



## CITY OF OTHELLO PLANNING COMMISSION

**Regular Meeting  
500 E. Main St.  
January 21, 2020  
6:00 PM**

1. Call to Order - Roll Call
2. Election of Chair and Vice Chair
3. December 16, 2019 Minutes Approval
4. Zoning Update – Request for Direction on:
  - a. Fencing along alleys
  - b. Zoning west of Broadway and south of Park Street
5. OMC 17.46 Mobile Home Parks – Request for Direction
6. OMC 17.79 Nonconforming Uses – Request for Direction

**Commissioners: Please bring your June 17, 2019  
Othello Planning Commission Recommended Zoning and Comprehensive Plan Updates  
books if you want a paper copy of the proposed codes for our discussion.**

**You can also access the latest version of the draft at:**

<https://www.othellowa.gov/departments/BuildingPlanning/comprehensive-plan-zoning-updates>

**Next Regular Meeting is Tuesday, February 18, 2020 at 6:00 P.M. at Othello City Hall**

**City Hall is accessible for persons with disabilities.  
Please let us know if you will need any special accommodations to attend the meeting.**

City of Othello  
Planning Commission  
December 16, 2019  
Jackee Carlson

**CALL TO ORDER**

Chair Roger Ensz called the meeting to order at 6:00 pm.

**ROLL CALL**

**Commissioners Present:** Kevin Gilbert, Roger Ensz, Brian Gentry, Tari Perez, Chris Dorow

**Absent:**

**Staff:** Community Development Director Anne Henning, Building & Planning Secretary Jackee Carlson,

**Attendees:** John Lallas, City Councilmember; property owners Steve & Jackie Sackmann and Bob Carlson.  
Quorum Established.

**APPROVAL OF PLANNING COMMISSION MEETING MINUTES**

**Commission Action:** The Commissioners voted to accept the minutes from November 18, 2019 M/S Roger Ensz/Kevin Gilbert.

**ZONING UPDATE - REQUEST FOR DIRECTION**

**Residential Uses in Commercial Zones** – The City Council has continued the public hearing on the Zoning Update to the next Council meeting on January 6. They are hoping the Planning Commission will review two remaining issues in the proposed Commercial Zones: whether to allow more residential uses within Commercial Zones, and how to regulate cargo containers as storage.

Ms. Henning stated that as it is drafted, the code would allow residential in commercial zones as an accessory use, upper floor or behind, but not on the street level. Currently, there is a lot of commercial land that is vacant. Ms. Henning presented the Commissioners with a map roughly showing all the vacant commercial land and they discussed the “Mixed Up Priorities for Mixed Use Buildings” article she had sent them regarding this topic.

Commissioner Ensz stated he drove around looking at all the vacant lots. He brought up the idea of having a 50-unit complex where the current mobile home parks are now.

Commissioner Dorow stated he would like to see Main Street frontage remain commercial, as well as First Ave.

The Commission continued discussing the different zoning options and what would best fit the City. They decided that Main Street should remain commercial on the ground floor and that it should be built to commercial standards with residential opportunities on any floors above that. The lots in the blocks along Main Street are 140' deep to the alley, so using requiring stand-alone residential to be at least 140' from Main Street would keep street level commercial in the first half block from Main Street. They also felt

commercial frontage was important in proximity to Highway 26. They felt at least 3 units should be required in a building so that individual single family homes and duplexes would not be allowed in a Commercial Zone. The changes would only be for the C-2 Zone.

Ms. Henning stated the Council would continue the hearing on January 6, 2020 and she didn't expect them to be done at that time.

**The Commission carried a motion to recommend allowing in C-2, residential without commercial as long as it is 3 or more units, more than 140 feet from Main Street and Highway 26. Motion introduced by Kevin Gilbert. Motion was seconded by Chris Dorow. Vote was 5-0 in favor; motion passed.**

The Commission discussed requiring commercial standards for first floor residential so it could be more easily converted in the future, but decided against including it in their motion.

#### **ZONING UPDATE – CARGO CONTAINERS**

The Commission discussed the regulations on cargo containers within the City and whether they should require a permit. During the discussion, Commissioner Ensz stated he would be ok with allowing the containers as long as they were camouflaged and out of sight, any others would need to have a limit of 6 months. Commissioner Dorow stated that they had previously discussed allowing them for a 3-year period, as they were to only be temporary. Ms. Henning stated that they went with the 3-year period because it was already in the code and she couldn't find any other city that had that long of a limit. Mr. Carlson gave a little background on the reason why the code had the limit it had and stated that the City did not want to see cargo containers along main street and 3 years should be enough time to come up with the money for a permanent structure. Commissioner Ensz stated that the current code has a clause about a yearly permit for a cargo container. The Commission and Ms. Henning both stated they did not like the idea of a yearly permit because of tracking reasons. Commissioner Ensz reiterated that he would like to see the container painted and kept up if it was going to be allowed for a 3-year period. Ms. Henning brought up that if that you're going to make someone comply with all the requirements, but then have them remove it in 3 years, does it make sense, why not just let them keep it. The Commission continued to discuss different options.

**The Commission carried a motion to recommend removing the 3-year limit and allow cargo containers to be permanent as long as they are kept up to code. Motion introduced by Roger Ensz. Motion was seconded by Chris Dorow. Vote was 5-0 in favor; motion passed.**

#### **OTHER BUSINESS:**

County Meeting - Zoning – Ms. Henning was asked by the County Planning Commission to attend their meetings, due to them discussing zoning and regulations around Othello. Commissioner Ensz stated that the County would like to zone all of Lee Road light industrial and they are requesting that the City zones the school district property to keep the buffer, also as industrial. The Commission had a brief discussion and went over the map.

The Commission questioned why the School District purchased the property on Lee Road, if a school was not allowed to be built there, per zone. Ms. Henning stated that they would be able to with a rezone. At this time the only thing that can be zoned is Industrial, because the Comprehensive Plan needs to be followed. If they wanted to change it, they would need to request the Planning Commission and City Council to change the Comprehensive Plan, then if approved it would go to the Hearing Examiner for a rezone.

Tari Perez wishes to abstain from voting due to a conflict of interest, as she is employed by the School District and her husband is the Assistant Superintendent.

**The Commission carried a motion recommend that the School District property on Lee Road be rezoned to I-1 Industrial in the current rezoning that the Council is working on right now. Motion introduced by Roger Ensz. Motion was seconded by Kevin Gilbert. Vote was 4-0 in favor; motion passed.**

**MOBLIE HOME PARKS & NONCONFORMING USES – REQUEST FOR DIRECTION**

The Commission is to review the Mobile Home Park chapter to determine if changes should be made to accommodate its use in regulating existing parks rather than permitting new parks.

Ms. Henning stated that the one that staff reviewed was not too bad, however, it can never be conforming to the code currently in place and meet the standards.

Previously the Planning Commission had recommended that the chapter be removed, because new parks are not proposed to be allowed in the new zoning. Since that is the only regulations for those parks, it should be looked at and something more reasonable should be put in place.

**ADJOURNMENT**

Having no other business, the meeting was adjourned at **7:59 pm**. Next scheduled meeting is Tuesday, January 21, 2020.

\_\_\_\_\_  
Roger Ensz, Chair

Date: \_\_\_\_\_

\_\_\_\_\_  
Jackee Carlson, Planning Secretary

Date: \_\_\_\_\_

TO: Planning Commission

FROM: Anne Henning, Community Development Director

MEETING: January 21, 2020

SUBJECT: Zoning Update – Fencing Along Alleys

At the January 6 City Council continued public hearing on the Zoning Update, the Council briefly discussed whether the proposed language requiring fencing to be at least 10' from the centerline of an alley should be increased to created additional clear space in alleys. The Planning Commission may wish to provide a new recommendation or retain their previous recommendation on this issue.

#### **Staff Comments**

1. At the Jan. 6 public hearing, an issue that was brought up was that the proposal to require fences no closer than 10' from the centerline of the alley, to ensure that the full 20' of alley right-of-way was outside any new fencing, was insufficient for the passage of large vehicles like garbage trucks, due to trash cans in alleys outside the fences. The request was for 12' from centerline, to potentially create 24' of space between fences, but at the expense of a 2' strip of back yard being excluded from the fenced area. Allowing a notched-in area for trash cans was discussed but rejected as not suitable for the automated pickup of cans.

**Action:** The Planning Commission should consider whether to make a new recommendation to the Council on the distance fencing can be from the centerline of an alley.

TO: Planning Commission

FROM: Anne Henning, Community Development Director

MEETING: January 21, 2020

SUBJECT: Zoning Update - Map Revisions – West of Broadway & South of Park Street

Doug and Vaughn Pegram own property west of Broadway and south of Park Street. They are interested in requesting a change to the zoning, which could also affect the zoning of surrounding properties. While the City is considering zoning City-wide is a good time to examine the zoning of an area in-depth if questions are raised.

The Planning Commission has the opportunity to provide additional recommendation to the Council at the continued public hearing January 27.

#### **Staff Comments**

1. The south half of the Pegram's property is zoned R-3 Residential and the north half is zoned I-1 Industrial. The Pegram would like the whole property zoned R-3 so they can create a residential subdivision, based on earlier proposals on the site.
2. The history of this site is complex. Without taking multiple days to review the many documents related to this site, staff can summarize a few relevant highlights: In 1998, a residential subdivision was proposed but never completed. Water mains were installed in the location of the proposed streets. In 2008, the north 500' of the site was rezoned from R-3 to I-1 Industrial (Ord. 1271).
3. Whether to rezone the north half of the property back to R-3 Residential from I-1 Industrial is a significant decision that should go through a public notice process. If that were the only decision, staff would just recommend it go through the normal process, after the current city-wide rezoning is finished. However, knowing that this proposal is coming has implications for the rezones currently under consideration, specifically the proposed change from C-2 Commercial to I-1 Industrial on the west side of Broadway for 6 lots and the School District transportation facility property. The Commission has been cautious about creating new areas where Residential directly abuts Industrial. By continuing with the proposed rezone to Industrial along Broadway, more Residential would be abutting Industrial if the Pegram property is rezoned. However, the Commission should also consider the impacts to the property owners along Broadway to being zoned C-3 instead of I-1. There are some differences in allowed uses under the proposed zoning code, as well as landscape requirements, pedestrian connections, and building design standards for buildings over 12,000 SF in the C-3 Zone. The latest versions of the draft codes are on the city website at:

<https://www.othellowa.gov/media/Building-and-Planning/Zoning%20Update/Ordinance%20Repealing%20portions%20and%20adopting>

[%20new%20chapters%20Title%2017%20Zoning.%2011-26-19.pdf](#). Commercial starts on p. 10, Industrial on p. 28.

4. Three of the six lots along Broadway are vacant, and the other three are developed as Othello Welding, All-American Propane, and the Pegrams' excavation/construction business.
5. If there is concern about Residential abutting Industrial, then the north boundary of the Pegrams' property should be looked at as well. The property to the north is owned by the Othello School District, with vacant land zoned I-1 on the south half and the transportation facility (also zoned I-1) on the north half. In the zoning draft as currently proposed, "passenger transportation facilities, public or private" are allowed in C-3. This would address the School District transportation facilities, but it is not currently known what the School District might intend for the vacant south half of their property.

#### **Attachments**

- Aerial photo
- S. Broadway proposed zoning 11-19-19
- S. Broadway zoning changes 10-7-19

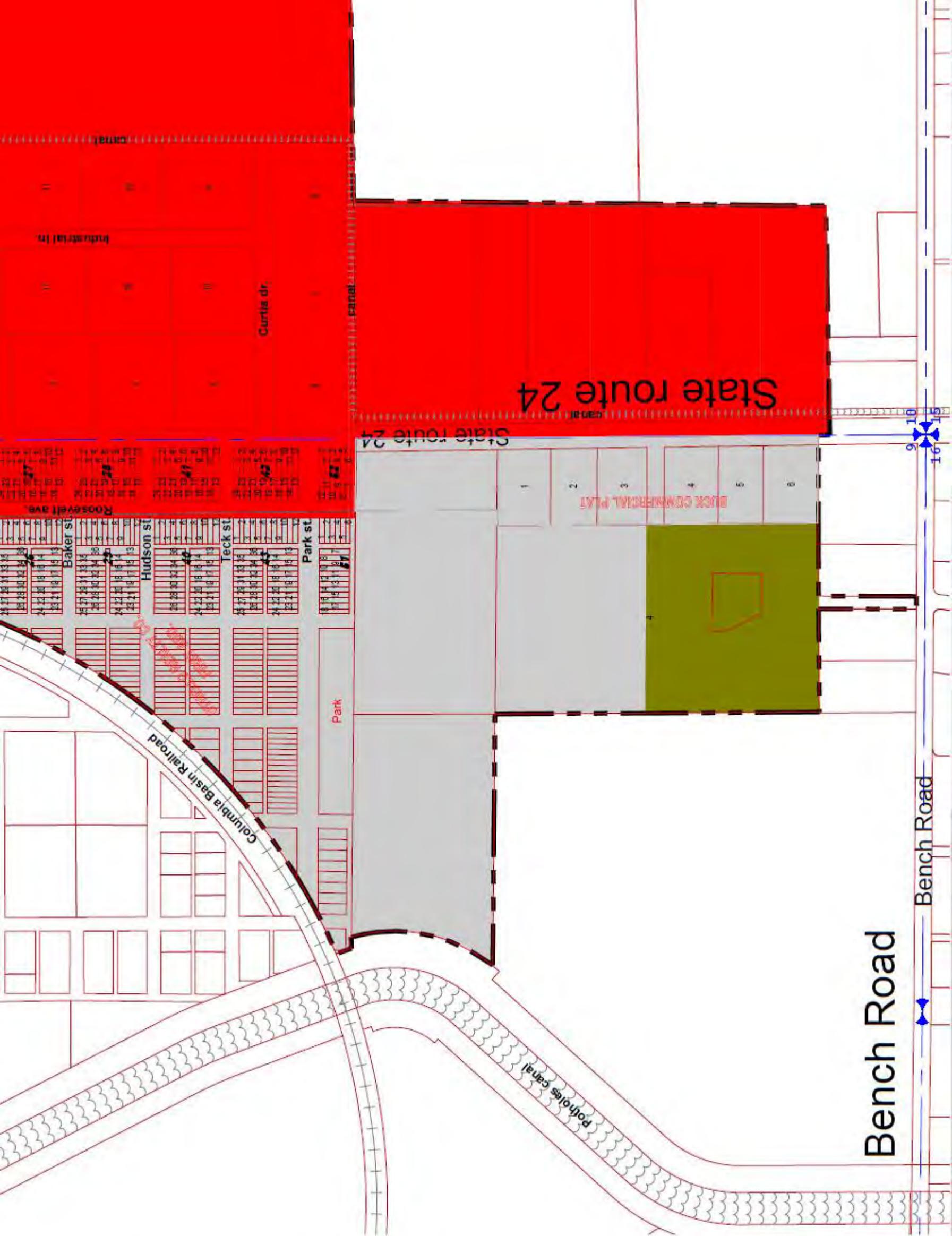
**Action:** The Planning Commission should review the current and proposed zoning for the area west of Broadway and south of Park Street and determine whether to make any new recommendations to the Council on the zoning in this area.

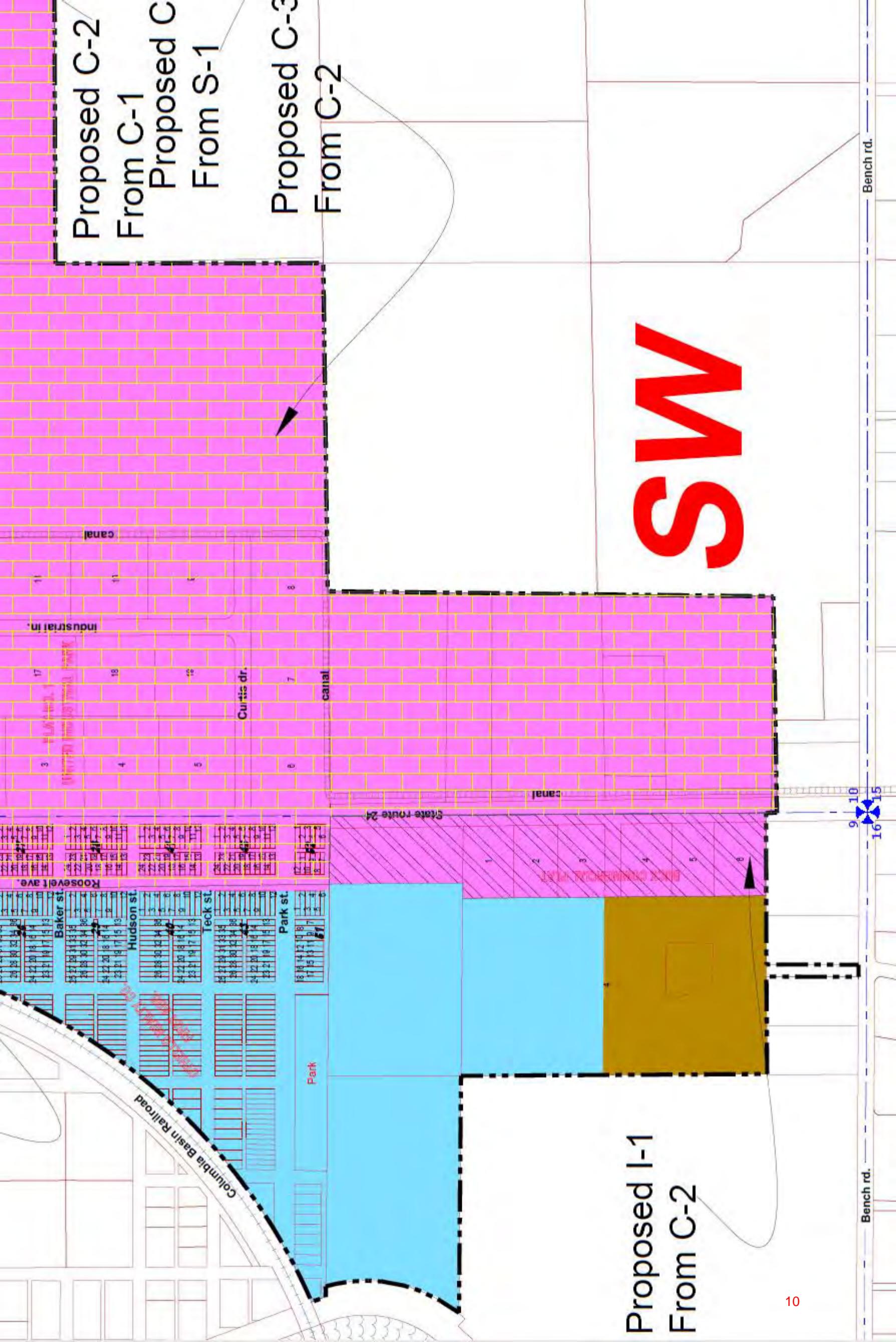


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200 ft

# Bench Road





TO: Planning Commission

FROM: Anne Henning, Community Development Director

MEETING: January 21, 2020

SUBJECT: OMC 17.46, Mobile Home Parks

For the Title 17 Zoning Update recommendation to the City Council, the Planning Commission had initially recommended that OMC 17.46, Mobile Home Parks, be deleted, since mobile or manufactured home parks are not proposed to be an allowed use in any zone. However, there are two existing mobile home parks, and OMC 17.46 seemed to provide the only zoning standards for these parks. As a result, this chapter was removed from the proposed repeal ordinance that is part of the continued public hearing by the Council on the zoning updates, with the intent to consider revising the mobile home park chapter to make it more applicable to the existing parks.

However, based on review of codes and procedures in other cities, it appears most cities do not try to make old parks comply with existing codes. Only one city had any history of deeming parks nonconforming and doing a periodic review. Therefore, it may not be relevant to retain the existing mobile home park chapter.

#### **Staff Comments**

1. Mobile home parks in Othello have been regulated in different ways over time. Ordinance history:
  - a. The first ordinance regulating trailers and trailer parks (Ord. 202) was adopted in 1957. Trailer parks required an annual permit from a designated Health Officer. (6-27-57)
  - b. There was an amendment in 1963 (Ord. 281) to allow a permit for temporary and emergency parking of trailers for 6 months. (9-23-63)
  - c. In 1977, Ord. 527 repealed the previous regulations and created a new chapter for mobile home parks and RV parks. This ordinance required a permit to create a new park. Standards included 44'-wide paved streets with curb and gutter (28'-wide if no parking allowed), sidewalks to each mobile home site, permits for additions, sheds, etc.; 20' landscaped buffer to adjoining uses (or 10' of landscaping with a solid fence or wall), grass or shrubbery along the street, recreation areas, fire flow, 2 parking spaces for each mobile home site, an office and a manager, the manager could refuse rental to units which were too dilapidated or were a fire or health menace, and set limits on the occupancy of each trailer. The ordinance also created three Mobile Home and RV Park Zones, for low, medium, and high density. (5-23-77)
  - d. Also in 1977, Ord. 557 designated certain areas zoned C-1 to also be zoned contemporaneously Residential Mobile Home District 1 (as created in Ord. 527). This area included a portion of one of the remaining mobile home parks on 1<sup>st</sup> Avenue and is adjacent to both. There was no discussion captured in the minutes (11-28-77), but at the same meeting, there was an ordinance to reduce the annual fee for a

trailer court business license from \$75 to \$27.50. There was also a motion to waive the fee for the two existing trailer courts. The two trailer courts in 1978 are likely the two that still exist.

- e. In 1978, Ord. 577 reduced the lot size in RMH-1 from 7200 square feet to 7000 square feet. This appears to be due to the existing lots in the C-1/RMH-1 area being only 7000 square feet. (9-25-78)
- f. There was a major overhaul of the Zoning code in 1995 (Ord. 948, 7-20-95). This ordinance repealed the three Mobile Home Districts and Chapter 17.68 Mobile Homes and Recreational Vehicles—Uses, and created 17.46, Mobile Home Parks, the current ordinance. At that time, the Council had some concerns about older mobile homes in the parks. There were a few minor amendments later the same year (Ord. 972) but no amendments since then.
- g. Ord. 1181 in 2004 repealed Title 15, House Trailers and Trailer Courts. According to the minutes, this title was a duplicate of 17.46, Mobile Home Parks. (6-14-04)

- 2. State law (RCW 35.21.684(2) and RCW 35A.21.312(2)) does not allow a city to adopt an ordinance that restricts placement of a unit in an existing (pre-2008) park based exclusively on age or dimensions of the unit. These same RCWs also do not allow the city to restrict the location of a mobile/manufactured home based solely on lack of compliance with existing separation and setback requirements that regulate the distance between homes. Other restrictions, such as failure to comply with fire, safety, or other local ordinances or state laws, are allowed. Staff has been unable to locate clear examples of these types of regulations that could be placed. Some jurisdictions note that a Fire Safety Inspection from L&I is required before placement of a pre-1976 mobile home; however, this is already required by WAC 296-150M-0540 so would not need to be specifically adopted.
- 3. According to WAC 296-1501, Sections 0300 and 0340, a city may impose requirements for installation in floodplains, installation in hazardous areas, earthquake protection, frost depth, soil-bearing capacity, noise control, automatic sprinkler systems for fire protection, and local snow and wind load requirements. All structures in the jurisdiction must be required to meet the same snow load and options must be given for meeting the requirements. For example, if the local snow root load is 50 psf, the city may require the home to have a free-standing snow cover, a snow removal plan, or some other option. The city may **not** require the structure to be built with 50 psf roof load. A jurisdiction also may not impose regulations on smoke detectors in manufactured homes because they are regulated by federal standards.
- 4. State law (RCW 35.21.684(3) and RCW 35A.21.312(3)) also does not allow a city to prohibit a recreational vehicle used as a primary residence in a mobile/manufactured home community. A city can impose fire and safety regulations, require utility connections, and require the RV to have a toilet and shower or the park to provide toilets and showers.
- 5. State law (RCW 35A.63.146 and RCW 36.63.161) further does not allow the removal or phased elimination of a manufactured home community because of its status as a nonconforming use.

6. See attached summary of how various cities regulate older mobile home parks. There is a wide range of approaches, from intensive code enforcement to no activity at all, probably closely tied to how much of a problem or hazard the specific parks are perceived to be by the regulating jurisdiction.
7. Staff's recommendation is that OMC 17.46, Mobile Home Parks, be deleted as no longer relevant, and that enforcement of nuisance, maintenance, and safety issues be mainly through the nuisance code and International Property Maintenance Code (adopted Oct. 2019).

**Attachments**

- Summary of Regulation of Older Mobile Home Parks
- Existing OMC 17.46, Mobile Home Parks

**Action:** The Commission should review staff's findings and provide direction on whether to recommend deleting OMC 17.46, Mobile Home Parks.

Summary of Regulation of Older Mobile Home Parks

City/Population	Regulations
Black Diamond 4,436	Website includes link to <a href="#">Mobile Home Info Sheet</a> , which includes FAQs about mobile home placements, including what can and can't be required.
Clarkston 7,396	Per staff: They don't allow new mobile home parks. They regulate the existing ones with the International Property Maintenance Code and NFPA 501A, Standards for Fire Safety Criteria for Manufactured Home Installations, Sites and Communities. Unlike the IBC, these codes aren't limited to the standards in place at the time the home was built, they are just concerned with safety. If someone is renting a mobile and they are concerned that it is unsafe, they can call the city for an inspection. If it is outside the city's jurisdiction (inside of a mobile home is L&I's jurisdiction), the city can submit a form to L&I for an inspection.
Selah 7,859	Per staff: None of the parks in city limits are very old. Code: Mobile homes which do not meet the applicable HUD standards of June 15, 1976, must pass a fire safety inspection by L&I before an installation permit will be issued. SMC <a href="#">11.11.020(1)(F)</a> An existing legal nonconforming park can be expanded if existing parking is upgraded substantially to current standards. SMC <a href="#">10.26.050</a>
Ephrata/8,017	Per staff: One existing old park. It has not had any complaints or issues.
Airway Heights 8,166	Per staff: They have some old parks, and conditions had been pretty bad. Their Code Enforcement Officer spent about a year of intensive work on the parks, starting with nuisance violations of trash, junk vehicles, etc. Most of the parks have public streets, so there were no private property issues and she could enforce the same as any house fronting a street. The other parks improved so much that the two with private streets requested her help, so then she could enforce within the interior of those parks as well. Once the nuisance violations were cleaned up, they started work on the safety violations.
<b>Othello/8,345</b>	
Grandview 11,129	Per staff: Patio covers without permits is the most common violation. He uses nuisance codes and IPMC for enforcement. Nuisance doesn't always apply because park streets are private. Having enough time to do the enforcement of everything in the city is the biggest problem. He focuses on issues that will improve safety for EMS personnel. Code: All existing manufactured home parks not meeting the requirements of the manufactured home park chapter shall be declared nonconforming and shall not be permitted to add spaces or make any improvements that are not in full compliance with the chapter. Any nonconforming park which is not operated for 1 year shall not reopen until all requirements of the chapter have been met. GMC <a href="#">17.20.080</a>
Sedro-Woolley 11,838	Per staff: No review of old parks, they are existing and allowed to continue, just as old subdivisions are. New placements in existing parks need to meet current setback & size requirements. (Note that size limitations and setback restrictions would appear to conflict with RCW 35.21.684(2) and RCW 35A.21.312(2)).
Cheney 12,446	Code: Existing mobile/manufactured home parks shall be allowed to continue as a nonconforming use and be regulated by the ordinances in effect when the park was created, except 1) Expansions shall be conforming, 2) Renovations where the value exceeds 50% of the assessed value of the park shall be conforming, 3) If the park is unoccupied for 1 year (up to 3 years with written notice of intent to resume), the nonconforming use is considered abandoned. CMC <a href="#">20.05.060</a> For grandfathered parks, a plan showing trailer sites, streets, driveways, and required improvements is required if any trailer site is relocated or if any street or

City/Population	Regulations
	<p>driveway is altered. No new mobile home is allowed until the plan has been approved. CMC <a href="#">20.05.061</a></p> <p>Any manufactured home park may be inspected by the building official at any reasonable time for violations of this title. CMC <a href="#">20.05.070</a></p> <p>Code Enforcement Officer – Enforcement Powers: In addition to the powers and duties provided by other city ordinances and existing provisions of the city code, the code enforcement officer and deputy code enforcement officers shall have the power and duty to enforce the penal provisions of Title 20 and of all ordinances relating to mobile homes and mobile home parks. CMC <a href="#">2.25.020</a></p>
E. Wenatchee 13,983	<p>Per staff: Very little unit turnover, maybe 4 in 20 years. Do not get complaints on any of the parks so he does not go looking for problems. Could probably find problems if he had the time to look for them. Would use nuisance codes and building code for enforcement if needed.</p>
W. Richland 14,596	<p>Code: Existing code, WRMC <a href="#">8.12</a> Mobile Home Parks and Trailer Coach Camps, was adopted in 1956 with apparently no changes since then.</p>
Anacortes 16,953	<p>No manufactured home park regulations. Appears new manufactured home parks are not allowed.</p>
Moses Lake 23,328	<p>Parks are deemed nonconforming and are reviewed every 2 years by the Planning Commission to determine if they can continue to operate. Process starts with a walk-thru by staff (Building, Code Enforcement, Fire, Planning) to identify any violations. A correction list is generated and enforcement letters sent if not corrected in a timely manner. Usually violations are corrected before Planning Commission review, unless the owner is not cooperative, then the PC can start action to revoke the nonconforming status of the park.</p>
SeaTac 29,140	<p>Code: Existing parks use standards for density, setback, landscaping, &amp; parking in effect when the park was approved. Placement of new accessory structures and replacement of mobile homes governed by standards in effect when the park was approved. In no information available, use the average of prevailing setback on either side of the proposed new or replacement structure. All mobile homes in established parks shall meet minimum HUD standards and applicable Building Codes and amendments. STMC 15.465.600.D</p>
Lacey 49,748	<p>Code: Requirements for RV in a manufactured home park: smoke detector, CO detector, egress from sleeping area, electric cord protection, connected to water supply and sewer system of park, steps/landings etc. to meet IRC, internal toilet and shower or park to provide. LMC <a href="#">14.14.025.G</a></p>
Marysville 68,864	<p>Existing mobile home parks governed by standards for density, setbacks, landscaping, and parking in effect when park approved. Placement of new accessory structures and replacement mobile homes governed by dimensional standards when park was approved. Where internal setbacks not specified, setbacks in IBC, IRC, and IFC shall apply. RV as permanent residence is allowed provided utility connection and meet current adopted standards for mobile/ manufactured home parks. Insignia mobile homes may be installed in established parks; provided all mobile homes supported by piers shall be fully skirted. MMC <a href="#">22C.230.150</a></p>
Pierce County	<p>County standards for installation/placement: If home does not have HUD or L&amp;I tag, a Fire Safety inspection shall be performed by L&amp;I. If unit passes, L&amp;I will place alteration tag noting Fire Safety inspection (A F/S). If L&amp;I does not tag the unit but provides list of corrections, proof of this inspection shall be presented to building official prior to issuance of permit. Unit may not be lived in until corrections inspected by L&amp;I. <a href="#">17C.30.160.AE 103</a></p>

## Chapter 17.46

### MOBILE HOME PARKS

#### Sections:

- 17.46.010 Mobile home parks (permitted by conditional use in the C-2 district).
- 17.46.020 Permitted uses.
- 17.46.030 Mobile home parks development standards.
- 17.46.040 Mobile home parks—Required permits and licenses.
- 17.46.050 Mobile home park administration.

#### **17.46.010 Mobile home parks (permitted by conditional use in the C-2 district).**

When allowed in a specific use district, any development, alterations or extension of a mobile home park shall require a conditional use permit as per the definition of “mobile home park.” The ownership of the land must be under one entity (i.e., one person, partnership, firm or corporation). All streets and systems within the boundaries of the mobile home although served by the municipal system, are maintained by the ownership entity. Application shall be submitted to the city of Othello hearing examiner. In addition to the requirements specified, the application/development plan shall include design specifics of the mobile home park, as set forth and required in this section, including, but not limited to, the location and dimensions of each mobile home lot; the location of each mobile home stand (so that setbacks, yards and other open spaces and utility connections may be determined); the location of street lighting; the method for drainage and the location of all catchbasins and storm sewers; and the mobile home park landscaping plan. The hearing examiner in determining whether the location contemplated will create special problems in relation to site design and compatibility with other developments established as of right within the particular zone, shall on its own initiative, or by recommendation of the planning commission, establish conditions of the conditional use permit as deemed necessary or shall deny the permit. (Ord. 972 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

#### **17.46.020 Permitted uses.**

No building, structure or land within the boundaries of a mobile home park shall be used for any purpose, except as follows, and specified on the approved conditional use permit development plan.

##### (a) Principal Permitted Uses.

- (1) Mobile homes used for dwelling purposes with their customary accessory uses;
- (2) Buildings and structures necessary for the operation and maintenance of the mobile home park, or providing customary accessory uses of mobile home parks, including laundry facilities, park office and equipment storage buildings;
- (3) Buildings and structures necessary for the operation of a public utility;
- (4) Community recreation facilities, for residents of the mobile home park and their guests, including swimming pools;
- (5) Residences for the use of a manager and/or caretaker responsible for maintaining or operating the mobile home park which may be either a conventional single-family dwelling or a mobile home;
- (6) Vending machines and similar products and services may be approved by the planning commission and the city council. (Ord. 948 § 2 (part), 1995).

#### **17.46.030 Mobile home parks development standards.**

(a) Minimum Park Size. The minimum area for a mobile home park shall be five acres.

(b) Maximum Gross Density. Maximum gross density shall not exceed ten mobile home lots per acre. Density for each specific mobile home park shall be similar to, or compatible with, surrounding residential areas and shall be determined on a case-by-case basis.

(c) Public Access. Public access not less than thirty-six feet in width shall be required from the mobile home park to an arterial or collector street. The planning commission and city council shall determine on a case-by-case basis whether a secondary access shall be required. Secondary access, if provided, shall enter the public street system at least one hundred fifty feet from the primary access.

(d) Minimum Lot Requirements.

(1) The minimum area for a mobile home lot designed to accommodate a mobile home not exceeding fourteen feet in width shall be three thousand five hundred square feet. The minimum lot dimension shall be thirty-four feet.

(2) The minimum area for a mobile home lot designed to accommodate a mobile home exceeding fourteen feet in width shall be four thousand five hundred square feet.

(e) Minimum Building Setback Requirements.

(1) Twenty-five feet from a public right-of-way;

(2) Ten feet from the mobile home lot line abutting on an interior access street;

(3) Fifteen feet from any park boundary (excluding public rights-of-way).

(f) Setback Requirements. No mobile home or accessory buildings shall be located closer than fifteen feet from any other mobile home unit or permanent park building. An unattached accessory building shall be set back seven and one-half feet from the lot line. An attached accessory building shall be considered part of the mobile home for separation purposes. If not attached to the mobile home, an accessory structure shall not be located closer than five feet from such mobile home (unless an intervening fire wall is provided), or from any other mobile home or permanent building.

(g) Occupied Area. The cumulative occupied area of the mobile home and its accessory buildings on a mobile home lot shall not exceed sixty-five percent of the respective lot area.

(h) Accessory Structures and Buildings. Accessory structures and buildings shall be designed and constructed of materials, size, color and pattern so as to be compatible with the mobile home. Such structures shall be subject to all applicable building and construction provisions of this code.

(i) Park Land Dedication/Recreation Areas. Mandatory park land dedication or payment of fees-in-lieu-of-dedication shall be required for all mobile home park developments. Dedicated park land shall not be designated within the boundaries of a mobile home park; however, certain recreational facilities and areas provided within the park for its residents which are determined by the planning commission and the city council to satisfy the intent of the mandatory park land provision may be eligible for credit towards the required dedication or fee. Development and maintenance of recreational facilities and area(s) within the mobile home park boundaries are the responsibility of the park owner and/or developer.

(j) Interior Park Access Ways. Streets, driveways and other access ways within a mobile home park shall be constructed and maintained by the owner and/or developer of the park in accordance with the standards provided by the engineering department. Interior park access ways shall not be dedicated as a public right-of-way unless otherwise approved or required by the city council. Interior park streets shall observe the following minimums:

(1) One-way traffic streets shall be a minimum of twenty-eight feet in width. Reduction of this standard to a minimum of twenty feet may be allowed when on-street parking is prohibited subject to the approval of the public works department.

(2) Two-way traffic streets shall be a minimum of thirty-six feet in width. Reduction of this standard to a minimum of twenty-eight feet may be allowed when on-street parking is prohibited subject to the approval of the public works director.

(3) Parking lanes shall be eight and one-half feet wide where provided.

(4) Cul-de-sac streets and streets designed to have one end permanently closed ("Y" or "T") should have a minimum turning radius of fifty feet, or an adequate right-of-way to permit ease of turning.

(k) **Parking Requirements.**

(1) A minimum of two off-street parking spaces shall be provided adjacent to, or conveniently near, each mobile home lot. Parking may be in tandem.

(2) One parking space per each four mobile home lots shall be required to accommodate the contemplated guest parking loads and shall be evenly distributed throughout the mobile home park. Parking lanes may be provided up to fifty percent of this requirement. The remainder of the guest parking spaces shall be grouped in separate off-street parking areas. The design and construction of parking facilities shall be in accordance with this code.

(l) **Mobile Home Stand.** Every mobile home lot shall be provided with a mobile home stand to accommodate the placement of the mobile home and its attached accessory structures. The material used for the mobile home stand foundation base shall be durable and capable of supporting a mobile home without shifting, heaving or uneven settling regardless of weather conditions and other forces acting on the unit. Provisions shall be made at the mobile home stand for utility connections at appropriate locations and adequate surface drainage as specified and approved by the public works department.

(m) **Pedestrian Walkways.** A common walkway system shall be provided and maintained between locations where pedestrian traffic is expected to be concentrated and might interfere with automobile traffic. Such common walks shall be constructed in accordance with standards provided by the public works department.

(n) **Street Lighting.** Adequate street lighting shall be provided to illuminate streets, driveways, walkways and buildings for the safe movement of pedestrians and vehicles and for the safe night time use of such facilities. Installation of all street lighting shall be in accordance with standards provided by the public works department.

(o) **Landscaping, Buffering and Screening.**

(1) Mobile home parks shall be enclosed on all sides with permanently maintained natural or artificial barrier, such as a sight-obscuring wall or continuous buffer of trees or shrubs, not less than six feet in height, except for those sides abutting public rights-of-way. Sides which abut public rights-of-way shall be buffered with a perimeter landscape strip not less than ten feet wide within the required setback. Such landscape strip shall be planted or installed with a permanently maintained natural or artificial barrier not less than four feet in height. If an artificial barrier is installed, the remainder of the landscape strip shall be landscaped with ground cover or other approved landscape treatment, excluding pavement. (See city landscape ordinance.)

The city council may waive all or part of the perimeter landscaping requirements if, due to the nature of the existing topography or other existing conditions, it is unreasonable to require a wall, fence or screen.

(2) All open areas of the mobile home park shall be landscaped. A permanent irrigation system shall be installed and all landscaped areas shall be continually maintained.

(3) A specific landscaping plan for the mobile home park shall be submitted as part of the conditional use permit application. Landscaping materials shall conform to, and be installed in accordance with the approved development plan prior to occupancy of any mobile home lot.

(p) **Storage Facilities.**

(1) No mobile home lot shall be occupied unless or until adequate storage facilities as provided for herein are properly installed or developed. It shall be the responsibility of the park management to provide the required storage facilities and adequate security thereof.

(2) Outside storage of materials, equipment and household items shall not be permitted. A private storage facility having a floor area of at least forty-eight square feet and minimum height of six feet shall be provided

on or conveniently near each mobile home lot for inside storage of such items. The storage structure shall be anchored to a concrete footing as approved by the building official.

(3) A bulk storage and parking area shall be set aside for storage of boats, RV's, trailers, and other similar items. A minimum of three hundred square feet of space, exclusive of driveways, shall be provided within the mobile home park for every five mobile home lots. This storage area shall be located so as to avoid conflict with adjoining residential properties and shall be screened from view with appropriate landscaping and/or screening as indicated on the approved landscaping plan.

(q) Utilities and Other Services.

(1) The construction and maintenance of all water, sewer, electrical, natural gas, communication and miscellaneous (television cable, etc.) service lines shall be under the supervision of the department or utility agency having jurisdiction in accordance with all applicable state and local codes, policies and regulations. The location of all underground utility and service lines shall be indicated by an aboveground sign (or signs) identifying the proximity of the lines to the mobile home stand to facilitate service connection and to avoid damage to such underground services by the use of ground anchors, installation of skirting, etc. Fire protection, hydrant location, fire equipment access, etc. shall be approved by the local fire chief.

(2) Water Supply and Distribution System. Each mobile home park shall be connected to the Othello municipal system, with the appropriate backflow preventative device installed, and its supply shall be used exclusively. Individual water service connection shall be provided for each mobile home lot.

(3) Sewage Disposal. Adequate and safe sewage disposal shall be provided for all mobile home lots. (Connection shall be made to public sewer system).

(4) Electrical Distribution System. Each mobile home park shall be provided with an electrical distribution system in accordance with the policies and specifications for installation and maintenance of the electrical utility having jurisdiction.

(5) Natural Gas. Each mobile home park shall be provided with a natural gas distribution system, if available or desirable, in accordance with the policies and specifications for installation and maintenance of the natural gas utility having jurisdiction.

(6) Solid Waste Disposal System. Solid waste collection stands shall be provided for all waste containers in accordance with specifications for design and location as provided by the public works department. Solid waste collection stands, whether individual or grouped, shall be screened from view with appropriate landscaping and/or screening as indicated on the approved landscaping plan.

(r) At least one public telephone shall be provided in each mobile home park.

(s) Signs. Signs identifying the mobile home park shall be in conformance with applicable sign regulations. (Ord. 972 § 1 (part), 1995; Ord. 948 § 2 (part), 1995).

**17.46.040 Mobile home parks—Required permits and licenses.**

(a) Mobile home parks are subject to all applicable building and construction provisions of this code, which include issuance of building permits and authorized inspections of all phases of construction and development.

(b) No building permits shall be issued and no construction of any kind to create, alter or extend any mobile home park may be initiated until a conditional use permit has been granted by the hearing examiner in accordance with the procedure specified and subject to the applicable regulations and standards set forth in this section.

(c) No mobile home lot may be rented or occupied until a business license for operation of the mobile home park has been obtained pursuant to Chapter 5.02. A business license shall not be issued until all required building, fire and health inspections have been conducted. Construction or development of all of the improvements indicated on the approved development plan shall also be required prior to issuance of a business license; provided, however, that the building official may waive this requirement if sufficient need can be shown. A performance bond or other

acceptable security shall be required by the building official in order to ensure development as per the conditional use permit, for any improvements that are not completed prior to issuance of the business license.

(d) Such improvements shall be completed within a reasonable time, not to exceed six months. Prior to renewal of the business license, the building official shall inspect the mobile home park to check continued compliance with all conditions of the conditional use permit and shall submit to the park owner a written report stating whether or not the park is in compliance. The owner must take action to effect compliance with any conditions that are in violation before the business license shall be renewed. A violation of any of the licensing provisions of this section shall be subject to the penalties set forth in Chapter 17.92.

(e) All mobile home parks are developed pursuant to a binding site plan as provided in Chapter 16.26 of this code. (Ord. 948 § 2 (part), 1995).

#### **17.46.050 Mobile home park administration.**

(a) It shall be the responsibility of the park owner and/or manager to assure that the provisions of this section, including installation of mobile homes and construction of accessory structures on individual mobile home lots, and any additional conditions of the special use permit are observed and maintained within the mobile home park.

(b) The park shall be kept free of any brush, leaves and weeds and all landscaped areas shall be continually maintained.

(c) Failure to comply with any of the requirements for administering a mobile home park shall be a violation subject to penalties set forth in Chapter 17.92.

(d) The stabilizing system (support system and anchoring system) of each mobile home shall be installed in accordance with the manufacturer's installation instructions. Mobile homes for which manufacturer's instructions are not available shall have the anchoring and support systems designed and installed in accordance with the specifications set forth in this section or shall be designed by a registered professional engineer or architect.

(e) Each mobile home shall have the space between the bottom of the unit and the ground completely enclosed with a compatible skirting material or installed at terrain level, with provisions for adequate ventilation and access as approved by the building official.

(f) Construction of accessory structures shall be subject to the applicable building and construction provisions of this code.

(g) Definitions (Mobile Home Stabilizing System).

(1) "Anchoring system" means a combination of ties, anchoring equipment and ground anchors that will, when properly designed and installed, resist overturning and lateral movement.

(2) "Stabilizing system" means combination of the anchoring system and the support system when properly installed.

(3) "Support systems" means a combination of footings, piers, caps and shims that will, when properly installed, support the mobile home. The stabilizing system of each mobile home shall be installed in accordance with the HUD approved manufacturer's installation instructions. For mobile homes without manufacturer's installation instructions, the stabilizing system of mobile homes for which installation instructions are not available shall be designed by a registered professional engineer or architect, or shall comply with the specifications and standards for mobile home setting and stabilization established in NFPA/501A-Standard for Installation of Mobile Homes Including Mobile Home Park Requirements; provided, however, that this standard shall not be construed as relieving the installer of a mobile home of responsibility for compliance with all other applicable regulations and provisions of this code. (Ord. 948 § 2 (part), 1995).

TO: Planning Commission

FROM: Anne Henning, Community Development Director

MEETING: January 21, 2020

SUBJECT: OMC 17.79, Nonconforming Uses

The Nonconforming Use chapter, OMC 17.79, was not included in the general zoning update but should be updated.

### **Staff Comments**

1. Ordinances regulating nonconformities typically address three different types of nonconforming:
  - a. **Uses:** Where the use of the land is no longer allowed in the zone, or does not meet the current standards. (Note that a true nonconforming use was legal at one time but the zoning and/or standards have changed so that it no longer is a legal use.)
  - b. **Structures:** Where the use of the structure is conforming, but dimensional standards such as setbacks do not meet the current codes.
  - c. **Lots:** Where the lot is smaller than currently required or does not meet some other standard such as width or depth.
2. Based on initial research, Othello's extensive process to deem uses as nonconforming and then review them every two years is unusual among codes across the state. This suggests we should consider carefully why Othello's code is different and how we should proceed.

### **Attachments**

- MRSC overview: Nonconforming Uses, Structures, and Lots
- Summary of nonconformity regulations in selected WA jurisdictions
- Samples of concise nonconformity chapters: Bainbridge Island, Friday Harbor, Sedro-Woolley
- Existing OMC 17.79, Nonconforming Uses

**Action:** The Commission should provide direction on changes to OMC 17.79, Nonconforming Uses.

# Nonconforming Uses, Structures, and Lots

This page provides information on local government regulation of nonconforming uses in Washington State, including relevant court decisions and examples of local ordinances.

## Overview

A nonconforming use is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations, is no longer a permitted use. A nonconforming structure is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations. A nonconforming lot is one that, at the time of its establishment, met the minimum lots size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, is now smaller than that minimum lot size.

State law does not regulate nonconforming uses, structures, or lots. So, local jurisdictions are free, within certain constitutional limits, to establish their own standards for regulation of these nonconforming situations.

Nonconforming uses and structures are not illegal uses and structures; they are generally allowed to continue as is, subject to local restrictions. In [Rhod-A-Zalea v. Snohomish County](#), 136 Wn.2d 1, 7 (1998), the state supreme court explained the basis for this treatment of nonconforming uses:

The theory of the zoning ordinance is that the nonconforming use is detrimental to some of those public interests (health, safety, morals or welfare) which justify the invoking of the police power. Although found to be detrimental to important public interests, nonconforming uses are allowed to continue based on the belief that it would be unfair and perhaps unconstitutional to require an immediate cessation of a nonconforming use.

Local restrictions typically prohibit expansion of nonconforming uses and structures. Nonconforming uses usually lose their legal status under local regulations if they are discontinued for a particular period of time, such as six months or a year. Nonconforming structures typically lose their legal status if they are destroyed, such as by fire, in whole or in part.

Uses that become nonconforming as a result of changes in zoning regulations are still subject to reasonable regulations under a city or county's police power to protect the public health, safety, and welfare that are enacted subsequent to the use being established. *Rhod-A-Zalea v. Snohomish County*, 136 Wn. 2d at 8-9. In that decision, the court held that a company that had the right to mine peat as a nonconforming use was subject to a later-enacted local building regulation that required a grading permit to excavate or fill the property.

Zoning ordinances may provide for the termination of nonconforming uses by reasonable amortization provisions. Such amortization provisions, which allow for the continued operation of the use for a period of time deemed sufficient to recoup the investment put into the use, are commonly applied to restrictions or prohibitions imposed on billboards.

Property owners are generally allowed to build on their nonconforming lots, although they typically must meet setbacks applicable to that zone, unless a variance from such setbacks is applied for and can be granted under the adopted criteria for variance approval. Denial of the ability to build on a nonconforming lot could, in some cases, constitute a "taking" under the federal and state constitutions. Where a property owner owns two adjacent and undeveloped nonconforming lots, some jurisdictions treat the two lots as one, conforming lot.

## Nonconformity Regulations Summary

City/Population	Regulations
Friday Harbor* 2,407	<p>Nonconforming use may not be enlarged. Expires in 12 months if abandoned. Nonconforming structure may not be enlarged or altered so as to increase nonconformity. If damaged, can be reconstructed only to previous size and height. A nonconforming lot may be used provided any structures meet all other provisions of the title except minimum lot size. FHMC <a href="#">17.60</a></p>
Benton City* 3,369	<p>Any lawful use, building, or structure existing at the time of the ordinance may be continued even though it may not conform with zoning. Any lawful use which is not listed as a permitted use shall be issued a CUP and may be repaired or structurally altered. An increase in the scope of the use shall require an amendment to the CUP.</p> <p>Nonconforming structure may be altered or repaired.</p> <p>A building that is part of a nonconforming use shall not be enlarged or structurally altered, unless repaired within 1 year of damage.</p> <p>Nonconforming use with no structures worth &gt;\$500 shall cease or become conforming within 2 years.</p> <p>Nonconforming use is discontinued if abandoned for 1 year, damaged or destroyed and no permit for repair within 6 months. Evidence of abandonment includes removal or destruction of contents, property, or fixtures necessary to maintain the use or structure; Failure to maintain necessary elements in workable or habitable condition; Uses or improvements incompatible with the nonconforming use or structure; Declaration by owner or occupant of intent to abandon.</p> <p>A single family dwelling can be constructed on a nonconforming residential lot of official record subject to compliance with all development requirements and setbacks. BCMC <a href="#">20.45</a></p>
Blaine* 5,311	<p>Intent is to allow nonconformities to continue but not encourage their survival. Nonconforming uses may not be expanded. Use is considered abandoned if ceases for 90 consecutive days or 9 months total in 3 years. New signs not allowed for nonconforming use. If a CUP is granted, the use is then considered conforming.</p> <p>Nonconforming lot in residential zone (area and/or width) can be built on if setbacks, etc. can be met. Does not apply if owner owns contiguous lots, those are considered combined.</p> <p>Nonconforming structure can continue but may not be expanded or enlarged until it has been brought into conformity. 50% destroyed must be rebuilt as conforming. BMC <a href="#">17.94</a></p>
Quincy 6,750	<p>Structures: Interior may be repaired or improved not more than 25% of the value of the structure in 3 years. Maybe be enlarged by 100% of floor area with CUP. New structure must comply with all bulk and dimensional standards of the zone. If cost to repair after damaged &gt;50% assessed value, entire structure must conform.</p> <p>Uses: Can be expanded with CUP if not incompatible with the area, adverse impacts mitigated by site design elements like landscaping and general visual improvement of the property, and concerns of adjacent owners and general</p>

City/Population	Regulations
	<p>public are considered. Discontinued if cost to restore &gt;50% value of structure. Increase in volume or intensity is allowed when the nature and character of the use are unchanged. Can be expanded onto land owned by same owner at the date of nonconformance with CUP but may not increase &gt;100% of area. Nonconforming structure abandoned after 24 months. Nonconforming use abandoned after 12 months. QMC <a href="#">20.06</a></p>
<b>Othello 8,345</b>	
Sumner* 10,093	<p>Existing legal lot of record can be built on if less than minimum lot size, provided all setbacks, lot coverage, and height requirements are met. Lot width requirement does not need to be met.</p> <p>Nonconforming use may not be enlarged and may not move to another location on the parcel. Use must be conforming if abandoned for 12 months (+ Hearing Examiner can grant longer time). No structural alterations except to make the use conforming. Repairs or maintenance of a nonconforming use within 12 months shall not exceed 25% of the current replacement value of the building. Nonconforming structure may not be enlarged or altered in a way which increases its nonconformity. Additions may not extend further into any required yards. If a structure is destroyed more than 50% of its replacement cost at the time of destruction, rebuilding must be in conformity with the zoning.</p> <p>SMC <a href="#">18.46</a></p>
Sedro-Woolley 11,838	<p>Nonconforming uses and structures shall not be enlarged, altered, or expanded except by CUP. Nonconforming uses lose such status if abandoned &gt;6 months. Nonconforming structures may be maintained and repaired unless damaged to reduce value by 75%, then lose nonconforming status. SWMC <a href="#">17.04.050</a></p>
Mukilteo* 21,469	<p>Abandoned if unoccupied for 1 year.</p> <p>Nonconforming lots: If 2 adjacent nonconforming lots are under common ownership, they are consolidated into one lot.</p> <p>Nonconforming structures may be altered or added to if addition or alteration meets all requirements of the zone and does not increase the nonconformity. Repairs necessary to meet IBC may be performed even if such repairs do not meet the requirements of the zone.</p> <p>Nonconforming uses may not be expanded or intensified except by CUP. Once CUP granted, it is considered a conforming permitted use.</p> <p>A nonconforming building which is damaged or destroyed may be rebuilt to the original footprint up to the maximum height of the zone and may be occupied by the same legal use, conforming or not. MMC <a href="#">17.68</a></p>
Bainbridge Island* 24,522	<p>Nonconforming use may be continued but not expanded or moved. If use ceases for 180 days, subsequent use must conform (except affordable housing unit constructed with density bonus).</p> <p>Nonconforming structures: Any vertical or horizontal extension of a nonconforming wall must meet standards. If &gt;50% destroyed, reconstruction must meet current standards.</p> <p>Nonconforming lots: If lawfully created and recorded, may be built on although does not meet minimum area, width, or depth. BIMC <a href="#">18.30</a></p>

## Chapter 18.30 NONCONFORMING LOTS, USES, AND STRUCTURES

Sections:

**18.30.005 Intent.**

**18.30.010 Applicability.**

**18.30.020 Nonconforming use of land.**

**18.30.030 Nonconforming structures and buildings.**

**18.30.040 Conditions of continuance of nonconforming use of structure.**

**18.30.050 Nonconforming lots.**

**18.30.060 Nonconforming agricultural use or structure.**

**18.30.070 Nonconforming manufactured homes.**

**18.30.005 Intent.**

These regulations address the treatment of lots, uses, and structures that predate some portions of this title and do not conform with at least some provisions of this title. The following sections of the BIMC also address nonconformities, and in the case of conflict between any two or more development standards or criteria, the more specific shall apply.

A. BIMC 16.12.030.C.1, Shoreline Master Program – Nonconforming Uses, Nonconforming Lots, and Existing Development;

B. BIMC 16.20.040.D, Critical Areas – Standards for Existing Development. (Ord. 2011-02 § 2 (Exh. A), 2011)

**18.30.010 Applicability.**

This chapter shall apply to structures, uses and lots that become nonconforming as a result of the passage of this title, or any subsequent amendments. (Ord. 2011-02 § 2 (Exh. A), 2011)

**18.30.020 Nonconforming use of land.**

A nonconforming use of land may be continued; provided, that:

A. The use is not enlarged, increased, or extended to occupy a greater area of land or structure than was occupied on the date of adoption of this code;

B. The use is not moved in whole or in part to any other portion of the lot or parcel; and

C. If the use ceases for a period of more than 180 days, the subsequent use of the land shall be conforming (this provision shall not apply to any dwelling unit constructed as an affordable housing unit under Chapter [18.21](#) BIMC). (Ord. 2011-02 § 2 (Exh. A), 2011)

**18.30.030 Nonconforming structures and buildings.**

A nonconforming structure may remain and be used; provided, that:

A. Changes to the structure that would alter or increase the nonconformity are not permitted.

1. Any vertical or horizontal extension of a nonconforming wall must meet the applicable standards.

2. Adding to the footprint of a nonconforming structure is permitted as long as the addition meets the requirements of BIMC Title [18](#);

B. If moved, the structure shall be made to conform to regulations of this code;

C. If a building is harmed or destroyed by more than 50 percent of its square footage, the building must be reconstructed in compliance with the requirements for the zone in which it is located (this provision shall not apply to any dwelling unit constructed as an affordable housing unit under Chapter [18.21](#)BIMC); and

D. Any structure other than a building that is damaged or removed to an extent that exceeds 50 percent of its square footage may be replaced or reconstructed in substantially the same location and of substantially the same design as the pre-damaged or pre-removed structure, if a complete application is submitted for any and all required construction permits within 180 days of the damage or removal. (Ord. 2011-02 § 2 (Exh. A), 2011)

#### **18.30.040 Conditions of continuance of nonconforming use of structure.**

A nonconforming use of a structure may be continued; provided, that:

A. The structure is not enlarged or moved;

B. It may be changed to another nonconforming use by the hearing examiner;

C. If it is superseded by a conforming use, the nonconforming use may not thereafter be resumed; and

D. If it is discontinued for a period of six consecutive months or for a total of 18 months in any three-year period, it may not thereafter be resumed (this provision shall not apply to any dwelling unit constructed as an affordable housing unit under Chapter [18.21](#) BIMC). (Ord. 2011-02 § 2 (Exh. A), 2011)

#### **18.30.050 Nonconforming lots.**

Any nonconforming single lot, tract or parcel of land that was lawfully created and recorded with the county auditor's office may be used for the purposes permitted by this title notwithstanding the minimum lot area, lot width and lot depth required. (Ord. 2011-02 § 2 (Exh. A), 2011)

#### **18.30.060 Nonconforming agricultural use or structure.**

As of November 9, 2011, all existing structures and heavy use areas are considered conforming. Where a property with an allowed or approved conditional agricultural use is not in conformity with the requirements of this title, the city shall not require that the entire property and existing structures be brought into compliance with the BIMC as a condition of approval to expand or change the property or its structures. Where an existing agricultural structure or area does not meet a required setback from a property line, the structure or area can be expanded on the side opposite that property line, but only if that expansion does not lengthen any wall of a structure or side of an area that is already nonconforming with the required setback. However, expansions or changes to the agricultural uses or structures will not be approved if they would create a new nonconformity or increase an existing nonconformity. (Ord. 2011-02 § 2 (Exh. A), 2011)

#### **18.30.070 Nonconforming manufactured homes.**

A manufactured home that was built before June 15, 1976, and was legally placed and maintained prior to the date of adoption of the ordinance codified in this chapter and does not meet the requirements of this chapter, shall be deemed to be a legal nonconforming building, i.e., nonconforming as to date of construction. (Ord. 2011-02 § 2 (Exh. A), 2011)

## Chapter 17.60 NONCONFORMITY

Sections:

**17.60.010 Nonconforming use of land.**

**17.60.020 Nonconforming structure.**

**17.60.030 Nonconforming use of structure.**

**17.60.040 Nonconforming lot.**

**17.60.010 Nonconforming use of land.**

A nonconforming use of land may be continued provided that:

- A. The use is not enlarged, increased, or extended to occupy a greater area of land than was occupied on the date the use became nonconforming; and
- B. If the use is superseded by a conforming use, the nonconforming use may not thereafter be resumed; and
- C. If the use ceases for a period of more than 12 months, the subsequent use of the land shall be conforming. (Ord. 1172 § 78, 2001)

**17.60.020 Nonconforming structure.**

A nonconforming structure may remain and be used provided that:

- A. The structure is not enlarged or altered so as to increase its nonconformity;
- B. If damaged, it is reconstructed only to pre-existing size and height; and
- C. If moved, it is made to conform to regulations of this title. (Ord. 1172 § 79, 2001)

**17.60.030 Nonconforming use of structure.**

A nonconforming use of a structure may be continued provided that:

- A. The structure is not enlarged or extended;
- B. If the use is superseded by a conforming use, the nonconforming use may not thereafter be resumed; and

C. If the use ceases for a period of more than 12 months, the subsequent use of the structure shall be conforming. (Ord. 1172 § 80, 2001)

#### **17.60.040 Nonconforming lot.**

A nonconforming lot may be used; provided, that any structure or building erected subsequent to the date of adoption of this title shall meet all other provisions of this title except minimum lot size. (Ord. 1172 § 81, 2001)

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The Friday Harbor Municipal Code is current through Ordinance 1666, passed April 18, 2019.

Disclaimer: The town clerk's office has the official version of the Friday Harbor Municipal Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.fridayharbor.org/>

Town Telephone: (360) 378-2810

[Code Publishing Company](#)

**17.04.050 Nonconforming uses, structures, and lots.**

Uses, structures and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;
- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements; and
- E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation.

(Ord. [1013](#)§ 1.05, 1985)

## Chapter 17.79

### NONCONFORMING USES

#### Sections:

- 17.79.010 Limitation on nonconforming uses.
- 17.79.020 Continuation of nonconforming uses.
- 17.79.030 Nonconforming uses, conditions upon continued existence, when, procedure.
- 17.79.040 Nonconforming structure.
- 17.79.050 Change of a nonconforming use.
- 17.79.060 Change of district.
- 17.79.070 Remodeling a nonconforming use.
- 17.79.080 Rebuilding duplexes or triplexes in R-1 zones.

#### **17.79.010 Limitation on nonconforming uses.**

Any nonconforming use in existence on January 1, 1996, which is nonconforming as to the type of structure allowed in a zone shall be removed as a nonconforming use by the owner not later than twenty years from that date. Any structure which becomes a nonconforming use in any zone after January 1, 1996, shall be removed not later than twenty years after such structure becomes a nonconforming use. Any nonconforming use existing in any zone on January 1, 1996, shall be terminated not later than ten years from that date. Any use which becomes nonconforming in any zone after January 1, 1996, through the action of a rezone or an amendment of the text of the zoning ordinances shall be terminated not later than ten years after such use becomes nonconforming. A use which becomes nonconforming through the actions of the owner or occupant of the land, shall be terminated immediately.

Any residential use of a structure which (a) exists on a property on or before March 1, 2016, and (b) is a nonconforming use of the zone in which the property is located, or the structure otherwise violates any provision of Title 14, 17, or 18, may be allowed to continue indefinitely beyond the time period identified in this section if the owner (1) enters into a voluntary compliance agreement in accordance with Chapter 1.20 et seq.; (2) obtains the necessary permits and completes the work necessary to bring the property into compliance with all applicable building codes; and (3) ensures that existing tenants on the property have substitute housing (at no additional cost to the tenant) while the owner completes said work during all times the tenant is required to move out of the premises to enable the owner to complete the work provided said requirement does not violate any provision of the Washington Landlord Tenant Act or other Washington State law. (Ord. 1465 § 6, 2016: Ord. 975 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

#### **17.79.020 Continuation of nonconforming uses.**

Notwithstanding Section 17.79.010, the use of land existing on January 1, 1996, although such use does not conform to the provisions of this title, may continue upon such conditions as prescribed by the planning commission. After this ordinance becomes effective, and if such nonconforming use is abandoned, or is discontinued for any period of time, subsequent use of the land shall be in conformity with the provisions of this code. The extension of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use on or before January 1, 1996, shall not be considered an extension of a nonconforming use.

The conditions prescribed by the planning commission for the continued use of a nonconforming use must bear a substantial relation to the alleviation of a hazard to the health, morals, safety or general welfare of the entire affected community and in particular that of surrounding inhabitants. Conditions may be prescribed including, but not limited to, those situations existing because of fumes, odors, glare, noise, smoke, dust, unsightly materials, or other objectionable factors. If, in fact, conditions are prescribed by the planning commission, such conditions shall be reviewed and revised if necessary no less frequently than every two years and/or upon change of ownership.

An appeal may be taken of the planning commission's ruling to the city council as prescribed in Chapter 17.83 of this code. (Ord. 975 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

**17.79.030 Nonconforming uses, conditions upon continued existence, when, procedure.**

(a) Those nonconforming uses allowed to continue to exist pursuant to Section 17.79.020, as now enacted or as hereafter amended, may be conditioned as provided in this section.

(b) The building official, upon receipt of any claim, complaint, report or information that a nonconforming use exists within the city shall investigate such claim, complaint, report or information and make a determination as set forth below.

(c) At the conclusion of his or her investigation, the building official shall determine if the use is a nonconforming use.

(d) If the use is found to be a conforming use, the building official shall determine whether or not the use is allowed to continue pursuant to Section 17.79.020. If the use is not found to be a use allowed to continue pursuant to Section 17.79.020, the building official shall proceed as provided in this chapter to terminate the use.

(e) If the use is found to be a nonconforming use allowed to continue pursuant to Section 17.79.020, the building official shall make written summary of his or her findings and submit them, together with any conditions that, in his or her opinion, should be attached to the use, to the planning commission.

(f) Upon receipt of the documentation described in subsection (e) of this section, the planning commission shall proceed to set a date for a public hearing before it. The purpose of that hearing shall be to determine what conditions, if any, shall be attached to the continuing nonconforming use pursuant to Section 17.79.020. Notice of the hearing shall be published at least once prior to the hearing in a newspaper of general circulation in the city. Additionally, the building official shall cause notice of the public hearing to be delivered to the adjacent land owners and occupants by mailing, posting, or personal notification, whichever the building official determines is likely to give actual notice of the hearing to those persons.

(g) At the conclusion of the public hearing, the planning commission shall make a finding on whether or not conditions need to be imposed pursuant to Section 17.79.020. If the planning commission finds conditions are necessary, it shall make findings as to what conditions shall be imposed and the reasons therefor.

(h) Any nonconforming use found to be required to be conditioned, will be allowed to continue as long as the person, firm, partnership or corporation responsible for that nonconforming use agrees to abide by and be governed by the conditions imposed by the planning commission within the time limit set by the planning commission. The conditions imposed by the planning commission may be for a period of up to twenty-four months. The planning commission may require more frequent review of the conditions imposed on the use as it may direct at the initial public hearing or any subsequent review.

(i) Additionally, the planning commission may bring a set of conditions on for review before the date provided at the time the conditions were set, upon a complaint being brought to its attention by the building official or any citizen. The planning commission shall determine from a review of the complaint whether or not the allegation is sufficient to warrant a further hearing on the question. If a further hearing is deemed appropriate, the planning commission shall cause to be sent to the person, firm, partnership or corporation responsible for the nonconforming use a notice of a hearing before the planning commission setting the date, time and place of the hearing. The notice shall provide, in all capital letters, in a conspicuous place thereon: "THIS HEARING COULD DETERMINE WHETHER OR NOT YOUR NONCONFORMING USE IS ALLOWED TO CONTINUE." Said notice shall be delivered in the same manner as personal service of summons to the responsible person, or posted upon the real property in question, or sent by United States mail service, postage prepaid, to the address of the responsible person. Said notice shall allow the responsible party five days' time before the hearing within which to prepare, unless the planning commission findings at the time it considers the allegation of noncompliance are that the public health, safety and morals require a hearing before that time.

(j) Either prior to or at least at the time of the hearing to consider the allegations of a complaint concerning noncompliance with conditions, the planning commission shall inform the person, firm, partnership or corporation responsible for the nonconforming use of the notice of the alleged violation. The building official shall present the evidence of the failure to comply. The responsible person shall then be allowed to respond if that person so desires. The planning commission shall then make its findings. It shall find whether or not the conditions have been violated;

whether or not any violation has occurred of such magnitude to require additional conditions, more frequent reviews of conditions, or termination. If termination of the privilege to continue the nonconforming use is determine by the planning commission as the only method that can protect the public health, safety and morals to an acceptable degree, the planning commission shall determine the date and time of termination. Once the privilege is terminated for failure to observe conditions, the planning commission shall proceed to direct the building official to enforce the provisions of this chapter to terminate the use.

(k) Any person aggrieved by the decision of the planning commission may appeal to the city council as provided in Chapter 17.83. (Ord. 948 § 2 (part), 1995).

**17.79.040 Nonconforming structure.**

A structure conforming with respect to use but nonconforming with respect to height, setback or coverage may be altered or extended if the alteration or extension does not deviate further from the standards of this title, unless otherwise stated in this chapter. (Ord. 948 § 2 (part), 1995).

**17.79.050 Change of a nonconforming use.**

If a nonconforming use is replaced by another use, the new use shall conform to this title and shall not subsequently be replaced by a nonconforming use. (Ord. 948 § 2 (part), 1995).

**17.79.060 Change of district.**

The provisions of this chapter shall also apply to nonconforming uses in districts hereafter changed or established and any time limit for the suspension of a nonconforming use of land shall date from the date of the enactment of the ordinance codified in this title or any amendment of district boundaries or amendment or adoption of zoning ordinances. (Ord. 948 § 2 (part), 1995).

**17.79.070 Remodeling a nonconforming use.**

Recognizing that there are nonconforming buildings or structures which are now existing which should be upgraded or improved by replacement, rebuilding or addition thereto, the city council may, after a public hearing before the planning commission, issue a permit for the replacement, rebuilding or addition to an existing nonconforming building or structure. As a condition to the issuance of the permit the city council shall require plans and specifications of the proposed replacement, rebuilding or addition be filed and that a bond in an amount to be set by the council be posted to assure compliance with the plans and specifications so filed. No permit shall be issued unless the city council finds that the proposed replacement, rebuilding or addition will be compatible with the lot or tract of land involved and, further, that it will not be detrimental to the health, safety or welfare of the surrounding area.

This section shall not apply to duplexes in areas currently zoned R-1 or areas subsequently zoned R-1 either through a rezoning or upon territory being annexed into the corporate limits of the city of Othello which are intended to be replaced, rebuilt or added to totally or partially because of destruction. In the case of such replacement, rebuilding or addition, Section 17.79.080 shall apply. (Ord. 948 § 2 (part), 1995).

**17.79.080 Rebuilding duplexes or triplexes in R-1 zones.**

In areas currently zoned R-1 or areas subsequently zoned R-1 either through a rezoning or upon territory being annexed into the corporate limits of the city of Othello, if a duplex or triplex exists as a nonconforming use and is destroyed, it may be replaced, rebuilt or added to by the owner/purchaser/vendee of the duplex or triplex without reference to the provisions of Section 17.79.070. In the case of such aforesaid replacement, rebuilding or addition, the duplex or triplex may be replaced, rebuilt or added to upon obtaining a building permit as is required for all construction in the city, provided, that the replacement, rebuilding or addition otherwise complies with all other current or subsequently enacted ordinances of the city.

If an exclusion from any ordinances is desired during this rebuilding, replacement or addition process, application must be made to the city council who may allow the sought after exclusion if the city council finds that strict adherence to the ordinances would work an injustice against the owner/purchaser/vendee of the duplex or triplex and further would not be detrimental to the health, safety or welfare of the surrounding area. (Ord. 975 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).