

CITY OF FRANKLIN, OHIO  
ORDINANCE 2018-22

**AMENDING SECTION 1113.04 OF  
THE CITY OF FRANKLIN UNIFIED DEVELOPMENT ORDINANCE**

WHEREAS, Section 1115.04 of the City's Unified Development Ordinance (UDO) allows amendments to the text of the UDO to be initiated by Planning Commission, upon its own motion;

WHEREAS, the Franklin City Planning Commission initiated, upon its own motion, Planning Commission Case PC-18-17, making certain amendments to Section 1113.04 of the UDO;

WHEREAS, the procedures with regard to zoning amendments to the UDO, as set forth in Section 1115.04 of the UDO have been followed;

WHEREAS, The Franklin City Planning Commission, at its November 12, 2018, regular meeting, voted 7-0 to approve Planning Commission Case No. PC 18-17, recommending Council approval of the proposed text amendments, and

WHEREAS, this Council finds it to be in the best interests of the health, safety and welfare of the City and its inhabitants to adopt Planning Commission's recommendations and make certain amendments to the City's Unified Development Ordinance,

THE CITY OF FRANKLIN HEREBY ORDAINS, at least four (4) members of the Council elected thereto concurring, that:

Section 1. Section 1113.04 of the City of Franklin Unified Development Ordinance are hereby amended, as shown on the attached Exhibit A.

Section 2. Existing Section 1113.04 of the Unified Development Ordinance are hereby repealed.

Section 3. It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

Section 4. This Ordinance shall go into effect on January 2, 2019.

INTRODUCED: November 19, 2018

ADOPTED: December 3, 2018

ATTEST: Jane McGee  
Jane McGee, Clerk of Council

APPROVED: Todd Hall  
Todd Hall, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of Ordinance 2018-22 passed by that body on December 3, 2018 and published in the Middletown Journal on December 7, 2018.

Approved as to form:

Lynnette Dinkler  
Lynnette Dinkler, Law Director

Jane McGee, Jane McGee, Clerk of Council

## 1113.04 Nonconformities

- (a) Purpose: Within the zoning districts established by this UDO or amendments that may later be adopted, there may exist lots, structures and uses of land and structures that were lawful before this UDO was passed or amended, but would be prohibited, regulated or restricted under the terms of this UDO or a future amendment. It is the intent of this UDO to permit these nonconformities to continue until they are removed or discontinued, but not to encourage their continuance. Such uses are declared by this UDO to be incompatible with permitted uses in the zoning districts involved. It is further the intent of this UDO that nonconformities shall not be enlarged upon, expanded or extended, relocated, nor be used as grounds for adding other structures or uses prohibited elsewhere in the zoning district, except by appeals to the Appeals Board for approval of specific plans, and with the exception that construction of decks, porches and detached garages meeting proper setbacks on their own shall not require approval by the Appeals Board.
- (b) Incompatibility of Nonconformities: Nonconformities are declared by this UDO to be incompatible with permitted uses in the zoning districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this UDO by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the zoning district in which such use is located.
- (c) Avoidance of Undue Hardship: To avoid undue hardship, nothing in this UDO shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this UDO, and upon which actual building construction has been carried on diligently. Actual construction is defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently to completion within two (2) years.
- (d) Certificates of Nonconformance: The Zoning Official may, upon his/her own initiative, or shall upon the request of any owner, issue a Certificate of Zoning Compliance for any lot, structure, use of land, use of structure or use of land and structure in combination, that certifies that the lot, structure or use is a valid nonconforming use. The Certificate shall specify the reason why the use is a valid nonconforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are nonconforming. The purpose of this paragraph is to protect the owners of lands or structures that are, or are becoming, nonconforming. One copy of the Certificate shall be returned to the owner and one copy shall be retained by the Zoning Official, who shall maintain, as a public record, a file of all such nonconforming lots, structures, uses of land, uses of structures, or uses of structures and land in combination.
- (e) Substitution/Change of Nonconforming Uses: So long as no structural alterations are made, except as required by enforcement of other codes or ordinances, any nonconforming use may, upon application to and approval by the Appeals Board, be changed to another nonconforming use of the same classification or of a less intensive classification, provided that the Appeals Board shall find that the use proposed for substitution is equally appropriate or more appropriate to the zoning district than the existing nonconforming use. In permitting such change, the Appeals Board may require that additional conditions and safeguards be met, which requirements shall pertain as stipulated conditions to the approval of such change, and failure to meet such conditions shall be considered a punishable violation of this UDO. Whenever a nonconforming use has been changed to a less intensive use or becomes a conforming use, such use shall not thereafter be reverted to a more intensive use or other nonconforming use.
- (f) Single Nonconforming Lots of Record: In any zoning district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single nonconforming lot of record at the effective date of adoption or amendment of this UDO. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This

provision shall apply even though such lot fails to meet the requirements for area or width, or both (that are generally applicable in the zoning district), provided, however, that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the zoning district in which such lot is located.

- (g) Nonconforming Lots of Record in Combination: If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this UDO, and if all or part of the lots with no buildings do not meet the requirements established for lot width and area in the zoning district in which such lots are located, the lots involved shall be considered to be an undivided parcel for the purposes of this UDO. No portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this UDO, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements for the zoning district, as stated in this UDO.
- (h) Nonconforming Uses of Land: At the time of adoption of this UDO **or upon the amendment of this UDO**, if lawful uses of land exist which would not be permitted by the regulations imposed by this UDO, these uses may be continued so long as they remain otherwise lawful, provided that:
  - (1) No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this UDO;
  - (2) No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this UDO;
  - (3) If any such nonconforming uses of land are voluntarily discontinued or abandoned for more than six (6) months (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this UDO for the zoning district in which such land is located; and
  - (4) No additional structure not conforming to the requirements of this UDO shall be erected in connection with such nonconforming use of land.
- (i) Nonconforming Structures: Where a lawful structure exists at the effective date of adoption or amendment of this UDO that could not be built under the terms of this UDO by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - (1) No such nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
  - (2) Should such nonconforming structure or nonconforming portion of a structure be destroyed, by any means, to the extent of more than fifty percent (50%) of the cost of replacement of such structure, it shall not be reconstructed except in conformity within the provisions of this UDO; and
  - (3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.
- (j) Nonconforming Uses of Structures or of Structures and Land in Combination: If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this UDO that would not be allowed in the zoning district in which it is located under the terms of this UDO, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - (1) No existing structure devoted to a use not permitted by this UDO in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
  - (2) Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building;

- (3) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zoning district, and the nonconforming use may not thereafter be resumed;
  - (4) When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for more than six (6) months (except when government action impedes access to the premises), the structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
  - (5) When nonconforming use status is applied to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- (k) Termination of Use Through Discontinuance: When any nonconforming use is discontinued or abandoned for more than six (6) months, it shall not thereafter be continued or resumed, nor shall it be substituted or replaced with another nonconforming use. Upon such termination, any new use shall be in conformity with the regulations of the zoning district in which it is located. The intent to continue a nonconforming use shall not be evidence of its continuance.
- (l) Termination of Use by Damage or Destruction: In the event that any nonconforming building or structure is destroyed by any means to the extent of more than fifty percent (50%) of the cost of replacement of such structure, exclusive of foundation, it shall not be rebuilt, restored or reoccupied for any use unless it conforms to all applicable regulations of this UDO.
- (1) When such a nonconforming structure is damaged or destroyed to the extent of fifty percent (50%) or less of the replacement cost, no repairs or rebuilding shall be permitted except in conformity with the following conditions:
    - A. A Certificate of Zoning Compliance pertaining to such restoration shall be applied for within three (3) months and issued within six (6) months of such destruction, and rebuilding shall be diligently pursued to completion within one (1) year of the issuance of the Certificate, with the exception that the Zoning Official may allow no more than one six (6) month extensions for extenuating circumstances, and Council may allow a second six (6) month extension for extenuating circumstances; and
    - B. Such restoration shall not cause a new nonconformity, nor shall it increase the degree of nonconformance or noncompliance existing prior to such damage or destruction.
    - C. If such restoration is not completed within the one (1) year allowed, or within such extensions as may be granted by the Zoning Official and Council, the structure or building shall be demolished and removed within six (6) months. If the owner fails to demolish and remove such structure as required, the City may cause such building or structure to be demolished and removed and place the costs therefore as a lien upon the property, to be placed on the tax duplicate, and to be collected as other taxes are collected.
  - (2) Exceptions:
    - A. If the nonconformity is the sole result of noncompliance with current setback regulations, the building or structure may be rebuilt, restored and reoccupied, as of right, for any conforming use so long as the building or structure is built upon the exact footprint of the previous building or structure, and the new building or structure complies in all other respects with this UDO.
    - B. If the nonconformity is the result of a single-family dwelling in a zoning district that does not permit single-family residences (a nonconforming use of land), the single-family residence may be rebuilt, restored and reoccupied, as of right, provided that the new single-family residence complies in all other respects with this UDO.
- (m) Repairs and Maintenance: On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement on non-bearing walls, fixtures, wiring or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. Where appropriate, a building permit for such activities shall be required.

**[NEXT PAGE OF TEXT IS PAGE 251]**