

Article 5 **Nonconformities**

CHAPTER 25.50 **GENERAL NONCONFORMING PROVISIONS**

§ 25.50.010. Purpose and Intent.

- A. Within the zoning districts established by this Title 25 or amendments that may later be adopted, there exists or will exist lots, structures, and uses of land and structures which were lawful before the adoption or amendment of this title but which no longer comply. The intent of this Article 5 (Nonconformities) is to permit those nonconformities to continue until they are removed or required to be terminated, but not to encourage their continuance. Such uses and structures are declared to be incompatible with permitted uses, structures, and standards in the zoning districts involved, and it is intended that they shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district, except as may be expressly permitted in this article.
- B. The eventual intent is that nonconformities, including certain classes of nonconforming uses, nonconforming structures of nominal value, and certain uses not meeting parking, performance, or screening standards, are to be altered to conform.
- C. It is also the City's intent to encourage and accommodate the renovation of designated historic structures that may be nonconforming with respect to development standards, and therefore to provide additional relief from the provisions of this article with regard to correcting nonconformities.

(Ord. 2000 § 2, (2021))

§ 25.50.020. Applicability.

- A. The provisions of this article shall apply to all legally established nonconforming lots, structures, and land uses. A mere change in ownership or tenancy without any change in use, occupancy, or development shall not affect any of the legal nonconforming rights, privileges, and responsibilities provided under this article.
- B. This article shall not apply to any use or structure established in violation of the previously adopted Zoning Ordinance for the City, unless the use or structure presently conforms to the provisions of this Zoning Code.

(Ord. 2000 § 2, (2021))

§ 25.50.030. Establishment of Legal Nonconforming Status.

- A. The provisions of this article shall regulate the continuation, termination, and modification of lots, structures, and uses which were lawfully established, but which no longer conform to the provisions of this title due to a change in zoning district boundaries or a change in the regulations for the zoning district in which it is located. A mere change in ownership or tenancy without any change in use, occupancy, or development shall not affect any of the legal nonconforming rights, privileges, and responsibilities provided under this article.

- B. Lots, structures, and uses not having previously acquired proper permits are illegal and subject to immediate abatement.
- C. Any nonconforming use or structure that becomes specifically authorized under the terms of some approval pursuant to this title, other than approval of an extension, expansion, change, or early termination of nonconformity, shall henceforth be governed by the terms of such approval and shall no longer be considered to be a nonconformity unless and until such approval expires or is revoked.
- D. Whenever any lot or structure is rendered nonconforming within the meaning of this article solely by reason of: (1) dedication to, or customary purchase by, the City for any public purpose; or (2) eminent domain proceedings which result in the acquisition by the City of a portion of the subject property, the same shall not be deemed nonconforming within the meaning of this article.
- E. The effective date of the Zoning Ordinance codified in this title or previous Zoning Ordinance codified herein shall determine the time of beginning for all existing nonconformities.

(Ord. 2000 § 2, (2021))

§ 25.50.040. Proof of Legal Nonconformity.

- A. Burden of Proof. The property owner shall have the burden to prove the claim of legal nonconformity and the related protected status that comes with that claim. The property owner shall provide sufficient evidence to the satisfaction of the Director that the subject property or use is a legal nonconformity as specified in this article.
- B. City Not Responsible. The City is not responsible to prove the absence of a legal nonconformity.
- C. Director's Determination.
 - 1. To exert a claim of legal nonconformity, the property owner shall submit sufficient written evidence to the Director justifying that the nonconformity is legal and subject to the protected status specified in this article.
 - 2. The Director shall consider the evidence and other available facts and make a determination as to the legality of the nonconformity and the available protections provided by this article.
 - 3. The Director's determination of legal nonconformity shall be appealable to the Commission in compliance with Chapter 25.98 (Appeals and Calls for Review).

(Ord. 2000 § 2, (2021))

§ 25.50.050. Maintenance and Repairs.

Routine maintenance and repair of uses, structures, or lots, as defined by the Uniform Building Code, which do not increase or alter the nonconformity may be performed. Such maintenance and repairs may not extend the area of nonconformity, and structural alterations may be made only when required by law to assure the safety of occupants. Any maintenance activity or repairs to

a structure for which the value of such maintenance or repairs exceeds 50 percent of the market value of the structure shall be considered substantial construction, as defined by this title, and shall affect the nonconforming status of the structure as set forth in this article.

(Ord. 2000 § 2, (2021))

§ 25.50.060. Revocation.

The Commission may revoke the right to continue a nonconforming use or structure if it deems, based on facts presented to the Commission, that the nonconforming use or structure will have a negative impact on its surroundings. Revocation procedures, including notice and hearing, shall be in compliance with the provisions specified in Sections 25.88.040 (Modifications) and 25.88.050 (Revocations and Suspension).

(Ord. 2000 § 2, (2021))

NONCONFORMING LOTS

§ 25.52.010. Use of Legal Nonconforming Lots.

Any lawfully created lot which becomes nonconforming with regard to lot area, street frontage, lot width, lot depth, or accessibility may continue indefinitely with the nonconformity and may be developed and used as if it were a conforming lot.

(Ord. 2000 § 2, (2021))

§ 25.52.020. Modification of Legal Nonconforming Lots.

Legal nonconforming lots may not be modified in any manner that increases the degree of nonconformity. Where feasible, lot modifications, such as through lot merger or lot line adjustment, are encouraged to eliminate or minimize the degree of nonconformity.

(Ord. 2000 § 2, (2021))

NONCONFORMING STRUCTURES

§ 25.54.010. Continuation of Legal Nonconforming Structures.

- A. May Be Continued. Any legally established nonconforming structure that does not conform to the provisions of this title with regard to maximum permitted height, minimum required setback, lot coverage, and floor area ratio may be continued indefinitely.
- B. Alterations and Additions. Alterations and additions may be made to a nonconforming structure, provided that there shall be no increase in the discrepancy between existing conditions and the standards for the zoning district, and provided that the alteration and addition does not qualify as substantial construction, as defined in this title, ~~or result in the reconstruction of any part of the building envelope that is nonconforming~~, with the following exceptions:
 1. ~~Floor Area Ratio and Lot Coverage Exceptions.~~
 - a. ~~Single-Unit Dwelling Setbacks. A single-unit dwelling with an existing non-conforming setback(s) can reconstruct the exterior wall(s) in the same location and up to the same dimensions, as long as the non-conforming setback is not increased and provided that any new construction meets all other applicable development standards. The provisions of subsection B.2 a-d below shall not apply to this subsection.~~
 - a.b. Reallocation. Floor area of structures that exceed the maximum floor area ratio (FAR) and/or lot coverage for the zoning district in which the property is located may be reallocated within other areas of the ~~property~~~~building~~ as long as the discrepancy between the existing ~~nonconforming~~ condition ~~in the FAR or lot coverage~~ and applicable zoning district standards is not increased and further provided, that any new construction meets all other applicable development standards.
 - b.c. Exception for Residential Structures. Notwithstanding the provisions of subsection B.1.a~~b~~, above, if the reallocated floor area encroaches into the maximum height limit or declining height envelope, a special permit, as set forth in Chapter 25.78 (Special Permits) of this title, may be requested to permit the encroachment, and where the Commission can make the finding that approval of the special permit will provide for the architectural integrity of the structure to be maintained.
 - e.d. Exception for Front Porches and Detached Garages. Nonconforming front porches and one-story detached garages may be rebuilt in the same location and footprint, including encroachment into any required setback. Reconstruction of an existing nonconforming detached garage shall be limited to a two-car garage or a maximum of 450 square feet.
 2. ~~Increase in Residential Units Prohibited. Any increase in the number of residential units of nonconforming structures designed and occupied for residential use shall be prohibited, except as may be permitted for accessory dwelling units pursuant to Section 25.48.030 (Accessory Dwelling Units) of this title.~~
 - 3.2. Limitations on Construction. The following applies to any alteration of or addition to a nonconforming structure.

- a. No more than 50 percent of the exterior first floor walls of the nonconforming structure shall be removed to allow for the alteration or addition to occur. Any alteration or addition inconsistent with this limit shall require that all nonconformities be brought into compliance with the development standards in place at the time of issuance of building permits for the alteration or addition.
- b. For projects where not more than 50 percent of the existing walls are removed and/or no portion of the nonconforming wall is removed, those nonconforming walls that remain in place shall be demonstrated to the satisfaction of the building official to be in sound structural condition, capable of supporting all proposed new construction, and pest free, and shall not be removed as part of the new construction.
- c. For the purposes of this subsection, "removed" shall include the removal, reinforcement, or significant alteration of wall studs or any other integral structural support feature.
- d. In the event that any deviation from these limitations and approved plans occurs through the building permit and construction processes, the applicant/developer shall lose all prior nonconforming rights, and all applicable zoning district standards shall apply.
- e. Exceptions for Designated Historic Structures. The provisions of subsection B.23 above shall not apply to alterations of and additions to designated historic structures. Through the special permit process, as set forth in Chapter 25.78 (Special Permits), a property owner may be granted the ability to remove more than 50 percent of the exterior first floor walls, provided that the primary building façade and any other key contributing feature, as determined by the Planning Commission, are maintained.

4.3. Limitation on Extent of Addition to Residential Structure. In the event of any addition to a nonconforming residential structure located in a nonresidential zoning district, the floor area of such structure may be increased by up to 50 percent of the floor area of the existing structure without a requirement to bring any nonconformity into compliance with the applicable zoning district standards.

(Ord. 2000 § 2, (2021))

§ 25.54.020. Utilities.

This chapter shall not be construed or applied to require the removal of a Federal or State regulated public utility's structures or structures which house or support operating electrical and mechanical equipment only used to provide service to the public, nor to prohibit structural alteration required to accommodate the equipment, provided that there is no change of use or enlargement of the lot area devoted to the use, and provided further that any existing nonconformity variation from related to height limits and/or established setbacks in the applicable zoning district zone are not be increased.

(Ord. 2000 § 2, (2021))

§ 25.54.030. Damage to or Destruction of Legal Nonconforming Structures.

- A. Any nonconforming structure which is damaged or destroyed by any means to the extent of 50 percent or more of its current market value, as determined by a licensed appraiser, may be rebuilt or used thereafter only in compliance with the regulations of the zoning district in which it is located. Exceptions shall apply to multi-unit housing, as set forth in Section

25.54.040 (Residential Structures – Exceptions).

- B. Any nonconforming structure other than a multi-unit residential structure which is damaged or destroyed by any means to the extent of less than 50 percent its current market value, as determined by a licensed appraiser, may be rebuilt to its original condition and the same occupancy and use resumed.
- C. Any nonconforming structure in the Broadway Mixed-Use (BRMU) zoning district which is partially or totally destroyed by catastrophe or natural disaster may be rebuilt to its pre-existing size and dimensions if the same amount of parking is provided on site as existed before the loss.
- D. Unless a building permit is obtained within a period of one year of determination of market value by a licensed appraiser and rebuilding has been initiated within six months of the issuance of a building permit and pursued to completion, or longer time period as may be granted by the Commission pursuant to Section 25.88.030 (Time to Implement – Time Extensions), the nonconforming status of the structure shall expire.

(Ord. 2000 § 2, (2021))

§ 25.54.040. Residential Structures—Exceptions.

- A. Single-Unit Residential Structures. Notwithstanding the provisions of Section 25.54.030 (Damage to or Destruction of Legal Nonconforming Structures), a nonconforming primary single-unit residential structure which is partially or totally destroyed by catastrophe or natural disaster may be rebuilt to its pre-existing size and dimensions, provided that any nonconforming use in such structure may not be continued. In the event of disagreement regarding the size or dimensions of the pre-existing structure, the property owner shall have the burden of proof. If any increase in size or floor area ~~is are~~ made to such structure as a part of reconstruction or remodel the structure shall be subject to the provisions of Section 25.54.010.B (Alterations and Additions).
- B. Multi-Unit Residential Structures. Notwithstanding the provisions of Section 25.54.030 (Damage to or Destruction of Legal Nonconforming Structures), an involuntarily damaged or destroyed multi-unit residential nonconforming structure located in any zoning district except the Innovation Industrial (I-I) zoning district may be reconstructed or replaced with a new structure with the same footprint (including preexisting nonconforming setbacks), height, and number of dwelling units in compliance with current Building and Fire Code requirements and pursuant to California Government Code Sections 65852.25 and 65863.4.

(Ord. 2000 § 2, (2021))

§ 25.54.050. Off-Site Relocation.

When a structure is relocated to another lot, the structure shall be made conforming in all respects with the provisions of this Title 25 and all other applicable laws and regulations, unless any conditions of approval applied to the relocation specifically identify alternative standards.

(Ord. 2000 § 2, (2021))

CHAPTER 25.56 NONCONFORMING USES

§ 25.56.010. Continuation of Legal Nonconforming Uses.

Any use of structure or land which was a lawfully existing use at the effective date of this Title 25 or amendments thereto which does not conform to the use regulations for the zoning district in which it is located may be continued for such time and in such manner as is set forth in this chapter. (Ord. 2000 § 2, (2021))

§ 25.56.020. Restriction on Extension of Legal Nonconforming Uses.

- A. No Physical Expansion. No nonconforming use shall be extended within the structure where it exists beyond the confines of the structure which it occupies or the location upon which it is situated, except as specified below.
 1. The changes are, in and of themselves, in conformance with the provisions of this Title 25.
 2. The changes are limited to minor alterations, improvements, or repairs that do not increase the degree of nonconformity present and do not constitute or tend to produce an expansion or intensification of a nonconforming use.
 3. The changes are required by other laws.
- B. Change in Operating Conditions. A nonconforming use shall not be permitted to increase in intensity of operation. An increase in intensity shall include, but not be limited to, extended hours of operation, substantial remodeling, or an increase in the number of seats or service areas for bars and food establishments.

(Ord. 2000 § 2, (2021))

§ 25.56.030. Change of Use.

- A. The Director may authorize a change from a legally established nonconforming use to the same or similar nonconforming use upon making the finding that the use is similar in character to the existing nonconforming use and does not have the potential to result in adverse impacts on surrounding uses.
- B. Whenever any part of a building, structure, or land occupied by a nonconforming use is changed to or replaced by a use conforming to the use regulations of the zoning district, such premises shall not thereafter be used or occupied by any nonconforming use, even though the building may have been originally designed or constructed for the prior nonconforming use.

(Ord. 2000 § 2, (2021))

§ 25.56.040. Discontinuance of Legal Nonconforming Uses.

- A. Automatic Change Due to Abandonment of Use. If any legal nonconforming use is discontinued for a period of 180 consecutive days or more, subsequent use of the property shall be in conformance with the provisions of this Title 25. Maintenance of a valid business

license shall of itself not be considered a continuation of the use. Remodeling or active marketing shall not constitute abandonment of a nonconforming use so long as such activity complies with the applicable City construction codes and is completed within 12 months of receiving a building permit.

- B. Change of Use Because of Dilapidation. When any building or land which has been used other than in conformity with the zoning district in which it is located and which the Council, after due notice and hearing, has found that the use has become dangerous or injurious to the public health, safety, or welfare by reason of dilapidation, neglect, decay, or otherwise, such use shall cease, and any subsequent use shall comply with the use regulations of the applicable zoning district.
- C. Removal of Structure. If any structure which is occupied by a nonconforming use is removed, the subsequent use of the subject property shall be in conformance with the provisions of this Title 25.

(Ord. 2000 § 2, (2021))

§ 25.56.050. Destruction of a Structure Containing a Legal Nonconforming Use.

Any conforming structure containing a legal nonconforming use which is damaged or destroyed by any means to the extent of 50 percent or more of its current market value, as determined by a licensed appraiser, may be rebuilt ~~or used~~ thereafter only in compliance with the regulations of the zoning district in which it is located.

(Ord. 2000 § 2, (2021))

CHAPTER 25.58
OTHER NONCONFORMING PROVISIONS

§ 25.58.010. Nonconforming Parking.

- A. Generally. Any nonconformity with respect to parking spaces or improvements may continue indefinitely, except that with any change of use, or an expansion or intensification of use, the additional parking required for the change, expansion, or intensification shall be in full compliance with the parking provisions specified in Chapter 25.40 (Parking Regulations).
- B. Broadway Mixed Use – Exception. In the Broadway Mixed-Use (**BRMU**) zoning district, additional parking shall not be required if a structure is totally destroyed by catastrophe or natural disaster so long as the uses in the new structure are the same size as existed before the loss.

(Ord. 2000 § 2, (2021))

§ 25.58.020. Nonconformities Regarding Fences.

- A. Legally established fencing shall be allowed to continue. Where nonconforming fencing is to be replaced with new fencing, it will be subject to the requirements specified in Section 25.31.070 (Fences, Walls, and Hedges).
- B. Any fences and landscaped buffers that are required along property lines shall be provided at the time of any expansion or intensification of a nonresidential use, unless this requirement is modified or waived through the approval of a minor modification, granted in compliance with Chapter 25.74 (Minor Modifications).

(Ord. 2000 § 2, (2021))

§ 25.58.030. Nonconforming Landscaping.

Where a nonresidential property has nonconforming landscaping with regard to required landscaping coverage, type of landscaping, or other landscaping requirement, such nonconformity may continue and shall not be required to be brought into compliance with applicable standards. However, the property owner or agent, at the time of submittal of any discretionary land use application for the property, shall be required to submit a landscape plan to show how existing landscaped areas will be improved to comply with the provisions of Chapter 18.17 (Water Conservation in Landscape) of the Municipal Code and 23 CCR § 490-495 the (California Code of Regulations). ~~Sections 490-495, Chapter 2.7, Division 2 Title 23 Model Water Efficient Landscape Ordinance.~~

(Ord. 2000 § 2, (2021))