

ORDINANCE NO. 2016-29

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 14 OF THE PEORIA CITY CODE (1977 EDITION), BY AMENDING ARTICLE 14-02 DEFINITIONS, ARTICLE 14-04 ESTABLISHMENT OF ZONING DISTRICTS, ARTICLE 14-05 SINGLE-FAMILY RESIDENTIAL, ARTICLE 14-26 NON-CONFORMING USES, ARTICLE 14-39 ADMINISTRATIVE PROCEDURES, ARTICLE 14-41 SPECIAL USE PERMITS, OF THE PEORIA CITY CODE; PROVIDING FOR SEPARABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Maricopa County, Arizona, held a public hearing on August 18, 2016 to consider proposed amendments to the Peoria City code, after notice in the manner provided by law; and

WHEREAS, due and proper notice of such Public Hearing was given in the time, form, substance, and manner provided by law including publication of such in the Peoria Times on July 25, 2016; and

WHEREAS, the Planning and Zoning Commission of the City of Peoria, Arizona at its regularly convened meeting of August 18, 2016 voted to recommend to the Mayor and Council of the City of Peoria, Arizona, that amendments be made to the Peoria City Code (1977 edition) and Chapter 14 of the Peoria City Code; and

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, have considered the recommendation of the Planning and Zoning Commission of the City of Peoria, Arizona, and deem it to be in the best interest of the public health, safety and welfare of the residents of the City of Peoria, Arizona to amend Article 14-02 Definitions, Article 14-04 Establishment of Zoning Districts, Article 14-05 Single-Family Residential, Article 14-26 Non-Conforming Uses, Article 14-39 Administrative Procedures, and Article 14-41 Special Use Permit, of Chapter 14 of the Peoria City Code (1977 edition):

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. of Chapter 14 of the Peoria City Code (1977 edition) shall be amended to read as indicated on Exhibits A-C.

SECTION 2. Effective Date. This Ordinance shall become effective on the date provided by law.

SECTION 3. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona this 20th day of September, 2016.

  
\_\_\_\_\_  
Cathy Carlat, Mayor

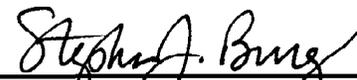
9-22-16  
\_\_\_\_\_  
Date Signed

ATTEST:

  
\_\_\_\_\_  
Rhonda Geriminsky, City Clerk



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Steve Burg, Interim City Attorney

Published in: Peoria Times

Publication Date: September 30, 2016

Effective Date: 10/22/16

# Exhibit A (Case TA 16-0004)

## ~~ARTICLE 14-26~~ ~~NON-CONFORMING USES~~

### ~~CONTENTS~~

- ~~14-26-1 INTENT~~
- ~~14-26-2 CLASSIFICATION OF NON-CONFORMANCE~~
- ~~14-26-3 PERMITTED CONTINUANCE OF NON-CONFORMANCE~~
- ~~14-26-4 EXCEPTIONS~~
- ~~14-26-5 RECORD OF NON-CONFORMANCE~~
- ~~14-26-6 PURCHASE OR CONDEMNATION~~

### ~~14-26-1 INTENT~~

~~Within the zoning district established by this chapter, there exist certain lots, structures and uses of land and structures, which were lawful prior to the effective date of this chapter, but which are prohibited, regulated or restricted under the terms of this chapter. Such uses are declared to be non-conforming uses and to be incompatible with permitted uses in the districts involved; their elimination, as expeditiously as is reasonable, is declared to be of as much concern to the public health, safety and welfare, as are the provisions of this chapter. It is therefore, the intent of this chapter to define and classify non-conforming uses, and, according to such classification to establish the conditions under which they may be continued or shall be terminated and brought into conformity. It is the further intent that such non-conformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district. There may, however, be a change of ownership, tenancy or management of the various categories of non-conforming uses, provided that the extent of non-conformity is not increased.~~

### ~~14-26-2 CLASSIFICATION OF NON-CONFORMANCE~~

~~For the purposes of this chapter, non-conforming uses are classified as follows:~~

- ~~A. Class A Non-conformance — non-conforming lots of record. Single family residential lots existing on February 9, 1971, which do not meet lot width or lot area requirements for the district in which located.~~
- ~~B. Class B Non-conformance — non-conforming uses of land not involving buildings. Uses of land existing on February 9, 1971 which are not permitted by this chapter in the district in which located.~~
- ~~C. Class C Non-conformance — non-conforming buildings or structures. Structures existing on February 9, 1971 that:
  - ~~1. Do not conform to requirements for building height, setback or distance between buildings for the district in which located.~~~~

- ~~2. All industrial or commercial buildings or structures not specifically permitted in the particular residential district in which located.~~
  - ~~3. All residential buildings not specifically permitted in the particular commercial or industrial zone in which located.~~
- ~~D. Class D non conformance — non conforming uses of buildings. Uses of buildings, or of buildings and premises in combination, existing on February 9, 1971, which are not permitted in the district in which located.~~
- ~~E. Class E non conformance — non conforming uses of buildings. Uses of buildings existing on February 9, 1971, which do not conform to lot area per dwelling unit requirements for the district in which located.~~

#### ~~14-26-3 PERMITTED CONTINUANCE OF NON-CONFORMANCE~~

~~Non-conforming uses, buildings and structures may be continued so long as they remain otherwise lawful, subject to the following conditions:~~

- ~~A. Class A non conformance — non conforming lots of record. In any district in which single family dwelling and customary accessory buildings may be erected on any single lot of record, even though such lot fails to meet area and width requirements established by this chapter for the district in which such lot of record is located; provided that:~~
- ~~1. Such lot is in separate ownership and not contiguous with other lots in the same ownership.~~
  - ~~2. Yard dimensions and other requirements not involving area or width, or both, conform to regulations for the district in which located.~~
  - ~~3. A minimum variance necessary to relieve the specific hardship has been granted by the Board.~~
  - ~~4. If two (2) or more lots, or combination of lots and portions of lots, having contiguous frontage in single ownership are of record, and if all or part of such lots do not meet requirements for lot width and lot area established by this chapter, the aggregate land involved shall be considered to be an undivided parcel, and no portion of said parcel shall be used or sold which does not meet lot width and lot area requirements of this chapter, nor shall any division of the parcel be made which leaves remaining any lot having width or area not meeting requirements of this chapter.~~
- ~~B. Class B non conformance — non conforming uses of land not involving buildings:~~
- ~~1. No such non conforming use shall be enlarged or increased or extended to occupy a greater area of land than it occupied on February 9, 1971.~~
  - ~~2. No such non conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on February 9, 1971.~~
  - ~~3. If any such non conforming use ceases for any reason for a period of time of more than one hundred eighty (180) days, any subsequent use of land shall meet all provisions of this chapter for the district in which located.~~

~~G. Class C non-conformance — non-conforming buildings or structures.~~

- ~~1. Any such building or structure may be enlarged or altered in any way which does not increase its non-conformity.~~
- ~~2. Should any such building or structure be destroyed by any means to an extent greater than fifty percent (50%) of its most recent assessor's full cash value at the time of destruction, it shall not be re-constructed except in conformity with provisions of this chapter.~~
- ~~3. Should any such building or structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which located after moving.~~

~~D. Class D non-conformance — non-conforming uses of buildings.~~

- ~~1. No building devoted to such use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered in any way which increases the extent of non-conformity of its use.~~
- ~~2. A non-conforming use of a building may be extended throughout any parts of the building which were manifestly arranged or designed for such use on February 9, 1971 provided that no such use shall be extended to occupy any land outside such a building.~~
- ~~3. If no structural alterations are made, a non-conforming use of a building and its premises may be changed to another non-conforming use, subject to the Board's granting a temporary use permit, wherein the Board, by making finding in the specific case, determines that the proposed use is equal or more appropriate in the district than the existing nonconforming use. In granting temporary use permit, the Board may impose such conditions and safeguards as it considers appropriate and in accord with the provisions and intent of this chapter.~~

~~E. Class E non-conformance — non-conforming uses of buildings. In a residential district, any building containing any residential use may be altered, provided that the number of dwelling units or rental units on the lot shall not be increased.~~

~~F. Non-conforming uses under variance. Non-conforming uses, buildings and structures for which a variance or "special use permit" has been granted by the Board under the terms of any previous ordinance shall be permitted to continue under the conditions imposed in said variance or "special use permit".~~

~~G. Non-conformity with performance standards. Any existing use of land, buildings or structures which does not meet the performance standards for such use or for equipment employed in operation of such land use as provided in this chapter shall by February 9, 1976, be brought into conformity with such performance standards. Any use failing to conform to such standards by February 9, 1976, shall be discontinued and no license or permit shall be issued to continue operation beyond that time.~~

**14-26-4 EXCEPTIONS**

~~A. *Strengthening or restoration of buildings.* Nothing herein contained shall be construed as preventing the strengthening or restoration of any building or structure declared by the Building Inspector to be unsafe to the public or private health, safety and welfare; provided, however, that the cost of such reconstruction or restoration does not exceed fifty percent (50%) of the most recent assessor's full cash value of the building before the start of reconstruction.~~

~~B. *Reasonable repair or alteration.* Nothing herein contained shall be construed as preventing the reasonable repair or alteration of any non-conforming building, structure or land improvements for purposes of continued use; provided, however, that the cost of such repair or alteration shall not, in any period of twelve consecutive months, exceed fifty percent (50%) of the most recent assessor's full cash value of the building, structure or land improvement, and that such repair or alteration shall not increase the degree or extent of non-conformity.~~

#### ~~14-26-5 RECORD OF NON-CONFORMANCE~~

~~The Zoning Inspector shall survey and make a complete record of all cases of non-conformance, and maintain such record thereafter, reviewing each case annually, or as often as the Council may prescribe. Such record shall include the name and address of the owner and occupant, if other than the owner, legal description of the property and classification and description of the non-conformance. The Zoning Inspector shall inform the owner of such property by mail as to the classification and nature of the non-conformity and the regulations applicable to its continuance, whereupon copies of the record shall be filed in the office of the Zoning Inspector. Such record shall constitute prima facie evidence of the character and extent of non-conformance existing on February 9, 1971 or any subsequent amendment thereto.~~

#### ~~14-26-6 PURCHASE OR CONDEMNATION (Ord. No. 02-85)~~

~~The City Council by resolution may authorize the acquisition of private property by purchase or condemnation for the removal of non-conforming uses and structures (Ord. No 81-35)~~

# Exhibit B (Case TA 16-0004)

## ARTICLE 14-26 LEGAL NON-CONFORMANCE (Ord. No. 2016-XX)

### CONTENTS

- 14-26-1 INTENT
- 14-26-2 ESTABLISHMENT OF LEGAL NON-CONFORMITY
- 14-26-3 GENERAL PROVISIONS
- 14-26-4 EXCEPTIONS

### 14-26-1 INTENT

This article establishes provisions for the regulation of non-conforming uses, buildings, structures, lots, and sites. These regulations are designed to identify legal non-conforming rights, but discourage their perpetuation and expansion.

### 14-26-2 ESTABLISHMENT OF LEGAL NON-CONFORMITY

Legal non-conforming status is the result of a use, building, structure, lot, or site that was legally established prior to the adoption or amendment of this Zoning Ordinance or annexation into the City, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Ordinance. The burden of establishing lawfulness of a non-conformity shall be upon the owner.

### 14-26-3 GENERAL PROVISIONS

All legal non-conformities may be continued so long as they remain otherwise lawful, subject to the following provisions:

#### A. Non-Conforming Buildings and Structures

1. Only routine repair and maintenance, which does not increase the non-conformity are permitted.
2. The replacement of damaged or partially destroyed non-conforming buildings or structures due to fire, flood, or other calamity, to an extent of:
  - a. Fifty percent (50%) or less of the gross floor area may be restored to its previous condition(s), provided a building permit for such restoration has been obtained within one (1) year of calamity.
  - b. Greater than fifty percent (50%) of the gross floor area shall not be reconstructed except in conformance with the regulations for the current zoning district in which it is located.

3. Should any such building or structure be moved for any reason, for any amount of time, any distance, it shall thereafter conform to the regulations for the current zoning district in which it is located after moving.

**B. Non-Conforming Uses**

1. The expansion of a non-conforming use within an additional building, structure, or land area is prohibited.
2. Whenever a non-conforming use has been discontinued or abandoned for a period of one (1) year, such use shall not thereafter be re-established and any future uses shall be in conformance with the current regulations for the current zoning district in which the property is located.
  - a. If the non-conforming use was forced to cease operations due to a fire, flood, or other calamity, the Zoning Administrator may extend the one (1) year deadline if a delay in recommencing was shown to be caused by unforeseen circumstances beyond the control of the property owner.
  - b. Once changed to a conforming use, no building, structure or land shall be permitted to revert back to a non-conforming use.

**C. Non-Conforming Lots**

1. A non-conforming lot shall develop in conformance with the regulations for the current zoning district in which it is located.

**D. Non-Conforming Sites**

1. All sites deemed non-conforming due to non-compliance with current applicable development standards, to include, but not limited to parking, circulation, and landscaping, shall be subject to the Site Plan Amendment process in Article 14-39.

**14-26-4 EXCEPTIONS**

- A. Additions to a non-conforming single-family dwelling shall be permitted if the added portion conforms to all current development standards as regulated by the current zoning district in which it is located.
- B. Any non-conformity will be required to be brought into conformance, in a timely manner, if such compliance is mandated by State or Federal Law.
- C. Nothing in this section shall prevent the full restoration of a building or structure that is listed on the National Register of Historic Places, the Arizona State Register of Historic Places, or the Peoria Register of Historic Places.
- D. Non-conforming signs shall be subject to Article 14-34.

## Exhibit C (Case TA 16-0004)

### ARTICLE 14-2 DEFINITIONS

#### 14-2-2 DEFINITIONS

~~*Non-Conforming Use* means any building, structure, premise, or use lawfully existing at the time of the adoption of this Zoning Ordinance, or lawfully established at such time as the Ordinance is amended, but does not conform with the regulations of the zone in which it is located. (Ord. No. 00-68)~~

*Non-Conformity, Legal*, means any use, building, structure, lot, or site that was legally established prior to the adoption or amendment of this Zoning Ordinance or annexation into the City, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Ordinance or future amendments thereof. (Ord. No. 2016-XX)

~~*Zoning Inspector Administrator* means the Planning Manager. (Ord. No. 2016-XX)~~

### ARTICLE 14-4 ESTABLISHMENT OF ZONING DISTRICTS

#### CONTENTS

- 14-4-1 CLASSIFICATION OF ZONING DISTRICTS
- ~~14-4-2 REQUIRED CONFORMITY TO DISTRICT REGULATIONS~~
- 14-4-32 CLASSIFICATION OF ANNEXED AREAS
- 14-4-43 CLASSIFICATION OF VACATED STREETS
- ~~14-4-54 OFFICIAL ZONING DISTRICT MAP~~

#### 14-4-1 CLASSIFICATION OF ZONING DISTRICTS (Ord. No. ~~93-12~~ 2016-XX)

The City of Peoria, Arizona is hereby divided into the following specific zoning districts as shown below. Each zoning district will have its own development standards to ensure a cohesive and compatible pattern of land use throughout the City. All buildings, structures, uses, lots, and developments shall comply with the requirements of their respective zoning district as set forth in this Zoning Ordinance.

#### ~~14-4-2 REQUIRED CONFORMITY TO DISTRICT REGULATIONS~~

~~The regulation set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided:~~

- ~~A. No building, structure or land shall hereinafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or~~

~~structurally altered unless in conformity with all regulations hereinafter specified for the district in which it is located.~~

~~B. No building or other structure shall hereafter be erected or altered:~~

~~1. To exceed the height;~~

~~2. To accommodate or house a greater number of families;~~

~~3. To occupy a greater percentage of lot area, or~~

~~4. To have narrower or smaller rear yards, front yards, side yards or other open spaces than hereinafter required; or in any manner contrary to the provisions of this chapter.~~

~~C. No part of a required yard or other open space, or off street parking or loading space provided in connection with any building or use shall be included as part of any yard, open space or off street parking or loading space similarly required for any other building.~~

~~D. No yard or lot existing on the effective date of this chapter shall be reduced in dimension or area below the minimum requirements set forth herein.~~

## **ARTICLE 14-5 SINGLE-FAMILY RESIDENTIAL DISTRICTS**

### **14-5-8 PROPERTY DEVELOPMENT STANDARDS FOR ACCESSORY BUILDINGS (Ord. No. 04-187)**

~~H. On or before June 15, 1990 owners of accessory buildings whether attached or detached, constructed prior to January 23, 1990, that conformed to the Uniform Building Code adopted by the City upon construction, that do not conform to the development standards within this Section 14-5-7 of Article 14-5 of Chapter 14 of the Peoria City Code, may submit to the City of Peoria an application supplied by the City to the City of Peoria Building Safety Department together with such plans as may be required by the Building Safety Department to register the non conforming accessory buildings. The Building Safety Department will review the accessory buildings in which registration is sought and after the review of the application, drawings and plans, herein provided for, shall issue a special building permit if the accessory building was constructed in accordance with the then existing Uniform Building Code, recognizing such accessory building may be registered as an exception to the limitations imposed by this Section 14-5-7.~~

~~The plans which may be required by the Building Safety Department shall show the location of the accessory building in relation to other structures on the lot and the lot lines of the property and such other information as may be necessary to determine if such building conformed to the Uniform Building Code upon its construction.~~

### **14-5-9 EXCEPTIONS**

~~A. Side yards, interior lots of record. On each lot or record, see Section 14-2-32-E, having a width of fifty (50) feet or less, the least side yard shall have a width not less than three (3) feet, and the other side yard shall have a width not less that seven (7) feet, and the~~

aggregate width of both side yards shall be not less than ten (10) feet upon adoption of this Ordinance.

## **ARTICLE 14-39 ADMINISTRATIVE PROCEDURES**

### **14-39-12 CONDITIONAL USE PERMITS**

(Section 14-39-12.B.2)

2. The Department shall consider any building, structure, or use existing on the effective date of this Ordinance as meeting the requirements and conditions of this Ordinance provided that the building, structure, or use is listed as a Permitted Conditional Use in the applicable zoning district. Continuance of the use shall not require the issuance of a new or additional Conditional Use Permit. However, the Department shall consider a building, structure, or use that fails to conform to the requirements of this Article as non-conforming as described in Article 14-26, "~~Non-Conforming Uses~~ Legal Non-Conformance," and its continuance shall be governed by all non-conformity ~~ing use~~ regulations stipulated in this Ordinance. (Ord. No. 2016-XX)

### **14-39-14 APPEALS TO BOARD OF ADJUSTMENT**

(Section 14-39-14.G.4.d.1)

- 1) ~~Non-conforming uses or~~ Violations related to lands, uses, or structures in the same zoning district (Ord. No. 2016-XX)

## **ARTICLE 14-41 SPECIAL USE PERMITS**

### **14-41-2 USES SUBJECT TO A SPECIAL USE PERMIT**

(Section 14-41-2.I.8.b-c)

- b. The Community Development Department shall review the information for completeness and shall notify the applicant within 15 business days when the registration is accepted. ~~Upon acceptance by the City, the information shall be retained on file as a record of non-conformance.~~ (Ord. No. 2016-XX)
- c. The boundaries of the registered area shall be consistent with the boundaries as set forth in the Community Notice pursuant to State Statute §27-442. Any expansion of a ~~registered non-conforming use~~ legal non-conformity beyond the registered operation area shall be subject to the Special Use Permit process and all requirements set forth in this Special Use Permits article, Section 14-41-2.I on Sand and Gravel and similar operations. (Ord. No. 2016-XX)