

Chapter 18.58

Nonconforming Uses, Buildings and Structures

18.58.010 Purpose and intent.

Within the jurisdiction of this Code are lots, structures, buildings, uses and characteristics of uses which were lawful when established, but which could not be established under current provisions. Such nonconformities may be created at the effective date of this Code, or as a result of subsequent amendments which may be incorporated into this Code and may include such nonconformities as land uses, setbacks or landscaping. It is the intent of this Chapter to describe the conditions under which legal nonconforming uses, buildings and structures may continue. (Ord. 27, 1998 §1)

18.58.020 Application.

(a) This Chapter shall apply to any use of land, building or structure which does not conform to all applicable provisions of this Code for the district in which such use, building or structure is located.

(b) A nonconforming use may be continued and a nonconforming building or structure may continue to be occupied except as may otherwise be provided for in this Chapter.

(c) The use of land or a structure or building which was in violation of the zoning regulations prior to the effective date of this Title shall be considered a violation, which violation shall be deemed a code infraction and shall be subject to the sanctions as provided in Chapter 1.33 of this Code. (Ord. 46, 2006 §2; Ord. 27, 1998 §1)

18.58.030 Definitions.

The following terms as used in this Chapter shall have the following meanings:

Amortization shall mean the prohibition and removal of a nonconforming use after the expiration of an amortization period.

Amortization period shall mean a reasonable period of time to recoup a return on the investment in an animal confinement use, but which in no event shall exceed nine (9) years from the effective date of this Code, or from the date the use became nonconforming, whichever is later.

Animal confinement use shall mean a place for confinement of livestock for the purposes of commercial food production and where feeding of the livestock is other than grazing and where the capacity at any one (1) time is greater than permitted on the Animal Unit Equivalency Chart for the zoning district in which it is located. Such animal confinement uses may include dairies, feedlots, poultry and swine production facilities.

Animal unit shall mean a unit of measurement used to determine the animal capacity of a particular site or parcel of land and to establish an equivalency for various species of livestock. The animal unit capacity is determined by multiplying the number of animals of each species by the appropriate equivalency factor from the table below and summing the resulting totals for all animal species contained on a site or parcel of land. The number of animals allowed per acre on a site or parcel of land is based on area requirements for each species, and the resulting acreages are also summed. If the maximum number of permitted animal units as provided on the Animal Unit Equivalency Chart is exceeded for a property that does not contain an animal confinement use as of the effective date of this Code, the property and use contained on said property shall be determined to be a nonconforming use and subject to the provisions in this Chapter.

Animal Unit Equivalency Chart*						
Animal Species	H-A Zone - max two (2) animal units per acre			Other Zones - max one (1) animal unit per acre		
	Animal unit equivalents	Number of Animals	Max # of Animals per acre	Animal unit Equivalents	Number of Animals	Max # of Animals per acre
Slaughter, feed & dairy cattle, bison, elk, llamas, horses, mules, burros, yaks, alpacas	1.0	1.0	2.0	1.0	1.0	1.0
Swine, butcher & breeding - over 55 lbs.	.50	2.0	4.0	.50	2.0	2.0
Sheep, lamb, goats	.50	2.0	4.0	.50	2.0	2.0
Turkeys	.20	5.0	10.0	.20	5.0	5.0
Chickens, broiler & layer; rabbits	.10	10.0	20.0	.10	10.0	10.0

(Young stock, less than 50% percent of adult weight, reduces the above equivalency factor by ½. "Per acre" refers to areas specifically devoted for animal use).

- * This chart shall not be used in a cumulative fashion. For example, in the H-A Zone, there is a maximum of 2 animal units permitted per acre. These animal units may be derived from a combination of animals, but in no event shall it exceed the maximum of 2 animal units per acre.

Livestock shall mean animals typically related to agricultural or farming uses, including but not limited to, chickens, swine, sheep, goats, horses, cattle, yaks, alpacas and emus.

Nonconforming shall mean any building, structure or use that does not conform to the regulations of this Chapter, but which was lawfully constructed, established and/or occupied under the regulations in force at the time of construction or initial operation. (Ord. 27, 1998 §1)

18.58.040 Nonconforming uses.

(a) A use that was allowed by the Code in effect when it was established, but which is no longer permitted in the district in which it is located, shall be permitted to continue after it became nonconforming so long as it complies with all of the following requirements:

- (1) A nonconforming use shall not be physically enlarged, intensified or extended, nor shall it displace a principal conforming use, except as provided in Subsection (b) below.
- (2) A nonconforming use shall not be moved to any other portion of a lot, building or structure.
- (3) A structure that does not conform to the requirements of this Code shall not be erected in connection with a nonconforming use.
- (4) A nonconforming use may be changed to another nonconforming use subject to a determination by the Community Development Director that the new use does not constitute an increased impact, as determined by the following criteria:
 - a. The parking meets current requirements for the new use and does not create any increased parking impact or new parking areas; and
 - b. The new use is not an expansion in size and the impact or effect upon the surrounding neighborhood is equal to or less than the existing impact or effect, including without limitation, glare, visual pollution, noise pollution, odor, air emissions, vehicular traffic, storage of equipment, materials and refuse, hours of operation, trips generated and number of employees and shall also conform to all other applicable provisions in this Title.

(5) The decision of the Community Development Director shall be considered final unless appealed by the applicant or property owner to the Planning Commission or to the City Council under the provisions of Chapter 18.24, Appeals.

(6) If a lawful nonconforming use is reduced in intensity or abandoned for a continuous period of twelve (12) consecutive months, the property may not thereafter be used except at that lower intensity or as a conforming use.

(7) For nonconforming mobile home communities, refer to Chapter 18.46, Design Review Performance Standards.

(b) Single-family dwellings that are not in compliance with this Code may be enlarged or altered one (1) time by no more than twenty-five percent (25%) of the building footprint, including attached garage area, as long as the base standard setbacks in the R-L District or the infill standards are met. In no event shall an existing nonconforming single-family dwelling in an industrial zoning district be removed from a lot or site and be replaced with another single-family dwelling, except as provided for in Section 18.58.080(b). (Ord. 46, 1999 §1; Ord. 27, 1998 §1)

18.58.050 Nonconforming sites, buildings and structures.

(a) A building or structure that was allowed by the Code in effect when it was established, but which is no longer permitted in the district in which it is located because it does not conform to existing height, setbacks, yard, coverage, area, architecture or signage requirements of the zoning district in which the land is located, or is on a site which is nonconforming, shall be permitted to continue so long as it complies with all of the following requirements:

(1) The nonconforming building or structure is not enlarged, moved or altered in a way that increases its nonconformity, except as provided in Section 18.58.040(b) above, but it may be altered to decrease its nonconformity.

(2) If a nonconforming building or structure or portion of a nonconforming building or structure is destroyed by any means to an extent of more than fifty percent (50%) of its replacement value, it cannot be reconstructed except in conformity with the provisions of this Code, except for single-family dwellings in the commercial and industrial zoning districts.

(3) On any nonconforming building or structure or portion of a building or structure containing a nonconforming use, ordinary repair is permitted if, in any consecutive twelve-month period, the work does not affect fifty percent (50%) or more of the replacement value of the nonconforming building or structure and is needed to maintain the building or structure in conformance with building codes.

(b) Single-family dwellings which are within nonconforming buildings or structures may be enlarged or altered one (1) time by no more than twenty-five percent (25%) of the building footprint, including attached garage area, as long as the base standard setbacks in the R-L District or the infill standards are met. In no event shall an existing nonconforming single-family dwelling in an industrial zoning district be removed from a lot or site and be replaced with another single-family dwelling, except as provided for in Section 18.58.080(b).

(c) If changes are proposed to nonconforming sites, buildings and structures, the Community Development Director shall determine, after considering recommendations from the Administrative Review Team, if the nonconforming feature or features of the building or structure will be worsened by the modifications in terms of the impact of the building or structure on the neighborhood.

(d) One-time expansions for single-family dwellings as provided in this Chapter shall be processed as design review uses, shall meet all provisions of the infill area design standards, as applicable, and recordation of such expansion shall be made in the County Clerk and Recorder's Office. (Ord. 4, 2006 §1; Ord. 46, 1999 §1; Ord. 27, 1998 §1)

18.58.055 Nonconforming uses in nonconforming sites, buildings and structures.

Legal nonconforming buildings or structures which accommodate land uses which are legal nonconforming land uses under this Code may be repaired, remodeled or restored only if the total floor space devoted to a nonconforming use is not increased and if the outside dimensions of the structure, including the height dimension, are not increased, except for single-family dwellings, which may be enlarged or altered one (1) time by no more than twenty-five percent (25%) of the building footprint, including attached garage area, as long as the base standard setbacks in the R-L District or the infill standards are met. In no event shall an existing nonconforming single-family dwelling in an industrial zoning district be removed from a lot or site and be replaced with another single-family dwelling, except as provided for in Section 18.58.080(b). (Ord. 46 §1, 1999)

18.58.060 Variances.

Variations to nonconforming buildings or structures shall be considered by the Zoning Board of Appeals under the provisions of Chapter 18.22, Variations. (Ord. 27, 1998 §1)

18.58.070 Abandonment or reduction of use.

If active and continuous operations of a nonconforming use are not carried on during a consecutive period of twelve (12) months, the nonconforming use shall thereafter be occupied and used only for a conforming use. (Ord. 27, 1998 §1)

18.58.080 Restoration.

(a) A nonconforming building or structure, or a building or structure containing a nonconforming use which has been damaged by fire or other calamity may be restored to its condition at the time of destruction, provided that such work is started within six (6) months of such calamity and completed within twelve (12) months of the time the restoration is commenced, except that if restoration would affect fifty percent (50%) or more of the replacement value of the entire building or structure, the building or structure may be restored or rebuilt only if it and the land use it houses thereafter will conform with all respects to this Title to the maximum extent feasible. The Community Development Director may grant a six-month extension to the provisions herein if reasonable cause can be shown.

(b) Nonconforming single-family dwellings shall be exempt from Section 18.58.070 and Subsection (a) above when reconstruction commences within nine (9) months and is completed within eighteen (18) months from the date of calamity. The Community Development Director may grant a six-month extension to the provisions herein, if reasonable cause can be shown. (Ord. 46, 1999 §1; Ord. 27, 1998 §1)

18.58.090 Certificates of nonconforming use.

(a) All owners of legal nonconforming uses shall obtain a certificate of nonconforming use from the Community Development Director prior to any development at the site of the purported nonconforming use. A certificate of nonconforming use is a document that verifies the legitimacy of such a use.

(b) Any owner of a legal nonconforming use may obtain a certificate of nonconforming use subject to the provisions of Subsection (d) below.

(c) A certificate of nonconforming use shall be required prior to commencement of any construction activities related to the nonconforming use or the site on which a nonconforming use is situated.

(d) Upon completion of an application by the property owner and submittal of information substantiating the nonconforming use, the Community Development Director shall verify the nonconforming status of the use or property. Upon such verification, the Director shall issue a certificate of nonconforming use to all known owners of the legal nonconforming use. The certificate of nonconforming use shall identify, in detail, the area and nature of the nonconformity.

(1) In accordance with the provisions of this Section, no use of land, buildings or structures shall be made other than that specified on the certificate of nonconforming use unless such use shall be in conformance with the provisions of the zoning district in which the property is located.

(2) A copy of each certificate of nonconforming use shall be filed with the City and recorded in the County Clerk and Recorder's Office.

(3) The burden of proof for establishing the date when the nonconforming situation was created shall be on the applicant or property owner. The applicant or property owner shall present clear and convincing information to support the claim of a legal nonconforming use.

(e) If the Community Development Director determines that the use is not a legal nonconforming use, then the use shall either be brought into full compliance with the provisions of this Title, or the use shall be abandoned and all operations ceased.

(f) The property owner may appeal the decision of the Community Development Director on a nonconforming use to the Planning Commission and to the City Council, according to the provisions in Chapter 18.24, Appeals. (Ord. 27, 1998 §1)

18.58.100 District changes.

Whenever the boundaries of a zoning district are changed to transfer an area from one (1) zoning district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein and to any use made nonconforming by such change. (Ord. 27, 1998 §1)

18.58.110 Procedural nonconformity.

(Whenever a nonconformity occurs solely because a use has not been evaluated under a review procedure required by this Title and the use is otherwise in conformance, such use shall be considered conforming. For example, a use which requires use by special review approval shall be considered conforming if it existed prior to the effective date of this Development Code and is in conformance in all other respects, only lacking the benefit of an otherwise required review process. (Ord. 27, 1998 §1)

18.58.120 Annexation of nonconforming uses, buildings and structures.

Lawfully established uses, buildings and structures which exist on property prior to annexation shall be evaluated by the Community Development Director as to the degree of nonconformity which will be created upon annexation and zoning, as provided in Section 18.26.040(d), regarding annexation. (Ord. 27, 1998 §1)

18.58.130 Amortization of nonconforming animal confinement uses.

(a) This Section is intended to provide a mechanism for the removal of nonconforming animal confinement uses which are, by their nature, uses which create negative impacts on the community and which are not considered appropriate land uses for urbanized areas because of their impacts.

(b) These provisions shall apply to all existing, nonconforming animal confinement operations, as defined in Section 18.58.030, which are located within the City boundaries and which are within the established Mid-Range Expected Service Area.

(c) Upon a request for annexation, application of these provisions to existing nonconforming animal confinement operations shall be evaluated and an amortization period shall be determined as provided herein and specified in an annexation agreement.

(d) Each animal confinement use shall have the number of years for each of the applicable criteria listed below to continue in operation and which shall not exceed a total of nine (9) years from the effective date of this Code, or from the date the use became nonconforming, whichever is later. The following criteria shall be used to establish a reasonable amortization period for nonconforming animal confinement uses.

(1) Location of use and nature of surrounding area.

a. Area within a five-hundred-foot radius of the site, exclusive of public rights-of-way, contains only agricultural-related uses (+ 3 years); or

b. Area within a five-hundred-foot radius of the site, exclusive of public rights-of-way, contains a mix of agricultural and non-agricultural-related uses (+ 2 years); or

c. Area within a five-hundred-foot radius of the site, exclusive of public rights-of-way, contains only non-agricultural-related uses (+ 1 year).

(2) Nature and conduct of use.

a. Animal confinement operations are conducted indoors, in fully enclosed areas (+ 3 years); or

b. Animal confinement operations are conducted both in indoor, fully enclosed areas and in outdoor areas which are not fully enclosed (+ 2 years); or

c. Animal confinement operations are always conducted outdoors in areas which are not fully enclosed (+ 1 year).

(3) Investment in land and use (includes land value and value of buildings, structures and equipment specifically related to and used in the animal confinement use, based on most current County Assessor's records).

a. Total investment in land, buildings and structures, plus value of equipment related to animal confinement operation does not exceed two hundred thousand dollars (\$200,000.00) (+ 1 year); or

b. Total investment in land, buildings and structures, plus value of equipment related to animal confinement operation is between two hundred thousand one dollars (\$200,001.00) and five hundred thousand dollars (\$500,000.00) (+ 2 years); or

c. Total investment in land, buildings and structures, plus value of equipment related to animal confinement operation is over five hundred thousand dollars (\$500,000.00) (+ 3 years).

(e) The amortization period for animal confinement uses shall be established by the City Council within one hundred twenty (120) days of the effective date of this Code, or from the date the use became nonconforming, whichever is later. The following information shall be required from the owner/operator of the animal confinement use to establish the amortization period and shall be provided within sixty (60) days from the receipt of written notice from the Community Development Director requesting such information:

(1) Scale drawing or map showing the existing use and all existing structures related to the use (including confinement areas, buildings, structures and equipment related to the use); and showing all existing land uses within a five-hundred-foot radius of the site which contains an animal confinement use.

(2) Written description of the existing operation, including number and types of animals confined, length of confinement and type of confinement (i.e., indoor, in fully enclosed areas and/or outdoor areas which are not fully enclosed);

(3) Detailed, written description of investment in the land, buildings, structures and equipment related to and used in the animal confinement operation, based on most recent County Assessor's records; and

(4) Any other information determined necessary by the Community Development Director to conduct a comprehensive review of the application.

(f) Upon submittal of all information required in Subsection (e) above, or refusal to do the same by the owner/operator, the Community Development Director shall schedule a public hearing on the matter before the Planning Commission on the next open agenda. Notice given for the public hearing shall be as provided for in Chapter 18.18, Notice.

(g) The Community Development Director shall prepare a staff report which shall be presented to the Planning Commission. In making a recommendation on an amortization period, the Commission shall consider the staff report and recommendation, all comments received from the owner/operator and the public, and shall consider the following:

(1) Criteria in Subsection (d) above; and

(2) Unique or special circumstances which may be related to the particular request.

The Planning Commission recommendation shall be in the form of minutes of the meeting, copies of which shall be furnished to the owner/operator.

(h) The City Council shall consider the amortization period at a public hearing with notice given for the hearing as provided for in Chapter 18.18, Notice. In making a decision on an amortization period, the Council shall consider the staff report and Planning Commission recommendation and all comments received from the owner/operator and the public. The Council shall also consider the following in making a decision to approve, approve with conditions, deny or table the request for future consideration:

(1) Criteria in Subsection (d) above; and

(2) Unique or special circumstances which may be related to the particular request.

(i) The decision of the City Council to establish an amortization period shall be final and shall be provided in writing to the owner/operator of the animal confinement use. (Ord. 27, 1998 §1)