

# ZONING RESOLUTION Web Version

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## THE CITY OF NEW YORK



THE CITY OF NEW YORK  
Bill de Blasio, Mayor

CITY PLANNING COMMISSION  
Marisa Lago, Chair

### Article V: Non-conforming uses and non-complying buildings Chapter 2 - Non-Conforming Uses

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CITY PLANNING COMMISSION  
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(12/15/61)

**Chapter 2**  
**Non-Conforming Uses**

(12/15/61)

**52-00**  
**DEFINITIONS AND GENERAL PROVISIONS**

(11/19/87)

**52-01**  
**Definitions**

Words in italics are defined in Section 12-10 (DEFINITIONS) or, if applicable exclusively to this Chapter, in this Section.

(10/9/13)

**52-02**  
**Applicability of Article V, Chapter 2**

In the #flood zone#, the provisions of this Chapter are modified by the provisions of Article VI, Chapter 4.

(12/15/61)

**52-10**  
**CONTINUATION OF NON-CONFORMING USE**

(12/15/61)

**52-11**  
**General Provisions**

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

(12/15/61)

**52-20**

**REPAIRS OR ALTERATIONS**

(12/15/61)

**52-21**

**Repairs and Incidental Alterations**

Repairs to both structural and non-structural parts or #incidental alterations# may be made in a #building or other structure# substantially occupied by a #non-conforming use#, or in connection with a permitted change or #extension# of a #non-conforming use#.

(12/21/89)

**52-22**

**Structural Alterations**

No structural alterations shall be made in a #building or other structure# substantially occupied by a #non-conforming use#, except when made:

- (a) in order to comply with requirements of law; or
- (b) in order to accommodate a conforming #use#; or
- (c) in order to conform to the applicable district regulations on performance standards; or
- (d) in the course of an #enlargement# permitted under the provisions of Sections 52-41 to 52-46, inclusive, relating to Enlargements or Extensions,

or except as set forth in Sections 52-81 to 52-83, inclusive, relating to Regulations Applying to Non-Conforming Signs.

(12/15/61)

## 52-30

### CHANGE OF NON-CONFORMING USE

(5/8/13)

## 52-31

### General Provisions

For the purposes of this Chapter, a change of #use# is a change to another #use# listed in the same or any other Use Group. However, a change in ownership or occupancy shall not, by itself, constitute a change of #use#.

Except as provided in this Section, a #non-conforming use# may be changed to any conforming #use#, and the applicable district #bulk# regulations and #accessory# off-street parking requirements shall not apply to such change of #use# or to alterations made in order to accommodate such conforming #use#, but shall apply to any #enlargement#.

In all zoning districts which mandate compliance with the Quality Housing Program, the provisions of Article II, Chapter 8, shall apply to such change of #use#.

In #Mandatory Inclusionary Housing areas# and where made applicable pursuant to the provisions of Section 74-32 (Additional considerations for special permit use and bulk modifications), the #affordable housing# requirements of paragraph (d) of Section 23-154 (Inclusionary Housing), except maximum #floor area ratio#, shall apply to such change of #use#.

In Manhattan Community Districts 1, 2, 3, 4, 5 and 6, Brooklyn Community Districts 1, 2, 6 and 8, and Queens Community Districts 1 and 2, the #conversion# of non-#residential floor area# to #residences# shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion within Existing Buildings), unless such #conversions# meet the requirements for #residences# of Article II (Residence District Regulations).

A #non-conforming use# may be changed to another #non-conforming use# only in accordance with the provisions of this Chapter.

Any such change of #use# permitted by this Chapter shall conform to the applicable district regulations on #accessory# off-street loading berths as set forth in Section 52-41 (General Provisions) and on #accessory signs#, except that in #Residence Districts# such change shall conform to the regulations on #accessory signs# applicable in a C1 District.

In the #Manhattan Core#, a #non-conforming use# may be changed to an automobile rental establishment, #public parking garage# or #public parking lot# in Use Groups 8 and 12D only pursuant to the provisions of Article I, Chapter 3, and in the #Long Island City area#, as defined in Section 16-02 (Definitions), a #non-conforming use# may be changed to a #public parking garage# or #public parking lot# in Use Groups 8 and 12D only pursuant to the provisions of Article I, Chapter 6.

In the case of a conflict between these provisions and retail continuity provisions that apply to the ground floor of #buildings#, a #non-conforming use# on the ground floor in such #building# may be changed only to a #conforming use#.

(12/15/61)

#### **52-32**

##### **Land with Minor Improvements**

In all #Residence# and #Commercial Districts#, a #non-conforming use# of #land with minor improvements# may be changed only to a conforming #use#.

(12/15/61)

#### **52-33**

##### **Manufacturing or Related Uses in Residence Districts**

(12/15/61)

#### **52-331**

##### **Buildings designed for residential use**

In all #Residence Districts#, a #non-conforming use# listed in Use Group 11A, 16, 17 or 18 which is located in a #building designed for residential use# may be changed only to a #use# permitted in #Residence Districts#.

(8/17/90)

#### **52-332**

**Other buildings or structures in Residence Districts**

In all #Residence Districts#, a #non-conforming use# listed in Use Group 11A, 16, 17 or 18 which is not subject to the provisions of Sections 52-32 (Land with Minor Improvements) or 52-331 (Buildings designed for residential use), may be changed either to a conforming #use# or:

- (a) to any #use# listed in Use Group 6, 7B, 7C, 7D, 8, 9, 10, 11B or 14, in which case any subsequent change of #use# shall conform to the provisions of Section 52-34 (Commercial Uses in Residence Districts); or
- (b) in accordance with the provisions of the following table:

From Use Group	To Use Group
11A	11A
16 or 17	11A 16 or 17
18	11A 16 17 or 18

provided that such changed #use# shall conform to all regulations on performance standards applicable in M1 Districts, and that any such changed #use#, or the storage of materials or products #accessory# to any changed #use#, which is not located within a #completely enclosed building#, shall be screened by a solid wall or fence (including solid entrance or exit gates) at least eight feet in height. Whenever a #use# located within a #completely enclosed building# is changed to another #use#, no activity related to such changed #use#, including the storage of materials or products, shall be located outside of such #building#.

In no event shall any change of #use# permitted in paragraph (b) of this Section extend the statutory period of useful life applicable under the provisions of Section 52-74 (Uses Objectionable in Residence Districts).

(2/2/11)

**52-34  
Commercial Uses in Residence Districts**

In all #Residence Districts#, a #non-conforming use# listed in Use Group 6, 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed,

initially or in any subsequent change, only to a conforming #use# or to a #use# listed in Use Group 6. In the case of any such change, the limitation on #floor area# set forth in Section 32-15 (Use Group 6) shall not apply. Eating or drinking places, with musical entertainment, but not dancing, thus permitted as a change of #use#, shall be limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a #completely enclosed building#.

(8/17/90)

## 52-35

### Manufacturing or Related Uses in Commercial Districts

In all #Commercial Districts#, a #non-conforming use# listed in Use Group 11A, 16, 17 or 18 which is not subject to the provisions of Section 52-32 (Land with Minor Improvements), may be changed either to a conforming #use# or:

- (a) to a #use# listed in Use Group 6, 7, 8, 9, 10, 11B or 14, in which case any subsequent change of #use# shall conform to the provisions of Section 52-36 (Non-Conforming Commercial Uses in Commercial Districts); or
- (b) in accordance with the provisions of the following table:

<u>From Use Group</u>	<u>To Use Group</u>
11A	11A
16 or 17	11A 16 or 17
18	11A 16 17 or 18

provided that such changed #use# shall conform to all regulations on performance standards applicable in M1 Districts, and that any such changed #use# or any storage of materials or products #accessory# to any changed #use# shall be located within a #completely enclosed building#. Whenever a #use# located within a #completely enclosed building# is changed to another #use#, no activity related to such changed #use#, including the storage of materials or products, shall be located outside of such #building#.

However, in C1, C3, C4 or C5 Districts, a #non-conforming use# listed in Use Group 11A, 16, 17 or 18, which is not subject to the provisions of Section 52-32, may not be changed to a #motel# or #tourist cabin#.

(8/17/90)

**52-36**

**Non-Conforming Commercial Uses in Commercial Districts**

In C1, C2, C4, C6, C7 or C8 Districts, any #non-conforming use# listed in Use Group 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed, initially or in any subsequent change, only to a conforming #use# or to any #use# listed in Use Group 7, 8 or 9.

In C3 Districts, any such #non-conforming use# may be changed, initially or in any subsequent change, only to a conforming #use# or to a #use# listed in Use Group 6.

However, in C1 or C4 Districts, a #non-conforming use# may not be changed to a #motel# or #tourist cabin#.

(8/15/74)

**52-37**

**Non-Conforming Commercial Uses in Manufacturing Districts**

In all #Manufacturing Districts#, any #non-conforming use# listed in Use Group 5, 6, 7, 9, 10, 12 or 15 may be changed, initially or in any subsequent change, only to a conforming #use# or to any #use# listed in Use Group 6, 9, 10 or 12.

(10/25/95)

**52-38**

**Special Regulations for Adult Establishments**

In all districts, a #non-conforming use# may not be changed, initially or in any subsequent change, to an #adult establishment#, except as provided in Sections 32-01 or 42-01 (Special Provisions for Adult Establishments).

(12/15/61)

**52-40**



## ENLARGEMENTS OR EXTENSIONS

(5/8/13)

### 52-41

#### General Provisions

A #non-conforming use# may be #enlarged# or #extended# within the district in which such #non-conforming use# is located only in accordance with the provisions of this Chapter. However, a #non-conforming single-# or #two-family residence# in an R3, R4 or R5 District may be #enlarged# or #extended# in accordance with the #bulk# regulations specified for the district in which it is located. Furthermore, #enlargements# or #extensions# designed exclusively to permit conformity with the regulations on performance standards or in order to provide required #accessory# off-street parking spaces or off-street loading berths on the same #zoning lot# as the #use# to which such spaces or berths are #accessory# are not subject to the restrictions set forth herein.

For the purposes of this Section and Sections 52-31 (General Provisions), 52-42 (C6, C8 or Manufacturing Districts) and 52-43 (C1 or C4 Districts), the applicable district regulations on #accessory# off-street parking spaces or loading berths shall be determined in accordance with the following tables. The term "required" as used in this Section shall mean some or all of, but not more than, the number of spaces or berths which would be required by such applicable district regulations for #development# for such #use#.

#### APPLICABLE OFF-STREET PARKING REGULATIONS FOR NON-CONFORMING COMMERCIAL OR MANUFACTURING USES

District in which #Non-conforming Use# is Located	District whose Regulations are Applicable
R1 R2 R3 R4 R5 R6 R7-1	M3-1
C1-1 C1-2 C1-3 C1-4	M3-1
C2-1 C2-2 C2-3 C2-4	M3-1
C3	M3-1
C4-1 C4-2 C4-3 C4-4	M3-1
C7	M3-1

C8-1 C8-2 C8-3	M3-1
M1-1 M1-2 M1-3	M3-1
M2-1 M2-2	M3-1
R7-2 R8 R9 R10	M3-2
C1-5 C1-6 C1-7 C1-8 C1-9	M3-2
C2-5 C2-6 C2-7 C2-8	M3-2
C4-5 C4-6 C4-7	M3-2
C5	M3-2
C6	M3-2
C8-4	M3-2
M1-4 M1-5 M1-6	M3-2
M2-3 M2-4	M3-2

APPLICABLE OFF-STREET PARKING REGULATIONS  
FOR NON-CONFORMING  
RESIDENTIAL OR COMMUNITY FACILITY USES

District in which #Non- conforming Use# is Located	District whose Regulations are Applicable
C8-1 C8-2 C8-3	R5
M1-1 M1-2 M1-3	R5
M2-1 M2-2	R5
M3-1	R5
C8-4	R10
M1-4 M1-5 M1-6	R10
M2-3 M2-4	R10
M3-2	R10

APPLICABLE OFF-STREET LOADING REGULATIONS

District in which #Non- conforming Use# is Located	District whose Regulations are Applicable
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R1 R2 R3 R4 R5 R6	M2-1
C1 mapped within R1 R2 R3 R4 R5 R6	M2-1
C2 mapped within R1 R2 R3 R4 R5 R6	M2-1
C3	M2-1
C4-1 C4-2 C4-3	M2-1
C7	M2-1
C8-1 C8-2	M2-1
M1-1 M1-2 M1-4	M2-1
R7 R8 R9 R10	M2-2
C1 mapped within R7 R8 R9 R10	M2-2
C2 mapped within R7 R8 R9 R10	M2-2
C1-6 C1-7 C1-8 C1-9	M2-2
C2-6 C2-7 C2-8	M2-2
C4-4 C4-5 C4-6 C4-7	M2-2
C5	M2-2
C6	M2-2
C8-3 C8-4	M2-2
M1-3 M1-5 M1-6	M2-2

For #non-conforming use# in #Residence Districts#, #accessory# off-street parking spaces or loading berths shall be subject to the provisions of Sections 25-66 or 25-77 (Screening).

In the #Manhattan Core#, #enlargements# or #extensions# of #non-conforming uses# which involve the provision of off-street parking are subject to the regulations set forth in Article I, Chapter 3, and in the #Long Island City area#, as defined in Section 16-02 (Definitions), such #enlargements# or #extensions# are subject to the regulations set forth in Article I, Chapter 6.

In the case of a conflict between these provisions and retail continuity provisions that apply to the ground floor of #buildings#, a #non-conforming use# on the ground floor in such #building# may be changed only to a #conforming use#.

(9/22/66)

**52-42**

**C6, C8 or Manufacturing Districts**

Except for the #use# of #land with minor improvements#, in C6 or C8 Districts, a #non-conforming use# listed in Use Group 17 or 18, or in C8 or #Manufacturing Districts#, a #use# listed in Use Group 11A, 16, 17, or 18 which is #non-conforming# with respect to the applicable district regulations on performance standards, may be #enlarged# or #extended#, provided that:

- (a) such #enlarged# or #extended# portion does not occupy more than 25 percent of the #floor area# or space which such #non-conforming use# occupied or utilized within the #building or other structure# at the time when it became #non-conforming#; provided, however, that in no event shall any such #enlargement# or #extension# create a #non-compliance# or increase the degree of #non-compliance# of a #non-complying building or other structure#; and
- (b) such #enlarged# or #extended# portion conforms to the applicable district regulations on performance standards and on #accessory# off-street parking spaces and loading berths, as set forth in Section 52-41 (General Provisions).

In the specified districts, such #use# may be #extended# into any #floor area# where it would be permitted as a changed #use# under the provisions of Section 52-35 (Manufacturing or Related Uses in Commercial Districts), provided that the applicable district regulations on performance standards and #accessory# off-street loading berths, as set forth in Section 52-41, shall apply to such #extended floor area#.

(9/22/66)

**52-43**

**C1 or C4 Districts**

Except for the #use# of #land with minor improvements#, in C1 Districts, a #non-conforming use# listed in Use Group 7, 8 or 9, or, in C4 Districts, a #non-conforming use# listed in Use Group 7, may be #enlarged# or #extended#, provided that:

- (a) such #enlarged# or #extended# portion does not occupy more than 25 percent of the #floor area# or space which such #non-conforming use# occupied or utilized within the

#building or other structure# at the time when it became #non-conforming#; provided, however, that in no event shall any such #enlargement# or #extension# create a #non-compliance# or increase the degree of #non-compliance# of a #non-complying building or other structure#; and

- (b) such #enlarged# or #extended# portion conforms to the applicable district regulations on #accessory# off-street parking spaces and loading berths, as set forth in Section 52-41 (General Provisions).

In the specified districts, such #use# may be #extended# into any #floor area# where it would be permitted as a changed #use# under the provisions of Section 52-36 (Non-Conforming Commercial Uses in Commercial Districts) provided that the applicable district regulations on #accessory# off-street loading berths, as set forth in Section 52-41, shall apply to such #extended floor area#.

In C1 Districts, no #extension# may be made in a #building designed for residential use#.

(2/2/11)

#### **52-44**

##### **Residence Districts Except R1 and R2 Districts**

In all #Residence Districts#, except R1 and R2 Districts, a fire station may be #enlarged# or #extended#, provided that:

- (a) such #enlarged# or #extended# portion does not occupy more than 25 percent of the #floor area# or space which such #non-conforming use# occupied or utilized within the #building or other structure# at the time when it became #non-conforming#;
- (b) such #enlargement# or #extension# shall not create a #non-compliance# or increase the degree of #non-compliance#; and
- (c) such #enlarged# or #extended# portion conforms to the applicable district regulations on #accessory# off-street parking spaces as set forth in Section 52-41 (General Provisions).

#Community facility bulk# regulations as set forth in Article II, Chapter 4, shall apply to such #enlarged# or #extended# fire stations.

(2/2/11)

## **52-45**

### **Non-Conforming Residential Uses in M1 Districts**

In an M1 District, a #non-conforming residential use# occupying at least 50 percent of the #floor area# of a #building# which was #designed for residential use# and erected prior to December 15, 1961, may be #extended# on the ground floor level provided that no #dwelling unit# or #rooming unit# may be located on or below a #story# occupied by a #commercial# or #manufacturing use#. The total number of #dwelling units# or #rooming units# in the #building# may not be increased by more than one for each 400 square feet of #residential floor area# created by such #extension#.

(9/21/11)

## **52-46**

### **Conforming and Non-conforming Residential Uses in M1-1D Through M1-5D Districts**

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, a #building# containing conforming or #non-conforming residential uses# may be #enlarged# and the #residential uses extended# thereby, provided that no non-#residential uses# exist above the level of the first #story# ceiling.

Such #enlargement# is subject to all of the following regulations:

- (a) There shall be no increase in the number of #dwelling units# in the #building# beyond the lawful number in existence on December 21, 1989.
- (b) The total amount of #residential floor area# in the #building# shall not exceed 500 square feet additional to the #residential floor area# in existence on December 21, 1989, or a #floor area ratio# of 1.65, whichever is less.
- (c) No #residential enlargement# shall be permitted within 30 feet of the #rear lot line#.
- (d) No #enlarged# portion shall exceed a height of 32 feet above #curb level#.

(e) No #side yards# shall be required. However, if any open area extending along a #side lot line# is provided at any level it shall have a width of not less than eight feet. However, #enlargements# of #single-family# or #two-family residences# existing as of June 20, 1988 shall be exempt from this requirement, provided such #enlarged building# does not exceed a height of two #stories#.

#Enlargements# in excess of those permitted in this Section, and #enlargements# that create additional #dwelling units# may be permitted by authorization of the City Planning Commission, pursuant to the regulations of Sections 42-47 (Residential Uses in M1-1D Through M1-5D Districts) and 42-48 (Supplemental Use Regulations in M1-6D Districts).

(12/15/61)

**52-50**  
**DAMAGE OR DESTRUCTION**

(12/5/90)

**52-51**  
**General Provisions**

Except as set forth in Sections 52-81 to 52-83, inclusive, relating to Regulations Applying to Non-Conforming Signs, if a #non-conforming building or other structure# is damaged, destroyed or demolished, the provisions set forth in Sections 52-52 to 52-56, inclusive, shall apply.

However, if a #non-conforming single-# or #two-family residence# in an R3, R4, or R5 District is damaged, destroyed or demolished, such #building# may be continued in #use# and reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations.

(2/2/11)

**52-52**  
**Land with Minor Improvements**

In all districts, if a #non-conforming building or other structure# or other improvement located on #land with minor

improvements# is damaged or destroyed by any means, including but not limited to, any demolition ordered or permitted by the Department of Buildings, to the extent of 25 percent or more of the assessed valuation of all #buildings or other structures# or other improvements thereon (as determined from the assessment rolls effective on the date of damage or destruction), such #non-conforming use# shall terminate, and the #zoning lot# shall thereafter be used only for a conforming #use#.

(12/15/61)

### **52-53**

#### **Buildings or Other Structures in All Districts**

(9/21/11)

### **52-531**

#### **Permitted reconstruction or continued use**

In all districts, if any #building#, except a #building# subject to the provisions of Section 52-54 (Buildings Designed for Residential Use in Residence Districts), or of Section 52-56 (Multiple Dwellings in M1-1D Through M1-5D Districts), which is substantially occupied by a #non-conforming use#, is damaged or destroyed by any means, including any demolition as set forth in Sections 52-50 et seq., to the extent of 50 percent or more of its total #floor area#, such #building# may either:

- (a) be repaired or #incidentally altered#, and the existing #non-conforming use# may be continued; or
- (b) be reconstructed, but only for a conforming #use#; provided, however, that in no event shall any such reconstruction create a #non-compliance# or increase the degree of #non-compliance# of a #non-complying building#.

However, where the damage or destruction is so great that the provisions in Sections 54-41 and 54-42 relating to Damage, Destruction or Demolition in Non-Complying Buildings also apply, the latter Sections shall govern the permitted #bulk# of the reconstructed #building#.

In addition, the alteration of an existing #building# resulting in both the removal of more than 75 percent of the #floor area# and more than 25 percent of the perimeter walls of such existing #building#, and the replacement of any portion thereof, shall be



considered a #development# for the purposes of the provisions set forth in Section 11-23 (Demolition and Replacement).

In applying the provisions of this Section to damaged or destroyed structures, substantially utilized by a #non-conforming use#, any appropriate measure of the size of such structures shall be substituted for #floor area# in determining the extent of damage or destruction.

In the event that any demolition, damage or destruction of an existing #building# produces an unsafe condition requiring a Department of Buildings order or permit for further demolition of #floor area# to remove or rectify the unsafe condition, and the aggregate #floor area# demolished, damaged or destroyed including that ordered or permitted by the Department of Buildings constitutes 50 percent or more of the total #floor area# of such #building#, then such #building# may be repaired or reconstructed only in accordance with the provisions of paragraph (a) or (b) in this Section.

For the purposes of this Section, any #single-family# or #two-family residence# located within an M1-1D, M1-2D, M1-3D, M1-4D, M1-5D or M1-6D District and existing on June 20, 1988, shall be a conforming #use#.

For the purposes of this Section, #buildings# that #abutted# one another on a single #zoning lot# on the date of such damage or destruction shall be considered a single #building#.

(12/15/61)

## **52-532**

### **Use of alternative formula**

In any case where the applicant alleges that #floor area# is an inappropriate measure of the extent of damage or destruction, and elects to substitute reconstruction costs for #floor area#, an application may be made to the Board of Standards and Appeals to determine the extent of such damage or destruction.

If the Board finds that the costs of reconstructing the damaged or destroyed portion of such #building# to its previous condition exceed 50 percent of the costs of reconstructing the entire #building# to the condition existing on the date of such damage or destruction, the provisions of Section 52-531 (Permitted reconstruction or continued use) shall apply. In determining reconstruction costs, the cost of land shall be excluded.

(3/28/85)

#### **52-54**

##### **Buildings Designed for Residential Use in Residence Districts**

In all #Residence Districts#, if the #floor area# occupied by #non-conforming uses# within a #building designed for residential use# is damaged or destroyed by any means, including but not limited to, any demolition ordered or permitted by the Department of Buildings, to the extent of 25 percent or more of such #floor area#, such #building# may be continued in #use# or reconstructed only in accordance with the provisions of Section 52-53 (Buildings or Other Structures in All Districts) except that the 25 percent ratio set forth in this Section shall apply instead of the 50 percent ratio set forth in Section 52-53.

(2/2/11)

#### **52-55**

##### **Lesser Damage or Destruction**

In the event that a #building or other structure# substantially occupied or utilized by a #non-conforming use# is damaged or destroyed to a lesser extent than that specified in Sections 52-51 to 52-54, inclusive, relating to Damage, Destruction or Demolition, the #building or other structure# may be restored and the #non-conforming use# of such #building or other structure# or #zoning lot# may be continued, provided that such restoration shall not create a #non-compliance# or increase the degree of #non-compliance#, if any, existing prior to such damage, destruction or demolition.

(9/21/11)

#### **52-56**

##### **Multiple Dwellings in M1-1D Through M1-5D Districts**

In the case of damage or destruction of less than 75 percent of the total #floor area# of a #non-conforming building# containing three or more #dwelling units# in an M1-1D, M1-2D, M1-3D, M1-4D or M1-5D District, such #building# may be repaired or reconstructed, and its #residential use# continued, subject to the following regulations:

- (a) there shall be no increase in the number of #dwelling units# in the #building# beyond the lawful number in existence prior to such damage and destruction; and
- (b) there shall be no increase to the pre-existing amount of #floor area# except as expressly provided in Section 52-46 (Conforming and Non-conforming Residential Uses in M1-1D Through M1-5D Districts).

#Enlargements# in excess of those permitted, pursuant to paragraph (b) of this Section, and #enlargements# that create additional #dwelling units#, may be permitted by authorization of the City Planning Commission pursuant to the regulations of Section 42-47 (Residential Uses in M1-1D Through M1-5D Districts).

(12/15/61)

**52-60**  
**DISCONTINUANCE**

(10/7/76)

**52-61**  
**General Provisions**

If, for a continuous period of two years, either the #non-conforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing.

The provisions of this Section shall not apply where such discontinuance of active operations is directly caused by war, strikes or other labor difficulties, a governmental program of materials rationing, or the construction of a duly authorized improvement project by a governmental body or a public utility company.

Except in Historic Districts as designated by the Landmarks Preservation Commission, the provisions of this Section shall not apply to vacant ground floor or #basement# stores in #buildings designed for residential use# located in R5, R6 or R7 Districts where the changed or reactivated #use# is listed in Use Group 6A,

6B, 6C or 6F excluding post offices, veterinary medicine for small animals, automobile supply stores, electrolysis studios and drive-in banks. In addition, the changed or reactivated #use# shall be subject to the provisions of Section 52-34 (Commercial Uses in Residence Districts).

(9/21/11)

## **52-62**

### **Buildings Containing Residences in M1-1D Through M1-5D Districts**

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, vacant #floor area# in a #building# originally designed as #dwelling units# or #rooming units# may be occupied by a #residential use# provided that the requirements of either paragraph (a) or (b) are met.

- (a) #Residential uses# in such #buildings# may be reactivated as-of-right, provided:
  - (1) the #floor area# has been continuously vacant for two years or more;
  - (2) the #street line# of the #zoning lot# upon which the discontinued #building# stands does not exceed 60 feet in length (or, in the case of a #corner lot#, the #lot area# does not exceed 6,800 square feet); and
  - (3) the #zoning lots abutting# on both #side lot lines# and fronting on the same #street# (or #streets#, if a #corner lot#) are occupied by #buildings designed for residential use# and contain no #manufacturing uses#.
- (b) #Residential uses# in such #buildings# may be reactivated by authorization of the City Planning Commission, provided:
  - (1) the #floor area# has been continuously vacant for two years or more;
  - (2) the #street line# of the #zoning lot# upon which the discontinued #building# stands does not form a continuous frontage with vacant land or #land with minor improvements# whose aggregate length exceeds 60 feet (or, in the case of a #corner lot#, the #lot area# does not exceed 6,800 square feet);
  - (3) the #zoning lot abutting# on one #side lot line# and fronting on the same #street# is occupied by either:

- (i) a #building designed for residential use# or a #community facility building#; or
  - (ii) a #building# originally designed as #dwelling units# or #rooming units# for which an application to reactivate #residential use# in such #building# has been combined with the subject application;
- (4) 25 percent or more of the aggregate length of the #block# fronts on both sides of the #street# facing each other is occupied by #zoning lots# containing #community facility buildings# or #buildings# containing #residences#; and
- (5) the Commission finds that:
- (i) reactivating the #residential use# will not adversely affect #manufacturing# or #commercial uses# in the district; and
  - (ii) such #residential use# will not be exposed to excessive noise, smoke, dust, noxious odor, or other adverse impacts from #manufacturing# or #commercial uses#.

In granting such authorization, the Commission may prescribe additional conditions and safeguards as the Commission deems necessary.

The number of #dwelling units# permitted in such reactivated #building# containing #residences# shall not exceed the greater of the number of lawful #dwelling units# last recorded by the Department of Buildings, or one #dwelling unit# for every 675 square feet of total net #residential floor area# as defined in Section 28-02 (Definitions).

No #dwelling unit# shall be permitted on or below a #story# occupied by a #commercial# or #manufacturing use#.

#Residential uses# in M1-D Districts may #enlarge# pursuant to the regulations of Sections 52-46 (Conforming and Non-conforming Residential Uses in M1-1D Through M1-5D Districts) or 42-47 (Residential Uses in M1-1D Through M1-5D Districts) as applicable.

(12/15/61)

## **TERMINATION OF CERTAIN NON-CONFORMING USES AFTER AMORTIZATION**

(10/25/95)

### **52-71**

#### **General Provisions**

In specified districts, specified #non-conforming signs#, specific #non-conforming uses# of #land with minor improvements#, specified #non-conforming# objectionable #uses#, certain specific types of #uses# involving open storage or salvage, #non-conforming adult establishments#, or certain #non-conforming public parking lots# may be continued for a reasonable period of useful life as set forth in this Chapter, provided that after the expiration of that period such #non-conforming uses# shall terminate in accordance with the provisions of this Chapter.

(12/15/61)

### **52-72**

#### **Land with Minor Improvements**

In all #Residence Districts#, a #non-conforming use# of #land with minor improvements# listed in Use Group 11A, 16, 17 or 18 may be continued for three years after December 15, 1961, or such later date that the #use# becomes #non-conforming#, provided that after the expiration of that period such #non-conforming use# shall terminate, and thereafter such land shall be used only for a conforming #use#.

(4/8/98)

### **52-73**

#### **Non-Conforming Signs**

(8/22/63)

### **52-731**

#### **Advertising signs**

In all #Residence Districts#, a #non-conforming advertising sign# may be continued for 10 years after December 15, 1961, or such

later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

(12/15/61)

#### **52-732**

##### **Signs on awnings or canopies**

In all #Residence# or #Commercial Districts#, a #non-conforming sign# on an awning or canopy may be continued for one year after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, provided that after the expiration of that period such #non-conforming sign# shall terminate.

(4/8/98)

#### **52-733**

##### **Advertising signs on waterways**

On all waterways adjacent to #Residence#, #Commercial# or #Manufacturing Districts# and within view from an arterial highway, a #non-conforming advertising sign# may be continued for one year after July 23, 1964, if already in operation on April 15, 1964; provided that after the expiration of this period such #non-conforming advertising sign# shall terminate.

For the purposes of this Section, an #advertising sign# is a #sign# that directs attention to a profession, business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises of the vessel and is not #accessory# to a #use# on such vessel.

(4/8/98)

#### **52-734**

##### **Non-conforming signs for adult establishments**

In all districts, a #non-conforming sign# for an #adult establishment# shall terminate within one year from October 25, 1995, or from such later date that such #sign# becomes #non-conforming#, except that such #sign# may be continued for a limited period of time by the Board of Standards and Appeals, pursuant to Section 72-40 (AMORTIZATION OF CERTAIN ADULT

ESTABLISHMENTS AND SIGNS FOR ADULT ESTABLISHMENTS).

(2/8/68)

**52-74**

**Uses Objectionable in Residence Districts**

In all #Residence Districts#, any of the following objectionable #uses# listed in Use Group 18, other than a #use# of #land with minor improvements#:

Coal storage;

Dumps, marine transfer stations for garbage, or slag piles;

Junk or salvage yards, including auto wrecking or similar establishments (whether or not such yard is enclosed);

Lumber yards (whether or not such yard is enclosed);

Manure, peat or topsoil storage;

Scrap metal, junk, paper or rags storage, sorting or baling (whether or not the yard in which such #use# is conducted is enclosed);

that:

(a) involves activities not located within a #completely enclosed building#; and

(b) involves the #use# of #buildings or other structures# or other improvements with a total assessed valuation, excluding land, of less than \$20,000 as determined from the assessment rolls effective on the date established for termination;

may be continued for 10 years after December 15, 1961, or such later date that the #use# becomes #non-conforming#, provided that after the expiration of that period such #non-conforming use# shall terminate, and thereafter such land or #building or other structure# shall be used only for a conforming #use#.

(2/8/68)



## 52-75

### **Certain Types of Uses Involving Open Storage or Salvage**

In all districts, #non-conforming# building materials or contractors' yards, or #non-conforming# junk or salvage yards, including auto wrecking or similar establishments, or #non-conforming# scrap metal, junk, paper or rags storage, sorting or baling may be continued subject to the applicable provisions set forth herein, whichever impose the greater restriction.

- (a) In #Residence Districts#, where such #use# constitutes a #non-conforming use# of #land with minor improvements#, the provisions of Section 52-72 (Land With Minor Improvements) apply.
- (b) In #Residence Districts#, where such #use# constitutes a #use# other than a #use# of #land with minor improvements#, and meets the criteria set forth in Section 52-74 (Uses Objectionable in Residence Districts), the provisions of Section 52-74 apply.
- (c) In all districts where such #use# is #non-conforming# with respect to the required enclosure as set forth in the listing of such #use# in Sections 42-14 (Use Group 17) or 42-15 (Use Group 18), and is either conforming or #non-conforming# in other respects, it may be continued without such enclosure until a date three years from February 8, 1968, or from such later date that the #use# becomes #non-conforming#. Thereafter, any such #use# which does not conform with the enclosure requirements shall be terminated, and the land shall be used only for a conforming #use#.

(11/16/78)

## 52-76

### **Adult Physical Culture Establishments**

In all districts, any #adult physical culture establishment#, unless subject to an earlier termination requirement contained in this Resolution, shall terminate not later than one year after November 16, 1978, and thereafter the space formerly occupied by such #use# shall be used only for a conforming #use#.

(10/25/95)

## 52-77

## **Termination of Adult Establishments**

In all districts, a #non-conforming adult establishment# shall terminate within one year from October 25, 1995, or from such later date that the #adult establishment# becomes #non-conforming#, except that such establishment may be continued for a limited period of time by the Board of Standards and Appeals pursuant to Section 72-40 (AMORTIZATION OF CERTAIN ADULT ESTABLISHMENTS AND SIGNS FOR ADULT ESTABLISHMENTS). However, the provisions of this Section shall not apply to an #adult establishment# subject to the provisions of paragraph (f) of Section 32-01 or 42-01 (Special Provisions for Adult Establishments).

(4/8/98)

### **52-80**

#### **REGULATIONS APPLYING TO NON-CONFORMING SIGNS**

(4/8/98)

### **52-81**

#### **General Provisions**

A #non-conforming sign# shall be subject to all the provisions of this Chapter relating to #non-conforming uses#, except as modified by the provisions of Sections 52-82 (Non-Conforming Signs other than Advertising Signs) and 52-83 (Non-Conforming Advertising Signs).

A change in the subject matter represented on a #sign# shall not be considered a change of #use#.

(4/8/98)

### **52-82**

#### **Non-Conforming Signs other than Advertising Signs**

Any #non-conforming sign#, except a #flashing sign# or a #sign# subject to the provisions of Section 52-734 (Non-conforming signs for adult establishments), and except any #advertising signs# may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new #non-conformity# or an increase in the degree of #non-conformity# of such #sign#;
- (b) an increase in the #surface area# of such #sign#; or
- (c) an increase in the degree of illumination of such #sign#.

However, any structural alteration, reconstruction or replacement of a #non-conforming sign accessory# to a #non-conforming use# shall be subject to the provisions of Section 52-31 (General Provisions).

To the extent that such structural alteration, reconstruction or replacement of #non-conforming signs# is permitted under the provisions of this Section, the provisions of the following Sections are modified:

Section 52-22 (Structural Alterations)

Sections 52-51 to 52-55, inclusive, relating to Damage or Destruction.

(7/29/10)

### **52-83**

#### **Non-Conforming Advertising Signs**

In all #Manufacturing Districts#, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Sections 32-66 or 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways), any #non-conforming advertising sign# except a #flashing sign# may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new #non-conformity# or an increase in the degree of #non-conformity# of such #sign#;
- (b) an increase in the #surface area# of such #sign#; or
- (c) an increase in the degree of illumination of such #sign#.

However, in Community District 1 in the Borough of Brooklyn, a #non-conforming advertising sign# may be structurally altered, reconstructed or replaced in a different location, and may create a new #non-conformity# or #non-compliance#, or an increase in the

degree of #non-conformity# or #non-compliance#, provided such #sign# is reconstructed pursuant to a Certificate of Appropriateness from the Landmarks Preservation Commission, is located on a landmark #building# that is part of a #general large scale development#, and there is no increase in the #surface area# or degree of illumination of such #sign#. Furthermore, the discontinuance provisions of Section 52-61 shall not apply to such #sign#, provided such #sign# is reconstructed on the landmark #building# prior to the issuance of a temporary certificate of occupancy for any #use# within such #building#.

No #sign# that exceeds or is otherwise in violation of any illumination standard established by rule of the Department of Buildings shall be #non-conforming# as to such illumination standard one year after such rule becomes effective.

To the extent that such structural alteration, reconstruction or replacement of #non-conforming advertising signs# is permitted under the provisions of this Section, the provisions of the following Sections are modified:

Section 52-22 (Structural Alterations)

Sections 52-51 to 52-55, inclusive, relating to Damage or Destruction.