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CHAPTER 114. - NONCONFORMITIES.

Sec. 114-1. - Intent. It is the intent of the City Commission to ensure that each and every landowner has the beneficial use of property as that right is defined by law, and to afford all landowners who believe they have been deprived of such use relief through nonjudicial procedures.

Sec. 114-2. - Development as a matter of right. Developments as a matter of right are those which are permitted, allowable, or conditionally approved in a land use district provided the development complies with the comprehensive plan, this Unified Land Development Code, and all other applicable laws, statutes, ordinances, codes or regulations.

Sec. 114-3. - Nonconforming development.

A. Nonconforming uses. Nonconforming uses are those land uses which are in existence on the effective date of this Unified Land Development Code that do not comply with the provisions of this Unified Land Development Code. Nonconforming uses may continue, subject to the following restrictions:

1. Public hazard. The use must not constitute a threat to the general health safety and welfare of the public.
2. Expansions or extensions. Nonconforming uses shall not be expanded or enlarged or increased or extended, including a nonconforming use associated with an historical nonconforming waterfront development.
3. Modifications of use. Nonconforming uses may be modified or altered in a manner which decreases the nonconformity, but may not be modified or altered in a way which increases the nonconformity. Once a nonconforming use or part thereof is decreased in nonconformity, the nonconformity may not be increased thereafter.
4. Abandonment or discontinuance. Where a nonconforming use is discontinued for six months or more or is otherwise abandoned, the existence of the nonconforming use shall terminate, and any further use of the premises shall comply with the provisions of this Unified Land Development Code.
5. Change of ownership. Change of ownership of other transfer of an interest in real property on which a nonconforming use is located shall not in and of itself

terminate the nonconforming status of the premises.

6. Change in use. Should a nonconforming use be converted in whole or in part to a conforming use, that portion of the nonconforming use so converted shall lose its nonconforming status.

B. Nonconforming developments. Nonconforming developments are those buildings or structures which were in existence on the effective date of this Unified Land Development Code and which, by design, location or construction, do not comply with the provisions of this Unified Land Development Code. Nonconforming developments may remain in a nonconforming state subject to the following restrictions:

1. Public hazard. The building or structure must not constitute a threat to the general health, safety and welfare of the public.
2. Ordinary repair and maintenance. Normal and ordinary maintenance and repair to a nonconforming building or structure shall be permitted.
3. Expansion or extensions. A nonconforming building or structure shall not be expanded or enlarged.
4. Damage or destruction. Where a nonconforming building or structure is substantially damaged or destroyed, reconstruction of such development shall comply with the provisions of this Unified Land Development Code. A structure shall be considered substantially damaged or destroyed if the cost of reconstruction or repair is 50 percent or more of the fair market value of the structure at the time of the damage or destruction. If the nonconforming development is comprised of multiple structures, the cost of reconstruction shall be measured against the combined fair market value of all of the structures in determining the issue of substantial damage.

5. Attrition. If a building or structure has an age of 20 years or more and has not been actively occupied for a period of six months or more, then prior to reoccupation, the building or structure will be required to comply with the requirements of this Unified Land Development Code, including but not limited to requirements relating to stormwater, height, density, intensity, setbacks, parking, open space, buffers, and landscaping.

6. Conflict. In the event of conflict between the provisions of this section and Chapter 105, article III,

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division 2, the provisions of such division shall prevail.

7. Historical nonconforming waterfront development. Notwithstanding subsection (3), a building or structure which is part of an historical nonconforming waterfront development may be expanded, enlarged, replaced or reconstructed without strictly complying with the provisions of this Unified Land Development Code provided that:

i. Such expansion, enlargement, replacement or reconstruction is in proportion to the expansion or enlargement of neighboring buildings or structures of similar form which has occurred during the life of the historical nonconforming waterfront development;

ii. Such expansion, enlargement, replacement or reconstruction does not increase any incompatibility between the existing historical nonconforming waterfront development (HNWD) and development in the surrounding area; and

iii. The burden of any associated nonconforming use upon the neighboring properties and owners is not increased.

C. Condemnation relief.

1. Intent. It is the intent to provide relief to the owners of land affected by roadway condemnation by allowing a relaxation of requirement of land use regulations which are necessary for reasonable use of the property and to provide relief where, as a result of land acquisition for condemnation purposes, substandard parcels are created, existing structures are rendered nonconforming, available parking area reduced, or use of property is otherwise curtailed.

2. Applicability. This is meant to be applied where strict enforcement of this Unified Land Development Code would have the effect of increasing the cost of land acquisition to the condemning authority and/or causing hardship to the landowner.

3. Requirements.

i. Existing use areas which are not within the part taken, but, because of the taking, do not comply with the setback, buffer, minimum lot requirements, lot coverage, stormwater management, parking, open space, and landscape provisions of this Unified Land Development Code, shall not be required to be reconstructed to meet such require-

ments and the remainders shall be deemed thereafter to be conforming properties. The exemption thus created shall constitute a covenant of compliance running with the use of the land.

ii. Any conforming building, vehicular use area, or other permitted use taken either totally or partially may be relocated on the remainder of the site without being required to comply with the setback and other provisions of this Unified Land Development Code except that the relocated building, vehicular use area, or other permitted use shall be set back as far as is physically feasible without reducing the utility or use of the relocated building, vehicular use of the relocated building, vehicular use area, or other permitted use below its pretaking utility or use. The exemption thus created shall constitute a covenant of compliance running with the land.

iii. Any properties in category (C)(3)i or (C)(3)ii of this section which are thereafter destroyed, or partially destroyed, may be restored.

iv. As to the exemptions in subsections (C)(3)i and (C)(3)ii of this section, either the condemning authority or the landowner or both of them, after proper notification to the land owner, may apply in writing to the director for a determination that the granting of the exemption will not result in a condition dangerous to the health, safety, or welfare of the general public. The director shall, within 30 days of the filing of the application, determine whether or not the waiver of the setback requirement granted by this section will endanger the health, safety, or welfare of the general public. If the director determines that the granting of the exemption under this section will not constitute a danger to the health, safety, or welfare of the general public, the director shall issue a signed letter to all parties granting waivers. The letter shall specify the details of the waiver in a form recordable in the public records of the city. If the application is denied, the director shall issue a signed letter to the applicant specifying the specific health or safety ground upon which the denial is based.

v. Any development permits or variances necessary to relocate building, vehicular use areas, or permitted uses taken or partially taken can be applied for by the condemning authority and/or landowners and administratively granted for the property in question.

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vi. Any legally nonconforming existing land use which, as a result of the taking or reconstruction necessitated by the taking, would be required to conform shall continue to be a legally nonconforming land use.

Sec. 114-4. - Vested rights.

A. A property owner’s right of development prior to adoption of this Unified Land Development Code shall be vested, even if such development does not comply with this Unified Land Development Code, subject to the following circumstances:

1. Final development approval has been granted to the developer by the City and a valid, unexpired building permit has been issued to the developer by the City’s Building Department Contractor (also referred to as the City’s Building Department), provided the development is commenced within the permit period.
2. Within 6 months after adoption of this Land Development Code, the property owner received approval of vested rights status from the appeals board.
3. All vested development shall be undertaken in strict conformity to the design plans and specifications approved by the City and the City Building Department. Any modifications, additions or alterations to the approved plans and specifications shall not be considered vested development.

Sec. 114-5. - Hardship relief; Variances.

A. Any person desiring to undertake a development activity that does not comply with this Unified Land Development Code may apply to the planning official for a variance to the bulk regulations. All variances shall be subject to review and approval by the **board of adjustment Planning Board** so long as the variance does not require an amendment to the comprehensive plan, is not expressly prohibited and is not a use variance. In addition, it is not contrary to the public health, safety, and welfare, and is granted due to an unnecessary hardship to the property owner.

B. No variance shall supersede or abrogate the requirements of flood damage prevention, or the requirements of the National Flood Insurance Program.

C. The **board of adjustment Planning Board** shall make an initial determination whether the need for the proposed variance arises out of the topography, shape, environmental, or similar conditions of the particular site, or whether the condition is common to numerous sites

in the surrounding area. Any decision as to the granting of a single-property variance shall be subject to the 7-point test. In a group-variance situation, the board shall make all required findings based on the cumulative effect of granting the variance to all properties similarly situated.

D. No variance of the provisions of this Unified Land Development Code shall be approved unless the following conditions are satisfied by substantial and competent evidence:

1. Strict compliance with the provisions of this Unified Land Development Code would deprive the property owner rights and privileges enjoyed by other properties in the area or same zoning district, or would render the enforcement of this Unified Land Development Code impracticable;
2. Conditions for which the variance is being applied are unique or unusual to the site or structure in question;
3. The variance request is not based solely upon the desire to reduce the cost of developing the site;
4. The variance shall not confer on the petitioner the grant of a special privilege, or be based on a self-imposed hardship;
5. The proposed variance will not alter the essential character of the area surrounding the site;
6. The proposed variance will not degrade level of service standards as established in the comprehensive plan.

~~7. The effect of the proposed variance is in harmony with the general intent of this Unified Land Development Code and the specific intent of the relevant provisions thereof.~~

E. In approving a variance request, the **board of adjustment Planning Board** may impose such conditions and restrictions deemed necessary to preserve the continuing intent of the comprehensive plan and the provisions of this Unified Land Development Code.

F. Any action of a variance request must state the reasons why the variance should be granted.

G. No variance may be continued to another meeting unless there is need for additional time for discovery of the facts needed to address the request.

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H. The variance granted must be the minimum required to make reasonable use of the land.

I. Variances for height may only be issued under the following circumstances:

1. Existing flood ways, surge zones, or easements on the site present an unnecessary hardship on the development of the site.

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