

514

FIRST AMENDMENT

BILL NO. 2018-47

ORDINANCE NO. 6664

AN ORDINANCE TO AMEND VARIOUS PROVISIONS OF THE UNIFIED DEVELOPMENT CODE TO ESTABLISH ADDITIONAL BASES AND STANDARDS FOR DETERMINING WHETHER OR NOT A USE HAS BEEN ABANDONED OR MAY BE DEEMED ABANDONED, AND THEREFORE REQUIRED TO CEASE OPERATION; TO CLARIFY WHEN USE-RELATED APPROVALS EXPIRE OR BECOME VOID; AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Robert Summerfield, Director of Planning

Summary: Amends various provisions of the Unified Development Code to establish additional bases and standards for determining whether or not a use has been abandoned or may be deemed abandoned, and therefore required to cease operation, and to clarify when use-related approvals expire or become void.

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

SECTION 1: Ordinance No. 6289 and the Unified Development Code adopted as Title 19 of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, are hereby amended as set forth in Sections 2 to 11, inclusive, of this Ordinance. The amendments are deemed to be amendments to both Ordinance No. 6289 and the Unified Development Code adopted as Title 19.

SECTION 2: Title 19, Chapter 14, Section 30, Subsection (A), Paragraph (3) is hereby amended to read as follows:

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 Paragraph (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.] in accordance with LVMC 19.14.035.

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1 a. If a nonconforming use of a conforming building is abandoned for a period of one year, the future
2 use of such building shall be only in conformance with the provisions of this Title.

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

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

18 SECTION 3: Title 19, Chapter 14, Section 30, Subsection (A), is hereby amended by
19 adding a new paragraph, designated as Paragraph (5), reading as follows:

20 **5. Adjustments to and Interpretation of Abandonment Provisions of Paragraph (3).** If a business
21 license is required for the operation of a nonconforming use described in Paragraph (3) above, the use may
22 be deemed abandoned if the required license (whether issued on a temporary or permanent basis) has not
23 been maintained in active status. The provisions of the preceding sentence apply to all uses, notwithstanding
24 any other provision of this Title regarding abandonment that is specific to any particular type of use. In
25 addition, notwithstanding any provision of Paragraph (3) or this Paragraph (5), upon the occurrence of all of
26 the following, the presumption provisions and abandonment periods otherwise applicable shall no longer

1 apply, and all future use of the building shall be only in accordance with the provisions of this Title:

- 2 a. A conforming use is established at the same location;
 - 3 b. The use occupies the same portion or portions of the building as the nonconforming use did; and
 - 4 c. The conforming use either essentially replaces the nonconforming use or is inconsistent with and
- 5 would preclude the continuation of the nonconforming use within that building.

6 SECTION 4: Title 19, Chapter 14, Section 30, Subsection (B), is hereby amended to read
7 as follows:

8 **B. Nonconforming Use of a Nonconforming Building**

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

11 1. **[Unoccupied Structure.] Abandonment of Building or Use.** A nonconforming building
12 occupied by a nonconforming use which is or becomes vacant and remains unoccupied for one year, or
13 regarding which the use is deemed abandoned pursuant to this Subsection (B) and remains abandoned for
14 one year, shall not be occupied thereafter[,] except by a use which conforms to the use regulations of [that]
15 the corresponding zoning district. If a business license is required for the operation of the nonconforming
16 use, the use may be deemed abandoned as of the date the license is no longer active if the license (whether
17 issued on a temporary or permanent basis) has not been maintained in active status. If a business license is
18 not required for the operation of the nonconforming use, the used may be deemed abandoned as of the date
19 the use discontinued by ceasing to physically occupy or operate within the building.

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

23 SECTION 5: Title 19, Chapter 14, Section 30, Subsection (D), is hereby amended to read
24 as follows:

25 **D. Nonconforming Use of Land**

26 A nonconforming use of land that does not take place within a principal building, legally existing on the

1 effective date of this Title or an amendment thereto shall be discontinued upon written notice from the City
2 to the owner to discontinue the use. The use shall be discontinued no later than the date described in the
3 notice, which in no event shall be later than five years from the date notice is given. Notice shall be provided
4 by mailing to the owner of the property as shown by the County Assessor's records and recording a copy of
5 the notice in the office of the County Recorder. Such notice shall contain the legal description of the property,
6 a description of the use required to be discontinued, the date that the use is to cease and desist and the section
7 of this Title which declares the use to be nonconforming.

8 **1. Expansion of Use.** No such nonconforming use of land shall in any way be extended or
9 expanded either on the same or adjoining property[;].

10 **2. Discontinuation of Use.** If a nonconforming use of land is discontinued for a period of 90 days
11 or changed to a conforming use, any future use of the land shall be in conformity with the provisions of this
12 Title. If a business license is required for the operation of the nonconforming use, the use may be deemed
13 abandoned as of the date the license is no longer active if the license (whether issued on a temporary or
14 permanent basis) has not been maintained in active status. If a business license is not required for the
15 operation of the nonconforming use, the used may be deemed abandoned as of the date the use discontinued
16 by ceasing to physically occupy or operate at the licensed location.

17 SECTION 6: Title 19, Chapter 14, is hereby amended by adding thereto a new section,
18 designated as Section 35, reading as follows:

19 **19.14.035 Factors Regarding Presumption of Abandonment and Rebuttal of Presumptions.**

20 A. In addition to the consideration of specific factors mentioned in this Title that pertain to the
21 presumption of abandonment regarding any particular use, the Department may also consider periods of non-
22 use, the existence of code violations regarding buildings and other structures, and the circumstances under
23 which buildings are removed from the site where a use is located.

24 B. Where a use has been deemed or presumed abandoned under the provisions of this Title, in particular
25 LVMC 19.14.030, the owner of the property or operator of the use may rebut the presumption of
26 abandonment by demonstrating that the use has continued or existed beyond the date of presumed

1 abandonment. The owner or operator shall have the burden of establishing the continuation or existence of
2 the use beyond that date, as well as the burden of establishing the existence or continued operation of the use
3 at any particular time.

4 SECTION 7: Title 19, Chapter 16, Section 100, Subsection (J), is hereby amended to read
5 as follows:

6 **J. Expiration**

7 A Site Development Plan which is not exercised within the approval period shall be void, unless an extension
8 of time is granted upon a showing of good cause. An extension of time may be granted only if application
9 therefor is made prior to the expiration of the approval period. For purposes of this Subsection (J):

10 1. The "approval period" for a Site Development Plan is the time period specified in the approval,
11 if one is specified, and is two years otherwise.

12 2. [A] For purposes of this Subsection (J), a Site Development Plan is deemed exercised [upon the
13 issuance of a building permit for the principal structure on the site or, in the case of a residential subdivision,
14 upon the recordation of a final subdivision map.] as follows:

15 a. Upon the issuance of a building permit for a principal structure on the site;

16 b. In the case of a residential subdivision, upon the recordation of a final subdivision map;

17 c. If its exercise is expressly recognized in the form of, or in connection with, a Condition of

18 Approval associated with a relevant or related application; or

19 d. If its exercise is expressly recognized by an action or communication of the Director.

20 →If the building permit referred to in this Section is allowed to expire and no new permit has been issued

21 (or a reinstatement or reissuance of the expired permit) within the "approval period" specified in Paragraph

22 (1) of this Subsection (J), the Site Development Plan expires.

23 SECTION 8: Title 19, Chapter 16, Section 110, Subsection (P), is hereby amended to read
24 as follows:

25 **P. Termination**

26 **1. Expiration for Failure to Exercise**

1 a. A Special Use Permit which cannot be exercised except upon [construction of a new building,]
2 new construction that requires a building permit, and which is not exercised within the approval period, shall
3 be void, unless the applicant obtains an extension of time upon a showing of good cause. Application for an
4 extension shall be made to the Planning Commission or City Council, whichever body took final action to
5 approve the Special Use Permit. An extension of time may be granted only if application therefor is made
6 prior to the expiration of the approval period. For purposes of this Subparagraph (a):

7 i. The "approval period" for a Special Use Permit is the time period specified in the approval,
8 if one is specified, and is two years otherwise.

9 ii. A Special Use Permit is exercised upon the issuance of a building permit for the new
10 construction.

11 b. A Special Use Permit which does not require [the construction of a new building] a building
12 permit for new construction in order to be exercised, and which is not exercised within the approval period
13 shall be void, unless the applicant obtains an extension of time upon a showing of good cause. Application
14 for an extension shall be made to the Planning Commission or City Council, whichever body took final action
15 to approve the Special Use Permit. An extension of time may be granted only if application therefor is made
16 prior to the expiration of the approval period. For purposes of this Subparagraph (b):

17 i. The "approval period" for a Special Use Permit is the time period specified in the approval,
18 if one is specified, and is two years, otherwise.

19 ii. A Special Use Permit is deemed exercised upon the approval of a temporary or permanent
20 business license to conduct the activity, if one is required[, or otherwise, upon the issuance of a no-work
21 certificate of occupancy (where no structural work is required) or the approval for tenant improvements.]
22 pursuant to LVMC Title 6. Where no business license is required, a Special Use Permit is deemed exercised
23 if its exercise is expressly recognized:

24 A) In the form of, or in connection with, a Condition of Approval associated with a
25 relevant or related application; or

26 B) By an action or communication of the Director.

1 **2. [Cessation of Use.] Voiding of Special Use Permit.** A Special Use Permit shall be void without
2 further action if:

3 a. The Special Use Permit was issued for alcoholic beverage use and such use ceases for one
4 hundred and eighty days or more, or twenty-four months or more if the building in which the use was being
5 conducted has been damaged or partially destroyed by fire, flood, wind, another calamity or an act of God;
6 [or]

7 b. The Special Use Permit was issued for a use other than alcoholic beverage use and such use
8 ceases for twelve months or more, or twenty-four months or more if the building in which the use was being
9 conducted has been damaged or partially destroyed by fire, flood, wind, another calamity or an act of God[.];

10 c. A building permit that is required for the exercise of the Special Use Permit is allowed to expire
11 and no new permit has been issued (or a reinstatement or reissuance of the expired permit) within the
12 “approval period” specified in Subparagraph (1)(a)(i) of this Subsection (P); or

13 d. A required temporary or permanent business license that has been obtained for the location is
14 not maintained in active status.

15 SECTION 9: Title 19, Chapter 16, Section 140, Subsection (O), is hereby amended to
16 read as follows:

17 **O. Termination**

18 **1. Expiration for Failure to Exercise**

19 a. A Variance which will require the construction of a new building and which is not exercised
20 within the approval period shall be void, unless the applicant obtains an extension of time upon a showing of
21 good cause. Application for an extension shall be made to the Planning Commission or City Council,
22 whichever body took final action to approve the Variance. An extension of time may be granted only if
23 application therefor is made prior to the expiration of the approval period. For purposes of this Subparagraph
24 (a):

25 i. The “approval period” for a Variance is the time period specified in the approval, if one is
26 specified, and two years, otherwise.

1 ii. A Variance is exercised upon the issuance of a building permit for the new construction.
2 **2. [Cessation of Use.] Voiding of Variance.** A Variance to allow a use that is not permitted in a
3 particular zone shall be void without further action if:

- 4 a. [the] The use approved by the Variance ceases for a period of twelve months or more[.]; or
5 b. A building permit that is required for the exercise of the Variance is allowed to expire and no
6 new permit has been issued (or a reinstatement or reissuance of the expired permit) within the “approval
7 period” specified in Subparagraph (1)(a)(i) of this Subsection (O).

8 SECTION 10: Title 19, Chapter 18, Section 20, is hereby amended by amending the
9 definition of the term “Abandoned” to read as follows:

10 **Abandoned.** Concerning a building, [or use,] means not having been developed or maintained or put to
11 beneficial use for a stated period of time. Concerning a use, and for purposes of the provisions of this Title
12 regarding the termination of uses or the duration of legal nonconforming status, means not having been used
13 or operated or maintained for a required period of time or in the manner required, all as set forth in this Title.
14 The term includes such lack of use or non-operation:

- 15 1. Whether or not accompanied by actual intent to abandon, and
16 2. Where provisions of this Title authorize a use to be deemed abandoned under the circumstances
17 specified.

18 SECTION 11: Title 19, Chapter 18, Section 20, is hereby amended by adding thereto, at
19 the appropriate location, a definition for the term “Active Status” to read as follows:

20 **Active Status.** With regard to a business license, means that the license is in good standing. In addition,
21 with regard to any specified business, the term also means that the business authorized by the business license
22 must be fully operational for at least 8 hours, on at least one occasion, within any continuous 30-day period.

23 For purposes of the preceding sentence:

- 24 1. “Specified business” means the following types of businesses:
25 a. A business that implements any of the following uses, as included within the description
26 and definition of “sexually oriented business” found in LVMC 19.12.070:

1 i. Adult emporium.

2 ii. Adult mini-motion picture theater.

3 iii. Adult motion picture arcade; or

4 iv. Nude show.

5 b. To the extent not included in Subparagraph (a) above, any of the following businesses:

6 i. Adult nightclub, as described in LVMC Chapter 6.06B.

7 ii. Erotic dance establishment, as described in LVMC Chapter 6.35; or

8 iii. Video center, as described in LVMC Chapter 6.83.

9 2. A business that opens itself to the public for the provision of products or services is "fully
10 operational" only if and when it is open to the public.

11 SECTION 12: For purposes of Section 2.100(3) of the City Charter, Sections 19.14.030,
12 19.16.100, 19.16.110, 19.16.140 and 19.18.020 are deemed to be subchapters rather than sections.

13 SECTION 13: The Department of Planning is authorized and directed to incorporate into
14 the Unified Development Code the amendments set forth in Sections 2 to 11, inclusive, of this Ordinance.

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

22 ...

23 ...

24 ...

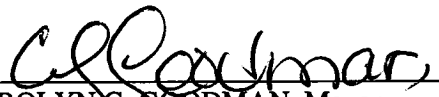
25 ...

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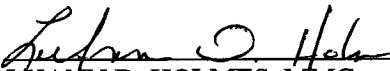
1 SECTION 15: All ordinances or parts of ordinances or sections, subsections, phrases,
2 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983
3 Edition, in conflict herewith are hereby repealed.

4 PASSED, ADOPTED and APPROVED this 19th day of December, 2018.

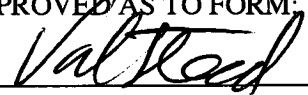
5 APPROVED:

6 By 
7 CAROLYN G. GOODMAN, Mayor

8 ATTEST:

9 
10 LUANN D. HOLMES, MMC
City Clerk

11 APPROVED AS TO FORM:

12  12-19-18
13 Val Steed, Date
Deputy City Attorney

1 The above and foregoing ordinance was first proposed and read by title to the City Council
2 on the 3rd day of October, 2018, and referred to a committee for recommendation;
3 thereafter the said committee reported favorably on said ordinance on the 19th day of
4 December, 2018, which was a regular meeting of said Council; that at said regular
5 meeting, the proposed ordinance was read by title to the City Council as amended and
6 adopted by the following vote:

7 VOTING "AYE": Mayor Goodman and Councilmembers, Coffin, Fiore,
Seroka and Crear

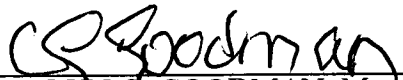
8 VOTING "NAY": None

9 EXCUSED: Tarkanian

10 ABSTAINED: None

11 THOSE NOT VOTING: Anthony

12 APPROVED:

13
14 
CAROLYN G. GOODMAN, Mayor

15 ATTEST:

16 
17 LUANN D. HOLMES, MMC City Clerk

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

LV CITY CLERK
495 S MAIN ST
LAS VEGAS NV 89101

Account # 22515
Ad Number 0001012741

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CITY CLERK

2018 OCT 31 A 11:54

Leslie McCormick, being 1st duly sworn, deposes and says: That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for, was continuously published in said Las Vegas Review-Journal and / or Las Vegas Sun in 1 edition(s) of said newspaper issued from 10/25/2018 to 10/25/2018, on the following days:

10 / 25 / 18

BILL NO. 2018-47

AN ORDINANCE TO AMEND VARIOUS PROVISIONS OF THE UNIFIED DEVELOPMENT CODE TO ESTABLISH ADDITIONAL BASES AND STANDARDS FOR DETERMINING WHETHER OR NOT A USE HAS BEEN ABANDONED OR MAY BE DEEMED ABANDONED, AND THEREFORE REQUIRED TO CEASE OPERATION; TO CLARIFY WHEN USE-RELATED APPROVALS EXPIRE OR BECOME VOID; AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by:
Robert Summerfield,
Director of Planning

Summary: Amends various provisions of the Unified Development Code to establish additional bases and standards for determining whether or not a use has been abandoned or may be deemed abandoned, and therefore required to cease operation, and to clarify when use-related approvals expire or become void.

At the City Council meeting of
October 3, 2018

BILL NO. 2018-47 WAS READ BY
TITLE AND REFERRED TO A
RECOMMENDING COMMITTEE

COPIES OF THE COMPLETE
ORDINANCE ARE AVAILABLE FOR
PUBLIC INFORMATION IN THE
OFFICE OF THE CITY CLERK, 2ND
FLOOR, 495 SOUTH MAIN
STREET, LAS VEGAS, NEVADA

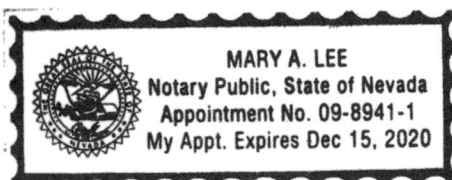
PUB: October 25, 2018
LV Review-Journal



LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 25th day of October, 2018

Notary 



AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

RECEIVED
CITY CLERK

2018 DEC 27 P 3: 52

LV CITY CLERK
495 S MAIN ST
LAS VEGAS NV 89101

Account # 22515
Ad Number 0001024417

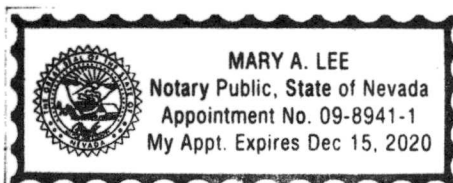
Leslie McCormick, being 1st duly sworn, deposes and says: That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for, was continuously published in said Las Vegas Review-Journal and / or Las Vegas Sun in 1 edition(s) of said newspaper issued from 12/22/2018 to 12/22/2018, on the following days:

12 / 22 / 18


/S/ _____
LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 24th day of December, 2018

Notary 



FIRST AMENDMENT

BILL NO. 2018-47
ORDINANCE NO. 6664

AN ORDINANCE TO AMEND VARIOUS PROVISIONS OF THE UNIFIED DEVELOPMENT CODE TO ESTABLISH ADDITIONAL BASES AND STANDARDS FOR DETERMINING WHETHER OR NOT A USE HAS BEEN ABANDONED OR MAY BE DEEMED ABANDONED, AND THEREFORE REQUIRED TO CEASE OPERATION; TO CLARIFY WHEN USE-RELATED APPROVALS EXPIRE OR BECOME VOID; AND TO PROVIDE FOR OTHER RELATED MATTERS.

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The above and foregoing ordinance was first proposed and read by title to the City Council on the 3rd day of October, 2018, and referred to a committee for recommendation; thereafter the committee reported favorably on said ordinance on the 19th day of December, 2018, which was a regular meeting of said City Council; and that at said regular meeting the proposed ordinance was read by title to the City Council as amended and adopted by the following vote:

VOTING "AYE": Mayor Goodman and Councilmembers Coffin, Seroka, Fiore and Crear

VOTING "NAY": NONE

EXCUSED: Councilwoman Tarkanian

DID NOT VOTE: Councilman Anthony

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PUB: December 22, 2018
LV Review-Journal