

SEC. 10-1.2900 NONCONFORMING USES

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SEC. 10-1.2905 PURPOSE.

Existing uses and structures that do not conform to the regulations of the District wherein located shall be subject to the following specific regulations in addition to general regulations contained herein in order to permit the continued operation of such uses while guarding against such uses becoming a threat to more appropriate development.

SEC. 10-1.2910 NONCONFORMING STRUCTURES.

A structure that lawfully existed prior to the effective date of this Ordinance is a legal nonconforming structure, and may continue even though the structure fails to conform to the present requirements of the land use district in which it is located. A legal nonconforming structure may be maintained as follows:

- a. A legal nonconforming structure that is damaged to an extent of one-half or more of its replacement cost immediately prior to such damage may be restored only if made to conform to all provisions of this Ordinance. However, any residential structure(s), including multi-family, in a residential land use district destroyed by a catastrophe, including natural disasters (firestorms, earthquakes) and official states of emergency, may be reconstructed up to the original size, placement, and density. However, reconstruction shall commence within two years after the catastrophe.
- b. Necessary repairs and desired alterations that are not structural may be made to a legal nonconforming residential structure(s), including multi-family, located in a residential land use district unless the City Building Official determines that such repairs are necessary for public safety purposes and the cost does not exceed one-half of the replacement cost of the legal nonconforming structure.
- c. Reasonable repairs and alterations may be made to legal nonconforming commercial, industrial, or institutional structures, provided that no structural alterations shall be made which would prolong the life of the supporting members of a structure, such as bearing walls, columns, beams, or girders. Structural elements may be modified or repaired only if the Building Official determines that such 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 one-half of the replacement cost of the legal nonconforming structure. However, improvements required to reinforce non-reinforced masonry structures shall be permitted without replacement cost limitations, provided that such retrofitting is strictly limited to compliance with earthquake safety standards.

- d. Additions may be made to residential structures that are non-conforming due to their placement on the parcel as long as the additions are consistent with current regulations.
- e. Changes to interior partitions or other nonstructural improvements and repairs may be made to a legal nonconforming commercial, industrial, or institutional structure, provided that the cost of the desired improvement or repair shall not exceed one-half of the replacement cost of the nonconforming structure over any consecutive 5-year period.
- f. The replacement cost shall be determined by the Planning Director.
- g. Any additional development of a parcel with a legal nonconforming structure will require that all new structures be in conformance with this Ordinance.
- h. If the use of a nonconforming structure is discontinued for a period of six or more consecutive calendar months, the structure shall lose its legal nonconforming status, and shall be removed or altered to conform to the provisions of this Ordinance. A use of a legal nonconforming structure shall be considered discontinued when any of the following apply:
 - (1) The intent of the owner to discontinue use of the nonconforming structure is apparent, as determined by the Planning Director.
 - (2) Where characteristic furnishings and equipment associated with the use have been removed and not replaced with equivalent furnishings and equipment during this time, and where normal occupancy and/or use has been discontinued for a period of 6 or more consecutive calendar months.
 - (3) Where there are no business receipts available for the 6-month period.
- i. The Planning Director shall permit a nonconforming structure to be reoccupied with a conforming use without complying with the building dimensional requirements (pertaining to height, setbacks and/or lot coverage) in this Ordinance where the use of the nonconforming structure has been discontinued for 6 months or more and if the Planning Director determines that a portion of the structure must be removed in order for the structure to conform to the provisions of this Ordinance and/or the City Off-Street Parking Ordinance. All other requirements, including the Uniform Building Code, shall apply to the reoccupancy of the structure.

SEC. 10-1.2915 NONCONFORMING USES.

A nonconforming use is one that lawfully existed prior to the effective date of this Ordinance, but which is no longer permitted in the land use district in which it is located. The continuance of a legal nonconforming use is subject to the following:

- a. Change of ownership, tenancy, or management of a nonconforming use shall not affect its legal nonconforming status, provided that the use and intensity of use, as determined by the Planning Director, does not change.
- b. If a nonconforming use is discontinued for a period of six or more consecutive calendar months, it shall lose its legal nonconforming status, and the continued use of the property shall be required to conform with the provisions of this Ordinance.
- c. Additional development of any property on which a legal nonconforming use exists shall require that all new uses conform to the provisions of this Ordinance.
- d. If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed.
- e. No nonconforming use may be established or replaced by another nonconforming use, nor any nonconforming use be expanded or changed, except as provided in subsections “f” through “h” below.
- f. A nonconforming use of a portion of a nonconforming commercial or industrial center or complex may be established or replaced by another similar nonconforming use when the Planning Director finds:
 - (1) That the nonconforming use is similar to or less intensive than the ones originally allowed in the center or complex;
 - (2) That the nonconforming use will not adversely affect or be materially detrimental to adjoining properties; and
 - (3) That the use of the entire center or complex has not been vacant or discontinued for a period of six or more calendar months.
- g. Notwithstanding all provisions in this subsection a legal nonconforming new car auto dealership facility on Mission Boulevard between Highland/Sycamore and Harder Road shall be allowed to apply for Site Plan Review for minor exterior alterations, improvements, or expansions of less than 10 percent of the building area of an existing facility as long as all minimum development standards, to the extent possible, are met, subject to review and approval by the Planning Director.
- h. Any legal residential use in the Baumberg area in existence as of June 6, 1995, formerly zoned as part of a Limited Industrial Zoning District, which became a nonconforming use due to the reclassification of area on June 6, 1995, may be lawfully reconstructed as a residential use for a period of twenty years from June 6, 1995, if such residential use is

damaged or destroyed by fire or other catastrophe, as long as that the building footprint of the replacement residence does not exceed that of the residential structure in existence as of June 6, 1995.

SEC. 10-1.2920 NONCONFORMING STRUCTURES - BUILDING UNDER CONSTRUCTION.

Nothing contained herein shall be deemed to require any change in the plans, construction or designated use of any building upon which actual construction was lawfully begun prior to the effective date of the zoning district change, ordinance amendment, or annexation, which resulted in the nonconformity, provided that in all cases actual construction work is consistent with approved plans or building permit.

SEC. 10-1.2925 STRUCTURE PERMITS OR CERTIFICATES OF OCCUPANCY PROHIBITED.

When any nonconforming structure or use is no longer permitted pursuant to the provisions of this Ordinance, no permit for a structure shall thereafter be issued for further continuance, alteration, or expansion. Any permit issued in error shall not be construed as allowing the continuation of the nonconforming structure or use.

SEC. 10-1.2930 REMOVAL OF ILLEGAL NONCONFORMING STRUCTURES AND USES.

Nothing contained in this Section shall be construed or implied so as to allow for the continuation of illegal nonconforming structures and uses.

SEC. 10-1.2931 BURDEN OF PROOF.

The burden of proof regarding nonconforming structures and uses rests with the property owner to the satisfaction of the Planning Director.