

# BINGEN MUNICIPAL CODE

## Chapter 17.68

### NONCONFORMING USES

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#### **17.68.010 Policy.**

It is the policy of the council to provide regulatory mechanics for nonconforming uses as found and determined to be reasonable and equitable in many jurisdictions. This policy is pursued in order that properties with nonconforming uses in existence at the time of adoption of the ordinance codified in this title, or amendments thereto, shall be brought to conformity within such periods of time as are compatible with justice to the owners of properties affected and with the interests of the safety, health and general welfare of the city. It shall not be the policy of the city to require the removal or cessation of nonconforming uses unless specifically stipulated under Section 17.68.050 and 17.68.090 or unless otherwise required by law (e.g., nuisance abatement). (Ord 440 Att. A (part), 1997).

#### **17.68.020 Prior establishment required.**

To benefit from the protection given to a nonconforming use, such use must have been legitimately and lawfully established prior to the adoption of the ordinance codified in this title. (Ord 440 Att. A (part), 1997).

#### **17.68.030 Continuance permitted.**

Any nonconforming use may be continued for such time and under such conditions as specified in this chapter. (Ord 440 Att. A (part), 1997).

**17.68.040      Enlargement and extension.**

No nonconforming use of land shall be changed to another nonconforming use. The lawful use of land existing at the time of the adoption of the ordinance codified in this title may be continued, although such use does not conform to this title for the district in which such land is located; provided, further, that except as otherwise provided in BMC 17.68.045, no such nonconforming use shall be enlarged or increased, nor shall any nonconforming use be extended to occupy a greater area of land or building than that occupied by such use at the time of the adoption of the ordinance codified in this title, unless by said change it brings the use closer to conformance with this title or mitigates an identified adverse environmental impact. (Ord 440 Att. A (part), 1997; Ord. 589 §2, 2011).

**17.68.045      Nonconforming single-family residential uses in commercial districts.**

Nonconforming single-family dwellings located within a Commercial District may be continued. Residential single-family dwelling uses located within a Commercial District may be enlarged or increased or extended to occupy a greater area of land or building as long as the enlargement or extension does not violate the zoning requirements of the Single-Family (R1) Residential District. (Ord. 589 §3, 2011).

**17.68.050      Discontinuance or abandonment.**

- A. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use.
- B. A non conforming use, when discontinued or abandoned, shall not be resumed. Discontinuance or abandonment shall be defined as follows:
  - 1. When improved land, buildings or facilities used as nonconforming use shall cease to be used for that particular use for twelve consecutive calendar months;
  - 2. When a building designed or arranged for a conforming use, but used for nonconforming activities shall cease to be used for such particular use for a period of twelve consecutive calendar months.
- C. The land from which nonconforming structure has been removed shall be subsequently used in conformity with the appropriate district regulations. (Ord 440 Att. A (part), 1997).

**17.68.060      Enlargement restrictions.**

- A. The enlargement of a nonconforming use to any portion of an existing building, which portion was designed and built for such nonconforming use prior to the passage of the ordinance codified in this title may be permitted, provided no structural alterations are made.

- B. A building designed and built for, and devoted to, a nonconforming use at the time of the passage of this title may not be enlarged or structurally altered unless the use of such building is changed to a conforming use, or when such enlargement is permitted by variance in case of evident hardship.
- C. Moving of a nonconforming use to contiguous lots is prohibited. (Ord 440 Att. A (part), 1997).

**17.68.070 Upgrading.**

A lawful nonconforming use of a building may not be changed to another nonconforming use unless changed to a more restrictive use. (Ord 440 Att. A (part), 1997).

**17.68.080 Improvement, repair.**

Normal repairs and alterations may be made to a lawful nonconforming building, provided that no structural alterations shall be made except those required by law or those that result in mitigation of adverse environmental impacts as may be approved by the city council. No existing nonconforming structure designed, arranged, intended for, or devoted to a use not permitted under this title for the district in which such structure is located shall be enlarged, extended, reconstructed, structurally altered, or moved unless such use is changed to a use permitted under the regulations specified by this title for the district in which said building is located; provided, further, that nothing in this title shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe and ordered to be strengthened or restored to a safe condition, unless such a building has been destroyed by an extent exceeding seventy-five percent of full value, as determined by consideration of the assessed value referred to above, or unless otherwise allowed under Section 17.68.090. (Ord 440 Att. A (part), 1997).

**17.68.090 Damaged—Restoration.**

When a building or other structure containing a nonconforming use is damaged by any cause to an extent exceeding seventy-five percent of the cost of the structure's fair market value as indicated by the records of the county assessor, then such building shall not be rebuilt unless the building and its construction and uses conform fully to this title and other codes of the city as applied to new buildings and structures and to uses for the district in which it is located, or in the case of a dwelling, unless a building permit is obtained from the city within twelve months of the date of the damage for a repair or replacement with a similar structure. The determination of whether a building is destroyed to the extent described shall rest with the city building official. (Ord. 440 Att. A (part), 1997).

**17.68.100 Unlawful uses prohibited—Exception.**

Nothing in this title shall be interpreted as authorization for, or approval of, the continuance of, or the allowing of a special permit, exception or variance for the use of a structure or premises in violation of the zoning regulations in effect at the time of the effective date of the ordinance

codified in this title. Any use existing at the time of adoption of this title which is within the scope of uses permitted by conditional exception or accessory exception in the use district in which the property is situated shall be deemed a conforming use without necessity of any action by the board of adjustment. (Ord 440 Att. A (part), 1997).

**17.68.110 Effect on previously approved construction.**

Nothing in this title shall be deemed to require any change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the adoption of the ordinance codified in this title and upon which building actual construction has been diligently carried on. (Ord. 440 Att. A (part), 1997).