

CHAPTER 21.27 - NONCONFORMITIES

21.27.010 - Purpose.

The City recognizes that the eventual elimination of existing nonconforming uses and structures benefits the health, safety and welfare of the community. It is the intent of this Chapter to establish regulations and procedures which ensure that the elimination of nonconforming uses and structures occurs as expeditiously and as fairly as possible and also avoids any unreasonable invasion of established property rights.

(Ord. C-7663 § 5, 1999)

21.27.020 - Continuance of nonconforming rights.

Nonconformities, as defined in Chapter 21.15 of this Title, may continue to be used and maintained in accordance with the provisions of this Chapter. The use and maintenance is permitted as a result of vested rights obtained through the legal establishment of the nonconforming use or structure so long as the use is operated and maintained in such a manner as not to be a nuisance, a blighting influence or a direct and substantial detriment to the rights of adjoining, abutting or adjacent uses.

(Ord. C-7663 § 5, 1999)

21.27.030 - Illegal uses or structures.

Illegal uses or structures have no vested rights. Illegal uses and structures shall either be brought into legal conforming status or shall be removed.

(Ord. C-7663 § 5, 1999)

21.27.040 - Maintenance.

Ordinary maintenance and repair of a building containing a nonconforming use, such as painting, plumbing repair, shall be permitted as necessary to ensure the protection of general health, safety and welfare. All nonconforming uses and structures are subject to all applicable property maintenance and substandard buildings laws.

(Ord. C-7663 § 5, 1999)

21.27.050 - Abandonment.

A. **Loss of rights to a nonconforming use.** All rights to a nonconforming use are lost if the use is abandoned for twelve (12) months (see Section 21.15.030) or if the structure housing the use is demolished (see Section 21.15.750) except as follows:

1. **Nonconforming nonresidential structure.** A nonconforming nonresidential structure, which has been abandoned for a period greater than twelve (12) months, may apply for an administrative use permit to establish a CNP (neighborhood pedestrian) permitted use and may apply for a conditional use permit to establish a CNP (neighborhood pedestrian) discretionally permitted use.
2. **Nonconforming nonresidential historic landmark.** A designated City landmark which has been abandoned for a period greater than twelve (12) months, may apply for an administrative use permit to establish a CNP (neighborhood pedestrian) permitted use or discretionally permitted use, and may apply for a conditional use permit to establish another nonconforming use subject to the following:
 - a. A special building inspection is conducted to ensure the building conforms or can be repaired to conform to minimum building, plumbing, fire, housing, electrical and earthquake code provisions as necessary to protect public health and safety, and

- b. The proposed use is necessary to avoid an unnecessary hardship on the property owner due to the condition of the structure, the value of the property, or the potential economic life of the building, and
 - c. The proposed change of use will provide a desirable service or will be beneficial to the neighborhood, and
 - d. The proposed use and adaptive reuse design plan has obtained a certificate of appropriateness from the Cultural Heritage Commission.
- B. **Loss of rights to nonconforming parking.** All nonconforming rights related to parking shall be lost if the primary structure on the lot is demolished. Rights shall not be lost if a building is merely vacated.
- C. **Abandonment/revocation of rights through nuisance, blight or detrimental effect upon adjoining, abutting or adjacent property.** Any nonconforming use which is operated in such a way as to be a nuisance or a direct detriment to adjoining, abutting or adjacent properties or which is neglected to the point of being a blight on the community shall be considered to have had its nonconforming rights abandoned. Such abandonment shall be determined by a revocation hearing according to the procedures of Division VI, "Revocations", of Chapter 21.21 of this Title, provided, that:
 - 1. A fully noticed public hearing is held before the Planning Commission; and
 - 2. The Planning Commission, or City Council on appeal, finds that:
 - a. The use adversely affects the health, peace or safety of persons residing or working on the premises or in the surrounding area, or
 - b. The use jeopardizes or endangers the public health or safety, or
 - c. The use constitutes a direct and substantial detriment to surrounding uses by repeated adverse activities and incidences, including, but not limited to, disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assault, battery, acts of vandalism, loitering, excessive littering, illegal parking, loud noises (particularly in late night or early morning), noise code violations, traffic violations, curfew violations, lewd conduct or police detentions and arrests, or
 - d. The uses cause repeated violations under Public Health and Safety Code, Title 8 or Title 9, and
 - e. The owner or operator has been unwilling or unable to eliminate the adverse activities, if any;
 - 3. If it finds that conditions and/or modifications of the use will be ineffective in eliminating the adverse activities, the Planning Commission, or City Council on appeal, shall revoke only the nonconforming rights to the use;
 - 4. Continuation of any use after abandonment or revocation pursuant to this Subsection shall constitute a violation of this Chapter and shall be penalized as provided for in Section 21.10.080.

(Ord. C-7663 § 5, 1999)

21.27.060 - Expansion.

A nonconforming use or structure may not be expanded or altered in any way so as to increase that nonconformity, except as follows:

- A. **Uses permitted by CUP or AUP.** Any use which was originally established in a zone district by right and has since been reclassified as a discretionary use in that district shall obtain an administrative use permit or a conditional use permit prior to expansion of the use or any structure related to the use. An application to change an alcoholic beverage license to expand the range of beverages sold shall be considered an expansion of that use.

- B. **Conforming nonresidential uses with nonconforming parking.** A conforming nonresidential use with nonconforming parking may be expanded or intensified, as long as parking is provided for the expansion or intensification in accordance with current parking standards. The required number of spaces shall be calculated based on the additional square feet of new construction or other applicable unit of measurement.
- C. **Nonconforming residential uses.**
1. **Maximum expansion.** A nonconforming residential use (i.e., that exceeds the allowable density for the zone, or is located in a zone that does not permit residential uses) may expand up to two hundred fifty (250) square feet per unit.
 2. **Parking.** Any expansion beyond two hundred fifty (250) square feet per site of cumulative addition shall require one (1) additional conforming parking space for each additional two hundred fifty (250) square feet. For single-family dwellings outside the parking impacted areas, no additional parking shall be required on sites with driveways twenty feet (20') or more in length.
 3. **Development standards.** The expansion shall be consistent in style and materials with the existing building, and shall conform to the current development standards of the zone.
- D. **Conforming residential use with nonconforming parking.** A residential use with nonconforming parking may be expanded as follows:
1. **Demolition of nonconforming parking.** Nonconforming parking demolished during remodeling or additions may be replaced with new parking of equal size or a more conforming size. The new parking shall provide for the best feasible turning radius. For the purposes of this Section, "best feasible turning radius" means the most conforming turning radius that may be created by relocating the new parking on the lot up to the point it conflicts with the existing building.
 2. **Addition of new dwelling unit.** The addition of new dwelling units on a lot shall require the provision of additional parking spaces for the new dwelling units as well as existing units if substandard in parking in accordance with the standards for new construction.
 3. **Expansion of existing dwelling unit.** A residential use with nonconforming parking may be expanded by up to two hundred fifty (250) square feet after July 1, 1989, without providing additional parking. Expansion beyond two hundred fifty (250) square feet per site of cumulative addition shall require one (1) additional conforming parking space for each additional two hundred fifty (250) square feet. However, for single-family dwellings outside the parking impacted areas, no additional parking shall be required on sites with driveways twenty feet (20') or more in length.
- E. **Nonconforming commercial, institutional and park uses.**
1. **General.** Nonconforming uses shall not be expanded to occupy a greater area of land or building than was occupied at the time the use or structure became nonconforming.
- F. **Nonconforming industrial uses.**
1. **General.** Nonconforming industrial uses shall not be expanded to occupy a greater area of land or building than was occupied at the time the use or structure became nonconforming.
 2. **Machinery and equipment.** Nonconforming machinery and equipment requiring a building permit may be relocated within the site or replaced with machinery or equipment of equal size or capabilities. The number of machines or equipment, the size of the machines or equipment, or the capabilities of the machines or equipment to do heavier work may not be expanded.
 3. **Outside uses.** Outside nonconforming equipment and machinery may be relocated or altered, provided the equipment or machinery is not relocated any closer to the nearest residential district.

4. **Volumes.** Increased sales, production or throughput volume shall not be considered as an expansion, provided the use does not expand to occupy additional land or another building.

(ORD-05-0037 § 1, 2005; Ord. C-7663 § 5, 1999)

21.27.065 - Interior alteration to residential uses with nonconforming parking to create additional bedrooms.

- A. **Single-family residential.** Interior alteration to create additional bedrooms is prohibited unless parking is provided in compliance with the requirements in Section 21.41. However, for single-family dwellings outside the parking impacted areas, as those areas are defined in Resolution C-24607 or any successor resolution, no additional parking shall be required on sites with driveways twenty feet (20') or more in length.
- B. **Multifamily residential.** Interior alteration to create additional bedrooms is prohibited unless parking is provided in compliance with the requirements in Section 21.41.

(ORD-09-0004, § 1, 2009; ORD-05-0037 § 2, 2005)

21.27.070 - Change in use.

A nonconforming use may be changed to a conforming use, and may be changed to another nonconforming use if the use or structure housing the nonconforming use has not been abandoned for twelve (12) months (see Section 21.15.030) or the structure has not been demolished (see Section 21.15.750), as follows:

- A. **To a CNP permitted use.** An existing nonconforming nonresidential use may change to a CNP (neighborhood pedestrian) permitted use.
- B. **To another nonconforming use with an administrative use permit.** An existing nonconforming use may be changed to another nonconforming use if an administrative use permit is granted as provided for in this Title and provided:
 1. A special building inspection is conducted to ensure the building conforms or can be repaired to conform to minimum building, plumbing, fire, housing, electrical and earthquake code provisions as necessary to protect public health and safety; and
 2. The change of use is necessary to avoid an unnecessary hardship on the property owner due to the condition of the structure, the value of the property or the potential economic life of the building; or
 3. The change of use will allow a designated City landmark to be economically productive, thus extending the life of the structure, as long as the proposed use and rehabilitation are approved by the Cultural Heritage Commission; and
 4. The change of use will provide a service or will be beneficial to the neighborhood, and will more closely conform to the zoning of the site than the existing use.
- C. **Change of use with nonconforming parking.** A use with nonconforming parking may change to another use without adding parking except:
 1. If the new use would require more parking than the existing use. Then, in order to establish the new use, the applicant must add parking equal to the difference between the parking requirement of the existing use and the new use (net change in parking intensity); and
 2. If the new use is a limousine service or a fleet service/company vehicle operation, the applicant must bring the parking up to current new construction parking standards.

(Ord. C-7663 § 5, 1999)

21.27.090 - Restoration.

Any building containing a nonconforming use or any nonconforming structure may be repaired and restored to its nonconforming state if the need for repairs or restoration shall be the result of fire, explosion, earthquake, imminent public hazard, acts of terrorism, sabotage, vandalism, warfare or abatement of earthquake hazard in accordance with City regulations. Such restoration shall comply with the following conditions:

- A. **Level of restoration.** The damaged use or structure may be repaired or rebuilt to the area and footprint of the previous use or structure. Alternatively, the use or structure may be repaired or rebuilt to a more conforming area or footprint.
- B. **Additional floor area added.** If during restoration and/or reconstruction additional floor area is added, the use or structure shall abandon its nonconforming status.
- C. **Time limit.** The repairs must be commenced within one year of the event causing damage to the use or structure, and the repairs must be diligently pursued until completed.

(Ord. C-7663 § 5, 1999)

21.27.110 - Special uses and structures.

Nothing in this Chapter shall prohibit the establishment of special regulations for specific nonconforming uses and structures regulated by other Sections of the Zoning Code. Such regulations may provide for the retirement or amortization of those specific uses and structures.

(Ord. C-7663 § 5, 1999)

21.27.130 - Historic landmark and landmark district exemption.

Any building, ~~or structure, or lot~~ designated as a historic landmark or contributing building, structure, or lot located within a designated landmark district established under Chapter 2.63 of this Code, shall be exempted from restrictions of this Chapter relating to restoration (Section 21.27.090), interior alteration to residential uses with nonconforming parking to create additional bedrooms (Section 21.27.065), expansion (Section 21.27.060), and maintenance (Section 21.27.040), provided that any use or construction plans are approved with a certificate of appropriateness issued by the Cultural Heritage Commission.

(Ord. C-7729 § 3, 2001; Ord. C-7663 § 5, 1999)

21.27.150 - Amortization—Adult entertainment.

After May 18, 1996, no person shall cause or permit the continued operation, maintenance or use of a lot, building or structure as a legal nonconforming adult entertainment business which does not comply with the locational requirements of Section 21.45.110. For the purposes of this Section, the term "legal nonconforming adult entertainment business" shall mean any adult entertainment business which existed on May 1, 1988, and any adult entertainment business which received a standards variance pursuant to former Subsection 21.45.110.B.

(Ord. C-7663 § 5, 1999)

21.27.160 - Amortization—Fleet service/company vehicle operations.

Any fleet service/company vehicle operation as defined in Section 21.15.1065 which was lawfully in existence as of the effective date of this Section (August 7, 1998) which does not comply in whole or in part with the parking requirements of Section 21.41.216, shall be terminated or otherwise be brought into full compliance within one year of the effective date of this Section (August 7, 1998). For those fleet service/company vehicle operations which cannot be brought into compliance with these provisions

because they do not meet the parking requirements of Section 21.41.216, the use may be extended for only one (1) additional period of time (not to exceed one (1) year), to be established by the Planning Commission, upon a showing by the operator of the use that such extension is reasonably necessary to permit the owner of the use adequate time to amortize or otherwise recover any long-term investment in the fleet service/company vehicle operation.

Any request for an extension of the one (1) year amortization period must be made in writing by the owner of the use to the Planning Commission by filing a request with the Planning Bureau of the Department of Planning and Building no later than sixty (60) days prior to the end of the one (1) year period provided for in this Section.

The Planning Commission may grant an extension of up to one (1) additional year only if the business is otherwise in compliance with all other applicable provisions of law, and upon a showing by the applicant/owner of the use:

- A. That the business involved a substantial financial investment in real property, improvement or stock in trade, or
- B. The business is subject to a written long-term lease entered into prior to January 1, 1995, with a termination date extending beyond one (1) year from the effective date of this Section, or
- C. Other factors establishing that the nature of the business is such that the business cannot be easily relocated.

(Ord. C-7663 § 5, 1999)