

PLANNING COMMISSION STAFF REPORT

Petition PLNPCM2009-00167 Zoning Text Amendment Chapter 21A.38 Nonconforming Uses & Noncomplying Structures August 26, 2009



Planning and Zoning Division
Department of Community and
Economic Development

Applicant: Salt Lake City
Council

Staff: Kevin LoPiccolo, 535-
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Master Plan Designation:
City Wide

Council District: City Wide

**Applicable Land Use
Regulations:**

- Chapter 21A.38

Notification

- Notice mailed on August 11, 2009
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites and in the newspaper August 11, 2009

Attachments:

- A. Proposed Text Amendment
- B. Task Force Meeting Comments
- C. Department Comments

Request

This is a request by the Salt Lake City Council to amend the Zoning Ordinance to modify regulations relating to Nonconforming Uses and Noncomplying Structure. The purpose of the proposed changes are to accomplish the following:

- Simplify and clarify the regulations
- Ensure consistency with State Law (LUDMA)
- Revise the regulations for changing one nonconforming use to another nonconforming use.
- Incorporate language for in-line additions.
- Incorporating language for environmental devices/structures for nonconforming uses and noncomplying lots and structures.
- Incorporating and establishing a review process by the Administrative Hearing Officer for all new nonconforming uses at an Administrative Hearing.
- Incorporate that all abandonment or loss of a nonconforming use be heard and approved or denied at an Administrative Hearing.

Staff Recommendation

Based on the analysis and findings listed in the staff report, Staff recommends that the Planning Commission transmit a favorable recommendation to the City Council to adopt the proposed zoning text amendments relating to Nonconforming Uses and Noncomplying Structures.

Alternative Motions

Motion in Support

1. Based on the findings in the staff report and the public comment, I move to transmit a favorable recommendation to the City Council to adopt the proposed zoning text amendments relating to Nonconforming Uses and Noncomplying Structures.

	<p>Motion in Opposition</p> <ol style="list-style-type: none"> 1. Based on the public comment and the following findings, I move that the Planning Commission transmit a motion to the City Council to not amend the proposed zoning text amendments relating to Nonconforming Uses and Noncomplying Structures. The findings include: 2. I move to table the decision until a future date of the Planning Commission and direct staff to submit the following information:
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Background

Historical Zoning and Nonconforming Uses

Nonconforming uses and structures have existed ever since the first zoning emerged in the 1920s. With the advent of Euclidian zoning and its distinct doctrine of separation of land uses, it has been widely held that for this zoning approach to be successful, nonconformities have to be eliminated. It was considered that nonconformities reduced the effectiveness of what a community is trying to accomplish through its comprehensive plan, as implemented by its local zoning regulations. This only holds true to the extent that specific uses were made nonconforming as a means to eliminate the uses rather than as a means to control the creation of additional similar uses by leaving regulations in place.

Between 1940-1960 Salt Lake City's land use policy and zoning supported higher density residential land uses to mix within the lower density neighborhoods of the community. During the 1970's and 1980's numerous down zonings occurred to prohibit further higher density residential development within many neighborhoods. These down zoning actions created a significant number of nonconforming dwellings. Other zoning text and mapping changes through time have created nonconforming nonresidential land uses throughout the City.

A variety of aspects can make a property and use nonconforming or noncomplying. The premise of nonconformities is non-compliance with requirements of a particular use or zoning standard. The fact that a use is non-compliant does not mean elimination of the use is necessary to protect the character and integrity of the community. It is important to note that the mere presence of nonconforming uses does not necessarily mean that it is a mistake or that it requires a remedy.

In recent years, the zoning concept of separate distinct land uses has been modified by many cities that have developed mixed use, neo-traditional and smart growth codes that actually reflect urban development patterns that existed prior to the past 70 years of traditional Euclidean zoning.

Proposed

The proposed changes to Chapter 38 is to provide a simplification of existing regulations and allow greater public participation through the public hearing process in determining new nonconforming uses, interpretations and abandonment of nonconforming uses.

Below is a summary of the proposed text amendments relating to Nonconforming Uses and Noncomplying structures. Attachment A of the Staff Report provides the full text changes that are being proposed to help clarify the existing regulations.

Citation	Existing Regulation	Proposed Regulation	Purpose of Amendments
21A.38.010; Purpose Statement and Intent	Lacked a definition of a purpose statement	Created a purpose statement definition of nonconforming uses and noncomplying structures	To define the purpose of Chapter 38
21A.38.40 (B) Continuation of Noncomplying Structure	Very lengthy	Shortened paragraph	To clarify
21A.38.50 (B) Rebuttal of Presumption of Abandonment	Allows Staff to make determination	Requires an Administrative Public Hearing	To allow greater public participation
Section 21A.38.70 Reoccupation or Enlargement Of A Structure With A More Intensive Nonconforming Use	Nonconforming use could expand up to 50%	Administrative Hearing Officer approve or deny new conforming use as a conditional use	To allow greater public participation and provide a more thorough review of new nonconforming use
Section 21A.38.70 (D) Change Of Nonconforming Use To Another Nonconforming Use	Current regulations are not clear on what a “similar land use type is” and most of the analysis relates to whether the parking requirement increases. Currently a staff function	Allow Hearing Officer to approve or deny new nonconforming use as a conditional use	To allow greater public participation and provide a more thorough review of new nonconforming use
Section 21A.38.70 (E) Destruction Of Structure With Nonconforming Use	Based on 50% rule of voluntary destruction	Does not allow %. If use is voluntary, the structure with nonconforming use is gone	Makes more restrictive and removes the percentages when it comes to removal
Section 21A.38.80 Noncomplying Structures	Does not address changes or improvements for energy devices	Allows energy improvements to a building that is noncomplying	To encourage energy improvements
Section 21A.38.80 (C) In-Line Addition	Absent from Salt Lake City Zoning Ordinance	Recognizes an inline addition for all buildings that do not comply with	To codify

		setbacks	
Section 21A.38.80 (D) Damage Or Destruction of Noncomplying Structure	Too lengthy and confusing	Removes the percentages for what is considered damage or destruction	To simplify
Section 21A.38.90 Noncomplying Lots	Restricts what can be done with a noncomplying lot	Recognizes the noncompliance and allows the lot to function as a legal lot	To simplify
Section 21A.38.160 Terminating The Nonconformance Of A School District Or Charter School	Does not exist	Comply with State Statute	To codify

Analysis

Public Comments

On June 8, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38, nonconforming uses and noncomplying structures. The committee members were asked to discuss the complexities of this particular chapter and evaluate what staff was proposing in order to help simplify the existing regulations. The Committee was very responsive and assisted staff with incorporating and establishing a review process for the Administrative hearing officer to review all new nonconforming uses and abandonment or loss of a nonconforming uses.

On July 8, 2009, the Business Advisory Board reviewed Chapter 38, nonconforming uses and noncomplying structures. The committee was very supportive of the proposed changes and were grateful that some of the language in the text was being simplified.

An Open House was held on July 16, 2009 to gather public input. One person attended the meeting to see what changes were being proposed to Chapter 38. The person did not state any objection to the proposed changes.

City Department Comments

The proposed text amendments were sent to all pertinent City Departments and Divisions for their review and input. Planning Staff has received comments from the following Division (Attachment C).

Transportation – Did not see any undo impact to the transportation corridor system per the proposed changes to simplify the text.

Attorney's Office – The Attorney's office was supportive of the proposed text amendment changes.

Analysis and Findings

In reviewing this legislative action request, the Planning Commission is required to use the following zoning amendment standards:

Section 21A.50.050. A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the city council and is not controlled by any one standard. However, in making its decision concerning a proposed amendment, the city council should consider the following factors:

- a. Whether the proposed amendment is consistent with the purposes, goals, objectives, and policies of the adopted general plan of Salt Lake City;**

Discussion: Most of the city's master plans do not contain specific policy regarding nonconforming uses and noncomplying structures and are older than the State revisions to nonconforming uses.

Finding: The proposed text amendment is a change in current zoning allowances for nonconforming uses and noncomplying structures and is consistent with the city master plans.

- b. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property;**

Discussion: The proposed text amendment is not site specific. The proposed nonconforming text establishes additional criteria that specifically address the processes of nonconforming uses and noncomplying lots and structures.

Finding: The proposed text amendment when applied, support harmony and consistency with the existing overall development character of areas where nonconforming reconstruction activities would occur.

- c. The extent to which the proposed amendment will adversely affect adjacent properties;**

Discussion: The proposed text amendment is not site specific. There are standards for review and approval that are designed to minimize potential adverse impacts upon adjacent properties.

Finding: The proposed standards will help ensure minimization of adverse impacts on adjacent properties.

- d. Whether the proposed amendment is consistent with the provisions of any applicable overlay zoning districts which may impose additional standards; and**

Discussion: The proposed text amendment is city-wide and not associated with any overlay zoning districts.

Finding: The proposed text amendment is city-wide and not associated with any specific geographic area. Submittal of individual site applications will include the review of applicable overlay zoning districts.

- e. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and wastewater and refuse collection.**

Discussion: The proposed amendment is not site specific. Submittal of individual site applications requires review for adequacy of public facilities and services.

Finding: The adequacy of public facilities and services criteria does not directly relate to the proposed text amendment.

Attachment A
Proposed Text Amendment

NONCONFORMING USES AND NONCOMPLYING STRUCTURES

21A.38.010 Purpose Statement And Intent:

A. **Purpose:** The purpose of this chapter is to regulate the continued existence of nonconforming uses and noncomplying structures as defined in this title. While nonconforming uses, noncomplying structures and improvements may continue, this chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the development standards prescribed by this Code, and

1. Legal nonconforming principal and accessory uses, which do not conform to the use regulations of this title in the zoning districts in which such uses are located;
2. Legally constructed noncomplying buildings, structures and property improvements that do not comply with the applicable bulk and/or yard area regulations of this title in the zoning districts in which such buildings or structures are located.

B. **Intent:** The intent of this chapter is to allow continued use of legal nonconforming uses and noncomplying structures, while at the same time protecting existing conforming development and furthering orderly development and improvement of the community. Certain nonconformities are permissible as is their continued use so long as in their particular location they are not detrimental to the surrounding neighborhood.

1. Uses of nonconforming and noncomplying buildings, structures or land which are compatible and complement existing or planned development patterns should be allowed to continue. Improvement for better integration into the surrounding neighborhood should be sought as much as possible.
- 2 Nonconforming and noncomplying situations which hinder the attainment of the city's master plan, create a nuisance, or are a hazard to a community or neighborhood, should be eliminated or brought into compliance with the provisions of this title. (Ord. 15-05 § 1, 2005)

21A.38.020 Scope Of Regulations:

~~This chapter applies to nonconforming uses, noncomplying structures and noncomplying lots. (Ord. 15-05 § 1, 2005)~~

21A.38.030~~20~~ Determination Of Nonconforming Use Status:

A. **Burden Of Owner To Establish Legality Of Nonconforming Use:** The burden of establishing that any nonconforming use lawfully exists under the provisions of this title shall, in all cases, be the owner's burden and not the city's. Building permits, business

licenses and similar documentation may be considered as evidence establishing the legality of use.

B. **Determination Of Nonconforming Status:** The zoning administrator shall determine the nonconforming use or noncomplying structure status of properties pursuant to the provisions of this chapter. (Ord. 15-05 § 1, 2005)

21A.38.04030 Nonconforming Parking, Signs And Landscaping:

Nonconforming parking, signs and landscaping, as accessory uses, are regulated by the provisions set forth in chapters 21A.44, 21A.46 and 21A.48 of this part. (Ord. 15-05 § 1, 2005)

21A.38.05040 Authority To Continue:

A. **Continuation Of Nonconforming Use:** A nonconforming use that lawfully occupies a structure or lot may be continued so long as it remains otherwise lawful, subject to the standards and limitations in this chapter.

B. **Continuation Of Noncomplying Structure:** ~~A noncomplying structure that was legally constructed on the effective date of any amendment to this title, that makes the structure not comply with the applicable bulk regulations and/or with the standards for front yards, side yards, rear yards, buffer yards, lot area, lot coverage, height, floor area of structures, driveways or open space for the district in which the structure is located may be used and maintained, subject to the standards and limitations in this chapter.~~ (Ord. 15-05 § 1, 2005) **A non-complying structure that was lawfully constructed prior to a contrary change in this Code may be used and maintained, subject to the standards and limitations of this chapter.**

21A.38.06050 Ordinary Repair And Maintenance And Structural Safety:

Normal maintenance and incidental repair may be performed on a complying structure which contains a nonconforming use or on a noncomplying structure. This section shall not be construed to authorize any violation of section 21A.38.080 or 21A.38.090 of this chapter. This section shall not prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the building official who declares a structure to be unsafe and orders its restoration to a safe condition. (Ord. 15-05 § 1, 2005)

21A.38.07060 Abandonment Or Loss Of Nonconforming Use:

A. **Abandonment Of Nonconforming Use:** A nonconforming use of land or of a structure in a district that is discontinued or remains vacant for a continuous period of **(1)** one year shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or site must conform with the regulations for the district in which it is located.

B. **Rebuttal Of Presumption Of Abandonment:** The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the ~~zoning administrator~~ **Administrative Hearing Officer**, that during such period the owner of the land or structure:

- 1) has been maintaining the land and structure in accordance with the building code and did not intend to discontinue the use, or
- 2) has been actively and continuously marketing the land or structure for sale or lease, with the use, or
- 3) has been engaged in other activities evidencing an intent not to abandon.

C. **Calculation Of Period Of Discontinuance:** Any period of such discontinuance caused by government actions, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance pursuant to subsection A of this section. (Ord. 15-05 § 1, 2005)

21A.38.08070 Moving, Enlarging Or Altering Nonconforming Uses Of Land And Structures:

No nonconforming use may be moved, enlarged or altered and no nonconforming use of land may occupy additional land. ~~except as provided in this section.~~

A. ~~— **Enlargement:** A nonconforming use may not be enlarged, expanded or extended to occupy all or a part of another structure or site that it did not occupy on the effective date of any amendment to this title that makes the use nonconforming. A nonconforming use for the purposes of this section may be extended within the same structure or as an addition to the same structure, provided the enlargement does not increase the need for additional hard surface parking than is existing on the property.~~

Reoccupation Or Enlargement Of A Structure With A More Intensive Nonconforming Use: ~~The Administrative Hearing Officer may approve a nonconforming use with another nonconforming use as a conditional use as established in Section 21A.54.080. Whenever expansion of a nonconforming use exceeds fifty percent (50%) of the original use at the time the use became nonconforming; a nonconforming use expansion requires additional off street parking than existing on the site; or a nonconforming use changes to a more intensive nonconforming use, such expansions shall only be approved as a conditional use subject to the requirements of part V, chapter 21A.54, "Conditional Uses", of this title and applicable specific conditional use standards and/or site and design review standards provided in this section:~~

a. **Specific Conditional Use Standards:** ~~The planning commission may grant a conditional use permit for the enlargement of a structure containing a nonconforming use, provision of additional parking area for a nonconforming use or the reoccupation of a structure with a nonconforming use that is more intensive, excepting uses which are only permitted as a conditional use in the heavy manufacturing district (M-2) of this title~~

located within any residential, mixed use, commercial or nonresidential zoning district, subject to consideration of the following standards:

- i. The condition and economic life of the building is such that near future demolition is not likely to occur;
- ii. The use provides reuse of buildings with architectural or historic value;
- iii. The use supports walk to work or live work opportunities;
- iv. The use provides an appropriate scale of neighborhood or community level of services;
- v. The enlargement will not create any additional noncompliance with zoning standards except for building modifications for life safety concerns;
- vi. The enlargement and reuse of the structure would not substantially change the character of the neighborhood; and/or
- vii. The use is not in conflict with any other current, local or state development standards (i.e., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition).

b. Site And Design Review Standards: Whenever an expansion or intensification of a nonconforming use is located within residentially zoned property or abuts residentially zoned property the following site and design review standards shall be reviewed as part of the conditional use approval process:

i. **Building Orientation:** The development shall orient to the street, not an interior courtyard or parking lot. The primary access shall be oriented to the pedestrian and have at least one operable building entrance that faces a public street. Residential uses shall meet the standards for subsections 21A.24.010H, "Side Entry Buildings", and 21A.24.010I, "Front Facade Controls", of this title;

ii. **Facade:** For nonresidential uses, street oriented facades shall maintain detailing and glass in sufficient quantities to facilitate pedestrian interest and interaction:

(A) **Minimum First Floor Glass:** The first floor elevation facing a street of all new building additions or buildings in which the property owner is modifying the size of windows on the front facade, shall not have less than forty percent (40%) glass surfaces. All first floor glass shall be nonreflective. Display windows that are three dimensional and are at least two feet (2') deep are permitted and may be counted toward the forty percent (40%) glass requirement. Exceptions to this requirement may be authorized by the planning commission as part of the conditional use site and design review procedure, if the planning commission finds:

- (1) The requirement would negatively impact the historic character of the building,
- (2) The requirement would negatively impact the structural stability of the building, or
- (3) The ground level of the building is occupied by residential uses, in which case the forty percent (40%) glass requirement may be reduced to twenty five percent (25%).

(B) Maximum Length: Architectural detailing shall emphasize the pedestrian level of the building. The maximum length of any blank wall uninterrupted by windows, doors, art or architectural detailing at the first floor level shall be fifteen feet (15');

iii. **Parking Lots:** Parking lots shall be appropriately screened and landscaped to minimize their impact on the neighborhood. Lightproof fencing is required adjacent to residential properties. Parking lot lighting shall be shielded to eliminate excessive glare or light into adjacent neighborhoods. The poles for parking lot lighting are limited to sixteen feet (16') in height from finished grade;

iv. **Screening:** Dumpsters and loading docks shall be appropriately screened or located within the structure. All building equipment and service areas, including on grade and roof mechanical equipment and transformers that are readily visible from the public right of way, shall be screened from public view. These elements shall be sited to minimize their visibility and impact, or enclosed as to appear to be an integral part of the architectural design of the building; and

v. **Signs:** Signage for residential uses shall meet sign standards for subsection 21A.46.080B, "Sign Regulations For Multi-Family Residential Districts", of this part. Signage for nonresidential uses shall emphasize a pedestrian scale and shall meet the sign standards of subsection 21A.46.090A4, "Sign Type, Size And Height Standards For The CN Districts", of this part. Exceptions to this requirement may be authorized by the planning commission as part of the conditional use site and design review procedure, if the planning commission finds that maintaining the nonconforming sign does not negatively impact the neighborhood character.

e. **Limitations On Development:** Any conditional use authorized for the reoccupation or enlargement of a structure with a more intensive use shall be limited to the following criteria:

- i. No additional lot area may be added to the subject nonconforming property;
- ii. No enlargement of a nonconforming principal structure shall involve the razing of more than fifty percent (50%) of the existing building footprint; and
- iii. Any nonconforming property with an existing mix of residential and nonresidential uses with more than two (2) existing dwelling units shall provide for a mixed use development with no reduction in the number of dwelling units.

B. **Exterior Or Interior Remodeling Or Improvements To Structure:** Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed provided the improvements do not increase the parking requirement.

C. **Relocation Of Structure:** A structure containing a nonconforming use may not be moved unless the use shall thereafter conform to the regulations of the zoning district into which the structure is moved.

D. **Change Of Nonconforming Nonresidential Use To Another Nonconforming Use:** The Administrative Hearing Officer may approve a substitution of a nonconforming

use with another nonconforming use as a conditional use as established in Section 21A.54.080.

Upon application to the zoning administrator, a nonconforming use may be changed to another nonconforming use of the same or similar land use type as defined in part VI, chapter 21A.62 of this title. Whenever any nonconforming nonresidential use is changed to a less intensive nonconforming nonresidential use, such use shall not be changed back to a more intensive nonconforming nonresidential use. For purposes of this section, a more intensive nonresidential use is determined when the existing hard surfaced parking available on site does not provide the required number of parking stalls. Whenever any nonconforming nonresidential use is changed to a conforming use, such use shall not later be changed to a nonconforming use.

E. Destruction Of Structure With Nonconforming Use: No structure containing a legal nonconforming use may be reconstructed for a nonconforming use, except in the manner provided in subsections E1 and E2 of this section or unless required by law. Restoration of a damaged or destroyed structure with a nonconforming use shall be started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.

If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable; and that the nonconforming use will be lost if the structure is not repaired or restored within one (1) year; or the property owner has voluntarily demolished seventy five (75%) or more of the exterior walls and/or total floor area of a structure, improvement or object; or if a building or structure that contains a nonconforming use is voluntarily razed, or is required by law to be razed, the nonconforming use shall not be resumed, and the building or structure shall not be restored unless it is restored to accommodate a conforming use within a complying structure. If a building or structure that contains a nonconforming use is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the nonconforming use may be resumed and the building or structure may be restored to the condition prior to the destruction, provided such work is reasonably pursued of such calamity.

1. Destruction Of Structure To The Extent Of Fifty Percent: If a structure that contains a legal nonconforming use is destroyed to the extent of fifty percent (50%) by fire or natural calamity, or is voluntarily razed, the nonconforming use may be resumed, and the structure restored. The determination of the extent of damage or destruction under this subsection shall be determined by the building official and based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of "Building Standards" published by the International Conference of Building Officials.

2. Destruction Of Structure Greater Than Fifty Percent: If a structure that contains a legal nonconforming use is destroyed, greater than fifty percent (50%), by fire or natural calamity, the nonconforming use may be resumed, and the structure may be restored to accommodate the nonconforming use subject to subsections E2a and E2b of this section.

a. Nonconforming Residential Uses: The zoning administrator may authorize the reconstruction and reestablishment of a legal nonconforming residential structure subject to consideration of the following:

- i. Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition); and/or
- ii. The reconstruction will not increase the number of units.

b. Nonconforming Nonresidential Uses: The board of adjustment may authorize as a special exception the reconstruction and reestablishment of a legal nonconforming nonresidential use structure subject to consideration of the following:

- i. Reconstruction plans shall be reviewed to consider the feasibility of site redesign to better meet underlying zoning district standards without a reduction in type or intensity of use of the property;
- ii. Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition);
- iii. The reconstruction and reuse of the structure would not change the character of the neighborhood by using construction materials which did not exist previously on the building. Other building materials should not be used, unless the materials are compatible with the neighborhood; and/or
- iv. Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity. (Ord. 14-06 § 1, 2006; Ord. 15-05 § 1, 2005)

21A.38.090~~80~~ Noncomplying Structures:

No noncomplying structure may be moved, enlarged or altered, except in the manner provided in this section or unless required by law. **For purposes of this section, the addition of a solar energy device/improvement to a building is not a structural alteration.**

A. Repair, Maintenance, Alterations And Enlargement: Any noncomplying structure may be repaired, maintained, altered or enlarged, except that no such repair, maintenance, alteration or enlargement shall either create any new noncompliance or increase the degree of the existing noncompliance of all or any part of such structure.

B. Moving: A noncomplying structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the

entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

C. In-Line Addition: Additions or extensions to existing residential or commercial buildings, which are noncomplying as to yard area only may be allowed provided:

1. The addition follows the existing building or foundation line.
2. The maximum exterior wall height adjacent to the interior side yard shall meet the required setback and zone height of the district.

D. Damage Or Partial Destruction Of Noncomplying Structure:

If a noncomplying structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure will be lost if the structure is not repaired or restored within one (1) year; or the property owner has voluntarily demolished a majority of the non-complying structure or the building that houses a non-complying structure is voluntarily razed or is required by law to be razed, the structure shall not be restored unless it is restored to comply with the regulations of the zone in which it is located. Demolition of a non-complying structure includes any act or process that destroys or removes seventy five (75%) or more of the exterior walls and/or total floor area of a structure, improvement or object. If a non-complying structure is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the structure may be restored to its original condition, provided such work is reasonable pursued of such calamity.

1. Restoration: If a noncomplying structure is damaged or destroyed by fire or natural calamity, the structure may be restored, or, if a noncomplying structure is voluntarily razed to the extent of seventy five percent (75%), the structure may be restored if restoration is started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.

2. Destruction Of Noncomplying Structure With Nonconforming Use: No legal nonconforming structure containing a nonconforming use may be reconstructed, except in the manner provided in subsections C2a and C2b of this section or unless required by law. Restoration of a damaged or destroyed noncomplying structure with a nonconforming use shall be started within one year and diligently pursued to completion. Any delay in starting such restoration that is caused by government actions and without contributing fault by the owner, may, upon application to and determination by the zoning administrator, be deducted in calculating the starting date of restoration.

a. Destruction Of Structure To The Extent Of Fifty Percent: If a noncomplying structure that contains a nonconforming use is destroyed to the extent of fifty percent

(50%) by fire or natural calamity, or is voluntarily razed or destroyed by other means, the nonconforming use may be resumed, and the structure restored. The determination of the extent of damage or destruction under this subsection shall be determined by the zoning administrator and based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of "Building Standards" published by the International Conference of Building Officials (ICBO).

b. Destruction Of Structure Greater Than Fifty Percent: If a noncomplying structure that contains a legal nonconforming use is destroyed, greater than fifty percent (50%), by fire or natural calamity, the nonconforming use may be resumed, and the structure may be restored to accommodate the nonconforming use subject to subsections C2bi and C2bii of this section.

i. Nonconforming Residential Use: The zoning administrator may authorize the reconstruction and reestablishment of a legal noncomplying residential structure with a nonconforming residential use subject to consideration of the following:

(A) Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition); and/or

(B) The reconstruction will not increase the number of units.

ii. Nonconforming Nonresidential Uses: The board of adjustment may authorize as a special exception the reconstruction and reestablishment of a legal noncomplying structure with a nonconforming nonresidential use subject to consideration of the following:

(A) Reconstruction plans shall be reviewed through the site plan review process to consider the feasibility of site redesign to better meet underlying zoning district standards without a reduction in type or intensity of use of the property;

(B) Compliance with all other current, local or state development standards (e.g., floodplain hazard protection, fault line hazards, groundwater source protection, airport flight path protection, environmental performance standards, and hazardous waste prohibition);

(C) The reconstruction and reuse of the structure would not change the character of the neighborhood by using construction materials which did not exist previously on the building. Other building materials should not be used, unless the materials are compatible with the neighborhood; and/or

(D) Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity. (Ord. 14-06 § 1, 2006; Ord. 15-05 § 1, 2005)

21A.38.100~~90~~ Noncomplying Lots:

A lot that is noncomplying as to lot area or lot frontage that was in legal existence on the effective date of any amendment to this title that makes the existing lot noncomplying shall be considered a legal complying lot, **subject to the underlying zoning regulations**. ~~Legal complying lots in residential districts shall be approved for the development of a single-family dwelling regardless of the size of the lot subject to complying with all yard area requirements of the R-1/5,000 district. Legal complying lots in residential districts shall be approved for any permitted use or conditional use allowed in the zoning district, other than a single-family dwelling, subject to complying with all lot area and minimum yard requirements of the district in which the lot is located. Legal complying lots in nonresidential districts shall be approved for any permitted use or conditional use allowed in the zoning district subject to complying with all yard requirements of the district in which the lot is located. (Ord. 15-05 § 1, 2005)~~

21A.38.110~~100~~ Nonconforming Accessory Uses And Noncomplying Accessory Structures:

The continued existence of a nonconforming accessory use and a noncomplying accessory structure shall be subject to the provisions governing principal nonconforming uses and noncomplying structures set forth in sections 21A.38.080 and 21A.38.090 of this chapter. (Ord. 15-05 § 1, 2005)

21A.38.120~~110~~ Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings, And Twin Homes:

Any single-family detached dwelling, two-family dwelling, or twin home, except those located in M-1 and M-2 zoning districts, that is in legal existence, shall be considered legal conforming.

Subject to complying with all other current, local or state development standards, legal conforming status shall authorize alterations, extensions/additions, and replacement of the single-family detached dwelling, two-family dwelling, or twin home.

~~In zoning districts other than~~ **the M-1 and M-2 zones**, which do not allow detached single-family dwelling units, two-family dwelling units or twin homes, the replacement structure may exceed the original footprint of the existing structure by twenty five percent (25%) when the structure has been destroyed by fire, voluntary demolition or natural calamity. Replacement structures which exceed twenty five percent (25%) of the original footprint, or the replacement of a single-family detached dwelling, two-family dwelling or twin home in an M-1 or M-2 zoning district may be allowed as a conditional use subject to the provisions of chapter 21A.54 of this title.

The replacement structure shall not project into a required yard beyond any encroachment established by the structure being replaced. All replacement structures in nonresidential zones are subject to the provisions of section 21A.36.190, "Residential Building

Standards For Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings And Twin Homes In Nonresidential Zoning Districts", of this part. When replacing a legal conforming single-family detached dwelling, two-family dwelling or twin home, the number of new parking stalls provided shall be equal to or more than the number of parking stalls being replaced. (Ord. 15-05 § 1, 2005)

21A.38.130~~120~~ Reserved:
(Ord. 15-05 § 1, 2005)

21A.38.140~~130~~ Appeal:

Any person adversely affected by a decision of the zoning administrator on a determination of the status of a nonconforming use or noncomplying structure may appeal the decision to the board of adjustment pursuant to the provisions in part II, chapter 21A.16 of this title. (Ord. 15-05 § 1, 2005)

21A.38.150~~140~~ Termination By Amortization Upon Decision Of Board Of Adjustment:

The board of adjustment may require the termination of a nonconforming use, except billboards, under any plan providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of the owner's investment in the nonconforming use, if any, as determined by the zoning administrator. The board of adjustment may initiate a review for amortization of nonconforming uses upon a petition filed by the mayor or city council, in accordance with the following standards and procedures and consistent with the municipal land use development and management act, title 10, chapter 9, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

A. **Initiation Of Termination Procedure:** Board of adjustment review of a use determined to be nonconforming pursuant to the provisions of this section, for the purpose of establishing an amortization plan for termination of the use, shall first require a report from the zoning administrator to the board of adjustment. The zoning administrator's report shall determine the nonconforming use, provide a history of the site and outline the standards for determining an amortization period.

B. **Notice To Nonconforming User:** Upon receipt of the report of the zoning administrator, recommending the establishment of an amortization plan for a nonconforming use, the board of adjustment shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the board of adjustment's intent to hold a public hearing to consider the request in accordance with the standards and procedures set forth in part II, chapter 21A.10 of this title.

C. **Board Of Adjustment Review:** The board of adjustment shall hold a noticed public hearing within a reasonable time, following the procedures established in part II, chapter 21A.10 of this title, on the request for amortization of the nonconforming use.

Upon the conclusion of the hearing, the board shall determine whether the nonconforming use should be amortized within a definite period of time.

D. Standards For Determining Amortization Period: The board of adjustment shall determine the appropriate amortization period upon the consideration of evidence presented by the zoning administrator and the owner of the nonconforming use that is sufficient to make findings regarding the following factors:

1. The general character of the area surrounding the nonconforming use;
2. The zoning classification and use(s) of nearby property;
3. The extent to which property values are adversely affected by the nonconforming use;
4. The owner's actual amount of investment in the property on the effective date of nonconformance, less any investment required by other applicable laws and regulations;
5. The amount of loss, if any, that would be suffered by the owner upon termination of the use; and
6. The extent to which the amortization period will further the public health, safety and welfare.

E. Appeal: Any person adversely affected by the decision of the board of adjustment may, within thirty (30) days after the decision, present to the district court a petition specifying the grounds on which the person was adversely affected. (Ord. 15-05 § 1, 2005)

21A.38.160~~150~~ Nonconformity Of Taverns, Brewpubs, Microbreweries Or Private Clubs Social Clubs:

A legally existing brewpub, microbrewery, ~~private club~~ **social club**, or tavern license, as defined in ~~chapter 6.08 of this code~~, shall not be deemed nonconforming for purposes of expansion, reconstruction or licensing (as long as the use is permitted in the base zoning district) if the only reason for such nonconformity is due to the subsequent location of a school, church or park within the spacing requirements as specified under city ordinances. (Ord. 15-05 § 1, 2005)

21A.38.160 Terminating the Non-Conformance Of A School District Or Charter School:

A non-conforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period of one (1) year.

Attachment B
Task Force Comments

2009 Zoning Text Amendment Project

June 8, 2009

Task Force Meeting

Members Present

Ray Whitchurch, Ron Jarrett, Esther Hunter, Betsy Burton, Mike Akerlow, Jerrold Green, Barbara Green, Vasilios Priskos, Michael Polacek, Helen Peters, Judi Short, Cindy Cromar, Grace Sperry, Lou Richardson III, Dave Richards, Virginia Hyhon

Staff Present

Wilf Sommerkorn, Planning Division, Kevin LoPiccolo, Planning Division and Mike Akerlow, Economic Development

Discussion of Non-Conforming Use and Non-Complying Lot and Structure Regulations.

Members present would prefer that any new nonconforming use be heard at an Administrative Hearing instead of the Planning Commission. The members **felt** that as long as there is a public hearing associated with a new nonconforming use, **the** administrative approach would serve the purpose to notify the community. **The** committee also would like to have incorporated into the review process that **all** abandonment or loss of a nonconforming use be heard at an administrative hearing versus a staff level for a determination.

At the meeting the Task Force members discussed the proposed amendment to the Nonconforming and Noncomplying regulations of the Zoning Ordinance. The discussion of the revised regulations includes the following:

- Simplify and clarify the regulations
- Ensure consistency with State Law (LUDMA)
- Revise the regulations for changing one nonconforming use to another nonconforming use.
- Incorporate language for in-line additions for single-family dwellings
- Incorporating language for environmental devices/structures for nonconforming uses and noncomplying structures.
- Incorporating and establishing a review process by the Planning Commission for all new nonconforming uses. Task Force members agreed to have this handled through an Administrative Hearing Officer.
- Incorporate that all abandonment or loss of a nonconforming use be heard and approved or denied at an Administrative Hearing.

We deferred the issue of non-conforming medical clinics. The Task Force was informed that the Planning Division was reviewing this issue.

Attachment C
Department **Comments**

LoPiccolo, Kevin

From: Walsh, Barry
Sent: Tuesday, July 21, 2009 5:55 PM
To: LoPiccolo, Kevin
Cc: Young, Kevin
Subject: RE: Chapter 38

Categories: Other

July 21, 2009

Kevin LoPiccolo, Planning

Re: Review of proposed changes to Chapter 21A.38 zoning text for NONCONFORMING USES AND NONCOMPLYING STRUCTURES.

The division of transportation review comment and recommendations are as follows:

We see no undo impact to the transportation corridor system per the proposed changes to simplify the text, Subject to standard site development transportation issues for traffic access, staging, stacking, and parking as needed and referred to as 21A.44 and as per the purpose statement in that the continued use is "not detrimental to the surrounding neighborhood", "or are a hazard to", from a transportation view of traffic issues for vehicles or pedestrians in their function of: parking - circulation - access - or services.

Sincerely,

Barry Walsh.

Cc Kevin Young, P.E.
File.

From: LoPiccolo, Kevin
Sent: Tuesday, July 21, 2009 3:22 PM
To: Nielson, Paul; Butcher, Larry; Walsh, Barry
Subject: Chapter 38

I have attached a revised copy of Chapter 38 – Nonconforming uses/noncomplying structures for your review. I plan on bringing this to the Planning Commission on August 12, 2009.

I would appreciate any input on what has been changed. It would be great if I could get your comments by July 30, 2009.

Thanks,

Kevin LoPiccolo
Planning Program Supervisor