

Superseded 5/12/2015

10-9a-511 Nonconforming uses and noncomplying structures.

- (1)
 - (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.
 - (b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
 - (c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.
- (2) The legislative body may provide for:
 - (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;
 - (b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and
 - (c) the termination of a nonconforming use due to its abandonment.
- (3)
 - (a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.
 - (b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:
 - (i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or
 - (ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.
 - (c)
 - (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.
 - (ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.
- (4)
 - (a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.
 - (b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
 - (c) Abandonment may be presumed to have occurred if:
 - (i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;
 - (ii) the use has been discontinued for a minimum of one year; or

- (iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.
- (d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.
- (5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.
- (6) A municipal ordinance adopted under Section 10-1-203.5 may not:
 - (a) require physical changes in a structure with a legal nonconforming rental housing use unless the change is for:
 - (i) the reasonable installation of:
 - (A) a smoke detector that is plugged in or battery operated;
 - (B) a ground fault circuit interrupter protected outlet on existing wiring;
 - (C) street addressing;
 - (D) except as provided in Subsection (7), an egress bedroom window if the existing bedroom window is smaller than that required by current state building code;
 - (E) an electrical system or a plumbing system, if the existing system is not functioning or is unsafe as determined by an independent electrical or plumbing professional who is licensed in accordance with Title 58, Occupations and Professions;
 - (F) hand or guard rails; or
 - (G) occupancy separation doors as required by the International Residential Code; or
 - (ii) the abatement of a structure; or
 - (b) be enforced to terminate a legal nonconforming rental housing use.
- (7) A municipality may not require a change described in Subsection (6)(a)(i)(D) if the change:
 - (a) would compromise the structural integrity of a building; or
 - (b) could not be completed in accordance with current building codes, including set-back and window well requirements.
- (8) A legal nonconforming rental housing use may not be terminated under Section 10-1-203.5.