

## Chapter 18.70

### NONCONFORMING USES AND NONCOMPLYING FACILITIES

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#### 18.70.010 General Application

Except as provided by this chapter or otherwise provided by law, a nonconforming use may be continued, and a structure containing or used by one or more nonconforming uses may be maintained, or a noncomplying facility may be maintained. A nonconforming use is a use which existed legally under the provisions of its zoning classification prior to a rezoning action or annexation which rendered such use not in conformance with the provisions of such new zoning classification. A noncomplying facility is a facility which existed legally under the provisions of its zoning classification prior to a rezoning action or annexation which rendered such facility not in compliance with the provisions of such new zoning classification.

(Ord. 3890 § 19, 1989; Ord. 3048 (part), 1978)

#### 18.70.020 Nonconforming Use – Expansion

- (a) A nonconforming use shall not be altered, enlarged, expanded, or extended, except as provided in subsection (b). This prohibition shall include any moving, enlargement, extension, expansion or alteration of a nonconforming use which:
  - (1) Increases the site area or floor area occupied by such use on the same or any additional site;
  - (2) Increases the number of structures or the size of any structure housing such nonconforming use or portion thereof.
- (b) A nonconforming use which occupies a portion of a building may be expanded to include additional floor area within the same building; provided that:

- (1) Without substantial remodeling or reconstruction, the portion of building into which expansion is proposed is not reasonably susceptible to use or occupancy by a conforming use. The determination of whether a portion of a building is reasonably susceptible to use or occupancy by a conforming use shall be made by the building official and shall take into consideration, but not be limited to, the following:
  - (A) Whether any required remodeling or reconstruction would involve structural alterations;
  - (B) Whether the building was designed and constructed for the nonconforming use occupying the building or portion thereof, or uses of similar intensity or classification;
  - (C) The degree of privacy, separation, and protection afforded the portion of the building into which expansion is proposed from intrusion, interference, noise, and similar effects resulting from or generated by the nonconforming use;
  - (D) Availability of access to the portion of the building into which expansion is proposed.
- (2) Such expansion within the building does not create, cause, or increase any additional nonconformance or noncompliance with the requirements of this title.
- (3) Nothing contained in this section authorizes a change in the nature of a nonconforming use contrary to the provision of Section 18.70.030.

(Ord. 3048 (part), 1978)

### **18.70.030 Nonconforming Use – Change**

- (a) Except as provided in subsection (b), a nonconforming use shall not be changed to or replaced by any use except a conforming use.
- (b) A nonconforming use may be changed to or replaced by another nonconforming use which would have been permitted under the most recent zoning classification of the property under which the nonconforming use was a conforming use and which is of no higher occupancy rating than the existing nonconforming use as defined by Title 16 subject to the following limitations:
  - (1) The change or replacement shall not increase the extent of the nonconformity, or the nature of the activity, or the site area or floor area occupied by the nonconforming use on the site, except as may be provided by Section 18.70.020(b).
  - (2) Any period of temporary vacancy or discontinuance associated with such change or replacement shall not exceed the limitations established by Section 18.70.040.
  - (3) Such change or replacement of nonconforming use to or by another nonconforming use shall be permitted only if the building, or portion of a building, presently occupied by the nonconforming use is not reasonably capable of conversion to accommodate use and occupancy by a conforming use, without substantial reconstruction or remodeling. The building official shall determine whether the building, or portion of a building, is reasonably capable of such conversion. Said determination shall take into consideration, but not be limited to, the following:

- (A) Whether changes in the nature of the building or a portion of the building would be required by Title 16 or similar regulations in order to convert the use of the building, or portion of the building, to a conforming use;
  - (B) Whether any reconstruction or remodeling necessary to convert the use and occupancy of the building, or a portion of the building, involves structural alterations;
  - (C) Whether the building, or portion of the building, was originally designed and constructed for the particular existing nonconforming use or uses of similar character.
- (c) A nonconforming use which is changed to or replaced by a conforming use shall not be reestablished, and any portion of a site or any portion of a building, the use of which changes from a nonconforming to a conforming use, shall not thereafter be used except to accommodate a conforming use.

(Ord. 3048 (part), 1978)

#### **18.70.040 Nonconforming Use – Discontinuance**

- (a) On any site having facilities thereon valued at less than one thousand dollars, any nonconforming use, other than a residential use, which is discontinued or abandoned or otherwise ceases operation and use of the site for a period of six months or longer shall not be resumed, reestablished, or continued, and all subsequent use of such site and facilities thereon shall conform to this title.
- (b) On any site not subject to subsection (a), a nonconforming use of facilities designed and constructed for nonresidential purposes which is discontinued or abandoned or otherwise ceases operation and use of the site for a period of one year or more shall not be resumed, and all subsequent use of such site and facilities thereon shall conform to this title.
- (c) Notwithstanding the provisions of Section 18.70.030, or the provisions of subsections (a) and (b) of this section, in any residential district, a nonresidential, nonconforming use occupying facilities originally designed and constructed for residential use which is discontinued or abandoned or otherwise ceases operation and use of the site for a period of ninety days or greater shall not be continued or recommenced, and any subsequent use of the site and facilities shall conform to this title. This provision shall not be construed to prevent a change of ownership or management of such nonconforming use; provided, that any cessation of operation of the use is solely in connection with the transfer of ownership or management to a specifically designated person or entity and is solely for the purpose of accomplishing any transfer of title, equipment, operational control, or similar purpose.

(Ord. 4016 § 43, 1991; Ord. 3048 (part), 1978)

#### **18.70.050 Nonconforming Use – Maintenance and Repair of Facility**

Facilities occupied or used by a nonconforming use permitted by this chapter shall be subject to the following provisions governing maintenance, repairs, alterations, or replacement:

- (a) Normal and routine maintenance of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, or complying with the requirements of law, shall be permitted.
- (b) Incidental alteration shall be permitted, provided the value of the incidental alterations in any one-year period shall not exceed twenty percent of the value of the facility prior to such alterations.
- (c) Structural alterations or enlargement of the facility shall be permitted only to accommodate a conforming use, or when made to comply with the requirements of law.

(Ord. 3048 (part), 1978)

### **18.70.060 Nonconforming Use – Replacement of Facility**

A facility, used or occupied wholly or partly by one or more nonconforming uses, which is damaged or destroyed by any means except ordinary wear and tear and depreciation, may be reconstructed or replaced only for occupancy or use by a conforming use, except in the following instances:

- (a) Where none of the nonconforming uses is subject to termination as provided by Section 18.70.070, reconstruction or replacement for continued occupancy or use by such nonconforming use shall be permitted only in accord with the following limitations:
  - (1) The extent of nonconformity, or the intensity of activity, or the site area or floor area occupied by the nonconforming use subsequent to reconstruction or replacement of the facility shall not exceed that existing prior to reconstruction or replacement.
  - (2) Reconstruction or replacement shall be subject to all applicable laws, regulations, and procedures otherwise governing construction on the site.
- (b) When one or more of the nonconforming uses is subject to termination as provided by Section 18.70.070, reconstruction or replacement for continued occupancy or use by such nonconforming use shall be permitted only in accord with the following limitations:
  - (1) During the first one-third of the applicable termination period of such use, the facility may be reconstructed or replaced; provided the value of such reconstruction or replacement shall not exceed seventy-five percent of the value of the facility prior to damage or destruction.
  - (2) During the second one-third of the applicable termination period of such use, the facility may be reconstructed or replaced; provided the value of such reconstruction or replacement shall not exceed fifty percent of the value of the facility prior to damage or destruction.
  - (3) During the last one-third of the applicable termination period of such use, the facility may be reconstructed or replaced; provided the value of such reconstruction or replacement shall not exceed twenty-five percent of the value of the facility prior to damage or destruction.
  - (4) Any reconstruction or replacement permitted in this chapter shall not extend or otherwise modify the required termination date established by Section 18.70.070 and applied to the nonconforming use prior to such reconstruction or replacement. Said

termination date shall apply to all portions of the site or structure, including those portions reconstructed or replaced.

(Ord. 4016 § 44, 1991; Ord. 3048 (part), 1978)

### **18.70.070 Nonconforming Use – Required Termination**

- (a) In any district, a nonconforming, nonresidential use occupying a site having facilities thereon valued at less than one thousand dollars, shall be terminated within five years from the effective date of this section, or within five years from the date such use becomes nonconforming, whichever date is later, and within such time the improvements shall either be removed, or converted or modified to accommodate a conforming use.
- (b) In any district, a nonconforming, nonresidential use of a site not subject to subsection (a) of this section shall be terminated in accord with the following provisions and schedules:
  - (1) When occupying or using facilities designed and built for residential use, the nonconforming use shall be terminated within ten years from July 20, 1978, or within ten years from the date such use becomes nonconforming, whichever date is later, and within such time the improvements shall either be removed, or converted or modified to accommodate a conforming use.
  - (2) When occupying or using facilities designed or built for nonresidential use, the nonconforming use shall be terminated, and the facilities shall be converted or modified to accommodate a conforming use, or shall be removed at or before the time limit prescribed in subdivision (3) of this subsection; provided, however, that no such termination, removal, or conversion shall be required within fifteen years from July 30, 1978, or within fifteen years from the date such use became nonconforming, whichever date is later; provided, however, that uses which were made nonconforming as a result of the 1974 Fire Zone 1 Study, by Ordinance No. 2777, adopted March 25, 1974, shall terminate on November 23, 1990; and provided, further, that any use made nonconforming by said Ordinance No. 2777, the primary purpose of which is to prepare and deliver food to senior citizens, shut-ins and others with limited mobility may remain and shall not be subject to termination pursuant to this section. Such uses shall be permitted to remodel, improve or replace site improvements in accordance with applicable site development regulations, provided that any such remodeling, improvement or replacement shall not result in any increased floor area.

Notwithstanding the dates of termination of uses required by this subsection (b)(2), the required termination dates of the following uses shall be as hereinafter set forth:

- (A) The nonconforming use(s) of the property at 440-460 Page Mill Road for nonprofit orthomolecular and molecular medical research functions shall terminate on or before July 20, 1998.
- (B) The nonconforming use of the property at 464 Colorado Avenue for a dance studio and associated parking shall terminate on or before July 20, 2003.

- (C) The nonconforming use of the property at 440 Pepper Street for an art studio specializing exclusively in the medium of monotype printmaking and associated instructional uses shall terminate on or before July 20, 2018. Nothing in this ordinance shall be construed to create a vested right for the nonconforming uses to remain after July 20, 2003.
- (D) The nonconforming use of the property at 4277 Miranda for a gero-psychiatric skilled nursing facility shall terminate on or before January 20, 1994.
- (E) The nonconforming uses of the property at 3200 Park Boulevard/340 Portage Avenue/Olive Avenue for retail, research and development, warehouse, and storage uses are permitted in approximately the same ratio of uses existing as of October 16, 2006, subject to the following limitations: (1) retail uses shall not exceed 60,000 square feet, and (2) truck deliveries and other noisy outdoor activities shall be limited to the hours of 8:00 a.m. to 9:00 p.m. weekdays and 9:00 a.m. to 9:00 p.m. weekends.
- (F) The nonconforming use of the property at 2011 El Camino Real for tire sales and installation shall terminate on or before April 26, 2009.

Such uses shall be permitted to remodel, improve or replace site improvements in accordance with applicable site development regulations, provided that any such remodeling, improvement or replacement shall not result in any increased floor area or increase in intensity of the use, nor any loss of parking.

- (3) The following schedule shall govern the period of time for termination of nonconforming uses specified in subdivision (2) of this subsection:

Type of Construction Defined by Building Code	Age of Structure Computed From Date of Construction
Type I – Totally noncombustible	35 years
Type II – Fire resistive	35 years
Type III – Noncombustible exterior, combustible interior	30 years
Type IV – Heavy timber	30 years
Type II – Nonrated	25 years
Type V – Wood frame	20 years

- (4) Nothing contained in this subsection shall extend or otherwise modify any termination date provided by any previously existing ordinance for any use which became nonconforming under such ordinance prior to the effective date of this section. Such termination dates for such previously existing nonconforming uses are incorporated in this section and shall remain in effect.
- (c) The director of planning and community environment shall determine those properties the use of which were lawfully existing uses permitted or conditionally permitted, in the districts in which they were located immediately prior to July 20, 1978, and which uses were rendered nonconforming by reason of the adoption of this title on July 20, 1978, and those properties which, prior to July 20, 1978, were located in an R-1 district which was imposed by reason of annexation of the property to the city without benefit of rezoning, the uses of which were lawfully existing uses permitted or conditionally

permitted operating subject to a conditional use permit prior to the date of annexation. Written notice of such nonconformance shall be mailed to the owner of record of each such property and to the occupant of the property. Within two years of the date of mailing of such notice, any owner of such property, lessee of such property with the written consent of owners, or purchaser of such property when acting pursuant to a contract of sale in writing duly executed and acknowledged by both the buyer and the owner of record, may apply to have such property excepted from the termination provisions of this section. Said application may be made to the director of planning and community environment in such form as may be prescribed by the director of planning and community environment. Said application shall include, but not be limited to, a statement of the location and size of the property, the nature of its use on July 20, 1978, a statement of reasons establishing that the use is compatible with and will not be detrimental to the uses designated in the Comprehensive Plan for the surrounding area and properties, a map of the subject property indicating the location of all parcels of real property within a distance of three hundred feet from the exterior boundary of the subject property, a list as shown in the last equalized assessment roll, of the name and address of the owner of record of each such parcel, and such other information as may be required by the director of planning and community environment.

- (1) Such application shall be accompanied by such fee as is prescribed in the municipal fee schedule.
- (2) Upon receipt of such application, the director of planning and community environment shall so inform the chairperson of the planning commission who shall set a date for a public hearing on the application which shall be held within a reasonable time from the date of filing of the application. Notice of the hearing shall be given by publication once in a local newspaper at least twelve days prior to the hearing and by mail to owners and occupants of real property within 300 feet of the subject property.
- (3) Upon the date set for hearing, the planning commission shall conduct a public hearing thereon, unless, for cause, the commission shall on that date continue the matter. Upon conclusion of the hearing, the commission shall determine whether the use of the property on July 20, 1978, is compatible and not detrimental to the land uses designated in the Comprehensive Plan for the surrounding areas of properties. In the event the commission so finds, it shall recommend to the city council that the use shall be exempted from the termination provisions of this section. The commission may recommend such conditions as it may find necessary to insure compatibility including, but not limited to, required improvement of or modifications to existing improvements on the property, limitations on hours of operation, limitation on the nature of operations, and a specified term of years for which the exception shall be granted.
- (4) Upon receipt of the recommendation of the planning commission, the city council shall consider the application within a reasonable time. The council may, at its option, conduct a public hearing on the matter.

In the event the council finds the use of the subject property to be compatible with and not detrimental to those land uses designated in the Comprehensive Plan for the surrounding area and properties, it shall, by motion, except said use from the termination provisions of this section. In granting such exception, the council may include such conditions as are deemed necessary to insure such compatibility, including, but not limited to, the conditions set out in subsection (c)(3) of this section.

- (5) Any use which is excepted from the termination provisions of this section, and which is changed pursuant to Section 18.70.030 shall be subject to the termination provisions of this section as though no exception had been granted.
- (6) Any use excepted from the termination provisions of this section shall be permitted to remodel, improve, or replace site improvements on the same site, without the necessity to comply with site development regulations, for continual use and occupancy by the same use; provided, that any such remodeling, improvement, or replacement shall not result in increased floor area, number of dwelling units, height, length, or any other increase in the size of the improvement.
- (d) Notwithstanding the provisions of this section, any off-street parking lot which was lawfully existing and not subject to any required termination provisions of any predecessor ordinance on the effective date of this section, and which on that date was and continues to be used accessory to a lawful conforming permitted use, shall be permitted to continue in existence and use for the life of the principal use to which it is accessory, regardless of whether said parking lot and principal use are located in the same district.

(Ord. 4923 § 5, 2006: Ord. 4826 § 135, 2004: Ord. 4803 § 2, 2003: Ord. 4594 § 2, 1999: Ord. 4314 § 1, 1995: Ord. 4175 § 1, 1993: Ord. 4174 § 1, 1993: Ord. 4142 § 1, 1993: Ord. 4141 § 1, 1993: Ord. 4081 § 18, 1992: Ord. 4016 § 45, 1991: Ord. 3886 § 1, 1989: Ord. 3536 § 39, 1984: Ord. 3273 § 3, 1981: Ord. 3204 § 1, 1980: Ord. 3187 § 6, 1980: Ord. 3171 § 1, 1979: Ord. 3130 § 25(e), 1979: Ord. 3108 § 7, 1979: Ord. 3070 § 2, 1978: Ord. 3048 (part), 1978)

### **18.70.080 Noncomplying Facility – Enlargement**

- (a) Except as specifically permitted by subsections (b) and (c) hereof or by Section 18.12.050(a), no enlargement, expansion, or other addition or improvement to a noncomplying facility shall be permitted which increases the noncompliance. This section shall not be construed to prohibit enlargement or improvement of a facility, otherwise permitted by this title, which does not affect the particular degree of or manner in which the facility does not comply with one or more provisions of this title.
- (b) Except in areas designated as special study areas, the director of planning and community environment may permit minor additions of floor area to noncomplying facilities in the commercial CC, CS and CN zones and in the industrial MOR, ROLM, RP and GM districts, subject to applicable site development regulations, for purposes of on-site employee amenities, resource conservation, or code compliance, upon the determination that such minor additions will not, of themselves, generate substantial additional employment. Such additions may include, but not be limited to, the following:

- (1) Area designed and used solely for providing on-site services to employees of the facility, such as recreational facilities, credit unions, cafeterias and day care facilities;
- (2) Area designated for resource conservation, such as trash compactors, recycling and thermal storage facilities; and
- (3) Area designed and required for hazardous materials storage facilities, handicapped access, and seismic upgrades.

(Ord. 3890 § 20, 1989; Ord. 3683 § 18, 1986; Ord. 3048 (part), 1978)

### **18.70.090 Noncomplying Facility – Maintenance and Repair**

- (a) Normal and routine maintenance of a noncomplying facility shall be permitted for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, or complying with the requirements of law.
- (b) Incidental alterations to a noncomplying facility shall be permitted, provided such alterations do not increase the degree of noncompliance, or otherwise increase the discrepancy between existing conditions and the requirements of this title.
- (c) Structural alterations to a noncomplying facility shall be permitted when necessary to comply with the requirements of law, or to accommodate a conforming use when such alterations do not increase the degree of noncompliance, or otherwise increase the discrepancy between existing conditions and requirements of this title.

(Ord. 3683 § 17, 1986; Ord. 3048 (part), 1978)

### **18.70.100 Noncomplying Facility – Replacement**

A noncomplying facility which is damaged or destroyed by any means except ordinary wear and tear and depreciation may be reconstructed only as a complying facility, except as follows:

- (a) When the damage or destruction of a noncomplying facility affects only a portion of the facility that did not constitute or contribute to the noncompliance, said portion may be repaired or reconstructed to its previous configuration.
- (b) When the damage or destruction of a noncomplying facility affects a portion of the facility that constituted or contributed to the noncompliance, any replacement or reconstruction to such damaged portion shall be accomplished in such manner as not to reinstate the noncompliance or degree of noncompliance caused by the destroyed or damaged portion of the facility, and otherwise in full compliance with this title; however, if the cost to replace or reconstruct the noncomplying portion of the facility to its previous configuration does not exceed fifty percent of the total cost to replace or reconstruct the facility in conformance with this subsection, then the damaged noncomplying portion may be replaced or reconstructed to its previous configuration. In no event shall such replacement or construction create, cause, or increase any noncompliance with the requirements of this title.
- (c) Notwithstanding subsections (a) and (b) hereof, a noncomplying facility in the commercial CS, CN and CC zones and the industrial LM, LM(3), LM(5), GM, GM(B) and OR zones, except for those areas designated as special study areas, existing on

August 1, 1989, which when built was a complying facility, shall be permitted to be remodeled, improved or replaced in accordance with applicable site development regulations other than floor area ratio, provided that any such remodeling, improvement or replacement shall not result in increased floor area.

- (d) Notwithstanding subsections (a), (b) and (c) hereof, a noncomplying facility housing a conforming use in the R-1 and RE zones, which when built was a complying facility, which is damaged or destroyed by non-willful means (i.e., acts of God) shall be permitted to be replaced, on the same site, and in its previous configuration, without necessity to comply with the current site development regulations, provided that any such replacement shall not result in increased floor area, height, length or any other increase in the size of the facility.
- (e) Except as otherwise provided in this section with regard to replacement or reconstruction of a portion of a facility to its previous noncomplying condition, all reconstruction shall be subject to all applicable laws, regulations, and procedures otherwise governing construction on the site at the time said construction is undertaken.

(Ord. 4102 § 1 (part), 1992: Ord. 4016 § 46, 1991: Ord. 3905 § 18, 1989: Ord. 3890 § 21, 1989: Ord. 3048 (part), 1978)

### **18.70.110 Determination of Value**

Value, as used in this chapter with respect to value of a facility, or to the value of improvements on a site, or to the value of reconstruction or replacement, means the current cost of construction, or the current cost of replacement in kind of existing facilities or improvements, excluding consideration of the value of land. Estimates or determinations of such cost for purposes of this chapter shall be made by or shall be reviewed and approved by the building official.

(Ord. 3048 (part), 1978)

### **18.70.120 Determination of Age**

The age of a facility shall be computed from the recorded date of its completion, if available, or otherwise shall be deemed to be one year subsequent to the date of issuance of a building permit for such facility. In any case where, in a single construction phase, an addition to a facility was commenced prior to July 20, 1978, which had at the time of its completion a value in excess of seventy-five percent of the full cash value of the original facility, or which increased the gross floor area of the facility by more than seventy-five percent, the age of the facility shall be computed from the recorded date of the completion of such addition, if available, or otherwise such date shall be deemed to be one year subsequent to the date of issuance of a building permit for such addition. When the age of a facility cannot be determined by any of the foregoing means, the building official shall estimate the age for purposes of this chapter.

(Ord. 3048 (part), 1978)

**18.70.130 Certificate of Use and Occupancy**

The owner or occupant of any site occupied or used entirely or partially by a nonconforming use shall make application for a certificate of use and occupancy under the provisions of Title 16 and shall annually thereafter apply for renewal of such certificate.

(Ord. 3048 (part), 1978)

**18.70.140 Unsafe Buildings**

Nothing in this chapter shall be construed as repealing, abrogating, or modifying any provision of Chapter 16.40, or any other provision of this code, or of any law relating to requirements for construction, maintenance, repair, demolition, or removal of structures.

(Ord. 3048 (part), 1978)

