

FACTSHEET ON NONCONFORMING REGULATIONS

Draft Westside Development Code

During the October 11, 2011 Westside Development Code Workshop, three examples related to non-conforming structures and uses were presented for the benefit of understanding the application of these regulations. Many of the Westside community stakeholders have asked for more detail on how the Draft Westside Development Code might apply to real examples for businesses.

Non-Conforming Structures And Uses Overview

Non-conforming use - A use of property that is permitted to continue after a zoning ordinance (Westside Development Code) prohibiting it has been established for the area.

Non-conforming structure - A structure already in existence prior to the adoption of the Westside Development Code that does not comply with the standards (and/or use limits in the new Code.

In summary, existing uses and structures that are non-conforming as a result of adopting the Westside Development Code will be allowed to continue.

- The only exception is that non-conforming uses that occupy property but not any buildings (such as property used for outdoor storage or work) shall be terminated within five years from the adoption of the Westside Development Code (Section 24W.100.045.E). As noted to Council in 4/18/11 Report, this is different city approach. For reference, the Downtown Specific Plan does not have a sunset date for non-conforming uses, even when they cease operation for more than six months.
- Expansion of a non-conforming use whether or not associated with a non-conforming structure would not be allowed. Also discontinuation of a non-conforming use for 6 months or more is not allowed. (Section 24W.100.045 D.4)
- Any building addition would need to conform to the development code (Section 24W.100.045.D.3.a), but in some cases could be evaluated through the Warrant and Exception review (Section 24W.100.047).
- Damage, resulting from a qualifying event (such as earthquake and fire) that exceeds 50% of the property/building value, then full reconstruction must meet the code (Section 24W.100.045.D.3.b.i. & ii.).

NOTE: Nonconforming regulations are complex and require case-specific information to determine applicability. The examples provided herein need to be considered while reading the entire non-conforming provisions contained in the Draft Westside Development Code.

Example One: Non-Conforming Uses

Existing auto repair business, not located in a Special District Industrial (SD), would be a non-conforming use.

- The use could not expand building area nor could there be an intensification of the use.
- Use “intensification” includes the addition of a service lift or reconfiguration of the building interior to accommodate a greater number of vehicles that could be worked on.
- If this use does not include a building, it would need to terminate in five years.
- For reference, the Downtown Specific Plan does not have a sunset date for non-conforming uses, even when they cease operation for more than six months.

Example Two: Conforming Use in Non-conforming Structures

Existing restaurant, which is a conforming use, wishes to expand into an existing adjacent suite or building can do so, if there are no additions or structural alterations proposed.

- Structural alterations are those that are considered integral to keeping the building intact: such as, bearing walls, roof framing, etc. Changes to windows and doors do not typically involve structural alterations.

In the event the restaurant within a non-conforming building wants to expand, then an addition would have to conform to the following Code requirements:

- 1) Building placement, and
- 2) Parking requirements.

Other aspects of the building would be allowed to remain. A warrant and/or exception could be sought to address the hardship of applying these regulations. For reference, the Downtown Specific Plan requires additions of 50% or more will trigger compliance with all of the Downtown Development Code provisions for the addition.

Example Three: Repairs to Non-conforming Structures

Existing buildings that are non-conforming structures could conduct repairs to the existing building if there are no building additions or expansion of floor area. Such repairs would not trigger the requirement to have a 15 foot first floor ceiling height or need to provide additional parking.