

**AGENDA MEMO****PLANNING COMMISSION MEETING DATE: JULY 29, 2010****DEPARTMENT: PLANNING AND DEVELOPMENT****ITEM DESCRIPTION: APPLICANT/OWNER: CITY OF LAS VEGAS**

**** STAFF RECOMMENDATION(S) ****

<i>CASE NUMBER</i>	<i>RECOMMENDATION</i>	<i>REQUIRED FOR APPROVAL</i>
TXT-38702	Staff recommends APPROVAL.	N/A



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**** PROPOSED AMENDMENT(S) ****

1. Title 19.16, "Nonconforming Uses and Structures," is hereby amended as follows:

19.16.030 – Regulations

A. Nonconforming Use of a Conforming Building.

1. General Provisions. A non-conforming use of a conforming building shall not be ~~continued following redevelopment of the property, extended or~~ expanded into any other portion of the conforming building, or relocated on the same parcel or within the same commercial subdivision; provided, however, that an existing use which was made nonconforming by one or more of the following may be ~~continued following redevelopment,~~ expanded, or relocated on the same parcel or within the same commercial subdivision in accordance with Subsection Paragraph (2) of this Subsection (A):
 - a. The adoption of a Special Use Permit requirement for that type of use;
 - b. The adoption of a ~~four hundred foot or one thousand five hundred foot~~ separation requirement between that type of use and a protected use;
 - c. The adoption of a ~~one thousand five hundred foot~~ separation requirement between two uses of that type;
 - d. The establishment of a protected use that, by virtue of a ~~four hundred foot or one thousand five hundred foot~~ separation requirement, would otherwise prohibit the existing use from expanding ~~or from continuing following redevelopment;~~ or
 - e. The adoption of a different method of measuring distance for purposes of a separation requirement.

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

 - a. Will not increase the size or extent of the use by more than fifty percent; and
 - b. Will not require a Variance or Waiver regarding any other provision of Title 19, including those that pertain to parking, landscaping and residential adjacency requirements.

3. ~~Discontinuation~~ Abandonment of Use. If a non-conforming use of a conforming structure ceases to physically occupy the space and/or to conduct business in said structure, there shall be the rebuttable presumption that the non-conformance has been abandoned. The owner or user has the burden to prove continuous operation of the use.
 - a. If a non-conforming use of a conforming building is discontinued ~~abandoned~~ for a period of one year, or two years in the case of a ~~conforming building that has been damaged or partially destroyed by fire, flood, wind, another calamity or an act of God~~, the future use of such building shall be only in conformance with the provisions of this Title; or
 - b. If a conforming building housing a non-conforming use is damaged or destroyed by fire, flood, wind, another calamity or an act of God, and a non-conforming use is abandoned for a period of two years, the future use of such building shall be only in conformance with the provisions of this Title.
 - c. Extension of Time. In the case of Subparagraph (a) or (b) of this Paragraph (3), the owner and/or user of a non-conforming use may be unable to reoccupy the non-conforming use within the

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established time period by virtue of market conditions beyond their control. To avert the abandonment of use an application may be filed for an Extension of Time to be heard at a public hearing of the City Council upon payment of fees as set by resolution of City Council. A justification letter explaining the consequences shall accompany the application. An Extension of Time may only be granted by the City Council with clear and convincing evidence for demonstrated economic hardship, provided the public health, safety and welfare is not jeopardized. An approval of an application for Extension of Time shall not exceed the original duration of the grace period to reestablish the use.

4. Discontinuation of Use. ~~In addition, non-conforming~~ Non-conforming uses of a conforming building shall be discontinued upon written notice from the City to the owner to discontinue the use. The use shall be discontinued no later than the date described in the notice, which in no event shall be later than five years from the date notice is given. Notice shall be provided by mailing to the owner of the property as shown by the County Assessor's records and recording a copy of the notice in the office of the County Recorder. Such notice shall contain the legal description of the property, a description of the use required to be discontinued, the date that the use is to cease and desist and the Section of this Title which declares the use to be nonconforming.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

Text amendment to allow non-conforming uses to be re-established in conforming buildings beyond one year.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
11/07/07	The City Council adopted Ordinance 5945, which was introduced as Bill No. 2007-58. In part, this ordinance increased the amount of time to re-occupy a non-conforming structure, vacant or destroyed by fire. The Planning Commission and staff recommended approval the amendment as TXT-21140.

ANALYSIS

Traditional twentieth century zoning principal and practice hold that for zoning codes to be successful, non-conformities must be eliminated. To achieve conformity of use and building types, traditional codes worked primarily to restrict further investment in non-conformities and eventually to eliminate them. Abandonment for any reason was seen as a trigger to pounce and disallow use following a minimal period of time.

Current planning literature correctly identifies the most serious difficulty existing in many codes is the continuation of the non-conforming use without an effective provision for its elimination. This is precisely the City of Las Vegas instance.

To quote a recent APA Zoning News article:

It was thought that the existence of nonconformities would lead to lowered property values, affect the area's desirability and result in physical deterioration. However, what has more often been the case is that traditional regulation has fostered vacancy, with buildings falling into disrepair due to their loss of marketability. Also, property value is diminished or destroyed while the property is effectively isolated from the market, tax revenue is lost and there is difficulty in obtaining mortgage financing and insurance.

The article goes on to address specific instances such as those we are facing at this time:
 Another situation with respect to discontinuance needs to be addressed. That is

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the case where the nonconforming owner or user is befallen by personal circumstances, market or other matters that contribute to the inability to reoccupy a nonconformity within the established time period to avert abandonment of use. These may be situations where the owner or user fully intends to continue the nonconformity and is willing to maintain it and make further investments. However, due to circumstances beyond their control, they cannot meet the codified deadline for reoccupancy. In these instances, the zoning administrator, after public notice and opportunity for comment, should be authorized to extend the time frame for abandonment. If the particular nonconformity has been problematic for the neighborhood and it is discovered that the nonconforming user has been disingenuous in an attempt to maintain and reoccupy, then the administrator can opt not to extend the abandonment period and let the nonconformity terminate. If there is reasonable supporting data to extend the abandonment period, then perhaps a vacant building (and its associated neighborhood impacts) can be avoided.

Non-conforming use of a conforming building	
Current Code:	Proposal
One year to re-tenant	One year to re-tenant,
No restrictions	Apply for EOT with justification letter and public hearing
	Each EOT only one year
	May reapply

NOTICES MAILED NEWSPAPER ONLY

APPROVALS 0

PROTESTS 0