

Chapter 30.76

NONCONFORMITIES

30.76.010 Purpose.

A. This Chapter is enacted to accomplish the regulation and eventual elimination of nonconforming uses and structural nonconformities.

B. This Chapter is not intended to restrict the City's ability to eliminate a public nuisance.

C. This Chapter is not intended to limit the City's ability to condemn a use or structure and pay to the owner thereof reasonable compensation.

D. Nothing in the Chapter shall preclude the City from declaring a building, structure, improvement or use to constitute a danger to the safety, health or welfare of the public and to take lawful action to remedy that danger.

E. This Chapter does not preclude the City from requiring an owner of a structure which has been constructed, expanded or altered either without a required building permit or contrary to the provisions of an issued building permit to modify or remove such structure or to obtain a required building inspection and final approval.

30.76.020 Nonconforming Use. A "nonconforming use" is a use that:

A. Is not within the scope, either expressly or implicitly, of the zoning restrictions set forth in this Chapter that announce the purpose, intent, permissible uses, accessory uses, and prohibited uses for the zone in which the particular use is located;

B. Did comply with the zoning restrictions contained in the Zoning Ordinance in effect at the time the use was created and was lawfully created; and

C. Has not been terminated in accordance with the provisions of this Chapter.

30.76.030 Structural Nonconformity. "Structural nonconformity" is a physical aspect of a building, structure or improvement that:

A. Does not conform to the development standards announced in this Chapter to include, without limitations, height, setbacks, lot area, parking, type of building, or coverage of lot by structure;

B. Did comply with the development standards contained in the Zoning Ordinance in effect at the time the building, structure or improvement was constructed or structurally altered and was lawfully constructed; and

C. Has not been terminated in accordance with the provisions of this Chapter.

30.76.040 Establishment of Nonconformity. In order to legally continue a use or structural aspect of a building, structure or improvement that is not consistent with the zoning restrictions of this Chapter, the person asserting a claim of nonconforming use or structural nonconformity has the burden of proof to establish that the use or structural feature qualifies in accordance with the provisions of this Chapter.

30.76.050 Prohibition on Enlargement. It is unlawful for any person to enlarge, extend, expand or in any other manner change a nonconforming use or a structural nonconformity so as to increase its inconsistency with the zoning restrictions of this Chapter.

30.76.060 Repair/Maintenance of Structural Non-Conformity. Repairs and maintenance may be performed on structural nonconformities so long as the nonconformity is not enlarged, relocated or increased in intensity.

30.76.070 Remodeling or Reconstruction of Building with Structural Nonconformity.

A. Any application for a project to restore or reconstruct a building that had one or more structural nonconformities and has been damaged to more than 50 percent of its valuation, as established by the Planning Director at the time of such application, shall be approved only if the project complies with all of the regulations contained in this Code.

B. Any application for a project for the remodeling of a building with one or more structural nonconformities at an estimated cost of more than 50 percent of the building's value, as established by the Planning Director at the time of application, shall be approved only if the project complies with all of the regulations of this Code.

C. Any project for a building with one or more structural nonconformities that is damaged to less than 50 percent of its valuation or that is the subject of a remodeling project at an estimated cost of less than 50 percent of the building's value, as determined by the Planning Director at the time of the application, may be approved with the continuation of the nonconformities so long as the nonconformities are not enlarged, extended or expanded. However, the owner must covenant to complete the project within 18 months of the issuance of the required permits, or, in the alternative, to abandon the structural nonconformities and comply with the regulations contained in this Code.

D. In applying this Section to remodeling, the City shall consider all remodeling accomplished in the twelve months preceding the application in determining whether "more than 50 percent of the building's value" is involved in the present application.

30.76.075 Nonconforming garage parking-requirements for compliance. A project involving the remodeling or enlargement of an existing residential structure which fails to conform to the garage off-street parking requirements of this Title shall be required to comply with such garage off-street parking requirements unless both of the following conditions apply: [Ord. 695]

A. The valuation of the project is less than 50% of the valuation of the existing structure; and

B. The project has been designed so that after remodel or expansion, there is an amount of allowable floor area for the property which will remain unconstructed and unused for any purpose other than garage off-street parking, with the amount of such area commensurate with the amount of floor area required to satisfy the garage off-street parking requirements for the project.

30.76.080 Nonconforming Lots. A single building may be constructed on a lot of less area than required by this Chapter so long as the lot is a legal lot of record, has not merged, and is not mergeable.

30.76.090 Termination of Nonconforming Uses - General.

A. A nonconforming use may be replaced with the same or a similar use so long as the subsequent use does not enlarge, extend, expand or in any other manner increase the inconsistency with the regulations of this Chapter.

B. If a nonconforming use is changed to a use that conforms to or is more consistent with the regulations of this Chapter, then any entitlement to maintain the nonconforming use is modified in that same degree.

C. A nonconforming use which remains inactive, as specified in the provisions in this Chapter, shall be deemed to have ceased, in accordance with the provisions of this Chapter, and shall not thereafter be renewed.

D. If a nonconforming use or structural nonconformity is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this Chapter, then, in addition to any other consequences imposed by this Code, any entitlement to thereafter maintain the nonconformity is terminated.

E. Unless otherwise specified in this Chapter, a nonconforming use terminates if inactive for 180 consecutive days.

30.76.100 Nonconforming Rental Dwelling Use. A nonconforming rental dwelling use is inactive if the rental dwelling area is not occupied and is not subject to being occupied in accordance with an existing lease or rental agreement:

A. Entered into for a fair market rent; and

B. Entered into by the tenant with the intention of occupying the unit.

30.76.110 Nonconforming Guest Dwelling Use.

A. A nonconforming guest dwelling use is inactive if the unit is not occupied by a guest during any 730-day period.

B. A nonconforming guest dwelling use is terminated if the unit is the subject of a rental or lease agreement.

30.76.120 Nonconforming Multi-Family Dwellings. Nonconforming multi-family dwellings of three or more units may be reconstructed or structurally altered so long as neither the number of dwelling units for each complex nor the number of bedrooms for each unit is increased; the height of any structure is not increased; existing building profiles are maintained;

and the number and size of existing parking spaces is not reduced.

30.76.130 Redevelopment Project. Except in cases where a building has been damaged to more than fifty percent (50%) of its valuation, as determined in accordance with this Chapter, if a property owner proposes a project that will replace or develop all or a portion of an existing structure which contains several nonconformities, the City may allow the owner to continue certain nonconformities if:

A. The Planning Commission concludes based on specific findings of fact that:

1. The proposed project will not expand an existing nonconformity; and

2. There is a public benefit in obtaining Code compliance to be derived from the elimination of one or more of the existing nonconformities that is not outweighed by the public detriment of allowing other, existing nonconformities to continue;

B. The Design Review Board concludes based on specific findings of fact that the proposed project design will improve the aesthetic quality of the community and will not violate any of the design criteria set forth Chapter 23.08.

C. A nonconforming floor area ratio shall not be maintained by this Section unless the Planning Commission finds that to do so will not have an adverse impact on the neighborhood.