

ARTICLE 21

NONCONFORMITIES

Sections:

- 21-1 General Provisions**
- 21-2 Nonconforming Lots of Record**
- 21-3 Nonconforming Structures**
- 21-4 Nonconforming Uses**
- 21-5 Nonconforming Manufactured Homes**

SECTION 21-1 GENERAL PROVISIONS

21-101. Nonconformities are of three types: nonconforming lots of record, nonconforming structures and nonconforming uses. Regulations governing nonconforming manufactured homes are set forth at Section 21-5. Types of nonconformities are defined as follows:

- a. **Nonconforming lots of record:** Means an unimproved lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded with the Haskell County Register of Deeds prior to the City's original adoption of zoning regulations and neither said lot nor parcel complies with the lot width and/or area requirements for the district in which it is located.
- b. **Nonconforming structure:** Means an existing structure which does not comply with the lot coverage, height or yard requirements which are applicable to new structures in the zoning district in which the structure is located.
- c. **Nonconforming use:** Means an existing, lawful use of a structure or land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

SECTION 21-2 NONCONFORMING LOTS OF RECORD

21-201. The Zoning Administrator, upon request of the property owner, shall issue a zoning certificate for any nonconforming lot of record, provided that:

- a. The lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations, and

- b. The lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulations.

SECTION 21-3 NONCONFORMING STRUCTURES

21-301.

- a. **Authority to continue.** Any structure that is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable intensity of use regulations and/or the applicable yard and height regulations, may be continued, so long as it remains otherwise lawful.
- b. **Enlargement, repair, alterations.** Any nonconforming principal structure may be enlarged, maintained, repaired or remodeled. No such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure. An enlargement which does not, in the Zoning Administrator's determination, extend the nonconformity beyond the existing nonconformity shall not be an additional nonconformity or an increase in the degree of nonconformity.
- c. **Damage or destruction.** In the event that any nonconforming principal structure is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located.
- d. **Moving.** No nonconforming structure shall be moved in whole or in part for any distance whatever, to any other location on the same lot or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

SECTION 21-4 NONCONFORMING USES

21-401.

- a. **Authority to continue.** Any nonconforming use of part or all of a structure or any nonconforming use of land which was lawful and in existence at the effective date of these regulations may be continued, so long as otherwise lawful and so long as it is not specified to be terminated by these regulations.

- b. **Ordinary repair and maintenance.**
 - 1. Normal maintenance and incidental repair, or replacement, installation or relocation of walls, partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use.
 - 2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.
- c. **Extension.** A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. Such prohibited activities shall include, without being limited to the following:
 - 1. Extension of such use to any structure or land area other than that actually physically occupied by such nonconforming use on the effective date of these regulations or on the effective date of subsequent amendments to these regulations that cause such use to become nonconforming.
 - 2. Extension of such use within a building or other structure to any portion of the floor area that was not actually physically occupied by such nonconforming use on the effective date of these regulations or on the effective date of subsequent amendments to these regulations that cause such use to become nonconforming; provided, however, that such use may be extended throughout any part of such building or other structure that is found by the Zoning Administrator to have been lawfully and manifestly designed or constructed for such use on such effective date.
- d. **Enlargement.** No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- e. **Damage or destruction.** In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located.

- f. **Moving.** No structure that is devoted in whole or in part to a nonconforming use and no nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.
- g. **Change in use.** Any change in use from nonconforming use to a different nonconforming use is prohibited if the Zoning Administrator determines that such a change would increase the degree of nonconformity with the applicable zoning regulations.
- h. **Abandonment or discontinuance.** When a nonconforming use is discontinued or abandoned for a period of twelve (12) consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land or buildings shall comply with the regulations of the zoning district in which such land is located.
- i. **Nonconforming accessory uses.** No nonconforming use which is accessory to a principal nonconforming use shall continue after the abandonment or discontinuance of the principal nonconforming use.

SECTION 21-5 NONCONFORMING MANUFACTURED HOMES

21-501. Except as otherwise provided in Section 21-502, the removal and relocation of nonresidential-design manufactured homes in the R-1, R-2 and CS Districts shall be governed by the following regulations:

- a. Upon removal of a nonconforming manufactured home, unless another manufactured home, manufactured no more than fifteen (15) years previously, is moved onto the same lot within sixty (60) days from the date that the previous manufactured home was moved off the lot, such use is forfeited and shall not thereafter be reestablished.
- b. Any manufactured home moved in accordance with a. above shall be placed on a permanent, enclosed perimeter foundation within sixty (60) days from the date it is moved onto the lot.
- c. No manufactured home moved in accordance with a. above shall be moved onto a lot if such will result in an increase in nonconformity with respect to lot size, yard or bulk requirements.
- d. No manufactured home moved in accordance with a. above shall be moved onto a lot if its location shall place it within twenty feet (20') of a principal building or ten feet (10') of an accessory building.

- e. Upon proper application the Board of Zoning Appeals may grant an exception to the time requirements of subsections a. and b. above upon a finding by the Board of hardship for the party who would reside in the manufactured home upon its relocation.

21-502. Relocation of a nonresidential-design manufactured home as a replacement for another such home, when located on property in actual use as a manufactured home park, but not zoned as such as of the effective date of these regulations, is allowed in accordance with the following regulations:

- a. No such home may be placed within fifteen feet (15') of another such home.
- b. Any such home must be manufactured no more than fifteen (15) years previously and must be moved on to the same lot within sixty (60) days from the date that the previous home was moved off the lot. The Board of Zoning Appeals may grant an exception to the time requirements of this subsection upon a finding by the Board of hardship for the party who would reside in the home upon its relocation.