

REYNOLDS, HARBOTT, KNUTSON & LARSON

Professional Limited Liability Partnership
ATTORNEYS AT LAW
P. O. BOX 457
CROOKSTON, MINNESOTA 56716

C.W. REYNOLDS
S.J.S. HARBOTT
T.L. KNUTSON
S.D. LARSON
T.C. HOLTEN

Bremer Bank Building
201 North Broadway, Suite #2
Telephone 218-281-4168
Facsimile 218-281-7928
Toll Free 1-800-870-4168

March 19, 2019

Memo – City of Crookston
Re: Gateway Overlay District Issues

I have received your communication requesting information and analysis with respect to the proposed Gateway Overlay District Ordinance. I present for your review and consideration, the following.

What is the remedy for noncompliance? Remedies which are available with respect to violations of the ordinance include both criminal prosecution and civil remedies. With respect to criminal prosecution, a violation of the provisions of the ordinance or failure to comply with any of the requirements of the ordinance, shall constitute a misdemeanor and shall be punishable as defined by law. Pursuant to Minnesota Law and the Gateway Overlay Ordinance, a misdemeanor may be punishable by a sentence of not more than 90 days or a fine of not more than \$1,000.00 or both. Consistent with the provisions of the Gateway Ordinance, the costs of prosecution may be added. Each day a violation occurs shall be deemed a separate and distinct offense. With respect to protentional civil remedies, the City may take such lawful action as is necessary to prevent or remedy any violation. The City may pursue injunctive relief, provide after the fact permits, seek orders for corrective measures such as demolition, removal or abatement, or such other legal remedies as may be determined in an appropriate civil proceeding. The City may in appropriate instances, request the National Flood Insurance Program deny flood insurance which was made available to the offending party. In any civil proceeding, the City must adhere to due process requirements including but not limited to hearings and proper notice of hearings for a determination of Gateway Overlay District Ordinance violations.

Does Crookston define “Industrial Park” other than the zoning map? The City of Crookston does not define “Industrial Park” other than in the zoning map. The boundaries of a zoning district (heavy industrial district and light industrial district) may be known as the “Industrial Park” but no specific definition exists within the Crookston codes and ordinances establishing an Industrial Park District. The “Industrial Park”, that is heavy industrial district and light industrial district, is established by the adoption of the official zoning map (152.21)(A).

Do the requirements of the proposed Gateway Overlay District automatically become effective when a parcel of real property is sold? The requirements of the Gateway Overlay District do not become automatically effective when a parcel of real property is sold. Any use of the property which is sold which existed prior to the enactment of the Gateway Overlay District (nonconforming use) (grandfathered uses), remain legal, but subject to limitations and provisions of the Crookston city code and Minnesota statues. Generally, a legal nonconforming use, that is grandfathered use, is lost only when the nonconforming use is

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discontinued or destroyed. So long as the character of the nonconforming use does not change, the nonconforming use will continue even if the property is sold.

Is there an exemption when real property is sold within the family? No, generally speaking, a nonconforming use which is established, runs with the land and a change in the ownership will not destroy the right to continue the nonconforming use. The character of the nonconforming use must be the same for the change in ownership not to effect a valid nonconforming use. A nonconforming use does not relate to a particular owner but the nonconforming use is tied to, that is runs with the land if a property is sold, the new owner whether or not a family member will have the right to continue the nonconforming use as long as the nonconforming use is not changed and remains the same.

Do requirements trigger on the entire building or property when one part of the building is remodeled? The term remodeled is not used within the Gateway Overlay District Ordinance, the ordinances of the City of Crookston, or Minnesota case law. Rather whether a legal nonconforming use (grandfathered use) is lost depends upon the nature and extent of change made to the building and/or real property. The use and the change related thereto must be analyzed on an individual case by case basis. A nonconforming use, grandfathered use is lost only when the nonconforming use is expanded, changed, enlarged, or altered in any way which increases its nonconformity. A structure or use of a structure or premise which was lawful prior to the passage of the Gateway Overlay District Ordinance but which is not in conformity with the provisions of the Gateway Overlay District may be continued unless the structure or use of the structure or premise has been expanded, changed, enlarged, or altered in a way which increases the nonconformity. Whether a continuance of a nonconforming use is appropriate, depends upon the present use of the property at the time the use became nonconforming. Any determination of whether a use is conforming or nonconforming will be determined by the date the Gateway Ordinance District is enacted.

After your review of this correspondence and the statements contained herein, if you have questions or need further information, please contact me.

Very truly yours,

Charles Reynolds

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