

**ARTICLE 3 NONCONFORMITIES AND LOTS OF RECORD**

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**Section 1 Nonconforming Uses and Structures**

**Explanatory notes:**

**Difference between use and structure:** It is sometimes confusing to distinguish between structures and uses since the use within a structure is often considered as one and the same with the structure. For the purpose of this ordinance, a use can occur in a structure or on land without structures. A use is the activity or purpose for which land or a structure is designed, arranged, or intended, or to which purpose land or a structure is occupied, maintained, leased, or operated.

**Example of uses of lesser and greater intensity:** If the original use is a single-family residence, a use of lesser intensity would be agriculture or open space without a residence. A use of greater intensity would be a two-family residence.

Nonconforming uses and nonconforming structures are uses and structures lawfully in existence prior to the adoption of this Ordinance that do not meet the requirements of this Ordinance for the zoning district in which they are located. Nonconforming uses and structures shall be allowed to continue if they comply with the following provisions:

1. **Conformity encouraged.** All nonconforming uses and nonconforming structures are encouraged to convert to conformity whenever possible.
2. **Change of title no effect.** Change of title or change of right to possession shall not affect the allowed continuation of a nonconforming use.
3. **Nonconforming uses.** Nonconforming uses shall comply with the following requirements:
  - (a) **Required discontinuance of nonconforming uses on land with no structures.** A nonconforming use that occurs on land where no structure exists, other than an incidental or accessory building, shall be discontinued within five (5) years from date of official notice issued by Linn County to discontinue such use.
  - (b) **Substitution of uses within a structure.** If no structural alterations are made, a nonconforming use of a structure may be changed to a conforming use.
  - (c) **Discontinuance.** If a nonconforming use is voluntarily discontinued for a continuous period of twelve (12) months or more, it shall not be re-established and any subsequent use of the building, structure, or land shall be conforming.



(Amended by Ordinance #13-8-2015, Effective August 17, 2015)

(Amended by Ordinance # 3-03-2010, Effective April 01, 2010)

4. **Alteration of a nonconforming structure.** A nonconforming structure may be structurally altered or enlarged, provided it is structurally altered or enlarged in a way that will not increase or extend its nonconformity, and provided either (a) or (b) below applies, and any related special exception is approved by the Board of Adjustment:

- (a) **Permitted use.** The use of the structure shall be a use permitted in the zoning district in which the structure is located.

**Explanatory notes:**

**Def. – Permitted use:** Any use which complies with the applicable regulations of this Ordinance governing permitted uses in the zoning district in which such use is located.

**Def. – Zoning district:**

A part, zone, or geographic area within the County within which certain zoning or development regulations apply.

- (b) **Legal requirement.** The structural change is required by law or court order.

(Amended by Ordinance #13-8-2015, Effective August 17, 2015)

5. **Restoring damaged buildings.** Any nonconforming structure damaged by fire, flood, explosion, war, riot, or Act of God to an extent equal to or greater than fifty percent (50%) of its market value, shall not be restored or reconstructed and used as before such occurrence; but if damaged less than fifty percent (50%), it may be restored, reconstructed or used as before provided that restoration or reconstruction shall be completed within one (1) year of such damage.

6. **Mobile homes.** Nonconforming mobile homes shall comply with the following requirements:

- (a) **Replacement and alteration.** Nonconforming mobile homes shall not be replaced with a different mobile home or structurally altered after passage of this Ordinance.

- (b) **Located in a mobile home park.** Except as provided in subsection 6(c), immediately below, all mobile homes used for residential purposes shall be located in an approved mobile home park subject to the provisions in Article 7, Section 15 of this Ordinance.

- (c) **Mobile home on a farm.** A mobile home located on a farm, shall become an illegal nonconforming use if the tract of land upon which the mobile home is located is divided and is no longer considered to be part of a farm unit. Such nonconforming mobile home shall be removed within twelve (12) months from the date of official notice issued by the Linn County Zoning Administrator to remove the mobile home.

**Explanatory note:**

**Def. - Mobile home:** A transportable, single family dwelling unit suitable for year round occupancy having no foundation other than wheels, jacks, piers, or skirting and containing water supply, waste disposal, heating and electrical conveniences. A mobile home shall be construed to remain a mobile home, subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

(Amended by Ordinance #13-8-2015, Effective August 17, 2015)

7. **Communication towers.** Nonconforming communication towers and other wireless communication facilities shall comply with the following requirements:

- (a) **Structural alteration.** Any nonconforming communication tower may be structurally altered in order to meet the most current Linn County Building Code, or electronic industry association



structural standards for steel structures, or other state or federal agency regulation, requirement, or guideline.

**Explanatory note:**

**Structural alteration of communication towers** is allowed when required to conform to new safety standards.

*(Amended by Ordinance #13-8-2015, Effective August 17, 2015)*

**(b) Substitution or reconstruction.** The supporting structure of any nonconforming tower or wireless facility constructed in accordance with the provisions of Article 5, Section 4, subsection 11, of this Ordinance, may be substituted or reconstructed, provided all of the following criteria are met:

- (i) Notice.** Written notice is provided by the tower or facility owner to the Linn County Planning and Development Department. Such notice shall outline the basis for the reconstruction or substitution; and
- (ii) Time frame.** Such reconstruction or substitution shall be substantially completed within twelve (12) months of the date of the written notice set forth in subsection 7(b) (i), immediately above; and
- (iii) Height.** The reconstruction or substitution shall not exceed the height of the original tower; and
- (iv) Use.** The use of the reconstructed or substituted nonconforming communication tower shall be for the same general technological use as before the reconstruction or substitution occurred.

*(Amended by Ordinance #13-8-2015, Effective August 17, 2015)*

**(c) Special exception or variance.** Proposed substitution, reconstruction, or enlargement of the supporting structure of any nonconforming tower or wireless communication facility that does not meet the criteria in subsection 7(b) immediately above, requires a special exception or variance, as provided in Article 4, Section 10. The application for a special exception or variance must be approved prior to any action being taken by the applicant.

*(Amended by Ordinance #13-8-2015, Effective August 17, 2015)*

**(d) Modification or replacement of transmission equipment.** Antennas or other transmission equipment associated with the supporting structure of a legal nonconforming tower or wireless facility, including equipment installed for collocation, may be removed, modified, or replaced provided all of the following criteria are met:

- (i) Application.** An application is provided by the tower or facility owner to the Linn County Planning and Development Department. Such application shall outline the basis for the modification or replacement; and
- (ii) Height and width.** The modification or replacement of equipment will not substantially change the physical dimensions of the tower or base station. "Substantial change" shall be as described in Report and Order FCC 14-153 pertaining to the Spectrum Act/Middle Class Tax Relief and Job Creation Act.
- (iii) Conditional Use Permit for a Minor or Insignificant Modification required.** Proposed modification or replacement of transmission equipment associated with the supporting structure of a legal nonconforming tower or wireless facility requires a Conditional Use Permit for a Minor or Insignificant Modification, as provided in Article 4, Section 9. The application for a Conditional Use Permit must be approved prior to any action being taken by the applicant.



## Section 2 Nonconforming Lots and Legal Lots of Record

### Explanatory notes:

A **legal lot of record** is an exception to the nonconforming lot definition. A legal lot of record is a nonconforming lot that is treated as conforming.

The **definition** of a legal lot of record follows the 7/1/2002 amendment to the Linn County Zoning Ordinance.

(Amended by Ordinance # 15-12-2015, Effective January 1, 2016)

Nonconforming lots are lots or parcels of land that do not meet the minimum lot width, length or area requirements of this Ordinance for permitted uses in the zoning district in which the lot or parcel is located. Nonconforming lots or parcels shall not be built on, and shall not be considered to have development rights, except for those existing nonconforming lots or parcels that are legal lots of record meeting the following criteria:

1. **Definition of legal lot of record.** A nonconforming lot or parcel is considered a legal lot of record if any of the following conditions are met:

- (a) **Lots in existence prior to zoning.** Any lot, the contract or deed to which was recorded in the office of the County Recorder prior to July 14, 1959, the effective date of the first adoption of zoning by Linn County, and has not been changed since; or

(Amended by Ordinance # 3-3-2006, Effective April 01, 2006)

(Amended by Ordinance # 4-6-2011, Effective July 01, 2011)

- (b) **Residual parcels.** Any residual parcel that was reduced from a lot on a single deed that was legally recorded in the office of the County Recorder prior to July 14, 1959, or from any lot legally created under ordinances in effect prior to the adoption of this Ordinance, and was created by a taking or dedication for a public right-of-way or public purposes, or was reduced pursuant to a court order; or was reduced in size by the completion of a Minor Boundary Change that meets the Conditions for Approval in Article 4, Section 8E, subsection (2) of this ordinance; or

(Amended by Ordinance # 3-3-2006, Effective April 01, 2006)

- (c) **Enlarged parcels.** Any parcel that was enlarged from a lot on a single deed that was legally recorded in the office of the County Recorder prior to July 14, 1959, or from any lot legally created under ordinances in effect prior to the adoption of the Ordinance, voluntarily or pursuant to a court order or other legal requirement; or

(Amended by Ordinance # 3-3-2006, Effective April 01, 2006)

- (d) **Bisected lot.** Any lot that was legally recorded in the office of the County Recorder prior to July 14, 1959, or any lot legally created under ordinances in effect prior to the adoption of this Ordinance, and remains as a single lot but is rendered nonconforming by a taking or dedication for a public right-of-way or public purposes; or

### Explanatory note:

The provision for **bisected lots** has been added to recognize the effect of public action, most often in the form of acquisition of road right-of-way, on the rights of owners of previously conforming lots. The intent is to allow the landowners to develop as would have been allowed prior to the public action, but not to increase the development rights associated with the parent parcel, and to allow residual parcels that may be physically cut off to be sold for agricultural or open space purposes.

- (e) **Lots legally permitted under prior ordinances.** Any lot legally created under ordinances in effect prior to the adoption of this Ordinance



2. **Standards for use and development of legal lots of record.** A lot of record which has less area than required by this Ordinance may be used for uses permitted in the zoning district where the lot of record is located if all of the following provisions of this Ordinance are met:

**Explanatory Note:**

**Developing a lot of record:** If you own a lot of record that meets the definition in Section 2, subsection 1., then you may develop the lot according to the standards in Section 2, subsection 2.

- (a) **Minor site plan required.** A minor site plan meeting the standards in Article 4, Section 7, shall be submitted and reviewed prior to the issuance of any zoning permits;

*(Amended by Ordinance # 13-9-2006, Effective October 01, 2006)*

- (b) **Setbacks.** Minimum structure setbacks for the zoning district where the lot is located shall be met; however, where the minimum side or rear yard setbacks cannot be met, the following setbacks shall prevail:

(i) **Side yard.** The sum of the side yard widths of any such lot or plot need not exceed thirty percent (30%) of the width of the lot but in no case, less than ten percent (10%) of the width for any one side yard.

(ii) **Rear yard.** The depth of the rear yard of any such lot need not exceed twenty percent (20%) of the depth of the lot, but in no case less than ten feet (10').

- (c) **Floodplain.** No dwelling unit shall be constructed in a flood plain without a floodplain permit;

- (d) **Access.** Road access to the site meets the requirements in Article 5, Section 1, subsection 5;

- (e) **Sewage and water.** Adequate sanitary sewage and water facilities can be provided as determined by the Health Department; and

- (f) **Bisected lots.** Lots of record that have been bisected by a taking or dedication for a public purpose shall meet the following additional requirements if the landowner wishes to legally separate the portions of the lot of record physically created by the taking or dedication:

(i) **Assignment of development right.** The landowner shall choose to assign the original development right to one portion of the parent parcel;

(ii) **Minor subdivision.** The physically separate portions of the parent parcel shall be legally separated through a minor subdivision process as provided for in Article 4, Section 8C; and

(iii) **Undeveloped parcel not a legal lot of record.** The parcels created through the minor subdivision process to which the development right has not been assigned shall not be considered legal lots of record.

### Section 3 Seasonal Homes, Seasonal Cabins, and Seasonal Cottages

Existing lots of record and existing homes, cabins, and cottages in the designated seasonal cabin areas, as defined in this Ordinance, shall be considered conforming land uses provided they comply with the regulations in Article 7, Section 12. Lots or cabin sites that do not conform to these standards shall be subject to the standards of Article 3.

