
CC – 04282025 - Updated Redline Document with changes to allow replacement of mechanical equipment in the front and secondary front yards shown in red. Planning Commission changes shown as underline with shading.

Sec. 2.3 Definitions

Mechanical equipment means a system or part of a system installed outside of a structure and utilized to provide control of environmental conditions and related process within a structure. Equipment can include air conditioning units, emergency generators, heat pumps, ductless heat pump (mini-splits), water pumps or other similar things.

Sec. 3.9. Accessory uses and structures.

3.9.1. General Standards.

- A. *Subordinate to Principal Use.* Accessory uses and structures must be subordinate to the principal use and structure on the subject lot in terms of area, extent and purpose.
- B. *Time of Establishment.* Accessory structures must be constructed in conjunction with or after the principal building, and may not be constructed prior to the construction of the principal building. Accessory uses may be established no earlier than the commencement of the principal use.

3.9.2. Building Coverage. The combined footprint of all detached covered accessory structures, and all porches or decks six inches or more above finished grade, may not exceed the building footprint of the principal building.

3.9.3. Location in Required Setbacks.

- A. Accessory structures, except for fences, trellises not more than eight feet in height, and arbors not more than ten feet in height, may not be located in the front yard or secondary front yard. The total width of trellises and arbors exempt under this section may not total more than 25 percent of the width of the principal structure on the lot.
- B. Accessory structures not more than 14 feet in height may be located in required rear setbacks if they do not occupy more than 33 percent of the actual rear yard area and are located at least five feet from any lot line. Except, in those instances where the rear lot line is coterminous with an alley right-of-way, the accessory structure may be as close as one foot to such rear lot line.
- C. Mechanical structures equipment such as heat pumps, air conditioners, emergency generators, and water pumps may only be located in rear or side yards and may be within rear or side yard setbacks if located at least three feet from rear and side lot lines.
- D. Fences or screening walls, as permitted by chapter 12 of the Code of Ordinances, may be located in any required setback.

(Ord. No. 2022-5, § 4, 3-28-22)

ARTICLE XXI. NONCONFORMING USES

Sec. 21.1. Purpose.

The purpose of this article is to provide for the regulation of legally nonconforming structures, lots of record, and uses, and also to specify circumstances and conditions under which nonconformities shall be permitted to continue. The zoning regulations established by this ordinance are designed to guide the future use of land located in the City of St. Joseph by encouraging appropriate groupings of compatible and related uses and to promote and protect the public health, safety, and general welfare. The continued existence of nonconformities is frequently inconsistent with these purposes; therefore, the gradual elimination of nonconformities is generally desirable. The regulations of this article permit nonconformities to continue, but are intended to restrict further investments which would make them more permanent.

Sec. 21.2. Reserved.

Sec. 21.3. Nonconformities.

Except as otherwise provided in this article, any nonconforming lot, use, or structure lawfully existing on the effective date of this ordinance or subsequent amendment may be continued so long as it remains otherwise lawful. All nonconformities shall be encouraged to convert to conformity wherever possible and shall be required to convert to conforming status as required by this article. A nonconformity shall not be enlarged, expanded, or extended, including extension of hours of operation, unless the change is in compliance with all requirements of this ordinance. Normal maintenance and incidental repair of a nonconformity shall be permitted, provided that this does not violate any other section of this article.

- A. Nothing in this article shall be deemed to prevent the strengthening or restoration 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 the structure to be unsafe and orders its restoration to a safe condition, provided that the restoration is not otherwise in violation of the various provisions of this section prohibiting the repair or restoration of partially damaged or destroyed structures.
- B. Nothing in this article shall be deemed to prevent the addition of required off-street parking or loading spaces, so long as there is no expansion of the nonconformity, and subject to the restrictions of Article XVIII, Off-Street Parking and Loading.
- C. A nonconformity shall not be moved in whole or in part, for any distance whatsoever, to any other location on any other lot unless the net effect of the change shall be to reduce the nonconformity on the current lot; and the entire relocated structure and/or use shall thereafter conform to the regulations of the zoning district in which it is relocated. Any nonconformity reduced or eliminated as a result of the move shall not be re-established in its nonconforming condition.
- D. A nonconformity shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same lot, unless the net effect of the change shall be to reduce the nonconformity.
- E. No use, structure, or sign which is accessory to a principal nonconforming use or structure shall continue after the principal use or structure has ceased or terminated, unless it shall thereafter conform to all regulations of this ordinance.
- F. The burden of establishing that any nonconformity was legally established shall, in all cases, be upon the owner of such nonconformity and not upon the City of St. Joseph.
- G. A nonconforming use shall not be changed to any use other than a use allowed in the zoning district in which it is located. For the purposes of this section, reducing the number of residential units on a lot shall not be considered a change of use. For example, a three-unit apartment is in the multiple-family

dwellings use class and therefore is a nonconformity in the R1 Single-Family Residence Zoning District. Eliminating one residential unit would change the structure to a duplex, which is in the two-family dwellings use class, which is also a nonconformity in the R1 Zoning District. This change would be allowed.

- H. Nonconforming structures shall not be re-established in their nonconforming conditions in any zoning district after damage, destruction or demolition if the estimated expense of reconstruction exceeds 50 percent of the appraised replacement cost of the structure. For the purposes of this section, "damage or destruction" does not include dismantlement.
- I. If a nonconforming use ceases for any reason for a period of more than twelve (12) consecutive months, such discontinuance shall be considered conclusive evidence of an intention to abandon the nonconforming use. At the end of the 12-month period, the nonconforming use shall not be re-established and any future use shall be in conformity with the provisions of this ordinance.

Sec. 21.4. Exceptions.

The following exceptions to Section 21.3 apply:

- A. A nonconforming residential use, building or structure in the C Commercial or CO Commercial Office Zoning Districts is exempt from the provisions of Sections 21.3.H and 21.3.I.
- B. Any nonconforming building or structure in the OS Open Space District is exempt from the provisions of 21.3.H, unless the structure is prohibited under areas of special flood hazard, high risk erosion area, sand dune area, or other state or federal laws or regulations.
- C. A limited neighborhood business shall be exempt from Section 21.3 with regard to the nonconforming use; it shall remain subject to Section 21.3 for the purpose of dimensional nonconformities.
- D. A nonconforming building or nonconforming structure located in the DH-OD Downtown Height Overlay District and which is of such height that special approval under Section 9.4 of this ordinance would be required to construct a new building or structure of that height in that location is partially exempt from Section 21.3.H with respect to that height in that it may be restored following damage or destruction; it may not be restored following demolition. To benefit from the exemption under this section, the building or structure must be restored to an exterior appearance and design as similar as possible to its previous configuration and shall not increase in height or volume as a result of restoration; this section is intended only to preserve the appearance of existing nonconformities in the DH-OD Overlay District and shall not be used to allow the substitution of a new, dissimilar nonconformity.

Sec. 21.5. Reserved.

Sec. 21.6. Nonconforming lots.

A nonconforming lot may be used for any principal use permitted in the zoning district in which the lot is located. A nonconforming lot may not be divided, combined with another lot, or otherwise altered unless the result is to lessen the nonconformity of the lot(s) involved.

Sec. 21.7. Repairs and maintenance.

- A. *Nonconforming Uses.* Repairs, maintenance and replacement may be performed on any building or structure devoted in whole or in part to a nonconforming use, including repair or replacement of roofs, doors, windows, interior and exterior walls, foundations, fixtures, wiring, plumbing and similar appurtenances and features. However, the dimensions or volume of the building or structure as it existed on the effective date of this ordinance or subsequent amendment shall not be increased in any way. Except that a building or structure

occupied by a limited neighborhood business may be repaired, replaced, or expanded so long as no dimensional nonconformity is created or increased. If the building or structure is itself nonconforming, Section 21.7.B also applies.

- B. *Nonconforming Structures.* Repairs and maintenance may be performed on any nonconforming building or structure, including repair or replacement of interior walls, roofs, doors, windows, fixtures, wiring or plumbing and similar appurtenances and features, or repair of exterior walls and foundations. No dimensional nonconformity shall be increased in any way. Portions of the structure necessary to allow the reasonable use of the structure, such as an exterior stairway or steps, may be removed and replaced in their previous location, or with such minor modifications as may be needed to meet current standards. The intention of this section is to allow the maintenance and rehabilitation of existing nonconforming structures but not to allow the replacement of foundations and exterior walls in such a way as to effectively allow a new structure to be constructed in a nonconforming location under the guise of rehabilitation.

- C. **Nonconforming Mechanical Equipment.** ~~Mechanical equipment Repairs and maintenance may be performed on mechanical equipment~~ that is nonconforming because it is located less than three feet from an interior side lot line or rear lot line ~~or within the front or secondary front yard may be repaired, maintained, and replaced. Replacement of mechanical equipment may be performed on mechanical equipment that is nonconforming because it is located less than three feet from an interior side lot line or rear lot line,~~ if it meets the following conditions:

1. ~~It is an air conditioning unit, heat pump or ductless heat pump (mini-split), and:~~
2. ~~It does not prevent free ingress or egress from any building, door, window, fire escape, or interfere with an opening required for ventilation; and~~
3. ~~Any replaced equipment is no closer than one foot from the side or rear lot line than the equipment being replaced; or~~
4. ~~Any replaced equipment is no closer than one foot from the front or secondary front lot line in the R1-C, R1-D or R1-E Single-Family and R-2 Two Family Residence Districts or no closer than 15 feet from the front or secondary front lot line in the R1-A or R1-B Single Family Residence Districts.;~~

~~The intent of this section is to allow existing nonconforming mechanical equipment to be repaired and maintained in its current location, and to require existing nonconforming mechanical equipment to be replaced in a compliant location unless the mechanical equipment being replaced has a minimal safety, health, or nuisance impact on adjacent properties. Nonconforming mechanical equipment emitting carbon monoxide, fumes, gasses, extreme heat, excessive noise, or creating similar conditions are intentionally omitted and may not be replaced under this section.~~

Sec. 21.8. Change of tenancy or ownership.

There may be a change of tenancy, ownership, or management of any Nonconformity provided there is no change in the nature of character of the nonconformity, unless such change is allowed under this ordinance.

Sec. 21.9. Elimination of nonconformities—Uses, buildings or structures.

For the purpose of removing any nonconforming use, building or structure, the city commission may acquire private property or an interest in private property by purchase, condemnation, or other means. The cost, expense, or a portion thereof may be paid from general funds or assessed to a special district in accordance with applicable statutory provisions and relevant provisions of the city charter.