

**PROPOSED Chapter 18.340:
NONCONFORMING AND CONDITIONAL USES**

Sections:

- 18.340.010 - General.
- 18.340.020 - Nonconforming uses and development.
- 18.340.030 - Conditional uses.
- 18.340.040 - Review procedures.
- 18.340.050 - Decision criteria for intensification of nonconforming uses and development.
- 18.340.060 - Decision criteria for minor and major conditional use approvals.
- 18.340.070 - Conditions, revocation of approval, appeals.

18.340.010 - General.

Nonconforming uses and conditional uses are considered together in the same chapter because they both involve a review of uses which are not permitted outright in the underlying district. Expansion of nonconforming uses or the approval or expansion of conditional uses is presumed to have adverse neighborhood or city-wide impacts. If identified impacts cannot be mitigated effectively with conditions of approval, the review authority has the discretion to deny the use or the alteration or expansion of the use. (*Ord. 802 § 9 (part), 2002: Ord. 676 § 1 (part), 1995*).

18.340.020 - Nonconforming uses and development.

A. Nonconforming uses and development occur when a use or development was lawfully established and maintained but subsequent changes to zoning maps or development regulations rendered the use or development out of compliance with new regulations. A permit is not required to continue a lawful nonconforming situation; however, city approval is required to alter a nonconforming use or development.

B. A nonconforming use is one that was lawfully established and maintained, prior to the effective date of the ordinance codifying or amending a zoning or development ordinance, and is not permitted, either outright or conditionally, in the zone in which it is located.

C. A nonconforming development occurs when the use is currently allowed as a nonconforming use or as a permitted or conditional use in the applicable zoning district but elements of the physical improvements do not meet existing development code and engineering standards. Alterations of nonconforming development may be reviewed through the nonconforming use or site plan review processes or at the time of building permit approval.

(*Ord. 802 § 9 (part), 2002: Ord. 676 § 1 (part), 1995*).

18.340.030 - Conditional uses.

A. Conditional uses are governed by RDC 18.205. The planning director may determine that a proposed use, not expressly permitted outright in the underlying zone requires conditional use review if the proposed character and potential neighborhood or city-wide impacts warrant elevated review.

B. Elevation of nonconforming use. A legally established use or development which is recognized as a conditional use under current zoning shall be deemed an approved conforming use. A proposal to alter or expand the use or development shall require conditional use and site plan review. The review shall consider the cumulative impacts of the existing use and the proposed alteration. (*Ord. 802 § 9 (part), 2002: Ord. 676 § 1 (part), 1995*).

18.340.040 - Review procedures.

A. Nonconforming uses.

1. The planning director, through a Type II review process, shall determine whether the use or development is lawfully nonconforming consistent with 18.340.020.
 - a. The burden of proving the existence of a lawful nonconforming development lies with the person making the assertion. Evidence sufficient to meet this burden includes building or zoning permits issued by the appropriate jurisdiction at the time the situation commenced. If the use pre-dates zoning, proof of the existence of the use, consistent with state law, is sufficient.
 - b. The burden of proving that a nonconforming use has been continued without interruption, i.e., that it has not been abandoned or discontinued, is on the applicant. Sources of information relevant to this standard include, but are not limited to, historical documents such as telephone books, business or occupational licenses, city or county records, and utility records.
2. An alteration of a nonconforming use or development shall be reviewed under the following procedures:
 - a. Type I. If the planning director determines that the proposal increases operations or impacts, such as increased number of employees, vehicle traffic, off-site impacts, noise, glare, emissions, and similar activities by more than 10 percent over the existing baseline, the alteration shall be reviewed under a Type I process.
 - b. Type II. If the planning director determines that the proposal increases the floor area, parking, outdoor storage or other measureable impacts by more than 10 percent over the existing use or development baseline, the alteration shall be reviewed under a Type II process.
3. Destruction and reconstruction of nonconforming uses. If a nonconforming use or development is destroyed by an act or omission of God, nature or person other than the owner, operator or developer, the replacement or reconstruction of the use or development shall be reviewed under a Type II procedure.
 - a. If the loss is less than 75 percent of the assessed value of property improvements, the structures associated with the nonconforming use may be rebuilt and used for their recognized nonconforming purpose, but they shall not be enlarged or used for other purposes. All new development must be in conformance with current fire and building codes, and shall be subject to site plan review.
 - b. If the loss is greater than or equal to 75 percent of the assessed value of improvements on the property, nonconforming use status shall be lost, and any new

use or development on the subject property shall be in conformance with current regulations and policies.

4. Discontinuance. The planning director, through a Type II process, may deem a nonconforming use discontinued if there is substantial evidence that the use has been discontinued for two years or more. Once deemed discontinued, a nonconforming use shall not be resumed.

B. Conditional use review.

1. Approval of new conditional uses and major alterations of existing conditional uses are reviewed under Type III procedure. A major alteration involves 2,000 square feet or more of gross floor area and results in an increase of 20 or more parking spaces within a 12-month period.

2. Minor alterations to existing conditional uses may be approved under Type II review procedures. A minor alteration to an approved conditional use involves less than 2,000 square feet of gross floor area and results in less than 20 more parking spaces within a 12-month period. However, the planning director may require that a minor conditional use be reviewed under Type III procedures, upon a finding of potential significant adverse impact on the neighborhood or the city as a whole.

C. Site plan review required. Except for single-family residences, alterations of nonconforming situations and new or altered conditional uses are subject to site plan review.

D. Application.

1. A property owner or authorized representative may apply for an alteration of a nonconforming situation or for conditional use review. The application shall be accompanied by a site plan meeting the requirements of Chapter 18.500.

2. A property owner or any interested party may apply for a determination of nonconforming situation status. Applicants shall provide evidence supporting their position consistent with Section 18.340.020 and 18.340.030.

3. The application is subject to the adopted fee schedule. .

(Ord. 802 § 9 (part), 2002; Ord. 676 § 1 (part), 1995).

18.340.050 - Decision criteria for intensification of nonconforming uses and development.

A. The city's policy is to reduce the impacts of nonconforming situations, whether through mitigation of impacts or through cessation of the use. A nonconforming situation may be intensified when all of the following criteria are met:

1. The intensification is not inconsistent with the goals and policies of the RUACP and RCFP:

2. Mitigation measures will result in a net decrease in adverse impacts to neighboring properties, considering such factors as hours of operation, vehicle traffic, visual and olfactory impacts, noise impacts, and impacts on neighboring property values;

3. Existing RDC and public works standards are met to the greatest extent reasonably practicable;

4. The proposal complies with all applicable site plan review requirements;
5. The intensification is for a use which is similar in character, or has fewer and less noxious impacts, than the proposed use;
6. The proposal has no significant adverse environmental impacts which cannot be mitigated through conditions of approval. (*Ord. 676 § 1 (part), 1995*).

18.340.060 - Decision criteria for minor and major conditional use approvals.

A. The city's policy is to mitigate the impacts of conditional uses through special conditions of approval. Where impacts cannot be mitigated effectively, the review authority shall deny the application. A conditional use may be approved or modified only when all of the following criteria are met:

1. The use is listed as a conditional use in the master use table in RDC 18.205.020;
2. Is suitable for the proposed site considering size, shape, location, topography, existence of improvements and natural features;
3. Is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use;
4. The location, size, and functional characteristics of the proposal are such that it can be made reasonable compatible with and have minimal impact on the livability and development opportunities in the neighboring area;
5. Is not inconsistent with the applicable goals and policies of the RUACP and the purpose of the underlying zone;
6. Complies with all applicable site plan review requirements; and
7. Does not have significant environmental consequences when compared with other permitted uses in the underlying zone which cannot be mitigated through conditions of approval. (*Ord. 676 § 1 (part), 1995*).

18.340.070 - Conditions, revocation of approval, appeals.

A. The review authority may impose conditions of approval as necessary to protect the public interest, achieve compliance with the RUACP, or to mitigate any adverse impacts resulting from approval of uses or impacts subject to this chapter.

B. A conditional use permit or nonconforming use approval shall expire within three years from the date the city issues the final decision unless within that time, the developer has obtained the necessary permits from the building department and there has been substantial construction activity pursuant to the required permits. If no construction is involved, then the approval shall be void after one year unless the permitted activity is regularly conducted on the premises. The burden of proving substantial construction or continued use for a year is on the applicant.

C. The review authority, on its own motion, may initiate proceedings consistent with the procedures provided in RDC 18.395.050, Enforcement Procedures and Penalties, to revoke land use approval for noncompliance with the requirements of the Title or conditions of approval listed in the final decision approving the conditional or nonconforming use or development.

D. Appeals of a site plan decision may be appealed consistent with the provisions of RDC 18.310.100, Appeal Procedure.

(Ord. 802 § 9 (part), 2002: Ord. 676 § 1 (part), 1995).