

## CHAPTER 17.610:

### NONCONFORMING USES, STRUCTURES, AND PARCELS

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#### Section

- 17.610.005 Purpose
- 17.610.010 Nonconforming Uses
- 17.610.015 Loss of Nonconforming Status
- 17.610.020 Nonconforming Structures
- 17.610.025 Exemptions and Exceptions
- 17.610.030 Maintenance and Repair
- 17.610.035 Nonconforming Parcels
- 17.610.040 Unlawful Uses and Structures
- 17.610.045 Public Nuisance Abatement

#### § 17.610.005 PURPOSE.

This Chapter establishes regulations for legal nonconforming land uses, structures, and parcels. These are land uses, structures, and parcels within the City that were lawfully established, constructed, or subdivided before the adoption or amendment of this Title, but which would be prohibited, regulated, or restricted differently under the current terms of this title or future amendments thereto.

It is the intent of this Chapter to encourage the continuing improvement of the City, by limiting the extent to which nonconforming structures and uses may continue to be used, expanded, or replaced, while allowing for improvements in their appearance.

(Ord. No. 2005-007 § 1 (part))

#### § 17.610.010 NONCONFORMING USES.

##### A. Continuation of Use.

1. Any nonconforming use, including a nonconforming use due to nonconforming density, may be maintained and continued, provided that there is no increase or enlargement of the area, space, or volume occupied by or devoted to the nonconforming use. Alterations that do not increase or enlarge a nonconforming use may be approved.

2. Increase or enlargement of the area, space, or volume occupied by or devoted to the nonconforming use, which is not allowed pursuant to this section shall mean, but not be limited to, increase in height; square footage additions; additions to existing rooms; construction of new rooms; replacement construction of units or portions of units; and construction of additional units.

**B. Abandonment or Discontinuance of Use.** A nonconforming use, which has been abandoned or discontinued for a period of one year, shall not be reestablished, and any subsequent reuse or any new use established shall conform to the current provisions of this Title.

**C. Change of Use.** A nonconforming use that is changed to, or replaced by, a conforming use shall result in termination and subsequent abandonment of the nonconforming use.

**D. Termination of Nonconforming Oil Uses.** Notwithstanding Subsection A., all nonconforming oil uses, regardless of the applicable zoning district or whether an oil use was previously lawfully established or permitted, shall terminate and be discontinued by November 24, 2026. Further, and notwithstanding the provisions of Chapter 11.12 (including Section 11.12.005.A., Oil Drilling Permit), no new or expanded oil and gas activity, such as drilling of new wells, re-drilling or deepening of existing wells, or the erection or installation of any derrick, structure, facilities or equipment related to oil and gas production, excepting those existing oil and gas activities and operations described in Subsection D.4. or as required to facilitate termination of the nonconforming oil uses, shall be allowed within the oil use premises after November 24, 2021. The provisions of this Subsection shall not apply to (i) common carrier oil pipelines intended for regionally-coordinated transport of hydrocarbons; (ii) injection wells that are permitted and demonstrated to be active and necessary by CalGEM; (iii) service stations or other like uses; or (iv) any previously closed oil or injection well that has been verified to have been plugged in accordance with all applicable local, state and federal laws, rules and regulations, including the California statutes and regulations and all other requirements overseen by CalGEM, and for which the well pad has been restored and revegetated to as near a natural state as practicable.

**1. Definitions.** For purpose of this Subsection D., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**a. CalGEM.** The California Geologic Energy Management Division, the principal regulatory authority for the closure of oil and gas production sites.

**b. Operator.** A person, firm, corporation, partnership, association, limited liability company, or other business entity that owns or holds the right to use the oil use premises to extract oil, gas, and other hydrocarbon substances, or use the oil use premises for injection. In the event there are two or more persons or entities who qualify as an operator at any given time, then this term shall apply to all persons or entities with regard to their respective operations.

**c. Oil Use Premises.** The surface of any parcel of land that has been used for the drilling, production, storage or transport of oil, gas or other hydrocarbons, or for injection or water flooding in connection with oil and gas activity.

**d. Terminate or Termination.** The discontinuance and removal of nonconforming oil uses from the oil use premises, in accordance with all applicable local, state and federal laws, regulations, rules and standards, including, but not limited to, (i) the cessation of production and drilling operations; (ii) the plugging of all oil and gas wells, including water flooding injection wells, except injection wells as permitted and demonstrated to be active and necessary by CalGEM; (iii) the dismantling and removal of all surface facilities associated with the nonconforming oil use, including storage tanks, above-ground pipelines, equipment, debris and other physical operational components; (iv) the plugging/capping of subsurface pipelines; and (v) the remediation, restoration and revegetation of the areas of the oil use premises affected by the plugging and removal activities to as near a natural state as practicable, free from all oil, rotary mud, oil-soaked earth, asphalt, concrete, litter, debris and other substances associated with oil operations. As to (ii) through (v) hereof, all related on-site activities and services shall be conducted between the hours of 8:00 a.m. and 8:00 p.m. Mondays through Fridays, 9:00 a.m. and 7:00 p.m. Saturdays, and 10:00 a.m. and 7:00 p.m. Sundays, and shall be prohibited at all other times. Internal roads and access ways and storm water retention and other drainage features and facilities shall remain in place.

## **2. Termination Program and Schedule Required.**

**a.** Prior to initiation of any termination activity, or no later than by November 24, 2022, the legal operator(s) for any nonconforming oil uses shall prepare and submit to the Director for review and approval a termination program and schedule demonstrating how compliance with Section 17.610.010.D. shall be accomplished and fully completed by November 24, 2026. The Director may request additional information prior to determining the termination program and schedule is adequate, complete, and demonstrates operator's ability to comply with Subsection D. within the required timeframe. No termination activity may be commenced unless a termination program and schedule has been received

and approved by the Director, applicable fees have been paid, and bond and insurance requirements have been met.

**b.** Each termination program and schedule shall consist of a written description, supported by maps, exhibits and data, as appropriate, detailing the activities and timeline for termination of oil and gas facilities in compliance with Subsection D. At a minimum, each termination program and schedule shall include:

**i.** A description and schedule detailing how and when all nonconforming oil uses, including all applicable wells under Subsection D., any drilling-related facilities, and any equipment and structures erected on the oil use premises, will be removed, dismantled, demolished or disposed of in a manner consistent with California statutes and regulations overseen by CalGEM, and in strict accordance with all other applicable local, state and federal laws, regulations, rules and standards;

**ii.** A description for termination and decommissioning of the areas of the oil use premises affected by the plugging and removal activities, including all well sites and areas used for related facilities, equipment and storage, that details how the operator will safely dismantle and remove such production facilities and remediate, restore and revegetate the areas of the oil use premises affected by the plugging and removal activities to as near a natural state as practicable, in accordance with all applicable requirements set forth in Cal. Code of Regulations, Title 14 (Natural Resources), Division 2 (Department of Conservation), Chapter 4 (Development, Regulation, and Conservation of Oil and Gas Resources), Article 3 (Requirements), Section 1775 (Oilfield Wastes and Refuse) and Section 1776 (Well Site and Lease Restoration);

**iii.** A copy of any applicable permits, including any notices of intent or any permit applications for permits pending, as required by other applicable local, state and federal agencies having authority for regulation of oil and gas well closures and plugging and decommissioning of oil-related uses, facilities or equipment;

**iv.** A description and schedule detailing how and when the areas of the oil use premises affected by the plugging and removal activities will be remediated, restored and revegetated to as near a natural state as practicable, free from all oil, rotary mud, oil-soaked earth, asphalt, concrete, litter, debris and other substances caused by the drilling or pumping activity; and

**v.** Sufficient detail and documentation of the termination process and related activities to substantiate and support the aggregate costs related to termination and restoration of the areas of the oil use premises affected by the plugging and removal activities, which are to be covered by the established bond and insurance amounts for the guaranteed payment of such costs.

**c.** Following the Director's approval of the termination program and schedule and determination that the termination program and schedule sufficiently demonstrates operator's ability to comply with the requirements of Subsection D. within the required timeframe, the operator shall provide to the Director quarterly updates on the termination progress until such time that the termination process is fully completed in accordance with California statutes and regulations overseen by CalGEM and in strict accordance with all other applicable local, state and federal laws, regulations, rules and standards.

**d.** A termination fee (per well), established by resolution of the City Council, shall be paid and submitted along with each termination program and schedule to recover the city's reasonable costs associated with review of the termination program and schedule and related documents, and subsequent monitoring and inspection of the oil use premises.

**3. Bond and Insurance Requirements.** Prior to initiation of any activity detailed in the termination program and schedule, the operator shall comply with all bond and insurance requirements established by resolution of the City Council.

**4. Continued Compliance Required.** Until such time that all nonconforming oil activities are fully terminated in compliance with this Subsection D., existing oil and gas activities and operations, such as production from existing oil wells, water injection to existing injection wells and permitted routine maintenance of existing wells and other facilities, shall be allowed to continue during the interim period

until removal of those nonconforming uses have been completed consistent with the timeframes established in the approved termination program and schedule. All such activities and operations shall be conducted in compliance with the provisions of Chapter 11.12 of this Code to the extent such provisions are not inconsistent with this Subsection D. In the event of any conflict between this Subsection D. and Chapter 11.12 of this Code, this Subsection D. shall control.

**5. Enforcement.** Any failure to comply fully with the provisions of this Subsection D. shall constitute a violation of this Title, and appropriate action may be taken by the Director according to the provisions of this Title and Chapter 1.02 (Administrative Citations) of this Code.

#### **E. Conditional Uses.**

**1. Conformity of uses requiring Administrative Use Permits and Conditional Use Permits.** Any use existing at the time of adoption of this Title, in a zoning district that allows the use subject to the granting of an Administrative Use Permit or Conditional Use Permit, shall be deemed a legal nonconforming use, and may only continue to the same extent that it previously existed.

**2. Previous Administrative Use Permits or Conditional Use Permits in effect.** A use that was established with an Administrative Use Permit or a Conditional Use Permit, but which is no longer a use allowed by this Title within the applicable zoning district, may continue in compliance with the provisions and terms of the original permit. If the Administrative Use Permit or Conditional Use Permit specified a termination date, then the use shall terminate in compliance with the original permit.

**F. Nonconforming Private School Use in the IG District.** Notwithstanding the foregoing, a nonconforming private school use in the IG zoning district, which was originally established with a Conditional Use permit at a time when the private school use fully conformed with all then existing applicable provisions of this Title, may be modified and/or expanded, subject to the following:

**1.** The modification and/or expansion shall require a modification of the existing Conditional Use Permit, subject to review and approval by the Commission in compliance with Chapter 17.530 (Administrative Use Permits and Conditional Use Permits) and § 17.595.035 (Changes to an Approved Project).

**2.** The modification and/or expansion may only include property that is already part of the existing private school use or that is directly and physically abutting the existing school property.

**3.** Any application for a modification and/or expansion of an existing Conditional Use Permit shall include, but not be limited to, the following:

**a.** The submittal of a master plan document, in form and substance as determined by the Director, which thoroughly outlines the extent of the proposed modification and/or expansion, including any proposed increase to student enrollment and/or staff;

**b.** The submittal of an economic study, in form and substance as determined by the Director, which estimates the fiscal impacts of any modification and/or expansion on the City. Such study shall include, but not be limited to, a calculation of the economic and tax "opportunity cost" to the City of expanding the nonconforming private school use.

**4.** After considering the economic study and the fiscal impacts on the city from any modification and/or expansion of the existing private school use, the appropriate review authority may impose reasonable conditions to mitigate the fiscal impacts if it determines that such conditions will serve the public interest, health, safety, convenience or welfare of the City.

**5.** The total area of the property included in the school (as proposed to be expanded) may in no event exceed 3.5 acres.

(Ord. No. 2005-007 § 1 (part); Ord. No. 2012-005 § 2 (part); Ord. No. 2019-004 § 2 (part); Ord. No. 2021-016 § 2)

#### **§ 17.610.015 LOSS OF NONCONFORMING STATUS.**

## A. Termination by Discontinuance of Use.

1. If a nonconforming use of land or a nonconforming use of a conforming structure is discontinued for a continuous period of at least one year, the rights to a legal nonconforming status shall terminate.
2. The one-year period shall not apply, if the Director determines that legitimate and continual efforts to reuse or release the subject property have been made during the one-year period.
3. The determination of abandonment shall be supported by evidence satisfactory to the Director (such as the actual removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, the turning-off of the previously connected utilities, or where there are no business receipts/records available to provide evidence that the use is in continued operation).
4. Without further action by the City, further use of the site or structure shall comply with all of the current regulations of the applicable zoning district and all other applicable provisions of this Title.

(Ord. No. 2005-007 § 1 (part))

## § 17.610.020 NONCONFORMING STRUCTURES.

**A. Alterations or Additions.** The construction, enlargement, expansion, extension, or reconstruction of a nonconforming structure shall be subject to the following.

**1. Increase in area.** The work shall be allowed if it results in an increase or enlargement of the area, space, or volume of the structure only if the structure is nonconforming with respect to setbacks, height, distance between structures, architectural projections, staircase and landing area encroachments, and the requirements of the Uniform Building Code are met. New additions and replacement structures shall meet the setback and height requirements of the zoning district in which the nonconforming structure is located except replacement structures required pursuant to § 17.610.025 - Exemptions and Exceptions.

**2. Improvements to nonconforming multiple-family and non-residential primary structure(s).**

**a. Major improvement defined.** A **Major Improvement** is an improvement that will add 10% or more, with a minimum of 750 square feet, to the existing gross floor area of the multiple-family or non-residential structure(s) on the site, as determined by the Building Official.

**b. Minor improvement defined.** If the City determines that the estimated value of the work for which the permit is requested is equal to 10% or more of the replacement value of the multiple-family or non-residential structure(s) on the site, but at least \$50,000 (to be adjusted annually each July 1st to reflect the increase in the Consumer Price Index for all Urban Consumers, Los Angeles/Riverside/Orange County Area, as established by the U.S. Department of Labor for the period from March of the preceding year through March of the current year), it shall be considered a **Minor Improvement**. In application of this Section, "work value" and "replacement value" shall be determined as follows.

**i. Work value.** Each permit shall indicate the value of the work to be performed. If the Building Official believes the work value estimate indicated on the permit is too low, the Building Official shall estimate the value of the proposed work for the purpose of this calculation.

**ii. Replacement value.** The replacement value of an existing structure shall be determined using tables of reconstruction costs published by the International Conference of Building Officials. The type of construction is determined, and a cost per square foot is derived from the table. This cost is multiplied by the number of gross square feet in the structure to obtain the estimated reconstruction cost of the structure.

**iii. Commercial revitalization area.** If the proposed minor improvements include exterior building facade improvements to an existing structure located within an area designated by the Council as a Commercial Revitalization Area, the portion of the work value devoted to exterior building facade improvements shall not be included in determining the 10% or \$50,000 enforcement threshold for minor improvements.

**c. Incidental improvements defined.** An improvement that does not qualify as a major or minor improvement shall be considered an **Incidental Improvement**.

**d. Requirements.** Whenever a permit for a major improvement or minor improvement to an existing nonconforming structure is requested, the Director shall not approve the application unless the requirements of Table 6-1 (Requirements for Major and Minor Improvements) are met.

<b>Table 6-1</b>		
<b>Requirements for Major and Minor Improvements</b>		
<b>Requirement</b>	<b>Major Improvement</b>	<b>Minor Improvement</b>
<b>Table 6-1</b>		
<b>Requirements for Major and Minor Improvements</b>		
<b>Requirement</b>	<b>Major Improvement</b>	<b>Minor Improvement</b>
1. The appropriate number of parking spaces shall be provided for the type of uses proposed for the site, in compliance with Chapter 17.320 (Off-Street Parking).	X	
2. Any sign on the subject site shall be in compliance with Chapter 17.330 (Signs).	X	X
3. All roof equipment screening shall be provided in compliance with § 17.300.035 (Screening).	X	X
4. All trash enclosures shall be provided, subject to the approval of the Sanitation Manager and the Director.	X	X
5. Parking lot landscaping, paving, screening, and striping shall meet all City requirements; provided, compliance with the requirements does not decrease the number of available parking spaces, in compliance with Chapter 17.320 (Off-Street Parking).	X	X
6. Fences, walls, and hedges shall comply with § 17.300.030 (Fences, Hedges, and Walls).	X	X
7. The project shall conform to the City's "Comprehensive Standard Conditions of Approval for Site Plan Review and Other Discretionary Planning and Zoning Applications," as adopted by the Commission.	X	X
8. Notwithstanding requirement 5 above, the addition of floor area to an existing structure shall not be allowed, unless there is additional parking to serve the newly-added floor area, in compliance with Chapter 17.320 (Off-Street Parking).		X

**3. Improvements, reconstruction, and new construction to nonconforming single-family, two-family, and three-family structure(s); accessory residential structures; and accessory dwelling units.**

**a.** Reconstruction or partial reconstruction of a nonconforming single-family, two-family, and three-family structure; accessory residential structure; or accessory dwelling unit that is/are not subject to §

17.610.025 - Exemptions and Exceptions, and that results in more than 50% demolition of both of the exterior wall surface area and building footprint, (measured from exterior wall to exterior wall), shall be completely reconstructed in conformance with current code required setbacks, height, and parking. For purposes of this section, exterior wall surface area shall mean full height exterior walls from grade to roof including existing framing, exterior sidings, and interior sidings of said exterior walls.

**b.** If over a five (5) year period, the cumulative demolition of a nonconforming single-family, two-family, and three-family structure; accessory residential structure; or accessory dwelling unit exceeds 50% of both the exterior wall surface area and building footprint, (measured from exterior wall to exterior wall), that is/are not subject to § 17.610.025 - Exemptions and Exceptions, then the nonconforming single-family, two-family, and three-family structure; accessory residential structure; or accessory dwelling, shall be completely reconstructed in conformance with current code required setbacks, height, and parking. For purposes of this section, exterior wall surface area shall mean full height exterior walls from grade to roof including existing framing, exterior sidings, and interior sidings of said exterior walls.

**B. Nonconforming Due to Parking.** A structure that is nonconforming due to the lack of compliance with off-street parking standards may undergo changes in compliance with this Section, subject to the following provisions.

**1. Residential additions.** Additional parking spaces shall not be required for additions to single-family homes, duplexes or triplexes that result in no more than 4 bedrooms per unit. However, additions resulting in 5 or more bedrooms per unit shall provide the minimum parking required.

**2. Multiple-family residential structures.** Additional parking spaces shall not be required, provided the change does not result in an increase in the number of dwelling units, nor the elimination of the only portion of the parcel that can be used for the required/existing vehicle parking or access.

**3. Non-residential structures and uses.** Structures with parking space deficiencies shall be allowed to expand or accommodate a change of use, provided that:

**a.** The expansion or new use has the same or lesser parking requirement as the existing or previous use or structure;

**b.** The expansion or new use has a greater parking requirement than the existing or previous use or structure, and a sufficient number of additional parking spaces have been provided to accommodate the net increase of required spaces in the following manner:

**i.** The net new parking spaces shall equal the number of spaces directly required by the change in use only;

**ii.** The number of additional parking spaces shall equal the number of spaces directly required by the expansion area only;

**iii.** Where there are 2 or more nonconforming structures on a site, but not all structures are proposed for additions, changes, or intensifications, parking nonconformities for the structures not proposed for additions, changes, or intensifications may remain as they are.

(Ord. No. 2005-007 § 1 (part); Ord. No. 2013-005 § 2 (part); Ord. No. 2019-004 § 2 (part))

## **§ 17.610.025 EXEMPTIONS AND EXCEPTIONS.**

Nonconforming structures damaged or destroyed due to an involuntary catastrophic event (e.g., fire, earthquake, or other calamity) may be reconstructed or replaced, provided:

**A. Development Standards.** The new structure(s) shall comply with the development standards (such as building envelope and footprint standards) in effect when the damaged or destroyed structure(s) was originally constructed; provided, however, that the new structure(s) shall contain no more dwelling units and/or floor area than the damaged structure(s).

**B. Building and Fire Code Compliance.** All new construction shall comply with the current Building and Fire Code requirements; however, the Building Official may require compliance for areas other than the new construction, when deemed necessary.

**C. Time Limits.** A building permit for reconstruction must be obtained no later than 18 months after the date of destruction, and construction must be pursued diligently to completion.

**D. Current Requirements.** If the preceding requirements are not met, the replacement structure shall comply with all current requirements of this Title in effect on the date of application for the required building permit.

**E. Extensions.** If the applicant submits a written request before expiration of the 18 months, containing reasonable justification for an extension, the Director may extend the deadline for issuance of the building permit for up to an additional 18 months.

(Ord. No. 2005-007 § 1 (part))

### § 17.610.030 MAINTENANCE AND REPAIR.

**A. Maintenance and Repair.** A nonconforming structure may be continued, improved, and maintained, subject to the restrictions contained in this Chapter.

**B. Seismic Retrofitting/Building Code Compliance.** Repairs or alterations required by law shall be allowed. Reconstruction required to reinforce unreinforced masonry structures, or to comply with Building Code requirements, shall be allowed without cost limitations. The seismic retrofitting and Code compliance shall be limited exclusively to compliance with earthquake safety standards and other applicable Building Code requirements, including State law (such as Title 24 and the California Code of Regulations).

(Ord. No. 2005-007 § 1 (part))

### § 17.610.035 NONCONFORMING PARCELS.

A nonconforming parcel of record that does not comply with the access, area, or width requirements of this Title for the zoning district in which it is located, shall be considered a legal building site, if it meets at least one of the criteria specified by this Section.

**A. Applicability.** It shall be the responsibility of the applicant to produce sufficient evidence to establish the applicability of one or more of the following:

- 1. Approved subdivision.** The parcel was created through a subdivision approved by the City;
- 2. Variance or lot line adjustment.** The parcel was approved through the Variance procedure, in compliance with Chapter 17.550 (Variances and Administrative Modifications), or resulted from a lot line adjustment; or
- 3. Partial government acquisition.** The parcel was created in compliance with the provisions of this Title, but was made nonconforming when a portion of the parcel was acquired by a governmental entity.

**B. Further Division or Reduction of Parcel - Prohibited.** Where structures have been erected on a nonconforming parcel, the area where structures are located shall not be later divided so as to reduce the building site area and/or frontage below the requirements of the applicable zoning district or other applicable provisions of this Title, or to make the use of the parcel more nonconforming.

**C. Administrative Modification.** A nonconforming parcel may be granted an administrative modification pursuant to CCMC Chapter 17.550 provided administrative modification findings stipulated in CCMC § 17.550.020.A can be made. An administrative modification approval shall not be considered an expansion of a legal nonconformity.

(Ord. No. 2005-007 § 1 (part); Ord. No. 2019-004 § 2 (part))

### **§ 17.610.040 UNLAWFUL USES AND STRUCTURES.**

Any use or structure, which did not comply with the applicable provisions of this Title or prior planning and zoning regulations when established, are violations of this Title and are subject to the provisions of Chapter 17.650 (Enforcement). This Chapter does not grant any right to continue occupancy of property containing an illegal or unpermitted use or structure. The activity shall not be allowed to continue unless/until permits and entitlements required by this Title and the CCMC are first obtained.

(Ord. No. 2005-007 § 1 (part))

### **§ 17.610.045 PUBLIC NUISANCE ABATEMENT.**

In the event that a nonconforming use or structure is found to constitute a public nuisance, appropriate action shall be taken by the Director in compliance with Chapter 9.04 (Nuisances) of the CCMC.

(Ord. No. 2005-007 § 1 (part))