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## Chapter 20.38 – Nonconforming Uses and Structures

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### 20.38.010 – 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 Zoning Code and for the abatement of those uses that may adversely affect the general welfare of persons and property. Refer to Section 20.42.140 (Nonconforming Signs) for regulations pertaining to nonconforming signs. The purpose of this Chapter is to:

- A. Establish procedures and criteria for the continuation, maintenance, and expansion of specific nonconforming uses and structures;
- B. Encourage nonconforming uses and structures to become more conforming over time;
- C. Reduce the number of nonconforming uses by prohibiting their reestablishment after abandonment; and
- D. Phase out nonconforming uses in residential zoning districts in compliance with the abatement periods established in this Chapter without infringing upon vested property rights.

### 20.38.020 – 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 Subsection 20.38.040.G.1 unless the structure is nonconforming because it does not comply with the required setbacks.

**20.38.030 – 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 zoning district in which it is located by reason of adoption or amendment of this Zoning Code 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 zoning district in which it is located by reason of adoption or amendment of this Zoning Code 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 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 Zoning Code 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 Zoning Code and the City may commence proceedings for the abatement and removal of the use or structure in compliance with the provisions of Chapter 20.68 (Enforcement).

**20.38.040 – 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, below), 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 Subsections 20.38.040 G and 20.38.060 A, below. 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 Zoning Code, except as provided in Subsection F, below. 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 Chapter 15.07 (Earthquake Hazard Reduction in Existing Buildings) of the Municipal Code.
- F. Reasonable accommodation.** Improvements to a nonconforming structure that are necessary to comply with an approved reasonable accommodation in compliance with Section 20.52.070 (Reasonable Accommodations) 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 Zoning Code subject to the following limitations and the limitations provided in Section 20.38.060 (Nonconforming Parking).
1. Expansion shall be limited to a maximum of 50 percent of the gross floor area of the existing structure within any 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 zoning district;
  3. The addition shall comply with all applicable development standards and use regulations of this Zoning Code ; and
  4. Additional parking shall be provided in compliance with Section 20.38.060 (Nonconforming Parking), below.
- H. 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 pre-existing height and floor area provided that not less than the pre-existing number of parking spaces is provided.
  2. **Landmark structures.** Landmark structures shall be exempt from the requirements of this Chapter in compliance with Section 20.38.070 (Landmark Structures), below.

### 20.38.050 – 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 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 Conditional Use 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 20.38.060 (Nonconforming Parking).
  2. A residential use that is nonconforming because it exceeds the allowed number of units for the zoning district may be altered to reduce the number of dwelling units provided the reduction complies with any floor area limit and the provisions of Chapter 20.34 (Conversion or Demolition of Affordable Housing) 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 20.38.070 (Landmark Structures).

### 20.38.060 – 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 Zoning Code, 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 Subsections 20.38.040 (A-F), above ; and
    - b. Additions up to a maximum of 10 percent of the existing floor area of the structure within a 10 year period as provided in Subsection 20.38.140.G, above.
  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 Zoning Code 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 Subparagraph A.1, above;

- b. Additions larger than those allowed under Subparagraph A.1, above, may be allowed subject to the approval of a Modification Permit in compliance with Section 20.52.050 (Modification Permits).

**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 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 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 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 Subsections 20.38.040 (A-G), above.
3. **Addition to structure or intensification of use.** A nonconforming structure or use may be enlarged by up to 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 Zoning Code.
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 Subsection 20.38.040.I (Exceptions), above.

### 20.38.070 – 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 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 discretionary permit subject to compliance with the conditions of Subsection D, below, 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 discretionary permit subject to compliance with the conditions of Subsection D, below.
    - 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 zoning district in which the landmark structure is located.
  2. **Alterations.** Structural alterations may be made to a landmark structure without obtaining a discretionary permit subject to compliance with the conditions of Subsection D, below.
- D. Conditions.** The exemptions specified in Subsection C, above, are applicable on the following conditions:
1. A new use that is initiated and a use that is intensified by way of a change in operational characteristics shall be an accessory use and remain subordinate to the principal use of the landmark structure;
  2. The principal use of the landmark structure shall occupy at least 70 percent of the gross floor area of the structure;
  3. Any permit required by other Titles of the Municipal Code (other than Title 20) shall be obtained before the initiation or intensification of an accessory use of a landmark structure;

4. Accessory uses in any landmark theater shall be conducted only between the hours of 8:00 a.m. and 12:00 a.m.;
5. The required off-street parking of all uses after any additions, intensification, modification, or expansion (including credit for reductions in off-street parking resulting from the elimination of accessory uses existing on January 1, 2003) is less than the required off-street parking for the principal and accessory uses prior to any additions, intensification, modification or expansion; and
6. The façade and exterior architectural features of the landmark structure are restored to substantially their original condition as determined by the Director and the exterior walls remain in substantially the same location as they existed on January 1, 2003.

### **20.38.080 – Repair of Damaged or Partially Destroyed Nonconformities**

- A. Nonconforming use.** A nonconforming use occupying land, a conforming structure, or portion of a conforming structure that is involuntarily damaged, or destroyed may be reestablished, provided that:
1. Restoration work is commenced within 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 in compliance with Section 20.38.100 (Abatement Periods), below.
- 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 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 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 75 percent damage or destruction.** If a nonconforming structure is involuntarily damaged, or destroyed to an extent of more than 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 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 pre-existing height and floor area provided that not less than the pre-existing number of parking spaces is provided.

### 20.38.090 – Termination of Nonconforming Status

- A. Nonconforming use.** Unless otherwise provided in this Chapter a nonconforming use, or nonconforming operational characteristic of a use, shall cease operations, shall not be reestablished, and shall lose its nonconforming right when one or more of the following conditions occur:
1. The use, or nonconforming operational characteristic of a use, is discontinued for 180 consecutive days, except as provided in Subsection C, below;
  2. The use, or nonconforming operational characteristic of a use, is converted to a conforming use;
  3. The use, or nonconforming operational characteristic of a use, is enlarged, extended, expanded (e.g., increase in floor area, lot area, or occupancy load), or changed to increase its nonconformity with the regulations this Zoning Code without first obtaining required approvals; or
  4. The abatement period specified for the nonconforming use has expired as identified in Section 20.38.100 (Abatement Periods), below.
- B. Demolition of structure.** All rights with regard to maintaining nonconforming status of a structure or nonconforming parking shall be lost for a structure that is voluntarily demolished, except as provided in Subsection 20.38.040.I (Exceptions), above.
- C. Exceptions.**
1. In nonresidential zoning districts, and in areas where residential uses are not allowed in planned community districts or specific plan districts, a nonconforming use that has been discontinued for 180 days or more may be reestablished subject to the approval of the Director when all of the following findings are made:
    - a. The use is allowed by right, but is nonconforming only because it does not conform to one or more of the standards for specific land uses, including parking;
    - b. The property or structure where the nonconforming use is located contains a substantial investment because of the structural design, equipment, or fixtures that are unique to and necessary for the operation of the former use; and

- c. The property owner has made a good faith effort to reestablish the use and has maintained the property in a manner to prevent unsafe or unsightly conditions during the period of inactivity.
2. A nonconforming use that has been discontinued for 180 days or more may be reestablished when located within a landmark structure, in compliance with the requirements of Section 20.38.070 (Landmark Structures).

### 20.38.100 – Abatement Periods

- A. Nonconforming uses shall be abated and terminated upon the expiration of the periods of time identified in this Section.
- B. **All zoning districts when no structure is involved.** Nonconforming uses of land located in any zoning district, planned community district, or specific plan district that do not involve the use of a structure shall be discontinued within one year of becoming nonconforming.
- C. **Residential zoning districts involving a structure.** In residential zoning districts or in an area where residential uses are allowed in planned community districts or specific plan districts, a nonconforming use of land involving a structure shall be discontinued as follows:
  1. **Abatement period.** A nonconforming use of land involving a structure in a residential zoning district shall be discontinued on the earliest date as follows:
    - a. Within one year; or
    - b. Upon the expiration of the term of a lease on the property. Any lease shall be the last lease entered into for the subject property prior to December 7, 2007; or
    - c. Upon the expiration of a current operating license that is required by State law.
  2. **Order of abatement.** Whenever the Director finds that any of the conditions exist that are identified in Subparagraph 1, above, the Director shall issue a written order of abatement to the property owners and all persons in possession of the property. The owner and/or person in possession shall comply within the time and in the manner stated in the order.
  3. **Exception.** Multi-family and two-family residential uses located in residential zoning districts and in areas where residential uses are allowed in planned community districts or specific plan districts that are nonconforming only in terms of their number of units or parking shall not be subject to abatement.

4. **Extension of abatement period.** Following the issuance of an Abatement Order by the Director, a property owner may request an extension of the abatement period in order to amortize the property owner's investment and to avoid a potential taking of property either under the procedure outlined in this Subparagraph or under the procedure outlined in Subparagraph 5 (Extension of abatement period for residential care facility), below.
- a. **Application requirements.** An application for an extension of the abatement period shall be filed with the Department no later than 90 days prior to the expiration of the abatement period as specified in this Section. The application shall include the following information in addition to other information required by the Department:
- (1) The length of the requested extension of the abatement period; and
  - (2) Evidence in support of the findings included in Subsubparagraph c (Findings/Considerations), below.
- b. **Hearing Officer hearing and action.**
- (1) The Hearing Officer, as provided in Section 20.60.040 (Hearing Officer), shall be the review authority for applications for requests of extensions to abatement periods for nonconforming uses in residential zoning districts and in planned community districts or specific plan districts where residential uses are allowed.
  - (2) The Hearing Officer shall conduct a public hearing on the request in compliance with Chapter 20.62 (Public Hearings).
  - (3) The Hearing Officer, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include; findings of fact; evidence presented of economic hardship arising from the abatement proceedings; the nonconformity's impact on the community; and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking.
- c. **Findings and considerations.** In reviewing an application for an extension to the abatement period the Hearing Officer shall consider the following:
- (1) Length of the abatement period in relation to the owner's investment in the use;
  - (2) Length of time the use was operating prior to the date of nonconformity;
  - (3) Suitability of the structure for an alternative use;
  - (4) Harm to the public if the use remains beyond the abatement period; and

- (5) Cost and feasibility of relocating the use to another site.
  - d. **Notice to owner.** Following the hearing, the Department shall send a copy of the Hearing Officer's action to the owner of the property within 10 days following the date of the Commission's action.
  - e. **Appeals.** Refer to Subsection F, below.
5. **Extension of abatement period for residential care facility.** The abatement period for a residential care facility may be extended upon approval of an application by the Director under one or both of the circumstances outlined below. An application for an extension under this Subparagraph is separate and apart from an application for an extension under Subparagraph 4, above. A residential care facility may apply for an extension under either or both procedures:
- a. When the owner or occupant has applied for a Conditional Use Permit (Section 20.52.020) or Reasonable Accommodation (Section 20.52.070) in a timely manner and is diligently pursuing the applicable process, as determined by the Director; or
  - b. When the business owner or occupant is contractually obligated to continue the provision of a program or service for one or more persons so long as any existing contract provides for a normal and customary term for the provision of those services. No term shall exceed 60 days.

**D. Nonresidential zoning districts involving a structure.**

- 1. **Abatement period.** In nonresidential zoning districts, and in areas where residential uses are not allowed in planned community districts or specific plan districts, a nonconforming use of land involving a structure shall be discontinued within 10 years after the Commission determines that the orderly termination of the nonconforming use is necessary to promote the health, safety, and general welfare and to comply with the provisions of the Zoning Code and goals and policies of the General Plan.
- 2. **Order of abatement.** Whenever the Commission determines that the abatement of a nonconforming use is necessary in compliance with Subparagraph 1, above, the Director shall issue a written order of abatement to the property owners and all persons in possession of the property. The owners and/or persons in possession shall comply within the time and in the manner stated in the order.
- 3. **Exceptions.** The abatement period specified in Subparagraph 2, above, shall not apply except in the following circumstances:
  - a. A different abatement period is specified in a planned community district or specific plan district; or
  - b. The use is located in a landmark structure that is subject to the provisions of Section 20.38.070 (Landmark Structures) in which case there shall be no abatement period.

- 4. Extension of abatement period.** Following the issuance of an Abatement Order by the Director, a property owner may request an extension of the abatement period in order to amortize the property owner's investment and to avoid a potential taking of property.
- a. Application requirements.** An application for an extension of the abatement period shall be filed with the Department no later than 90 days prior to the expiration of the abatement period as specified in this Section. The application shall include the following information in addition to other information required by the Department:
- (1) The length of the requested extension of the abatement period; and
  - (2) Evidence in support of the findings included in Subsubparagraph c (Findings/Considerations), below.
- b. Commission hearing and action.**
- (1) The Commission shall be the review authority for applications for requests of extensions to abatement periods for nonconforming uses in nonresidential zoning districts and in planned community districts or specific plan districts where residential uses are not allowed.
  - (2) The Commission shall conduct a public hearing in compliance with Chapter 20.62 (Public Hearings).
  - (3) The Commission shall evaluate evidence presented of economic hardship arising from the abatement proceedings, the nonconformity's impact on the community, and other factors provided in Paragraph c, below, that may affect the length of the abatement period required to avoid an unconstitutional taking.
  - (4) The Commission shall approve, conditionally approve, or deny the request for an extension to the abatement period only as required to avoid an unconstitutional taking of property.
- c. Findings and considerations.** In reviewing an application for an extension to the abatement period the Commission shall consider the following:
- (1) Length of the abatement period in relation to the owner's investment in the use;
  - (2) Length of time the use was operating prior to the date of nonconformity;
  - (3) Suitability of the structure for an alternative use;
  - (4) Harm to the public if the use remains beyond the abatement period;

- (5) Cost and feasibility of relocating the use to another site; and
      - (6) Other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property.
    - d. **Notice to owner.** Following the hearing, the Department shall send a copy of the Commission's action to the owner of the property within 10 days following the date of the Commission's action.
- E. **Enforcement.** The City shall enforce the provisions of this Chapter by civil action, utilization of the procedures in Chapter 20.68 (Enforcement), or any other proceedings or methods permitted by law.
- F. **Appeals.**
  - 1. Decisions of the Director, Zoning Administrator, Hearing Officer, or Commission may be appealed in compliance with the procedures established in Chapter 20.64 (Appeals).
  - 2. Council hearings on appeals of the Hearing Officer's decision shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council, acting as the appellate body, may sustain, reverse, or modify the decision of the Hearing Officer or remand the matter for further consideration. The remand shall include specific issues to be considered or a direction for a de novo hearing.

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