

19.14

Nonconforming Uses and Structures

Unified Development Code

Title 19





19.14

Nonconforming Uses and Structures

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INTENT**19.14.010**

Within the zoning districts established by this Title, there may exist lots, structures and uses of land which were lawful before the effective date of this Title or an amendment thereto and which would be prohibited, regulated, or restricted under the terms of this Title. It is generally the intent of this Title to permit these nonconformities to continue until they are removed or abandoned, or until such earlier time as they are ordered to be removed, but not to encourage their survival. It is further the intent of this Title, that such nonconforming lots, buildings, or uses shall not be enlarged upon, expanded or extended, except as otherwise specifically provided, and that such nonconforming lots, buildings or uses may not be used as justification for adding other lots, buildings or uses prohibited elsewhere in the same zoning district. Except as otherwise provided, nonconforming uses are declared to be incompatible with permitted uses in the same zoning districts.

APPLICABILITY**19.14.020**

The provisions of this chapter shall apply to lots, uses and buildings which become nonconforming by reason of the adoption of this Title, as well as to any amendment to this Title, as of the effective date of such amendment.

REGULATIONS**19.14.030****A. Nonconforming Use of a Conforming Building**

1. General Provisions. A nonconforming use of a conforming building shall not be reestablished in a new building, 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 expanded or relocated on the same parcel or within the same commercial subdivision in accordance with Subsection (2) of this Section (A):
 - a. The adoption of a Special Use Permit requirement for that type of use;
 - b. The adoption of a separation requirement between that type of use and a protected use;
 - c. The adoption of a separation requirement between two uses of that type;
 - d. The establishment of a protected use that, by virtue of a separation requirement, would

otherwise prohibit the existing use from expanding; or

- e. The adoption of a different method of measuring distance for purposes of a separation requirement.
2. Conditions of Allowable Continuation, Expansion, or Relocation of Use. If the proposed expansion of a nonconforming use or relocation of the same use on the same parcel or within the same commercial subdivision qualifies under Subsection (1) of this Section (A), the nonconforming use may be expanded or relocated on the same parcel or within the same commercial subdivision if the proposed expansion or relocation:
 - a. Will not increase the size or extent of the use by more than 50%; 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 and Abandonment of Use. If a nonconforming use of a conforming building is discontinued by ceasing to physically occupy or operate within the building, there shall be a rebuttable presumption that the nonconforming use has been abandoned as of the date the use was discontinued and, for purposes of this Subsection (3), the Department may deem the use abandoned as of that date. The owner of the property or operator of the use may rebut the presumption of abandonment by demonstrating that the use has continued or existed beyond that date. The owner or operator shall have the burden of establishing the continuation or existence of the use beyond that date, as well as the burden of establishing the existence or continued operation of the use at any particular time.
 - a. If a nonconforming use of a conforming building is abandoned for a period of one year, the future use of such building shall be only in conformance with the provisions of this Title.
 - b. If a conforming building housing a nonconforming use is damaged or partially destroyed by fire, flood, wind, another calamity or act of God, and the 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. If it appears, by reason of economic hardship, that a nonconforming use described in Paragraph (a) or (b) above will be deemed abandoned for a period of time greater than the applicable abandonment period described in those paragraphs, the owner of the property or operator of the use may request that the abandonment period be extended by the City Council. Such request shall be made by means of an application for an Extension of Time. The application shall include or be accompanied by a letter of justification explaining the economic hardship, which must be based on market conditions or other circumstances beyond the applicant's control, and shall be accompanied by the applicable fees, if any, that are set forth in the fee schedule. The application shall be heard at a public hearing of the City Council. An Extension of Time may be granted by the City Council only upon clear and convincing evidence of qualifying hardship and a determination that the public health, safety and welfare will not be jeopardized. An Extension of Time may not exceed the duration of the applicable abandonment period set forth in Paragraph (a) or (b) above.

4. Notice to Discontinue Use. Independent of any other provision of this Chapter, a nonconforming use 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.

B. Nonconforming Use of a Nonconforming Building

The nonconforming use of a nonconforming building legally existing on the effective date of this Title or an amendment thereto may be continued subject to the following conditions:

1. Unoccupied Structure. A nonconforming building occupied by a nonconforming use which is or becomes vacant and remains unoccupied for one year, shall not be occupied thereafter, except by a

use which conforms to the use regulations of that zoning district.

2. Expansion of Use. A nonconforming use of a nonconforming building may be extended or expanded into any other portion of the nonconforming building, provided no structural alterations are made thereto, except those required by law or ordinance.

C. Additions to Nonconforming Buildings

The Director may approve additions to nonconforming buildings when the nonconformance is a result of inadequate setbacks and provided that the addition conforms to all other provisions of this Title. The addition shall not encroach beyond the encroachment of the existing building, must be located in either a side or rear yard, and must not encroach more than 50 percent. In addition, the total of all such additions or enlargements shall not exceed more than 50 percent of the size of the original footprint of the structure. Additions may also be approved to nonconforming residential buildings in nonresidential zoning districts. Additions may be approved to any residential building made nonconforming by an action of a public entity. The addition, in either instance, shall be secondary in nature to the existing use on the property and will not substantially perpetuate the nonconforming use.

D. Nonconforming Use of Land

A nonconforming use of land that does not take place within a principal building, legally existing on the effective date of this Title or an amendment thereto 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.

1. Expansion of Use. No such nonconforming use of land shall in any way be extended or expanded either on the same or adjoining property;
2. Discontinuation of Use. If a nonconforming use of land is discontinued for a period of 90 days or changed to a conforming use, any future use of the land shall be in conformity with the provisions of this Title.

EXPANSION OF A NONCONFORMING USE IN A CONFORMING BUILDING 19.14.040

Except as provided in Subchapter 19.14.030, a nonconforming use may be continued provided no additions or enlargements are made to the building and no structural alterations are made, except those required by law or ordinance. If such nonconforming use is removed or made to conform, every future use of such building or structure shall be in conformity with all the provisions of this Title.

NONCONFORMING USES AND BUILDINGS – RESTORATION AFTER DAMAGE 19.14.050

A. Use of a Damaged or Destroyed Building

1. Except as otherwise provided in Subsection (2) of this Section (A), a nonconforming use which was located in a building that has been damaged or partially destroyed by fire, flood, wind, another calamity or an act of God shall not be continued when the extent of damage or destruction is more than 50 percent of the replacement value of the building.
2. Subsection (1) of this Section (A) does not apply to a use which was made nonconforming by one or more of the following:
 - a. The adoption of a Special Use Permit requirement for that type of use;
 - b. The adoption of a 400-foot or 1500-foot separation requirement between that type of use and a protected use;
 - c. The adoption of a 1500-foot separation requirement between two uses of that type;
 - d. The establishment of a protected use that, by virtue of a 400-foot or 1500-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.

B. Nonconforming Building

Any nonconforming building which has been damaged or partially destroyed by fire, flood, wind, another

calamity or an act of God shall be repaired, moved, re-modeled or altered entirely in conformity with the provisions of this Title or entirely demolished within a period of ninety days from the date of such damage when the extent of damage or destruction is more than 50 percent of its replacement value. The City Council may extend this period for an additional 90 days, provided the public health, safety and welfare is not jeopardized.

BUILDING - ABATEMENT IN "R" RESIDENTIAL DISTRICTS 19.14.060

Any nonconforming building or structure, which was designed or intended for a use prohibited in any residential district, shall be completely removed or altered and converted to a conforming building and use. Such removal or conversion shall be required when the use or building has reached the age specified in the following table:

Building Type Under Uniform Building Code (UBC)	Age in Years When Conformance Required
I or II	50
III	40
IV	30
V	20

RENEWABLE ENERGY SYSTEMS AND NONCONFORMING USES AND BUILDINGS 19.14.070

Notwithstanding any other provision of this Chapter, a solar panel and or small wind energy system that is approved as a conditional use or approved by means of special use permit pursuant to Chapter 19.12 shall not be considered an impermissible expansion or alteration to a nonconforming use or structure under this Chapter. However, nothing in this Subchapter precludes the denial of a special use permit application for a solar panel and or small wind energy system based upon the extent to which the size, scope and impact of the proposed installation or system would impact surrounding properties or would tend to perpetuate the nonconformity in a manner contrary to the intent of this Chapter as described in Section 19.16.010.

