

PROPOSED AMENDED CHAPTER 17.64

Chapter 17.64 - NONCONFORMING USES, STRUCTURES, AND PARCELS

Sections:

17.64.010 - Purpose.

17.64.020 - Application.

17.64.030 - Nonconforming uses and structures.

17.64.040 - Nonconforming parcels.

17.64.010 - Purpose.

This chapter establishes uniform provisions for the regulation of legal nonconforming land uses, structures, and parcels. For the purposes of this chapter, a “nonconforming land use, structure, and parcel” within the city is one that was lawfully established, constructed, or subdivided before the adoption or amendment of this title, but which would be prohibited, regulated, or restricted differently under the current terms of this title or future amendments to this title. It is the intent of this chapter to encourage the continuing improvement of the city, by limiting the extent to which legal nonconforming uses and structures may continue to be used, expanded, or replaced, while allowing for proper maintenance and improvements in their appearance.

17.64.020 - Application.

- A. The provisions of this chapter apply to legal nonconforming uses, structures, and parcels located within any zoning district in the city.
- B. This chapter does not apply to land uses, structures, and lots that were illegally established, constructed, or divided. These illegal uses, structures, and lots are subject to Section 17.90.040 (Violations—Enforcement) of this title.
- C. The provisions of this chapter will not be construed or applied to require the termination, discontinuance or removal; or prevention of expansion, modernization, replacement, repair, maintenance, alteration, reconstruction, or rebuilding of public utility buildings, structures, equipment and facilities; provided, there is no change of use or increase in the area of the property used.

17.64.030 - Nonconforming uses and structures.

- A. **Continuation of Use.** Any nonconforming use may be maintained and continued, provided that there is no increase or enlargement of the area or space occupied by or devoted to the nonconforming use. Alterations that do not increase or enlarge a nonconforming use may be approved. For the purposes of this section, “increase or enlargement of the area or space, occupied by or devoted to the nonconforming use” means, an increase in height; square footage additions; additions to existing rooms; construction of new rooms.
- B. **Change of Ownership.** A change of ownership, tenancy, or management of a nonconforming use will not affect its status as a legal, nonconforming use.
- C. **Abandonment or Discontinuance of Use.** A nonconforming use that is abandoned or discontinued for a continuous period of 180 days or more may not be reestablished, and

PROPOSED AMENDED CHAPTER 17.64

the subsequent use of the structure or site must be in conformity with the regulations for the district in which it is located and this title. Abandonment or discontinuance includes any cessation of a use regardless of intent to resume the use.

1. Exception. The time necessary to complete review of a building permit application submitted within the 180-day period, and subsequent related construction activities will not be counted towards the 180 days. However, the time following the lapse of a building permit application or expiration of an issued building permit will be counted towards the 180 days.
- D. Intensification of Use. A nonconforming use is not permitted to substantially change in mode or character of operation, including, but not limited to, addition of uses, or a change in operational hours..
 - E. Change of Use. A nonconforming use that is changed to, or replaced by, a conforming use will result in termination and subsequent abandonment of any nonconforming use and may not again be used as or the structure occupied by a nonconforming use.
 - F. Replacement of a Nonconforming Use Prohibited. The nonconforming use of a structure or site may not be changed to another nonconforming use.
 - G. Routine Maintenance and Repair. Routine maintenance and repairs may be performed on a structure, the use of which is nonconforming, and on a nonconforming structure. Exterior nonconforming elements including, but not limited to: stairways, decks, balconies, chimneys, and retaining walls may be replaced in their entirety, if, upon finding in a report prepared by a State of California licensed civil engineer, that, due to a deteriorated condition, such structure is unsafe, and routine repair is infeasible.
 - H. Alterations and Enlargements of Nonconforming Structures. A nonconforming structure may be altered provided that the alteration work complies with all current provisions of this code. A nonconforming structure may not be enlarged unless required by law, or unless the enlargement will result in the elimination of the nonconformity.
 - I. Restoration Due to Significant Damage or Destruction Caused by a Catastrophic Event.
 1. Non-residential structure and single-family dwelling unit. If a nonresidential, nonconforming structure or a single-family dwelling unit is destroyed by a catastrophic event (e.g., fire or other calamity, by act of God, or by the public enemy) to an extent greater than 50%, the structure may not be restored except in full conformity with the regulations for the district in which it is located and this code.
 - (a) The calculation of the extent of damage or partial destruction for the purposes of this subsection will be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it previously existed. Estimates for this purpose will be made by or will be reviewed and approved by the director. The estimated replacement value of an existing structure will be determined using tables of reconstruction costs published by the International Conference of Building Officials. The type of construction will be determined, and the cost per square foot will be

PROPOSED AMENDED CHAPTER 17.64

derived from the tables. This cost will then be multiplied by the number of gross square feet in the structure to obtain the estimated reconstruction cost of the structure.

2. Multifamily dwelling unit. If a nonconforming multifamily dwelling unit is damaged or destroyed by a catastrophic event (e.g., fire or other calamity, by act of God, or by the public enemy) such structure may be reconstructed or replaced up to its pre-damaged size and number of dwelling units as provided by state law (Government Code section 65852.25), provided:
 - (a) The applicant provides documentation satisfactory to the director supporting the claim that the damage or destruction occurred involuntarily.
 - (b) No expansion of the gross floor area or number of units occurs.
 - (c) The reconstruction work or replacement structure is in compliance with this code as long as the pre-damage size and number of dwelling units are maintained.
 - (d) A building permit is issued within 24 months after the date of destruction and the construction is diligently pursued to completion.

If the preceding requirements are not met, the replacement work or structure must comply with all current requirements of this code in effect on the date a building permit is issued.

- J. Voluntary Demolition and Reconstruction of a Nonconforming Residential Structure. Any voluntary demolition and proposed reconstruction of a nonconforming residential structure that results in more than 50% demolition of both of the exterior wall surface area and building footprint, (measured from exterior wall to exterior wall), either in a single application or multiple applications over a five-year period, must be completely reconstructed in conformance with current code requirements. For purposes of this subsection, "exterior wall surface area" means the full height of exterior walls from grade to roof including existing framing, exterior sidings, and interior sidings of the exterior walls.
- K. Limitation on Other Uses or Structures. So long as a nonconforming use or structure exists upon a parcel, no new use or structure may be constructed, established, or installed on the parcel, except as specifically allowed by this title.

17.64.040 - Nonconforming parcels.

- A. Building Permitted. A nonconforming parcel of record that does not comply with the access, area, or width requirements of this title for the zoning district in which it is located, will be considered a legal building site, if it meets at least one of the criteria specified by this section. The applicant must provide sufficient evidence to establish the applicability of one or more of the following:
 1. Approved subdivision. The parcel was created through a subdivision approved by the city or county.
 2. Lot line adjustment. The parcel resulted from a lot line adjustment.

PROPOSED AMENDED CHAPTER 17.64

3. Partial government acquisition. The parcel was created in compliance with the provisions of this title but was made nonconforming when a portion of the parcel was acquired by a governmental entity.
- B. Additional Buildings or Structures Not Permitted. No building permit may be issued for any additional building or structure to be erected on a nonconforming parcel that fails to satisfy one or more of the criteria in subsection (A) of this section.
- C. Further Division or Reduction of Parcel - Prohibited. Where structures have been erected on a nonconforming parcel, the area where structures are located may not be later divided so as to reduce the building site area and/or frontage below the requirements of the applicable zoning district or other applicable provisions of this title or Title 16 (Subdivisions) of this code, or to make the use of the parcel more nonconforming.