

**Exhibit A**  
**CHAPTER 1288**  
**Nonconforming Uses and Structures**

- 1288.01 Continuance; changes.
- 1288.02 Damaged buildings.
- 1288.03 Discontinued uses.
- 1288.04 Alteration of buildings.
- 1288.05 Violations; removal or correction.
- 1288.06 Nonconforming dimensions or setbacks.
- 1288.07 Acquisition by City of nonconforming uses and structures.
- 1288.08 Elimination of nonconforming uses and structures.
- 1288.09 Appeal to circuit court.
- 1288.10 Declaration and abatement of nuisance per se.

***CROSS REFERENCES***

- Zoning and planning in home rule cities - see M.C.L.A. Sec. 117.4i
- Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations – see M.C.L.A Sec. 125.3201
- Nonconforming uses or structures – see M.C.L.A. Sec. 125.3208
- Rental housing - see B.R. & T. Ch. 842
- Nonconforming signs - see P. & Z. 1296.22, 1296.27, 1296.28

**1288.01 CONTINUANCE; CHANGES.**

(a) The lawful use of a dwelling, building, or structure existing at the time of the adoption of this Zoning Code (Ordinance 36-84, passed December 18, 1984) may be continued, although such use does not conform to this Zoning Code and is hereby classified as legal nonconforming.

(b) Such legal nonconforming use may be extended throughout the portion of the building that was obviously designed therefore, provided no structural alteration, except as may be required by law or ordinance, is made therein. If no structural alteration is made to a legal nonconforming use of a building, it may be changed to another nonconforming use of the same or a more restricted classification.

(c) This section shall apply to nonconforming uses of the land in districts hereafter changed. Whenever a nonconforming use of a building has changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

(Ord. 36-84. Passed 12-18-84; Ord. 09-2011. Passed 6-21-11.)

**1288.02 DAMAGED BUILDINGS.**

(a) Except for as provided herein, no building that has been damaged by fire, explosion, act of God or the public enemy, shall be restored, except in conformity with this Zoning Code.

(1) Restoration can occur if the replacement or repair costs do not exceed the current year's assessed value contained in the City of Battle Creek assessing records.

(2) In situations where a legal nonconforming residential building has not intentionally been damaged or destroyed to an extent exceeding the current year's assessed value and the damaged residential

building is within a 300 foot radius comprised of at least 50% of other nonconforming residential properties, the residential unit may be repaired, rebuilt or replaced within 12 months of such damage or destruction, provided that such repairs or rebuilding or replacement does not expand more than 25% of the original ground floor area of the residential use or building so long as the expansion meets all other zoning requirements.

(Ord. 36-84. Passed 12-18-84.)

### **1288.03 DISCONTINUED USES.**

(a) If an intent to abandon a use of a nonconforming building or premises is discovered, the use of the same shall thereafter conform to the regulations of the district in which it is located.

(Ord. 36-84. Passed 12-18-84.)

### **1288.04 ALTERATION OF BUILDINGS.**

(a) No existing building or premises devoted to a nonconforming use shall be enlarged, extended or structurally altered except in any of the following circumstances:

(3) Residential dwellings as outlined in Chapter 1288.02(a)(2).

(4) When required by law or ordinance or unless such use is changed to one permitted in the district in which such building or premises is located.

(5) A legal nonconforming residential building may be expanded no more than 25% of the original ground floor area of the residential use or building so long as the expansion meets all other zoning requirements.

(Ord. 36-84. Passed 12-18-84.)

### **1288.05 VIOLATIONS; REMOVAL OR CORRECTION.**

A nonconforming structure that was erected, converted or structurally altered in violation of any previous Zoning Code adopted by the City of Battle Creek or the Township of Battle Creek shall not be validated by the adoption of this Zoning Code, and such violation or any violation of this Zoning Code may be ordered to be removed or corrected by the proper official at any time pursuant to Chapter 1232.

(Ord. 36-84. Passed 12-18-84.)

### **1288.06 NONCONFORMING DIMENSIONS OR SETBACKS.**

When, on a developed lot from which additional right of way is acquired by the Michigan Department of Transportation, the City or another entity exercising the power of eminent domain for the purpose of street reconstruction, street relocation or street widening, a nonconformity results with respect to the dimensional requirements of Chapter 1278, 1280, 1282, 1283, 1284 or 1286, any buildings or structures shall be permitted to be altered, enlarged or rebuilt, provided that the specific nonconformity created when the right of way was acquired is not increased.

(Ord. 14-93. Passed 10-5-93.)

### **1288.07 ACQUISITION BY CITY OF NONCONFORMING USES AND STRUCTURES.**

The City may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures. The City Commission may provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in the City. Property acquired under this subsection by the City shall not be used for public housing.

(Ord. 09-2011. Passed 6-21-11.)

**1288.08 ELIMINATION OF NONCONFORMING USES AND STRUCTURES.**

The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25.

(Ord. 09-2011. Passed 6-21-11.)

**1288.09 APPEAL TO CIRCUIT COURT.**

(a) Any party aggrieved by any order, determination, or decision of any officer, agency, board, or commission, of the City, or the City Commission, made under Section 1288.01 through Section 1288.08 of this chapter may obtain a review in Calhoun County Circuit Court. The review shall be in accordance with Section 1234.05.

(b) Any person required to be given notice under Section 1232.06(e)(1)C. of the appeal of any order, determination, or decision made under Section 1288.01 through Section 1288.08 shall be a proper party to any action for review under this section.

(Ord. 09-2011. Passed 6-21-11.)

**1288.10 DECLARATION AND ABATEMENT OF NUISANCE PER SE.**

Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted pursuant to the Michigan Zoning Enabling Act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se.

(Ord. 09-2011. Passed 6-21-11.)