

Title 18 – Development Code
Article 6 –
Nonconforming Uses, Structures, and Parcels

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Chapter 18.72 -- Nonconforming Uses, Structures, and Parcels

Sections:

- 18.72.010 – Purpose and Intent
- 18.72.020 – Definitions
- 18.72.030 – Proof of Legal Nonconformity
- 18.72.040 – Nonconforming Parking Provisions
- 18.72.050 – Nonconforming Adjustments

18.72.010 – Purpose and Intent

- A. Purpose.** This Article provides regulations for nonconforming land uses, structures, and parcels which were lawful before the adoption of the Development Code, but which are prohibited, regulated, or restricted differently under the terms of the Development Code or a subsequent amendment.
- B. Intent.**
1. In order to limit the number and extent of nonconformities created by adoption of the Development Code, it is the City's intent to generally allow nonconformities to continue until they are removed, but not to encourage their survival.
 2. It is further the intent that nonconformities shall not be altered, enlarged, expanded, extended, moved, reestablished, or changed to another nonconforming use after abandonment or discontinuance or restored after involuntary destruction, except in compliance with this chapter.
 3. The intent is that nonconformities, including certain classes of nonconforming uses, nonconforming structures of nominal value, and certain uses not meeting screening, performance, or parking standards, are discontinued or become conforming.
 4. This Article shall not apply to any use or structure established in violation of the adopted Zoning Ordinance for the City, unless the use or structure presently conforms with the provisions of the Development Code.

18.72.020 – Definitions

- A. Cessation or Discontinuance.** Cessation or discontinuance of a nonconforming use shall be defined as an abandonment of the use, irrespective of the owner's or occupant's intent.
- B. Illegal Nonconformity.** A parcel or a sign, structure, or use that was illegally constructed, created, installed, or initiated without proper permits or approvals, does not comply with the provisions of the Development Code. An illegal nonconformity is not eligible for any of the protections provided by this chapter.
- C. Nonconforming Parcel.** A parcel legally created before the effective date of the Development Code, or subsequent amendment, which does not comply with the minimum area, depth, width, or other requirements.

- D. **Nonconforming Sign.** A sign legally existing before the effective date of the Development Code, or subsequent amendment, which does not comply with the sign regulations.
- E. **Nonconforming Structure.** A structure legally existing before the effective date of the Development Code, or subsequent amendment, which does not conform to the requirements of the zone in which it is located.
- F. **Nonconforming Use.** A use of land and/or a structure, whether conforming or nonconforming, legally existing before the effective date of the Development Code, or subsequent amendment, but which is no longer allowed in the zone in which it is located.

18.72.030 – Proof of Legal Nonconformity

The property owner has the burden to prove legal nonconformity and the related protected status that comes with legal nonconformity.

- A. **Property Owner's Responsibility.** The property owner shall provide sufficient evidence to the satisfaction of the Director that the subject property or use is a legal nonconformity.
- B. **City is Not Responsible.** It is not the responsibility of the City to prove the absence of legal nonconformity.
- C. **Director's Determination.**
 1. The process begins with the property owner submitting sufficient written evidence to the Director justifying that the nonconformity is legal and subject to the protected status.
 2. The Director may decide the matter favorably on the documentation provided. In the alternative, the Director shall conduct an administrative hearing and provide notice of the hearing to the property owner.
 3. The property owner shall have the opportunity to appear and provide oral testimony on the legality of the nonconformity.
 4. The Director shall consider the evidence and make a determination as to the legality of the nonconformity and the available protections.
 5. The Director's determination of legal nonconformity shall be appealable.

18.72.040 – Nonconforming Parking Provisions

Where off-street parking spaces are provided and maintained in connection with a structure or use at the time the Development Code became effective and later become insufficient to meet the requirements for the use with which it is associated, or where no parking spaces have been provided, the structure may be expanded only if off-street parking is provided for the existing structure or use as well as the expansion in compliance with the standards identified in Chapter 18.30. The Director shall have the discretion to waive this provision by submittal of a parking study per the Institute of Transportation Engineers (ITE Parking Manual) or similar material to demonstrate the intended use of the lot.

18.72.050 – Nonconforming Adjustments**A. Nonconforming Adjustments.**

1. Nonconforming adjustments provide a procedure for City review and decision on proposals to continue a legal nonconforming use, allow the substitution of one nonconforming use for another nonconforming use, or allow minor modifications of applicable Development Code standards to allow the expansion of the use or structure, when pertaining to existing uses or structures, and not the initiation or construction of new uses or structures.
2. Nonconforming Adjustments are subject to special findings.

B. Authority to Allow Adjustments.

1. A nonconforming adjustment application shall be reviewed, and approved or disapproved by the Director.
2. The action of the Director on a nonconforming Adjustment may be appealed.
3. Nonconforming adjustments can be made up to a maximum of 10 percent of the allowable design standard.

C. Special Findings for Nonconforming Adjustments. The Review Authority may approve an adjustment, with or without conditions, only if it first makes all of the following findings:

1. The nonconforming adjustment is necessary because the use or structure was legal when it was originally initiated or constructed, but changes in the Development Code or the applicable zone development standards caused the use or structure to become legal nonconforming;
2. Approving the nonconforming adjustment for the use or structure will not pose a serious hazard to the public health or safety of persons residing or working on or adjacent to the parcel; and
3. The location, size, and operating characteristics of the legal nonconforming use or structure are compatible with the existing and future land uses in the vicinity.
4. The modification does not increase the nonconforming situation or represent a significant increase of the nonconforming design standard.

Chapter 18.74 -- Nonconforming Uses

Sections:

- 18.74.010 – Continuation of Legal Nonconforming Uses
- 18.74.020 – Effect of Conditional/Minor Use Permit Requirements
- 18.74.030 – Modifications or Expansions of Legal Nonconforming Uses
- 18.74.040 – Discontinuance of Legal Nonconforming Uses

18.74.010– Continuation of Legal Nonconforming Uses

The continuance of a legal nonconforming use is allowed subject to all of the following:

- A. Change of Ownership.** Change of management, ownership, or tenancy of a nonconforming use shall not affect its nonconforming status; provided, the use and intensity of use, as determined by the Director, does not change.
- B. Additional Development.** Additional development of any property on which a nonconforming use exists shall require that all new uses be in compliance with all of the applicable provisions of the Development Code.
- C. Conversion of a Nonconforming Use.** If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed.
- D. Changes to a Nonconforming Use.** A nonconforming use shall not be established or replaced by another nonconforming use, nor shall any nonconforming use be expanded or changed, except as provided in Section 18.72.050.

18.74.020– Effect of Conditional/Minor Use Permit Requirements

- A. Previous Conditional/Minor Use Permit in Effect.** A use authorized by a Conditional Use Permit or Minor Use Permit, but not allowed by the Development Code, may continue, but only in compliance with the original Conditional Use Permit or Minor Use Permit conditions of approval.

18.74.030 – Modifications or Expansions of Legal Nonconforming Uses

Any expansion or modification of a legal nonconforming use shall only be allowed in compliance with all applicable provisions of the Development Code.

18.74.040 – Discontinuance of Legal Nonconforming Uses

- A. Nonconforming Use.** If a nonconforming use ceases or is discontinued for a continuous period of 180 or more consecutive days, its legal nonconforming status is lost, and the continued use of the property shall be in compliance with all of the applicable provisions of the Development Code.
- B. Cessation or Discontinuance.** A nonconforming use or structure shall be considered ceased or discontinued when any of the following occur:

1. Voluntary (not compelled by government or act of nature) abandonment of the use, despite the owner's or occupant's intent;
2. Discontinuance of a use regardless of intent to resume the use;
3. The intent of the owner to cease or discontinue is apparent, as determined by the Director;
4. Where characteristic furnishings and equipment associated with the use are removed and not replaced with equivalent furnishings and equipment, and where normal occupancy and/or use is no longer evident; or
5. Where there are no business receipts or utility charges or payments for the 180-day period.

Chapter 18.76 -- Nonconforming Structures

Sections:

- 18.76.010 – Continuation of Legal Nonconforming Structures
- 18.76.020 – Destruction of Legal Nonconforming Structures
- 18.76.030 – Residential Exceptions

18.76.010 – Continuation of Legal Nonconforming Structures

- A. Continuation of a Legal Nonconforming Structure.** A legal nonconforming land use and the use of a legal nonconforming structure may be continued, including transfers of ownership; provided that continuation complies with the requirements of this section, or is exempt under Section 18.74.030.
- B. Nonconforming Structures.** A legal nonconforming structure may be maintained subject to the following.
1. **Ordinary Maintenance and Repairs.** A nonconforming structure may undergo ordinary maintenance and repairs.
 2. **Involuntary Damage to a Nonconforming Structure.** A nonconforming structure involuntarily damaged to an extent of 75 percent or more of its appraised value immediately before the damage may be restored only if made to conform to all applicable provisions of the Development Code. Any residential structure(s), including multi-family structures, in a residential zone destroyed by a manmade catastrophe or natural disaster (e.g., fire, earthquake, flood, windstorm) and any destruction covered by an official declaration of a state of emergency, may be reconstructed up to the original size, placement, and density. Reconstruction shall commence within 180 days after the date of the damage or catastrophe and shall be diligently pursued to completion.
 3. **Nonstructural Alterations to Residential Structure.** Necessary repairs and desired alterations that are not structural may be made to a nonconforming residential structure, including multiple-family structures, only if the Building Official first determines that the repairs are necessary for public safety purposes and the cost does not exceed 75 percent of the appraised value of the nonconforming structure.
 4. **Additions to Nonconforming Residential Structure.** Additions may be made to a residential structure that are nonconforming due to their placement on the parcel as long as the additions are in compliance with all of the applicable regulations of the Development Code.
 5. **Nonstructural Alterations to Commercial, Industrial, Mixed-Use, or Institutional Structure.** Structural elements may be modified or repaired only if the Building Official first determines that the modification or repair is immediately necessary to protect the health and safety of the public or occupants of the nonconforming structure, or adjacent property and the cost does not exceed 75 percent of the appraised value of the nonconforming structure.
 6. **Interior Partitions or Other Nonstructural Improvements.** Changes to interior partitions or other nonstructural improvements and repairs may be made to a

nonconforming commercial, industrial, mixed-use, or institutional structure; provided that the cost of the desired improvement or repair shall not exceed 75 percent of the appraised value of the nonconforming structure over any consecutive five-year period.

7. **Development of a Parcel With a Nonconforming Structure.** Any additional development of a parcel with a nonconforming structure shall require that all new structures be in compliance with the Development Code.
8. **Appraised Values.** All appraised values referred to in this section shall be determined by a State licensed appraiser and the appraisal shall be submitted to the Building Official.
9. **Use of a Nonconforming Structure.** If the use of a nonconforming structure ceases or is discontinued for a continuous period of 180 or more consecutive days, its legal nonconforming status is lost, and the structure shall be removed or altered to conform to all of the applicable provisions of the Development Code.

18.76.010 – Destruction of Legal Nonconforming Structures

A. Termination by Destruction. Nonconforming status shall terminate if a nonconforming nonresidential structure, or a conforming structure occupied by a nonconforming use, is involuntarily damaged or destroyed as a result of manmade catastrophe or natural disaster and except as follows:

1. **75 Percent or Less.** If the cost of repairing or replacing the damaged portion of the structure is 75 percent or less of the appraised value of the structure immediately before the damage, the structure may be restored to no more than the same size and use, and the use continued, if the restoration is started within 180 days following the date of damage and is diligently pursued to completion.
2. **Exceeds 75 Percent.** If the cost of repairing or replacing the damaged portion of the structure exceeds 75 percent of the appraised value of the structure immediately before the damage, or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full compliance with all of the applicable regulations for the zone in which it is located and the nonconforming use shall not be resumed.
3. **Appraised and Estimated Values.** All appraised values referred to in this section shall be determined by a State licensed appraiser and submitted to the Building Official. Estimates of repairing or replacing the damaged portion of the structure for purposes of this section shall be made by or shall be reviewed and approved by the Building Official and shall be based on the minimum cost of construction in compliance with the Building Code.

B. Physically Unsafe or Unlawful Structures.

1. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe due to lack of repairs or maintenance, and is declared by the Building Official to be unsafe by reason of physical conditions, pursuant to Municipal Code Chapter 8.08, it may be ordered demolished or rebuilt/repared and shall not be rebuilt, repaired, or restored except in full compliance with all of the applicable regulations of the zone in which it is located.
2. Nothing in this chapter shall be deemed to prevent the restoring or strengthening to a safe condition of any structure, or part of a structure, declared to be unsafe by the Building Official.

C. Termination by Operation of Law.

1. **Elimination of Nonconformities/Amortization.** Nonconforming uses and structures shall be discontinued and removed, altered to conform, or altered to decrease the degree of nonconformity, within the time specified in Table 7-1.

**Table 6-1
Amortization Schedule**

Description of Nonconformity	Length of Amortization ⁽¹⁾
Nonconforming uses. In any zone, removal of a nonconforming use that does not occupy a structure and does not have an approved site plan or a use occupying a structure having a value of less than \$5,000 as determined by the County Assessor’s Office.	Two years
Nonconforming structures. Removal or alteration of a nonconforming structure having a value of less than \$5,000 as determined by the County Assessor’s Office.	Two years
Off-Street Parking and Landscaping. Elimination of nonconformity of required amount of off-street parking, surfacing, and landscaping for all nonresidential uses.	10 years
Screening and Performance Standards. Elimination of nonconformity with screening requirements and performance standards in all commercial and industrial zones.	Two years
Signs. Any sign that is relocated, changed structurally, or receives new sign face shall be made to conform immediately	Five years
Nonconforming uses and structures.	
1. In a residential zone a use that is neither an allowed use nor a conditional use.	
2. In a commercial or industrial zone, a use that is neither an allowed use nor a conditional use.	
3. Structures over \$5,000 in valuation (except for dwellings in a nonresidential zone)	
Type I and Type II structures (fire resistive) ⁽²⁾	20 years
Type III (heavy timber construction and ordinary masonry construction). ⁽³⁾	15 years
Type IV and Type V structures (light incombustible frame and wood frame construction). ⁽²⁾	10 years

Notes.

- (1) Amortization shall be calculated from the effective date the Development Code or amendment establishing the nonconformity.
- (2) Type of construction, as defined in the Building Code.

2. **Exceptions to Provisions for Elimination of Nonconformities.** The following nonconforming uses need not be removed and under certain conditions may be expanded; provided they are subject to the applicable provisions of this Section.
 - a. In any zone, a residential use may be continued provided that the number of dwelling units is not increased.
 - b. In a residential zone, a nonresidential use that is an allowed use or a conditional use with a Conditional Use Permit may be continued. Landscaping, parking, and screening shall be required in compliance with Article 3.
 - c. In a commercial zone, a use that is an allowed use or a conditional use with a Conditional Use Permit may be continued. Expansion of the area occupied by

the use by no more than 10 percent may be approved with a Conditional Use Permit within any five-year period. Landscaping, parking, and screening shall be required in compliance with Article 3.

- d. In an industrial zone, a use that is an allowed use or a conditional use in an industrial zone may be continued; provided that nonconformity with screening, performance, parking, and landscaping requirements shall be eliminated. A Conditional Use Permit may be approved for the expansion of the floor area or the site area.
- e. Nothing in this chapter shall be construed or applied to require the cessation, discontinuance, removal, or termination or to prevent the alteration, maintenance, modernization, rebuilding, reconstruction, repair, or replacement and continued use of public utility structures, equipment, and facilities; provided that there is no change of use nor enlargement of those uses.
- f. A Conditional Use Permit may be approved to extend the life of nonconforming sign for no more than five additional years.

18.76.030– Residential Exceptions

- A. Reconstruction or Replacement – Single-Family Dwelling.** An involuntarily damaged or destroyed single-family nonconforming dwelling may be reconstructed or replaced with a new structure with the same footprint, in compliance with applicable Building and Fire Code requirements.
- B. Reconstruction or Replacement – Multi-Family Dwelling.** An involuntarily damaged or destroyed multi-family nonconforming dwelling unit or structure may be reconstructed or replaced with a new unit or structure with the same footprint, including preexisting nonconforming setbacks, height, and number of dwelling units, in compliance with applicable Building and Fire Code requirements and Government Code Section 65863.4.

Chapter 18.78 -- Nonconforming Parcels

Sections:

18.78.010 – Nonconforming Parcels – Legal Building Sites

18.78.020 – Subdivision of a Nonconforming Parcel

18.78.030 – Merger of Nonconforming Parcels

18.78.010– Nonconforming Parcels – Legal Building Sites

A single nonconforming parcel that does not comply with the applicable area, depth, or width, requirements of the Development Code is a legal building site if it meets at least one of the following criteria, as documented to the satisfaction of the Director by evidence furnished by the applicant.

- A. **Approved Subdivision.** The parcel was created by a recorded subdivision;
- B. **Individual Parcel Legally Created by Deed.** The parcel is under single ownership and was legally created by a recorded deed before the effective date of the provision which made the parcel nonconforming;
- C. **Variance or Lot Line Adjustment.** The parcel was approved through the Variance procedure or resulted from a lot line adjustment; or
- D. **Partial Government Acquisition.** The parcel was created in compliance with the provisions of the Development Code, but was made nonconforming when a portion was acquired by a governmental entity so that the parcel size is decreased not more than 20 percent and the yard facing a public right-of-way was decreased not more than 75 percent

18.78.020 – Subdivision of a Nonconforming Parcel

No subdivision shall be approved which would increase the nonconformity of an existing parcel or any nonconforming use on the parcel.

18.78.030 – Merger of Nonconforming Parcels

Nonconforming contiguous parcels held by the same owner shall be involuntarily merged if one or more of the parcels does not conform to the minimum parcel size to allow use or development in compliance with the Development Code and in compliance with Section 18.56.040 and Government Code Section 66451.11.