

ARTICLE 5: NONCONFORMITIES

Contents:

- Chapter 18.90 – General Nonconforming Provisions**
- Chapter 18.92 – Nonconforming Parcels**
- Chapter 18.94 – Nonconforming Structures**
- Chapter 18.96 – Nonconforming Uses**
- Chapter 18.98 – Other Specific Nonconforming Provisions**

Chapter 18.90 – General Nonconforming Provisions

Contents:

- 18.90.010 – Purpose, Intent, and Definitions**
- 18.90.020 – Establishment and Proof of Legal Nonconforming Status**
- 18.90.030 – Continuation of Nonconformities**
- 18.90.040 – Termination of Nonconformities**

18.90.010 – Purpose, Intent, and Definitions

A. **Purpose.** This Article provides regulations for:

1. Nonconforming parcels, signs, structures, and land uses that were lawfully permitted before the adoption or amendment of this Zoning Code, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Code or an amendment which subsequently changed requirements.
2. The continuance, maintenance, and repair of nonconformities under certain circumstances and limiting reconstruction and reestablishment of nonconformities. These nonconforming uses and structures may continue or be discontinued as specified in this Article.

B. **Intent.**

1. In order to limit the number and extent of nonconformities created by adoption of this Zoning Code, it is the County's intent to generally allow nonconformities to continue until they are removed, but not to encourage their long-term existence.
2. It is further the intent of this Article that nonconformities shall not be altered, enlarged, expanded, extended, moved, reestablished, or changed to another nonconforming use after abandonment or discontinuance, or restored after involuntary destruction, except in compliance with this Article.
3. It is the County's intent to ensure that certain nonconformities, including certain classes of nonconforming uses, nonconforming structures of nominal value, and certain uses not meeting screening, performance, or parking standards, are discontinued or become conforming.
4. This Article shall not apply to any use or structure established in violation of the adopted Zoning Code, unless the use or structure presently conforms with the provisions of this Zoning Code.

C. **Definitions.** For purpose of this Article, the following terms shall have the following definitions:

Cessation or Discontinuance. Cessation or discontinuance of a nonconforming use shall be defined as an abandonment of the use, irrespective of the owner's or occupant's intent.

Illegal Nonconformity. An illegally created parcel, sign, structure, or use that was illegally constructed, created, installed, or initiated without proper permits or approvals, and does not comply with the provisions of this Zoning Code. An illegal nonconformity is not eligible for any of the protections provided by this Article.

Nonconforming Parcel. A parcel legally created before the effective date of this Zoning Code, or subsequent amendment, which does not currently comply with the minimum area, depth, width, or other requirements of this Zoning Code.

Nonconforming Sign. A sign legally existing before the effective date of this Zoning Code, or subsequent amendment, which does not currently comply with the sign regulations of this Zoning Code.

Nonconforming Structure. A structure legally existing before the effective date of this Zoning Code, or subsequent amendment, which does not currently conform to the requirements of the zone in which it is located.

Nonconforming Use. A use of land and/or a structure legally existing before the effective date of this Zoning Code, or subsequent amendment, but which is no longer allowed in the zone in which it is located.

18.90.020 – Establishment and Proof of Legal Nonconforming Status

The property owner has the burden to prove a legal nonconformity and the related protected status that comes with legal nonconformity as specified in this Article.

- A. **Property Owner's Responsibility.** The property owner shall provide sufficient evidence to the satisfaction of the Director that the subject is a legal nonconformity.
- B. **County is Not Responsible.** The County is not responsible to prove the legal status of the nonconformity.
- C. **Director's Determination.**
 - 1. The process begins with the property owner submitting sufficient written evidence to the Director justifying that the nonconformity is legal and subject to the protected status specified in this Article.
 - 2. The Director may decide the matter favorably on the documentation provided. In the alternative, the Director shall conduct an administrative hearing and provide notice of the hearing to the property owner in compliance with Chapter 18.146 (Public Notices and Hearings).
 - 3. The property owner shall have the opportunity to appear and provide oral testimony on the legality of the nonconformity.
 - 4. The Director shall consider the evidence and make a determination as to the legality of the nonconformity and the available protections provided by this Article.
 - 5. The Director's determination of legal nonconformity shall be appealable as specified in Chapter 18.144 (Appeals).

18.90.030 – Continuation of Nonconformities

- A. **Customary Maintenance and Repair Allowed.** A nonconformity (i.e., parcel, sign, structure, or use) may be maintained and continued with customary maintenance and repair without any expansion or enlargement of area, space, or volume, with the exception of those improvements and expansions specified in Subsection B (Allowed Improvements and Expansions Addition of Accessory Structure), below. A nonconformity may be maintained provided that no structural alterations shall be made to structural supporting members (i.e., bearing wall, column, beam, girder, rafter, joist), except as required for health and safety as determined by the Building Official.
- B. **Allowed Improvements and Expansions**
 - 1. The addition of one accessory structure related to a conventional single-family dwelling, other than an accessory dwelling unit, provided that all structures shall comply with all other regulations of the zone.
 - 2. The addition of animal sheds or shades, hay barns, etc. for agricultural operations where there is no increase in animals, wastewater, or employees;
 - 3. The continued use and expansion of certain nonconforming communications buildings and structures (including, but not limited to, radio towers, wireless facilities, and antennas) that directly or indirectly provide or support emergency services within the county (including, but not limited to, the broadcast of Emergency Alert System messages or public agency communications) may be allowed subject to the approval of a Conditional Use Permit in compliance with Chapter 18.116 (Conditional Use Permits), and the following findings:

- a. That the improvement and/or expansion of the nonconformity is directly or indirectly related to the provision of emergency services within the county and will provide these services for the lifetime of the project,
- b. That the improvement and/or expansion of the existing nonconforming building or structure will not result in an increase of more than one hundred percent of the original floor area of the nonconformity, not including the floor area of any previously approved expansions, and
- c. That the improvement and/or expansion of the nonconformity would not be detrimental to the public health, safety and general welfare.

18.90.040 – Termination of Nonconformities

A. Destroyed or Deteriorated over 50 Percent.

1. **Involuntarily Destroyed or Deteriorated.** A nonconformity involuntarily destroyed or deteriorated to an extent of 50 percent or more of its appraised value immediately before the destruction may be restored only if made to conform to all applicable provisions of this Zoning Code. Cumulative repairs exceeding 50 percent of the nonconformity's appraised value from the initial date of the nonconformity shall not be allowed.
2. **Appraised Values.** All appraised values referred to in this Section shall be determined by a State-licensed appraiser and confirmed by the Building Official. Estimates of repairing or replacing the damaged portion of the structure for purposes of this Section shall be made by or shall be reviewed and approved by the Building Official and shall be based on the minimum cost of construction in compliance with the Building Code.

B. Abandonment or Discontinuance.

1. **Nonconforming Use.** If a nonconforming use ceases or is discontinued for a continuous period of 180 days or more, its legal nonconforming status is lost, and the continued use of the property shall be in full compliance with all of the applicable provisions of this Zoning Code.
2. **Use of a Nonconforming Structure.** If the use of a nonconforming structure ceases or is discontinued for a continuous period of 180 days or more, its legal nonconforming status is lost, and the structure shall be removed or altered to conform to all of the applicable provisions of this Zoning Code.
3. **Cessation or Discontinuance.** A nonconforming use or structure shall be considered ceased or discontinued when any of the following occur:
 - a. Abandonment of the use, despite the owner's or occupant's intent;
 - b. Discontinuance of a use regardless of intent to resume the use;
 - c. The intent of the owner to cease or discontinue is apparent, as determined by the Director;
 - d. Where characteristic furnishings and equipment associated with the use are removed and not replaced with equivalent furnishings and equipment, and where normal occupancy and/or use is no longer evident; or,
 - e. Where there are no business receipts or utility charges or payments for the 180-day period.

Chapter 18.92 – Nonconforming Parcels

Contents:

18.92.010 – Use of Legal Nonconforming Parcels

18.92.020 – Subdivision of Legal Nonconforming Parcels

18.92.030 – Merger of Nonconforming Parcels

18.92.010 – Use of Legal Nonconforming Parcels

A single nonconforming parcel that does not comply with the applicable area, depth, or width, requirements of this Zoning Code is a legal building site if it meets at least one of the following criteria, as documented to the satisfaction of the Director by evidence furnished by the applicant.

- A. **Approved Subdivision.** The parcel was created by a recorded subdivision;

- B. **Individual Parcel Legally Created by Deed.** The parcel is under single ownership and was legally created by a recorded deed before the effective date of the provision which made the parcel nonconforming;
- C. **Variance or Lot Line Adjustment.** The parcel was approved through the Variance procedure or resulted from a lot line adjustment; or
- D. **Partial Government Acquisition.** The parcel was created in compliance with the provisions of this Zoning Code, but was made nonconforming when a portion was acquired by a governmental entity so that the parcel size was decreased not more than 20 percent and the depth of the required yard facing a public right-of-way was decreased not more than 75 percent

18.92.020 – Subdivision of Legal Nonconforming Parcels

A subdivision of land (i.e., lot line adjustment, final, parcel, or tentative map) shall not be approved that would increase the nonconformity of an existing parcel or any nonconforming use on the parcel.

18.92.030 – Merger of Nonconforming Parcels

Nonconforming contiguous parcels held by the same owner shall be involuntarily merged if one or more of the parcels does not conform to the minimum parcel size to allow use or development in compliance with this Zoning Code and in compliance with Government Code Section 66451.11.

Chapter 18.94 – Nonconforming Structures

Contents:

18.94.010 – Continuation of Legal Nonconforming Structures

18.94.020 – Destruction of Legal Nonconforming Structures

18.94.030 – Residential Exceptions

18.94.010 – Continuation of Legal Nonconforming Structures

- A. **Continuation of a Legal Nonconforming Structure.** A legal nonconforming land use and the use of a legal nonconforming structure may be continued, including transfers of ownership; provided that continuation complies with the requirements of this Section, or is exempt under Section 18.94.030 (Residential Exemptions).
- B. **Nonconforming Structures.** A legal nonconforming structure may be maintained subject to the following:
 - 1. **Ordinary Maintenance and Repairs.** A nonconforming structure may undergo ordinary maintenance and repairs.
 - 2. **Involuntary Damage to a Nonconforming Structure.** A nonconforming structure involuntarily damaged to an extent of 50 percent or more of its appraised value immediately before the damage may be restored only if made to conform to all applicable provisions of this Zoning Code. Any structure(s) destroyed by a manmade catastrophe or natural disaster (e.g., fire, earthquake, flood, windstorm) and any destruction covered by an official declaration of a state of emergency, may be reconstructed up to the original size, placement, and density, only if the reconstruction commences within 180 days after the date of the damage or catastrophe and is diligently pursued to completion.
 - 3. **Nonstructural Alterations to Structure(s).** Necessary repairs and desired alterations that are not structural may be made to a nonconforming structure(s), only if the Building Official first determines that the repairs are necessary for public safety purposes and the cost does not exceed 50 percent of the appraised value of the nonconforming structure.
 - 4. **Additions to Nonconforming Structure(s).** Additions may be made to a structure(s) that are nonconforming due to their placement on the parcel as long as the additions are in compliance with all of the applicable regulations of this Zoning Code.

5. **Development of a Parcel With a Nonconforming Structure(s).** Any additional development of a parcel with a nonconforming structure shall require that all new structures and/or additions be in compliance with this Zoning Code.
6. **Appraised Values.** All appraised values referred to in this Section shall be determined by a State-licensed appraiser and confirmed by the Building Official.

18.94.020 – Destruction of Legal Nonconforming Structures

- A. **Termination by Destruction.** Nonconforming status shall terminate if a nonconforming structure, or a conforming structure occupied by a nonconforming use, is involuntarily destroyed or deteriorated as a result of manmade catastrophe or natural disaster (e.g. fire, earthquake, flood, windstorm) in compliance with Section 18.90.040 (Termination of Nonconformities).
- B. **Physically Unsafe or Unlawful Structures.**
 1. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe due to lack of repairs or maintenance, and is declared by the Building Official to be unsafe by reason of physical conditions, it may be ordered demolished or rebuilt/repared, and shall only be rebuilt, repaired, or restored in full compliance with all of the applicable regulations of the zone in which it is located.
 2. Nothing in this Chapter shall be deemed to prevent the restoring or strengthening to a safe condition of any structure, or part of a structure, declared to be unsafe by the Building Official.

18.94.030 – Residential Exceptions

- A. **Reconstruction or Replacement – Single-Family Dwelling.** An involuntarily damaged or destroyed single-family nonconforming dwelling may be reconstructed or replaced with a new structure with the same footprint, including preexisting nonconforming setbacks, and height in compliance with applicable Building and Fire Code requirements.
- B. **Reconstruction or Replacement – Multi-family Dwelling.** An involuntarily damaged or destroyed multi-family nonconforming dwelling unit or structure may be reconstructed or replaced with a new unit or structure with the same footprint, including preexisting nonconforming setbacks, height, and number of dwelling units, in compliance with applicable Building and Fire Code requirements and Government Code Sections 65852.25 and 65863.4.

Chapter 18.96 – Nonconforming Uses

Contents:

- 18.96.010 – Continuation of Legal Nonconforming Uses**
- 18.96.020 – Effect of Conditional Use/Administrative Permit Requirements**
- 18.96.030 – Expansion or Modification of Legal Nonconforming Uses**
- 18.96.040 – Discontinuance of Legal Nonconforming Uses**

18.96.010 – Continuation of Legal Nonconforming Uses

The continuance of a legal nonconforming use is allowed subject to all of the following:

- A. **Change of Ownership.** Change of management, ownership, or tenancy of a nonconforming use shall not affect its nonconforming status; provided, the use and intensity of use, as determined by the Director, does not change.
- B. **Additional Development.** Additional development of any property on which a nonconforming use exists shall require that all new uses and structures be in compliance with all of the applicable provisions of this Zoning Code.
- C. **Conversion of a Nonconforming Use.** If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed.
- D. **Changes to a Nonconforming Use.** If no structural alterations are made, a nonconforming use may be changed to another nonconforming use of an equal or more restrictive classification, as determined by the Director. Once

changed, the nonconforming use may not be changed back to a nonconforming use of a less restrictive classification, as determined by the Director.

18.96.020 – Effect of Conditional Use/Administrative Permit Requirements

- A. **Absence of Conditional Use/Administrative Permit.** A use lawfully existing without the approval of a Conditional Use Permit or Administrative Permit that would be required by this Zoning Code shall be deemed conforming but only to the extent of its previous lawful use (e.g., maintaining the same site area boundaries, hours of operation).
- B. **Previous Conditional Use/Administrative Permit in Effect.** A use that was authorized by a Conditional Use Permit or Administrative Permit, but is no longer allowed by this Zoning Code, may continue, but only in compliance with the original Conditional Use Permit or Administrative Permit conditions of approval.

18.96.030 – Expansion or Modification of Legal Nonconforming Uses

Any expansion or modification of a legal nonconforming use shall only be allowed in compliance with all applicable provisions of this Zoning Code.

18.96.040 – Discontinuance of Legal Nonconforming Uses

Nonconforming status shall terminate if a nonconforming use ceases or is discontinued for a continuous period of 180 days or more in compliance with Section 18.90.040 (Termination of Nonconformities), and its legal nonconforming status is lost, and the continued use of the property shall be in compliance with all of the applicable provisions of this Zoning Code.

Chapter 18.98 – Other Specific Nonconforming Provisions

Contents:

- 18.98.010 – Nonconformities Regarding Landscaping**
- 18.98.020 – Nonconformities Regarding Off-Street Parking and Loading**
- 18.98.030 – Nonconformities Regarding Signs**

18.98.010 – Nonconformities Regarding Landscaping

- A. **Use May Continue Indefinitely.** Any lawfully-created use that becomes nonconforming with regard to landscaping requirements, including, but not limited to, site coverage, parking lot coverage, distribution, installation, or maintenance, may continue indefinitely with the nonconformity as long as the use continues as permitted.
- B. **Improvements Exceeding 50 Percent.** However, upon performing any improvements to the parcel exceeding 50 percent of the total appraised value of the existing development of the property, as determined by a State-licensed appraiser and confirmed by the Building Official, landscaping shall be provided in compliance with Chapter 18.36 (Landscaping).
- C. **Landscaping Shall Be Improved to Maximum Extent Possible.** Along with any change, expansion, or intensification of use, the landscaping shall be improved to the maximum extent possible.

18.98.020 – Nonconformities Regarding Off-Street Parking and Loading

- A. **Parking Spaces and Improvements.** Any nonconformity with respect to off-street parking spaces or improvements may continue indefinitely, except that with any change, expansion, or intensification of use, the additional off-street parking required for the change, expansion, or intensification shall be provided in compliance with Chapter 18.38 (Off-Street Parking Regulations and Design Standards).
- B. **Loading Spaces.** Any nonconformity with respect to off-street loading areas may continue indefinitely, except that with any change, expansion, or intensification of use, the additional off-street loading areas required for the change,

expansion, or intensification shall be provided in compliance with Chapter 18.38 (Off-Street Parking Regulations and Design Standards).

- C. **Parking Lot Landscaping.** Upon a review for any expansion, intensification, or reconfiguration of an existing parking lot, the designated Review Authority may require that any nonconformity with respect to interior landscaping and landscaped yards along streets for parking lots be made to conform with the requirements specified in Chapter 18.38 (Off-Street Parking Regulations and Design Standards) to the fullest extent feasible.

18.98.030 – Nonconformities Regarding Signs

Legally-established nonconforming signs shall be allowed to continue, subject to the compliance with Section 18.44.200 (Nonconforming Signs).