

Chapter 18.90

Nonconforming Uses, Structures, and Parcels

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18.90.010 - Purpose of Chapter

A. This Chapter provides regulations for nonconforming land uses, structures, and parcels that were lawful before the adoption, or amendment of this Development Code, but which would be prohibited, regulated, or restricted differently under the current terms of this Development Code or an amendment that changed the applicable requirements.

B. It is the intent of this Development Code to generally discourage the long-term continuance of nonconformities other than residential uses, while allowing them to exist under the maintenance and repair provisions of this Chapter. Where the Review Authority determines that a nonconformity appears to “fit well” with surrounding uses and the prevailing character of the immediate neighborhood, and where the nonconformity does not present any public health or safety issues, as determined by the Review Authority, the City may allow its continuance in compliance with this Chapter.

18.90.020 - Definitions

A. **Nonconforming parcel.** A parcel that was legally created before the adoption of this Development Code or amendment, but does not comply with the current area, width, depth, or other applicable requirements of this Development Code.

B. **Nonconforming sign.** A sign that lawfully existed before the effective date of this Development Code or amendment, but does not comply with the current sign regulations of this Development Code.

C. **Nonconforming structure.** A structure that was legally constructed before the adoption or amendment of this Development Code, but does not comply with the current setback, height limit, off-street parking, and/or other applicable requirements of this Development Code.

D. **Nonconforming use.** A use of land and/or a structure (either conforming or nonconforming) that was legally established and maintained before the adoption of this Development Code or amendment, but does not conform to the current Development Code requirements for allowable land uses within the applicable zoning district.

18.90.030 - Restrictions on Nonconforming Structures and Uses

A nonconforming land use and the use of a nonconforming structure may be continued, including transfers of ownership, provided any such continued use shall comply with the requirements of this section. See Section 18.90.040 for exceptions regarding certain residential uses and structures.

A. Nonconforming use of land.

1. **General rule.** A nonconforming use of land may be continued, provided the use shall ~~not only~~ be intensified, enlarged or increased, ~~nor~~ be extended to occupy a greater area of land than it lawfully occupied before becoming nonconforming, ~~if the business is not a nuisance (has had no code violations and no calls for service within the past three years) and if a Use Permit is approved for the expansion with the exception as noted below. in Subsection (A)(2) of this Section.~~

2. Nonconforming use ~~in a conforming structure~~. A nonconforming land use ~~within a conforming structure~~ may be expanded or replaced with ~~Minor~~ Use Permit approval, in the following manner:

- a. Expansion of use.** The nonconforming use of a portion of a structure may be expanded throughout the structure ~~and/or the parcel~~. ~~The Review Authority shall find that the non-conforming use is compatible with neighboring uses and would not adversely impact neighboring properties. All new buildings/development associated with the non-conforming use shall conform with all standards of this development code except for the use requirement; and~~
- b. Substitution of use.** The nonconforming use of a structure may be changed to another nonconforming use of ~~the same or more restricted a similar nature and impact; except that if a nonconforming use is changed to a conforming use, no nonconforming use may be resumed.~~

B. Nonconforming structure. A nonconforming structure may continue to be used in the following manner:

1. Changes to, or expansion of a structure. A nonconforming structure may be changed or expanded as follows:

- a. Nonresidential structure.** A nonconforming nonresidential or multifamily structure may be enlarged, expanded, reconstructed, or relocated, with ~~Minor~~ Use Permit approval, if the changes comply with all applicable provisions of this Development Code, provided the Review Authority first finds that the additional work is compatible with neighboring uses and would not adversely impact neighboring properties. ~~Additions that go beyond the prior building footprint may be allowed as follows: an addition that encroaches into a required setback no further than an existing nonconforming portion of the structure may be allowed; provided, that: a) the expansion is not more than 500 square feet beyond the same physical dimensions of the existing structure; or the expansion is limited to 25% of the existing structure's area, whichever is less.~~
- b. Single residential unit or multifamily.** A single residential unit or multifamily development that is nonconforming with respect to setback requirements, height limits, or other development standards may undergo interior modifications in compliance with Building Code requirements without limitation by this Chapter. Exterior modifications that go beyond the prior building footprint may be allowed as follows:
 - i) The Director may approve any addition to a nonconforming single-family dwelling where the addition complies with applicable setback requirements; and
 - ii) An addition that encroaches into a required setback no further than an existing nonconforming portion of the structure may be allowed; provided, that: a) the expansion is not more than ~~4250~~ square feet beyond the same physical dimensions of the existing structure; or b) if larger than ~~4250~~ square feet, ~~Minor~~ Use Permit approval is granted (limit to 25% larger).

2. Conversion of existing nonconforming structure to residential unit. Single residential units and/or multifamily residential development with a nonconforming residential accessory structure may be converted and/or replaced to create an accessory dwelling unit. A nonconforming residential accessory structure may be rehabilitated and expanded; provided, ~~that it complies with the relevant requirements of Section 18.40.170 accessory Dwelling Units.~~

~~a. The structure does not exceed 18 feet in height; and~~

~~b. The conversion and/or expansion complies with Subsection (B)(1)(b) of this Section.~~

3. Ordinary maintenance and repair. Any nonconforming structure may undergo ordinary maintenance and repair.

4. Seismic retrofitting and Building Code compliance. Any nonconforming structure may undergo alterations, reconstruction, or repair to reinforce unreinforced masonry or to comply with Building Code

requirements; provided, that the work is exclusively to comply with applicable earthquake safety standards and the Building Code and does not change building footprint or height.

5. A non-conforming structure may be reconstructed in the same building footprint, so long as the building is not increased in size by more than 250 square feet beyond the same physical dimensions of the prior structure; or b) if larger than 250 square feet, a Use Permit approval is granted (limit to 25% larger).

(Am. Ord. 959, § 4, passed 02-10-2020)

18.90.040 - Residential Exemptions

A. Reconstruction or replacement. An involuntarily damaged or destroyed single residential unit or multifamily nonconforming use may be reconstructed or replaced with a new structure with the same footprint, height, and number of dwelling units, in compliance with current Building and Fire Code requirements.

B. Substantial rehabilitation/renovation. Substantial rehabilitation/renovation of, and additions to an existing dwelling unit in a zoning district where residences are a nonconforming use may be allowed if they meet all development standards of the zoning district. ~~with Minor Use Permit and Design Review approval, in compliance with §§ 18.71.060 and 18.71.050. (Housing Element Program H 1.1.4)~~

~~1.—Substantial rehabilitation/renovation defined.~~ Substantial rehabilitation/renovation of an existing dwelling unit occurs when at least 25% of the floor area of the existing structure is proposed to be added to the structure and/or a Building Permit for construction valued at 50% or more of the assessed value of the structure before rehabilitation/renovation is requested.

~~2.—Protection of community and neighborhood character.~~ The Review Authority shall ensure that Minor Use Permit and Design Review approval for a substantial rehabilitation or renovation shall maintain public health, safety, and welfare, maintain neighborhood character, and encourage mixed use development.

(Am. Ord. 959, § 4, passed 02-10-2020)

18.90.050 - Loss of Nonconforming Status

A. Termination by discontinuance.

1. If a nonconforming use of land or a nonconforming use of a conforming structure is discontinued for a continuous period of 12 months or more, all rights to legal nonconforming status shall terminate.
2. The Director shall base a determination of discontinuance on evidence including the 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.
3. The Director may grant ~~a Minor Use Permit to allow~~ an extension of that 12-month period for a period not to exceed an additional 12 months if the Director finds that circumstances of a significant or unusual nature prevent or have prevented the timely reestablishment of the use.
4. Once the rights to a legal nonconforming status have terminated, any further use of the site or structure shall comply with the regulations of the applicable zoning district and all other applicable provisions of this Development Code.

~~**B.—Termination by destruction.** Nonconforming status shall terminate if a nonconforming structure, or a conforming structure occupied by a nonconforming use, is involuntarily damaged or destroyed, except as provided by Section 18.90.040 for dwellings, and except as follows:~~

~~1.—If the cost of repairing or replacing the damaged portion of the structure is 75 percent or less of the assessed value of the structure immediately before damage, the structure may be restored to no more than the same size and use, and the use continued, if the restoration is started within 12 months of the date of damage and is diligently pursued to completion.~~

~~2. Minor Use Permit approval shall be required if the cost of repairing or replacing the damaged portion of the structure is more than 75 percent of the assessed value of the structure immediately before the damage, except that fair market value shall be used where a current licensed appraisal is available to the City. Minor Use Permit approval shall require a finding, in addition to those contained in 18.71.060.F. (Findings and decision), that the benefit to the public health, safety, or welfare exceeds the detriment inherent in the restoration and continuance of a nonconformity.~~

18.90.060 - Nonconforming Parcels

A. Legal building site. A nonconforming parcel that does not comply with the applicable area, width, or depth requirements of this Development Code shall be considered a legal building site if it meets at least one of the following criteria, as documented to the satisfaction of the Director by evidence furnished by the applicant.

- 1. Approved subdivision.** The parcel was created by a recorded subdivision map;
- 2. Individual parcel legally created by deed.** The parcel is under one ownership and was legally created by a recorded deed before the effective date of the zoning amendment that made the parcel nonconforming;
- 3. Variance or lot line adjustment.** The parcel was approved through the Variance procedure or resulted from a lot line adjustment; or
- 4. Partial government acquisition.** The parcel was created in compliance with the provisions of this Development Code, but was made nonconforming when a portion was acquired by a governmental entity so that the parcel size ~~is was decreased not more than 20 percent and the yard facing a public right-of-way was decreased not more than 50 percent.~~

B. Subdivision of a nonconforming parcel. No subdivision shall be approved that would increase the nonconformity of an existing parcel or any nonconforming use on the parcel.

18.90.070 - Parcel Without Frontage on a Public Way

A. Conforming parcel without frontage on a public way. A parcel without frontage on a public right-of-way, but otherwise conforming to the applicable requirements of this Development Code, may be used with ~~the approval of the Public Works Director~~ ~~Minor Use Permit approval~~, unless Article 2 would otherwise require a Use Permit.

B. Parcel with private accessways. If a private accessway was provided in conjunction with an approved subdivision map, the uses allowed in the applicable zoning district shall be considered conforming uses.

18.90.080 - Nonconforming Due to Lack of a Use Permit

A. Conformity of uses requiring a Use Permit. A use lawfully existing without the approval of a Use Permit or Minor Use Permit that would be required by this Development Code shall be deemed conforming only to the extent of its previous lawful use (e.g., maintaining the same site area boundaries, hours of operation, etc.).

B. Previous planning permits in effect. A use that was authorized by a Use Permit or Minor Use Permit but is not allowed by this Development Code in its current location may continue, but only in compliance with the original Use Permit or Minor Use Permit.

18.90.090 - Nonconforming Signs

A nonconforming sign is any permanent or temporary sign that was legally established and maintained in compliance with the provisions of all applicable laws in effect at the time of original installation but that does not now comply with the provisions of this Development Code.

A. General requirements. A nonconforming sign shall not be:

1. Changed to another nonconforming sign;
2. Structurally altered to extend its useful life;
3. Enlarged;

4. Re-established after a business is discontinued for 30 days; or
5. Re-established after damage or destruction to 50 percent or more of the value of the sign, or its components, as determined by the Building Official.

Any interruption in the use of a nonconforming sign that continues for 60 days or more shall be deemed to be an abandonment of the sign. Subsequent use shall comply with the regulations of this Chapter. Non-occupation or non-operation of the building or business advertised shall be deemed an interruption of the use of the sign.

B. Exceptions. An administrative exception to the requirements of Subsection A. may be granted by the Commission, provided that the Commission shall make the following findings:

1. The new proposed sign is significantly more conforming in height and/or area than the existing sign; and
2. By approving the new sign, the exception will eliminate the existing nonconforming sign.