CHAPTER 21

NONCONFORMING USES, NONCOMPLYING STRUCTURES, AND OTHER NONCONFORMITIES

Section 2101—Purpose:

The following provisions are provided to establish procedures for determining the existence of a legal nonconforming use, a legal noncomplying structure, or other legal nonconformity, including noncomplying lots and signs, and other matters relating to legal nonconforming uses, legal noncomplying structures, and other legal noncomplying structures and activities.

Section 2102—Legal Nonconforming Uses or Noncomplying Structures May be Continued:

Except as provided in this Chapter, a legal nonconforming use or legal noncomplying structure, as determined by the provisions of Section 2110 may be continued by the present or a future property owner.

1. A legal nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

2. For purposes of this Subsection (2), the addition of a solar energy device to a building is not a structural alteration.

3. The Planning Commission may provide for the expansion of nonconforming uses upon issuance of a Conditional Use Permit. *(Amended by Ordinance 2009-11 adopted August 11, 2009)*

4. The City shall not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

Applications shall be maintained on file by the Zoning Administrator and City Recorder.

3. A finding by the Zoning Administrator of the existence of a legal noncomplying use, noncomplying structure, lot, sign, or other nonconformity shall not be deemed an approval of any other application, permit, or license.

4. A finding by the Zoning Administrator of the existence of a legal noncomplying use, noncomplying structure, lot, sign, or other nonconformity shall allow the filing of an Application for any necessary approval, permit, or license, as may be required by this Ordinance, as adopted, and all other Land Use Ordinances and requirements, as applicable.

Section 2112—Requirements for Nonconforming Uses:

Following a determination by the Zoning Administrator of the existence of a legal nonconforming use, the use shall comply with the following requirements:

1. As provided by Section 2102 herein and the Act, a legal nonconforming use may be continued by the present or future property owner.

2. As provided by Section 2102 herein and the Act, a legal nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purposes of the extension. As provided by Section 2102 herein and the Act, for the purposes of this Subsection, the addition of a solar energy device to a building is not a structural alteration.

3. The expansion of a nonconforming use may be allowed upon the Planning Commission issuing a Conditional Use Permit. *(Amended by Ordinance 2009-11 adopted August 11,2009)*

4. Necessary maintenance and repairs may be made to a structure housing a legal nonconforming use by following the procedures for any approval, permit, or license, including the issuance of a Building Permit, for such maintenance and repairs, as required by this Ordinance, as adopted, and all other Land Use Ordinances and requirements, as applicable.

5. As provided by the Act, the City may require the termination of a legal nonconforming use by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use.

6. As provided by the Act, the City may not terminate a legal nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the use has been abandoned.

7. As provided by the Act, a legal nonconforming use of a structure shall terminate if:

   7.1. The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the property owner, by the Zoning Administrator, that the structure is uninhabitable and that the nonconforming use will be lost if the structure is not repaired or restored within six (6) months.

   7.2. The property owner has voluntarily demolished a majority of the building that houses the nonconforming use.

8. Change in Use. A legal nonconforming use may only be changed to a use allowed in the Table of Uses for the Zoning District in which the property is located, by following the approval procedures for such use, as required by this Ordinance, as adopted, and all other Land Use Ordinances and requirements, as applicable.

Section 2113—Requirements for Noncomplying Structures:

Following a determination by the Zoning Administrator of the existence of a legal noncomplying structure, the structure shall comply with the following requirements:

1. As provided by Section 2102 herein and the Act, a legal noncomplying structure may be continued by the present or future property owner.

2. As provided by Section 2102 herein and the Act, the City may not prohibit the reconstruction or restoration of a legal noncomplying structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure has been abandoned.

3. The expansion of a nonconforming structure may be allowed upon the Planning Commission issuing a Conditional Use Permit. *(Amended by Ordinance 2009-11 adopted August 11,2009)*

4. Necessary maintenance and repairs may be made to a legal noncomplying structure by following the procedures for any approval, permit, or license, including the issuance of a Building Permit, for such maintenance and repairs, as required by this

Ordinance, as adopted, and all other Land Use Ordinances and requirements, as applicable.

5. As provided by the Act, a legal noncomplying structure shall terminate if:

   5.1. The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the property owner, by the Zoning Administrator, that the structure is uninhabitable and that the noncomplying structure will be lost if the structure is not repaired or restored within six (6) months.

   5.2. The property owner has voluntarily demolished a majority of the noncomplying structure.

Section 2114—Requirements for Noncomplying Lots:

This Section shall apply to legal undeveloped noncomplying lots or parcels.

1. A legal lot of record, or any parcel of record, legally existing on the date of adoption of this Ordinance shall:

   1.1. Be eligible for a Building Permit authorizing the construction of one (1) single family dwelling, complying with the provisions of this Ordinance, as adopted, and all other Land Use Ordinances and requirements, as applicable, even though such lot or parcel may not conform to the requirements of the Zoning District in which the legal noncomplying lot or parcel is located. provided:

      1.1.1. That such lot or parcel of land is located in a Zoning District that allows single family dwellings, and

      1.1.2. The proposed construction can qualify for the issuance of a Building Permit for a single-family dwelling, as required by the Building Codes as adopted.

Section 2115—Requirements for Noncomplying Signs:

This Section shall apply to signs that were legal on the date of adoption of this Ordinance but which may now be a noncomplying structure.

1. A legal noncomplying sign shall not be enlarged.

2. A legal noncomplying sign shall not be moved or replaced, except to bring the sign into compliance with this Ordinance, as adopted, and all other Land Use Ordinances and requirements, as applicable.

3. The text message of a legal noncomplying sign may be changed if such changes do not create any new nonconformities or other noncompliance.

4. A legal noncomplying sign shall be considered abandoned if it advertises a business, service, commodity, or other activity that has been discontinued for a minimum period of one (1) year.

Section 2116—Termination of a Nonconforming Use by the City Permitted – Reasonable Amortization Period Required:

As provided by the Act, the City may terminate a nonconforming use, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any.

Section 2117—Termination of a Nonconforming Use due to Abandonment:

1. As required by the Act, any party claiming a legal nonconforming use has been abandoned shall have the burden of establishing the abandonment.

2. Abandonment may be presumed to have occurred if:

   2.1. A majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the City regarding an extension of the nonconforming use.

   2.2. The use has been discontinued for a minimum period of one (1) year; or

   2.3. The primary building associated with the nonconforming use remains vacant for a minimum period of one (1) year.

3. The property owner may rebut the presumption of abandonment under this Section and shall have the burden of establishing that any claimed abandonment under this Section has not in fact occurred. The Zoning Administrator shall have authority to review and decide all disputes relating to abandonment of structures associated with a nonconforming use, noncomplying structure, or other nonconformity.

4. The City may terminate the nonconforming use status of a school district or charter school use or structure when the property associated with the school district or

charter school use or structure ceases to be used for school district or charter school purposes for a minimum period of one (1) year.

Section 2118—Determination of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity Applications by the Zoning Administrator to be on File:

The Zoning Administrator and City Recorder shall maintain all Determinations of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity Applications on file.

Section 2119—Revocation of a Determination of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity Applications:

The approval of a Determination of a Legal Nonconforming Use/Legal Noncomplying Structure/Other Legal Nonconformity Application by the Zoning Administrator shall be revoked by the Zoning Administrator if the Zoning Administrator finds that the approval was obtained in a fraudulent manner.

Section 2120—Appeal:

Any person aggrieved by a decision of the Zoning Administrator related to a nonconforming use, noncomplying structure, or other nonconformity may appeal the decision to the Planning Commission, as provided by Chapter 26, herein.
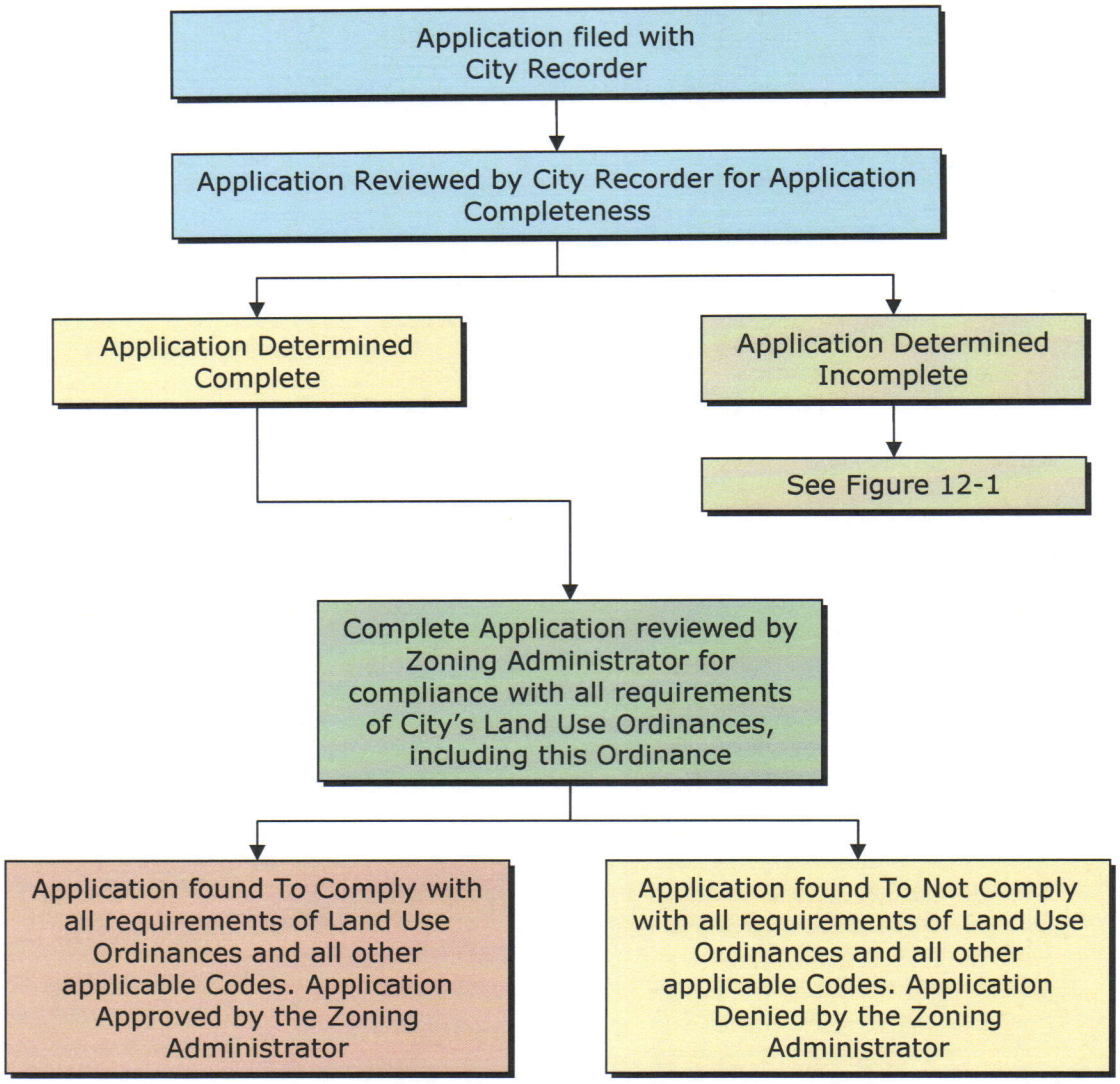
Figure 21-1
Determination of Nonconforming Use, Noncomplying Structure and other Nonconformity Procedures