



# City of North Port

## Office of the City Attorney

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### Interoffice Memorandum

To: Peter D. Lear, City Manager

Cc: Cari Branco, Assistant City Manager  
Frank Miles, Neighborhood Services Director  
Michael Golen, Assistant City Attorney  
Nicole Galehouse, Senior Planner

From: Amber L. Slayton, City Attorney *ALS*

Date: September 24, 2018

Re: Zoning - Extension of Nonconforming Uses

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You inquired as to the legality of incorporating into the land development code a provision that allows the extension or expansion of nonconforming uses.

Florida courts have never questioned the right of a municipality to impose reasonable restrictions on the expansion of a nonconforming use.<sup>1</sup> Accordingly, there is no legal barrier preventing the city from doing the opposite – lifting restrictions on the expansion of a nonconforming use, provided it is a proper exercise of the police power. Lawful zoning is the exercise of the police power and must be based upon and have substantial relation to public health, safety, morals, comfort, convenience, or general welfare, and must not be unreasonably discriminatory.<sup>2</sup>

However, as a matter of general zoning principles, “nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit.”<sup>3</sup> To this end, local governments may also convert nonconforming uses into conditional conforming issues.<sup>4</sup>

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<sup>1</sup> *Johnston v. Orange County*, 342 So. 2d 1031, 1033 (Fla. 4th DCA 1977).

<sup>2</sup> *State ex rel. S. A. Lynch Corp. v. Danner*, 33 So. 2d 45, 47 (Fla. 1947).

<sup>3</sup> *JPM Inv. Group, Inc. v. Brevard County Bd. of County Com'rs*, 818 So. 2d 595, 598 (Fla. 5th DCA 2002) (quoting *Salerni v. Scheuy*, 102 A.2d 528, 530 (Conn. 1954)).

<sup>4</sup> See generally *Smalley Logics Corp. v. Dade County*, 176 So. 2d 574 (Fla. 3d DCA 1965).

Ultimately, local governments are charged with the interpretation and enforcement of their codes and their interpretation will not be overruled unless it is clearly erroneous.<sup>5</sup>

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<sup>5</sup> Las Olas Tower Co. v. City of Ft. Lauderdale, 742 So.2d 308 312 (Fla. 4th DCA 1999).