

Chapter 3.0:

Nonconforming Lots, Land Uses, Structures, and Signs

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Division 3.01—Nonconforming Lots, Land Uses, and Structures

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3.01.000: Purpose

A. The City Council finds that nonconforming lots, land uses, structures, and improvements within the City, including those that are legally established and those that are illegal, are detrimental to the orderly development of the City, and the health, safety, peace, comfort and welfare of persons and property within the City.

B. The purpose of this Division is to provide for the orderly termination of nonconforming rights for lots, land uses, structures, and improvements that were previously legally established; however, due to revisions to the Development Code, the previously legally established provisions no longer comply with the Development Code. The orderly termination of legally established nonconforming lots, land uses, structures, and improvements is necessary to promote the public health, safety and welfare, and to bring nonconforming lots, land uses, and structures into conformity with current Development Code provisions, and the goals and policies of the Policy Plan (General Plan) component of The Ontario Plan.

C. This Division is intended to limit the expansion of nonconforming lots, land uses, structures and improvements, establish the circumstances under which they may be continued, and provide for their correction, maintenance, and removal.

D. This Division is intended to provide for the elimination of nonconforming lots, land uses, structures, and improvements as rapidly as possible, without infringing upon the constitutional rights of their owners.

3.01.005: Applicability

A. Nonconforming lots, land uses, structures, and improvements may be maintained, expanded, altered, and/or abated only in accordance with the provisions of this Division. It shall be the property owner's responsibility to provide evidence or information to justify the establishment of the nonconforming rights provided under this Division.

B. Any designated historic landmark, contributing structure within a designated historic district, or any property listed on the California Register of Historical Resources or National Register of Historic Places, shall be exempt from the provisions of this Division with respect to the restoration and maintenance of structures, provided that all construction plans are approved through a Certificate of Appropriateness by the Historic Preservation Commission.

C. A lot, land use, structure, or improvement that becomes nonconforming due to a change in zoning district boundary or Development Code regulation, the period prescribed for abatement of the use or improvement of the lot or structure shall begin on the effective date of the change in zoning district boundary or Development Code regulation.

3.01.010: Nonconforming Lots

A. A lot that is not in compliance with the development standards prescribed by this Development Code, as they pertain to minimum area, dimension, or configuration, shall be deemed a "legal nonconforming lot," provided the lot was lawfully created and existing at the time the ordinance codified in this Development Code that created the nonconformity became effective.

B. A legal nonconforming lot shall be granted all development rights and land uses of the zoning district in which it is located.

3.01.015: Nonconforming Land Uses

A use that lawfully occupied a building or land at the time an ordinance codified in this Development Code became effective, and does not conform to the use regulations of the zoning district in which it is located, shall be deemed a "legal nonconforming use." A legal nonconforming use may continue, subject to the following:

A. Discontinuance and Abandonment of Use, and Loss of Legal Nonconforming Status.

1. Without further action by the City, a legal nonconforming use shall lose its legal nonconforming status and shall not be reestablished if the legal nonconforming use is abandoned for any reason.

a. *Residential Land Uses.* A legal nonconforming residential land use shall be deemed abandoned if the use is discontinued for a period of 180 or more consecutive days.

b. *Nonresidential Land Uses.* A legal nonconforming nonresidential land use shall be deemed abandoned if the use is discontinued for a single period of 180 or more consecutive days. Wherein special circumstances exist, the legal nonconforming status of a nonresidential land use may be extend pursuant to Section 4.02.030 (Extensions of Legal Nonconforming Status) of this Development Code.

2. Wherein the determination of abandonment of a land use is in question, the determination of abandonment shall be made by the Zoning Administrator, based upon satisfactory evidence. If there are no business receipts, records, or necessary licenses available to provide evidence that the land use in question has been in continual operation, the Zoning Administrator may make a determination of "abandonment of use" based upon consideration of **[i]** the removal, without replacement, of equipment, furniture, machinery, fixtures, structures, or other components necessary to business operation, and/or **[ii]** the shut-off or disconnect of utilities (water, electricity, and/or natural gas).

3. Following the discontinuance of a nonconforming land use, the use of a property shall comply with all current requirements of this Development Code and the applicable zoning district.

B. Change in Ownership, Tenancy or Management. A change in ownership, tenancy or management of a nonconforming use shall not affect its legal nonconforming status, provided the use is not discontinued pursuant to Subsection A (Discontinuation of Use and Loss of Legal Nonconforming Status), above, or the type of use and/or intensity of use does not change.

C. New Development. New development on any lot upon which a legal nonconforming use exists shall require that all uses on the property conform to the provisions of this Development Code.

D. Alterations and Expansion of Use. A nonconforming use shall not be enlarged or extended in such a way as to occupy any part of any structure or property that the use did not occupy prior to the creation of the nonconformity.

E. Intensification of Use. A nonconforming use shall not be intensified in such a way as to increase the discrepancy between existing conditions and the standards set forth in this Development Code

F. Replacement of a Nonconforming Use by Another Nonconforming Use. A legal nonconforming use may be replaced by another nonconforming use if the Zoning Administrator can clearly establish the following:

1. The nonconforming use is similar to the use(s) originally permitted in the structure/on the site;
2. The nonconforming use will not adversely affect, or be materially detrimental to, adjoining properties; and
3. The previous nonconforming use has not ceased for a period of 90 or more consecutive days.

G. Abatement of Nonconforming Uses. Nonconforming uses shall be abated as follows:

1. A use shall be discontinued upon the issuance of a cease and desist order by the City if **[i]** the use is nonconforming due to an operation or process that poses a threat to the public health, safety or welfare, as determined by the Planning Director or Building Official; and **[ii]** the owner fails to discontinue the operation or process, or to fully mitigate the hazard(s) involved.

2. A use that does not occupy a structure, or that occupies a structure having an assessed valuation of less than \$2,500 and causes a public or private nuisance, shall be discontinued within 5 years following the effective date of the ordinance codified in this Development Code.

3. The abatement of nonconforming adult businesses shall be governed by Section 3.01.025 (Abatement of Nonconforming Adult Businesses) of this Division.

4. A nonconforming use that has been discontinued or abandoned shall comply with Subsection A (Discontinuance and Abandonment of Use, and Loss of Legal Nonconforming Status) of this Section.

3.01.020: Nonconforming Structures and Improvements

A structure or improvement that was lawfully constructed or installed at a time an ordinance codified in this Development Code became effective, and does not conform to the development standards of the zoning district in which it is located, shall be deemed a “legal nonconforming structure” or “legal nonconforming improvement,” as applicable. A legal nonconforming structure or improvement may continue, subject to the following:

A. Damage or Destruction of a Legal Nonconforming Structure.

1. A legal nonconforming structure that is damaged or partially destroyed by fire or other calamity, or the public enemy, or other cause which is beyond the control of the property owner, and which could not otherwise have been prevented by reasonable care and maintenance of the structure, may be reconstructed, restored, or rebuilt up to the original size, placement and density, provided that total cost of the reconstruction, restoration, or rebuilding does not exceed more than 50 percent of the structure's fair market value prior to said damage or destruction. Structure reconstruction, restoration, or rebuilding shall commence within 180 days following the occurrence of damage, unless extended by the Zoning Administrator, and shall be diligently pursued to completion.

2. In the event that the cost of reconstructing, restoring, or rebuilding a structure exceeds 50 percent of the fair market value of the structure prior to such damage occurring, the structure may be reconstructed, restored, or rebuilt up to its original size, placement, and density prior to such damage occurring, and the use of the structure resumed, subject to the following:

a. The Zoning Administrator, at a duly noticed public hearing, shall first find that the reconstruction, restoration, or rebuilding of the nonconforming structure: **[i]** will not be detrimental or injurious to the health, safety or general welfare of persons residing or working in the neighborhood, **[ii]** will not be detrimental or injurious to property and improvements in the neighborhood, and **[iii]** continuation of the nonconforming structure will not result in an annoyance to and/or reduction of any surrounding property.

b. The public hearing and findings prescribed in Subparagraph A.2.a, above, shall not be required for the reconstruction, restoration, or rebuilding of a legal nonconforming single-family dwelling located on a lot that is designated for single-family dwellings by the Land Use Plan (Exhibit LU-01) contained in the Policy Plan component of The Ontario Plan.

c. The reconstruction, restoration, or rebuilding shall be commenced within 180 days following the date that the damage or destruction occurred, unless extended pursuant to Section 4.02.030 (Extensions of Legal Nonconforming Status) of this Development Code, and diligently pursued to completion.

d. Nothing in this section shall be construed to permit the continuation of conditions that will endanger the health, safety, or welfare of building occupants, the residents of the area, or which constitute a public or private nuisance.

B. Reconstruction, Restoration or Rebuilding of Legal Nonconforming Multiple-Family Housing.

1. Pursuant to GC Section 65852.25, legal nonconforming multiple-family housing that has been involuntarily damaged or destroyed by fire or other catastrophic event, or the public enemy, and such involuntarily damage or destruction could not otherwise have been prevented by reasonable care and maintenance of the structure, may be reconstructed up to the original

size, placement and density, excepting multiple-family housing that conforms with one or more of the following:

a. The reconstruction, restoration, or rebuilding will be detrimental or injurious to the health, safety or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvements in the neighborhood;

b. The existing nonconforming use of the building or structure would be more appropriately moved to a zone in which the use is permitted, or that there no longer exists a zone in which the existing nonconforming use is permitted; or

c. The existing nonconforming use of the building or structure has ceased for a period of 180 or more consecutive days.

2. The reconstruction, restoration, or rebuilding of any legal nonconforming multiple-family housing pursuant shall conform to all of the following:

a. The California Building Standards Code, as that code was in effect at the time of reconstruction, restoration, or rebuilding;

b. Any more restrictive local building standards authorized pursuant to HSC Sections 13869.7, 17958.7, and 18941.5, as those standards were in effect at the time of reconstruction, restoration, or rebuilding;

c. The State Historical Building Code (Part 2.7 (commencing with Section 18950) of HSC Division 13) for work on qualified historical buildings or structures;

d. The provisions of this Development Code, so long as the predamage size and number of dwelling units are maintained;

e. Architectural regulations and standards, so long as the predamage size and number of dwelling units are maintained; and

f. A building permit shall be obtained within 2 years following the date that the damage or destruction occurred, and diligently pursued to completion.

3. The reconstruction, restoration, or rebuilding of multiple-family housing that is involuntarily damaged or destroyed by fire or other catastrophic event, or by the public enemy, shall be prohibited within any industrial zoning district.

C. Alterations and Expansions to Legal Nonconforming Structures.

A nonconforming structure shall not be moved, altered or enlarged so as to increase the discrepancy between existing conditions and the most current standard as prescribed by the zoning district in which the structure is located. Furthermore, reasonable repairs and alterations may be made to legal nonconforming nonresidential structures, provided that no structural alterations shall be made that would prolong the life of supporting members, such as bearing walls, columns, beams, or girders, of a structure. Structural elements may be modified only if the modification or repair is immediately necessary to protect the public health and safety, occupants of the legal nonconforming structure, or adjacent property, as determined by the Building Official, excepting alteration and/or enlargement of the following:

1. A single-family dwelling conducted pursuant to Subsection H (Nonconforming Single-Family Residential Structures) of this Section;

2. A nonconforming structure shall not be moved, altered or enlarged so as to increase the discrepancy between existing conditions and the most current standard as prescribed by the zoning district in which the structure is located, excepting alteration and/or enlargement to a single-family dwelling conducted pursuant to Subsection H (Nonconforming Single-Family Residential Structures) of this Section.

3. Within nonresidential zoning and land use districts, reasonable repairs and alterations may be made to legal nonconforming nonresidential structures, provided that no structural alterations shall be made that would prolong the life of supporting members, such as bearing walls, columns, beams, or girders, of a structure. Structural elements may be modified only if the modification or repair is immediately necessary to protect the public health and safety, occupants of the legal nonconforming structure, or adjacent property, as determined by the Building Official. The total cost of the repairs or alterations may not exceed 50 percent of the replacement cost of the nonconforming structure; however, improvements required to reinforce an unreinforced masonry structure shall be permitted without replacement cost limitations, provided the retrofitting is strictly limited to compliance with current earthquake safety standards.

D. Interior Modifications to Legal Nonconforming Structures. Changes to interior partitions or other nonstructural improvements and repairs may be made to legal nonconforming structures provided that, over any consecutive 5-year period, the total cost of the desired improvements or repairs does not exceed 50 percent of the replacement cost of the structure. For the purpose of this provision, the replacement cost shall be determined by the Planning Director.

E. New Structures. Any new structure constructed on a lot with an existing legal nonconforming structure shall be constructed in conformance with all applicable provisions of this Development Code; however, in no case may a new nonresidential structure be constructed on the same lot as an existing legal nonconforming residential structure.

F. Abatement of Nonconforming Structures Posing a Threat to the Public Health, Safety and General Welfare. A structure that is nonconforming because of a violation or deficiency that poses a threat to the public health, safety, or general welfare, as determined by the Building Official, and that fails to provide necessary improvements to resolve the nonconformity or to fully mitigate the hazard involved, shall be abated, condemned or demolished upon the issuance of a nuisance abatement, condemnation, or demolition order by the City.

G. Conversion of Nonconforming Residential Structures Located Within Industrial Zoning Districts. A nonconforming residential structure located within an industrial zoning district shall not be converted to accommodate a commercial or industrial land use, excepting those single-family homes determined to meet the designation criteria for local historic landmarks set forth in Section 4.02.040 (Historic Preservation—Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservation Areas) of this Development Code.

H. Alteration and/or Expansion of a Nonconforming Single-Family Residential Structures. In addition to the requirements of Subsections A through G of this Section, a nonconforming single-family residential lot and/or structure that was lawfully established and maintained prior to the adoption of the ordinance codified in this Development Code, but which under the provisions of this Development Code does not conform with the regulations of the zoning district in which it is located with respect to use, design and/or development standards, and which is continuously used and maintained for single-family residential purposes, shall be subject to the following:

1. Alterations and Expansions to Single-Family Structures in Nonresidential Zones.

a. Necessary repairs and desirable alterations, as deemed appropriate by the Planning Director, may be made to a legal nonconforming single-family residential structure that is nonconforming as to use.

b. A single-family dwelling that is nonconforming as to use may be enlarged by an additional 25 percent of the original enclosed floor area, provided the addition meets all other provisions of this Development Code.

c. A single-family dwelling that is nonconforming as to its location within a zoning district that does not permit single-family dwellings, and in which the residential use was lawfully established and continuously maintained, shall be subject to the development regulations of the LDR-5 (Low Density Residential – 5 Dwelling Units/Acre) zoning district.

d. The addition or enlargement of a garage for the purpose of providing off-street parking facilities in compliance with Division 6.03 (Off-Street Parking & Loading) of this Development Code shall be permitted and shall not be counted toward the additional floor area permitted by Subparagraph H.1.b, above.

2. Continuation of a Nonconforming Setback. A single-family dwelling having a nonconforming side yard setback, which is added to, extended or enlarged, may continue the nonconforming setback, provided the addition, extension or enlargement maintains a side yard setback equal to or greater than the existing side yard setback, and is no greater than 14 FT in height.

3. On-site Parking. A single-family residential dwelling that is nonconforming as to site development or design, which is expanded or enlarged to include more than 3 bedrooms, or wherein a second unit or guesthouse is constructed subject to the requirements of this chapter, off-street parking required pursuant to Division 6.03 (Off-Street Parking & Loading) of this Development Code shall be provided, unless physical constraints exist that would make it impractical to provide the required parking facility(ies), as determined by the Planning Director, given the existing site design and configuration. For the purpose of this provision, a bedroom shall be considered any room within the structure that is not a clearly established garage, kitchen, bathroom, hallway or open living area (e.g., dining, family, and living rooms).

4. Fences and Walls. A street side yard fence or wall that is nonconforming as to setback and was lawfully constructed prior to 1998, may be replaced with a block wall or other fence, keeping within the existing setback, provided visual evidence (such as a photograph) of the nonconforming setback is provide to the Planning Department prior to building permit issuance for the new fence or wall. If a fence or wall nonconforming as to setback is demolished or removed prior to obtaining a building permit for a new fence or wall, the new fence or wall must meet the setback requirements in effect at the time of building permit issuance.

5. Historic Structures. A nonconforming single-family structure shall comply with the applicable requirements of Division 8.01 (Historic Preservation) of this Development Code.

I. Alteration and/or Expansion of a Nonconforming Multiple-Family Residential Structure. In addition to the requirements of Subsections A through G of this Section, a nonconforming multiple-family residential lot and/or structure that was lawfully established and maintained prior to the adoption of the ordinance codified in this Development Code, but which under the provisions of

this Development Code does not conform with the regulations of the zoning district in which it is located with respect to use, design and/or development standards, and which is continuously used and maintained for multiple-family residential purposes, shall be subject to the following:

1. The alteration and/or expansion of a nonconforming multiple-family residential land use or structure may be allowed provided there is no net increase in overall floor area.

2. The alteration and/or expansion of a nonconforming multiple-family residential lot and/or structure shall be acted on based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and any comments and/or testimony provided by the public, only after considering and clearly establishing all of the below-listed findings, and giving reasons in support of each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

a. The alteration and/or expansion is not for the purpose of increasing the number of living units on the project site;

b. The alteration and/or expansion will benefit the health, safety, and welfare of the building's occupants;

c. The alteration and/or expansion is architecturally compatible with the existing building;

d. The alteration and/or expansion is compatible with the character of the surrounding area; and

e. The alteration and/or expansion will provide adequate parking pursuant to the City's off-street parking provisions, and will not displace existing parking facilities.

J. Alteration and/or Expansion of a Nonconforming Nonresidential Structure. In addition to the requirements of Subsections A through G of this Section, a nonconforming nonresidential lot and/or structure that was lawfully established and maintained prior to the adoption of the ordinance codified in this Development Code, but which under the provisions of this Development Code does not conform with the regulations of the zoning district in which it is located with respect to use, design and/or development standards, and which is continuously used and maintained for nonresidential purposes (excepting Nonconforming Adult Businesses, which shall comply with Section 3.01.025 (Abatement of Nonconforming Adult Businesses) of this Division), shall be subject to the following:

1. A nonconforming nonresidential land use or structure may be granted a one-time, 25 percent expansion in area, subject to the granting of a Conditional Use Permit pursuant to the provisions of Section 4.02.015 (Conditional Use Permits) of this Development Code.

2. The alteration and/or expansion of a nonconforming nonresidential lot and/or structure shall be acted on based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and any comments and/or testimony provided by the public, only after considering and clearly establishing all of the below-listed findings, which shall be in addition to the findings for Conditional Use Permit approval contained in Section 4.02.015 (Conditional Use Permits) of this Development Code, and giving reasons in support of each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

- a. The alteration/expansion will protect a valuable property investment;
- b. The alteration/expansion and the proposed use will not adversely affect or be materially detrimental to surrounding properties;
- c. The alteration/expansion will allow for modernization in order to properly operate the use and protect valuable property rights;
- d. The alteration/expansion is architecturally compatible with the existing building;
- e. The alteration/expansion is compatible with the character of the surrounding area; and
- f. The alteration/expansion will provide adequate parking pursuant to the City's off-street parking provisions, and will not displace existing parking facilities.

K. Nonconforming Improvements. Nonconforming improvements such as landscaping, screen walls, security fences, and enclosures for trash receptacles, shall be altered to comply with the district regulations covering the following standards as a condition of any discretionary land use or development entitlement approval required by this Development Code:

- 1. The landscaping of setback areas, insofar as a setback exists;
- 2. The landscaping of parking areas, provided fulfilling the requirement does not reduce off-street parking or loading spaces to fewer than prescribed by Division 6.03 (Off-Street Parking and Loading) of this Development Code;
- 3. The screening of outdoor storage and loading areas;
- 4. The design, height, and placement of security fences; and
- 5. The enclosure of trash receptacles.

3.01.025: Abatement of Nonconforming Adult Businesses

Nonconforming adult business uses shall be abated as follows:

A. An adult business that lawfully occupied a building or land at the time an ordinance codified in this Development Code became effective, and does not conform to the land use regulations of the zoning district in which it is located, is deemed a "legal nonconforming adult business," and may not be increased, enlarged, or altered, except to change the use to a conforming use.

B. The below-listed amortization schedule for the abatement of legal nonconforming adult businesses be complied with, unless an extension is granted pursuant to Section 4.02.030 (Extensions of Legal Nonconforming Status) of this Development Code

- 1. A legal nonconforming adult business shall be terminated within one year following the adoption of this Section;

2. An adult business legally existing on real property that is subsequently annexed to the City shall be terminated within one year following the date of annexation;

3. Notwithstanding the amortization periods above, any discontinuance or abandonment of a nonconforming adult business for a period of 30 or more days shall result in the loss of nonconforming status.

C. Any adult business that becomes nonconforming by reason of the provisions established by this Development Code shall be notified by the Zoning Administrator by certified mail. Notice shall be given within 180 days of the date the use will become nonconforming and shall be provided to the property owner and business owner, if different from the property owner. In addition, the notice shall identify the applicable amortization period and the process for requesting an extension thereof.

D. The owner or operator of a legal nonconforming adult business may apply under the provisions of this Subsection, to the City Manager for an extension of time within which to terminate the nonconforming use, as follows:

1. An application for extension of time within which to terminate a use made nonconforming by the provisions of this Development Code may be filed by the owner of the real property upon which such use is operated, or by the operator of the use. The application shall be filed with the City Manager, at least 90 days, but not more than 180 days, prior to the time established in Subsection B of this Section, for termination of the use.

2. The application shall state the grounds for requesting an extension of time. The filing fee for the application shall be the same as that for Variance, as is set forth in the schedule of fees established by resolution of the City Council.

3. The City Manager shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within 45 days following receipt of the application. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The decision of the hearing officer shall be final and subject to judicial review pursuant to CCP Section 1094.6. If the Applicant fails to seek judicial review within the allotted time period, the decision of the hearing officer shall have res judicata and collateral estoppel effect in any other proceeding involving the same applicant.

4. An extension under the provisions of this Section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all the following findings or any other findings as required by law:

a. The applicant has made a substantial investment in the property or structure on or in which the nonconforming adult business is conducted, and the property or structure cannot be readily converted to another use and the investment was made prior to the date the adult business became nonconforming.

b. The applicant will be unable to recoup their investment as of the date established for termination of the use; and

- c.** The applicant has made a good faith effort to recoup the investment and to relocate the use in conformance with City requirements.

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Division 3.02—Nonconforming Signs

Sections:

- 3.02.000: Purpose
- 3.02.005: Applicability
- 3.02.010: Damage or Destruction of a Legal Nonconforming Sign
- 3.02.015: Illegal Signs
- 3.02.020: Amortization and Abatement of Nonconforming Signs

3.02.000: Purpose

A. It is the determination of the City Council that that nonconforming signs within the City are detrimental to the welfare of the citizens and their property, and to the orderly and creative development of the City. The City Council further determines that nonconforming signs shall be eliminated as rapidly as possible, without infringing upon the rights of property owners. To this end, it is the intent of this Division to:

1. Prevent the expansion of nonconforming signs to the maximum extent feasible;
2. Establish criteria under which nonconforming signs are allowed to be continued or expanded; and
3. Provide for the correction or removal of nonconforming signs in a reasonable, practical and judicious manner.

B. Furthermore, it is the intent of this Division to provide for the orderly termination of nonconforming signs to promote the public health, safety and welfare, and to bring nonconforming signs into conformity with the principals, goals and policies of the City Council Priorities, Vision, and Policy Plan (General Plan) components of The Ontario Plan.

3.02.005: Applicability

A. Nonconforming signs may be continued, maintained, repaired, and/or abated only as allowed by the provisions of this Division. It shall be the responsibility of each respective property and/or business owner to provide sufficient evidence or information to justify the continuation, maintenance, reconstruction, restoration, or rebuilding of a nonconforming sign, pursuant to the rights prescribe by this Division.

B. A nonconforming sign may be continued, maintained, reconstructed, restored, or rebuilt, provided the sign is not structurally altered or expanded.

3.02.010: Damage or Destruction of a Legal Nonconforming Sign

L. A legal nonconforming sign that is damaged or destroyed by fire or other calamity, or the public enemy, or other cause that is beyond the control of the business owner, and which could not otherwise have been prevented by reasonable care and maintenance of the sign, may be reconstructed, restored, or rebuilt up to the original size, design and placement, provided that

total cost of the reconstruction does not exceed more than 50 percent of the sign's fair market value prior to the damage or destruction. The reconstruction, restoration, or rebuilding of a damaged or destroyed legal nonconforming sign shall commence within 6 months following the occurrence of the damage or destruction, unless extended by the Zoning Administrator, and shall be diligently pursued to completion.

M. In the event that the cost of reconstructing, restoring, or rebuilding a sign exceeds 50 percent of the fair market value of the sign prior to any damage occurring, the sign may be reconstructed, restored, or rebuilt up to its original size, design and placement, and the use of the sign may be resumed, subject to the following:

1. The Planning Commission, at a duly noticed public hearing, must find that **[i]** the reconstruction, restoration, or rebuilding of the nonconforming sign will not be detrimental or injurious to the health, safety or general welfare of persons residing or working in the neighborhood, and will not be detrimental or injurious to property and improvements in the neighborhood, and **[ii]** continuation of the nonconforming sign will not result in an annoyance to and/or reduction of any surrounding property.

2. In considering whether a nonconforming sign results in annoyance to and/or reduction of any surrounding property, the Zoning Administrator shall consider the following:

- a.** The number of additional nonconforming signs on the property;
- b.** Whether the nonconforming sign(s) impede visibility toward other conforming signs on the subject property and/or adjacent properties;
- c.** The extent to which the nonconforming sign(s) contribute to sign clutter within the surrounding area; and
- d.** The extent to which such nonconforming sign(s) provide the subject property, or use thereon, with its only means of identification.

3. The reconstruction, restoration, or rebuilding of a nonconforming sign shall be completed within 6 months following building permit issuance, unless extended by the Zoning Administrator, and shall be diligently pursued to completion.

4. Nothing in this Division shall be construed to permit the continuation of conditions that will endanger the public health, safety or welfare, or which constitute a public or private nuisance.

3.02.015: Illegal Signs

A. Nuisance Signs. The following signs shall be considered illegal and deemed to be a nuisance:

1. Unsafe Signs. An unsafe sign is a sign determined by the Zoning Administrator or Building Official to be any of the following:

- a.** A sign that poses a danger to the public or could create a potential hazard;
- b.** A sign erected without required permits; or

c. A sign erected in the public right-of-way or on public property without specific written authorization from the City.

2. Abandoned Signs.

a. An abandoned sign is a sign remaining in place for a period of 90 or more consecutive days, which no longer advertises or identifies an ongoing business, product, or service available on the premise where upon the sign is located.

b. When the abandonment of a sign is in question, the determination shall be made by the Zoning Administrator, based upon satisfactory evidence. When there are no business receipts, records or necessary licenses available to provide evidence that the business for which the sign was erected has been in continual operation, the Zoning Administrator may make a determination of sign abandonment based upon **[i]** consideration of the removal, without replacement, of equipment, furniture, machinery, fixtures, structures, or other components necessary to business operation, and/or **[ii]** the shut-off or disconnect of utilities (water, electricity, and/or natural gas).

3. Unmaintained Signs. An unmaintained sign is a sign that has not been kept in a proper state of preservation, free of damaged or broken components, and has been kept neatly painted and maintained.

4. Illegally Erected Signs. A sign is illegally erected if:

a. It violates any provision of this title, except as provided by Paragraph B.2 of this Section;

b. It was erected without first obtaining required permits; or

c. It was erected without complying with all ordinances and regulations in effect at its time of construction, erection or use. No sign that has been erected in violation of any previously existing sign regulation(s) shall become a conforming sign by virtue of the adoption of any new regulation(s).

B. Existing Illegal Signs. Any business located on the same property where a sign has been determined by the Zoning Administrator to be illegal, shall not be granted a permit for additional signs until all illegal signs have been removed, except as follows:

1. The sign determined to be illegal is associated with a business that is different from the business seeking a permit for new signage, even though they may be located in the same center or complex; or

2. The sign determined to be illegal is not owned or controlled by the permit applicant, and the permit applicant is not the agent of the person who owns or controls the illegal sign.

C. Identification and Inventory of Illegal Signs. Within one-year following the enactment date of this Section, the City shall commence with the identification and inventory of illegal signs within the City. Upon completion of the identification and inventory of illegal signs, the City may commence abatement of all illegal signs identified in the sign inventory.

D. Removal of Illegal Signs.

1. Unsafe Signs. The Zoning Administrator, Building Official, or Code Enforcement Director, may cause the removal of any unsafe sign, or any other advertising structure that creates an immediate peril to persons or property, summarily and without notice.

2. Political Signs and Commercial Advertising on Public Facilities and Rights-of-Way. Political signs and commercial advertising are prohibited from being displayed on public facilities and rights-of-way, including but not limited to, any curb, gutter, sidewalk, or utility pole. The Code Enforcement Director may cause the immediate removal of any such sign.

3. Abandoned, Unmaintained, and Illegally Erected Signs. Abandoned, unmaintained, and/or illegally erected signs shall be removed and stored pursuant to the rules and procedures established by the Code Enforcement Director, at which time they may be recovered by the owner upon payment to the City for costs of removal and storage.

3.02.020: Amortization and Abatement of Nonconforming Signs

A. Amortization of Nonconforming Signs. A sign lawfully placed, erected, or constructed at the time an ordinance codified in this Development Code became effective, and which does not conform to the applicable current sign regulations, is deemed a "legal nonconforming sign." The classifications of legal nonconforming signs identified in Table 3.02-1 (Amortization Period of Certain Classifications of Nonconforming Signs), below, shall be removed or made to meet the current requirements of this Division within the timeframes specified by said Table, except that timeframes for signs nonconforming by reason of annexation to the City shall begin on the date of completion of the annexation.

Table 3.02-1: Amortization Period of Certain Classifications of Nonconforming Signs

<i>Sign Classification</i>	<i>Abatement Period</i>
Billboard signs, excluding signs established by billboard relocation agreement pursuant to Section 4.02.010 (Billboard Relocation Agreements) of this Development Code	10 years
Pole signs	10 years
Painted signs on buildings, walls and fences within commercial zoning districts, excepting historic signs	5 years

B. Inventory of Nonconforming Signs. Following the enactment of this Division, the City shall commence the identification and inventory of nonconforming signs within the City. Upon completion of said nonconforming sign identification and inventory, the City may commence abatement of all identified nonconforming signs.

C. Abatement of Nonconforming Signs. The abatement of nonconforming signs shall be accomplished in the following manner:

1. Painted Signs. Signs painted directly on buildings, walls, and fences shall be painted over in such a manner that the sign will not thereafter become visible. Such painting shall cause the sign area to blend with, and be compatible with, the color scheme of the building, wall, or fence, as applicable.

2. All Other Signs. All other nonconforming signs not otherwise specified in Subsection A (Amortization of Nonconforming Signs), above, shall be removed or altered to cause it to conform to the provisions of this Division. Nothing in this Section shall prohibit the normal upkeep or repair of any sign, or the painting or repainting of the face thereof, during its lawful existence.

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