

# Planning Commission

## Regular Meeting Agenda Thursday, June 2, 2016 7:00 p.m., Council Chambers



City of South Haven

1. **Call to Order**
2. **Roll Call**
3. **Approval of Agenda**
4. **Approval of Minutes** – May 5, 2016 Regular Meeting and April 28, 2016 Special Meeting
5. **Interested Citizens in the Audience Will be Heard on Items Not on the Agenda**
6. **New Business – Public Hearings**

The Planning Commission will hold public hearings on the following zoning and city code of ordinances amendments:

- a) Nuisance Gathering Ordinance
- b) Noise Ordinance
- c) Nonconforming Lots, Uses and Structures

7. **Other Business – None**
8. **Commissioner Comments**
9. **Adjourn**

RESPECTFULLY SUBMITTED,  
Linda Anderson, Zoning Administrator

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## Planning Commission

### Regular Meeting Minutes Thursday, May 5, 2016 7:00 p.m., Council Chambers



City of South Haven

#### 1. Call to Order by Heinig at 7:00 p.m.

#### 2. Roll Call

Present: Bill Fries, Dave Paull, Brian Peterson, Judi Stimson, Larry Heinig  
Absent: John Frost, Clark Gruber, Steve Miles, Terri Webb

Motion by Paull, second by Stimson to excuse Frost, Gruber, Miles and Webb.

All in favor. Motion carried.

#### 3. Approval of Agenda

Motion by Stimson, second by Paull to approve the May 5, 2016 Regular Meeting Agenda as presented.

All in favor. Motion carried.

#### 4. Election of Officers for 2016-17: Chair, Vice-chair and ZBA representative

Heinig opened the nominations for chair.

Motion by Stimson, second by Peterson to nominate Larry Heinig for chair.

Heinig asked for any other nominations for chair. There were none.

Motion by Stimson, second by Paull to close the nominations for chair.

All in favor. Motion carried.

Heinig opened the nominations for vice chair.

Motion by Stimson, second by Peterson to nominate Dave Paull for vice chair.

There were no other nominations.

Motion by Stimson, second by Fries to close the nominations for vice chair.

All in favor. Motion carried.

Heinig noted that the commissioners need to designate a representative to the Zoning Board of Appeals.

Motion by Fries, second by Paull to designate Judi Stimson as representative to the Zoning Board of Appeals.

All in favor. Motion carried.

**5. Approval of Minutes – April 14, 2016 Regular Meeting**

Motion by Stimson, second by Peterson to approve the April 14, 2016 Regular Meeting Minutes as written.

All in favor. Motion carried.

**6. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda**

None at this time.

**7. New Business**

Discussion of the following draft ordinances and set public hearing date for June 2, 2016:

a) Nuisance Gathering Ordinance

Anderson explained this ordinance was put together while city was working on the rental ordinance; a companion piece that adds additional teeth to the regulations currently being considered. This is proposed to be added to the offenses portion of the city code. Nuisances include things like noise, public urination and drunkenness. The proposed ordinance also names the responsible person, who would receive the violation. This is fairly simple.

Motion by Paull, second by Stimson to set a public hearing for June 2, 2016 to discuss the Nuisance Gathering Ordinance as introduced.

All in favor. Motion carried.

b) Noise Ordinance

Anderson noted this addition to the existing ordinance identifies the individuals who would be responsible for the noise violation.

Motion by Stimson, second by Peterson to set June 2, 2016 for a public hearing to discuss the proposed addition to the existing Noise Ordinance.

All in favor. Motion carried.

c) Nonconforming Lots, Uses and Structures

Anderson noted Article 19 of the Zoning Ordinance addresses zoning issues with nonconformity for lots, uses and structures and explained that this is a very confusing section and difficult to interpret. This ordinance is one that the attorney and Anderson had worked on together during the early days of working on the rental ordinance and then work on the nonconformity section got put aside. The proposed changes are clearer and to the point, shorter and easier to interpret.

Motion by Stimson, second by Fries to present the proposed Nonconforming Lots, Uses and Structures Ordinance at a public hearing on June 2, 2016.

A member of the audience questioned why discussion was not happening, noting that the agenda says discussion of the draft ordinances.

Heinig explained that the board is discussing the setting of the public hearing at this time.

Stimson pointed out that the verbiage of these amendments is available on the website and asked, "Does the agenda not mean that discussion may occur between the commissioners?"

Anderson agreed, noting these are more housekeeping types of ordinances. We already have a nonconforming ordinance we could use, this is just clarification of that, explaining what you can and cannot do. Eventually, the city's goal is for nonconforming uses and structures to change to conformity.

Peterson asked whether the new wording is highlighted in the documents on the website. Stimson said what is being proposed is out there. Anderson explained that the proposed nonconforming language would repeal the current ordinance and replace it.

Heinig noted there is a motion on the floor and called for the vote.

All in favor. Motion carried.

**8. Other Business** – Prepare fee recommendation to City Council for residential parking in the CBD and identify lots suitable for long term parking.

Anderson explained that in 2011, the Planning Commission began working on different ways parking for residences downtown could be accommodated, noting this is not parking for condos, but solely for apartments in spaces above existing uses downtown. Currently the ordinance requires two (2) off street parking spaces and they too often just are not available. Anderson noted, "One goal in the Master Plan is to encourage residences above stores in the downtown which creates a more vibrant community. There are only four members still on the Planning Commission who worked on this ordinance. We looked at a number of different options and what other communities do, including requiring only one parking spot per unit or permit parking, which is what was finally decided would be the best approach. We worked with the attorney and drew up a

draft ordinance. We sent it to City Council and it didn't go any further. There is a lot of interest in this again. There has been grant money available for such dwellings, but we always ran into the same problem, we have the space; we have owners willing and wanting to fix up apartments, but no parking. This draft called for a parking permit program. It wouldn't guarantee a space but would allow you to park overnight in a downtown parking lot." Anderson explained that this draft ordinance is ready to send to City Council but the City Manager asked that the Planning Commission take two more steps. "One is to look at a fee and we have included a chart showing what other communities charge, which range from no charge to as high as \$360 per year for the parking permit. And if we are going to have certain lots that would be recommended for permit parking or specified lots where they would have to park, maybe requiring using the outlying lots as opposed to those downtown." Since only four of our current members worked on this, Anderson recommends having some work sessions; discuss the issues; understand the process; see if this remains the direction we want to be going.

Stimson asked if we know how many apartments or condos or whatever that need parking to which Anderson responded that our GIS person considered the downtown stores with upper vacant floors and mapped them out. Anderson noted that there were a tremendous number although not all owners are willing to develop their upper stories. One thought we had was to put a limit on this, first come first served, if everyone developed and we had no restrictions it could get out of hand very quickly. Anderson noted there are files of working papers which may be referenced.

Heinig asked if the Planning Commission is being asked to determine those numbers to which Anderson responded that there is probably interest in getting additional information. Peterson asked if cars are ticketed and towed out of city lots. Anderson said only during snowplowing season.

Discussion ensued about setting a time for subcommittee meetings. Anderson will send out a note to everyone and see who is interested in being on the subcommittee.

## **9. Commissioner Comments**

Paull: Spoke about revisiting alternative energy development within the city where it would be possible and how we could encourage it.

Stimson: Thanked the commission for designating her as the Planning Commission representative to the Zoning Board of Appeals.

## **10. Adjourn**

Motion by Paull, second by Stimson to adjourn at 7:26 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary

## Planning Commission

### Special Meeting Minutes Thursday, April 28, 2016 7:00 p.m., Council Chambers



City of South Haven

#### 1. Call to Order by Heinig at 7:00 p.m.

#### 2. Roll Call

Present: Bill Fries, Clark Gruber, Steve Miles, Brian Peterson, Dave Paull, Judy Stimson,  
Terri Webb, Larry Heinig

Absent: None

#### 3. Approval of Agenda

Motion by Paull, second by Gruber to approve the April 28, 2016 Planning Commission Special Agenda as presented.

All in favor. Motion carried.

#### 4. Interested Citizens in the Audience Will be Heard

Heinig outlined the focus of the meeting which is responding to the proposed rental ordinance questions posed to the commission by City Council. Requested that those speaking keep their comments to those issues, those being: consider our recommendation to them for lowering age of occupant to 24 months; lowering the occupancy maximum for new rentals in the R-1 districts from 16 to 12 and consider adding an additional restriction in the R-1 districts of 3500 square feet per house if intended for short term rentals. There were another two (2) issues that did not require planning commission comment. "The commission's purpose tonight is much focused".

Heinig opened the meeting to public comment requesting that people be brief and focus on the issues he just outlined.

Stephen Earls, 4<sup>th</sup> Avenue, South Haven. Had a question on item C about whether a building that has never been rented before can be rented, and if it is over 3500 square feet that it can't be rented at all.

Anderson stated that these questions should be taken to City Council at their meeting on May 2<sup>nd</sup> or the public hearing on May 16th.

Earls asked if the commission is voting on this.

Anderson said no, they are not voting, and Heinig commented that the commission is just responding to City Council comments.

Earls commented that he believes 3500 square feet is too small because there are houses out there now that are not being rented now and may perhaps be sold in the future and if they cannot be rented that may affect their real estate value.

Margaret Erle, 37 North Shore Drive had questions regarding the local representative. Stated she has asked a couple people on city council, an attorney, and planning commission people about this particular clause that has been suggested. Explained that she cannot approach her neighbor and ask him or her to be her local representative if she cannot tell them exactly what is expected of them in that position, what the requirements and legal ramifications are and so forth. Is there going to be something in print?

Heinig stated that they were not going to consider any additions to the ordinance at this point.

Anderson stated those questions should be brought to city council.

John Lohrstdorfer, 712 Maple Street. Stated when changes are being made to the Zoning Ordinance, it is supposed to be based on a plan and for the last six months there hasn't really been discussion about the plan. I know there is one coming up in the fall. If you are going to have a dwelling with 16 in it, it should be in its own zone, but we really shouldn't spoil the single family zone. That's why you adopt a zoning ordinance. Almost all municipalities he knows do not mix large rentals in single family zones. He supports people being able to rent single family to single family but it is these large rentals he is talking about.

Heinig said we do not intend to discuss anything but what the City Council asked us to discuss.

Lorsdorfer said he does not know where 16, 14 and 12 came from, if you are going to come up with a number it should be based on facts. I do know that if you have a dwelling that has over ten occupants and you have sleeping units and they share bathroom and kitchen facilities, that puts it in section 420 the building code which has all kinds of building code and fire code regulations different from single family.

Heinig stated, once again, the commission is not talking about building codes or fire codes tonight. The city council did not ask us to look at that and we will not be discussing it. Suggested that if Lohrstdorfer has concerns beyond what the commission is talking about tonight and he should take his concerns to the city council meeting.

Lorsdorfer said this is a concern because that's why ten is a better number because it can be supported for occupancy for the single family. The other numbers are arbitrary and could be challenged because they are. That's why a lot of the citizens have been urging 10, because there is a distinction; it is more in keeping with a single family district. Stated the commission should, because he thinks the city council did not give the commission a specific number.

Heinig stated, "City Council, to correct you, did give us some numbers to consider."

Lorsdorfer stated he did not know the commission was confined to the numbers city council gave them but the commission should have a basis for what number they decide because by doing this you are changing the character of the single family district.

Jim Martin, Monroe Park. Asked if the commission can address grandfathering.

Heinig stated the commission has specific questions to answer, we will be sending those responses to City Council, who will be holding a public hearing on the entire proposed ordinance.

Martin stated he dittoes the concerns of the gentleman in the white shirt.

Sally Newton, lives in South Haven Township, manages Shore Vacation Rentals. Stated we have ourselves in a situation here. Stated she is confused, because the commission has not been given legal verbiage from City Council or from the attorney. Noted the commission is kind of going on some bullet points, which, if you are in this industry and you care about the economics of this. Said bullet points do not really do the job; that she is not sure why, as a planning commission they have not been given the legalese to respond to this evening. Newton commented that on Point A we need clarification on what existing means; Point B, if regarding the occupancy of 12, if you pay attention, as a city council, to the financial information from people who do this business have provided you with, that might not be a good idea. Point C, in the original Planning Commission version there was an end date to the "no new short term rentals". Newton thinks the original date was 2019. Not seeing any end date Newton asked if this is just forever. Newton told the commission these are things that need to be paid attention to. Newton then stated she heard a rumor today which she hopes is untrue, that City Council is in the process of writing a new version, a new ordinance, and the fact that is happening behind closed doors without awareness of some City Council members is atrocious in a small town where we should all be part of the solution.

Heinig stated that is not an issue for here, tonight.

Newton responded that if she goes to City Council on Monday night and is faced with a new ordinance to take her highlighter to, she is going to be really disappointed.

#### **5. New Business – Review and Respond to City Council Comments regarding Short Term Rentals**

Anderson noted the Zoning Ordinance requires that once Planning Commission submits an ordinance or an amendment to City Council, the city council needs to review it. If they are going to make any changes they have to send it back to Planning Commission with those sections highlighted that they want to be reconsidered. We will reconsider, send it back to the city council and it will not come back to the Planning Commission again. The city council will then adopt whatever ordinance that they choose. There were a couple of things; the things in here are changes from what the Planning Commission proposed; that is what we are looking at. The first one, A, is taking the Planning Commission's recommendation, assuming the 2 per bedroom, 2 per floor formula or 16, whichever is

less, and asking to drop the exception for children from 6 years to 24 months, making this cap applicable to existing short term rentals in the R-1 districts. "That's the first point they wanted you to consider, going from 6 years to 24 months, in the occupancy requirement."

Gruber said this is for existing rentals, those who had short term rental history in 2015.

Anderson stated that this would drop the age requirement down for all occupants. Occupancy is defined and it would be for anyone over the age of 24 months or 6 years or whatever it is.

Gruber said he thought A was for 16 occupants for existing short term rentals and B is a maximum of 12 for new short term rentals.

Anderson noted it is for existing, yes, it says existing.

Heinig said A is for dropping the age, from 6 years to 24 months to which Anderson agreed, "That's what it is; it's just the age in A."

"In existing short term rentals," Gruber added to which Heinig agreed. Gruber pointed out that the Planning Commission can recommend no to that, that's an option.

Frost said this Planning Commission has never discussed . . . "A, to me, appears to be what is referred to as a grandfather clause and this Planning Commission has never discussed that, this Planning Commission did not submit that or anything like that, to City Council. If we are going to be talking about a "grandfathering" provision I am going to ask, Mr. Chairman, that you allow me to recuse myself from this discussion. I have several large rentals and any grandfathering provision that would allow me to maintain up to sixteen occupants could potentially have a direct financial benefit and I feel that I cannot participate in this discussion."

Heinig said he did not see where A is referring to grandfathering at all; it's talking about changing the age from 6 years to 24 months. Gruber noted it states, "existing short term rentals." Frost explained that the cap of 16 would be applicable to existing short term rentals of which he has several. "But then, if you look at B, it's a cap of twelve for new short term rentals." Frost pointed out that he is aware that there has been quite a bit of talk about conflicts of interest, etc. and added, "I did not have a conflict of interest up until this point, and again, Planning Commission did not send anything up to City Council with respect to a grandfathering clause, but that's what this is. And if we are going to talk about grandfathering, I'm going to ask you to let me recuse myself from this discussion."

Heinig asked for the wish of the commission.

Gruber said he thinks it is Frost's personal choice. Gruber referenced a document from the Michigan Planning Association with suggested rules of conducting meetings and conflict of interest. Gruber noted he talked to individuals at their organization and explained to them what was going on and they said this body, the Planning Commission, is doing nothing but making a recommendation to City Council; there is no conflict of interest. "And in fact when you are helping to develop an ordinance, you can't have a conflict of interest. She said the first four points, is first of all, you have to be the applicant; the fifth point is it has to be the proposal of the applicant. And there is no proposal. It's

nothing but a recommendation to city council." Gruber explained that his contact also said your planning commission should be made up of a lot of different individuals from the community. "And we do; and she said you may have real estate agents, which we do, and she said you may have somebody who owns a rental; and we do. We do and that's good practice. In fact she wanted to say that our legal counsel and our staff interpret it the same way that organization does. So the document that was used to say there's a conflict of interest actually shows there is not a conflict of interest. If John wants to step down, though, that is his personal choice."

Frost noted that when the Planning Commission voted on the number of 16, he was putting a cap on his properties, and as much as it has been out there that would have financially benefited him, it would have financially hurt him because many of his properties would have had more than 16 occupants. "I was lowering the number I could have in my rentals. I am uncomfortable recommending something to City Council that would benefit me. And I understand what you are saying about this not being an ordinance we are passing, but I would not feel comfortable recommending to City Council something that could potentially have a direct benefit to me."

Heinig questioned, "Items A and B?" to which Frost responded, "Correct." Heinig stated he values Frost's input and that is why he hesitated to agree to recusal.

Paull asked that until the commission actually acts on these proposed amendments, Frost please stay part of the process. Frost noted that the commission is not taking any action tonight, other than discussing it. Paull responded that until the commission actually comes to deciding whether or not to send something to City Council, other than that, stay in the discussion. "Because we need you."

Peterson noted that the commission can move on exactly what we recommended before to which other commissioners agreed with. Heinig left it up to Frost, that if he wants to recuse himself, he may.

Frost stated he does not think he can participate in the discussion.

Webb, on item A, "I do not mind discussing the age, but like John, I really think this is two separate bullet points, because I don't know what the definition of existing is, and if I don't know what the definition of existing is, it's hard for me to say if I agree or disagree, but if we are only talking about the age I feel like I can participate."

Stimson had a question for Anderson. "I thought we defined existing as what people were renting in 2015. Anderson noted that was not in the Zoning Ordinance, it was in the regulatory ordinance. Anderson explained there was some discussion but there is no clear definition of existing and she has mentioned to City Council that they should have something in there.

Heinig called for comments on age. When none were forthcoming, Heinig noted that his recollection, from when the commission discussed it earlier, we looked at ages 16 down to 24 months and we, as a group, concluded that anyone under 6 was probably not going to be contributing to the perceived problems with renters, in fact there might be some benefit there, earlier bedtime for the entire family with an earlier bedtime for all. We did talk about 24 months in that discussion also.

Stimson agreed that is the way the commission talked about it. Heinig asked about voting or whether the group is giving Anderson enough discussion to respond. Anderson said consensus is fine.

Stimson said we can say stick with 6 years, what we presented, or we can say 24 months is fine and asked Heinig asked if city council will be looking for an explanation. Anderson said they don't need an explanation; they just need a response to "How would you feel about dropping this age limit from 6 years to 24 months?" Yes or no.

Fries is troubled about what the benefit is of going from 6 years to 24 months explaining that a family around the corner who rents their house out to help with taxes asked him about renting to a single family. Because of the bedroom size, 2 per bedroom, 2 per floor, they won't be able to rent to the family they have always rented to because the children are now over 2 years of age and Fries feels that turning a family away from renting in South Haven he thinks is not moving in the right direction.

Gruber stated that 24 months was more like looking at someone in a crib as opposed to someone in a bed, and they would probably bring a port-a-crib. Looking at it that way, it was just another way to separate those considered children and those that are not and came up with a different number, that once they hit the area where they are doing a lot of running around making them more as part of the occupant cap. "But if we want to give back to City Council that we feel occupancy of 16 and an age of 6 is more appropriate in the existing R-1s, then we can certainly do that. But that was the reasons for that, just like B, looking at the differences between now and the future. Because we are probably looking at a slowing of the rental industry. Seems like we had a great 2015 but we are going to look at the numbers in 2016, and we may look at down the road, and see a difference." Fries asked, "A slowing how?" Gruber explained it as looking at communities up and down the lake shore, take Grand Haven, for example, decided only to allow short term rentals in certain districts; at some point we have to look at what percentage of housing stock will be allowed to be rentals.

Fries stated that is not much to do with the 6 year . . . . "I guess again I'm troubled at treating a 24 month old person the same as an adult." Gruber corrected, "24 months is okay, it's 25 months."

Heinig is not hearing much in favor of 24 months. Anderson said consensus for A is 6 years. Commissioners indicated they are for 6 years remaining the cut-off point for occupancy. Gruber added, "For A." Stimson requested that Gruber, when presenting this to council, tell them the commission's logic and Gruber agreed.

Anderson, regarding B, said this provides that new short-term rentals, new rentals, have the same formula with a hard maximum of 12 occupants over 24 months in age. We'll probably be switching that to 6 years, as well. And looking at 12 as opposed to 16 that Planning Commission had in their ordinance. The City Council is suggesting going down to 12 for new rentals.

Webb says she feels we really are discussing a concept without seeing the language as an attorney changes it. "I'm not comfortable changing what we had already proposed because I don't know what "new" is." Gruber said new would be, as we had in the other

portion, people who rented in 2015 already. People who have an establishment of renting, that's considered new. If your building or rehabbing a home, that's considered new. Gruber said, "Like myself, I've never rented my house before. If I were to do this, I would be a new short term rental. The guy two doors down from me has been renting for several years; he would be considered an existing short term rental." Webb is concerned more about the people in between, people who are currently building, people who have their permit, are currently booked out this year to families, who would probably come back to the same house next year. "I appreciate your definition of "new" but I'd have to see it in draft form, as the attorney puts it, before I could vote on it."

Gruber said she could certainly present that in the feedback to council. Webb stated that is her feedback.

Paull said he wants to present one more quirk. "The home next to me is going to be torn down due to water damage from a broken pipe and replaced with a new home of 2 stories. In the past it has been rented, but it will be a new structure, a new home, and very different, and a new owner. Is that one going to be allowed to continue to rent at 16, or is it now, because it's different, changed, physically different, new construction, not going to be allowed to be rented? We are going to get into some confusing, weird, really weird stuff." Paull said his suggestion is to leave it alone.

Paull said the city is already determining it will be diff according to Anderson.

Anderson said she agrees with Paull, but the way that was written they would be limited to 12. Paull commented that the city has already determined that house will be limited.

Gruber asked if we need more input on B or if the Planning Commission has reached a consensus. After discussion Gruber said he'd like to see the 12 and 24 stay.

Heinig said his recollection from when we discussed this is that we had trouble because we do not have historical data; some thought we shouldn't give a maximum and our attorney said we should not go in that direction and we should provide a maximum. And he felt we should give a high number which would give us a chance to gather the data and we could adjust the number at that point, up or down, as the data indicates. With that, Heinig recommended staying with 16. Consensus is to keep the number at 16 except for Gruber.

Anderson said the last one we have to discuss, because the other two have no change suggested by City Council, provides no new short term rentals exceeding 3500 square feet in the R-1 zones; it would still allow those houses over 3500 square feet in those zones but they would not be able to be used as rentals. Anderson noted this is new; added to the zoning ordinance.

Stimson asked if this is a "new built" or a house that already exists. Anderson said either/or – then noted that she is being distracted by conversations behind her. Heinig reminded that talking needs to cease so the commission can continue their deliberations. Appleyard asked that people use their microphones.

Anderson said this would be for new construction; new construction under 3500 square feet, it could be a rental. But there's more. If you have an existing home that is under

3500 square feet and has never been rented before, it also can be a rental. That also would be a new rental even though it's not new construction. They would still fall under the 12 (occupancy cap).

Webb felt that the commission had this entire discussion already. Webb asked Gruber what he can tell the commission about what he told the City Council and why they are wanting to put this back in. Gruber said there are no existing rentals exceeding 3500 square feet in interior space, in R-1 zones, isn't that both existing and new structures. Gruber said, "Just new structures? Let's look at C again. Let's say I have never rented my house before and it's 4,000 square feet and never rented before. And I want to be a new short term rental. Can I rent?" Anderson responded, "No." Gruber said then existing buildings and new buildings, any building 3500 square feet and bigger, can't have a new short term rental. "New short term rentals – saying I've never done it in the past. That's kind of putting a stake in the ground. I think Council is looking at again, the feedback is, we've got large homes, capacities that are larger than what we need and we want to push the larger capacity homes with occupancies greater than 16 into the RM1, B3 and R-2 districts. And right now we probably have a large enough stock of those size properties in the city limits now. And right now city council has been getting a lot of feedback from a lot of individuals; that's kind of where our feelings were."

Gruber added that what was put together and sent to us from Planning Commission was awesome; we liked that. I think we need to look at that for the existing short term rentals, and curb the growth of the new short term rentals.

Stimson thinking about, let's say she hadn't built her house yet, and she wanted it to be 4000 square feet for when she retires here. But she wants to rent it in the interim to help with finances, and then this 3500 square foot provision is now a restriction on what her house would be when she wanted to live in it, not just because it was going to be a rental. Gruber responded that if she was going to rent it, yes, that would be a restriction.

Frost said the whole thing doesn't make sense because the cap takes care of this. Stimson and Paull agreed. Frost said if you want to build a 4000 square foot house, a 5000 square foot house, the argument is too many people. "We're going to have 16, 12, whatever it ends up being, but who cares if it's over 3500 square feet? You can't put 20 people in there; you're going to have a cap, right?" Gruber says, "Correct, so for a new home that would be . . ." Frost interjected asked what the point would be of limiting the square footage. we want to curb the growth of new short term rental. Gruber states that is good input to provide city council.

Paull asked if the cap would be twelve. Gruber said, "Well, it depends, if you are in the RM-1." Paull asked where he is coming up with that number. Gruber said it all depends, in B . . . Paull interjected, "I thought it was 16." Anderson said that is for existing; they can show that they rented in 2015 but for a new house, a house that is remodeled or a house that is existing, their cap is 12. Stimson said but that was city council. Paull reiterated, That's city councils recommendation. Stimson added, "And we just said we wanted to leave it at 16. Anderson, "Exactly, and I have that here, yes." Frost said, whatever the number is, my point is that the cap takes care of it. Gruber, "It's got a hard cap, either way." Frost said, "So size doesn't matter."

Webb stated it makes more sense, if it's 12, 14, 16, whatever that number is, you're rather have 16 people in a 5000 square foot house." Frost noted that should be put on

SHINEs website. Gruber said that's excellent feedback to provide to City Council for C, that the Planning Commission's feeling is that the hard cap would take care of the issue and furthermore, we'd rather see the maximum in a 3500 square foot home than in a 2000 square foot home.

Stimson said we've had feedback from people who have said they rent the house now but are going to live in it long term later and if we are restricting limiting the number of people they can rent it to, why are we restricting the size of the house?

Peterson said this is almost word for word rehashing of the subcommittee meetings we had two or three weeks ago. Stimson said that is why the Planning Commission didn't put a number in there. Fries asked if Gruber can tell where the 3500 came from? Gruber said he thinks it was from the moratorium. Fries said he means as far as the cap, how do you feel about what John has expressed? Gruber, "I like what John has expressed. This is the feedback we wanted to get and discuss, which is that the maximum cap would take care of that. I personally like the 12; it would take care of the 3500 square foot home that was being rented until someone decided that was going to be their long term home. Because I've heard from a lot of individuals who are doing that on a short term basis, or for a certain amount of time before they are able to make that their long term residence. Fries asked, "So are you saying the cap should be looked at and not the size of the house? Also, we're including the basement in these." Gruber said if there are ingress and egress windows you could legally put bedrooms down there. Fries pointed out that is all taken out through permits through the city, so if somebody doesn't put in egress windows it shouldn't be counted. Gruber said he likes the idea of a cap and Fries asked, "On the size of the house or the people?" to which Gruber responded, "People. They were looking at the large homes becoming a party home but if you can only put twelve people in a 3500 square foot home, you've got to do your two times two and get there. Also as applications do come in, any bedrooms in attics or basements have to have required egress windows. Basements would require a site review to make sure it has ingress and egress. And a legal bedroom."

Stimson said, "To wrap this up, we want to say that we don't think C is necessary or even appropriate for the way this population moves, as far as buying something for the future, using it for a short term rental, then using it for a permanent residence, the cap on the number of people should take care of the concerns that have been brought to us." Gruber said while that is true, it doesn't preclude someone building a 3500 square foot home and using it exclusively for a short term rental and not plan on it being a home that they're going to use.

Heinig asked if we want to include the 3500 square feet or do we want to say no on C, that the cap takes care of it. After discussion, Anderson said fine, if you think the cap on occupancy takes care of it, that's what we will say. Heinig noted that previous discussion also included limitations, like houses only 35' high, only 2 stories, additional parking requirements will limit the size of house and the basic lot coverage requirement.

Anderson said D and E are unchanged so we will prepare your comments and consensus tonight and will be given to the city manager tomorrow for addition to the agenda.

Paull asked for a review.

Anderson said for

A. Existing short term rentals, we are going to make a point of saying we don't know what existing is, we are making an assumption, that Planning Commission's consensus was that 6 years is fine.

B. Short term rentals in R-1 district would have the same formula with a hard maximum of 12 occupants. The Planning Commission agreed that we need a definition of new, but assuming we know what it means, want the maximum to stay at 16 for over occupants over 24 months.

C. Which provides there are no new short term rentals exceeding 3500 square feet in interior space, the Planning Commission agrees that the hard cap takes care of this issue and square footage restriction is not necessary.

Gruber wanted to make sure on B that it is noted that there was a holdout; Gruber didn't agree.

Webb asked, "On B, did you say that we did not agree with 24 months? Wouldn't we keep A and B consistent? After discussion, Anderson corrected her notes to indicate that both A and B keep the occupant age at 6 months as the Planning Commission presented it.

Heinig said our response will be read at the City Council meeting on May 2. Anderson noted that they will introduce the ordinance they will be bringing to the public hearing and on the 16<sup>th</sup> of May they will be holding a public hearing and making a decision on what the ordinance will say when adopted.

## **6. Commissioner Comments**

Gruber: Stressed that for the most part City Council took nearly everything the Planning Commission sent them and made some slight adjustments. Noted that council wanted the input; we got great input on your thoughts and why. Noted that all of its good but the 3500 square foot part is good.

Paull: Noted that we need to keep moving and finish this.

There were no other commissioner comments.

Anderson: "As most know, we've been having conversations with the state Fire Marshall's office and the Site Plan Review Division and trying to get something from them on how the city is interpreting this. I'm happy to say we heard back and they agree with the city's interpretation: a single family house is a single family house, not a boarding house, not a dorm, not a motel, not a hotel and they will be getting that to us in written form.

## **7. Adjourn**

Motion by Paull, second by Stimson to adjourn at 7:52 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary



City of South Haven

## Agenda Item #7a

# Nuisance Gathering Ordinance

### Background Information:

As an accompanying document to the short term rental regulations, the City Attorney recommended that the city adopt a Nuisance Gathering Ordinance. This ordinance identifies and outlaws behavior at large gatherings that may be disruptive to the surrounding area. Although this ordinance is proposed as part of the city code of ordinances, the council has asked that the planning commission review the content, hold a public hearing and make a recommendation to City Council regarding the adoption of the ordinance.

### Recommendation:

Staff recommends that the Planning Commission hear public comments related to this draft ordinance and proceed by either 1) referring the document back for more study or 2) sending it to the city council with a recommendation to adopt.

### Attachments:

Draft Nuisance Gathering Ordinance

Respectfully submitted,  
Linda Anderson  
Zoning Administrator

**CITY OF SOUTH HAVEN  
VAN BUREN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO ADD A NEW SECTION 54-116 TO THE CODE OF ORDINANCES,  
CITY OF SOUTH HAVEN, MICHIGAN, TO DESIGNATE INDIVIDUALS RESPONSIBLE FOR  
NOISE ORDINANCE VIOLATIONS**

The City of South Haven Ordains:

Section 1. Addition. A new Section 54-116 is added to Chapter 54, Article V of the Code of Ordinances, City of South Haven, Michigan, to read as follows:

**Sec. 54-116. Nuisance Gathering.**

- (A) *Purpose*. The City Council finds that there are parties or gatherings on premises in the city that are unsafe or are a public nuisance. These gatherings can involve alcoholic beverages that are illegally sold and/or provided to individuals in attendance, including underage individuals. These gatherings can result in excessive noise and traffic, excessive consumption of alcohol, overcrowding of the premises, and other ordinance and state law violations. The City Council desires to protect the public from such public nuisances.
- (B) *Definitions*. For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning:
- (1) *Nuisance Gathering*. A gathering, party or meeting that is conducted on or within any premises located within the city and which, by reason of the conduct of persons hosting or attending, results in one or more of the following conditions or occurrences:
    - (a) The drinking or possession of alcohol in public or intoxication that would warrant involuntary commitment under MCL 330.1276, as amended;
    - (b) The use or possession of any controlled substance, drug, or immediate precursor enumerated in schedule 1-5 of sections 7201 to 7231 of the Public Health Code, 1978 PA 368, as amended, MCL 333.7201 *et seq.*, except as provided in subsection (c) of this ordinance with respect to marihuana;
    - (c) The use or possession of marihuana, except as permitted by the Michigan Medical Marihuana Act, PA 2008, Initiated Law 1, as amended, MCL 333.26421 *et seq.*;
    - (d) Indecent exposure or public nudity in violation of MCL 750.335a, as amended;
    - (e) Public urination or defecation;
    - (f) The unlawful sale, furnishing, possession or consumption of alcoholic or intoxicating beverages in violation MCL 436.1703, as amended, or Sections 54-105 or 54-106 of this Code;
    - (g) The unlawful dumping, placing or depositing of trash or litter on public or private property in violation of MCL 750.552a, as amended, or Section 70-35 of this Code;
    - (h) The damage or destruction of public or private property;
    - (i) The generation of pedestrian or vehicular traffic which obstructs the free flow of traffic within the public rights-of-way or interferes with the ability to render police or other emergency services;
    - (j) The generation of noise or violations that are audible at a distance beyond 50 feet from the property line of the premises or from inside a neighboring building, structure or dwelling unit;
    - (k) Public disturbances, brawls, fights, quarrels or similar disturbances of the peace in violation of Chapter 54, Article V of this Code; and

(l) Violation of the fire code, building code, zoning ordinance, or Chapter 10, Article X of this Code, due to the over-occupancy or overcrowding of a building, structure or dwelling unit, or any adjacent deck or patio, or the obstruction of stairway or entries to a building, structure or dwelling unit.

(2) Premises. Any building, structure or dwelling unit, either commercial or residential, including adjacent exterior property, common areas, yards, and parking lots. The term premises does not include an establishment operating with a liquor license issued by the Michigan Liquor Control Commission, or a successor agency.

(C) Nuisance gatherings prohibited.

- (1) Nuisance gatherings are declared to be public nuisances and are prohibited in the city.
- (2) Any person who is an owner, occupant, or tenant of a premises that is the site of a nuisance gathering is in violation of this article.
- (3) Any person who attends a nuisance gathering is in violation of this article.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect 10 days after its adoption or upon publication of the notice of adoption, whichever occurs later.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

CERTIFICATION

This true and complete copy of Ordinance No. \_\_\_\_\_ was declared adopted at a Regular Meeting of the South Haven City Council held on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Robert Burr, Mayor

\_\_\_\_\_  
Amanda Morgan, City Clerk

Introduced: \_\_\_\_\_, 2016

Adopted: \_\_\_\_\_, 2016

Published: \_\_\_\_\_, 2016

Effective: \_\_\_\_\_, 2016



**City of South Haven**

## **Agenda Item #7b Noise Ordinance Amendment**

### **Background Information:**

As with the Nuisance Gathering Ordinance, the City Attorney recommended that the city adopt an amendment to the Noise Ordinance that designates individuals responsible for Noise Ordinance violations. Although this ordinance is proposed as part of the city code of ordinances, the council has asked that the planning commission review the content, hold a public hearing and make a recommendation to city Council regarding the adoption of the amendment.

### **Recommendation:**

Staff recommends that the Planning Commission hear public comments related to this draft ordinance and proceed by either 1) referring the document back for more study or 2) sending it to the city council with a recommendation to adopt.

### **Attachments:**

Draft Noise Ordinance Amendment

Respectfully submitted,  
Linda Anderson  
Zoning Administrator

**CITY OF SOUTH HAVEN VAN BUREN COUNTY, MICHIGAN  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND SECTION 30-28 OF THE CODE OF ORDINANCES, CITY OF SOUTH HAVEN, MICHIGAN, TO DESIGNATE INDIVIDUALS RESPONSIBLE FOR NOISE ORDINANCE VIOLATIONS**

The City of South Haven Ordains:

Section 1. Amendment. Section 30-28 of Chapter 30, Article II of the Code of Ordinances, City of South Haven, Michigan, entitled "Noise," is amended to read as follows:

**Sec. 30-28. General Prohibitions.**

Any person who creates, assists in creating, or permits the continuance of any noise prohibited in this article is in violation of this article. Further, any person who owns or occupies a premises on which a prohibited noise is produced is in violation of this article. All noises prohibited in this article are hereby declared to be public nuisances.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect 10 days after its adoption or upon publication of the notice of adoption, whichever occurs later.

YEAS:

NAYS:

ABSTAIN:

ABSENT:

**CERTIFICATION**

This true and complete copy of Ordinance No. \_\_\_\_\_ was declared adopted at a Regular Meeting of the South Haven City Council held on \_\_\_\_\_, 2016.

Robert Burr, Mayor

Amanda Morgan, City Clerk

Introduced: , 2016  
Adopted: , 2016  
Published: , 2016  
Effective: , 2016

Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect 10 days after its adoption or upon publication of the notice of adoption, whichever occurs later.



City of South Haven

## Agenda Item #7c Nonconforming Lots, Uses and Structures Zoning Amendment

### Background Information:

Article XIX, Section 1901 in the zoning ordinance addresses nonconforming lots, uses and structures. This section has long been very confusing and difficult to interpret given that it does not clearly delineate between nonconforming uses, structures and lots. While working with the city attorney drafting the short term rental ordinances, it was again noticed both by staff and the attorney that the nonconformity article was confusing and contradictory. As a result, the attached text was drafted in hopes of helping to clarify an already confusing aspect of zoning.

### Recommendation:

Staff recommends that the Planning Commission hear public comments related to this draft ordinance and proceed by either 1) referring the document to a subcommittee for more study or 2) sending it to the city council with a recommendation to adopt.

### Attachments:

Draft Section 1901  
Existing Section 1901

Respectfully submitted,  
Linda Anderson  
Zoning Administrator

**CITY OF SOUTH HAVEN  
VAN BUREN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND SECTION 1901 OF THE SOUTH HAVEN  
ZONING ORDINANCE TO REGULATE NONCONFORMING LOTS, USES,  
AND STRUCTURES**

The City of South Haven Ordains:

Section 1. Amendment. Section 1901 of the South Haven Zoning Ordinance is amended to read as follows:

**Sec. 1901. LEGAL NONCONFORMING LOTS, USES, AND STRUCTURES**

1. *Nonconformities generally*. A legal nonconforming lot, use, or structure legally existing at the time when this Ordinance was adopted or is amended in relevant part may be continued even if it no longer conforms to the provisions of this Ordinance. However, a legal nonconformity may not be increased in any manner unless otherwise provided in this Ordinance.
2. *Nonconforming uses*. The following regulations apply to nonconforming uses:
  - a. *Increases in use*. Increases in nonconforming uses include, but are not limited to:
    - i. Occupying a greater area of land than was occupied at the time the use became nonconforming.
    - ii. Moving the nonconforming use in whole or part to any other portion of the lot than was occupied when it became nonconforming, unless approved under the provisions of this Article, a variance, or a special use permit.
  - b. *Replacement with conforming use*. Whenever a nonconforming use is replaced by conforming use, the nonconforming use may not be resumed and any subsequent use of the land must conform to the regulations for the district in which it is located.
  - c. *Discontinuance of nonconforming use*. Whenever a nonconforming use is discontinued for a period of 12 months or more, the nonconforming use may not be resumed and any subsequent use of the land must conform to the regulations for the district in which it is located.
3. *Nonconforming structures*. The following regulations apply to nonconforming structures:
  - a. *Change in use in nonconforming structure*. A nonconforming structure may not be enlarged or altered in a way that increases its nonconformity, but the use of a nonconforming structure may be changed or altered to any use permitted in the district in which it is located. Further, any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of the relevant adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
  - a. *Destruction*. If a nonconforming structure is destroyed by any means to an extent of more than sixty (60%) percent or twice its assessed valuation at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance. Where nonconforming status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
  - b. *Relocation of structure*. If a nonconforming structure is moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located.

- b. *Single-family dwellings in business districts.* In business districts, existing single-family dwellings are permitted to add accessory buildings and uncovered decks in accordance with the requirements of the districts in which they are located.
- 4. *Changes toward conformity.* Changes on a lot that help bring it into or closer to conformity with this Ordinance are permitted. Such activities include, but are not limited to increasing parking where it is deficient, adding landscaping screening, or fencing where it otherwise is required or would help mitigate a negative impact on abutting property, or replacing signs which do not conform with this Ordinance with ones that do.
- 5. *Additions relating to multi-family occupancy.* Decks, stairways, fire escapes and wheelchair ramps shall not be considered an expansion to a multiple-family residential nonconforming structure in an R-1 or R-2 district if all of the following conditions have been met:
  - a. The addition meets the dimensional standards of the zoning ordinance;
  - b. There is no roofing, screening or enclosure of the addition;
  - c. The height of the floor of a deck addition is not above the first story floor level of the main structure being added to;
  - d. No part of a deck addition structure is located above the guardrail or hand railing height as required by the building code; and
  - e. The baluster area between the flooring and the guardrail or hand railing shall have at least a fifty (50%) percent open area.
- 6. *Fences and dumpster corrals.* Fences and dumpster corrals shall not be considered an expansion of a nonconforming use if the proposed fence or dumpster corral meet the zoning ordinance standards for a conforming use.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect 10 days after its adoption or upon publication of the notice of adoption, whichever occurs later.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

CERTIFICATION

This true and complete copy of Ordinance No. \_\_\_\_\_ was declared adopted at a Regular Meeting of the South Haven City Council held on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Robert Burr, Mayor

\_\_\_\_\_  
Amanda Morgan, City Clerk

PC Hearing: \_\_\_\_\_, 2016  
 Introduced: \_\_\_\_\_, 2016  
 Adopted: \_\_\_\_\_, 2016  
 Published: \_\_\_\_\_, 2016  
 Effective: \_\_\_\_\_, 2016

**ARTICLE XIX  
NONCONFORMING USES AND BUILDINGS**

**SECTION 1900. NONCONFORMING USES OR BUILDINGS BY REASON OF THIS ORDINANCE**

It is recognized that there exists within the districts established by the Ordinance and subsequent amendments, lots, buildings, structures and uses of land and structures which were lawful before this Ordinance was passed or amended, which would be prohibited, regulated or restricted under the terms of this Ordinance. Any lawful use of a building or premises existing at the time of the enactment of this Ordinance may be continued, although such use or building does not conform to the provisions of this Ordinance, provided that there is no increase in the degree or manner of nonconformance.

**SECTION. 1901. Legal Nonconforming Lots, Uses, Buildings and Structures.**

1. Nonconforming **lots, uses, buildings or structures**—that were **not legally** established, **defined for purposes of this section to mean in accordance with applicable provisions of this Ordinance, the City's Code of Ordinances or state law** shall be declared illegal nonconforming **lots, uses, buildings or structures** and are not entitled to the status and rights accorded legally established nonconforming **lots, uses, buildings or structures**.
2. A legal nonconforming use of a building or premises existing at the time of enactment of this Ordinance may be continued, although such use or structure does not conform to the provisions of this Ordinance, provided there is NO such increase in the degree or manner of nonconformance. Such increase includes, but is not limited to, occupying a greater area of land than was occupied at the time the use became nonconforming as well as moving the nonconforming use in whole or part to any other portion of the lot as was occupied when it became nonconforming, unless approved under the provisions of this Article, a variance, or a special use permit. In addition:
  - a. No nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but the use of a structure and/or the structure itself may be changed or altered to a use permitted in the district in which it is located, provided that all such changes are also in conformance with the requirements of the district in which it is located. Furthermore, any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time for adoption or amendment of this Article, but no such use shall be extended to occupy any land outside such building.
  - b. Should such structure be destroyed by any means to an extent of more than sixty (60%) percent of twice its assessed valuation at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Article.
  - c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
  - d. Any structure, or structure and land in combination, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
  - e. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

f. In Business Districts, existing single-family homes are permitted to add accessory buildings and uncovered decks under the requirements of the district in which they are located.

3. Changes to property which help bring it into or closer to Ordinance conformance shall not be considered a prohibited alteration or expansion of a nonconforming use provided such alteration or expansion conforms as nearly as is reasonable, in the opinion of the Zoning Administrator, with the requirements of the district in which the lot or building is located. Such activities include, but are not limited to increasing parking where it is deficient, adding landscaping screening, or fencing where it otherwise is required or would help mitigate a negative impact on abutting property, or replacing signs which don't conform with this Ordinance with ones that do.

4. Decks, stairways, fire escapes and wheelchair ramps shall not be considered an expansion to a multiple-family residential nonconforming structure in an R-1 or R-2 district if all of the following conditions have been met:

- a. the addition meets the dimensional standards of the zoning ordinance; and,
- b. there is no roofing, screening or enclosure of the addition; and,
- c. the height of the floor of a deck addition is not above the first story floor level of the main structure being added to; and,
- d. no part of a deck addition structure is located above the guardrail or hand railing height as required by the building code; and,
- e. the baluster area between the flooring and the guardrail or hand railing shall have at least a fifty (50%) percent open area.

5. Fences and dumpster corrals shall not be considered an expansion of a nonconforming use if the proposed fence or dumpster corral meet the zoning ordinance standards for a conforming use.

## **SECTION 1902. NONCONFORMANCE BY REASON OF HEIGHT, AREA, YARDS, PARKING AND OFF-STREET LOADING**

A conforming use which does not conform to height, area, yard, parking or off-street loading provisions only may be altered, remodeled, modernized or enlarged, provided no additional encroachment of such provisions is occasioned thereby.

## **SECTION 1903. CHANGE OF USE**

The use of a nonconforming building may be changed to another nonconforming use if the Zoning Board of Appeals finds that such new use would not markedly change the degree of nonconformance and would preserve or improve the desirability of the adjacent conforming uses. The Zoning Board of Appeals may impose such structural changes, building or site modifications or other requirements as it deems necessary to meet the above requirements. This section shall not be construed to permit the conversion of a nonconforming use to a prior nonconforming use nor to waive other provisions of this Article.

## **SECTION 1904. RESTORATION AND REPAIRS**

Such repairs and maintenance work as are required to keep a nonconforming building or structure in a sound and modern condition may be made. A nonconforming building or structure which is damaged or destroyed by fire, wind, or other calamity may be restored and the occupancy or use, as it existed at the time of such destruction, may be continued or resumed.

1. Changes to the location of a foundation or footprint of a nonconforming single-family residence destroyed by fire, wind or other calamity pursuant to Section 1904 may be

**ARTICLE XIX  
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**SECTION. 1901. Legal Nonconforming Lots, Uses, Buildings and Structures.**

1. Nonconforming **lots, uses, buildings or structures**—that were **not legally** established, **defined for purposes of this section to mean in accordance with applicable provisions of this Ordinance, the City's Code of Ordinances or state law** shall be declared illegal nonconforming **lots, uses, buildings or structures** and are not entitled to the status and rights accorded legally established nonconforming **lots, uses, buildings or structures**.
2. A legal nonconforming use of a building or premises existing at the time of enactment of this Ordinance may be continued, although such use or structure does not conform to the provisions of this Ordinance, provided there is NO such increase in the degree or manner of nonconformance. Such increase includes, but is not limited to, occupying a greater area of land than was occupied at the time the use became nonconforming as well as moving the nonconforming use in whole or part to any other portion of the lot as was occupied when it became nonconforming, unless approved under the provisions of this Article, a variance, or a special use permit. In addition:
  - a. No nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but the use of a structure and/or the structure itself may be changed or altered to a use permitted in the district in which it is located, provided that all such changes are also in conformance with the requirements of the district in which it is located. Furthermore, any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time for adoption or amendment of this Article, but no such use shall be extended to occupy any land outside such building.
  - b. Should such structure be destroyed by any means to an extent of more than sixty (60%) percent of twice its assessed valuation at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Article.
  - c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
  - d. Any structure, or structure and land in combination, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
  - e. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

f. In Business Districts, existing single-family homes are permitted to add accessory buildings and uncovered decks under the requirements of the district in which they are located.

3. Changes to property which help bring it into or closer to Ordinance conformance shall not be considered a prohibited alteration or expansion of a nonconforming use provided such alteration or expansion conforms as nearly as is reasonable, in the opinion of the Zoning Administrator, with the requirements of the district in which the lot or building is located. Such activities include, but are not limited to increasing parking where it is deficient, adding landscaping screening, or fencing where it otherwise is required or would help mitigate a negative impact on abutting property, or replacing signs which don't conform with this Ordinance with ones that do.

4. Decks, stairways, fire escapes and wheelchair ramps shall not be considered an expansion to a multiple-family residential nonconforming structure in an R-1 or R-2 district if all of the following conditions have been met:

- a. the addition meets the dimensional standards of the zoning ordinance; and,
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#### **SECTION 1903. CHANGE OF USE**

The use of a nonconforming building may be changed to another nonconforming use if the Zoning Board of Appeals finds that such new use would not markedly change the degree of nonconformance and would preserve or improve the desirability of the adjacent conforming uses. The Zoning Board of Appeals may impose such structural changes, building or site modifications or other requirements as it deems necessary to meet the above requirements. This section shall not be construed to permit the conversion of a nonconforming use to a prior nonconforming use nor to waive other provisions of this Article.

#### **SECTION 1904. RESTORATION AND REPAIRS**

Such repairs and maintenance work as are required to keep a nonconforming building or structure in a sound and modern condition may be made. A nonconforming building or structure which is damaged or destroyed by fire, wind, or other calamity may be restored and the occupancy or use, as it existed at the time of such destruction, may be continued or resumed.

1. Changes to the location of a foundation or footprint of a nonconforming single-family residence destroyed by fire, wind or other calamity pursuant to Section 1904 may be