

ORDINANCE 2021 - 4

AN ORDINANCE AMENDING TITLE FIVE - CHAPTER 1141 [NONCONFORMING AND EXISTING USES] OF THE PLANNING AND ZONING CODE OF THE CODIFIED ORDINANCES OF THE CITY OF PARMA HEIGHTS.

WHEREAS, the Council is desirous of amending Chapter 1141 [Nonconforming and Existing Uses] of the Codified Ordinances to update Title Five - Chapter 1141 of the Planning and Zoning Code; and

WHEREAS, the said proposal has been properly submitted to the Municipal Planning Commission for its approval and report, which Commission after due consideration and public hearing thereon has submitted its report to Council as hereinafter set forth; and

WHEREAS, notice of public hearing before this Council on said proposed amendment has been duly published, and pursuant thereto a full public hearing thereon has been had as prescribed by law; and

WHEREAS, it is the opinion of this Council that the health, safety and convenience, comfort, property and general welfare of this community will be preserved and furthered by the adoption of the said amendment will enhance opportunities for future development in the city.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARMA HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. Chapter 1141 [Nonconforming and Existing Uses] of Title Five of the Codified Ordinances [Planning and Zoning Code] shall be amended and shall be captioned as Chapter 1141 [Nonconforming Uses, Structures and Lots], and shall read as set forth in Exhibit A, which is attached to this Ordinance.

Section 2. Chapter 1141 of the Parma Heights Codified Ordinances, as it has heretofore existed is repealed.

Section 3. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. This Ordinance shall be in effect from and after the earliest period provided by law.

PASSED: 1-25-2021


PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohden
CLERK OF COUNCIL

1-25-2021
APPROVED

FILED WITH
THE MAYOR: 1-25-2021



MAYOR

EXHIBIT A

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CHAPTER 1141 Nonconforming Uses, Structures and Lots

1141.01 Intent.	1141.06 Nonconforming parking facilities.
1141.02 Lawful nonconformance; permit required for change.	1141.07 Nonconforming signs.
1141.03 Buildings under construction.	1141.08 Nonconforming lots.
1141.04 Nonconforming uses.	1141.09 Existing use deemed conditional use; permit required for change.
1141.05 Nonconforming buildings and structures.	

1141.01 INTENT.

The purpose of this chapter is to protect the rights of property owners who lawfully established, and have continuously maintained in a lawful manner, a use, structure or lot which, due to the adoption of or amendment to this Code, is no longer permitted. Such legal nonconforming use, structure or lot shall continue to operate under the provision of law under which the nonconforming use, structure or lot was recognized so long as the nonconforming use, structure or lot is not in violation of such provision of law, the adoption of this chapter notwithstanding.

- a) Nothing in this chapter prohibits the voluntary compliance with any future ordinance, regulation, or incentive.
- b) The regulations of this Chapter are intended to restrict further investments that would make nonconformities more permanent in their location in inappropriate districts as well as to afford opportunities for creative use and reuse of those other nonconformities that contribute to a neighborhood and are consistent with the goals of the Comprehensive Plan.
- c) A nonconforming use may be nonconforming either by virtue of characteristics of the physical structure that fail to comply with applicable legal standards, or due to a use of the structure that fails to comply with applicable land use restrictions.

1141.02 LAWFUL NONCONFORMANCE; PERMIT REQUIRED.

- a) A nonconforming use, structure or lot does not include nonconformity with regulations pursuant to a legally granted variance from a zoning regulation.
- b) Ordinary repairs, repair or replacement of non-bearing walls, fixtures, wiring, or plumbing may be performed on a nonconforming structure or on any portion of a structure that contains a nonconforming use provided that the cubic content shall not be increased and no structural parts shall be replaced except when required by law to restore such building or structure to a safe condition or to make the building or structure conform to the regulations of the district in which it is located.
- c) No change may be made to a nonconforming use or structure without review and authorization by the Board of Zoning Appeals unless the use of such building or structure is changed to a conforming use.
- d) Such authorization shall be issued only if the Board finds, after a public hearing, that the proposed change, extension or alteration is no more harmful or objectionable than the current nonconforming use or structure and only if the estimated cost of the proposed change, extension or alteration does not exceed twenty-five (25) percent of the assessed value of the building or structure.

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1141.03 BUILDINGS UNDER CONSTRUCTION.

No change shall be required by this Zoning Code in the plans, construction or designated uses of a building or structure which does not conform to the regulations of this Zoning Code for the district in which its premises are located, provided a building permit was issued and construction on such building or structure was begun before the effective date of this Zoning Code or amendment thereto and completed within six months thereof. For the purposes of this Zoning Code such construction shall be deemed an existing nonconforming use.

1141.04 NONCONFORMING USES.

- a) Any use lawfully existing prior to the effective date of this Zoning Code (Ordinance 1953-29, passed June 1, 1953) or any use within a district changed by amendment to this Zoning Code may be allowed or continued although the use does not conform to the new regulations of the district in which it is located.
- b) Expansion of Use. No nonconforming use of a building, structure or land shall hereafter be expanded, enlarged or increased in intensity, provided however that a nonconforming use may be extended throughout those parts of the building which were manifestly arranged or designed for such use prior to the effective date of this Zoning Code (Ordinance 1953-29, passed June 1, 1953) or to the enactment of subsequent amendments to this Zoning Code if no structural alterations except those required by law or ordinance are made therein.
- c) Change in Use.
 - i) A nonconforming use may be changed to a use conforming with the regulations established for the district in which the nonconforming use is located, provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use.
 - ii) A nonconforming use may be changed to another nonconforming use, provided the Board of Zoning Appeals determines that the new use is more consistent with the spirit of the Zoning Code, the neighborhood, and the City's Master Plan.
 - iii) A change in ownership or occupancy of the same use shall not in itself constitute a change in use.
- a) Moving. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of adoption or amendment of the Planning and Zoning Code.
- b) Damage or Destruction. When a building or structure occupied by a nonconforming use is damaged, destroyed or removed by more than fifty percent of its replacement value, by whatever cause, such building or structure shall not be reconstructed, restored or replaced, except by a conforming building, structure or use.
- c) Abandonment. A nonconforming use shall be considered abandoned when the intent of the owner to discontinue the use for at least six months is apparent, when the use has been replaced by a conforming use or when the characteristic equipment and furnishings of the nonconforming use of a building, structure or premises has been changed to a more restricted use.
 - i) Intent to resume operation or use shall not affect this provision.
 - ii) Reuse of such land or building shall thereafter conform to all regulations for the district, and any nonconforming use shall not be resumed.

1141.05 NONCONFORMING BUILDINGS AND STRUCTURES.

Where a lawful structure occupied by a use permitted in the zoning district in which it is located exists on the effective date of adoption or amendment of any provision of the Zoning Code that could not be built under the terms of said provision by reason of restrictions on size, height, setbacks, or lot coverage, such structure may be

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continued so long as it remains otherwise lawful, and in compliance with the following:

- a) No such nonconforming structure shall be enlarged, altered, or reconstructed in a way that increases its nonconformity, except as otherwise provided below.
- b) Structural alterations of a building or structure that is nonconforming solely because of its encroachment in a required setback area may be extended in any lawful manner that does not further encroach in that setback.
- c) A nonconforming building or structure that is damaged, destroyed or removed by more than fifty percent of its replacement value, by whatever cause, shall not be reconstructed, restored or replaced, except by a conforming building or structure.
- d) If a nonconforming structure becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

1141.06 NONCONFORMING PARKING FACILITIES.

A building or use existing lawfully at the time this Zoning Code, or an amendment thereto, became or becomes effective, but which does not comply with off-street parking regulations for the district or use in which it is located may continue without such parking facilities. In the event an existing building is altered or a use is changed or substituted in accordance with these regulations, then additional off-street parking spaces shall be provided for the expansion as required in Section 1187.06.

1141.07 NONCONFORMING SIGNS.

A sign, lawfully existing at the time this Planning and Zoning Code, or any amendment thereto, became or becomes effective, but which fails to conform to the sign regulations of the district in which it is located is a nonconforming sign. Nonconforming signs shall comply with the regulations set forth in Section 1383.30, Nonconforming Signs.

1141.08 NONCONFORMING LOTS.

Any lot of record existing at the time of the adoption of any provision of this Zoning Code, which does not meet the requirements of said provision, shall be considered buildable provided that the site plan meets all setback requirements established by the Zoning Code.

1141.09 EXISTING USE DEEMED CONDITIONAL USE; PERMIT REQUIRED FOR CHANGE.

Any lawfully existing use that, at the time of its establishment, was not classified as a conditional use, but which now, because of the passage of a zoning amendment, is listed as a conditional use in the district in which it is located, shall be deemed without further action to be a conforming use. Any change, modification, enlargement or alteration of such use, site development conditions or signs, or change in ownership shall only be permitted upon review and approval by the Planning Commission according to the procedures for conditional uses set forth in Chapter 1135.

*** End of Chapter ***