

## CHAPTER 2:

### PROCEDURES AND ENTITLEMENTS

#### ARTICLE C. NONCONFORMING USES, STRUCTURES, AND PROPERTIES

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##### 9-2C-1: PURPOSE AND APPLICABILITY:

This article establishes special regulations for nonconforming land uses and structures that were lawful before the adoption or amendment of this zoning code, but which would be prohibited, regulated, or restricted differently under the current terms of this zoning code or future amendments. It is the intent of these regulations to allow the continuation of nonconformities under limited conditions outlined herein and reconstruction in the event of natural disaster. (Ord. 2012-01, 4-17-2012)

##### 9-2C-2: DECLARATION OF NONCONFORMING:

- A. Nonconforming Use: Any use that is not permitted under the provisions of this title (or any amendments thereto) but was legally in place, with licenses and permits in current status, at the effective date of the ordinance codified in this article or any subsequent ordinance, shall be deemed to be a nonconforming use.
- B. Nonconforming Structure: Any structure, including signs, that is not permitted under the provisions of this title (or any amendments thereto) but was legally in place, with licenses and permits in current status, at the effective date of the ordinance codified in this article or any subsequent ordinance, shall be deemed to be a nonconforming structure.
- C. Nonconforming Property: Any property or lot that is less than the minimum lot size required by this title, or has less than the minimum lot dimensions required by this title, shall be deemed to be a nonconforming property.
- D. Legally Nonconforming: A use, structure, or property shall be deemed to be legal nonconforming if the use, structure, or property was legally established prior to the change in this title that made it nonconforming. (Ord. 2012-01, 4-17-2012)

##### 9-2C-3: CONTINUATION:

- A. Use: A nonconforming use may continue to operate in perpetuity, be transferred, or be sold, provided that the use shall not be enlarged or intensified, nor be expanded to occupy a greater area than it lawfully occupied before becoming nonconforming. Likewise, plans for any use approved as of the date the ordinance codified in this chapter becomes effective

may be carried out as approved. Any extension of such approval for which the applicant was entitled to apply as of the effective date may be granted according to the regulations in effect prior to the effective date; if granted, such extension will be considered the same as an approval granted before the effective date. The person asserting the nonconforming use must present evidence that the use existed before the enactment of the zoning code provision prohibiting the use.

- B. Structure: A structure lawfully occupying a site on the effective date of this title, or of amendments hereto, which does not conform with the standards of coverage, front yard, side yards, rear yard, or distances between structures prescribed in the regulations for the district in which the structure is located shall be deemed to be a nonconforming structure and may be used and maintained, except as otherwise provided in this article.
- C. Property: Except as otherwise provided in this article, a property or site having an area, frontage, width, or depth less than the minimum prescribed for the district in which the site is located, which is shown on a duly approved and recorded subdivision map, or for which a deed or valid contract of sale was of record prior to the adoption of this title, and which had a legal area, frontage, width, and depth at the time that the subdivision map, deed, or contract of sale was recorded, may be used for any permitted use listed for the district in which the site is located, but shall be subject to all other regulations for such district. (Ord. 2012-01, 4-17-2012)

#### **9-2C-4: MAINTENANCE:**

A nonconforming structure or site may be maintained or improved as follows:

- A. Maintenance And Repair: A nonconforming structure may be maintained and repaired. Maintenance may include repair work necessary to keep the building or structure in sound condition, but maintenance shall not include the replacement of a building or structure.
- B. Seismic Retrofitting And Building Code Compliance: Repairs, alterations, or reconstruction to reinforce unreinforced masonry structures or to comply with building code requirements shall be allowed, provided that the work is exclusively to comply with applicable earthquake safety standards and the building code.
- C. Safety Improvements: Structural alteration of a nonconforming structure to improve safety or to reduce fire hazard. (Ord. 2012-01, 4-17-2012)

#### **9-2C-5: MODIFICATION AND EXPANSION:**

- A. Use: A nonconforming use shall not be expanded or modified.
- B. Structure: No nonconforming structure shall be altered, enlarged or reconstructed so as to increase the discrepancy between existing conditions and the standards of coverage, front yard, side yards, rear yard, height of structure, or distances between structures prescribed in the regulations for the district in which the structure is located. No nonconforming structure shall be moved unless the new location shall conform to the standards prescribed in the regulations prescribed for the district in which the structure is located. (Ord. 2012-01, 4-17-2012)

**9-2C-6: ABANDONMENT OR DISCONTINUANCE OF NONCONFORMING USE:**

A. Abandonment Or Discontinuance Generally: Whenever a nonconforming use has become abandoned or discontinued for a continuous period of twelve (12) months, the nonconforming use shall not be reestablished and the use of the site or structure thereafter shall be in conformity with the regulations for the district in which it is located; provided, however, that a similar type nonconforming use may be established within the twelve (12) month period. A determination that a use has been abandoned requires both: 1) evidence of an intention to abandon, and 2) an act or failure to act which shows or implies that the owner does not continue to claim or retain an interest in the nonconforming use. Evidence may include, but is not limited to, removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business records to document continued operation. Maintenance of a valid business license shall of itself not be considered a continuation of the use. Without further action by the city, any subsequent use of the site or structure shall comply with all of the regulations of the applicable zoning district and all other applicable provisions of this zoning code.

It is the intent of this section to prohibit the addition of a new nonconforming use with functions and characteristics which clearly are different from those of the preexisting nonconforming use. The term "similar type" means similarity in type and intensity of operations or activities and shall not be construed so as to allow uses which would be more incompatible with conforming uses within the vicinity. As examples, one type of business use may be permitted to replace another type of business use, and one type of contracting service may be allowed to replace another type of contracting service; provided, that such uses are of same or less general intensity as to traffic generation and other operational characteristics associated with the previous nonconforming use.

B. Extension Of Residential Uses In Nonresidential Zoning Districts: The city recognizes that there are existing single-family residential uses in nonresidential zoning districts. It is the intent of the city that, in the future, property owners will proceed with development of their property consistent with the general plan and this title at such time as they choose. Until such time, should an existing legal nonconforming single-family residential dwelling in a nonresidential zoning district become vacated for more than twelve (12) months, the dwelling may be reoccupied upon issuance of a temporary use permit as provided in section 9-2B-4, "Temporary Use Permit", of this chapter.

C. Extension Of Nonconforming Period: A legal nonconforming use may be reestablished after twelve (12) months of discontinuance upon approval of a temporary use permit as provided in section 9-2B-4, "Temporary Use Permit", of this chapter. Approval of the temporary use permit shall be conditioned upon the physical improvement of the property to bring it into conformance with the requirements of the general plan and this title, including, but not limited to, necessary right of way dedications and streetscape improvements. (Ord. 2012-01, 4-17-2012)

**Comment [SB1]:** Recommend that this be changed from temporary use permit to regular use permit.

**9-2C-7: RESTORATION OF DAMAGED USES AND STRUCTURES:**

Whenever a nonconforming use or a nonconforming structure is damaged or destroyed by fire or other calamity, or by an act of God, or by public enemy, the following standards shall apply. The extent of damage to any structure shall be determined by the building official and shall be based upon the ratio of the estimated cost of restoring the use or structure to its condition prior

to such damage to the estimated cost of duplicating the entire structure as it existed prior thereto.

- A. Less Than Seventy Five Percent Damage: To the extent that less than seventy five percent (75%) of the structure is damaged or destroyed, the structure may be restored and the nonconforming use may be resumed, provided that restoration is started within one year and diligently pursued to completion.
- B. At Least Seventy Five Percent Damage: To the extent that seventy five percent (75%) or more of the structure is damaged or destroyed, or shall be voluntarily razed, or shall be required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located, and the nonconforming structure or use shall not be resumed. (Ord. 2012-01, 4-17-2012)

**9-2C-8: NONCONFORMING SIGNS:**

Standards for nonconforming signs are provided in subsection 9-5F-2F, "Nonconforming Signs", of this title. (Ord. 2012-01, 4-17-2012)