

# Chapter 135. Planning and Design

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## 135-10.1 General

### 10.1.1 INTENT

Pre-existing situations are created when the planning and design regulations that apply to a particular property are changed to no longer allow buildings, structures or other development features that have already been lawfully established. The regulations governing pre-existing situations are intended to explain the effect of this pre-existing status and help differentiate pre-existing situations, which have legal status under this chapter, from violations, which are illegal and subject to penalties and enforcement action. The regulations of this article are also intended to:

- A. Recognize the interests of landowners in continuing to use buildings and structures that were lawfully established;
- B. Promote maintenance and rehabilitation of existing buildings and structures; and
- C. Place reasonable limits on pre-existing structures and development features that have the potential to adversely affect surrounding properties.

### 10.1.2 AUTHORITY TO CONTINUE

Any pre-existing building, structure or other development feature that existed on the effective date specified in section [135-1.2 of this chapter](#) or any situation that becomes pre-existing upon adoption of any amendment to this chapter or any change to the applicable building type regulations created by an amendment of the zoning map pursuant to chapter 134 of this code after the effective date specified in section [135-1.2 of this chapter](#) may be continued, subject to the regulations of this article.

### 10.1.3 DETERMINATION OF PRE-EXISTING STATUS

- A. The burden of proving that a pre-existing situation exists, as opposed to a violation, rests entirely with the subject property owner.
- B. The community development director is authorized to determine whether reliable evidence of pre-existing status has been provided by the subject property owner.
- C. Building permits, lawfully recorded plats, lawfully recorded instruments of conveyance, aerial photography owned by a governmental agency and other official government records that indicate lawful establishment of a lot or structure constitute conclusive evidence of pre-existing status.
- D. The community development director's determination of pre-existing status may be

reviewed in accordance with section [135-9.3.9 of this chapter](#).

### 10.1.4 REPAIRS AND MAINTENANCE

- A. Repairs and normal maintenance necessary to keep a pre-existing structure in sound condition are permitted unless the work increases the extent of the pre-existing situation or is otherwise expressly prohibited by this chapter.
- B. If a pre-existing structure becomes unsafe or dangerous, or when a structure is found unfit for human occupancy or otherwise deemed to be a public nuisance, it may not thereafter be restored, repaired, or rebuilt except in compliance with the provisions of this chapter.
- C. Nothing in this article is intended to prevent pre-existing situations from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized public official.

### 10.1.5 CHANGE OF TENANCY OR OWNERSHIP

Pre-existing status runs with the land and is not affected by changes of tenancy, ownership or management.

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## 135-10.2 Pre-Existing Lots

### 10.2.1 DESCRIPTION

A pre-existing lot is a lawfully created lot, shown on a plat recorded in the office of the county recorder prior to the effective date of this code, that does not comply with applicable lot area, lot width, or street frontage requirements for the subject building type.

### 10.2.2 LOTS IN AGRICULTURAL OR NEIGHBORHOOD DISTRICTS

In A, N, and NX districts, a single detached house containing no more than one household unit may be erected on a pre-existing lot without complying with the applicable lot area, lot width, or street frontage requirements of the subject building type. The following shall apply:

- A. The front setback requirements for the subject building type shall apply to the street side of the lot or the shorter street side of a corner lot.
- B. The street side setback requirements for the subject building type shall apply to the longer street side of a corner lot.
- C. The sum of the side setback widths of any such lot shall not be less than 30% of the width of the lot,

but in no case less than 10% of the width of the lot for any interior side setback.

- D. The rear setback of any such lot shall not be less than 20% of the depth of the lot, but in no case less than 10 feet.
- E. If two or more such lots with continuous frontage are combined under single ownership, such combined lots shall be treated as a single lot for purposes of applying these requirements.
- F. If the application of any of the requirements of subsections of this section to a particular lot would impose a greater setback than required under the regulations of the district in which the lot is located, the lesser setback requirements of the building type regulations shall control.
- G. Notwithstanding the setback requirements set forth above, a pre-existing house containing no more than one household unit on such a lot in N and NX districts can be used, maintained and reconstructed, provided however that if the household is destroyed by any means to an extent of 60% or more of its replacement cost at the time of destruction, it shall not be reconstructed unless such reconstruction is commenced within six months of the destruction of the original household and diligently pursued to completion. If the reconstructed household is unable to meet the requirements of the applicable house type, the following may be approved with a Type 1 design alternative:
  1. The household shall remain within the original building footprint without an increase in the gross floor area;
  2. The household shall have a minimum width facing the street of the smaller of 24 feet or the width of the household prior to such destruction;
  3. The household shall have a minimum depth perpendicular to the street of the smaller of 20 feet or the depth of the household prior to such destruction.

### 135-10.3 Pre-Existing Buildings

#### 10.3.1 DESCRIPTION

A pre-existing building is a building that was lawfully established but that no longer complies with the applicable building type or design regulations of this chapter because of the adoption or amendment of zoning, building type or design regulations after the structure was established.

#### 10.3.2 INTENT

Adoption of the building type and design regulations of this chapter will result in some buildings that were lawfully established as being classified as pre-existing buildings. The pre-existing building regulations of this section are intended to allow these buildings to be changed and upgraded without requiring their elimination if the change would not substantially adversely affect the surrounding area.

#### 10.3.3 MOVEMENT

A pre-existing building may be moved in whole or in part to another location on the same lot only if the movement or relocation complies with this chapter.

#### 10.3.4 ALTERATION, ENLARGEMENT OR CHANGE

- A. Any modification to a pre-existing building that adds more than 50% to the floor area existing on the effective date specified in section [135-1.2 of this chapter](#) and does not meet the building type or design regulations of this chapter [135-1.2 of this chapter](#) must comply with all applicable building type or design regulations of this chapter. For the purposes of calculating the amount of floor area being added, all floor area added since the effective date specified in section [135-1.2 of this chapter](#) must be included.
- B. Alterations, including enlargements and expansions, are permitted if the proposed alteration or expansion complies with all applicable lot and building regulations and does not increase the extent of the pre-existing situation. A building with a pre-existing street setback, for example, may be expanded to the rear as long as the rear expansion complies with applicable rear setback regulations and all other applicable lot and building regulations.
- C. Any facade being added must comply with the building type street facade and roof requirements and the building design regulations in [article 2 and article 4 of this chapter](#).
- D. Except for House A, B, C and D building types, when 50% or more of a street facade material is being replaced, the regulations in section [135-4.2 of this chapter](#) related to facade materials apply.
- E. If the facade exists or will be constructed within the build-to zone, compliance with the facade requirements of the applicable building type, not including the cap types, is required if any one of the following criteria apply to the building modification or expansion:
  1. New exterior facades are being added as a result of the addition of floor area;

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2. More than two additional exterior doors are being added or installed;
  3. The area of exterior windows is being expanded by more than 30%;
  4. More than 30% of the exterior facade material is being replaced.
- F.** The cap type regulations of the applicable building type must be met when the shape or style of more than 60% of the roof is changed and 30% or more of the facade is within the required build-to zone.

### 10.3.5 DAMAGE OR DESTRUCTION

- A.** If a pre-existing building is damaged or destroyed by any means beyond the control of the property owner, the pre-existing building may be re-established to the extent it existed before the damage or destruction, provided that a permit application to allow the re-establishment is filed within six months of the damage or destruction.
- B.** If a pre-existing building is demolished, modified, damaged or destroyed, by any means, including repair, alteration, replacement or upgrade, by intentional act of the property owner to the extent of 50% or more of its replacement cost at time of demolition, modification, damage or destruction, the pre-existing building may not be re-established, unless otherwise approved through design alternatives in compliance with this chapter.
- C.** This subsection does not apply to properties designated a historic district or landmark under chapter 58 of this code or under the National Register of Historic Places.

### 10.3.6 MANUFACTURED HOUSING UNITS

Pre-existing manufactured housing units may be occupied and maintained, and if damaged or destroyed may be reconstructed, provided that if the household is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to the extent of 50% or more of its replacement cost at the time of damage or destruction, it may not be reconstructed unless a permit application to allow the re-establishment is filed within six months and the reconstructed household:

- A.** Remains within the original building footprint without an increase in the gross floor area; and
- B.** Complies the building type regulations of the subject zoning district.
- C.** If located within a mobile home park, the park complies with all regulations and conditions of

approval in effect at the time that the park was established.

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## 135-10.4 Pre-Existing Structures

### 10.4.1 DESCRIPTION

A pre-existing structure is a structure, other than a building, that was lawfully established but that no longer complies with the applicable provisions of this chapter because of the adoption or amendment of zoning, building type or design regulations after the structure was established.

### 10.4.2 MOVEMENT

A pre-existing structure may be moved in whole or in part to another location on the same lot only if the movement or relocation complies with this chapter.

### 10.4.3 ALTERATION, ENLARGEMENT OR EXPANSION

A pre-existing structure may not be enlarged or altered in a way which increases its pre-existing situation. Alterations, including enlargements and expansions, are permitted if the proposed alteration or expansion complies with all applicable lot and building regulations and does not increase the extent of the pre-existing situation.

### 10.4.4 DAMAGE OR DESTRUCTION

If a pre-existing structure is damaged or destroyed, by any means, including repair, alteration, replacement or upgrade, to the extent of 50% or more of its replacement cost at time of damage or destruction, the pre-existing structure may not be re-established. If the structure is damaged or destroyed to the extent of less than 50% of its replacement cost at the time of damage or destruction, the pre-existing structure may be re-established to the extent it existed before the damage or destruction, provided that a permit application to allow the re-establishment is filed within six months of the damage or destruction.

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## 135-10.5 Effect of Condemnation

**10.5.1** If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a lot or structure becoming pre-existing or increasing the extent of the pre-existing situation, then notwithstanding any provisions to the contrary in this article, if the pre-existing structure or structure on the pre-existing lot is thereafter damaged to any extent or is totally destroyed by any means, the structure may be repaired, restored,

or rebuilt to its prior condition, if all of the following conditions are satisfied:

- A.** The pre-existing situation was created by the conveyance through condemnation or under threat of condemnation;
- B.** Appropriate relief was obtained in accordance with this chapter or prior code for any pre-existing situation with the applicable planning and design requirements, to the extent that such noncompliance predated the condemnation or conveyance;
- C.** The repair, restoration or rebuilding of the structure does not create any additional pre-existing situations of the structure beyond that originally created by such conveyance or allowed by any relief granted in accordance with this chapter or prior code;
- D.** A permit application to allow the repair, restoration, or rebuilding is filed within six months of such damage and is diligently pursued to completion; and
- E.** One of the following conditions are satisfied:
  1. The acquisition document for such conveyance contains language stating substantially as follows: “The provisions of section [135-10.5 of this article](#) apply to this acquisition”; or
  2. The community development director determines after consultation with the real estate division of the engineering department, that the circumstances of such conveyance affirmatively support a finding that any resulting pre-existing situations were not considered in determining the compensation paid for such conveyance.

**10.5.2** If a portion of a lot is conveyed to the state, the city, or any other political subdivision of the state through condemnation or under threat of condemnation, and the conveyance results in a single household upon the remaining lot becoming pre-existing or increasing the extent of the pre-existing situation with setback or lot size requirements, then the remaining lot will be treated as a pre-existing lot pursuant to section [135-10.2 of this article](#).

**10.5.3** Any adjustment to the minimum lot area made under authority of this section automatically lapses and is of no further effect if the lot is combined with other abutting land under common ownership and such combination results in a lot that meets applicable minimum lot area requirements.

**10.5.4** Any adjustment to a required setback made under authority of this section lapses and is of no

further effect if the lot is combined with other abutting land under common ownership and such combination results in a lot that meets applicable minimum setback requirements.

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## **135-10.6 Pre-Existing Site Elements**

### **10.6.1 DESCRIPTION**

Pre-existing site elements are components of a site, other than a lot, structure or building, that were lawfully established but no longer comply with the applicable provisions of this chapter because of the adoption or amendment of zoning, building type or design regulations after the site elements were established. Examples of site elements include driveways, parking and loading areas, and berms and landscaping.

### **10.6.2 REPAIRS AND MAINTENANCE**

- A.** Repairs and normal maintenance necessary to keep pre-existing site elements in sound condition are permitted unless the work increases the extent of the pre-existing situation or is otherwise expressly prohibited by this chapter.
- B.** Pre-existing gravel drives or parking areas constitute pre-existing site elements and must be maintained with a surface area consisting of a uniform layer of gravel evenly distributed, and must be free of bare spots, ruts, and vegetation. The consistency of the surface must be tightly bound and consistently graded. All defects must be repaired with clean fill material consistent with the existing drive or parking area that does not contain dirt, sticks, construction debris or other foreign material.
- C.** If pre-existing site elements becomes unsafe or dangerous, or when site elements are found unfit or otherwise deemed to be a public nuisance, it may not thereafter be restored, repaired, or re-installed except in compliance with the provisions of this chapter.

### **10.6.3 MOVEMENT**

Pre-existing site elements may be moved in whole or in part to another location on the same lot only if the movement or relocation complies with this chapter.

### **10.6.4 ALTERATION, ENLARGEMENT OR EXPANSION**

Pre-existing site elements may not be enlarged or altered in a way which increases the pre-existing situation. Alterations, including enlargements and expansions, are permitted if the proposed alteration or expansion complies with all applicable lot and building regulations and does not increase the extent of the

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pre-existing situation.

### **10.6.5 DAMAGE OR DESTRUCTION**

If pre-existing site elements are damaged or destroyed, by any means, including repair, alteration, replacement or upgrade, to the extent of 50% or more of the replacement cost at time of damage or destruction, the pre-existing site elements may not be re-established, unless otherwise approved through design alternatives in compliance with this chapter. If the site elements are damaged or destroyed to the extent of less than 50% of the replacement cost at the time of damage or destruction, the pre-existing site elements may be re-established to the extent they existed before the damage or destruction, provided that the re-establishment commences within six months of the damage or destruction. [END OF ARTICLE]