

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING AND LAND USE AND AMENDING THE LAND USE AND AMENDING ORDINANCE 2740 AS AMENDED, THE KIRKLAND ZONING ORDINANCE.

Whereas, the City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the text of the Kirkland zoning ordinance, Ordinance 2740 as amended, all as set forth in that certain report and recommendation of the Planning Commission dated December 31, 1984 and bearing Kirkland Department of Planning and Community Development File No. IV-84-22; and

Whereas, prior to making said recommendation the Planning Commission, following notice thereof as required by RCW 35A.63.070, on December 20, 1984, held a public hearing on the amendment proposals and considered the comments received at said hearing; and

Whereas, pursuant to the State Environmental Policies Act there has accompanied the legislative proposal and recommendation through the entire consideration process, a final declaration of non-significance (including supporting environmental documents) issued by the responsible official pursuant to WAC 197-11-340 and WAC 197-11-390; and

Whereas, in regular public meeting the City Council considered the report and recommendation of the Planning Commission, now, therefore,

Be it ordained by the City Council of the City of Kirkland as follows:

Section 1. Zoning text amended: The following specified sections of the text of Ordinance 2740 as amended, the Kirkland zoning ordinance, be and they hereby are amended to read as follows:

CHAPTER 162 - NON-CONFORMANCE

- 162.05 User Guide
- 162.10 When Conformance is Required
- 162.15 General
- 162.20 Abatement of Non-Conformance that was Illegal When Initiated
- 162.25 Immediate Compliance with Certain Provisions Required
- 162.30 Special Provision for Damaged Improvements
- 162.35 Certain Non-Conformances Specifically Regulated
- 162.40 Additional Provision if a Quasi-Judicial Decision is Required
- 162.45 Prohibition on Increasing Non-Conformance
- 162.50 Applicability of Uniform Codes
- 162.55 Special Provisions for Continued Uses

162.05 User Guide

This Chapter establishes when and under what circumstances non-conforming aspects of a use or development must be brought into conformance with this Code. You need to consult the provisions of this Chapter only if there is some aspect of the use or development on the subject property that is not permitted under this Code.

162.10 When Conformance is Required

If an aspect, element or activity of or on the subject property conformed to the applicable Zoning Code in effect at the time the aspect, element or activity was constructed or initiated, that aspect, element or activity may continue and need not be brought into conformance with this Code unless a provision of this Chapter requires conformance.

162.15 General

If a use is non-conforming, the applicable use zone chart does not establish what regulation of this Code applies. Therefore, to determine what regulations apply, the City will determine the zone that allows the non-conforming use that is most similar to the zone in which the non-conforming use is located and apply the regulations of that Chapter.

162.20 Abatement of Non-Conformance that was Illegal When Initiated

1. General - Except as specified in Paragraph 2 of this Section, any non-conformance that was illegal when initiated must immediately be brought into conformance with this Chapter. The City may, using the provisions of Chapter 170 of this Code, immediately abate any non-conformance that was illegal when initiated.
2. Exceptions - If a non-conformance has ever been in complete conformance with an applicable zoning code it may continue to exist subject to the provisions of this Chapter, and it is not subject to abatement under Paragraph 1 of this Section.

162.25 Immediate Compliance With Certain Provisions Required

1. General - Regardless of any other provision of this Chapter, the following non-conformances must be immediately brought into conformance with the applicable provisions of this Code:
 - a. Non-conformance with the Noise Standards in Chapter 115.

- b. Non-conformance with the Lighting Standards in Chapter 115.
- c. Non-conformance with the Heat Emission Standards in Chapter 115.
- d. Non-conformance with the Radiation Standards in Chapter 115.
- e. Non-conformance with the Air Quality Standards in Chapter 115.
- f. Non-conformance with the Water Quality Standards in Chapter 115.
- g. Non-conformance with the Odor Standards in Chapter 115.
- h. Non-conformance with the provisions in Chapter 115 regarding Parking and Storage of large vehicles in residential zones.
- i. Non-conformance with the provisions in Chapter 115 regarding junk in residential zones.
- j. Non-conformance with the Glare Standards in Chapter 115.
- k. Non-conformance with the provision of Section 100.85.1.i of this Code regarding portable outdoor signs.
- l. Non-conformance with the provision of Section 100.75.1 regarding location of signs as it relates to pole signs extending over rights-of-way.
- m.* Any other non-conformance if the Planning Director concludes that the public interest in abating the non-conformance outweighs the detriment or loss to the owner or occupant of the property, and either:
 - 1) ~~That~~ Immediate abatement is necessary to fulfill a specific adopted policy of the City; and or
 - 2) The non-conformance is causing distinct and identifiable harm to adjacent property, the neighborhood in which it exists, or the City as a whole. and
 - 3) ~~---The public benefit in abating the non-conformance outweighs the detriment or loss to the owner or occupant of the property.~~

2. Abatement - The City may immediately abate any Non-conformance listed in paragraph 1 of this Section 162.25.1 using the provisions of Chapter Sections 170.25 through 170.40 of this Code, or any other abatement process lawfully available to the City.

162.30 Special Provision for Damaged Improvements

1. If a non-conforming improvement is damaged by sudden, accidental cause and the damage does not exceed 50% of the replacement-cost-of assessed or appraised value of that improvement, whichever is greater, the applicant may reconstruct that improvement. The reconstructed improvement may not be more non-conforming than it was immediately prior to the damage. A Building Permit to rebuild the non-conforming improvement must be applied for within 6 months or the nonconformance shall be considered to be terminated and shall not be resumed.
2. If the damage exceeds 50% of the replacement-cost assessed or appraised value of the improvement, whichever is greater, the improvement may be reconstructed and, the use conducted in or on the improvement, and all parking areas, buffers, signs, storm drainage systems and other site improvements that support the damaged improvement or the use conducted in or on that improvement must conform to this Code.
3. The provisions of paragraphs 1 and 2 of this section are superceded by any specific provision of Section 162.35.

162.35 Certain Non-Conformances Specifically Regulated

1. General - Paragraphs 2 through 8 of this Section specify when and under what circumstances certain non-conformances must be corrected. If a non-conformance must be corrected under this section, the applicant must submit all information necessary for the City to review the correction as part of the application for any development permit. In addition, the City will not issue a certificate of zoning compliance or permit occupancy until the correction is made.

If Section 25 of this Chapter applies to a specific non-conformance, then the provisions of this Section do not apply to that same non-conformance.

2. Non-Conforming Use

- a. For the purpose of determining a non-conforming use, the word "use" refers to the specific activity being conducted and not the definition of use set forth in Section 5.10.955. A non-conforming use may be continued by successive owners or tenants.
- b. Any non-conforming use except for a detached dwelling unit must be brought into conformance or discontinued if--
- 1) The applicant is making a structural alteration or increasing the gross floor area of any structure that houses or supports the non-conforming use; or
 - 2) The non-conforming use has ceased for 90 or more consecutive days.
 - 3) The non-conforming use is replaced by another use; the City may allow a change from one non-conforming use to another such use if, through Process IIA, the City determines that the proposed new use will not be more non-conforming and will have a less adverse affect on the neighborhood than does the existing use.

~~Non-Conforming Use--Any non-conforming use must be brought into conformance or discontinued if--~~

- ~~a.---The applicant is making structural alteration or increasing the gross floor area of any structure that houses or supports the non-conforming use; or~~
- ~~b.---The applicant is making changes, or alterations or doing work, other than as listed in Paragraph a, of this subsection, in any 12-month period to any structure that houses or supports the non-conforming use that exceeds 10% of the replacement cost of that structure; or~~
- ~~c.---The subject property has been abandoned for 90 or more consecutive days or the nonconforming use has ceased for 180 or more consecutive days; or~~
- ~~d.---The applicant is going to replace the use with a different use.--The City may allow the change-- in use if, through Process IIA, the City determines that the proposed new use will not be more non-conforming and will have no more detrimental affect on the neighborhood than does the existing use.~~

3. Expansion or Modification of an Existing Use or Structure or the Addition of New Structures

If the expansion or modification of an existing use or structure or the addition of a new structure(s) requires review of the application by any one of the processes described in chapters 145 through 155 of this Code, the proposal shall be reviewed pursuant to such process; unless:

- a. The gross floor area of the use is expanded by less than 10%; or
- b. The Planning Director determines that the change or alteration will not have significantly more or different impact on the surrounding area than does the present development.

Non-Conforming Procedure

~~If the use or any aspect of the use or development supporting the use that requires approval through a quasi-judicial process described in Chapters 145 through 155 of this Code was not approved through a quasi-judicial process under this Code or a prior zoning code, the use or development must be reviewed and approved using the appropriate process if--~~

- a. ~~---The gross floor area of the use is expanded by 10% or more; or~~
- b. a. ~~The applicant is making additions, changes or alterations or doing work to the subject property in any 12-month period that exceeds 25% of the replacement cost of all structures on the subject property, except that, if the Planning Director determines that the change or alteration will have significantly more or different impact on the surrounding area than does the present development, the change or alteration will be reviewed and decided upon using the appropriate process under this Code; or~~
- b. ~~The applicant is going to replace the use with a different use; or~~
- c. ~~---The subject property has been abandoned for 90 or more consecutive days or the use conducted on the subject property has ceased for 180 or more consecutive days.~~

4. Non-Conforming Parking

If there are fewer parking spaces for the uses conducted on the subject property than are required under this Code, these additional required number of spaces must be provided if the applicant is going to change the use conducted on the subject property and the new use requires more parking spaces than the former use.

- a.---The applicant is increasing the gross floor area of any use on the subject property; or
- b.---The applicant is making changes, alterations or doing work, other than as listed in Paragraph a. of this sub-section, in any 12-month period to any structure on the subject property that exceeds 10% of the replacement cost of that structure; or
- c.---The applicant is going to change the use conducted on the subject property and the new use requires more parking spaces than the former use; or
- d.---The subject property has been abandoned for 90 or more consecutive days or the use conducted on the subject property has ceased for 180 or more consecutive days;

162.35 5. Non-Conforming Signs

- a. All non-conforming signs are defined as either major non-conforming signs or minor non-conforming signs.
- 1) Major non-conforming signs include the following:
- a) Any pole sign associated with a use which is not entitled to sign category F.
 - b) Any pole sign or monument sign which exceeds 20 feet in height above average ground elevation.
 - c) Any sign attached to the building and which extends above the building roofline.
 - d) Any projecting sign except those allowed by Section 100.115.
 - e) Any sign listed as a prohibited device by Section 100.85.
 - f) Any sign which has exposed structural supporting elements such as angle irons, guy wires and braces.
 - g) Any sign located off-site which does not meet the provisions of Section 100.75.

2) Minor non-conforming signs are those, other than listed above in Paragraph 1, which violate any provision of the Zoning Code.

b. Non-conforming signs must be brought into conformance as specified below:

1) Notwithstanding the provisions of Section 162.30, any major non-conforming sign must be brought into conformance if:

a) Structural alteration is made to the sign; or

b) The color, design, lettering or shape of the sign is altered. Change in temporary message on a readerboard is excluded from this requirement; or

c) Structural alteration or an increase in the gross floor area is made to any structure that houses or supports the use that has the major nonconforming sign.

2) Notwithstanding the provisions of Section 162.30, any minor non-conforming sign must be brought into complete conformance when either:

a) The fair market value of any nonstructural alteration (such as color, design) of the sign exceeds 35% of the replacement value of that sign (change in temporary message on a readerboard is excluded from this requirement); or

b) Structural alternation is made to the sign. In such event, the applicant must sign and record a concomitant agreement to run as a covenant with the property, in a form acceptable to the City Attorney. Said agreement shall describe the minor non-conforming elements involved and state that they will be brought into conformance within 10 years of the date of issuance of the building or sign permit. The applicant shall also grant to the City license to enter the property and shall also sign an agreement to reimburse the City for the cost of removing the sign(s) if, after the specified time, the prescribed minor non-conforming element(s) is not brought into conformance; or

- c) Structural alteration or an increase is made to the gross floor area of any structure that houses or supports the use that has the minor non-conforming sign.
- c. Any sign which can be classified as both a major non-conforming sign and a minor non-conforming sign shall be regulated as a major non-conforming sign.
- d. Exception for Repair and Maintenance -
- Repair and maintenance work to any non-conforming sign is excepted from the provisions of this chapter, subject only to the following:
- 1) The repair or maintenance work will not increase the degree or magnitude of non-conformance.
 - 2) If the repair or maintenance work requires a Building or Sign Permit, the applicant must sign and record a concomitant agreement to run as a covenant with the property, in a form acceptable to the City Attorney. Said agreement shall describe the minor non-conforming elements involved and state that they will be brought into conformance within 10 years of the date of issuance of the building or sign permit. The applicant shall also grant to the City license to enter the property and shall also sign an agreement to reimburse the City for the cost of removing the sign(s) if, after the specified time the prescribed minor non-conforming element(s) is not brought into conformance.
 - 3) For purposes of this section, repair shall mean the work that is necessary to restore a sign to its former appearance subsequent to a sudden, accidental event.

~~if the sign for a use is non-conforming, it must be brought into conformance if--~~

~~a.---The applicant is making structural alterations or increasing the gross floor area of any structure that houses or supports the use that has the non-conforming signage, or~~

b.---The applicant is making changes, alterations or doing work, other than as listed in Paragraph a, of this sub-section, in any 12-month period to any structure that houses or supports the use that has the nonconforming signage and the cost of these changes, alterations or other work exceeds 10% of the replacement cost of that structure, or

c.---The applicant is making changes to the sign in any 12-month period the cost of which exceeds 35% of the replacement cost of the sign.

d.---The subject property has been abandoned for 90 or more consecutive days or the use conducted on the subject property has ceased for 180 or more consecutive days.

If the sign for a use is non-conforming, it must be brought into conformance if--

a.---The applicant is making structural alterations or increasing the gross floor area of any structure that houses or supports the use that has the non-conforming signage, or

b.---The applicant is making changes, alterations or doing work, other than as listed in Paragraph a, of this sub-section, in any 12-month period to any structure that houses or supports the use that has the non-conforming signage and the cost of these changes, alterations or other work exceeds 10% of the replacement cost of that structure, or

c. The applicant is making changes to the sign in any 12-month period the cost of which exceeds 35% of the replacement cost of the sign.

d.---The subject property has been abandoned for 90 or more consecutive days or the use conducted on the subject property has ceased for 180 or more consecutive days.

6. Non-Conforming Landscaping, Buffers, and Paving

a. The City will not issue a Certificate of Zoning Compliance for, or permit occupancy of, any site that has non-conforming buffers

landscaping until the landscaping is brought into conformance as much as is feasible based on the available land on the subject property that could be made into buffers. Appeals to this determination will be processed according to Section 145.55 through 145.100 of this Code. In addition, any non-conforming buffers on the subject property must be brought into complete conformance with this Code if--

b. If the applicant is going to increase the gross floor area of any use on the subject property, or, buffers adjoining the new gross floor area must be brought into conformance.

~~b.---The applicant is making changes, alterations or doing work, other than as listed in Paragraph a, of this sub-section, in any 12-month period to any structure on the subject property and the cost of these changes, alterations or other work exceeds 10% of the replacement cost of that structure, or~~

c. If the use on the subject property is changed and the new use requires larger buffers than the former use, or, any non-conforming buffers on the subject property must be brought into conformance.

d. The City will not issue a Certificate of Zoning Compliance for any site that has non-conforming paving until the paving is brought into conformance.

e. If the use on the subject property is changed and the new use requires more parking than the former use, all paving must be brought into conformance.

~~d.---The subject property has been abandoned for 90 or more consecutive days or the use conducted on the subject property has ceased for 180 or more consecutive days.~~

7. Non-Conforming Height, Setbacks and View Corridors

Any structural alteration of a roof or exterior wall which does not comply with height, setback or view corridor standards will require that the nonconforming height, setback or view corridor be brought into conformance. Excepted from this section are the repair or maintenance of structural members.

~~If the height or setback of an improvement is nonconforming, these must be brought into conformance if--~~

~~a.---The applicant is making structural alterations to, or increasing the gross floor area of, that improvement; or~~

~~b.---The applicant is making changes or alterations or doing work, other than is listed in Paragraph a, of this sub-section, in any 12-month period to that improvement and the cost of these changes, alterations or other work exceeds 10% of the replacement cost of that improvement; or~~

c. The subject property has been abandoned for 90 or more consecutive days or the use conducted in or on that improvement has ceased for 180 or more consecutive days.

8. Any Other Non-Conformance

If any non-conformance exists on the subject property, other than as specifically listed in Paragraphs 2 through 7 of this Section, these must be brought into conformance if--

a. The applicant is making any alteration or change or doing any other work in a consecutive 12 month period to an improvement that is non-conforming or houses, supports, or is supported by the non-conformance, and the cost of the alteration, change or other work exceeds 50% of the replacement cost of that improvement; or

b. The use on the subject property is changed and this Code establishes more stringent or different standards or requirements for the non-conforming aspect of the new use than this code establishes for the former use.

~~c.---The subject property has been abandoned for 90 or more consecutive days or the use conducted on the subject property has ceased for 180 or more consecutive days.~~

162.40 Additional Provision if a Quasi-Judicial Decision is Required

~~In-addition-to-any-other-provision-of-this-Chapter,-if~~
If a development activity on the subject property is being decided upon using either Process I, IIA, IIB or III, described in Chapters 145, 150, 152 and 155 respectively, the City shall in such process consider the degree of non-conformance, its relationship to the proposed development activity, and pursuant to the relevant provisions of this Chapter, may require that the applicant correct any nonconformance that exists on the subject property.

162.45 Prohibition on Increasing Non-Conformance

No non-conformance may in any way be enlarged, expanded, increased, intensified, compounded or in any other way made greater, except as permitted in this Chapter.

162.50 Applicability of Uniform Codes

Nothing in this Chapter in any way supersedes or relieves the applicant from compliance with the requirements of Title 21 of the Kirkland Municipal Code (uniform construction related codes).

162.55 Special Provisions for Continued Uses

As used in this Chapter, the term "continued use" shall mean an existing, lawful use of land (and structures) which became non-conforming as to use or density solely as a result of this amendatory Ordinance No. 2347 or which becomes non-conforming solely as a result of the maximum lot coverage provision of this Code, Ordinance No. 2678, effective on October 2, 1982.

A continued use shall be permitted to exist as a lawful use subject only to the following conditions:

1. Any change in use or density shall conform to the Land Use Policies Plan and Zoning regulations in effect at the time such change is made.
2. Ordinary repairs and maintenance may be carried out consistent with the provisions of this Chapter provided that there shall be no limitation on the amount or cost of such repairs and maintenance.
3. A continued use shall not be subject to the provisions of this Chapter relating to destruction by fire or other casualty.

In the event a structure so designated as a continued use is destroyed to any extent by fire or other casualty, the structure may be rebuilt provided, however, that the number of dwelling units (if residential units existed in the structure), gross floor area of the structure and major exterior dimensions of the structure shall not exceed the same dimensions or standards of the previous structure. This provision shall not reduce any requirements of the building or fire codes in effect when such structure may be rebuilt.

The provisions of this section shall only be available if an application for a building permit is filed within twelve (12) months of such fire or other casualty and construction is commenced and completed in conformance with the provisions of the building code then in effect.

4. A continued use shall be subject to the provisions of this Chapter relating to the abandonment of structure or use.
5. The owner of a continued use may request the issuance of a "Certificate of Continued Use" which shall identify the property, existing use, density and site characteristics for which the certificate is issued and which shall include the provisions of this Chapter.

~~Such request shall be made in writing upon forms provided by the City and shall contain sufficient information, including density, use and site characteristics, to permit the determination that such use of land and structures qualifies as a continued use as herein provided. Upon determination from the information provided that such use of land and structures shall be classified as a continued use, a Certificate shall be issued by the Department of Community Development.~~

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. To the extent that the subject matter of this ordinance is subject to the disapproval jurisdiction of the Houghton Community Council as created by Ordinance 2001, said plan shall become effective within the Houghton community either upon approval of the Houghton Community Council, or upon failure of said community council to disapprove this ordinance within 60 days of its passage.

Section 4. Except as provided in Section 3, this ordinance shall be in full force and effect five days from and after its passage by the City Council and publication or posting as required by law.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 7th day of January 1985.

Signed in authentication thereof this 7th day of January, 1985.

Lois Cooper
MAYOR

ATTEST:

Jan F. Johnson
Director of Administration & Finance
(ex officio City Clerk)

APPROVED AS TO FORM:

Fugh E. [Signature]
City Attorney

CERTIFICATION OF POSTING

I hereby certify under penalty of perjury that the foregoing ordinance was posted on the 9th day of January, 1985 in accordance with the provisions of RCW 35A.12.160 and City of Kirkland Ordinance No. 2600.

Janice Perry
clerk

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