

Article 7

Nonconforming Uses, Lots, Structures and Signs

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Sec. 9-1.0700: Purpose

Nonconformance provisions are established:

- A. To bring all uses, structures, sites and signs into conformance with the developmental requirements and design guidelines in the Code;
- B. To limit the occurrences and extent of nonconformance by prohibiting expansion, intensification, reinstatement, alteration, restoration after destruction, and reestablishment after abandonment; and
- C. To gradually phase out nonconforming uses, structures, lots and signs.

Sec. 9-1.0702: Applicability

- A. Nonconforming uses, structures, signs and lots may be maintained, expanded, altered and/or abated only in accordance with the provisions of this Article.
- B. Any Designated Historic Landmark, contributing structure within a Designated Historic District, or any property listed on the California Register of Historical Resources or National Register of Historic Places, shall be exempt from the provisions of this Article with respect to the restoration and maintenance of structures and, if historically significant to the property, signs, provided that any construction plans are approved through a Certificate of Appropriateness by the Historic Preservation Commission.

Sec. 9-1.0705: Nonconforming Uses

A use which lawfully occupied a building or land at the time an ordinance codified in this Development Code became effective, and which does not conform to the use regulations of the zoning district in which it is located, is deemed a "legal nonconforming use." A legal nonconforming use may continue, subject to the following:

A. Discontinuation of use.

- 1. Loss of legal nonconforming status. If a legal nonconforming use is discontinued for a period of 90 or more consecutive days, regardless of the owner's intent, it shall lose its legal nonconforming status and the continued use of the property shall be required to conform to all provisions of this Development Code.
- 2. Extension of legal nonconforming status. Wherein special circumstances exist, the Zoning Administrator may extend the legal nonconforming status of a use, for up to an additional 90-day period. Furthermore, an additional extension may be granted by the Planning Commission, for up to an additional 90-day period. The total time period of all time extensions shall not exceed 180 days.

3. Extension of legal nonconforming use.

- (i) An application for Extension of Legal Nonconforming Status shall be filed with the Planning Department on a City application form, together with all required fees, plans, maps, reports, special studies, exhibits, and any other information deemed necessary by the Department to process the application. The application shall be filed prior to the expiration of the 90-day period.
- (ii) The application shall be reviewed by the Planning Department within 30 consecutive days following application filing. The Planning Department shall notify the applicant, in writing, as to whether the application is complete. If the application is not complete, the Planning Department shall specify those parts of the application that are not complete and shall identify the manner by which it can be made complete. If written notification is not provided to the applicant within 30 consecutive days following application filing, the application shall be deemed complete.
- (iii) The Planning Department shall investigate the facts bearing on the application and provide the information necessary for action on the application, consistent with this Development Code and the General Plan, and shall report all findings to the Zoning Administrator.
- (iv) The application shall be reviewed by the Zoning Administrator at a duly noticed public hearing, whom shall then approve, modify or deny such application. The decision of the Zoning Administrator shall be final and conclusive in the absence of a timely filed appeal to the Planning Commission.
- (v) In granting an extension of the legal nonconforming status, the Zoning Administrator may attach reasonable conditions and restrictions to the request, in addition to those required by this Development Code, which will ensure that the use:
 - (a) Will not endanger the public health, safety or general welfare;
 - (b) Will not injure the value of adjoining or abutting property;
 - (c) Will not result in any significant environmental impacts; and
 - (d) Will be in harmony with the area in which it is located.
- (vi) In approving an extension of the legal nonconforming status, the Zoning Administrator or Planning Commission shall consider and clearly establish the following findings of fact:
 - (a) The applicant has made a good faith effort to keep the nonconforming status,
 - (b) In the case of vacation of the property by the City due to unsafe and dangerous conditions, the applicant has made a good faith effort to rectify the unsafe and dangerous conditions through the submittal of plans, and/or the issuance of permits, and had diligently pursued it to completion (shown through the request for inspections);
 - (c) A physical and/or economic hardship has prevented the nonconforming use from being reestablished prior to the expiration of the 90 day period.
 - (d) Approving the extension will not adversely affect the character, integrity, or value of surrounding properties
 - (e) Approving the extension will not adversely affect the character, integrity, or general welfare of the neighborhood; and
 - (f) The extension will not adversely impact the public health, safety or general welfare of the City's residents.

- B. Change in ownership, tenancy or management.** A change in ownership, tenancy or management of a nonconforming use shall not affect its legal nonconforming status, provided that the use did not discontinued pursuant to § 9-1.075(A)(1) (Loss of legal nonconforming status) or the type of use and/or intensity of use does not change.

- C. New development.** New development on any lot or parcel upon which a legal nonconforming use exists shall require that all uses on the property conform to the provisions of this Development Code.
- D. Alterations and expansion of use.**
1. A nonconforming use shall not be enlarged or extended in such a way as to occupy any part of any structure or property that it did not occupy prior to the creation of the nonconformity.
 2. A structure fully or partially occupied by any nonconforming use shall not be moved, altered or enlarged, unless required by law, or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use.
- E. Intensification of use.** A nonconforming use shall not be intensified in such a way as to increase the discrepancy between existing conditions and the standards set forth in this Development Code
- F. Replacement of a nonconforming use by another nonconforming use.** A legal nonconforming use may be replaced by another nonconforming use if the Zoning Administrator can clearly establish the following findings of fact:
1. The nonconforming use is similar to the use(s) originally permitted in the structure/on the site;
 2. The nonconforming use will not adversely affect, or be materially detrimental to, adjoining properties; and
 3. The previous nonconforming use has not ceased for a period of 90 consecutive days or more.
- G. Abatement of nonconforming uses.** Nonconforming uses shall be abated as follows:
1. A use that is nonconforming because of an operation or process which poses a threat to the public health, safety, or welfare, as determined by the Building Official, and which fails to discontinue such operation or process or to fully mitigate the hazard involved shall be discontinued upon the issuance by the City of a cease and desist order;
 2. A use that does not occupy a structure or which occupies a structure having an assessed valuation of less than \$2,500 and which causes a public or private nuisance, shall be discontinued within 5 years from the effective date of the ordinance codified in the Development Code;
 3. Abatement of nonconforming adult businesses shall be governed by § 9-1.0740 (Elimination of Nonconforming Adult Business Uses) of this article; and
 4. A use that has been abandoned shall comply with subsection (A) of this section.

Sec. 9-1.0710: Nonconforming Structures

A structure lawfully existing at the time an ordinance codified in this Development Code became effective, any portion of which does not comply with the requirements of the zoning district in which it is located, including setbacks, separations, height and design, is deemed a "legal nonconforming structure." A legal nonconforming structure may continue to exist, subject to the following:

A. Damage or destruction.

1. A legal nonconforming structure that is damaged or partially destroyed by fire, flood, wind, earthquake or other calamity, or the public enemy, or other cause which is beyond the control of the property owner, and which could not otherwise have been prevented by reasonable care and maintenance of the structure, may be reconstructed up to the original size, placement and density, provided that total cost of such reconstruction does not exceed more than 50 percent of the structure's fair market value. The structure may be restored and the nonconforming use may be resumed, provided that restoration is started within 6 months, unless extended by the Zoning Administrator, and diligently pursued.

2. In the event that the cost of repairing such damage exceeds 50 percent of the fair market value of the structure prior to such damage occurring, the structure may be reconstructed up to the original size, placement and density, subject to the following:
 - (i) The Planning Commission, at a duly noticed public hearing, must find that continuing the nonconforming use will not result in an annoyance to and/or reduction of any surrounding property. A public hearing and Planning Commission finding shall not be required for a parcel of land that is designated for a residential land use by the General Plan and contains a single family dwelling;
 - (ii) The extent of damage or partial destruction shall be based upon a comparison of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction with its value at the time the structure was damaged or partially destroyed. Estimates for such purpose shall be made by or reviewed by the Building Official;
 - (iii) The restoration is commenced within 6 months and diligently pursued to completion; and
 - (iv) Nothing in this section shall be construed to permit the continuation of conditions that will endanger the health, safety and welfare of building occupants or the residents of the area, or which constitute a public or private nuisance.
3. A multiple family dwelling or development that has been involuntarily damaged or destroyed by fire, flood, wind, earthquake, or other calamity, or by public enemy, or other cause which is beyond the control of the property owner, and which could not otherwise have been prevented by reasonable care and maintenance of the structure may be reconstructed up to the original size, placement and density, except a multiple family dwelling or development which has been abandoned for a period of 90 or more consecutive days prior to being involuntarily damaged or destroyed, or a multiple family dwelling or development constituting a public nuisance prior to being involuntarily damaged or destroyed may not be reconstructed unless the structure is made to comply to all provisions of the Development Code.

B. Alterations and expansion.

1. A nonconforming structure shall not be moved, altered or enlarged so as to increase the discrepancy between existing conditions and the most current standard as prescribed by the zoning district in which the structure is located, excepting alteration and/or enlargement to a single family dwelling conducted pursuant to subsection (7) of this section (Nonconforming single family residential structures).
2. Within residential zoning and land use districts, necessary repairs and desirable alterations, as deemed appropriate by the Planning Director, may be made to legal nonconforming residential structures.
3. Within nonresidential zoning and land use districts, reasonable repairs and alterations may be made to legal nonconforming nonresidential structures, provided that no structural alterations shall be made which would prolong the life of supporting members of a structure, such as bearing walls, columns, beams or girders. Structural elements may be modified only if such modification or repair is immediately necessary to protect the public health and safety, occupants of the legal nonconforming structure, or adjacent property, as determined by the building official. The total cost of such repairs or alterations may not exceed 50 percent of the replacement cost of the nonconforming structure. However, improvements required to reinforce an unreinforced masonry structure shall be permitted without replacement cost limitations, provided that such retrofitting is strictly limited to compliance with current earthquake safety standards.

C. Interior Modifications. Changes to interior partitions or other nonstructural improvement(s) and repair(s) may be made to legal nonconforming structures provided that, over any consecutive five year period, the total cost of the desired improvement(s) or repair(s) does not exceed 50 percent of the replacement cost of the structure. For the purpose of these provisions, the replacement cost shall be determined by the Planning Director.

D. New Structures. Any new structure constructed on a lot or parcel with an existing legal nonconforming structure shall be constructed in conformance with all applicable provisions of this chapter. However, in no case may a new nonresidential structure be constructed on the same lot as an existing legal nonconforming residential structure.

- E. Abatement of nonconforming structures posing a threat to the public health, safety and general welfare.** A structure which is nonconforming because of a violation or deficiency that poses a threat to the public health, safety or general welfare, as determined by the Building Official, and which fails to resolve, repair or improve such, or to fully mitigate the hazard involved, shall be abated, condemned or demolished upon the issuance by the City of a nuisance abatement, condemnations or demolition order.
- F. Conversion of nonconforming residential structures located within industrial zoning districts.** A nonconforming residential structure located within an industrial zoning district shall not be converted to accommodate an industrial land use.
- G. Nonconforming single family residential structures.** In addition to the requirements of subsections (A) through (F), above, a nonconforming single family residential lot and/or structure that was lawfully established and maintained prior to the adoption of the ordinance codified in this chapter, but which under the provisions of this Development Code does not conform with the regulations of the zoning district in which it is located with respect to use, design and/or development standards, and which is continuously used and maintained for single family residential purposes, shall be subject to the following:
1. Alterations and expansions to structures within nonresidential zones.
 - (i) Necessary repairs and desirable alterations, as deemed appropriate by the Planning Director, may be made to a legal nonconforming single family residential structure that is nonconforming as to use.
 - (ii) A single family dwelling that is nonconforming as to use may be enlarged by an additional 25 percent of the original enclosed floor area, provided the addition meets all other provisions of the Code.
 - (iii) A single family dwelling that is nonconforming as to its location within a zoning district that does not permit single family dwellings, and in which the residential use was lawfully established and continuously maintained, shall be subject to the development regulations of the R1 zoning district.
 - (iv) The addition or enlargement of a garage for the purpose of providing off-street parking facilities in compliance with Article 30 (Off-Street Parking and Loading Requirements) of this chapter shall be permitted and shall not be counted toward the additional floor area permitted by subparagraph (ii), above.
 2. Continuation of a nonconforming setback. A single family dwelling with a nonconforming side yard setback, which is added to, extended or enlarged, may continue such nonconforming setback, provided that the addition, extension or enlargement maintains a side yard setback equal to or greater than the existing side yard setback, but no less than 5 FT, and is no greater than 14 FT in height.
 3. On-site parking. A single family residential dwelling that is nonconforming as to site development or design, which is expanded or enlarged to include more than 3 bedrooms, or wherein a second unit or guesthouse is constructed subject to the requirements of this chapter, off-street parking required pursuant to Article 30 (Off-Street Parking & Loading Requirements) of this chapter shall be provided, unless physical constraints exist that would make it impractical to provide the required parking facility(ies), as determined by the Planning Director, given the existing site design and configuration. For the purposes of this provision, a bedroom shall be considered to be any room within the structure that is not a clearly established garage, kitchen, bathroom, hallway or open living area (i.e., dining, living and family rooms).
 4. Fences and walls. A street side yard fence or wall that is nonconforming as to setback and which was lawfully constructed prior to 1998, may be replaced with a block wall or other fence, keeping within the existing setback, provided visual evidence (i.e., photograph) of the nonconforming setback is provided to the Planning Department prior to building permit issuance for the new fence or wall. If a fence or wall nonconforming as to setback is demolished or removed prior to obtaining a building permit for a new fence or wall, the new fence or wall must meet the setback requirements in effect at the time of building permit issuance.
 5. Historic structures. A nonconforming single family structure shall comply with the applicable requirements of Article 26 (Historic Preservation) of this chapter.

Sec. 9-1.0715: Nonconforming Signs

A sign lawfully existing at the time an ordinance codified in this Development Code became effective, any portion of which does not comply with the requirements of Article 31 (Signs) of this chapter, is deemed a "legal nonconforming sign." A legal nonconforming sign may continue to exist, subject to the following:

- A. A sign which presents a hazard to public safety, as determined by the City, shall be removed upon the issuance of a cease and desist order by the City;
- B. A nonconforming sign may not be altered, enlarged, extended, or moved, except in conformity with the requirements of Article 31 (Signs) of this chapter, or as otherwise required by law;
- C. Where a use or a structure associated with a nonconforming sign is abandoned or discontinued, any sign associated with a new use of the site shall be in full conformity with the requirements of Article 31 (Signs) of this chapter; and
- D. A nonconforming sign that is destroyed by any means, to the extent of greater than 50 percent of its replacement value as determined by the Building Official, may be restored and the nonconforming sign resumed, provided that restoration is started within 6 months and diligently pursued to completion, and provided further that the Zoning Administrator, after holding a duly noticed public hearing, finds that continuing the nonconforming sign will not result in an annoyance to and/or reduction of any surrounding property.
- E. In considering whether the nonconforming sign results in annoyance to and/or reduction of any surrounding property, the Zoning Administrator shall consider the following:
 - 1. The number of additional nonconforming signs on the property;
 - 2. Whether the nonconforming sign(s) impede visibility toward other conforming signs on this and adjacent properties;
 - 3. The extent to which the nonconforming sign(s) contribute to sign clutter in the surrounding area; and
 - 4. The extent to which such nonconforming sign(s) provide the property and/or use with its only means of identification.

Sec. 9-1.0720: Nonconforming Lots

- A. A lot or parcel that is not in compliance with the site development standards prescribed by the regulations of the zoning district in which the lot or parcel is located, including area, coverage, configuration, dimensions, parking, landscaping, screen walls, fences and enclosure trash receptacles, is deemed a "legal nonconforming lot," provided such lot or parcel was lawfully created and existing at the time the ordinance codified in this Development Code, which created the nonconformity, became effective.
- B. A lot or parcel that is nonconforming as to minimum area or dimension shall be granted all development rights and uses of the zoning district within which it is located.
- C. A lot or parcel that is nonconforming as to landscaping, screen walls, fences and enclosure of trash receptacles, shall be altered to comply with the district regulations covering the following standards, within 5 years following the effective date of the ordinance codified in this chapter, or as a condition of any subsequent Development Plan or Conditional Use Permit approval:
 - 1. The landscaping of setback areas insofar as a setback exists;
 - 2. The landscaping of parking areas, provided fulfilling the requirement does not reduce off-street parking or loading spaces to fewer than prescribed in Article 30 (Parking & Loading Requirements);
 - 3. The screening of storage areas; and
 - 4. The enclosure of trash receptacles.

Sec. 9-1.0725: Elimination of Nonconforming Adult Business Uses

Nonconforming adult business uses shall be eliminated as follows:

- A. Any use of real property which does not conform to the terms of this Chapter but which was constructed, operated, and maintained in compliance with all previous regulations, shall be regarded as a nonconforming use and may not be increased, enlarged, or altered except to change the use to a conforming use. The following amortization schedule shall apply unless an extension is granted pursuant to subsection (3) of this section:
 - 1. An Adult Business legally existing on real property in the City of Ontario shall be terminated within one (1) year of the adoption of this ordinance;
 - 2. An Adult Business legally existing on real property subsequently annexed to the City of Ontario shall be terminated within one (1) year of the date of annexation;
 - 3. Notwithstanding the amortization periods above, any discontinuance or abandonment of a nonconforming Adult Business use for a period of 30 days or more shall result in the loss of nonconforming status.
- B. Any Adult Business which becomes a nonconforming use by reason of provisions in this Chapter shall be notified by the Zoning Administrator by certified mail. Such notice shall be given within 6 months of the date the use will become nonconforming and shall be provided to the Owner of the Adult Business and also provided to the property owner of record of the real property on which the Adult Business is located. Such notice shall also identify the applicable amortization period and the process for requesting an extension thereof
- C. Pursuant to the following provisions, the Owner or Operator of a nonconforming use as described in subsection (A) may apply under the provisions of this section to the City Manager for an extension of time within which to terminate the nonconforming use.
 - 1. An application for extension of time within which to terminate a use made nonconforming by the provisions of this chapter may be filed by the owner of the real property upon which such use is operated, or by the Operator of the use. Such an application must be filed with the City Manager at least 90 days but not more than 180 days prior to the time established in subsection (A) for termination of such use.
 - 2. The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be the same as that for variance as is set forth in the schedule of fees established by resolution from time to time by the City Council.
 - 3. The City Manager shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within 45 days of receipt of the application. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The decision of the hearing officer shall be final and subject to judicial review pursuant to Code of Civil Procedure § 1094.6. If the Applicant fails to seek judicial review within the allotted time period, the decision of the hearing officer shall have res judicata and collateral estoppel effect in any other proceeding involving the same Applicant.
 - 4. An extension under the provisions of this section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all the following findings or such other findings as are required by law:
 - (i) The Applicant has made a substantial investment in the property or structure on or in which the nonconforming use is conducted, such property or structure cannot be readily converted to another use and such investment was made prior to the date the use became nonconforming.
 - (ii) The Applicant will be unable to recoup said investment as of the date established for termination of the use; and
 - (iii) The Applicant has made a good faith effort to recoup the investment and to relocate the use in conformance with City requirements.

Sec. 9-1.0730: Abatement of Nonconforming Uses, Structures, Lots and Signs

Whenever a use, structure, site or sign becomes nonconforming because of a change of zoning district boundaries or a change of the regulations prescribed for the district in which the site is located, the period of time prescribed in this Code for the abatement period for the elimination of the use, the removal of the structure or sign, or the improvement of the lot or parcel shall begin on the effective date of the change of district boundaries or regulations.