

Article 12. Pre-Existing Uses and Nonconforming Sites, Structures, and Uses

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Sec. 1201. Purpose:

- A. The specific purpose of this Article is to permit continuation of uses and continued occupancy and maintenance of structures that were legally established but do not comply with all of the standards and requirements of this Development Code in a manner that does not impair public health, safety, and general welfare.
- B. Nothing in this Development Code pertaining to nonconforming structures and uses shall be construed or applied so as to require the termination, discontinuance or removal of public utility buildings, structures, equipment, and facilities, or so as to prevent the expansion, modernization, replacement, repair, maintenance, alteration, reconstruction, or rebuilding and continued use of such buildings, structures, equipment, and facilities, provided that there be no change of use nor enlargement of those areas so used.

Sec. 1202. Preexisting Structures and Uses:

- A. A use previously permitted through a Special Use Permit, or a Conditional Use Permit that was established prior to enactment of this Development Code, shall be permitted to continue.
- B. Alteration or expansion of a conditional use established prior to enactment of this Development Code shall be permitted upon the granting of a new use permit. However, a new use permit shall not be required for existing accessory structures and accessory uses located on the same site as a preexisting use that is listed as a conditional use in this Development Code.
- C. A use permit shall be required for the reconstruction of a structure housing a conditional use established prior to enactment of this Development Code if the structure is destroyed by fire or other calamity or by act of God or by public enemy to a greater extent than 50 per cent.

Sec. 1203. Nonconforming Sites:

A. Use of Nonconforming Sites.

1. Except as otherwise provided in this Section, a site having an area, frontage, width or depth less than the minimum prescribed for the district in which the site is located may be used for any permitted use, provided that:
 - a. The site is shown on a duly approved and recorded parcel or subdivision map;



- b. A deed or valid contract of sale was of record prior to the adoption of this Development Code or amendments thereto;
 - c. The site has a legal area, frontage, width and depth at the time that the parcel or subdivision map, deed or contract of sale was recorded; and
 - d. The site complies with all other regulations for the district in which it is located.
2. Two or more adjoining vacant sites may be treated as if the sites constituted a single parcel of real property subject to all regulation for the district in which the sites are located, including minimum area, width and frontage requirements, provided that:
 - a. Each vacant site has a width or frontage less than the minimum prescribed for the district in which the sites are located; and
 - b. The sites are under common ownership as of the date of adoption of the Development Code.
 3. Notwithstanding the foregoing provisions of Paragraph 2 of this Subsection A, in the R-1-6, R-1-8 and MU Districts, sites shown on a duly approved and recorded parcel or subdivision map as having a width less than that required for such district under the provisions of this Development Code may be divided as indicated on the recorded parcel or subdivision map, provided that:
 - a. In no case shall such subdivided sites be less than 50 feet in width; and
 - b. There are no structures or improvements on the site that would require their continued combination for compliance with the provisions of this Development Code or other development regulations of the county.
 4. For the purpose of this Section, the term “vacant site” shall mean that the site is not developed with a building or structure for which a permit has been issued pursuant to the provisions of Chapter 5 of the Kings County Code of Ordinances.

B. Adjustment of Nonconforming Sites, Site Area.

1. The property line(s) between two or more contiguous parcels, where at least one of the parcels contain less than the minimum parcel area required for that zoning district, may be adjusted so that territory may be transferred between parcels if all of the following findings can be made by the Kings County Advisory Agency for subdivisions and parcel maps:
 - a. No additional nonconforming parcels will result from the adjustment.
 - b. Where individual water supply or individual sewage waste disposal systems are to be utilized on the sites, the smallest parcel shall not be diminished to less than one acre in area.
 - c. No other health or safety problems are likely to occur from the transfer.
 - d. The transfer of the territory from one parcel to another parcel is accomplished pursuant to Article 23 of this Development Code and the Subdivision Map Act (beginning at Section 66410 of the California Government Code).
 - e. If one or more of the parcels are within an agricultural preserve and subject to a *California Land Conservation (Williamson) Act of 1965* contract, the resulting restricted parcels will still comply with the provisions of the Williamson Act or Farmland Security Zone contract.



Sec. 1204. Nonconforming Structures:

A. Nonconforming Structures.

1. A nonconforming structure is a structure which was lawfully erected prior to the adoption of this Development Code but which, under this Development Code, does not conform with the development standards of the zoning in which the structure is located. While permitting the use and maintenance of nonconforming structures, this Section is intended to limit the number and extent and duration of nonconforming nonresidential structures and to encourage their gradual elimination by:
 - a. Prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this Development Code; and
 - b. Prohibiting their restoration after destruction. Residential structures which are located in a Commercial or Industrial zoning district as a result of a zoning district boundary change may be reconstructed if damaged or destroyed as detailed in Subsection B below.
2. **Continuation and Maintenance:**
 - a. A structure lawfully occupying a site on the effective date of this Development Code or of amendments thereto which does not conform with the standards prescribed in the regulations for the District in which the structure is located relating to coverage, front yard, side yards, rear yard, height of structures or distances between structures shall be deemed to be a nonconforming structure and may be used and maintained as provided in this Section.
 - b. Legal nonconforming structures may be continued and maintained in compliance with the requirements of this article unless deemed to be a public nuisance because of health or safety conditions.
 - c. Routine maintenance and repairs may be performed on a nonconforming structure, a structure containing a nonconforming use, or on a nonconforming site.
3. **Alterations and Additions to Nonconforming Structures:**
 - a. Alterations and additions to nonconforming structures shall be permitted, provided that there is no increase in the inconsistency with current standards of coverage, front yard, side yards, rear yard, height of structures or distances between structures as established in the relevant zoning district regulations.
 - b. A structure housing a nonconforming residential use may be moved, altered or enlarged, provided that the number of dwelling units are not increased in excess of Government Code Sections 65852.2 & 65852.22.
4. **Restoration of a Damaged Structure:**
 - a. Whenever a nonconforming structure or a structure housing a nonconforming use is destroyed by fire or other calamity, or by an act of God or by the public enemy to the extent of 50% or less, the structure may be restored and the nonconforming use may be resumed, provided that restoration is started within 12 months of destruction of the structure and is diligently pursued to completion.
 - b. Whenever a nonconforming structure or a structure housing a nonconforming use is:
 - (1) Destroyed by fire or other calamity, or by act of God or by the public enemy to a greater extent than 50%, or
 - (2) Voluntarily demolished, or
 - (3) Required by law to be demolished, the structure shall not be restored except in full conformity with the regulations for the district in which it is located, and the nonconforming use shall not be resumed.
 - c. For the purposes of this Subsection, the extent of damage to any structure shall be determined by the Building Official.



B. Nonconforming Residential Structures in a Commercial or Industrial Zoning District.

1. For the purposes of reconstruction, previously approved single or multifamily residential structures shall not be considered nonconforming due to:
 - a. An amendment to this Development Code which changes the zoning to Commercial or Industrial zoning, or
 - b. The taking or dedication of additional street right-of-way which changes the standards of coverage, front yard setbacks, side yard setbacks, rear yard setbacks or distances between structures prescribed by this Development Code for the district in which the structure is located.
2. If a single or multifamily residential structure in a Commercial or Industrial zoning district is destroyed by fire or other calamity, or by act of God or by the public enemy to a greater extent than 50%, or shall be required by law to be demolished, the structure may be reconstructed provided that:
 - a. The structure was legally established in the appropriate zoning district in compliance with the Zoning Ordinance or Development Code in place at the time of construction.
 - b. The single-family residence was legally occupied by the owner of the property at the time of the demolition. A single-family residence used as a rental unit shall not be reconstructed in the Commercial or Industrial zoning district.
 - c. The number and size of the off-street parking spaces located on the property before the disaster shall not be diminished.
3. The property owner has nine months from the date of destruction to apply for building permits for any new single or multifamily residential structure and three months from the date of issuance of the building permit to begin construction. If the permit is not secured within the time limit specified, the use shall be considered discontinued and abandoned.

(Ord. No. 668-1-17, §56, 3/28/17)

Sec. 1205. Nonconforming Uses:

A. Nonconforming Uses

1. A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this Development Code but which, under this Development Code, does not conform to the use regulations for the district in which it is located.
2. This Section is intended to limit the number, extent, and duration of nonconforming uses and to encourage their gradual elimination by prohibiting their enlargement and their re-establishment after abandonment and by prohibiting the alteration of the structure they occupy and their restoration after destruction.

B. Continuation and Maintenance:

1. A use lawfully occupying a structure or a site on the effective date of this Development Code or of amendments thereto which does not conform with the use regulations for the district in which the use is located shall be deemed to be a nonconforming use and may be continued, as provided in this Section.
2. **Alterations and Additions to Nonconforming Uses:** No nonconforming use, except that of a nonconforming residential use, shall be enlarged or extended.

C. Abandonment of a Nonconforming Use: Whenever a nonconforming use has been abandoned, discontinued or changed to conforming use for a continuous period of 180 days or more, the nonconforming use shall not be re-established and the use of the structure or site thereafter shall be in conformity with the regulations for the district in which it is located.



Sec. 1206. Procedure for a Change of Nonconforming Use: Except as otherwise prescribed in this Section, the nonconforming use of a structure or site may be changed to another nonconforming use provided that the change of use is approved by the Planning Commission in accord with the following procedure:

A. **Application:** Application for a change of nonconforming use shall be made to the Planning Commission (“Commission”) on the “Uniform Application Form” and shall include all applicable information, including a site plan drawing, as well as a statement of the precise nature of the existing or preexisting nonconforming use and the proposed nonconforming use. Any other data pertinent to the finding prerequisite to the granting of an application prescribed in Paragraph 3 of this Section shall also be included.

1. The application shall be filed with the Zoning Administrator, who shall give notice to the applicant and the property owner of the time when the application will be considered by the Planning Commission and may give notice of the time to any other interested party.
2. The Zoning Administrator shall make an investigation of the application and shall prepare a report which shall be submitted to the Commission. The report shall include the results of the investigation pertaining to the conformance of the structure for the proposed use.

B. **Public Hearing Notice:**

1. The Planning Commission shall hold a public hearing on each application for a change of nonconforming use. Such hearing shall be held within 45 days of the date when the application is complete.
2. Notice of the public hearing shall be given as set forth in Section 1903.

C. **Public Hearing Procedure:** At the public hearing, the Commission shall review the application, the statement, and drawing submitted therewith, and the report of the Zoning Administrator and shall receive pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained. After considering all of the evidence presented, the Commission shall grant the permit upon making all of the relevant findings prescribed in Section 1708 of this Development Code for issuing a Conditional Use Permit.

D. **Action of the Planning Commission:**

1. The Commission may grant an application for a change of use if, on the basis of the application and the evidence submitted, the Commission makes the following findings:
 - a. That the proposed use is classified in a more restricted category than the existing or preexisting use by the district regulations of this Development Code. The classification of a nonconforming use shall be determined on the basis of the district in which it is first permitted, provided that a conditional use shall be deemed to be in a less restricted category than a permitted use in the same district.
 - b. That the proposed use will not more adversely affect the character of the district in which it is proposed to be located than the existing or preexisting use.
 - c. That the proposed use will not create more vehicular or rail traffic than the volumes created by the existing or pre-existing use.
 - d. That the proposed use will not create more odor, dust, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amounts created by the existing or pre-existing use.
 - e. That the proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
2. The Commission may grant an application for a change of use for a limited time period or subject to such conditions as the Commission may prescribe. An approved change in nonconforming use shall be indicated on the Zoning map by a number located on the site of the conditional use.



3. The Commission may deny an application for a change of use.
4. Following the date of denial of an application for a change of use or revocation of an action of the Planning Commission granting an application, no application for the same or substantially the same use on the same or substantially the same structure or site shall be filed within six months of denial on the application or revocation of the action of the Commission.

E. **Notice of Commission Action:** Within five days of the Commission decision, a record of the action taken shall be submitted to the Clerk of the Board of Supervisors and to the applicant.

F. **Review by Board of Supervisors (“Board”):**

1. Within eight days following the date of a decision by the Planning Commission on a change of nonconforming use or on an application for extension of a change of nonconforming use, or on the revocation of a change of nonconforming use, the Board of Supervisors (“Board”), on its own motion, may initiate proceedings to review the decision of the Commission. The Board shall specify its reasons for reviewing the Planning Commission’s decision.
2. The Clerk of the Board shall give notice of the time and place when the decision of the Planning Commission will be reviewed by the Board of Supervisors. Notice will be given in the same manner as provided in Section 1903 of this Development Code for notice of hearing on appeal, except that where the review is of a decision of the Commission concerning the revocation of a change of nonconforming use, and in that case, notice shall be required to be given only to the permit holder of the use permit.

G. **Appeals:** The applicant or any other directly affected person or party may appeal the decision of the Planning Commission in writing, setting forth his or her reason for such appeal:

1. **Appeal to the Board of Supervisors.** Within eight days following the date of a decision of the Planning Commission on a change of nonconforming use application or an application for extension of change of nonconforming use, the Board.
 - a. The appeal shall be filed with the Community Development Agency which will date stamp the appeal form and then forward the original appeal form to the Clerk of the Board of Supervisors.
 - b. The appeal shall be accompanied by a fee set by the Board of Supervisors sufficient to cover the cost of processing the appeal and providing notice as prescribed in this article.
 - c. The appeal shall be placed on the agenda of the Board's first regular meeting after the Commission’s decision which allows noticing requirements to be met.
 - d. The appeal of a decision of the Planning Commission is limited to the issues and evidence submitted to the Commission during the original public comment period and public hearing. Only those issues reviewed by the Commission in their decision may be appealed to the Board. New issues raised, and evidence submitted, after the close of the Commission’s public hearing shall not be considered by the Board for an appeal.
 - e. Within five days after the filing of an appeal from a decision of the Commission on a change of nonconforming use application, the Zoning Administrator shall transmit to the Clerk of the Board the change of nonconforming use application, the site plan drawing and all other data filed therewith, the minutes of the public hearing, if any, the report of the Zoning Administrator, the findings of the Commission and their decision on the application.
 - f. Where an appeal is from a decision of the Commission on an application for a extension of a change of nonconforming use application, the Zoning Administrator shall transmit to the Clerk of the Board within five days after the filing of an appeal, in addition to the above, the application for extension, the report of the Zoning Administrator on the extension application, the minutes of the public hearing, if any, and the findings and the decision of the Commission on the extension application.
2. Notice of the appeal hearing shall be given as set forth in Section 1903.



3. An appeal may be withdrawn before the time that the review authority issues a decision. The applicant or the applicant's representative shall notify the Community Development Agency in writing that they wish to withdraw the appeal.
4. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Development Code until all appeals to the Commission and Board have been first exhausted in compliance with this Development Code.

H. **Action by the Board of Supervisors:** When a decision of the Planning Commission on a change of nonconforming use application or an application for extension of a change of nonconforming use, or on the revocation of a change of nonconforming use is brought before the Board of Supervisors, either on appeal or on its own motion:

1. The Board may affirm, reverse or modify the decision of the Commission.
2. The Board may not reverse or modify a decision of the Commission granting or denying an application for a change of nonconforming use or an application for an extension of a change of nonconforming use unless the Board, on the basis of the record transmitted by the Zoning Administrator, is able to make the findings prerequisite to the granting of a change of nonconforming use, as prescribed and set forth in Section 1206., above.
3. A change of nonconforming use application, or an application for extension of a change of nonconforming use, or revocation of a change of nonconforming use which has been the subject of an appeal to the Board, shall become effective within three days of the Board's decision.
4. The Clerk of the Board of Supervisors shall within three days after the date of the decision of the Board, give written notice of the decision, by mail, to the applicant and/or appellant (if the applicant is not the appellant) and to the Planning Division of the Community Development Agency.

Sec. 1207. Zoning Clearance and Building Permit: Before a building permit shall be issued for any building or structure proposed as part of the approved conditional use application, the Zoning Administrator shall certify, through the zoning clearance process in Section 1607 of this Development Code, that the building location is in conformity with the site plan and conditions approved by the Zoning Administrator, the Commission or the Board.

Sec. 1208. Lapse of a Change of Nonconforming Use: A change of nonconforming use shall lapse and shall become void 180 days following the date on which the permit became effective unless by conditions of the permit a greater or lesser time is allowed as prescribed in Section 1205., above, or unless prior to the expiration of 180 days, a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion on the site which was the subject of the change of nonconforming use application.

Sec. 1209. Extension of a Change of Nonconforming Use:

- A. A change in nonconforming use which has been granted may be extended for an additional period of 180 days provided that prior to the expiration of 180 days from the date when the permit originally became effective, an application for extension of the permit is filed with the county Planning Commission. An application for extension of a change of nonconforming use shall be filed and processed in the manner set forth in Section 1206 above which governs the filing and processing of applications for changes of nonconforming uses. The Commission may grant an application for extension of a change of nonconforming use if it is able to make the findings prerequisite to the granting of a change of nonconforming use application as prescribed and set forth in Section 1206., above. The application for extension of change of nonconforming use shall be denied if such findings cannot be made.
- B. Within eight days following the date of a decision of the Commission on an application for extension of a change of nonconforming use, the decision may be appealed to the Board of Supervisors. If no appeal is filed within said eight-day period and if the Board within said eight-day period does not initiate proceedings to review the decision of the Commission as provided in Section 1206.F.1, the decision of the Commission shall be final and conclusive.



Sec. 1210. Revocation of a Change of Nonconforming Use: When any applicable provision of this Development Code or when any condition or conditions of a change of nonconforming use have not been complied with, the Zoning Administrator shall notify the holder of the permit and shall give said person a reasonable period of time within which to comply with said Development Code or condition or conditions. If the holder of the permit fails to comply with the Development Code or with said condition or conditions within such period of time, the Zoning Administrator shall submit a report to the Planning Commission and the Commission shall on its own motion give written notice to the holder of the permit that a hearing will be held by the Commission on the matter of the revocation of the change of nonconforming use.

- A. Notice of said hearing shall be given not less than 10 days nor more than 30 days prior to the date of the hearing by either personal service of a copy of said notice on holder of the permit or by sending a copy of the notice by certified or registered mail, return receipt requested, to said holder of the permit. The notice shall state the reason or reasons why action is being taken for revocation of the permit.
- B. At said hearing the Commission shall hear all relevant testimony concerning the change of nonconforming use and the provisions of the Development Code which allegedly have not been complied with and the condition or conditions which were imposed. If the Commission finds that any of the applicable provisions of the Development Code have not been complied with or that the condition or any of the conditions imposed have not been complied with, then the change of nonconforming use shall be revoked.
- C. If the Commission revokes the nonconforming use:
 - 1. The use shall be automatically and immediately suspended.
 - 2. The holder of such permit may within eight days following the date of the decision of the Commission, appeal the decision to the Board of Supervisors.
 - 3. If an appeal is filed or if the Board initiates a review of the decision to revoke the permit, the suspension shall remain in effect during the course of appeal or review.
 - 4. If within said eight days, no appeal is filed and the Board does not initiate proceedings to review the decision of the Commission as provided in Section 1206.F.1, above, the decision of the Commission shall be final and conclusive.
- D. The appeal shall be filed with the clerk of the Board of Supervisors and shall state specifically wherein it is claimed that there was an error or abuse of discretion by the Commission or wherein the decision is not supported by the evidence in the record. Appeals must be based on evidence in the record.
- E. Within five days after the filing of an appeal, the Zoning Administrator shall transmit to the Clerk of the Board the change of nonconforming use application, the minutes of the public hearing on the application, if any, the report of the Zoning Administrator, the findings and decision of the Commission, the report of the Zoning Administrator on the failure of the appellant to comply with the provisions of the Development Code or with the condition or conditions of the permit, the minutes of the hearing on the matter of revocation and the findings and decision of the Commission on the matter of revocation of the use permit.
- F. Notice of the hearing of the appeal shall be given by the Clerk of the Board not less than 10 days prior to the time when the appeal will be considered by the Board, by mailing, postage prepaid, a notice of the time and place of the hearing, to the appellant.

Sec. 1211. New Application: Following the denial of a change of nonconforming use application or the revocation of a change of nonconforming use, no application for a permit for the same or substantially the same change of nonconforming use on the same or substantially the same site shall be filed within 12 months from the date of denial or revocation of the permit.

