

ORDINANCE 2017-039 PASSED: SEPTEMBER 11, 2017

AMENDING CHAPTER 23 “UNIFIED DEVELOPMENT ORDINANCE”, ARTICLE 19 NON-CONFORMING SITUATIONS TO REMOVE REGULATIONS RELATED TO NON-CONFORMING USES AND CHANGE OF OWNERSHIP AND TENANCY.

WHEREAS, the City of DeKalb is a home-rule municipality with the powers and authority conferred upon it by virtue of the Illinois Constitution of 1970 and the Illinois Municipal Code; and

WHEREAS, Section 6(a) of Article VII of the Illinois Constitution of 1970 gives to Home Rule Municipalities the authority to exercise any powers pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and general welfare; and

WHEREAS, the City of DeKalb has adopted a Unified Development Ordinance (UDO), which sets forth the zoning and subdivision standards and procedures for the City of DeKalb; and

WHEREAS, Article 19 of the UDO sets forth regulations for non-conforming situations; and

WHEREAS, the City wishes to amend those regulations that require discontinuing a non-conforming use upon change of ownership and tenancy; and

WHEREAS, the Planning and Zoning Commission held a public meeting on this proposed amendment at its meetings on August 9, 2017, and August 23, 2017, at which time the Commission recommended approval of the proposed amendments by a vote of 3-1-3.

THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

Section 1. Chapter 23 “Unified Development Ordinance”, Article 19 “Non-Conforming Situations”, shall be amended as follows:

19.05 Non-Conforming Uses of Buildings and Structures

Where, on the date of adoption or amendment of this Ordinance, a lawful use of a building or structure exists that is no longer permissible under the regulations of this Ordinance or amendment thereto, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. An existing building or structure shall not be enlarged, constructed, reconstructed, moved or structurally extended or altered except to change the use of such building or structure to a use permitted in the district in which such building or structure is located.
2. Although an existing non-conforming use may continue, except as hereinafter limited, it may not be changed to another use, except to ~~a use of the same or of a less intense nature, or~~ a use permitted in the district in which it is situated.
3. When a non-conforming use of a building or structure is discontinued or abandoned for more than six (6) months (except where government action prevents access to the premises), the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.
4. When a non-conforming use of a building or structure changes ~~ownership, use or tenancy~~, the legal non-conforming use must be discontinued.

19.06 Repairs and Maintenance

1. Nothing in this Ordinance shall be deemed to prohibit the restoration of any structure and its use where such structure has been damaged by any means out of the control of the owner to an extent of less than fifty (50) percent of its replacement value (excluding the value of the land, the cost of preparation of land, and the value of any foundation adaptable to a conforming use) at the time of damage, provided the restoration of such structure and its use in no way increases any former non-conformity.
2. Whenever such structure has been damaged to an extent of more than fifty (50) percent of its replacement value (excluding the value of the land, the cost of preparation of land and the value of any foundation adaptable to a conforming use), at the time of damage, as determined by the ~~Director of Community Development~~ Community Development Director or by any means within the control of the owner to any extent whatsoever, the structure shall not be restored except in full conformity with all regulations of the district in which such structure is situated.
3. When a structure is determined to be in violation of any applicable health or safety code by the ~~Director of Community Development~~ Community Development Director under any applicable Code or Ordinance of the City and the cost of placing the structure in condition to satisfy the standards under such ordinance shall exceed fifty (50) percent of the replacement cost of the

structure, such non-conforming structure shall not be restored for the purpose of continuing a non-conforming use.

4. Repair or replacement of a damaged structure as permitted in Paragraph 1, above, shall be commenced in full compliance with the City's Building Codes and other codes, within twelve (12) months of the occurrence of the damage and diligently managed to completion. Failure to begin repair within that twelve (12) month period, or the commencement of repairs in violation of other Codes, will result in the forfeiture of the rights provided by this Article and after that period, the building or structure may only be repaired and/or used in full compliance with the provisions of this Ordinance.


Section 2. All ordinances or portions thereof in conflict with this Ordinance, including the prior versions of the ordinances included above, are hereby repealed.


Section 3. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

Section 4. This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: September 12, 2017. Effective date: September 21, 2017.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 11th day of September, 2017, and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Waiver of Second Reading passed by a 6-2 roll call vote. Aye: Jacobson, Marquardt, Fagan, Noreiko, Faivre, Smith. Nay: Finucane, Verbic.

ATTEST:


RUTH A. SCOTT, Deputy City Clerk


JERRY SMITH, Mayor

