

PLANNING COMMISSION STAFF REPORT

Legislative Item

NONCONFORMING USES and NONCOMPLYING STRUCTURES REGULATIONS ZONING TEXT AMENDMENTS

PLNPCM2009-00167

Hearing date: May 8, 2013



Planning Division
Department of Community and
Economic Development

Applicant: Salt Lake City
Council

Staff: Everett Joyce, (801) 535-
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Master Plan Designation:
City-wide

Council District: City-wide

Community Council: City-wide

Applicable Land Use

Regulations:

- Chapter 21A.38
- Portions of Chapters 21A.36,
54, 60 and 62

Attachments:

- A. Proposed Text Amendment
- B. Task Force Meeting
Comments
- C. August 26, 2009 and January
13, 2010 Planning
Commission Minutes

Request

This is a request by the Salt Lake City Council to amend the Zoning Ordinance to modify regulations relating to Chapter 38 Nonconforming Uses and Noncomplying Structures. The purpose of the proposed changes are to accomplish the following:

- Provide consistency with State code.
- Clarify processes for nonconforming uses and noncomplying structures.
- Identify special exception process and standards for enlargement of a structure with a nonconforming use.
- Revise regulations for changing a nonconforming use to another nonconforming use.
- Incorporate language for in-line additions, school districts, charter schools and the Americans with Disabilities Act.
- Simplify and clarify the regulations.

Recommendation

Based on the analysis and findings listed in the staff report, it is the Planning Staff's opinion that overall the amendment petition generally meets the applicable standards and therefore, 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.

Recommended Motion

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.

Background

This petition was initiated as part of the City's 2009 Zoning Amendment Project which identified the need to address issues relating to Chapter 38 Nonconforming Uses and Noncomplying Structures of the City Zoning Ordinance. Issues identified are: Compliance with State regulations, address in-line additions, expansion, changes of use and options to terminate nonconforming / noncomplying status of a property and to provide a comprehensive, in-depth refinement of existing regulations. In addition to the issues listed above, the Planning Staff identified the following issues: consistency with sustainability goals, amortization, noncomplying lots, similar land use type definition and the need to reformat the chapter to better differentiate and lessen confusion between nonconforming and noncomplying regulations.

Nonconformities

The Salt Lake City Zoning Ordinance separates nonconformities into two categories, nonconforming and noncomplying. The nonconforming category relates to use, which is the activity that takes place within a structure or upon the land. Nonconforming uses are created when zoning regulations change and the existing use of a property is no longer permitted. The noncomplying category relates to a structure or a lot. Noncomplying structures are created when zoning regulations change and the existing structure or lot does not meet the dimensional standards of the new zoning regulations. Examples of noncomplying aspects would be when the existing structure no longer complies with standards such as building height, building setbacks, lot size, lot area, parking requirements or any other specific standard that relates to the development character of a site.

Historical Zoning and Nonconforming Uses

Nonconforming uses and structures have existed ever since zoning first 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 if specific uses were made nonconforming as a means to eliminate the use rather than as a means to control the creation of additional similar uses.

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 always 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 Text Changes

Chapter 38 text changes were previously approved by the Planning Commission on January 13, 2010. Proposed changes to the nonconforming uses and noncomplying structures chapter were developed to provide a simplification of existing regulations and to define the processes in determining new nonconforming uses, interpretations and abandonment of nonconforming uses.

However, Planning staff has since then revised the previous draft ordinance. These later revisions mainly consist of a complete restructuring of the chapter layout for improved clarity and use and additional modifications to further refine the text for consistency with State law.

Below is a summary of the proposed text amendments relating to the Nonconforming Uses and Noncomplying Structures chapter. Attachment A of the Staff Report provides the full text changes that are being proposed.

Chapter 38 - Nonconforming Uses and Noncomplying Structures Summary of Ordinance Restructuring and Key Modifications			
Existing Citation	Proposed Citation	Proposed Regulation	Purpose of Amendments
21A.38.010 Purpose Statement	21A.38.010 Purpose Statement and Intent	Creates a purpose statement definitions and eliminates duplication	To clarify and define the purpose and intent of Chapter 38
21A.38.020 Scope of Regulations		Duplicated the purpose and intent statements	Deleted section for clarity
21A.38.030 Determination of Nonconforming Use Status	21A.38.040.E Determination of Nonconforming Use Status	Relocated to consolidate nonconforming use text into one location in the chapter	To provide consistency and clarity
21A.38.040 Nonconforming Regulations for Parking, Signs, And Landscaping	21A.38.040.A Nonconforming Regulations for Parking, Signs, Landscaping, Airport Flight Path Overlay, Riparian Corridor Overlay and Sexually Oriented Businesses	Updated to include references to other code sections with nonconforming use regulations	Provide additional references to other nonconforming regulations within the City code
21A.38.050 Authority to Continue	21A.38.020 Authority to Continue	Updated to reflect State law	Consistency with State law
21A.38.60 Ordinary Repair and Maintenance and Structural Safety	21A.38.30 Ordinary Repair and Maintenance and Structural Safety	Updated and relocated within the chapter	To provide clarity
21A.38.070 Abandonment or Loss of Nonconforming Use	21A.38.040.F Abandonment or Loss of Nonconforming Use Status	Relocated to consolidate nonconforming use text into one location in the chapter	To provide consistency and clarity
21A.38.080 Moving, Enlarging Or Altering Nonconforming Uses of Land And Structures	21A.38.040.H Modifications To Nonconforming Uses	Separates nonconforming uses and noncomplying structures text. Provides standards for enlargement and change of use	To provide consistency and clarity
21A.38.090 Noncomplying Structures	21A.38.050 Noncomplying Structures	Separates nonconforming uses and noncomplying structures text. Provides consistent standards	Define limits for a change of one nonconforming use to another. Provides consistency and clarity
21A.38.100 Noncomplying Lots	21A.38.060 Noncomplying Lots	Recognizes noncompliances and allows the lot to function as a legal lot. Establishes process to recognize noncomplying lots	To simplify and create process to recognize a noncomplying lot

Existing Citation	Proposed Citation	Proposed Regulation	Purpose of Amendments
21A.38.110 Nonconforming Accessory Uses And Noncomplying Lots	21A.38.010 Purpose Statement and Intent	Incorporated into the nonconforming and noncomplying definitions in the purpose statement	To provide consistency and clarity
21A.38.120 Legal Conforming Single- Family Detached Dwellings, Two-Family Dwellings and Twin Homes	21A.38.070 Legal Conforming Single- Family Detached Dwellings, Two- Family Dwellings and Twin Homes	Provides text linking to other code requirements within the zoning ordinance	To clarify existing standards
21A.38.130 Reserved		Section not being used	Deleted section for clarity
21A.38.140 Appeal	21A.38.080 Appeal	Consistency with other appeal text in the zoning code	Consistency
21A.38.150 Termination By Amortization Upon Decision of Appeals Hearing Officer	21A.38.040.G Termination Of A Nonconforming Use By Amortization	Combined into one section discussing modifications to nonconforming uses	To provide consistency and clarity
21A.38.160 Nonconformity of Taverns, Social Clubs, Dining Clubs, Brewpubs or Microbreweries	21A.38.040.B Nonconformity of Taverns, Social Clubs, Dining Clubs, Brewpubs or Microbreweries	Modified for consistency and combined into one section discussing modifications to nonconforming uses	Consistency with existing code and State law.
New Text	21A.38.040.C Terminating the Non- Conformance of a School or Charter School	Consistency with State law	To codify
New Text	21A.38040.D Americans with Disabilities Act	Consistency with State law	To codify
New Text	21A.38.050.C Americans with Disabilities Act	Consistency with State law	To codify
New Text	21A.38.90 (C) In- Line Addition	Defines special exception required for inline addition to buildings that do not comply with setbacks and links the section to the special exception chapter	To codify in noncomplying structures section, text consistent with existing special exception regulations

Public Notice, Meetings, Comments

The following is a list of public meetings that have been held related to the proposed project:

- Presented to the Zoning Amendment Task force on June 8, 2009, August 8, 2009 and November 9, 2009.
- Presented to the Business Advisory Board on July 8, 2009.

- Open House held on July 16, 2009.
- August 26, 2009 Planning Commission Public Hearing
- January 13, 2010 Second Planning Commission Public Hearing
- Open House held on February 21, 2013.

Comments and notes can be found in attachment B.

Notice of the public hearing for the proposal includes:

- Public hearing notice posted in newspaper on April 26, 2013.
- Public hearing notice mailed on April 26, 2013.
- Public hearing notice posted on City and State websites on April 26, 2013.
- Public hearing notice emailed to the Planning Division listserv on April 26, 2013.

City Department Comments

The proposed text amendments were sent to all pertinent City Departments and Divisions for their review and input. Planning Staff did not receive any comments identifying concerns with the proposed text modifications.

Analysis and Findings

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

21A.50.050 Standards for general amendments.

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.

A. In making a decision concerning a proposed amendment, the city council should consider the following factors:

1. **Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents;**

Analysis: Most of the city's master plans do not contain specific policy regarding nonconforming uses and noncomplying structures. The following related policies are contained within the community master plans of Salt Lake City. State code revisions to nonconforming use regulations have occurred since adoption of existing plan policy.

Central Community Master Plan

The following policies relate to nonconforming uses and noncomplying text changes:

- *Ensure that future amendments to the zoning map or text of the zoning ordinance do not result in a significant amount of nonconforming land uses.*
- *Encourage appropriate reuse of existing nonconforming or noncomplying commercial and industrial structures on a case-by-case basis.*

Sugar House Community Master Plan

The issue of nonconforming properties deserves particular attention. These are properties that are used for commercial or business purposes, but are zoned residential. As nonconforming property, the business is very limited in terms of expansion or rebuilding, even if a disaster strikes. In some cases, these nonconforming businesses have been present and operating for many decades and have served the surrounding residential area without undue harm to that neighborhood.

However, rezoning the property to commercial bestows upon that property significant value and rights including allowing the possibility that the current use could be replaced with any use permitted in the commercial zone. Therefore, the City should be cautious in rezoning these nonconforming properties to commercial. Each one should be considered on its own merits, with the public and surrounding residents given the opportunity to provide input into the decision making process.

The City should also consider the establishment of a distinct new zoning status for these properties, giving the property owner some certainty (e.g., the right to rebuild after a fire) without raising the status to full commercial zoning. This concept could be called “legal conforming” status, which the City already uses in a few discrete circumstances especially for residential land uses.

Neighborhood Commercial Policy

- *The City should explore new techniques and ordinances that support small businesses to serve residents within the surrounding neighborhood while mitigating impacts that may adversely affect the residential character of the neighborhood.*

Finding: The use limits established for changes of a nonconforming use to another nonconforming use in the proposed text supports the policies of the Central and Sugar House community master plans. The proposed text changes to provide more clarity to Chapter 38 Nonconforming Uses and Noncomplying regulations would have a positive impact on City’s master plan goals and policies. The proposed text amendments are consistent the community master plans.

2. Whether the proposed text amendment furthers the specific purpose statements of the zoning ordinance;

Analysis: The proposed text amendment is not site specific. The proposed text establishes criteria for nonconforming uses as well as noncomplying lots and structures. The proposed changes restructure and clarify regulations related to nonconforming uses and help classify land uses, provides order and convenience for residents in utilizing City regulations. The text changes serve the purpose of the zoning ordinance.

Finding: The proposed text amendments support harmony and consistency with the overall development character of areas where nonconforming uses and noncomplying structures and lots exist. The proposed text changes positively impact the purpose statements of the zoning ordinance and Chapter 38 Nonconforming Uses and Noncomplying Structures.

3. Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards; and

Analysis: The proposed amendments do not directly modify any overlay zoning districts. The proposed text changes provide clarity as to which overlay districts can affect nonconforming uses and noncomplying

structures. The text changes provide specific references to applicable overlay zoning districts. All overlay zoning districts would continue to regulate nonconforming uses and noncomplying structures within the parameters of the overlay district.

Finding: The proposed amendments are consistent with the provisions of all applicable overlay zoning districts that may impose additional standards. The amendments do not modify any intent or purpose of applicable overlay zoning ordinance. The proposed text amendment is city-wide and not associated with any specific geographic area. Submittal and processing of individual site applications would include the review of applicable overlay zoning districts

4. **The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.**

Analysis: The proposed text amendment provides consistency with State regulations regarding nonconforming uses and noncomplying structures. The amendments make the change of nonconforming use to another nonconforming use process more clear. The reorganization and restructuring of the Chapter 38 make the ordinance easier to administer.

The proposed text amendments are intended to update the City's nonconforming uses and noncomplying structures regulations to reflect current standards and best practices; to make the review process more efficient and user-friendly and facilitate incorporation of solar energy systems and accessibility requirements. Many of the standards proposed for deletion are outdated and not considered best practices because they facilitate greater intensification of nonconforming uses.

Finding: The proposed amendments reflect current practices in urban planning and will clarify, update and enhance the City's planning practices as it relates to nonconforming uses and noncomplying structures. The proposed regulations will be easier to administer because they distinctly separate nonconforming use and noncomplying structures processes. The regulation changes also provide more consistent text with Sate code and clarify the city's zoning code by providing direct references to related nonconforming uses or noncomplying structure text located elsewhere in the zoning ordinance.

The proposed amendments would have a positive effect on review and the application of nonconforming use and noncomplying structure regulations city-wide.

Alternatives

One alternative would be to recommend that the nonconforming uses and noncomplying structures ordinances remain unchanged. This option would continue the current review process and standards. This would maintain an ordinance that is confusing and creates undue administrative costs and that is inconsistent with State code.

Another alternative would be to approve only a portion of the proposed amendments or suggest other amendments. There is some risk with this option in that the modifications or suggestions have not had a chance to be considered by other departments. If suggesting new amendments, the Commission should consider additional staff review time and if necessary followed by another public hearing.

Commission Options

If the proposed amendments are denied in their entirety, no changes would be made to the nonconforming uses and noncomplying structures standards.

If the request is modified, depending on the extent, additional city staff review time and public input should occur in order to assess impacts to current practices.

If the amendment is approved as proposed, the revised text and standards could be implemented if adopted by the City Council.

Potential Motions

Not Consistent with Staff Recommendation (modify): Based on the testimony presented and the following findings, I move that the Planning Commission transmit a favorable recommendation to the City Council relating to the proposed amendments to the nonconforming uses and noncomplying structures regulations with the following modifications: *(list the modifications and their section number for clarification)*.

Not Consistent with Staff Recommendation (no amendments): Based on the testimony presented and the following findings, I move that the Planning Commission transmit a negative recommendation to the City Council relating to the proposed amendments to the nonconforming uses and noncomplying structures regulations.

The Planning Commission shall make findings on the zoning text amendment standards as listed below:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the City as stated through its various adopted planning documents;
2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance;
3. Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards; and
4. The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.

Attachment A
Proposed Nonconforming Uses and Noncomplying Structures Amendments

Chapter 21A.38 NONCONFORMING USES AND NONCOMPLYING STRUCTURES

SECTION:

- 21A.38.010: Purpose Statement And Intent
- ~~21A.38.020: Scope Of Regulations~~
- ~~21A.38.030: Determination Of Nonconforming Use Status~~
- ~~21A.38.040: Nonconforming Parking, Signs And Landscaping~~
- 21A.38.0520: Authority To Continue
- 21A.38.0630: Ordinary Repair And Maintenance And Structural Safety
- ~~21A.38.0740: Abandonment Or Loss Of Nonconforming Uses~~
- ~~21A.38.080: Moving, Enlarging Or Altering Nonconforming Uses Of Land And Structures~~
- 21A.38.0950: Noncomplying Structures
- 21A.38.1060: Noncomplying Lots
- ~~21A.38.110: Nonconforming Accessory Uses And Noncomplying Accessory Structures~~
- 21A.38.12070: Legal Conforming Single-Family Detached Dwellings, Two-Family Dwellings, And Twin Homes
- ~~21A.38.130: Reserved~~
- 21A.38.14080: Appeal
- ~~21A.38.150: Termination By Amortization Upon Decision Of Board Of Adjustment~~
- ~~21A.38.160: Nonconformity Of Taverns, Brewpubs, Microbreweries Or Private Clubs~~

21A.38.010: PURPOSE STATEMENT AND INTENT:

- A. **Purpose:** The purpose of this chapter is to regulate the continued existence of nonconforming uses, noncomplying structures, noncomplying lots and legal conforming dwellings as defined in Chapter 21A.62 Definitions. While nonconforming uses, noncomplying structures and improvements may continue, this chapter's purpose is to limit enlargement, alteration, restoration, or replacement which would increase the level of nonconformity or noncompliance discrepancy between existing conditions and the development standards prescribed by this Code. ÷
1. Nonconforming uses include legal ~~Legal noneonforming~~ 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; ~~and,~~
 2. Noncomplying structures and improvements include legally ~~Legally~~ constructed ~~noneomplying~~ principal and accessory buildings, structures and property improvements, that do not comply with the applicable bulk and/or yard area regulations and design standards of this title in the zoning districts in which ~~such~~ the buildings or structures are located, such as setbacks and parking.
 3. This chapter also provides standards for legal complying lots and dwellings. The legal complying status permits continued use and or replacement of structures subject to the standards of this chapter.
- B. **Intent:** The intent of this chapter is to allow continued use of legal nonconforming uses, ~~and~~ noncomplying structures and legal conforming dwellings, while at the same time protecting existing conforming development ~~and furthering orderly development and improvement of~~ within 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. ~~Nonconforming uses that are determined to create a nuisance or are a potential hazard to a community or neighborhood may be eliminated through amortization.~~

- ~~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.~~

~~21A.38.020: SCOPE OF REGULATIONS:~~

~~This chapter applies to nonconforming uses, noncomplying structures and noncomplying lots.~~

~~21A.38.030: 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.~~

~~21A.38.040: 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 title.~~

~~21A.38.050~~20: AUTHORITY TO CONTINUE:

Except as provided in this chapter, a nonconforming use, noncomplying structure, noncomplying lot or legal conforming dwelling may be continued by the present or a future property owner.

- ~~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.~~

~~21A.38.060~~30: 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 or on a legal conforming dwelling. This section shall not be

construed to authorize any violation of section 21A.38.080 or 21A.38.090 of the standards 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.

21A.38.040: NONCONFORMING USES

A. Nonconforming Regulations For Parking, Signs, Landscaping, Airport Flight Path Protection Overlay, Riparian Corridor Overlay And Sexually Oriented Businesses:

Nonconforming regulations for parking, signs and landscaping are regulated by the provisions set forth in chapters 21A.44, 21A.46 and 21A.48 of this title. Nonconforming regulations for the airport flight path protection overlay and the riparian corridor overlay are set forth in section 21A.34.040 and 21A.34.130 of this title. Nonconforming sexually oriented businesses are also subject to section 21A.36.140.C and 5.61.065 of this title.

B. Nonconformity Of Taverns, Social Clubs, Dining Clubs, Brewpubs Or Microbreweries:

A legally existing tavern, social club, dining club, brewpub, or microbrewery 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 requirements of State Law.

C. Terminating The Non-Conformance Of A School District Or Charter School:

A nonconforming status of a school district or charter school use or structure may be terminated 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.

D. Americans With Disabilities Act (ADA):

To accommodate and encourage compliance with the Americans with Disabilities Act (ADA) accessibility guidelines, the enlargement of structures to accommodate ramps, elevators, and bathrooms that meet the minimum ADA accessibility guidelines and improve accessibility for persons with disabilities are not considered as increasing or enlarging a nonconforming use.

E. Determination Of Nonconforming Use Status:

1. 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.
2. 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.

F. Abandonment Or Loss Of Nonconforming Use:

1. 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 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.

2. Rebuttal Of Presumption Of Abandonment: The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the zoning administrator, 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.
3. 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 1 of this section.

G. Termination Of A Nonconforming Use By Amortization:

The appeals hearing officer 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 appeals hearing officer 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 9a, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

1. Initiation Of Termination Procedure: Appeals hearing officer 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 appeals hearing officer. 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.
2. 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 appeals hearing officer shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the appeals hearing officer's intent to hold a hearing to consider the request in accordance with the standards and procedures set forth in chapter 21A.10 of this title.
3. Appeals Hearing Officer Review: The appeals hearing officer shall hold a noticed hearing within a reasonable time, following the procedures established in chapter 21A.10 of this title, on the request for amortization of the nonconforming use. Upon the conclusion of the hearing, the appeals hearing officer shall determine whether the nonconforming use should be amortized within a definite period of time.
4. Standards For Determining Amortization Period: The appeals hearing officer 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:
 - a. The general character of the area surrounding the nonconforming use;

- b. The zoning classification and use(s) of nearby property;
 - c. The extent to which property values are adversely affected by the nonconforming use;
 - d. 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;
 - e. The amount of loss, if any, that would be suffered by the owner upon termination of the use; and
 - f. The extent to which the amortization period will further the public health, safety and welfare.
5. Appeal: Any person adversely affected by a final decision of the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

H. **Modifications To Nonconforming Uses:**

Except as provided in this section, a nonconforming use may be extended through the same building, provided no structural alteration to the exterior walls or roofline of the building is proposed or made for the purpose of the extension. No nonconforming use may be changed to another nonconforming use, moved, enlarged or altered except as provided in this section and no nonconforming use of land may occupy additional land.

1. Change Of Nonconforming Use To Another Nonconforming Use: Any change of an existing nonresidential nonconforming use to another nonconforming use that is listed as a permitted use in the Small Neighborhood Business District in section 21A.26.025.B Uses or the Neighborhood Commercial District in section 21A.26.080 Table of Permitted and Conditional Uses for Commercial Districts is permitted. Any other change of a nonconforming use to another nonconforming use is subject to determination by the Appeals Hearing Officer as to the new use being a similar land use type as the existing use as defined in Chapter 21A.62 Definitions and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site.

Within a mixed use development no existing nonconforming use may be allowed to expand into any residential portion of the development.

2. Enlargement of a Structure with a Nonconforming Use: Alterations or modifications to a portion of a structure that are directly related to a legally nonconforming use may be approved by special exception, subject to the provisions of chapter 21A.52 of this title, if the floor area does not increase by more than twenty five percent (25%) of the gross floor area, or one thousand (1,000) gross square feet, whichever is less and subject to the site being able to provide required off street parking within the limits of existing legal hard surfaced parking areas on the site. An approved expansion shall be documented through an updated Zoning Certificate for the property. Any expansion to the nonconforming use portion of a structure beyond these limits is not permitted.

3. Relocation Of Structure: A structure containing a nonconforming use may not be moved on the same lot unless the structure shall thereafter conform to the regulations of the zoning district into which the structure is located.
4. Exterior Or Interior Remodeling Or Improvements To Structure: Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed for energy efficiency, accessibility or life safety improvements if the parking requirement is not increased as a result of the remodeling or improvements. Other improvements may be allowed provided they do not increase the parking requirement as required by this title.
5. Deterioration or Destruction Of Structure With a Nonconforming Use: Restoration of a deteriorated, damaged or destroyed structure and continuance of a nonconforming use shall be subject to the following:
 - a. If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable; the nonconforming use will be lost.
 - b. 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.
 - c. If a property owner has voluntarily demolished seventy five percent (75%) or more of the perimeter wall length and area dimensions of the exterior walls and/or total floor area of a structure, the structure shall not be restored.
 - d. 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 in a time frame determined by the building official after such calamity.

~~21A.38.070: 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 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, 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.~~

~~**21A.38.080: 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.~~

~~1. Reoccupation Or Enlargement Of A Structure With A More Intensive Nonconforming Use: 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 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:~~

~~(1) The condition and economic life of the building is such that near future demolition is not likely to occur;~~

~~(2) The use provides reuse of buildings with architectural or historic value;~~

~~(3) The use supports walk to work or live-work opportunities;~~

~~(4) The use provides an appropriate scale of neighborhood or community level of services;~~

~~(5) The enlargement will not create any additional noncompliance with zoning standards except for building modifications for life safety concerns;~~

~~(6) The enlargement and reuse of the structure would not substantially change the character of the neighborhood; and/or~~

~~(7) The use is not in conflict with any other current, local or state development standards (i.e., floodplain hazard protection, fault line hazards, ground water 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:~~

~~(1) 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;~~

~~(2) 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:~~

~~(i) The requirement would negatively impact the historic character of the building;~~

~~(ii) The requirement would negatively impact the structural stability of the building; or~~

~~(iii) 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');~~

~~(3) 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;~~

~~(4) 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~~

~~(5) Signs: Signage for residential uses shall meet sign standards for subsection [21A.46.080B](#), "Sign Regulations For Multi-Family Residential Districts", of this title. 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 title. 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:~~

~~(1) No additional lot area may be added to the subject nonconforming property;~~

~~(2) No enlargement of a nonconforming principal structure shall involve the razing of more than fifty percent (50%) of the existing building footprint; and~~

~~(3) 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: 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 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.~~

~~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:~~

~~(1) 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~~

~~(2) The reconstruction will not increase the number of units.~~

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

~~(1) 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;~~

~~(2) 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);~~

~~(3) 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~~

~~(4) Consideration of the enforcement history of the property regarding any continual public nuisance generated by the nonconforming use activity.~~

21A.38.09050: NONCOMPLYING STRUCTURES:

No noncomplying structure may be moved, enlarged or altered, except in the manner provided in this section or unless required by law. Modifications to a noncomplying structure that is subject to the Historic Preservation Overlay District requirements shall also meet the applicable supplemental regulations and standards of section 21A.34.020 H Historic Preservation Overlay.

Repair, Maintenance, Or Alterations ~~And Enlargement~~: Any noncomplying structure may be repaired, maintained, or altered ~~or enlarged~~, except that no such repair, maintenance, or 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. For purposes of this subsection, the addition of a solar energy device to a building is not a structural alteration, small solar energy collection systems are subject to section 21A.40.190 of this title.

A. Enlargement: A noncomplying structure may be enlarged if such enlargement and its location comply with the standards of the zoning district in which it is located. Horizontal in-line additions or extensions to existing noncomplying building portions is considered not creating a new nonconformance and are subject to special exception standards and approval of Chapter 21A.52.030.15 of this title. Vertical in-line additions or extensions to existing noncomplying building portions is considered creating a new nonconformance and are not permitted.

B. Determination of Noncomplying Structure Status: The zoning administrator shall determine the noncomplying structure status of properties pursuant to the provisions of this chapter.

C. Americans With Disabilities Act (ADA): To accommodate and encourage compliance with the Americans with Disabilities Act (ADA) accessibility guidelines, the enlargement of structures to accommodate ramps, elevators, and bathrooms that meet the minimum ADA accessibility guidelines and improve accessibility for persons with disabilities are not considered as increasing or enlarging a noncomplying structure.

D. 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.

E. Replacement or Reconstruction of a Noncomplying Structure: The replacement or reconstruction of any existing noncomplying portion of a principal structure or full replacement of a noncomplying accessory structure are subject to special exception standards of Chapter 21A.52.030.19 of this title.

F. C. Deterioration, Damage Or Partial Destruction Of Noncomplying Structure: Restoration of a deteriorated, damaged or destroyed noncomplying structure shall be subject to the following:

1. If a noncomplying structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one (1) year after written notice to the property owner that the structure is uninhabitable, the noncomplying structure status will be lost and requires either complete demolition or compliance with the standards of the zoning district in which the structure is located.
2. If a property owner or authorized representative voluntarily demolishes a non-complying structure or the non-complying structure 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 percent (75%) or more of the perimeter wall length and area dimensions of exterior walls and/or total floor area of a structure.
3. 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 with respect to building footprint, setback height and other noncomplying dimensional standards of the zoning district in which the structure is located, provided such work is started within one(1) year, unless a longer timeframe is approved by the building official, after such calamity.

A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

- ~~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 C2b(1) and C2b(2) of this section.~~

~~(1) 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.~~

~~(2) Nonconforming Nonresidential Uses: The planning commission 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.~~

21A.38.10060: 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 and is subject to the regulations of this title. 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. Any noncomplying lot not approved by the city that was created prior to January 13, 1950 may be approved as a legal noncomplying lot subject to the lot meeting minimum zoning requirements at the time the lot was created and documented through an updated Zoning Certificate for the property.~~

~~Any noncomplying lot not approved by the city that was created on or between January 13, 1950 to April 12, 1995 may be approved as a legal noncomplying lot subject to the lot meeting minimum zoning and subdivision requirements at the time the lot was created and documented through an updated Zoning Certificate for the property~~

~~Noncomplying lots may be combined to create a conforming lot or more conforming lot subject to any maximum lot size standards of the zoning district in which the lot is located.~~

~~21A.38.110: 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.38.12070: LEGAL CONFORMING SINGLE-FAMILY DETACHED DWELLINGS, TWO-FAMILY DWELLINGS, AND TWIN HOMES:

~~Any legally existing single-family detached dwelling, two-family dwelling, or twin home located in a zoning district that does not allow these uses, except those located in M-1 and M-2 zoning districts, that is in legal existenee shall be considered legal conforming. ~~Subject to complying with all other current, local or state development standards, legal~~ Legal conforming status shall authorize alterations, extensions/additions, and replacement of the single-family detached dwelling, two-family dwelling, or twin home structure to the extent of the original footprint.~~

~~A. **Alterations, Additions Or Extensions Or Replacement Structures Greater Than the Original Footprint.** In zoning districts other than M-1 and M-2, which do not allow detached single-family dwelling units, two-family dwelling units or twin homes, any alterations, extensions/additions or the replacement of the structure may exceed the original footprint by twenty five percent (25%) of the existing structure subject to the following standards:~~

1. Any alterations, extensions/additions or the replacement structure shall not project into a required yard beyond any encroachment established by the structure being replaced.
2. Any alterations, additions or extensions beyond the original footprint which are noncomplying are subject to special exception standards of Chapter 21A.52.030.15 of this title.
3. 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 title.

Any alterations, additions or extensions or replacement structures which exceed twenty five percent (25%) of the original footprint, or alterations, additions or extensions or 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.

~~In zoning districts other than M-1 and M-2, 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, 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 title.~~

B. **Off Street Parking.** 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. The maximum number of outdoor parking stalls shall be four parking stalls per dwelling unit.

~~**21A.38.130: RESERVED:**~~

~~**21A.38.140080: APPEAL:**~~

~~Any person adversely affected by an administrative decision of the zoning administrator on a determination of the status of for a nonconforming use or noncomplying structure, may appeal that decision to the appeals hearing officer may appeal the decision to the board of adjustment pursuant to the provisions in chapter 21A.16 of this title.~~

~~**21A.38.150: 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 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 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.~~

~~21A.38.160: NONCONFORMITY OF TAVERNS, BREWPUBS, MICROBREWERIES OR PRIVATE CLUBS:~~

~~A legally existing brewpub, microbrewery, private club, or tavern license, as defined in [title 6, 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.~~

Other Related Code Changes

Chapter 21A36 General Provisions

Section 21A.36.020

21A.36.020: CONFORMANCE WITH LOT AND BULK CONTROLS:

- A. Conformance With District Requirements: No structure or lot shall be developed, used or occupied unless it meets the lot area, lot width, yards, building height, and other requirements established in the applicable district regulations, except where specifically established otherwise elsewhere in this title.

In any residential district, on a lot legally established prior to April 12, 1995, a single-family dwelling may be erected regardless of the size of the lot, subject to complying with all yard area requirements of the R-1/5,000 district. Legal conforming 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 area requirements of the district in which the lot is located.~~

Chapter 21A54 Conditional Uses

Section 21A.54.135

21A.54.135: ALTERATIONS OR MODIFICATIONS TO A STRUCTURE WITH A CONDITIONAL USE:

- A. ~~Nonconforming Conditional Use: Any modification to a legally nonconforming land use listed as a conditional use under current zoning regulations shall be approved subject to the provisions of this chapter if the floor area increases by more than twenty five percent (25%) of the gross floor area, or one thousand (1,000) gross square feet, whichever is less and/or the parking requirement increases as required by this title.~~ Alterations or modifications to a structure with an existing legal conditional use or with a previously permitted use that now is listed as a conditional use under current zoning regulations shall be approved subject to the provisions of subsections B and C of this section.
- B. Administrative Review: An alteration or modification to a structure with a ~~an existing legal~~ conditional use that increases the floor area by less than twenty five percent (25%) of the gross floor area or one thousand (1,000) gross square feet, whichever is less may be approved by the planning director without a public hearing.
- C. New Conditional Use Review Required: An alteration or modification to a structure with a ~~an existing legal~~ conditional use that increases the floor area by more than twenty five percent (25%) of the gross floor area or one thousand (1,000) gross square feet, whichever is less, shall be reviewed as a new conditional use pursuant to the requirements and standards of this chapter.

Chapter 21A.60 List of Terms

Section 21A.60.020

Noncomplying Nonconforming-Lot

Chapter 21A.62 Definitions

Section 21A.62.040

~~**LAND USE TYPE (SIMILAR LAND USE TYPE):** "Land use types" shall be considered to be similar land use types if both uses are allowed in the same zoning district or in the same or more restrictive zoning district within the commercial zoning category or in the same or more restrictive district within the manufacturing zoning category and the change from one land use type to another similar land use type does not increase the parking requirement. If the proposed land use type is a conditional use it will be subject to the conditional use process.~~

LAND USE TYPE (SIMILAR LAND USE TYPE): Use tables within subsections of title 21A list various land use types for permitted and conditional uses for the Residential, Commercial, Manufacturing, Gateway and Special Purpose categories. Land uses shall be considered to be similar land use types, if the uses are listed as a permitted or conditional use in the same subsection of the use tables within subsections of title 21A and the uses have similar off-street parking requirements as defined in Chapter 44 Off Street Parking and Loading.

CHANGE OF USE: The replacement of an existing use by a new use, or a change in the nature of an existing use which does not increase the size, occupancy, or site requirements. A change of ownership, tenancy, name or management, or a change in product or service within the same use classification where the previous nature of the use, line of business, or other function is substantially unchanged is not a change of use. The conversion of existing residential units to condominiums is not a change of use. ~~(See also definition of Land Use Type (Similar Land Use Type).)~~

NONCOMPLYING NONCONFORMING LOT: A parcel of land which was legally established on the effective date of any amendment to this title that made the lot noncomplying that has less lot area, frontage or dimensions than required in the district in which it is located.

Attachment B
Public Input

Public Comments

On June 8, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38, nonconforming uses and noncomplying structures and Chapter 62 definitions. The 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 supportive of the proposed changes and grateful that 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.

On August 8, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38 and Chapter 62. This meeting was to discuss the July 16, 2009 Open House input. The Committee requested that staff incorporate criteria when reviewing a nonconforming use.

On August 26, 2009 the Planning Commission reviewed this request in a public hearing. Staff presented to the Commission the purpose of the proposed changes relating to nonconforming uses and noncomplying structures regulations.

On November 9, 2009, the Zoning Amendment Project Task Force reviewed Chapter 38 and Chapter 62. Staff presented proposed criteria when evaluating a nonconforming use change. Overall the committee was satisfied with the criteria, but felt that it was not strong enough to deny certain nonconforming use actions such as a change from one nonconforming use to another.

On January 13, 2010 the Planning Commission held a public hearing and passed a motion to transmit a favorable recommendation to the City Council.

Additional Code Modifications and Public Input

Since the Planning Commission public hearing of January 13, 2010, the Planning staff has modified that draft version of the Nonconforming Uses and Noncomplying Structures chapter to include a complete reformatting of the chapter and text for clarity purposes. Also text was updated to provide additional consistency with State law. After the revisions of the text were completed the proposed draft text changes were made available for public comment through an Open House on February 21, 2013.

During the February 21, 2013 Open House three individuals reviewed the proposed text. None of them provided comments. In response to the Open House notice on the Planning listserv, proposed text changes were emailed to two individuals and no comments were submitted to the Planning Office from those inquiries.

Attachment C
August 26, 2009 Planning Commission Minutes
January 13, 2010 Planning Commission Minutes

August 26, 2009 Planning Commission Minutes

6:37:15 PM PLNPCM2009-00167; Non Conforming & Non Complying Zoning Text Amendment – A request by the Salt Lake City Council to amend Chapter 21A.38 of the Salt Lake City Zoning Ordinance, relating to Non Conforming Uses and Non-Complying Lots and Structures regulations. The purpose of the petition is to simplify and clarify the existing regulations and to ensure consistency with State Law.

Chair Woodhead recognized Cheri Coffey as staff representative.

Ms. Coffey stated that the easiest way to understand non-conforming uses was the zoning was probably correct when built, but over time the zone changed in conformance to the master plan, and hopefully these non-conforming uses would eventually go away. She stated that the problem with that was there were private property rights, and recently State law stated that owners could rebuild a non-conforming use within 6 months if it was destroyed by a natural disaster.

She stated that in the past the Zoning Administrator had made a decision, which could be appealed to the Board of Adjustment and that board was then making a land use decision. Staff was trying to clean up this process and make it more public. She noted that because the Planning Commission was the land use board, these zoning changes should go through a public process and be decided by the Commission.

Ms. Coffey stated that there were a lot of non-conforming uses. Partly because the master plans were outdated and a lot of the neighborhoods were built before zoning regulations were created. Over the years downzones were made and now walkability and sustainability were factors and a lot of these uses were things the neighborhood liked. It was difficult to get financing and insurance for these uses. Staff was looking at changing the zoning to make them conforming. She stated that in-line additions were also not addressed in the ordinance and needed to be made clearer. She stated that a non-complying structure was when the size or height of the structure did not comply with the underlying zone. A non-conforming lot was a parcel that did not have frontage or the minimum lot area that was required in the zone.

Ms. Coffey stated that non-complying lots in the past meant that you could only put a single-family home on the property; she stated that this was not the intent, the intent was that the minimum you could build would be a home, and now it would include you could build on the property whatever was allowed within the zone.

Commissioner De Lay stated that it was hard to get a loan or a refinance on a non-complying use. She inquired if staff had run this by any lenders to see if this was approved if they would be okay now.

Ms. Coffey stated they had not.

Commissioner De Lay stated that it would be a good idea to have a workshop that included residential and commercial lenders so that they could look at this text amendment and comment on whether or not changes needed to be made so they would actually lend money. She inquired if live/work spaces were part of this.

Ms. Coffey stated that she was working on the definitions and uses of some terms that would be placed in the table of the ordinance, so that specific uses were defined in the future.

Commissioner Dean stated that if the City was going to take a stricter stance on this, they needed to take a look at the map amendments and if the City can proactively rezone preferable properties to maintain the commercial diversity. She stated that it would be a clarifying tool for property owners as well.

Commissioner Fife inquired about changing from one non-conforming use to another, the amendment stated that the Zoning Administrator would make the decision on those, but it seemed like those petitions should come before the Planning Commission.

Ms. Coffey stated that was a decision for the Commission to make. She stated that the taskforce felt this would be a more streamlined process if it went through an Administrative hearing process, but if the Commission wants to see them, then they should recommend that.

7:02:54 PM Public Hearing

Chair Woodhead opened the public hearing portion of the petition.

The following person spoke or submitted cards in *support* of the petition: **Judy Short** (862 Harrison Street) stated that the City needed to find a way to retire non-conforming uses, which were not compatible with the City's long range plans and objectives. She stated that one way to make that easier would be to create small, low intensity mixed-use and business zones. She stated that staff could categorize what characteristics made a property non-conforming and redefine it in a way that a lot of those properties could become conforming with a few tweaks to what was allowed in the zoning district.

Commissioner De Lay stated that was a valid point, what were the number one reasons that most properties in the City were non-conforming.

Ms. Coffey stated that the short answer is that they are not compatible with the zone, but part of the problem was the City's master plans were outdated and some of the more current master plans did not have the zoning implemented when they were adopted. She stated that the ZAP taskforce looked at some uses that could be designated as mixed-use which would be appropriate.

Mr. Sommerkorn stated that there were a lot of non-conforming uses in the City, and could the zoning be modified to the point that a lot of them could be made conforming. He stated that was part of what the small neighborhood business study intended to look at.

Chair Woodhead stated that the City was lucky that a lot of these non-conforming uses had survived, when there was a tendency toward sameness in the past. She stated that the City needed to find a way to protect those mixed-uses and to make them better.

Commissioner Hill stated that staff had mentioned looking at where in the City it would be appropriate to drop particular commercial mixed-use areas in. She stated that overtime if density was strengthened in any area, neighborhoods could start strengthening these neighborhood cores.

Ms. Short stated that this was zoning for the future, where twice as many people would eventually occupy the same space and if the City still wanted open space there needed to be some creativity when looking at the zoning.

Chair Woodhead closed the public hearing.

January 13, 2010 Planning Commission Minutes

PLNPCM2009-00167; Nonconforming and Noncomplying Zoning Text Amendment—a request by the Salt Lake City Council to amend Chapter 21A.38 of the Salt Lake City Zoning Ordinance, relating to nonconforming uses and noncomplying structures regulations. The purpose of petition is to simplify and clarify the existing regulations and to ensure consistency with State Law.

Acting Chair Algarin recognized Kevin LoPiccolo as staff representative.

Mr. LoPiccolo stated the purpose of this petition was to clarify this zoning text and make it more consistent with state law. He stated some items were added back in that were missing since the citywide rewrite of the zoning ordinance in 1995.

He stated there were concerns with residences wanting to hold on to the fabric of existing neighborhoods, especially in the avenues. After looking at the viability of a lot of these types of buildings that exist around the city, a lot of them were compatible with the neighborhoods around them and staff did want to recognize that and maintain and retain them.

Mr. LoPiccolo stated a hearing officer could hear the petition for a change of use for a continuation of a non-conforming use, through the public process, but each petition that was appealed would not need to come before the Planning Commission.

He stated another change added was on Page 8, under non-complying structures, particularly any expansions or other work that might be done to a non-complying structure could be seen as an expansion and an owner would not be able to do that; however, staff wanted to allow for modifications like solar panels.

Mr. LoPiccolo stated staff also included a section on ADA requirements, there were times when older structures were being improved, such as including a ramp and other accessibility tools, which might create a greater non-compliance, but it was important to realize ADA additions were exempt from this.

He stated inline additions were also added, which simply was an extension of a noncomplying structure—the foundation was extended in line with the existing structure.

Commissioner Dean stated assuming there were some nonconforming uses the city did want to eventually go away, what would be the process. She inquired if there were any tools to enforce the reality of abandonment.

Mr. LoPiccolo stated that section was not changed, but the city could require documentation that the applicant was marketing the building or if tenant improvements were issued through the building department, something to show good faith on the applicant's part they were pursuing a sale etc.

Ms. Coffey stated state law was pretty favorable toward the property owner, so the city had to give some type of allowance for the property owner to prove they did not have intent to abandon a use.

Mr. Sommerkorn stated the term abandoned was not clearly determined in the state ordinance, so from the city's standpoint it's ordinance was pretty low standard, after a lot of discussion it was determined that for now that would be left alone.

Mr. LoPiccolo stated the city did not really deal with too many abandonment issues.

Commissioner Chambless inquired where the line should be drawn between being reasonable and fair and being progressive.

Mr. LoPiccolo stated the owner had one year after the doors were closed without the use being considered abandoned. After that documentation would need to be provided to the city, if it did turn blight then enforcement and fines began.

Ms. Coffey stated part of this project would be for staff to look at each nonconforming uses in the City and to analyze if the zoning could be changed to make them conforming.

Commissioner Woodhead stated Commissioner De Lay had mentioned staff should speak to the lending community, because when people had nonconforming uses they had a hard time getting financing.

Mr. LoPiccolo stated that was addressed in 2005 or 2006, and was done through rebuilding letters, which assured the owner the city recognized that particular use.

Commissioner Woodhead stated lenders were still uncomfortable, even after the city had written a letter stating it was legitimate, they were still hesitant to allow financing.

Ms. Coffey stated she did not know if the lending community would be at ease unless the property was actually rezoned.

Mr. LoPiccolo stated that was the final answer for all properties, to have the right zoning for the right use.

Commissioner Chambless inquired where arson fit into the criteria.

Mr. LoPiccolo stated that would be a function of both the building and fire departments to determine if a fire was an act of arson.

Public Hearing

Acting Chair Algarin opened the public hearing. He noted there was no one present to speak to the petition, and closed the public hearing.

Motion

Commissioner Gallegos made a motion regarding Petition PLNPCM2009-00167; Zoning Text amendment to Chapter 27A.38: nonconforming uses and noncomplying structures and Chapter 21A.62: definitions, the Planning Commission forwards a positive recommendation to the City Council based on staff analysis and findings and clarifying the appeal process regarding change of use.

Commissioner Woodhead seconded the motion.

Commissioners Gallegos, Fife, Dean, Chambless, Wirthlin, Muir, and Woodhead voted, "Aye". The motion passed unanimously.