

1 **BILL NO. 2010-40**

2 **ORDINANCE NO. _____**

3 AN ORDINANCE TO AUTHORIZE UNDER CERTAIN CIRCUMSTANCES AN EXTENSION
4 OF TIME REGARDING THE EXPIRATION OF CERTAIN NONCONFORMING USES, AND TO
PROVIDE FOR OTHER RELATED MATTERS.

5 Sponsored by: Councilman Steven D. Ross

Summary: Authorizes under certain
circumstances an extension of time regarding the
expiration of certain nonconforming uses.

7 THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN
8 AS FOLLOWS:

9 SECTION 1: Title 19, Chapter 16, Section 30, Subsection (A), of the Municipal Code
10 of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11 (A) Nonconforming Use of a Conforming Building.

12 (1) General Provisions. A nonconforming use of a conforming building shall not be
13 [continued following redevelopment of the property,] reestablished in a new building, extended or
14 expanded into any other portion of the conforming building, or relocated on the same parcel or within
15 the same commercial subdivision; provided, however, that an existing use which was made
16 nonconforming by one or more of the following may be [continued following redevelopment,]
17 expanded[,] or relocated on the same parcel or within the same commercial subdivision in accordance
18 with [Subsection] Paragraph (2) of this Subsection (A):

19 (a) The adoption of a Special Use Permit requirement for that type of use;

20 (b) The adoption of a [four hundred foot or one thousand five hundred foot]
21 separation requirement between that type of use and a protected use;

22 (c) The adoption of a [one thousand five hundred foot] separation requirement
23 between two uses of that type;

24 (d) The establishment of a protected use that, by virtue of a [four hundred foot or
25 one thousand five hundred foot] separation requirement, would otherwise prohibit the existing use
26 from expanding; [or from continuing following redevelopment;] or

27 (e) The adoption of a different method of measuring distance for purposes of a
28 separation requirement.

1 (2) Conditions of Allowable Continuation, Expansion, or Relocation of Use. If the
2 proposed expansion [or continuation] of a nonconforming use [following redevelopment,] or
3 relocation of the use on the same parcel or within the same commercial subdivision[,] qualifies under
4 [Subsection] Paragraph (1) of this Subsection (A), [and no Variance from (or Waiver of) a separation
5 requirement has previously been granted for the property,] the nonconforming use may be expanded
6 [or continued following redevelopment,] or relocated on the same parcel or within the same
7 commercial subdivision[,] if the proposed expansion[, continuation] or relocation:

8 (a) Will not increase the size or extent of the use by more than fifty percent; and

9 (b) Will not require a Variance or Waiver regarding any other provision of Title
10 19, including those that pertain to parking, landscaping and residential adjacency requirements.

11 (3) Discontinuation and Abandonment of Use. If a nonconforming use of a conforming
12 building is discontinued by ceasing to physically occupy or operate within the building, there shall be
13 a rebuttable presumption that the nonconforming use has been abandoned as of the date the use was
14 discontinued and, for purposes of this Paragraph (3), the Department may deem the use abandoned
15 as of that date. The owner of the property or operator of the use may rebut the presumption of
16 abandonment by demonstrating that the use has continued or existed beyond that date. The owner or
17 operator shall have the burden of establishing the continuation or existence of the use beyond that
18 date, as well as the burden of establishing the existence or continued operation of the use at any
19 particular time.

20 (a) If a nonconforming use of a conforming building is [discontinued] abandoned
21 for a period of one year, [or two years in the case of a conforming building that has been damaged or
22 partially destroyed by fire, flood, wind, another calamity or an act of God,] the future use of such
23 building shall be only in conformance with the provisions of this Title.

24 (b) If a conforming building housing a nonconforming use is damaged or partially
25 destroyed by fire, flood, wind, another calamity or an act of God, and the use is abandoned for a period
26 of two years, the future use of such building shall be only in conformance with the provisions of this
27 Title.

28 (c) If it appears, by reason of economic hardship, that a nonconforming use

1 described in Subparagraph (a) or (b) above will be deemed abandoned for a period of time greater than
2 the applicable abandonment period described in those subparagraphs, the owner of the property or
3 operator of the use may request that the abandonment period be extended by the City Council. Such
4 request shall be made by means of an application for an Extension of Time. The application shall
5 include or be accompanied by a letter of justification explaining the economic hardship, which must
6 be based upon market conditions or other circumstances beyond the applicant's control, and shall be
7 accompanied by the applicable fees, if any, that are set forth in the fee schedule. The application shall
8 be heard at a public hearing of the City Council. An Extension of Time may be granted by the City
9 Council only upon clear and convincing evidence of qualifying hardship and a determination that the
10 public health, safety and welfare will not be jeopardized. An Extension of Time may not exceed the
11 duration of the applicable abandonment period set forth in Subparagraph (a) or (b) above.

12 (4) Notice to Discontinue Use. [In addition, nonconforming uses] Independent of any other
13 provision of this Chapter, a nonconforming use of a conforming building shall be discontinued upon
14 written notice from the City to the owner to discontinue the use. The use shall be discontinued no
15 later than the date described in the notice, which in no event shall be later than five years from the date
16 notice is given. Notice shall be provided by mailing to the owner of the property as shown by the
17 County Assessor's records and recording a copy of the notice in the office of the County Recorder.
18 Such notice shall contain the legal description of the property, a description of the use required to be
19 discontinued, the date that the use is to cease and desist and the Section of this Title which declares
20 the use to be nonconforming.

21 SECTION 2: Table 2 of the Land Use Tables adopted in Title 19, Chapter 4, Section
22 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by
23 amending the entry for the use "Sexually Oriented Business," as found in the "Recreational,
24 Entertainment and Amusement" element of Table 2, so that Conditional Use Regulation 5 applicable
25 to the use reads as follows:

26 5. The provisions of Regulations 3 and 4 above and the provisions of Chapter 19.16 shall apply
27 to sexually oriented businesses; provided, however, that any existing sexually oriented
28 business located in the M Zoning District that was made nonconforming as to a separation

1 requirement by either of the following circumstances shall be deemed a conforming use for
2 purposes of expansion, enlargement or alteration:

- 3 a. The adoption of a different method of measuring distance; or
4 b. The intervening establishment within the required separation area of either a protected
5 use or another sexually oriented business.

6 Any such business shall continue to be subject to the provisions regarding discontinuation and
7 removal that are set forth in Sections [19.16.030(A)(3)] 19.16.030(A)(4) and 19.16.040,
8 respectively.

9 SECTION 3: For purposes of Section 2.100(3) of the City Charter, LVMC 19.04.010
10 and 19.16.030 are deemed to be subchapters rather than sections.

11 SECTION 4: If any section, subsection, subdivision, paragraph, sentence, clause or
12 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or
13 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
14 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the
15 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,
16 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
17 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
18 invalid or ineffective.

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SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 8-17-10
Date

1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 ____ day of _____, 2010, and referred to the following committee composed of
3 _____ and _____ for recommendation;
4 thereafter the said committee reported favorably on said ordinance on the ____ day of
5 _____, 2010, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council
7 as first introduced and adopted by the following vote:

8 VOTING "AYE": _____

9 VOTING "NAY": _____

10 ABSENT: _____

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12 APPROVED:

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14 By _____
OSCAR B. GOODMAN, Mayor

15 ATTEST:

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17 BEVERLY K. BRIDGES, MMC
City Clerk

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