Chapter 21.38 – Nonconforming Uses and Structures (NEW)

CLUP Polices Implemented	
Coastal Land Use Plan Policy	Section
2.2.5-1. Legal nonconforming structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed. Rebuilding after catastrophic damage or destruction due to a natural event, an act of public enemy, or accident may be allowed in limited circumstances that do not conflict with other policies and of the Coastal Land Use Plan.	Chapter 21.38
2.2.5-2. In the older commercial districts of Balboa Village and Corona del Mar, allow existing commercial buildings that exceed current intensity limits to be renovated, upgraded, or reconstructed to no more than their existing intensity only where a finding can be made that the development will not perpetuate or establish a physical impediment to public access to coastal resources, nor adversely impact coastal views or biological resources. Where such development cannot meet current parking standards, such approval may only be granted if the proposed development includes at least as much parking as the existing development, and provides for or facilitates the use of alternative modes of transportation such as ridesharing, carpools, vanpools, public transit, bicycling or walking to the extent feasible.	Section 21.38.040.I
2.2.5-3. When proposed development would involve demolition or replacement of 50 percent or more of the exterior walls of an existing structure that is legally non-conforming due to a coastal resource protection standard, the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan.	Section 21.38.040.H
2.2.5-4. The enlargement or intensification of legally established nonconforming uses shall be limited to only those uses normally permitted by right or by the approval of a use permit, but which were made nonconforming by additional regulations of the district in which they are located. Such enlargement or intensification shall be subject to discretionary review and approval by the City and shall not increase the degree of the use's nonconformity.	Section 21.38.050
2.9.3-8. Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations or additions result in increased parking demand.	Section 21.38.060
2.9.3-9. Approve no application for a modification or waiver of off-street parking requirements that are found to impact public parking available for coastal access.	Section 21.38.110.E

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Chapter 21.38 – Nonconforming Uses and Structures

Sections:

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21.38.010 – Purpose

This chapter establishes procedures for the continuation and maintenance of existing uses and structures, except signs, that do not conform to the provisions of this Implementation Plan and for the abatement of those uses that may adversely affect the general welfare of persons and property.

21.38.020 – Applicability

A. **Legally Established Uses and Structures.** The provisions of this chapter shall apply to all legally established uses and structures that become nonconforming due to reclassification, ordinance changes, or annexations.

B. **Exemptions.** A structure that was legally constructed prior to October 26, 2010, shall be exempt from the limitations identified in Section 21.38.040(G)(1) unless the structure is nonconforming because it does not comply with the required setbacks.

21.38.030 – Determination of Nonconformity

A. **Director's Determination.** The Director shall determine the nonconforming conditions of land uses and structures.

B. **Nonconforming Use.** Any use determined to have been lawfully established and maintained, but that does not conform to the use regulations or required conditions for the coastal zoning district in which it is located by reason of adoption or amendment of this Implementation Plan or by reason of annexation of territory to the City, shall be deemed to be a nonconforming use.

1. A nonconforming use includes a use that was lawfully established and maintained, but is now conditionally allowed, and has not obtained a conditional use permit or minor use permit.

2. A use shall not be considered to have been "lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including permits and licenses required by any Federal, State, or local government agency.

C. **Nonconforming Structure.** Any structure that was lawfully erected, but that does not conform with the development standards for the coastal zoning district in which it is located by reason of adoption or amendment of this Implementation Plan or by reason of annexation of territory to the City, shall be deemed to be a legal nonconforming structure. A structure, or any portion of a structure, shall not be considered to have been "lawfully erected" and is illegal if it was constructed without required permits, or was constructed inconsistent with approved plans for a required permit, including permits required by any Federal, State, or local government agency.

D. **Responsibility of Owner.** When a use or structure does not conform with the applicable use regulations or property development standards for the coastal zoning district in which it is located, it shall be the responsibility of the owner to provide evidence that the use or structure was lawfully established, erected, and maintained and is nonconforming by reason of adoption or amendment of this Implementation Plan or by reason of annexation of territory to the City.

E. **Illegal Use or Structure.** A use or structure that was not lawfully established, erected, or maintained is contrary to the provisions of this Implementation Plan and the City may commence proceedings for the abatement and removal of the use or structure.

21.38.040 – Nonconforming Structures

Nonconforming structures may be maintained, altered, or added on to only in compliance with the provisions of this section.

A. **Maintenance and Repairs.** Routine maintenance and repairs may be made to nonconforming principal and accessory structures.

B. **Nonstructural Alterations.** Changes to interior partitions or other nonstructural improvements may be made to nonconforming principal structures, but shall not be made to accessory structures.

C. **Structural Alterations.** Structural elements, with the exception of foundations of nonconforming principal structures (see subsection (D) of this section), may be

modified, repaired, or replaced. Structural alteration of nonconforming accessory structures is not allowed.

D. **Foundation Alterations.** Maintenance and repairs may be made to foundations of nonconforming principal structures. A foundation of a nonconforming principal structure may be modified, retrofitted, or replaced when necessary and in conjunction with additions allowed in compliance with subsection (G) of this section and Section 21.38.060 A. For any alterations beyond routine repair or maintenance, the nonconforming structure shall be required to be brought into compliance with all applicable standards and regulations of this Implementation Plan, except as provided in subsection (F) of this section. Alterations to nonconforming accessory structures shall not be allowed.

E. **Seismic Retrofits.** Alterations to nonconforming structures due to seismic retrofitting requirements are allowed in compliance with the California Existing Building Code.

F. **Reasonable Accommodation.** Improvements to a nonconforming structure that are necessary to comply with an approved reasonable accommodation in compliance with Federal and State fair housing laws shall be allowed.

G. **Additions.** Nonconforming structures may be expanded and the existing nonconforming elements of the structure shall not be required to be brought into compliance with the development standards of this Implementation Plan subject to the following limitations and the limitations provided in Section 21.38.060 (Nonconforming Parking).

1. Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure within any ten (10) year period;

2. The floor area of any addition, together with the floor area of the existing structure, shall not exceed the allowed maximum floor area for the coastal zoning district;

3. The addition shall comply with all applicable development standards and use regulations of this Implementation Plan; and

4. Additional parking shall be provided in compliance with Section 21.38.060 (Nonconforming Parking).

H. **Nonconformity with Coastal Resource Protection Regulations.** If a structure is non-conforming due to a coastal resource protection development regulation of Section 21.28.040 (Bluff Overlay District), Section 21.28.050 (Canyon Overlay District), or Chapter 21.30B.050 (Development Standards) and proposed alterations or additions would result in more than 50 percent of the exterior walls to be demolished or replaced within any ten (10) year period, the entire structure shall

be brought into conformity with all current development regulations and all applicable policies of the certified Local Coastal Program.

I. **Exceptions.**

1. **Corona del Mar and Balboa Village.** Existing nonresidential structures within Corona del Mar and Balboa Village that are nonconforming because they exceed the allowed floor area shall be exempt from the limits of this section and may be demolished and reconstructed to their preexisting height and floor area; provided, that not less than the preexisting number of parking spaces is provided.

2. **Landmark Structures.** Landmark structures shall be exempt from the requirements of this chapter in compliance with Section 21.38.070 (Landmark Structures).

21.38.050 – Nonconforming Uses

Nonconforming uses may be changed, expanded, increased, or intensified only as provided in this section.

A. **Expansion and Intensification of Existing Nonconforming Uses.** In nonresidential coastal zoning districts, and in areas where residential uses are not allowed in Planned Community Districts or specific plan districts, a use that was previously allowed by right, but which becomes nonconforming because of new permit regulations, may be expanded or intensified (e.g., increase in floor area, lot area, or occupancy load) subject to the approval of a coastal development permit.

B. **Change of Use.**

1. A nonconforming nonresidential use may be changed to a conforming use, provided the change does not create or increase a deficiency in required off-street parking except as provided in Section 21.38.060 (Nonconforming Parking).

2. A residential use that is nonconforming because it exceeds the allowed number of units for the coastal zoning district may be altered to reduce the number of dwelling units, provided the reduction complies with any floor area limit and affordable housing provisions are satisfied.

C. **Exception for Landmark Structures.** The use of a landmark structure may be changed, expanded, increased, or intensified without obtaining a conditional use permit required by this section subject to compliance with the provisions of Section 21.38.070 (Landmark Structures).

21.38.060 – Nonconforming Parking

A. **Residential.** Where a residential structure or use is nonconforming only because it does not conform to the off-street parking requirements of this Implementation Plan, only the following alterations may be allowed:

1. **Number of Spaces.** A residential development having less than the required number of parking spaces per dwelling unit shall be allowed the following repairs, alterations, and additions:

   a. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 21.38.040(A) through (F); and

   b. Additions up to a maximum of ten (10) percent of the existing floor area of the structure within a ten (10) year period as provided in Section 21.38.040(G).

2. **Dimensions or Type of Parking Spaces.** Residential developments that are nonconforming because they do not have the required type of covered or enclosed parking spaces or because amendments to this Implementation Plan have changed the dimensions of required parking spaces subsequent to the original construction of the structure may be altered or expanded as follows:

   a. All improvements and expansions allowed under subsection (A)(1) of this section;

   b. Additions larger than those allowed under subsection (A)(1) of this section may be allowed subject to the approval of a coastal development permit.

B. **Nonresidential.** Where nonresidential structures and uses are nonconforming because they do not provide the required number of parking spaces the following provisions shall apply:

1. **Change of Use.** A nonconforming use in a nonresidential coastal zoning district, and in areas where residential uses are not allowed in Planned Community Districts or specific plan districts, may be changed to a new use allowed in that coastal zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs and the new use requires a parking rate of no more than one space per two hundred fifty (250) square feet of gross building area.

2. **Repair, Maintenance, and Alterations.** Repair, maintenance, and alterations to nonconforming structures and uses shall be allowed as provided in Section 21.38.040(A) through (G).

3. **Addition to Structure or Intensification of Use.** A nonconforming structure or use may be enlarged by up to ten (10) percent of its existing gross floor area, or a nonconforming use may be changed to a new use that requires additional parking under the following conditions:

   a. Required parking for the additional square footage is provided; or

   b. If the new use requires more parking than the nonconforming use, the new use shall only be required to provide additional parking equal to the difference between the two; or

   c. A reduction in the number of required parking spaces is approved in compliance with the provisions of this Implementation Plan.

4. **Demolition of Structure.** All rights with regard to nonconforming parking shall be lost for a structure that is voluntarily demolished, except as provided in Section 21.38.040(H) (Exceptions).

21.38.070 – Landmark Structures

A. **Purpose.** The purpose of this section is to help preserve historic structures, encourage their adaptive reuse, and revitalize the older commercial areas in which they are located by granting relief from restrictions on nonconforming structures and uses and by maintaining the principal use and minimizing impacts on the surrounding area.

B. **Applicability.** The following types of structures are recognized as having importance to the history and architecture of the City and are collectively designated as landmark structures:

   1. **Landmark Theaters.** The term “landmark theaters” shall mean a structure constructed for use as a cinema or theater that was constructed on or before December 12, 1950; has a single screen or stage; and was designed to seat more than three hundred (300) people.

   2. **Landmark Structure.** The term “landmark structure” shall mean a structure listed on the National Register of Historic Places, constructed on or before December 12, 1950.

C. **Exemptions.** Changes in use and structural alterations to a landmark structure shall be exempt from the requirements of this chapter in compliance with the following.

   1. **Change of Use.**

a. The principal use of a landmark structure may be changed, modified, increased, or intensified without obtaining a coastal development permit subject to compliance with the conditions of subsection (D) of this section, and regardless of whether the use has been discontinued for a period of time.

b. An accessory use may be initiated, increased, or intensified without obtaining a coastal development permit subject to compliance with the conditions of subsection (D) of this section.

c. For purposes of this section, the term “principal use of a landmark theater” shall mean the display of motion pictures and similar entertainment uses that occurred on a regular basis within the structure from its inception to January 1, 2003.

d. For the purposes of this section, the term “principal use of a landmark structure” shall be the use that occupied the greatest amount of floor area as of January 1, 2003.

e. For purposes of this section, the term “accessory use” shall mean a use that is allowed in the coastal zoning district in which the landmark structure is located.

2. **Alterations.** Structural alterations may be made to a landmark structure without obtaining a coastal development permit subject to compliance with the conditions of subsection (D) of this section.

21.38.080 – Repair of Damaged or Partially Destroyed Nonconformities

A. **Nonconforming Use.** A nonconforming use occupying land, a conforming structure, or a portion of a conforming structure that is involuntarily damaged or destroyed may be reestablished; provided, that:

1. Restoration work is commenced within twelve (12) months of the date of damage, unless otherwise allowed by the Director, and is diligently pursued to completion; and

2. An abatement period for the nonconforming use has not been established.

B. **Nonconforming Structure.**

1. **Determination of Replacement Cost.** The replacement cost of the structure shall be determined by the Building Official. However, the Building Official shall accept the appraised replacement cost of the structure as determined by an independent, licensed appraiser retained by the property owner.

2. **Up to Seventy-Five (75) Percent Damage or Destruction.** A nonconforming structure that is involuntarily damaged or destroyed may be repaired, restored, or rebuilt if the cost of the repair or restoration is less than seventy-five (75) percent of the replacement cost of the entire structure. The rights conferred by this section are contingent upon diligent application for a building permit after the damage occurs and diligent pursuit of repairs or rebuilding to completion.

3. **Greater than Seventy-Five (75) Percent Damage or Destruction.** If a nonconforming structure is involuntarily damaged or destroyed to an extent of more than seventy-five (75) percent of its replacement cost, the nonconformity may be restored to its original condition subject to the approval of a minor use permit. An application for the minor use permit shall be made within twelve (12) months after the damage or destruction occurs.

C. **Aging and Deterioration.** The provisions of this section shall not allow replacement of nonconforming conditions in structures damaged by ongoing natural processes (e.g., dry rot or termites) or that have deteriorated due to age and lack of maintenance.

D. **Condominium Units.** When a minor use permit is required for replacement or repair of condominium units that are involuntarily damaged or destroyed no reduction in the number of units shall be required. The replacement units shall be permitted to be equivalent in size and location to the units that were damaged or destroyed.

E. **Exceptions for Corona del Mar and Balboa Village.** Existing nonresidential structures within Corona del Mar and Balboa Village that are nonconforming because they exceed the allowed floor area shall be exempt from the limits of this section and may be demolished and reconstructed to their preexisting height and floor area; provided, that not less than the preexisting number of parking spaces is provided.