



JOINT CITY COUNCIL & PLANNING COMMISSION

AGENDA

Monday, January 11, 2021

This meeting will be conducted remotely.

At 5:15 p.m., join the meeting from your computer, tablet, or smartphone,
by clicking the link below:

<https://www.gotomeet.me/CommunityDevelopmentCityofAlbany/pc>

You can use your microphone or dial in using your phone.

Call: 1-571-317-3122 (long distance charges may apply)

Access code/Meeting Id: 498-239-709

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. SCHEDULED BUSINESS
 - a. Nonconforming Situations, Draft Code Amendments
 - b. Next steps
5. ADJOURNMENT

Microphones will be muted and webcams will be turned off for presenters and members of the public unless called upon to speak.

If participant(s) disrupt the meeting, the participant(s) microphone and webcam will be turned off.

If disruption continues, the participant(s) will be removed from the meeting.



MEMORANDUM

DATE January 4, 2021
TO Albany City Council and Planning Commission
FROM Cathy Corliss and Kate Rogers, APG
CC Jeff Blaine, City of Albany

ADC Amendments Project: Nonconforming Situations

Project Purpose

“Nonconforming situations” is a general term used to describe land uses, lots, or developments that were lawfully created in compliance with zoning regulations in place at the time they were established but which, because of subsequent changes in those regulations, no longer comply. In the City of Albany, the regulations for nonconforming situations are in the Albany Development Code (ADC), Sections 2.300 through 2.370. The goal of this project is to make improvements to these regulations in order to:

- Make the regulations easier to understand and thereby improve implementation,
- Better facilitate the reuse of existing buildings and improvements, and
- Provide more options to property owners who are impacted by fire or other disasters.

Background

According to Albany’s 2017 Code Audit, the City’s existing standards and procedures for nonconforming situations have been a source of friction for quite some time. Current standards for nonconforming situations were updated in 2014 in response to the Business-Ready Task Force effort but continue to create challenges for both staff and applicants. The Code Audit identified several issues that should be addressed with future Code amendments; some of these have to do with the usability and clarity of the code, but others are more substantive issues.

Following the 2017 Code Audit, the Project Team worked with City staff to conduct a more detailed assessment of the nonconforming situations regulations, including an evaluation of similar regulations in other jurisdictions such as Bend, Corvallis, and Salem. The evaluation and Code concepts were reviewed with the ADC Task Force as well as commercial realtors. The results were then shared with the Planning Commission and City Council at a joint work session on December 14, 2020.

Draft Code Amendments

The first draft of the propose Code amendments (attached) reflects the input received from the Planning Commission and City Council at the December joint work session. At that work session, the following Code concepts were discussed and reflected in the attached draft Code amendments.

- **Overall Organization:** Reorganizing the regulations to clearly delineate which apply to nonconforming lots, nonconforming development, and nonconforming uses. Implementing this concept in the draft Code amendments resulted in extensive reorganization, therefore, draft Code amendments are not shown in track changes. You can review the current Code at this link: <https://www.cityofalbany.net/cd/development-code>
- **Nonconforming Lots:** Continue allowing nonconforming lots that were legally established to be developed in compliance with the Code.
- **Nonconforming Development:**
 - Do not apply a time limit to the reinstatement of nonconforming development (i.e., it can be re-occupied regardless of how long it's been vacant. The time limit would only apply to nonconforming uses – see nonconforming uses, below).
 - Continue to allow changes to nonconforming development (buildings and other site improvements such as parking lots) that conform to the current development standards for the site or those which don't increase the nonconformity of the site.
 - Allow nonconforming development to be rebuilt after a fire or other disaster.
 - *Key Question: When a nonconforming development is damaged or destroyed by fire or other causes, should the restoration project be required to include some improvements to bring the site closer to conformance with the Development Code? The attached draft Code amendments include this provision for consideration.*
 - Increase the dollar threshold for when incremental improvements are triggered but keep the spending cap at the current 10% maximum. Also allow the developer more flexibility in terms of the order in which they complete the listed improvements they can do first.
 - *Key Question: What should be the dollar threshold for triggering the required improvements? The attached draft Code amendments propose a threshold of \$250,000.*
- **Nonconforming Uses:**
 - Extend the time limit for reinstatement of a discontinued nonconforming use and simplify the process. The current Code allows discontinued nonconforming uses to be reinstated within one year of being discontinued, with an additional two-year extension possible with Type II discretionary review. The proposed amendments would allow uses to be reinstated within three years in a residential zone and within five years in a nonresidential zone. This approach reflects comments

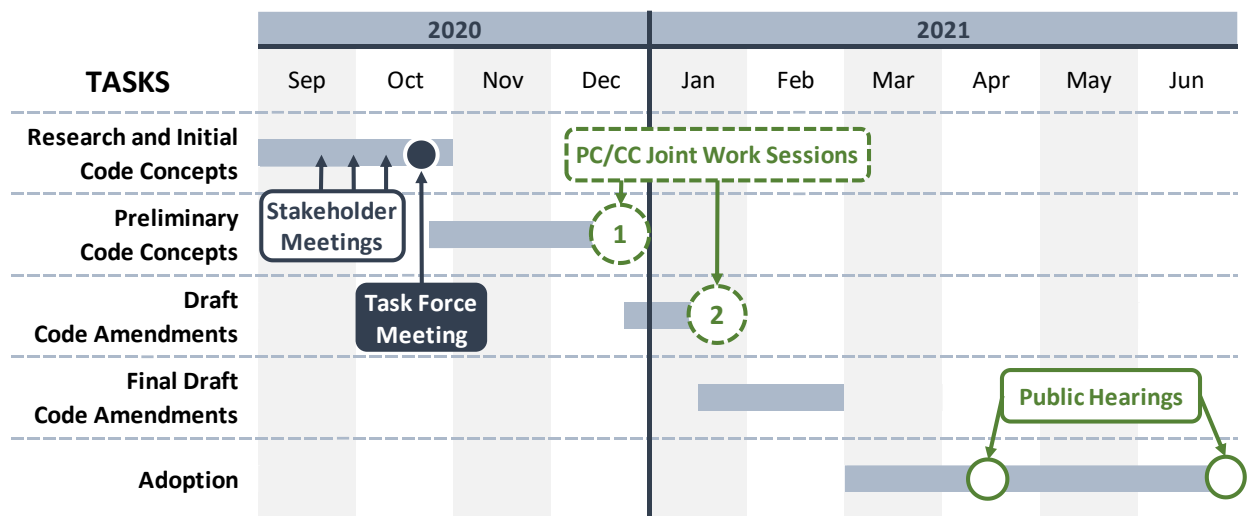
We are seeking further guidance from the Planning Commission and City Council on these “key questions.” Additional background about the draft amendments (and these key questions) is provided in “Commentary” boxes in the attached draft.

provided during the December work session that there might be more sensitivity toward nonconforming uses in residential zones.

- Allow nonconforming uses to be reinstated after a fire or other disaster.
- Clarify that the current Code provision allowing: “change to a use not permitted in the base zone” only allows changes to commercial uses in industrial zones, consistent with the original legislative intent (i.e., it was not intended to allow a nonconforming use to change to any and all prohibited uses).
- Continue to allow some expansion and alterations with either Type I or Type II review, depending on the scale of the proposed change.

Next Steps

The attached draft Code amendments are scheduled for discussion at a joint work session with the Planning Commission and City Council on January 11, 2021. Following that work session, the Project Team will work with City staff to prepare a final draft of the Code amendments with the goal of bringing them to the Planning Commission for a public hearing this Spring. In addition to the public hearings, additional targeted outreach will be conducted on an as-needed basis. See below for the project schedule.



**ARTICLE 22
USE CATEGORIES AND DEFINITIONS**

Commentary: Article 22

The following revisions are proposed to the definitions related to nonconforming situations.

1. Delete the term “nonconforming building” because in the proposed Article 2 revisions, “nonconforming development” includes all nonconforming improvements on a site, including buildings.
2. Amend the “nonconforming use” definition to remove the reference to Conditional Uses, since the City considers uses approved through Conditional Use Review to be allowed uses, and not nonconforming. Uses allowed in districts by Conditional Use Permit that were existing on the effective date of this Code without a Conditional Use Permit would be required to go through the Conditional Use application process when seeking an expansion. If the site also includes nonconforming development, the nonconforming development would still be subject to the standards for nonconforming situations.

~~Nonconforming Building: Any building that lawfully existed prior to the effective date of this Code but due to the requirements adopted herein, no longer complies with the height, yard, area, and/or coverage regulations, off street parking requirements, or other provisions of this Code.~~

Nonconforming Development: Any physical development of land that lawfully existed on the effective date of this Code but which, due to the requirements adopted herein, no longer complies with the ~~site development~~ standards of this Code for the zoning district in which the development is located.

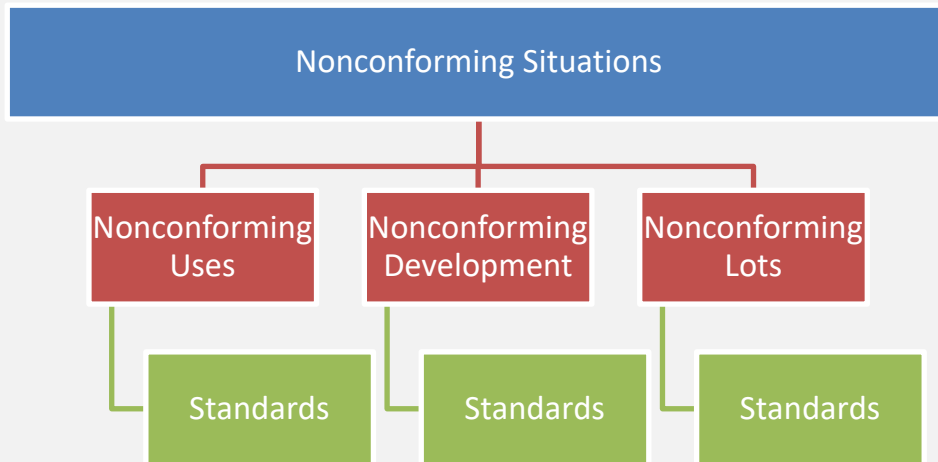
Nonconforming Lot: A lot or parcel of land that lawfully existed on the effective date of this Code or that was legally created after the effective date of this Code, but which in either case does not conform to the lot area and lot dimension standards for the zone in which it is located.

Nonconforming Situation: An inclusive term for a nonconforming lot, nonconforming use, ~~nonconforming building,~~ and/or nonconforming development.

Nonconforming Use: Any use that lawfully existed on the effective date of this Code but which, due to the requirements adopted herein, no longer complies with the schedule of permitted uses and which has not been deemed terminated under the provisions of this Code. ~~Uses allowed in districts by Conditional Use Permit but were existing on the effective date of this Code without a Conditional Use Permit shall also be considered as nonconforming.~~

Commentary: Article 2 – Nonconforming Situations

Overall Organization. As you may recall from the joint Planning Commission/City Council work session on December 14, 2020, the proposed concept was to reorganize the Code to clearly differentiate the requirements for nonconforming uses, nonconforming development, and nonconforming lots. This concept had general support and is the approach taken in this draft.



NOTE: The Code language below is intended to replace the current Nonconforming Situations section of Article 2 in its entirety. Some of the text is from the current Code, but much of it is new. For the sake of readability, we did not use underline/strikeout format for these proposed amendments.

**ARTICLE 2
REVIEW CRITERIA**

NONCONFORMING SITUATIONS

- 2.300 Purpose.
- 2.310 Nonconforming Situation, Generally.
- 2.320 Nonconforming Lots.
- 2.330 Nonconforming Development.
- 2.340 Nonconforming Uses.
- 2.345 Procedures for Expanding or Changing a Nonconforming Use.
- 2.350 Review Criteria for Type II Decisions - Nonconforming Uses.

2.300 Purpose.

Commentary (2.300): The purpose statement is proposed to be updated to more accurately reflect the revised Code, which is less restrictive than the current requirements. For example, the current purpose statement states that, “these provisions are intended to permit such nonconforming situations to continue, but not to encourage their perpetuation” which doesn’t necessarily reflect the approach taken in the proposed amendments.

This section provides standards and procedures for the continuation of lots, developments and uses that are lawfully established but do not comply with current Code standards (“nonconforming situations”). The Code is intended to protect public health, safety, and general welfare, while allowing reasonable use of private property.

2.310 Nonconforming Situations, Generally

Commentary (2.310): This section would apply to all three types of nonconforming situations: nonconforming lots, nonconforming developments, and nonconforming uses. In addition, each type of nonconforming situation has specific standards. These are described in Subsection (1).

(1) Applicable Provisions. In addition to the general requirements in this section, properties are subject to the standards and procedures for the type (or types) of nonconforming situations applicable to the property.

- (a) Non-conforming lots are subject to Section 2.320.
- (b) Non-conforming developments are subject to Section 2.330.
- (c) Non-conforming uses are subject to Sections 2.340 through 2.350.

Commentary (2.310.2 and .3): The current Code has comparable requirements for nonconforming situations to have been legally established and maintained and for the applicant to provide the necessary proof. The approach to describing the proof required has been updated to clarify the difference between the type of evidence required for a nonconforming lot, development or use to show that it was legally established, and the need for uses (only) to provide evidence that it has been maintained over time.

(2) Nonconforming Situations must be Lawfully Established. Uses or development that were not lawfully established do not have a legal right to continue as nonconforming situations as defined by this Code and must be removed.

(3) Documentation that a Nonconforming Situation was Lawfully Established. The property owner or applicant must document that a nonconforming situation was legally established on its present site. Evidence that the situation was allowed depends on the type of nonconforming situation. For nonconforming lots, the property owner or applicant must document when the lot was lawfully created by providing land division records meeting the requirements of the State of Oregon. For development or uses, the property owner or applicant must provide building, land

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use, or development permits. For development or uses which did not require a permit when lawfully established, the property owner or applicant must provide other evidence which clearly shows the date the development or use was established such as dated aerial photographs. In addition, for nonconforming uses, the property owner or applicant must document that the use has been maintained over time. Evidence that a use was maintained over time might consist of building permits, utility hookups, tax records, business licenses, lease agreements, business receipts, or telephone directory listings.

Commentary (2.310.4): The first sentence is consistent with the current Code. The second sentence is a proposed addition. Since the revised Code would allow “in-kind” replacement of destroyed buildings (see 2.330.2) it is now necessary to clarify what happens in cases of intentional destruction.

(4) Dangerous Buildings or Intentional Destruction. Any nonconforming use or development dependent upon a building or structure that has been declared a “dangerous building” and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Title 18) will be considered terminated upon that declaration and order. Nonconforming uses or nonconforming developments that have been intentionally destroyed by the owner shall lose their legal nonconforming status.

Commentary (2.310.5): Subsections (a) through (f) are from the current Code. However, Subsection (f) has been amended to only reference conditions of approval. The current version of Subsection (f) also refers to “applicable regulations in place at the time the site became nonconforming;” however, this requirement has been difficult to implement and potentially conflicts with Subsection (d).

(5) Allowances That Apply to All Nonconforming Situations. The following allowances apply to all nonconforming situations.

- (a) Their status is not affected by changes in ownership.
- (b) They may be changed to conforming situations by right or with an applicable land use approval. Once a conforming situation occupies a site, the nonconforming rights are lost, and a nonconforming situation may not be re-established.
- (c) Normal maintenance and repair is allowed.
- (d) Changes that conform to the standards applicable to the site may be made.
- (e) Legal nonconforming uses may continue to operate.
- (f) Except as specified herein, nonconforming situations shall maintain compliance with all conditions of approval on land use actions by which it was governed at the time it became nonconforming.

2.320 Nonconforming Lots.

Commentary (2.320): This section was amended to refer to all legal lots not just lots of record. The definition of “lot of record” is provided below for background. No other changes to the nonconforming lot provisions are proposed. This concept appeared to have general support at the December Planning Commission/City Council work session.

Lot of Record: A lot shown as part of a recorded subdivision or approved partition map; or any parcel of land described by metes and bounds in a recorded deed, record of survey, or other appropriate document recorded in the Office of the County Recorder prior to December 12, 1956. No lot or parcel of land created without complying with the provisions of the Land Division Requirements of the State of Oregon and the City Subdivision Ordinance is recognized as a lot of record.

A legal lot or a legally established lot of record that does not meet the dimensional or area requirements of the zoning district in which it is located may be developed, subject to the applicable requirements of the Code.

2.330 Nonconforming Development.

Commentary (2.330): Nonconforming development refers to the physical development of land that was lawfully established but which no longer complies with the standards of the Code. Nonconforming developments can house uses which are nonconforming or conforming. The Task Force was generally supportive of allowing unlimited expansion or alteration of nonconforming development, provided the expansion or alteration is in compliance with the code or moving toward compliance. This concept also received support at the December Planning Commission/City Council work session.

Additionally, the Planning Commission and City Council, as well as the Task Force, generally supported allowing vacant nonconforming development to be reoccupied at any time, provided Building Code requirements can be met. In other words, unlike nonconforming uses (see 2.340.2), there would be no limit on the length of time a nonconforming development could be vacant without the losing its nonconforming status.

(1) Nonconforming Development, Generally. Nonconforming developments may continue unless specifically limited by other regulations in this Code. A nonconforming development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or moves in the direction of conformity. A nonconforming development shall not be enlarged or altered in a way that increases its nonconformity.

Commentary (2.330.2): The current regulations state that: “Any nonconforming use or development dependent upon a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value will be

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considered terminated.” The approach proposed in the Code amendments would change this significantly by allowing “in-kind” restoration of damaged or destroyed nonconforming development. This was supported by a majority of the Task Force and also appeared to receive general support at the December Planning Commission/City Council work session. Staff and the Project Team recommend that there be a limit on the amount of time allowed to restore the building as it was—and that the limit should be consistent with the reinstatement threshold for nonconforming uses. After that point, if the development were rebuilt, it would have to be in compliance with the Development Code.

At the December work session, some participants raised concerns about allowing complete in-kind restoration of nonconforming development. It was suggested that the Code could require compliance with some percentage of the current Code standards and allow the remainder to be nonconforming. However, staff noted that applying percentages to standards would necessitate discretionary review, which is not consistent with the intent of simplifying these provisions. The last sentence of Subsection (2) offers one possible approach to address this issue—it states that if the cost of the restoration project exceeds a specific dollar threshold, the restoration project must allocate 10% toward incremental improvements that move the site toward conformance with the current Code. This would apply the same incremental improvement requirements that apply to major alterations of nonconforming development. The threshold in the draft Code amendments is \$250,000; however, we are seeking further input on this value.

Question: When a nonconforming development is damaged or destroyed by fire or other causes, should the restoration project be required to include some improvements to bring the site closer to conformance with the Development Code? As written, Subsection (2) would apply the same approach and thresholds to improvement projects that are in response to a disaster as those improvement projects that are at the developer’s discretion. Does that approach address the concerns raised during the work session?

(2) Damage or Destruction of a Nonconforming Development. When a nonconforming development is damaged or destroyed by fire or other causes beyond the control of the owner it may be replaced in-kind within the footprint of the destroyed improvement within three years in a residential zone or five years in any other zone provided doing so is not otherwise precluded by the regulations of the Albany Municipal Code. The replacement improvements shall not increase the degree of nonconformity beyond that of the previously existing improvements. If the cost of the replacement improvements exceeds the threshold in Subsection 2.330(5)(a), the requirements for site improvements in Subsection 2.330(5)(b) shall apply.

(3) Nonconforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. The building may not move further out of compliance with the applicable standards.

(4) Roadway Access. The owner of a nonconforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the nonconforming access into conformance with the standards of the applicable roadway authority.

(5) Required Improvements. When a proposed project includes alterations that are over the

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threshold in Subsection (a), the project shall provide the required improvements listed in Subsection (b) for the area specified in Subsection (c).

Commentary (2.330.5): The current Code requires that certain improvements be made when applicants are proposing projects of more than \$25,000. The Task Force supported increasing this threshold. A proposed threshold of \$250,000 was supported by a majority of the Task Force and this amount is included in the draft Code amendments for further discussion. The concept of increasing the threshold was considered at the December Planning Commission/City Council work session, but no clear consensus was expressed.

Question: What should be the dollar threshold in Subsection (a) for triggering the required improvements listed in Subsection (b)?

The current Code provides a list of improvements that must be addressed in a specific order. The Task Force generally supported allowing the developer to choose which order to make the required improvements. Staff generally agrees with the Task Force but there are some improvements which are particularly important to public safety. Given that, the Subsection (b) identifies a few “Category 1” improvements that must be done first (if necessary), otherwise the developer is free to choose from the list.

Subsection (c) includes new language that creates an exception for site improvements on the entire site when the project is limited to a ground lease.

(a) Threshold. The cumulative value of one or more building improvements, expansions or site modifications exceeds \$250,000, excluding the costs associated with voluntarily bringing the site into compliance with applicable development standards. The value of a proposed building or site investment will be the value stated on the application for building permits or calculated by the Building Official, whichever is higher. The value of the alterations is based on the entire project, not individual building permits.

(b) Required improvements. Ten percent of the cost of all improvements proposed in excess of the threshold in Subsection (a) must be allocated toward improvements that bring the site into compliance with standards listed below unless all of the standards listed below can be met at lesser cost. Category 1 improvements must be brought into compliance first.

Category 1

- Pedestrian facilities connecting development to public sidewalk (if a public sidewalk is abutting property).
- Access to public streets in accordance with Section 12.100.

Category 2

- If the site is within the Willamette River Greenway, funds will be used to enhance

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the natural areas closest to the waterfront in accordance with the criteria in Section 6.540.

- Front yard landscaping standards in accordance with Article 9, unless there is not enough physical room.
- Buffering and screening standards in accordance with Article 9, unless there is not enough physical room.
- Parking space and lot improvement standards in accordance with Sections 9.120 and 9.130.
- Parking lot landscaping improvement standards in accordance with Section 9.150;
- Screening of refuse containers.

(c) Area of required improvements. Except as provided below, required improvements must be made for the entire site. Required improvements may be limited to a smaller area if there is a ground lease for the portion of the site where the alterations are proposed. The area of the ground lease will be considered as a separate site for purposes of required improvements provided the applicant submits a signed ground lease or excerpts from the lease document showing that there is at least one year remaining on the ground lease; and a legal description of the boundaries of the lease.

2.340 Nonconforming Uses.

Commentary (2.340): The standards in this section apply to nonconforming uses. A nonconforming use is one which was lawfully established but no longer complies with the schedule of permitted uses and which has not been deemed terminated under the provisions of this Code. Nonconforming uses may or may not be housed within nonconforming development.

The standards in Subsection (1) are consistent with the current Code requirements.

(1) Continued Operation. Nonconforming uses may continue to operate on a site. Changes in operations, such as changes in ownership, hours of operation and the addition or subtraction of accessory uses, are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period of 11 pm to 6 am.

Commentary (2.340.2): The new language in this Subsection is intended to clarify when a nonconforming use has been discontinued or abandoned. This action starts the “clock ticking” -- unlike nonconforming development, if a nonconforming use ceases for a period of time, it loses its nonconforming status and can’t be restarted. The current Code allows discontinued nonconforming uses to be reinstated within one year of being discontinued. An additional two-year extension is possible with Type II discretionary review. As we discussed at the December work session, the Task Force identified a wide range of timeframes for the abandonment of a nonconforming use. Members of the Planning Commission and City Council

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generally agreed with the need for a longer timeframe than the current Code allows. Various members suggested 3, 4, and 5 year timeframes.

For the purposes of this first draft, we've suggested three years in residential zones and five years in nonresidential zones. This suggested two-track approach responds to concerns raised at the December work session about impacts of nonconforming uses on residential areas. The shorter timeframe in residential zones reflects the potentially greater sensitivity to having nonconforming uses in neighborhoods. With this longer timeframe, staff suggests doing away with the discretionary extension process which has been problematic to implement.

(2) Discontinuation or Abandonment of Nonconforming Use. A nonconforming use that is discontinued for a period of more than three years in a residential zone or five years in any other zone shall be deemed abandoned and shall no longer be allowed as a legal nonconforming use.

For purposes of calculating the time period, a use is discontinued on a site when:

- (a) The use of land is physically vacated;
- (b) For nonresidential uses, the use ceases operation. For example, the site is no longer actively in use for the sale of merchandise, the manufacture or warehousing of products, or the provision of services; as evidenced by the removal of signs, goods, stock, or office equipment, or the disconnection of telephone or utility service or similar indications;
- (c) Any lease or contract under which the nonconforming use has occupied the site is terminated;
- (d) A request for final reading of water and power meters is made to the applicable utility ;
- (e) The owner's utility bill or property tax bill account became delinquent;
- (f) The use changes to another use without obtaining all building, land use, and development permits that would have been required at the time of the change;
- (g) The use ceases operation as a result of damaged or destruction by fire or other causes;
- (h) An event occurs similar to those listed in Subsections (a) – (g), above, as determined by the Director.

(3) Application of Code Criteria and Standards to Nonconforming Use. Once the City deems a nonconforming use abandoned pursuant to Subsection (2), any subsequent use of the subject lot shall conform to the current standards and criteria of this Code applicable to the use. After the City has deemed a nonconforming use abandoned, the use shall not be allowed to resume, in whole or in part, under the same or different ownership or management; any such activity is a violation of this Code and subject to enforcement proceedings.

2.345 Procedures for Expanding or Changing a Nonconforming Use on a Site.

Commentary (2.345): The procedures and thresholds in this section apply to nonconforming uses. They are generally consistent with the current Code.

A nonconforming use is reviewed through either a Type I or Type II procedure as described below.

(1) Type I Procedure. The following situations will be processed through a Type I procedure,

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as established in Section 1.210.

- (a) Changes of use within the same use category. Changing to a different use within the same land use category, such as a change from one type of Manufacturing and Production use to another type of Manufacturing and Production use, is permitted if the following criteria are met:
 - i. The nonconforming use was not created unlawfully, and
 - ii. The new use requires no more than two new parking spaces.
- (2) Type II Land Use Review. The following nonconforming uses will be processed through a Type II procedure as established in Section 1.230 and subject to the applicable review criteria in Section 2.350:
 - (a) A change to another use in the same use category that requires three or more new parking spaces or has increased hours, staffing, traffic, outside storage areas, or off-site impacts.

Commentary (2.345.2.c and d): Subsection (b) has been clarified that the “change to a use not permitted in the base zone” provision allows changes to commercial uses in industrial zones only, which is consistent with the original legislative intent. This provision was added to the Code as part of the Business Ready Task Force initiative in 2014 and was intended to promote the reuse of vacant industrial buildings by allowing commercial uses in industrial zones. It was not intended to allow a nonconforming use to change to any and all prohibited uses. The original intent was also to preserve the ability to go back to a conforming industrial use; that language is retained in the review criteria in Subsection 2.350.2(k). Subsection (c) has been amended to clarify that hours and staffing, which are generally not regulated by the Development Code, would be considered if specified in conditions of approval.

- (b) Within an industrial zoning district, a change from a legal nonconforming use to a commercial use that is not otherwise permitted in the base zone.
- (c) Changes in operational characteristics including, but not limited to, expansions to outside storage areas (or hours or staffing if specified in conditions of approval).
- (d) New construction or structural expansions of improvements supporting nonconforming uses.

2.350 Review Criteria for Type II Nonconforming Use Decisions.

Commentary (2.350): The criteria in this section apply to nonconforming uses. They are generally consistent with the current Code.

A request will be approved for nonconforming uses if the review body finds that the application meets all of the following criteria:

- (1) The nonconforming use was not created unlawfully. See Section 2.310(3).

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- (2) With mitigation measures, there will not be a net increase in overall adverse impacts (over the impacts of the previous use) on the surrounding area taking into account factors such as:
- (a) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (b) Potential for increased litter;
 - (c) The amount, location, and nature of any outside displays, storage, or activities;
 - (d) The appearance of the new use will not detract from the desired function and character of the zone.
 - (e) The operating characteristics of the proposed use are compatible with the existing and anticipated uses. The hours of operation in residential zones cannot be extended into the period of 11 p.m. and 6 a.m.;
 - (f) If the proposed change to the nonconforming use will result in an increase in vehicular trips, the street system has adequate capacity to accommodate the use through the horizon year of the current TSP;
 - (g) If the proposed change to the nonconforming use will result in an increase in vehicle parking demand, the site has adequate on-site parking to accommodate the development or adequate parking will be provided in accordance with Article 9;
 - (h) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion;
 - (i) Public services for water, sanitary sewer, stormwater, water management, and for fire and police protection, can serve the proposed use;
 - (j) Activities and developments within overlay districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable;
 - (k) If a commercial use is proposed in an existing building in an industrial zone, the development shall not alter the existing building or site in a way that would discourage or preclude its later conversion back to an industrial use; and
 - (l) Any applicable criteria in (3) and (4) below.

- (3) Structural Expansions to support nonconforming uses do not exceed the following thresholds:

<u>Existing Gross Floor Area</u>	<u>% of Expansion</u>
Buildings under 4,000 sq. ft.	25%
Buildings between 4,000 and 10,000 sq. ft.	20%
Buildings larger than 10,000 sq. ft.	15%

- (a) Structural expansions for nonconforming uses may occur one time only and the structural expansion must comply with current development standards.
- (b) Expansion of a nonconforming use onto another site is prohibited, except when:

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- i. The expansion site abuts the site of the nonconforming use; and
 - ii. The expansion site was in the same ownership as the nonconforming site when it became nonconforming; and
 - iii. Prior zoning regulations on the expansion site would have allowed the use.
 - (c) Addition of new residential units to a nonconforming residential use is prohibited.
- (4) Nonconforming Use Expansions in Residential Areas. If the nonconforming use is in a residential zone or in a mixed-use zone with residential uses adjacent to the site, the appearance of the proposed expansion will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (a) Building scale, placement, and facade;
 - (b) Parking area placement;
 - (c) Buffering and the potential loss of privacy to abutting residential uses; and
 - (d) Lighting and signs.

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