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## Sec. 30-10.5. Nonconforming uses.

- A. *Limitation on enlarging, increasing or extending use.* A legally nonconforming use shall not be enlarged, extended or intensified, including to cover more area of the land or building or structure than was occupied by that use when it became legally nonconforming, except a legally nonconforming use may be extended throughout any parts of a building or structure that were manifestly arranged or intended for such use at the time the nonconformity status was established.
- B. *Alterations to structures and site improvements associated with legally nonconforming uses.* A structure associated with a legally nonconforming use may receive the following alterations, provided such work otherwise complies with the provisions of this chapter:
1. Ordinary repair and maintenance, meaning any actions that correct defects in, extend the useful life of, or bring the structure or site improvement into conformance with applicable building, electrical, mechanical, fire, health, safety or related regulations;
  2. Site improvements to the premises of structures associated with legally nonconforming uses, including landscaping, drainage, lighting, and the provision of buffering and screening along property boundaries; and
  3. Alterations made to comply with the requirements of law, including making a nonconforming structure or site improvement conforming to the requirements of this chapter.
- C. *Change of use.* A legally nonconforming use shall not be changed to another use unless such use is permitted by and complies with all applicable requirements of this chapter. If a legally nonconforming use is changed to any other use, said use shall lose its legally nonconforming status and any subsequent use shall conform to all applicable requirements of this chapter.
- D. *Abandonment.* If a legally nonconforming use is deemed abandoned in accordance with the procedures set forth in this section, said use shall lose its legally nonconforming status and any subsequent use shall conform to all applicable requirements of this chapter.
1. *Review criteria.* Abandoned means to cease the use for a continuous period equaling or exceeding nine months. Evidence, including public records, utility records, property records, verified personal records, or other general research and documentation, shall demonstrate that a use or activity has not been abandoned. The intent of the owner or user shall not be relevant in determining whether the use has been abandoned. The time period of any legal proceedings related to change of ownership, including foreclosures or bankruptcies, shall not be used in any calculation of the time period for abandonment.
  2. *Review procedure.*
    - a. The burden shall be on the property owner/developer to establish that a use has not been abandoned.
    - b. At such time as city staff or the city plan board determines that reasons exist for a property to lose its legal nonconformity status, notice of such determination shall be given to the property owner by the city. The notice shall be given by certified mail, return receipt requested, shall clearly state the reasons for the determination, and shall advise the property owner that a hearing to consider the determination shall be held by the city plan board on a date not less than 30 calendar days following the date of the notice. The time and place of the hearing shall be specified in the notice.
    - c. A quasi-judicial public hearing shall be conducted by the city plan board with respect to all proceedings regarding loss of legal nonconformity status. A staff report shall be prepared and shall contain a recommendation as to the appropriate course of action. Where such proceedings

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have been instituted against a group of similarly situated nonconformities, such proceedings may be consolidated for hearing purposes.

- d. Following the close of the public hearing, the city plan board shall render its decision no later than 30 calendar days after the date of the hearing. The decision shall be supported by written findings and a record of the proceeding shall be kept.
  - e. *Appeals.* The determination of the city plan board shall be final, subject to such remedies as may be provided in this chapter or at law.
- E. *Reinstatement of abandoned legally nonconforming use.* A legally nonconforming use that was deemed abandoned in accordance with subsection D. above, and thereby lost its status as a legally nonconforming use, may be reinstated as a legally nonconforming use in accordance with the terms of this subsection E. The process set forth herein shall be applicable only to the status of legally nonconforming uses of land and shall not apply to any other development criteria or regulation in this chapter.
- 1. *Review criteria.* The applicant shall bear the burden of demonstrating each of the following:
    - a. That the use requested to be reinstated is the same as the former legally nonconforming use that was deemed abandoned, and is therefore not a change in use;
    - b. That the impacts of the nonconforming use are minimal upon the surrounding land uses and are not detrimental to the public health, safety, and welfare; and
    - c. That the impacts of the nonconforming use may be substantially mitigated through measures including but not limited to: buffering; screening; landscaping; architectural treatment; additional setbacks; access limitations; limitations on use; sufficient parking designed to provide safe internal traffic circulation and off-site access; and site plan design to minimize off-site impacts of service and delivery areas, refuse and recycling collection areas, and outdoor storage and work areas.
  - 2. *Review procedure.*
    - a. Upon application of the property owner, a staff report shall be prepared and shall contain a recommendation as to the appropriate course of action. The city plan board shall conduct a quasi-judicial public hearing and shall apply the criteria set forth above to grant, grant with conditions, or deny an application for reinstatement. The notice and hearing procedure shall be the same as for rezonings.
    - b. Following the close of the public hearing, the city plan board shall render its decision no later than 30 calendar days after the date of the hearing. The decision shall be supported by written findings and a record of the proceeding shall be kept.
    - c. *Appeals.* The determination of the city plan board shall be final, subject to such remedies as may be provided in this chapter or at law.