

Title 17. Zoning

Chapter 17.38. NONCONFORMING USES

§ 17.38.010. Purpose and Intent.

This chapter is intended to accomplish the following:

- A. To provide for the regulation of nonconforming uses and nonconforming development or performance standards.
- B. To specify the circumstances and conditions under which nonconformities may continue to exist.
- C. To limit the number and extent of nonconformities by prohibiting or limiting their enlargement or extension; their re-establishment after abandonment; and their alteration or restoration after partial destruction.
- D. To discourage the continuance of nonconformities where they adversely affect the intent and purpose of this code and the General Plan or the maintenance, development, use, enjoyment or economic value of other property in the vicinity.

(Ord. 12-95)

§ 17.38.020. Exception to Compliance (Nonconformities).

The following provisions shall apply to nonconforming uses and structures legally established prior to the effective date of this ordinance or any prior applicable ordinance.

- A. Continuation of Nonconforming Uses and Structures. A nonconforming use or structure, as defined by Section **17.04.033** of this title, may be maintained and continued, provided there is no alteration, or addition to any structure, nor any enlargement of area, space, or volume occupied by or devoted to that use, except as otherwise provided in this title.
- B. Regulations for Nonconforming Structures. The following regulations shall apply to nonconforming structures:
 1. Repairs and Alterations to a Nonconforming Structure. Ordinary repairs and maintenance may be made to a nonconforming structure as required to maintain the public health, safety, and general welfare.
 2. Permitted Expansions and Alterations. The following exceptions to this title are provided for the extension, expansion, or enlargement of a nonconforming structure. These exceptions set forth the only allowable alterations for nonconforming structures and shall not be construed to authorize the modification of any provisions of this Title nor extend the termination date of the subject nonconforming use.
 - a. When a subsequently adopted ordinance or regulation requires alterations, those alterations shall be permitted.

- b. When a structure other than a single family residential structure located in a residential zone, is nonconforming because it does not meet off-street parking requirements for the number of parking spaces, alterations or expansions may be permitted provided that all parking facilities are increased to meet the standards required by this title.
 - c. When a single family residential structure located in a residential zone is nonconforming because it does not meet off-street parking requirements, alterations and expansions may be permitted without increasing the number of off-street parking spaces provided, in accordance with Section **17.34.020**. However, no existing off-street parking shall be eliminated.
 - d. Additions may be made to a nonconforming structure which is nonconforming because it does not meet the requirements for yards, building height, or dimensions for parking and loading. However, the proposed addition shall meet the requirements in effect at the time the application for the addition is made.
- C. Repair of Damaged or Destroyed Structures. The following shall apply to damaged or partially destroyed nonconforming structures.
1. Any nonconforming nonresidential structure or structures which are damaged or partially destroyed by fire, explosion, act of God, act of a public enemy, collapse, or any other casualty or calamity, may be reconstructed, provided the damage to the structure does not exceed 75% of the appraised value (as defined by this section) of the damaged structure, and further provided the structure or structures existed as legally established structures. All such construction or repairs shall be properly permitted and started within two years from date of damage and shall be pursued diligently to completion. Otherwise, the legal nonconforming status of the structure or structures shall be lost.
 2. Any nonconforming residential structure or structures which are damaged or partially destroyed by fire, explosion, act of God, act of a public enemy, collapse, or any other casualty or calamity, may be reconstructed to the conditions which existed prior to the casualty or calamity, provided the structure or structures existed as legally established structures. All such construction or repairs shall be started within two years from the date of damage and shall be diligently pursued to completion. Otherwise, the legal nonconforming status of the structure(s) shall be lost.
 3. In determining the appraised value of any nonconforming structure, the cost of land or any factors other than those concerning the nonconforming structure itself shall not be considered.

Appraised value, for the purpose of this section, shall mean the market value of the structure as reported by the owner, based upon the market value of comparable structures in the City. Where the City and owner do not agree upon the appraised value based on said comparable, appraised value shall mean the value reported by a qualified appraiser, approved by the City, hired by the owner to determine the value of the structure.
 4. A nonconforming structure may be repaired or reconstructed to a size no larger in area or volume than that which existed at the time the damage occurred.
 5. If, in the process of repairing or reconstructing a nonconforming structure, certain nonconformities can be brought into conformance, they shall be brought into conformance.
- D. Moving a Nonconforming Structure. No nonconforming structure shall be moved unless doing so will cause the structure to become conforming.
- E. Structures Under Construction. Construction which is underway on a structure at the time the ordinance implementing these provisions is adopted may be completed and the structure then used in accordance with provisions of this title, or any amendments thereto, provided that:
1. A valid building permit has been issued prior to the effective date of this title; and

2. The construction or proposed use of the building or structure is not in violation of any other ordinance or law; and
3. The building or structure is completed within one year from the date of the ordinance; and
4. The building or structure is completed in accordance with the plans, ordinances and permits under which it was issued.

(Prior code 17.90.020; Ord. 431; Ord. 10-94; Ord. 12-95)

§ 17.38.030. Regulations for Nonconforming Uses.

The following regulations shall apply to nonconforming uses:

- A. Continuation. The lawful use of a building or structure may be continued, although such use does not conform with the provisions of this title, provided no structural alterations, except those required by law or ordinance, are made in the building. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use which, in the opinion of the Community Development Director, is of the same or more restricted classification.
- B. Discontinuance—Future Use Must Conform. The lawful use of land, although such use does not conform to the provisions of this title, may be continued, but if such nonconforming use is discontinued voluntarily or involuntarily for more than six months, all nonconforming privileges will be lost, any future use of the land shall be in conformity with the provisions of this chapter.
- C. Physical Expansion Not Permitted. A nonconforming use shall not be enlarged or extended to any other portion of a lot not in use at the time the nonconformity was created, except as provided for in Section **17.38.060(A)**.

(Prior code 17.90.010, 17.88.010; Ord. 431; Ord. 20-82; Ord. 12-95)

§ 17.38.040. Termination of Nonconforming Uses.

Discontinuance of a nonconforming use as follows shall immediately terminate the right to operate such nonconforming use:

- A. By changing a nonconforming use to a conforming use.
- B. By discontinuance of a nonconforming use for a consecutive period of six months or for an intermittent period totaling one year over a span of three years.
- C. This section does not apply to structures nonconforming to development standards only.
- D. No property shall lose its right to continue as a nonconforming use unless and until the Community Development Director has made a determination that the property has been or was discontinued for such a period as to lose its legal nonconforming status as set forth in this code. The decision of the Community Development Director may be appealed in accordance with this code.

(Prior code 17.90.010, 17.88.010; Ord. 431; Ord. 20-82; Ord. 12-95; Ord. 12-09, 2010)

§ 17.38.050. Exemption for Public Utilities and Publicly Owned Uses.

Nonconforming public utilities and publicly-owned uses are not subject to nonconforming provisions except as follows:

- A. Additional nonconformities or increases in the extent to which a use or structure is nonconforming are prohibited.

- B. The site upon which a use was located at the time the use was rendered nonconforming shall not be increased in size.

(Ord. 12-95)

§ 17.38.060. Nonconformities Connected with Public Acquisition.

In the case of nonconformities created by public acquisition, the following shall apply:

- A. Where a structure is located upon a lot, a portion of which is acquired for any public use (by condemnation, purchase, dedication, or otherwise) by any governmental entity, such structure may be maintained upon the remaining portion of said lot, and may thereafter be used, maintained or repaired without relocating or altering the same to comply with the development standards of this code.
- B. Further, if such structure is partially located upon the property being acquired for public use, it may be relocated upon the same lot or premises without observing the required yard space adjacent to the new lot line created by such acquisition, and without reducing the number of dwelling units to conform to the development standards of the district in which it is located.
- C. If a lot does not comply with the development standard of the district due to an acquisition of a portion thereof for public use, or if a legally existing nonconforming lot is reduced in size due to an acquisition of a portion thereof for public use, the remainder of said lot (so long as said remainder is not smaller in area or width than one-half of the minimum area or width required for the zone in which it is situated) may continue to be utilized as a conforming lot. However, all other development standards will still apply to any construction thereafter.

(Ord. 12-95)

§ 17.38.065. Regulations for Properties Made Nonconforming by the 2010 General Plan Update and Accompanying Zoning Changes.

The following provisions apply exclusively to property which is made nonconforming by General Plan Amendment No. 2009-001 and zoning changes accompanying General Plan Amendment No. 2009-001 (here-after, collectively referred to as general plan zoning), which properties are included on the map of "Properties Made Non-Conforming by the 2010 General Plan Update and Accompanying Zone Changes" (hereafter, map), which map shall be a public record, be provided to all property owners whose property is on the map and be on file with the Community Development Director.

- A. Nonconforming Use of a Conforming or Nonconforming Development.
1. A legally established use on property that is depicted on the map which because of general plan zoning is no longer permitted in a particular zone shall be considered a nonconforming use.
 2. A nonconforming use shall be allowed to remain indefinitely, and can be replaced by a similar nonconforming use provided the Community Development Director finds that the proposed use is equal to or more appropriate than the existing nonconforming use. With respect to property previously zoned Commercial Recreation the Director's findings shall be based upon reference to the use provisions contained in the M-1 (Light Manufacturing) and M-2 (Industrial) Districts. Manufacturing uses on property previously zoned Commercial Recreation that contain retail or office space consisting of more than 25% of the gross floor area shall be determined as an equal to or more appropriate use, provided the use complies with the City's parking ordinance.
 3. A nonconforming use shall be allowed to expand within a conforming or nonconforming parcel. When the expansion of a nonconforming use requires an alteration of buildings or site

improvements, the building addition, additional structures or site improvements shall comply with the requirements contained herein, and all applicable requirements of the Orange Municipal Code.

B. Nonconforming Development Containing a Conforming or Nonconforming Use.

1. A legally constructed development which because of general plan zoning is no longer in compliance with the zoning development standards shall be considered a nonconforming development.
2. A nonconforming development shall be allowed to remain indefinitely.
3. A nonconforming development shall be allowed to be routinely repaired to maintain public health, safety and general welfare.
4. A nonconforming development shall be allowed to expand provided that the expansion complies with the requirements contained herein, and all applicable requirements of the Orange Municipal Code.
5. Existing nonconforming industrial development within the Katella Avenue Corridor project area that was established prior to Zone Change 1177-95 shall be governed by the M-1 and M-2 provisions.

C. Repair of Damaged or Destroyed Nonconforming Developments.

1. A nonconforming development that is damaged or destroyed shall be permitted to be repaired or reconstructed to the condition which existed prior to such damage or destruction, provided the structure or building existed as a legally established development.
2. Repair or reconstruction of a legally established nonconforming development shall not be limited to any specific time constraint that is not applied to repair or reconstruction of conforming development, provided that public health and safety issues are addressed.

D. Moving a Nonconforming Structure or Building. A nonconforming structure or building shall be allowed to be moved provided doing so will cause the structure or building to become conforming.

E. Residential Property Made Nonconforming by the General Plan Zoning. Any residential property that is made nonconforming by the general plan zoning may, notwithstanding Section **17.38.030(B)**, be permitted to continue unless such nonconforming use is discontinued, voluntarily or involuntarily, for more than 24 months.

(Ord. 12-09, 2010)

§ 17.38.070. Nonconforming Lot.

Any lot or parcel existing prior to annexation or prior to May 7, 1946 and any lot or parcel created since that date by City approval of a lot division or subdivision application and subsequent recordation in accordance therewith, having less area or width than required by its subsequent zone classification may be used in accordance with such classification regardless of its deficiency in area or width. All other development standards of the zone shall apply.

(Ord. 12-95)

§ 17.38.080. Urban Lot Split (SB 9) Exception to Compliance (Nonconformities).

The City shall not require the correction of nonconforming zoning conditions as a condition for ministerial approval of a parcel map application for the creation of an urban lot split pursuant to SB 9.

(Ord. 15-23, 11/14/2023)