. Meets the applicable design standards prescribed in MMC Chapter 22.42; and

vi. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

2. Change of Use. Unless specifically permitted by the chapter, an existing structure devoted to a legal nonconforming use shall not be structurally altered, except for those alterations necessary to change the nonconforming use of the structure to a use permitted in the zoning district in which it is located.

a. If no structural alterations are made, any legal nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use; provided, that the hearing body findings in the specific case shall find that the proposed use is more appropriate to the zoning district than the existing legal nonconforming use. In permitting such change, the hearing body may require appropriate conditions and safeguards in accord with the provisions of this title.

b. Any structure, or structure and land in combination, in or on which a legal nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.

c. Relocation. No legal nonconforming use shall be moved, in whole or in part, to any other portion of the structure or lot other than that portion occupied by such use at the effective date of adoption or amendment of the ordinance codified in this chapter.

d. Restoration. In the event that a structure containing an existing legal nonconforming use is destroyed by accidental causes, the legal nonconforming status of any use contained in the structure shall not be lost, provided a complete building application to rebuild the structure and reestablish the legal nonconforming use is submitted within 12 months of the date of the loss.

e. Conditional uses. An existing legal use does not become a conditional use because the zoning district in which it is located is changed to a zoning district that requires a conditional use permit for the specified use. The existing use may be enlarged without obtaining a conditional use permit.

f. Exemption—Residential/Group Care Facilities. The conversion of an existing residential structure to housing for people with functional disabilities, as defined by RCW 74.39A.009(23), shall not be deemed a change of use or an abandonment or discontinuity of the prior use of the structure, if such structure constituted a prior legal nonconforming use.

B. Illegal Nonconforming Uses. A use that was not legally established in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming use and will not be allowed by the City to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances.

22.40.080 Nonconforming Sites.

A. Legal Nonconforming Sites. A legal nonconforming site is a developed building site that conformed to the applicable code requirements that were in effect regarding site development at the time of development, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Alterations to legal nonconforming sites shall be regulated by this section.

1. Impervious Surface Coverage. A structure on a site that is legally nonconforming because the maximum allowable impervious surface coverage has been exceeded may be increased in height and gross floor area up to the maximum allowed in the zoning district in which the site is located. No new impervious surfaces are permitted outside the footprint of an existing structure on a nonconforming site.

2. Parking. For any site deemed legal nonconforming due to insufficient off-street parking, as set forth in MMC Chapter 22.44, Parking Standards, such legal nonconforming conditions may continue as permitted by the provisions set forth in this section. However, in no case shall a site legal nonconforming to parking requirements have its existing number of off-street parking spaces reduced.

a. Legal Nonconforming Residential Parking. No additional parking spaces shall be required for modifications to residential structures on sites legal nonconforming to parking, provided:

- i. The primary land use located on the site is residential;
- ii. The number of dwelling units on the site is not increased; and
- iii. The number of off-street parking spaces on the site is not decreased.

b. Legal Nonconforming Nonresidential Parking. For a nonresidential site deemed legal nonconforming to insufficient off-street parking, it shall be exempt from providing additional off-street parking, provided:

- i. A structure is not enlarged, extended, or structurally altered outside the existing building footprint in a manner that would require additional parking pursuant to MMC 22.44.
 - ii. The use of the structure is changed to one that does not requires more parking than the previous use.
 - iii. The number of off-street parking spaces on the site is not decreased.
- c. Movement of Structure. If a structure that is nonconforming to parking requirements is moved to a new lot, off-street parking spaces shall be provided in accordance with the requirements of MMC chapter 22.44.
- d. Reduction of Required Off-Street Parking for Nonconforming Sites. The Zoning Administrator may approve a reduction of up to 20 percent of the required off-street parking spaces, per MMC Chapter 22.44, when the applicant provides one or more of the following:
- i. A parking study, written by a qualified professional, demonstrating that the parking need can be met by the proposed reduction.
 - ii. The applicant enters into joint parking agreement, for use of a cooperative parking facility, in accordance with MMC Chapter 22.44.

3. Landscaping. For any site deemed legal nonconforming due to insufficient landscaping, as set forth in MMC Chapter 22.46, Landscaping Standards, such legal nonconforming conditions may continue as permitted by the provisions set forth in this section. However, in no case shall a site legal nonconforming to landscaping requirements have the total existing area of existing landscaping on site reduced.

- a. Legal Nonconforming Residential Landscaping. No additional landscaping shall be required for modifications to residential structures on sites legal nonconforming to landscaping, provided:
 - i. The primary land use located on the site is residential;
 - ii. The number of dwelling units on the site is not increased; and
 - iii. The total area of the landscaping on the site is not decreased.
- b. Legal Nonconforming Nonresidential Landscaping. A nonresidential site deemed legal nonconforming to landscaping shall be exempt from providing additional landscaping, provided the following are met:
 - i. A structure is not enlarged, extended, or structurally altered outside the existing building footprint in a manner that would require additional landscaping pursuant to MMC Chapter 22.46.
 - ii. The use of the structure is changed to one that does not requires more landscaping than the previous use.
 - iii. The total area of the landscaping on the site is not decreased.
- c. Landscape Plan. When the City determines that landscaping on a nonconforming site shall be brought into compliance with code requirements, a landscape plan, which substantially conforms to the requirements MMC 22.46, Landscaping Standards, shall be submitted to the city for approval prior to issuance of a building or development permit.

B. Illegal Nonconforming Sites. A site that was not legally developed in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming site and will not be allowed by the City to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances.

22.40.090 Enforcement.

A. Compliance with Current Regulations. Pursuant to the provisions of this chapter, the following shall come into compliance with current code requirements:

- 1. Any illegal nonconforming structure, site, lot, or use;
- 2. Any legally nonconforming structure, site, lot, or use that loses its nonconforming status; and
- 3. Any structure or use that is deemed vacated or abandoned shall be enforced pursuant to the provisions of MMC Chapter 1.04.

B. Loss of Nonconforming Status. A legally established nonconformance shall lose its legal nonconforming status when any of the following conditions are met. When legal nonconforming status is lost, the structure, site, lot, or use must be brought into conformance with all applicable code requirements.

- 1. Nonconforming Structures.
 - a. Should any legal nonconforming structure be destroyed by any means other than accidental causes to an extent of more than 75 percent of its replacement cost at time of destruction, in the judgment of the city, it shall not be reconstructed except in conformity with the provisions of this

chapter. Structures destroyed by accidental causes are subject to the requirements of MMC 22.40.060(A)(5), Reconstruction.

b. When a legal nonconforming structure, or structure and premises in combination, is vacated or abandoned for six consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the zoning district in which it is located.

2. Nonconforming Uses.

a. If any such legal nonconforming use is vacated or abandoned for any reason for a period of more than six consecutive months, any subsequent use shall conform to the regulations specified by this title for the zoning district in which such use is located.

b. Any structure, or structure and land in combination, in or on which a legal nonconforming use is superseded by a permitted use shall conform to the regulations specified by this title for the zoning district in which such use is located.

3. Nonconforming Sites.

a. Maximum Lot Coverage. Sites legally nonconforming to lot coverage standards shall conform to current regulations regarding impervious surface coverage when new impervious surfaces are placed outside of the footprint of an existing structure on a legal nonconforming site

b. Parking Requirements. Sites legally nonconforming to off-street parking standards shall conform to current parking regulations subject to the following:

i. Legal Nonconforming Residential Parking. Residential sites that are legal nonconforming due to insufficient off-street parking shall be brought into conformance with the requirements set forth in MMC Chapter 22.44, Parking Standards and Design, under the following conditions:

- a) The primary land use located on the site is changed to a nonresidential land use; or
- b) The number of dwelling units on the site is increased.

ii. Legal Nonconforming Nonresidential Parking. Nonresidential sites that are legal nonconforming due to insufficient off-street parking shall be brought into conformance with the requirements set forth in MMC Chapter 22.44 when one of the following conditions is met:

- a) A structure is enlarged or extended outside the existing structure footprint in a manner that would require additional parking pursuant to MMC Chapter 22.44; or
- b) The use of the site changes to a use that requires more parking than the previous use.

c. Landscaping. Sites legally nonconforming to landscaping standards shall conform to current landscaping regulations in MMC Chapter 22.46, subject to the following:

i. Legal Nonconforming Residential Landscaping. Residential sites that are legal nonconforming to landscaping requirements shall be brought into conformance with the requirements set forth in MMC Chapter 22.46, Landscaping Standards, under the following conditions:

- a) The primary land use located on the site is changed to a nonresidential land use; or
- b) The number of dwelling units on the site is increased.

ii. Legal Nonconforming Nonresidential Landscaping. Nonresidential sites that are legal nonconforming due to insufficient landscaping shall be brought into conformance with the requirements set forth in MMC Chapter 22.46, Landscaping Standards when one of the following conditions is met:

- a) A structure is enlarged or extended outside the existing structure footprint in a manner that would require additional landscaping pursuant to MMC Chapter 22.46; or
- b) The use of the site changes to a use that requires more landscaping than the previous use.

C. Illegal Nonconformances. Any use, structure, lot, or site not established in compliance with applicable development regulations in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the applicable provisions of MMC Chapter 1.04, Code Enforcement.