

## Chapter 18.11 - NONCONFORMING USES, STRUCTURES, AND PARCELS

**Sections:**

## 18.11.010 - Purpose.

Within the zones established by this title, there exist uses, structures and lots which were lawful before the Land Use Code was adopted or amended, but which would be prohibited under the terms of this title or future amendment to this title. It is the intent of this title to permit these nonconforming uses to continue until they are terminated, but not to encourage their expansion. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any building where a building permit has been issued prior to the effective date of the Land Use Code, provided such permit construction is diligently carried to completion.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

## 18.11.020 - Continuance.

Any lawful nonconforming use existing at the time of adoption of the Land Use Code may be continued, provided such use is continually maintained and occupied. A nonconforming use in either a conforming building or a nonconforming building, structure, or portion of either shall neither be extended to any portion of the building or structure not so used nor be enlarged or extended to any other portion of the lot not actually so occupied at the time said use became nonconforming, except as otherwise provided in this chapter.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

## 18.11.030 - Enlargements and alterations.

- A. Changes to Nonconforming Uses. No existing building or premises designed, arranged, intended, or devoted to a use not permitted in the zone in which such building or premises is located shall be enlarged, extended, reconstructed or structurally altered, except:
1. Work done in any period of twelve months on ordinary structural alterations or replacements of walls, fixtures or plumbing not exceeding twice the building's assessed value, according to the assessment thereof by the county assessor for the fiscal year in which such work is done, shall be permitted.
  2. These provisions shall not prevent the expansion, increase in capacity, modernization or replacement of such public utility buildings, structures, equipment, and features as are used directly for the delivery of or distribution of the service; provided, however, that all setback

requirements of the zone in which the site is located shall be maintained and there shall be no enlargement of the site.

3. A single-family detached dwelling may be reconstructed or remodeled in accordance with the standards of the existing structure, i.e., in the same building location on the lot, the same size of the existing structure, and the same height as the existing structure; however, different materials and architectural details may be used.
4. A nonconforming use located in the Westside Specific Plan area that substitutes another nonconforming use in compliance with Section 18.11.040 may expand, enlarge, reconstruct, or structurally alter the footprint of the existing building or structure for that substituted nonconforming use up to twenty percent within the existing parcel in which it is located, subject to first obtaining a conditional use permit.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

#### 18.11.040 - Substitution of nonconforming uses.

- A. Conversion of Nonconforming Uses. A nonconforming use may not be converted to any use except to a specifically permitted use in the zone of the parcel on which it is located; except that conversion of a lawful nonconforming use to a nonconforming use found by the planning commission to be a lawful nonconforming use on another site within the same zone may be allowed where a conditional use permit therefore has been approved; provided, that this shall in no way extend the abatement provisions contained in this chapter. The exception stated in this paragraph of allowing a conversion of a lawful nonconforming use to another nonconforming use within the same zone does not apply to nonconforming uses located within the Westside Specific Plan area.
- B. Nonconforming Uses Located Within the Westside Specific Plan Area.
  1. A nonconforming use located on a parcel or parcels located within the Westside Specific Plan may not be converted to any use except to a specifically permitted use in the zone of the parcel or parcels on which it is located, except as follows:
    - a. A nonconforming use may be converted to any use which is specifically permitted in the allowable uses for any of the zones identified in Appendix A of the Westside Specific Plan.
  2. A nonconforming use that converts to another nonconforming use from Appendix A may enlarge and alter their footprint to the extent allowed in Section 18.11.030.
- C. Nonconforming Uses in the CA Zone. In the CA zone where there exists commercial retail shopping facilities which became nonconforming at the time of the adoption of the Land Use Code, such facilities may continue to lease commercial space to uses typical of such facilities but not otherwise permitted in the CA zone.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

#### 18.11.050 - Partially destroyed structures.

- A. Nonconforming Buildings or Structures that Become Damaged. A nonconforming building or structure which is damaged or destroyed by fire, explosion, or natural disaster may be restored and the occupancy or use of such structure or part thereof existing at the time of such partial destruction may be continued or resumed provided:
1. Such restoration results in an equal or lesser degree of nonconformity;
  2. The total cost of such restoration for structures other than single-family detached dwellings does not exceed one-half the replacement cost of the structure at the time of such damage (the replacement cost will be calculated by the department of building and housing);
  3. Such restoration is started within a period of one year and is carried out diligently to completion;
  4. Such damage or destruction of structures is not intentionally caused by the owner.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

#### 18.11.060 - Religious institutions.

Religious Institutions of a permanent nature which became nonconforming at the time of adoption of the Land Use Code may be continued, reconstructed, structurally altered, extended or enlarged subject to plans approved by the planning commission for any reconstruction, alteration, extension or enlargement and provided such reconstruction, alteration, extension or enlargement conforms with all other provisions of this title; and provided, further, that said extension, reconstruction, alteration or enlargement shall not be extended to additional property beyond the parcel(s) upon which the nonconforming use exists.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

#### 18.11.070 - Single-family dwellings.

- A. Nonconforming Single-Family Dwellings. Single-family dwellings which became nonconforming uses at the time of adoption of the Land Use Code or of amendments to the code may be continued, reconstructed, structurally altered, extended or enlarged in conformance with the following:
1. Enlargement or extension of a single-family detached dwelling shall conform to the standards of the zone which applies to the property. If a proposed enlargement or extension, except in the coastal zone, results in more than two thousand five hundred square feet of floor area and/or more than four bedrooms, parking facilities shall be provided for the increase but not for any existing deficiency in such facilities. Parking facilities required as a result of this section may be provided in a garage, carport, or surface space.
  2. No increase in parking over that previously provided shall be required for reconstruction of a nonconforming single-family residential use destroyed or partially destroyed by natural disaster, but may be permitted, in conformance to development standards of the zone which applies to the property.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

## 18.11.080 - Nonconforming parking facilities.

## A. Use Made Nonconforming by Off-Street Parking Requirements.

1. Any use, excluding a single-family detached dwelling, which is nonconforming only because of changes made in the off-street parking requirements by the adoption of the Land Use Code, or any amendment thereto, may be expanded, increased or modified, or converted to a conforming use, and no addition to or change in the off-street parking facilities shall be required except as identified below.
2. If the existing off-street parking facilities are not sufficient to comply with the requirements of this title after such expansion, increase or modification, additional parking facilities shall be added.
3. The capacity of said facilities shall equal the difference between the off-street parking facilities this title would require for such use as expanded, increased or modified, and the off-street parking facilities as required for such use before said expansion, increase or modification.
4. This shall not apply to entertainment and public assembly type uses which shall provide the full amount of parking otherwise required.
5. Any additional off-street parking facilities provided under these conditions shall be developed pursuant to the provisions of Chapter 18.45 (Off-Street Parking and Loading).
6. Any modification of off-street parking requirements permitted by this section shall not be construed to extend the termination date of the subject nonconforming use, as specified by this title.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

## 18.11.090 - Nonconforming signs.

## A. Nonconforming Sign Regulations.

1. In cases where the area of signs existing as a lawful nonconforming use on a property exceeds the total allowable area for permitted signs, no additional signs shall be permitted on the property. If the size or configuration of a parcel or building is changed by the subdivision or splitting of the property or alterations to the building or parcel, property identification signs and outdoor advertising signs on the resulting properties shall be required to conform to the sign regulations applicable to the newly created parcel or parcels, at the time such change becomes effective.
2. In the event a use of any site or building is vacated, terminated or abandoned, for any reason, for a period of more than one ninety consecutive days, the owner or person in possession of the property shall be responsible for the removal of all signs on the property, building or wall, or for having the copy thereon painted out, immediately upon notice from the city.
3. Nonconforming signs shall be removed or made conforming when the business or property changes occupancy or ownership.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

## 18.11.100 - Termination.

- A. Violation of Title. Any of the following violations of this title shall immediately terminate the right to operate a nonconforming use, except as otherwise provided in this title:
1. Changing a nonconforming use to a use not permitted in the zone;
  2. Increasing or enlarging the area, space, or volume occupied by or devoted to such nonconforming use;
  3. Addition to a nonconforming use of another use not permitted in the zone.
- B. Discontinuance. A nonconforming use or structure shall become discontinued, except when extended as otherwise provided in this title, when it is:
1. Succeeded by a conforming use;
  2. Discontinued and not re-established within a period of twelve or more consecutive calendar months;
  3. Discontinued and not re-established within a period of eighteen or more nonconsecutive calendar months in a twenty-four month period.
- C. Termination by Operation of Law. The following conditions will result in a termination of nonconforming signs.
1. Termination by Abandonment. Any nonconforming sign, the use of which is discontinued for a period of ninety days, regardless of any intent to resume or not to abandon such use, shall be deemed to be abandoned and shall not thereafter be re-established. Any period of such discontinuance caused by government actions, strikes, material shortages or forces of nature, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this section.
  2. Termination by Change of Business. Any nonconforming sign advertising or relating to a business on the premises on which it is located shall be terminated upon any change in the ownership or control of such business.
  3. Termination by Damage or Destruction. Any nonconforming sign damaged or destroyed, by any means, to the extent of thirty-five percent of its replacement cost new shall not be restored but shall be terminated.
  4. Termination by Going Out of Business/Closure of Business. No sign that is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.
  5. Termination Due to Lack of Repair. Failure to keep a nonconforming sign in good repair within one year after notification by the city shall constitute abandonment and subject to termination.
- D. Affirmative Termination by Amortization.
- 1.

The city council of the City of National City may order a nonconforming use to be terminated within a reasonable amount of time, upon recommendation of the planning commission. The planning commission shall conduct a public hearing after ten days' written notice to the nonconforming user. If the nonconforming user has not made a substantial investment in furtherance of the use, or if the investment can be substantially utilized or recovered through a currently permitted use, the order may require complete termination of the nonconforming use within a minimum of one year after the date of the order. If the nonconforming user has made a substantial investment in furtherance of the use, or if the investment cannot be substantially utilized or recovered through a currently permitted use, the order may require the complete termination of the nonconforming use within a longer reasonable amount of time. Nonconforming uses that are determined to be an imminent threat to the public health or safety may be terminated immediately, pursuant to Chapter 1.36 of this Municipal Code. In making its recommendation to terminate a nonconforming use and in recommending a reasonable amount of time in which to terminate, the planning commission shall consider:

- a. The total cost of land and improvements;
- b. The length of time the use has existed;
- c. Adaptability of the land and improvements to a currently permitted use;
- d. The cost of moving and reestablishing the use elsewhere;
- e. Whether the use is significantly nonconforming;
- f. Compatibility with the existing land use patterns and densities of the surrounding neighborhood;
- g. The possible threat to public health, safety, or welfare; and
- h. Any other relevant factors.

The term "nonconforming use" when used in this section shall include nonconforming uses, nonconforming structures, and nonconforming lots, consistent with the intent of this title.

This amortization section does not apply to any lawful nonconforming residential uses.

Failure to comply with the city council's order to terminate a nonconforming use shall constitute a violation of this chapter and is a public nuisance subject to abatement in accordance with Chapter 1.36 of this Code.

2. That a notice of exemption shall be filed indicating that this amendment to the Municipal Code is exempt from the California Environmental Quality Act, because it can be said with certainty that there is no possibility that the action will have a significant effect on the environment as it does not have a direct effect on any property or environmental consequence.

E.

Unlawful Uses and Structures. Uses and structures that did not comply with the applicable provisions of this Land Use Code or prior planning and zoning regulations when established are violations of this code and are subject to the provisions of Title 1 of the Municipal Code (Administration and Enforcement). This section does not grant any right to continue occupancy of property containing an illegal use or structure. The activity shall not be allowed to continue unless/until permits or entitlements required by this Land Use Code and the Municipal Code are first obtained.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

#### 18.11.110 - Exemptions.

- A. Historic Structures. Nonconforming structures of historical significance may be altered or enlarged with a building permit approval granted by the city manager or his/her designee, without conforming to current setback provisions; provided the historic structure:
1. Has been certified to be an historic resource by the city, county, or state, or in the National Register of Historic Places; or
  2. Is to be altered or enlarged as an authentic replica of the original structure.
- B. Single-family Dwellings. Single-family dwellings are exempt from the provisions of Section 18.11.100 as follows:
1. Height. An existing single-family dwelling that is nonconforming only because it exceeds the height limit of the applicable zone, shall not be required to comply with the provisions of this title.
  2. Setbacks. Where a single-family dwelling or a detached accessory structure, is nonconforming only by reason of substandard setbacks, the provisions of this title shall not apply; provided that any structural alteration of a nonconforming structure shall not increase the degree of nonconformity, and any enlargements shall comply with the setback requirements of the applicable zoning district.
  3. Parking. A single-family dwelling that is nonconforming with respect to the parking requirements of this Land Use Code is exempt from requirements of this title that would otherwise require compliance with the parking requirements of this Land Use Code.
- C. Destroyed Nonconforming Dwelling Units.
1. Where the city manager or his/her designee determines that a nonconforming single- or multi-family dwelling unit has been involuntarily damaged or destroyed by accident (e.g., fire, explosion, etc.) or natural disaster (e.g., earthquake, etc.), the unit may be reconstructed or replaced with a new structure using the same development standards applied to the damaged or destroyed structure (e.g., building footprint, building height, density standards, number of dwelling units, setbacks, and floor area); provided:
    - a. The applicant provides documentation, satisfactory to the review authority, supporting the claim that the damage or destruction occurred involuntarily;
    - b. No expansion of the gross floor area or number of dwelling units occurs;
    - c. The replacement structure:

- i. Is in compliance with the current building code; and
      - ii. Would not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the immediate vicinity of the replacement structure;
    - d. A building permit is issued no later than twelve months after the date of destruction, and construction is diligently pursued to completion.
  2. If the preceding requirements are not met, the replacement structure shall comply with all of the regulations of the applicable zoning district in effect on the date of application for the required building permit.
- D. Seismic Retrofitting. Alterations, reconstruction, or repairs otherwise required by law (e.g., city adopted building, electrical, plumbing codes) shall be allowed. Reconstruction required to reinforce unreinforced masonry structures or to comply with building code requirements shall be allowed without cost limitations; provided, the retrofitting and code compliance are limited exclusively to compliance with earthquake safety standards and other applicable building code requirements.
- E. Nonconforming Upon Annexation. Nonconforming uses or structures, or both, which are lawfully existing at the time the property on which they are located is annexed to the city, and which do not conform to the regulations of the subject zoning district following annexation, shall be deemed legal nonconforming uses or structures, or both, and shall, upon annexation, be subject to the provisions of this chapter.
- F. Nonconforming Due to a Lack of a conditional use permit.
1. Conformity of Uses Requiring Conditional Use Permits. A use that becomes nonconforming only because it is a use that would be required by this Land Use Code to have conditional use permit approval shall be deemed conforming, but only to the extent that it previously existed prior to adoption of the Land Use Code (e.g., maintain the same site area boundaries, hours of operation, etc.).
  2. Previous Conditional Use Permits in Effect. A use that was authorized by a conditional use permit prior to adoption of this Land Use Code, but is identified in this Land Use Code as a use that is not allowed in its current location, may continue, but only in compliance with the original conditional use permit.
- G. Previous Permits. A use or structure which does not conform to the current regulations of the subject zoning district, but for which a building permit, or a permit or entitlement approved in compliance with this Land Use Code, was issued and work substantially completed before the applicability of this Land Use Code, may be completed; provided, the work is diligently pursued to completion. Upon completion these uses or structures, or parts thereof, shall be deemed to be legal nonconforming and shall thereafter be subject to the provisions of this chapter.
- H. Public Acquisition. Nonconforming due to public acquisition. Whenever any structure or parcel is rendered nonconforming within the meaning of this chapter by reason of a reduction in a required parcel area, reduction of off-street parking facilities, or setbacks occurring solely by reason of dedication to, or purchase by, the city for any public purpose, or eminent domain proceedings, which



result in the acquisition by the city or any agency authorized for the eminent domain proceedings of a portion of the property, the structure or parcel shall not be deemed nonconforming within the meaning of this chapter.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)