

Chapter 9-88

NONCONFORMING USES AND STRUCTURES

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9-88.010 Purpose and intent.

This chapter provides for the regulation of legal nonconforming uses, properties and structures, and recognizes the legal status that certain nonconforming uses, properties and structures may have. Except for residential legal nonconforming uses, it is the intent of this chapter to promote and encourage the ultimate conversion or termination of nonconforming uses, properties and structures to uses and structures that are conforming to this development code. (Ord. 98-8 § 2 (part): prior code § 9-32.010)

9-88.020 Land uses permitted.

No property in the city shall be used for any purposes except those permitted by this development code. (Ord. 98-8 § 2 (part): prior code § 9-32.020)

9-88.030 Restriction on improvements to legal nonconformities.

Legal nonconformities may be continued subject to the following conditions:

A. Maintenance of Legal Nonconforming Structures Conforming as to Use. Legal nonconforming structures which are conforming as to use are encouraged to be maintained and aesthetically improved. Maintenance and aesthetic improvement includes repainting and resurfacing, re-roofing, re-carpeting, re-flooring and re-landscaping. Maintenance and aesthetic improvements shall not serve to expand the nonconforming structure in any way.

B. Expansion of Legal Nonconforming Structures Conforming as to Use. Except as otherwise provided for in this code, legal nonconforming structures which are conforming as to use may be expanded provided the

expansion meets the current requirements of the Building and Safety Code and does not reduce the aesthetic values in the neighborhood. Any expansion shall meet current code requirements and shall be subject to appropriate development and or use permits required by the city.

C. Improvement to Legal Nonconforming Properties. Properties that become legal nonconforming due to changes in development standards in this code shall be considered legally nonconforming. When property owners request permits for expansion, alteration or remodel, approval shall be contingent on the property reducing the level of nonconformity on the site to the extent practical. This shall entail provision of parking for any expansion area based upon the current code standards, compliance with sign criteria and the upgrading of any lighting, landscaping, and trash requirements.

Improvements to legal nonconforming properties shall be allowed as follows:

1. Legal Nonconforming Residential Properties.

a. Aesthetic Improvements and Minor Alterations.

The repair, addition, maintenance, replacement, improvement, and aesthetic improvement of legal nonconforming residential properties which are conforming to this code and are not a public nuisance, shall be permitted. Repair, maintenance, replacement, and aesthetic improvements typically include painting, landscaping, paving, the replacement and addition of skylights, windows, doors, open spaces, and other features which promote the livability of the dwelling and its compatibility with and enhancement to the neighborhood.

b. Alterations and/or Expansions. Alterations and/or

expansions to legal nonconforming residential properties which do not result in increased intensity of the nonconforming use, and where the residential use is not a public nuisance, are permitted.

2. Legal Nonconforming Nonresidential Properties.

a. Aesthetic Improvements and Minor Alterations.

The repair, maintenance, replacement, and aesthetic improvement of properties containing nonconforming uses which do not enlarge or expand the nonconforming use shall be permitted.

The repair, maintenance, replacement, and aesthetic improvements to a nonconforming, nonresidential property include painting, landscaping, paving, the replacement of signage, windows, doors, public spaces, and other similar features to promote the uses, compatibility and enhancement to the surrounding area.

b. Alterations and/or Expansions. No alteration or expansion of a legal nonconforming, nonresidential property shall be permitted.

D. Improvement to Legal Nonconforming Uses.

Uses that become legal nonconforming due to changes in

permitted uses in this code shall be considered legally nonconforming. When property owners request permits for expansion, alteration or remodel, approval shall be contingent on the use reducing the level of nonconformity on the site to the extent practical. This shall entail provision of parking for any expansion area based upon the current code standards, compliance with sign criteria and the upgrading of any lighting, landscaping, and trash requirements.

Improvements to legal nonconforming uses shall be allowed as follows:

1. **Nonconforming Residential Uses.**

a. **Aesthetic Improvements and Minor Alterations.** The repair, addition, maintenance, replacement, improvement, and aesthetic improvement of legal nonconforming residential uses which are conforming to this code and are not a public nuisance, and which do not enlarge or expand the nonconforming use as determined by the Community Development Director, shall be permitted. Repair, maintenance, replacement, and aesthetic improvements typically include painting, landscaping, paving, the replacement and addition of skylights, windows, doors, open spaces, and other features which promote the livability of the dwelling and its compatibility with and enhancement to the neighborhood.

b. **Alterations and/or Expansions.** Improvements and/or additions to legal nonconforming residential uses which do not result in increased intensity of the nonconforming use, and where the residential use is not a public nuisance, are permitted.

2. **Legal Nonconforming Nonresidential Uses.**

a. **Aesthetic Improvements and Minor Alterations.** The repair, maintenance, replacement, and aesthetic improvement of structures containing nonconforming uses which do not enlarge or expand the nonconforming uses shall be permitted.

The repair, maintenance, replacement, and aesthetic improvements to a nonconforming, nonresidential use includes painting, landscaping, paving, the replacement of signage, windows, doors, public spaces, and other similar features to promote the uses, compatibility and enhancement to the surrounding area.

b. **Alterations and/or Expansions.** No alteration or expansion of a legal nonconforming, nonresidential use shall be permitted. (Ord. 98-8 § 2 (part): prior code § 9-32.030)

9-88.040 Termination of legal nonconformance.

Except for residential uses and as otherwise provided herein, any nonconforming use that is deemed by the Orange County Fire Authority and/or the Building De-

partment destroyed by fire, flood, explosion, act of God, or act of the public enemy, shall not be permitted to re-establish. A single-family or multi-family residential use may be reestablished up to the number of pre-existing dwelling units. Approval of a conditional use permit shall be required to re-establish such units and shall be based on the proposed re-establishment's improvement of the site's parking situation, building setbacks, and landscaping. Any re-establishments of use or reconstruction of structures must comply with current building and related codes.

Legal nonconforming uses or structures, which are abandoned for one hundred eighty (180) consecutive calendar days or longer shall be converted or reconstructed to conform to the requirements of this code or shall be abated in accordance with this chapter. A noticed public hearing shall be held to determine whether abandonment has occurred. (Ord. 98-8 § 2 (part): prior code § 9-32.040)

9-88.050 Legal nonconforming historic structures and uses.

A legal nonconforming designated national, state, or local historic structure or use may be exempted from the provisions of this chapter by the Planning Agency. Legal nonconforming historic structures and uses should be consistent with the land use designation and goals of the general plan. Improvements to such structures and uses and approval of a site development permit or conditional use permit shall be required to assure that the historic resource is maintained and preserved to the extent practical consistent with the general plan. (Ord. 98-8 § 2 (part): prior code § 9-32.050)

9-88.060 Substitution of a nonconforming use.

Subject to the Community Development Director's approval, a legal nonconforming use may be replaced by another nonconforming use, provided that such substitute use is less detrimental to the public welfare and to the property of persons located in the vicinity thereof than the original nonconforming use. (Ord. 98-8 § 2 (part): prior code § 9-32.060)

9-88.070 Termination—Violation of law.

Violation of any of the following conditions shall terminate the right to operate as a legal nonconformity, except as otherwise provided in this chapter.

A. Changing a legal nonconforming use to another nonconforming use;

B. Increasing or enlarging the area, space, or volume occupied by or devoted to a nonconformity except as otherwise may be permitted by this chapter;

C. Addition to a legal nonconforming use of another use not permitted in the zoning district. (Ord. 98-8 § 2 (part): prior code § 9-32.070)

9-88.080 Abatement of nonconforming use.

The City Council reserves the right to enact by ordinance regulations regarding the eventual termination of legal nonconforming structures or uses by determining reasonable amortization periods commensurate with the investment involved.

Upon determination that the provisions of this chapter apply to a given parcel of land, the Community Development Director shall send a notice thereof by certified mail, return receipt requested, to the owner as shown on the latest equalized assessment roll, shall cause such property to be posted with a similar notice, and shall publish such notice at least once in a newspaper of general circulation.

The notice provided for in this section shall state that the property in question is a nonconformity and shall state the date of abatement established by the Planning Agency. Any nonconformity continuing beyond the date for abatement as established by ordinance, except as may be extended by the City Council, is a public nuisance. (Ord. 98-8 § 2 (part): prior code § 9-32.080)