

## 19.56 - Legal Nonconformities

### Chapter 19.56 - LEGAL NONCONFORMITIES

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**19.56.010 Purpose and intent.** The purpose of this chapter is to address uses, structures, lots, signs, and other characteristics of property that were lawfully established but do not conform to one or more provisions of the current Evans Municipal Code, as amended. This chapter is intended to provide for the health and safety of the public and to reasonably safeguard the investment of property owners. (Ord. 523-11: 499-10: 320-05: 015-00: prior code 15.72)

#### **19.56.020 Definitions.**

- A. Legal nonconforming shall collectively refer to any and all legal nonconforming lots, legal nonconforming signs, legal nonconforming structures, and other characteristics of a property that were legally established and that no longer conform to one or more standards of the Evans Municipal Code, as amended. Examples of other characteristics of a property which may be considered legal nonconforming at the discretion of the City based on current codes include buffer yards, landscaping, and required off-street parking.
- B. Legal nonconforming lots shall mean lots of record that have been legally established but no longer meet one or more dimensional standards of the Evans Municipal Code, as amended.
- C. Legal nonconforming signs shall mean signs that were legal at the time and place they were installed and that no longer meet one or more requirements of Chapter 19.45, Signs, of the Evans Municipal Code, as amended.
- D. Legal nonconforming structures shall mean buildings, fences, walls, and other structures, that were legal at the time and place they were established but that no longer meet one or more standards of the Evans Municipal Code, as amended, except those structures deemed to be unsafe or a nuisance as determined by the Evans Building Official based on any applicable codes.
- E. Legal nonconforming use shall mean a use that was legally established but would no longer be permitted under current regulations (or that now requires Special Use approval) in the zoning district in which it is located, but may continue provided such use is not discontinued for a period of three or more consecutive months in accordance with Section 19.56.040 of this chapter. (Ord. 523-11: 499-10: 320-05)

**19.56.030 Burden of proof.** The burden of proof regarding whether a use, structure, lot, sign, or other characteristic of property is legally established as nonconforming shall be the responsibility of the owner, not the City. The City Manager, or his designee, shall make the determination as to whether the evidence is sufficient to consider the property legal nonconforming. Such determination may be appealed to the Planning Commission by the property owner within 30 days of receipt of written notice from the City Manager by the property owner filing written notice of appeal with the City Clerk. (Ord. 523-11: 499-10: 320-05)

**19.56.040 Legal nonconforming uses, signs and structures.** Legal nonconforming uses, signs and structures shall be allowed to continue in accordance with the following limitations:

- A. Expansion of legal nonconforming uses. Expansion of a legal nonconforming use is prohibited, except as stated below:
  - 1. The floor area for a legal nonconforming use may not be expanded.
  - 2. Expansion of a legal nonconforming use may be permitted by approval of a Special Use, in accordance with Chapter 19.44 of the Evans Municipal Code. Examples of such expansion include, but are not limited to, increased density or intensity, and extension of hours of operation.
- B. Expiration of legal nonconforming status. A legal nonconforming use, sign or structure which ceases operations

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or ceases to be occupied for a period of three or more consecutive months shall no longer be considered legal nonconforming and shall be therefore prohibited.

C. Change of legal nonconforming use. The use of a property containing a legal nonconforming use may not be changed to a new legal nonconforming use.

D. Relocation prohibited. A legal nonconforming use may only be moved to a property in a zoning district in which the use is permitted by right in that zoning district.

E. Legal nonconforming mobile home parks. Mobile home parks that were lawfully established shall be considered legal nonconforming with the following limitations:

1. Such parks shall have in place directory poster and space identification in accordance with Section 18.30.080 of the Evans Municipal Code.

2. Mobile homes that are removed from such parks shall only be replaced with mobile homes that comply with all requirements of Chapter 19.22 of the Evans Municipal Code to the extent practical, as determined by the City, in addition to the requirements of Title 15 of the Evans Municipal Code. (Ord. 523-11: 499-10: 320-05: 015-00)

**19.56.050 Legal nonconforming structures.** Legal nonconforming structures shall be subject to the following regulations:

A. Enlargement. Any enlargement, alteration, or expansion of a legal nonconforming structure that increases the degree of nonconformity shall be prohibited.

B. Damage or destruction. In the event that a legal nonconforming structure is damaged, destroyed or removed, by any means, to an extent of more than 50 percent of its structural replacement value, such structure shall not be restored or replaced except in conformance with the applicable regulations of the Evans Municipal Code. Such value shall be determined by the City based on Weld County Assessor records. The owner may appeal such determination by filing a written appeal with the City Clerk and by submitting an independent, certified real estate appraiser's written opinion of valuation.

C. Relocation. A legal nonconforming structure shall not be moved to a different property in the City unless it is situated on the new property in conformance with the regulations of the zoning district in which that property is located.

D. Maintenance, restoration, and remodeling of legal nonconforming structures. Maintenance, restoration or remodeling projects that cost 25 percent or less of the current fair market value of the structure shall not require any correction to existing nonconforming parking, landscaping or screening/buffering other than what may be required by fire and building codes. The cost of the maintenance, restoration or remodeling shall be as shown on the approved building permit application and the current fair market value of the existing structure shall be based on improvement value as determined by the records of the Weld County Assessor or an appraisal performed by a certified general appraiser licensed to do business in the State of Colorado utilizing the "cost" approach. This appraisal shall be performed at the applicant's expense. The Weld County Assessor's appraisal may be used if not more than 12 months old.

1. Maintenance, restoration or remodeling projects that cost more than 25 percent, but less than 75 percent, of the current fair market value of the structure shall require a corresponding percentage increase in compliance with all design standard requirements of this code including but not limited to parking, landscaping, paint and signage until the site achieves 100 percent compliance. For example, if a site has only 20 percent compliance with the codes and the cost of the remodeling is 30 percent of the value of the building, then an additional 30 percent compliance is required for a total of 50 percent.

2. Maintenance, restoration or remodeling projects that cost 76 percent or greater of the current fair market value of the structure shall require 100 percent compliance with the design standard requirements of this code.

E. Properties that are physically constrained from complying with these provisions shall comply to the maximum extent practical as determined by the Community and Economic Development Director using the following criteria:

1. Is the general intent of the requirement being met by the applicant?

2. Are there other upgrades, amenities, or public benefits being provided, such as upgrades to building facade, relocating landscaping on site, increasing plant sizes and/or planting density, public art, etc.?

3. What other alternatives have been considered that would meet the current standards?

**19.56.060 Legal nonconforming signs.** Legal nonconforming signs shall be subject to the following regulations:

A. Alterations. A legal nonconforming sign may be altered in a way that does not increase its height or size, or change its perimeter shape or location, without bringing the entire sign into conformance, provided that the cost of such alteration is less than 50 percent of the replacement cost of the sign. A sign or portion of a sign may be altered to change its copy or to decrease its nonconformity.

B. Damage or destruction. In the event that a legal nonconforming sign is damaged, destroyed or removed, by any means, to an extent of more than 50 percent of its structural replacement value, such sign shall not be restored or replaced except in conformance with the applicable regulations of the Evans Municipal Code. Such value shall be

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determined by the City based on building permit records and/or testimony of sign contractor(s).

C. Relocation. A legal nonconforming sign shall not be moved to a different property in the City unless it is situated on the new property in conformance with the applicable regulations of the Evans Municipal Code. (Ord. 523-11: 499-10: 320-05)

**19.56.070 Legal nonconforming lots.** Two or more adjacent lots under common ownership and contained in one deed may be considered a single lot for the purpose of obtaining building permits, so long as the parcel contains the minimum area required for lots in the zoning district in which it is located. In such cases, setbacks shall be measured from the perimeter boundary of the parcel and a lot line adjustment or subdivision must be completed prior to issuance of a Certificate of Occupancy. (Ord. 523-11: 499-10: 320-05)

### Code Documents



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