



# *City of Sunnyvale*

## *Memorandum*

**To:** Planning Commission  
**From:** Diana O'Dell and Rosemarie Zulueta through Trudi Ryan  
**Date:** January 14, 2013  
**Re:** Retooling the Zoning Code: Nonconforming Regulations

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At our last study session, we described ideas for new permit findings, responded to questions about exceptions and reviewed ideas for new or revised findings for new permit types, including the proposed planned development permit. We also looked at two types of exceptions that could be considered. We are continuing to work on the proposed permit structure based on your feedback from that study session.

### **NONCONFORMING ORDINANCE**

At Monday's study session we will go over the proposed revisions to the nonconforming ordinance. "Nonconforming" means a property, use, or structure that doesn't conform to the current code. Conforming can be a result of many factors such as changed zoning requirements for lot size, setback, height or different uses allowed. Nonconformities happen as the zoning code is revised and updated as well as when a government agency acquires property for public purposes (e.g. roadway widening). A non-conforming provision applies only to "legal nonconformities" meaning that the property once complied with local regulations. The nonconforming ordinance lays out very specific provisions for when (and if) a property, use, or structure is required to change and be brought into conformity with the current regulations.

The nonconforming ordinance seeks to balance the property owners' needs for reasonable use of their property, with the need to upgrade properties to meet current standards. Sunnyvale's nonconforming ordinance is relatively flexible. Nonconforming single family homes and duplexes are given the most latitude, and all residential uses are allowed to be rebuilt within one year if accidentally damaged or destroyed. The code is more stringent for nonresidential uses and requires conformity if over 50% of the structure value is destroyed or if the use is vacant for more than one year.

Planning staff has struggled with the nonconforming ordinance as currently written. It is oddly organized, even more oddly phrased, and not systematic in dealing with potential situations that can arise. The combination of confusing language and gaps in regulations has interfered with consistent application of the ordinance (See Attachment B, Existing Nonconforming Regulations). Attempts to address specific situations have probably contributed to some of the "oddness."

As part of the Retooling, we are looking to clarify language and fill in the gaps for the nonconforming regulations chapter. This effort requires reorganizing and adding new sections, using simpler language, and codifying the policies staff uses to address gaps in the regulations. Attached is a very preliminary draft that we will be discussing at the study session (Attachment A, Preliminary Draft Nonconforming Regulations Chapter). Many changes to this draft will still have to be made, but we would like to get the conversation started.

**QUESTIONS/ISSUES WITH THE CURRENT ORDINANCE**

- 1) **REPLACE** – The ordinance seems to permit rebuilding a nonconforming structure even if it was not damaged or destroyed. This is not typical for a nonconforming ordinance. The phrase that is used is that “a building.....may be repaired, altered, enlarged or replaced.” This causes endless headaches. Elsewhere in the code it indicates that you cannot replace a non-conforming structure. Under the current ordinance, you can take a nonconforming structure (such as a shed or garage), demolish it, and rebuild it exactly as it was. This extends the life of the structure and is not in keeping with one of the primary purposes of the ordinance, to “Provide for the elimination of incompatible and nonconforming uses of land, buildings and structures which are adversely affecting the character and value of desirable development in each zoning district” (SMC 19.002.030 (10)). To make this section have any point, we need to get rid of “replaced” except when speaking of accidental damage or destruction.
- 2) **REPAIR** - Lots of ordinances define “repair.” Might be a good idea.
- 3) **DEFINING NONCONFORMING USE** – This needs to be clarified, primarily for residential. In the Use Table, there are three main categories of residential uses: Single-family homes, duplexes, and multi-family developments. Each zoning district also has density restrictions. Clarification is needed whether a nonconforming use also encapsulates nonconforming densities.
- 4) **LEGAL vs. ILLEGAL** - Determining the legality of the use/building/structure/land and what to do if illegal.
- 5) **MEANS OF DESTRUCTION** - Damage or destruction of a nonconforming use by what means? Most ordinances clarify that it must be accidental or an “Act of God.” Staff opinions have differed on whether accidental destruction is addressed. Probably a good idea to close that loophole. Also, surprisingly, the section on non-conforming does not deal well with nonconforming residential buildings.
- 6) **PERMITS AND CONFORMING STATUS** - The role of Use Permits or other planning approvals in determining conformity. For example, if a project receives a Use Permit for high floor area, and it is destroyed, is it considered a nonconforming structure or a conforming structure? Staff’s interpretation is that the ordinance intends it to be conforming but it is never made clear.
- 7) **REQUIRED FACILITIES** - What to do with a site where parking or landscaping or trash enclosures are not in compliance? The code doesn’t handle it well, and it should be handled.
- 8) **RECONSTRUCTION OF RESIDENTIAL USES** - Currently, the code only allows rebuilding or nonconforming residential uses in *residential or commercial* zoning districts. The code should probably be more specific about residential uses in industrial zoning districts.
- 9) **SPECIFIC PLAN BLACK HOLES** - Specific Plan sections and the nonconforming section point at each other, but never actually say anything. Also,
- 10) **CLARITY** - Overall, the structure of this section of the zoning code is difficult to use and find what you need.

## STAFF EFFORTS TO DATE

- A) **NEW DEFINITIONS.** A lot of questions have come up about defining terms. Is a shed a residential structure or not? What does “expand” actually entail? Where does “repair” leave off and “replace” begin? We added new definitions that are intended to capture how we have been interpreting these terms.
- B) **REPLACEMENT.** The current code allows for a “expand, enlarge, replace.” That has been changed to prohibit replacement except for accidental damage or destruction.
- C) **NONCONFORMING REQUIRED FACILITIES.** This clarifies when a nonconforming required facility (parking, landscaping, trash enclosure) affects the alteration or modification of the associated building or the facility itself. Sections about upgrading nonconforming parking and recycling and trash enclosures have been pulled into this section.
- D) **ACCESSORY USES.** We clarified that accessory uses may be expanded or replaced on a property with a nonconforming use. For example, if you have a nonconforming residential density, you can still fix up the leasing office or the rec room in the residential development.
- E) **SINGLE FAMILY AND DUPLEXES.** Single-family homes and duplexes have gotten mingled together in the sections. We have separated them. Single-family homes (permitted uses) may be expanded in the R-0, R-1 and R-2 Zoning districts even if they do not meet the minimum lot size/maximum density standards. Duplexes may be expanded **in the R-2 Zoning District** if they do not meet the minimum lot size/maximum density standards.
- F) **EMINENT DOMAIN.** The definition of a legal nonconformity can be the result of “eminent domain.” The proposed ordinance addresses this situation.
- G) **PUBLIC HEALTH.** There is a provision about how the nonconforming ordinance cannot override lawful orders made in the interest of public health, etc. It is written narrowly for additions or alterations to buildings. This section was expanded to include any modification to a nonconforming anything. If the required addition of accessible parking spaces cuts into required landscaping, that is specifically permitted in this section.
- H) **CONVERSION TO HABITABLE SPACES.** As a policy, we have not allowed the conversion of nonconforming accessory structures into habitable spaces. This codifies that practice.
- I) **DAMAGE OR DESTRUCTION.** We have clarified what can be the the cause of damage, and that a nonconforming residential building may be rebuilt within 1 year.

**KEY QUESTION: Do you have any comments or questions about the preliminary draft of the nonconforming regulations chapter? We will also be highlighting certain provisions at the study session to obtain your input.**

## ATTACHMENTS

- A. Preliminary Draft Nonconforming Regulations Chapter
- B. Existing Nonconforming Regulations

## PRELIMINARY DRAFT ONLY

### CHAPTER 19.06 NONCONFORMING USES, STRUCTURES OR LOTS

19.06.010	Purpose
19.06.020	Applicability
19.06.030	Definitions
19.06.040	Determination of Legality
19.06.050	Applicable Zoning Standards and Permits
19.06.060	Public Health, Safety and General Welfare
19.06.070	Nonconforming Uses
19.06.080	Nonconforming Structures
19.06.090	Nonconforming Required Facilities
19.06.100	Nonconforming Lots
19.06.110	Damage or Destruction

#### 19.06.010 Purpose

- (a) **Provisions.** The purpose of this chapter is to establish uniform provisions for the regulation of legal nonconforming land uses, structures, and lots. Within the zoning districts established by this Zoning Code, there exist land uses, structures, and lots that were lawfully in existence before the adoption, or amendment of this Zoning Code, or annexation of the subject property to the City, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Code, as amended.
- (b) **Intent.** It is the intent of this Zoning Code to discourage the long-term continuance of these nonconformities in order to promote the public health, safety, and general welfare and to bring the uses and structures into conformity with the Zoning Code and any applicable specific plan, master development plan, or precise plan. This chapter provides for the eventual elimination of nonconformities but allows them to exist under the limited conditions identified in this chapter. Generally, this chapter is intended to be administered in a manner that would limit the expansion of nonconformities, establish the circumstances under which they may be continued, and provide for their change, correction, or removal resulting in their eventual abatement.

#### 19.06.020 Applicability

This section applies to all uses, structures and lots in all zoning districts including specific plan and precise plan areas with the following exceptions:

- (a) Nonconforming signs are regulated in Chapter 19.44 (Signs).
- (b) Adult businesses that do not comply with applicable location limitations are regulated in Section 19.60.040 (Application to Existing Establishments).

#### 19.06.030 Definitions

- (a) **“Expand”** means enlargement in area, space, volume or increase in occupant load.*(new)*
- (b) **“Nonconforming lot”** means a lot which does not meet the current minimum lot area or lot width of its particular zoning district. An example is a lot in the M-S Zoning District that is less than the minimum of 22,500 square feet required for the zoning district.*(19.50.010)*
- (c) **“Nonconforming required facility”** means any associated site requirement, such as landscaping, parking, trash enclosures, or similar as referred to in Chapter 19.x that does not conform to the applicable requirements. An example of a nonconforming required facility is an industrial building that does not meet current parking requirements.*(new, previously incorporated into “Nonconforming building” 19.12.150(4))*
- (d) **“Nonconforming structure”** means any building, accessory structure, fence, or other structure that does not conform to required setbacks, height, floor area, lot coverage or other applicable

## PRELIMINARY DRAFT ONLY

development standards in the Zoning Code. Signs and required facilities are not included in this category and are regulated separately. (19.12.150(4), amended)

- (e) **“Nonconforming use”** means a use that does not conform to the applicable use requirements for the zoning district, specific plan district or applicable combining district. A nonconforming use may also be a residential property that exceeds the maximum residential density limitations of the zoning district. An example of a nonconforming use is a duplex in an R-0 Zoning District, where duplexes are prohibited. (19.12.150(6), amended)
- (f) **“Non-residential use or structure”** means any use or building that is not a dwelling unit or an associated residential accessory structure or use. (new)
- (g) **“Repair and alteration”** includes ordinary maintenance or replacement of walls, electrical systems, fixtures, plumbing, or reroofing that does not exceed 75% of the total valuation of the structure. Repair and alteration may also include alteration such as changes to exterior materials, layout of parking, landscaping, or recycling and trash enclosures, and similar types of site improvements. Repair and alteration does not include expansion or intensification.
- (h) **“Replace”** means repair or alteration that exceeds 75% of the appraised value as last shown in the Santa Clara County Assessor’s records. Seismic retrofitting costs are exempted from this definition.
- (i) **“Residential use or structure”** means a dwelling unit or an associated accessory structure or use such as a detached garage, accessory utility building or leasing office. (new)

### 19.06.040 Determination of Legality

Nonconforming uses, structures, required facilities and lots regulated by this chapter must be legal. Proof of legality is described below. If proof of legality cannot be found, the Director will make a determination in accordance with Section 19.04.080 (Director Determination). Illegal uses and structures are subject to enforcement per Section 19.02.050 (Responsibility for Enforcement). (new)

- (a) **Valid Permit.** A nonconforming use is legal if the applicant can prove a valid planning permit and/or building permit was issued by the City prior to the commencement of the use. Nonconforming structures and required facilities are legal if a valid building permit was issued by the City. Lots are considered legal if the subdivision was legally created and approved by the City or County.
- (b) **Annexation.** A nonconforming use, structure, required facility or lot is legal if valid permits were obtained from the County prior to annexation.
- (c) **Prior to Establishment of the Nonconforming Ordinance.** Any nonconforming use that lawfully existed on April 2, 1963 is considered legal.
- (d) **Dedication of Land.** If nonconformity was caused by the dedication of land to the City, county or other governmental authority, the use, structure, required facility or lot is legal. An example is when the City acquires land to expand a roadway, resulting in a nonconforming lot area or building setback.

### 19.06.050 Applicable Zoning Standards and Permits

Any alteration, expansion or replacement of a use, structure, required facility or lot must meet current zoning development standards unless otherwise provided for below. All required permits must be obtained. (19.50.010, 19.50.020(a) and (b), 19.50.030(a) and (b))

### 19.06.060 Public Health, Safety and General Welfare

Any nonconforming use, structure or required facility may be repaired, altered, expanded or replaced if required to reasonably comply with any lawful order of any public authority made in the interest of the public health, safety or general welfare. For example, parking spaces or landscaping may be eliminated in to provide required accessible spaces per the building code. (19.50.080)

## PRELIMINARY DRAFT ONLY

### 19.06.070 Nonconforming Uses

- (a) **Repair and Alteration.** A structure containing a nonconforming use may be repaired or altered. *(19.50.060, amended to clarify "expansions")*
- (b) **Expansion or Replacement.** A nonconforming use or a structure containing a nonconforming use must not be expanded or replaced except for the following: *(19.50.060)*
  - 1) **Single-Family Homes.** Single-family dwellings in the R-0, R-1 or R-2 Zoning Districts on lots that do not meet the minimum lot area requirements, and therefore exceed the maximum allowable density for the zoning district, may be expanded or replaced. *(19.50.020(a))*
  - 2) **Single-Family Homes in the DSP District.** Single-family dwellings in any block of the Downtown Specific Plan District may be expanded or replaced. *(19.28.060(a))*
  - 3) **Duplexes.** Duplexes in the R-2 Zoning District that do not meet the minimum density requirements may be expanded or reconstructed. *(19.50.020(b))*
  - 4) **Accessory Uses.** Related accessory uses on a property may be expanded or replaced provided they meet all current development requirements. For example, a residential apartment complex with nonconforming density may add or expand the leasing office. *(new, per common practice)*
  - 5) **Damage or Destruction.** As provided for in 19.06.110 (Damage or Destruction).
  - 6) **Change to another Nonconforming Use.** Change of a nonconforming use to another nonconforming use may be considered by the Director in accordance with 19.04.080 (Director Determination) provided the new use is the same type as, or no more incompatible with the zoning district than, the previous use. Intensification of the nonconforming use is prohibited. For example, a nonconforming shopping center use in a residential zoning district may continue to change uses provided the new uses are consistent with a shopping center and do not have more traffic, noise or other land use impacts than a shopping center use. *(19.50.070)*
- (c) **Abandonment.** A nonconforming use is considered discontinued if associated activities have ceased or the building vacated. Future uses must conform to the Zoning Code if the nonconforming use is discontinued for a time period described below: *(19.50.100)*
  - 1) **Enclosed.** One year or more for an enclosed nonconforming use.
  - 2) **Unenclosed.** Six months or more for a unenclosed nonconforming use;

### 19.06.080 Nonconforming Structures

- (a) **Repair, Alteration and Expansion.** A nonconforming structure may be repaired or altered. Expansion of a nonconforming structure may only occur if there is no expansion of the nonconformity. For example, a building with a nonconforming setback may be expanded provided it does not expand along the nonconforming setback. *(19.50.020(a) , 19.50.030(a) and 19.50.040)*
- (b) **Conversion to Habitable Spaces.** A nonconforming non-habitable structure must not be converted into a habitable structure. For example, a nonconforming detached garage may not be converted into an office or accessory living unit. *(new, per common practice)*
- (c) **Replacement.** Nonconforming structures must not be replaced except as provided for in 19.06.110 (Damage or Destruction).

### 19.06.090 Nonconforming Required Facilities

- (a) **Repair, Alteration and Expansion of a Use or Structure on a Parcel with a Nonconforming Required Facility.** Except as provided below, nonconforming required facilities do not need to be modified to current standards when associated uses and structures are repaired, altered or expanded. The repair, alteration or expansion may not worsen the deficiency of the required facility without approval by the Director as described in 19.04.080 (Director Determination). For example, a property that does not meet the minimum landscaping requirement may not add on to

## PRELIMINARY DRAFT ONLY

the building in such a way as to further reduce the landscaping area. The following alterations or expansions require nonconforming required facilities to be upgraded: *(19.50.020(a)(b) and 19.50.030(a) – required facility as “building”)*

- 1) **Non-residential Uses with Nonconforming Recycling and Solid Waste Enclosures.** Any addition to a non-residential building which equals or exceeds 30% of the existing floor area of the building or buildings on a site must also provide enclosures for recycling and solid waste containers that meet current standards as described in 19.x. (Solid Waste and Recycling Enclosures) *(19.38.030(e)(1)(A))*
  - 2) **Single-Family Homes with Nonconforming Covered Parking.** Effective March 1, 2003, any single-family home with nonconforming covered parking must provide the minimum 2 covered parking for projects described in 19.46.xxx (Single-Family and Two-Family Dwelling Parking Requirements). *(19.46.060(a)(4))*
  - 3) **Uses with Nonconforming Parking.** Any change or expansion to a use or structure which requires additional parking must provide all parking in conformance with current standards. *(19.46.060(a)(2)) and common practice)*
- (b) **Repair and Alteration of a Nonconforming Required Facility.** A nonconforming required facility, such as parking, landscaping, recycling or trash enclosures may be repaired or altered in conformance with design standards as necessary provided the alteration does not worsen the deficiency of the required facility. *(19.50.020(a)(b) and 19.50.030(a) – required facility as “building.”*

### 19.06.100 Nonconforming Lots

Except for the DSP district, conforming structures may be constructed on nonconforming lots provided the owner does not own sufficient adjoining land to facilitate compliance with minimum standards of lot area or lot width. See Section 19.28.090 (Downtown Specific Plan) for minimum lot requirements for the Downtown Specific Plan area. *((19.50.010) and 19.28.090(a))*

### 19.06.110 Damage or Destruction

In the case where a nonconforming use or structure is damaged or destroyed by accidental cause, the following provisions apply:

- (a) **Residential Use or Structure.** A nonconforming residential use or structure may be rebuilt exactly as it was previously configured provided that the associated building permit is issued within one year of the date of damage or destruction. Expansion of a nonconforming use is prohibited. *(19.50.090(b) for use. The code is silent on the subject of a nonconforming residential structure.)*
- (b) **Non-Residential Use or Structure.** A nonconforming non-residential use or structure may be rebuilt exactly as it was previously configured provided that the cost of repairs or reconstruction is 50% or less of the value of the building. When cost of repair or reconstruction is in excess of this amount, the use or structure must conform to current zoning and use standards. For damage or destruction of only a portion of the nonconforming use or structure, the 50% will be applied to the portion of the use or structure. For example, if a nonconforming use takes up only a portion of a structure, and that entire portion of the structure is destroyed, the nonconforming use may not reoccupy the structure. Exceptions may be granted for nonconforming structures with a Use Permit following the procedures in 19.x (Use Permits). There are no exceptions for nonconforming uses. *(19.50.030 (b) and (c) for non-residential structures, 19.50.090(a) for non-residential use.)*
- (c) **Building Value and Repairs.** The building official determines all costs of repair and building valuation. *(19.50.030(b) and (c), 19.50.090(a).*

Sunnyvale Municipal Code

[Up](#)   [Previous](#)   [Next](#)   [Main](#)   [Collapse](#)   [Search](#)   [Print](#)

[Title 19. ZONING](#)

[Article 4. GENERAL DEVELOPMENT STANDARDS](#)

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**Chapter 19.50. NONCONFORMING BUILDINGS AND USES**

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**19.50.010. Nonconforming lots.**

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The owner of legally created lots which do not meet current minimum lot area or lot width, providing the owner does not own sufficient adjoining land to permit compliance, may obtain a building permit to construct a building which complies with applicable zoning regulations. (Ord. 2623-99 § 1 (part): prior zoning code § 19.36.060).

**19.50.020. Nonconforming residential building.**

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(a) A building legally built and occupied as a dwelling, in all zoning districts except R-1 and R-2, which does not meet current development standards except for lot area per dwelling unit, may be repaired, altered, enlarged or replaced without requiring a variance provided:

- (1) No increase in nonconformities will result; and
- (2) Any required permits are obtained.

(b) A building legally built and occupied as a single-family or duplex dwelling in the R-0, R-1 and R-2 zoning districts may be repaired, altered, enlarged or replaced without a variance even if it does not meet current development standards for lot area per dwelling unit, provided all other current development standards are met and any required permits are obtained. (Ord. 2745-04 § 1: Ord. 2623-99 § 1 (part): prior zoning code § 19.28.005).

**19.50.030. Nonconforming nonresidential building.**

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(a) A building legally built and used for nonresidential purposes, in any zoning district, which does not meet current development standards may be repaired, altered, enlarged or replaced without requiring a variance provided any repair, alteration, addition or enlargement must comply with the latest applicable zoning standards. Any required permits must be obtained.

(b) If the existing building is damaged to the extent that repairs would exceed fifty percent of the value of the building, as determined by the building official, the entire building must comply with the latest applicable zoning standards. Any required permits must be obtained.

(c) If the existing building is damaged by a catastrophic event to the extent that repairs would exceed fifty percent of the value of the building, as determined by the building official, a use permit may be obtained to allow reconstruction to its configuration prior to damage by the catastrophic event. An application for such a use permit to replace the nonconforming structure shall be heard by the planning commission and is subject to the procedures set forth in Chapter 19.88. The application must be submitted within six months of the catastrophic event. Failure to apply for a building permit within three months of the issuance of the use permit, or failure to begin construction within three months of the issuance of a building permit, shall be deemed to be discontinuation or abandonment of the use permit. In granting a use permit, the planning commission must take the following factors into account:

- (1) The building may be reconstructed or replaced only for occupancy or use by a conforming use;
- (2) The nonconforming portion may be replaced or reconstructed to its previous configuration, provided it will not create, cause, or increase any nonconformity beyond that which existed prior to destruction;
- (3) Except as otherwise provided in this section with regard to replacement or reconstruction of a portion of a facility to its previous nonconforming condition, all reconstruction shall be subject to all applicable laws, regulations, and procedures otherwise governing construction on the site at the time the construction is undertaken.

(4) The planning commission may impose such conditions as determined necessary to insure compatibility with surrounding properties, including, but not limited to, improvements or modifications to existing improvements on the property such as landscaping, parking, etc., limitation on nature of operations and a specified term of years for which the use permit shall be granted. (Ord.

2673-01 § 4; Ord. 2623-99 § 1 (part): prior zoning code § 19.28.007).

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#### **19.50.040. Nonconforming floor area ratio.**

Nothing contained in this chapter shall be construed to prohibit alterations to a building or use made nonconforming with respect to maximum floor area ratio, or with respect to maximum floor area ratio permitted without a use permit, due to the establishment or change of a zoning district or modification of the maximum floor area ratio limitations of Chapter 19.32, provided that such building or use was lawful at the time of such change and provided that the alteration does not increase the floor area ratio or the floor area occupied by the use made nonconforming. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.080).

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#### **19.50.050. Nonconforming required facilities.**

Except as provided in Section 19.50.020, a use which was lawfully established and which becomes nonconforming, including residential uses that do not meet minimum lot area per dwelling unit requirements, may be continued so long as no enlargement of the area, space or volume occupied by such use occurs. (Ord. 2745-04 § 2; Ord. 2623-99 § 1 (part): prior zoning code § 19.46.010).

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#### **19.50.060. Continuance of an existing nonconforming use.**

A use which was lawfully established and which becomes nonconforming, including residential uses that do not meet minimum lot area per dwelling unit requirements, may be continued so long as no enlargement of the area, space or volume occupied by such use occurs. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.010).

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#### **19.50.070. Change of a nonconforming use.**

Nonconforming use of a building may be changed to another type of nonconforming use provided:

- (a) No structural alterations are made.
  - (b) The new use is the same type as, or no more incompatible with the zoning district than, the previous use.
- (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.020).

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#### **19.50.080. Additions or alterations.**

Nothing contained in this chapter shall be construed to prohibit such additions or alterations to a building occupied by a nonconforming use as may be reasonably necessary to comply with any lawful order of any public authority made in the interest of the public health, safety or general welfare. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.070).

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#### **19.50.090. Damage or destruction of a nonconforming use.**

(a) Except as otherwise provided in subsection (b), if any building occupied by a nonconforming use has been damaged or destroyed to the extent that the cost of repairs to the building would exceed fifty percent of the value of the building, then the repaired or reconstructed building shall not thereafter be occupied by a nonconforming

use. If any part of a building occupied by a nonconforming use has been damaged or destroyed to the extent that the cost of repairs to that part of the building occupied by a nonconforming use would exceed fifty percent of the value of that part of the building, then the repaired or reconstructed part of the building shall not thereafter be occupied by a nonconforming use. The determination of the cost of repairs and the value of the building or part thereof shall be made by the building official.

(b) Any nonconforming residential use that was in conformity at the time it was constructed or added to, located in any residential or commercial zoning district, that is damaged or destroyed may be reconstructed within one year of such damage or destruction with the same number of units, provided that the reconstructed portion does not enlarge the area, space, volume or increase the nonconformity.

(c) Any covered residential parking built within one year of damage or destruction to replace covered parking shall not require more than a one-for-one replacement. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.050).

#### **19.50.100. Abandonment or discontinuance of a nonconforming use.**

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(a) In the event an unenclosed nonconforming use is abandoned or is discontinued for a period of six months or more, subsequent use of such land shall comply with the provisions of this title.

(b) Any building or part thereof which has been vacated by a nonconforming use and subsequently occupied by a conforming use shall not thereafter be occupied by a nonconforming use. In the event a nonconforming use of any building or part thereof has been abandoned or discontinued for a period of one year or more, subsequent use of such building or part thereof shall comply with the provisions of this title. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.030, 19.28.040).

#### **19.50.110. Nonconforming signs.**

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Except as noted in 19.44.130, signs lawfully established may continue to be displayed, maintained and repaired. (Ord. 2623-99 § 1 (part)).

#### **19.50.120. Conversion of single-family garage.**

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As provided for in Section 19.46.230 any conversion of a single-family residential garage for which a building permit was obtained is considered a legal nonconforming use. (Ord. 2623-99 § 1 (part): prior zoning code § 19.48.180(g)).

#### **19.50.130. Nonconforming status in the ITR (industrial to residential) district.**

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The nonconforming status of existing uses in the ITR are determined as set forth in Chapters 19.18 and 19.22. (Ord. 2623-99 § 1 (part): prior zoning code § 19.20.354).

#### **19.50.140. Nonconforming status in the downtown specific plan.**

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The nonconforming status of buildings or uses in the downtown specific plan are determined as set forth in Chapter 19.28. (Ord. 2623-99 § 1 (part): prior zoning code § 19.30.050(c)).