Chapter 27.72 NONCONFORMING BUILDINGS AND USES

27.72.010 CONTINUANCE OF USE.

(a) Any lawfully established use of a building or land, existing at the effective date of this title, or of amendments thereto, that does not conform to the use regulations for the district in which it is located, shall be deemed to be a legal nonconforming use and may be continued, except as otherwise provided herein.

(b) Any legal nonconforming building or structure may be continued in use provided there is no physical change other than necessary maintenance and repair, except as otherwise permitted herein.

(c) Any building for which a building permit has been lawfully granted prior to the effective date of this title, or of amendments thereto, may be completed in accordance with the approved plans; provided construction is started within sixty days of the date of the building permit and diligently prosecuted to completion. Such building shall thereafter be deemed a lawfully established building. This subsection is not intended to extend the effective time of any building permit granted pursuant to this code, or any ordinance, rule or regulation of the City. (Prior code § 144.01).

27.72.020 DISCONTINUANCE OF USE.

(a) Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, such premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.

(b) Whenever a nonconforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, such use shall not after being discontinued or abandoned be reestablished, and the use of the premises thereafter shall be in conformity with the regulations of the district.

(c) Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months constitutes abandonment, and the use of such premises shall thereafter conform with the regulations of the district and shall not thereafter be used in a nonconforming manner.

(d) A nonconforming use not authorized by the provisions of this code and amendments thereto in effect at the time this title becomes effective, shall be discontinued and not reestablished unless, pursuant to the provisions of this title, the use is conforming to the district in which it is then located. (Prior code § 144.02).

27.72.030 POWER TO ESTABLISH.

Upon application of any property owner, or by action initiated by the commission or council, premises within the City may be ascertained and established as a nonconforming use in the manner herein provided. (Prior code § 144.03).

27.72.040 CHANGE OF NONCONFORMING USE.

(a) Use of Nonconforming Building. The nonconforming use of any building, structure, or portion thereof, which is designed or intended for a use not permitted in the district in which it is located, may be changed to another nonconforming use thereof under the procedure provided for obtaining a special use permit under Chapters 27.06 through 27.12, 27.62, 27.74, 27.78 and 27.80.

(b) When any land has been devoted to a nonconforming use, permitted by this code, and the Council, after due notice and lawful hearing thereon, has found and determined that fifty percent or more replacement value of the building or buildings located thereon has become dangerous or injurious to the public health, safety or welfare, by reason of dilapidation, neglect, decay or otherwise, such use shall forthwith revert back to the classification to which it formed an exception, without further hearing or action thereon. (Prior code § 144.04).

27.72.050 TERMINATION AND REMOVAL OF NON-CONFORMING USES OF LAND.

A non-conforming use of land herein shall be terminated within such period as specified by the Council, but not less than two years nor more than five years where the Council determines that such use is especially burdensome upon the surrounding neighborhood or the community at large and that a termination within such time will not be unduly oppressive or constitute a denial of constitutionally guaranteed rights. In considering whether a particular use is of such nature, the following factors shall be considered:

(1) Whether said use causes or contributes to impairment of property values or economic stability of the surrounding area;

(2) Whether said use is inhibitive of the type of development in the surrounding contemplated by the general plan and this code;

(3) Whether said use is otherwise detrimental to the public health, safety and general welfare;

(4) The usability of the land or the improvements for purposes permitted in the applicable zoning district;

(5) The amount of hardship, if any, to the user of the land, which would be caused by such termination.

The above factors shall also be considered in the determination of the amount of time to be allowed for termination. (Ord. 1995-23, 1995; Ord. 1972-12 § 1, 1972: prior code § 144.05).

27.72.052 HEARINGS; PROCEDURE.

(a) Hearings. The planning commission and the City Council shall hold hearings pursuant hereto for the purpose of determining whether a use is especially burdensome within the meaning of Section 27.72.050 hereof and if so, the amount of time to be allowed for continuance prior to termination. The procedure herein may be initiated by any councilman, planning commissioner or by the zoning administrator.

(b) Procedure. The commission and council shall each hold at least one public hearing, notice of the nature, purpose, time and place of which shall be given to the owner and occupant of the property in question by mail at least ten days in advance of the date of hearing. Said notice shall also be published and posted in the manner prescribed in Section 27.08.090 of this code. At the time and place set for hearings the commission or council as the case may be shall proceed to hear all persons interested in the matter. In the case of the commission, its decision shall be recommendatory to the Council. The decision of the Council shall be final. (Ord. 1972-12 § 2, 1972).

27.72.060 REPAIRS—ALTERATIONS.

(a) Normal maintenance of a building or other structure containing a nonconforming use is permitted, including necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use.

(b) No structural alteration shall be made in a building or other structure containing a nonconforming use, except in the following situations:

(1) When the alteration is required by law;

(2) When the alteration will result in eliminating the nonconforming use;

(3) When a building containing residential nonconforming uses may be altered in any way to improve livability, provided no structural alteration shall be made which would increase the number of dwelling

units or the bulk of the building. (Prior code § 144.06).

27.72.070 DAMAGE—DESTRUCTION.

(a) If a building or other structure containing a nonconforming use is damaged or destroyed by any means to an extent of fifty percent or more of its replacement value at that time, as determined by the zoning administrator based upon current construction costs, the building or other structure can be rebuilt or used thereafter only for a conforming use and in compliance with the provisions of the district. In the event the damage or destruction is less than fifty percent of its replacement value, based upon prevailing construction costs, the building may then be restored to its original condition and the occupancy use of such building which existed at the time of such partial destruction may be continued. In either event, restoration or repair of the building or other structure must be started within a period of six months from the date of damage or destruction and diligently prosecuted to completion.

(b) The provisions of subsection (a) shall not apply to the following:

(1) Residential structures in residential districts;

(2) Buildings in commercial, or office districts; and

(3) Buildings in Transit Oriented Development (TOD) districts.

In the event of partial or total damage or destruction thereto, all of the above structures in the listed zones may be restored to their original size, shape, volume and condition, and the use of such structures which existed at the time the damage or destruction occurred may be continued. (Ord. 2007-3 § 3, 2007; Ord. 1985-17 § 66, 1985; Ord. 1981-27 § 1, 1981: prior code § 144.07).

27.72.080 ADDITIONS—ENLARGEMENTS.

(a) A nonconforming building may be enlarged or extended only if the entire building is thereafter devoted to a conforming use, and is made to conform to all the regulations of the district in which it is located.

(b) No building partially occupied by a nonconforming use shall be altered in such a way as to permit the enlargement or expansion of the space occupied by such nonconforming use.

(c) No nonconforming use may be enlarged or extended in such a way as to occupy any required usable open space, or any land beyond the boundaries of the zoning plot as it existed at the effective date of this title, or to displace any conforming use in the same building or on the same parcel.

(d) A building or structure which is nonconforming with respect to yards, floor area ratio, or any other element of bulk regulated by this title may be altered to expand the interior floor area but shall not increase the degree or extent of its nonconformity with respect to the bulk regulations for the district in which it is located. (Ord. 1981-27 § 52, 1981: prior code § 144.08).

27.72.090 EXEMPTED BUILDINGS, STRUCTURES AND USES.

Wherever a lawfully existing building or other structure otherwise conforms to the use regulations of this title, but is nonconforming only in the particular manner hereinafter specified, the building and use thereof shall be exempt from the requirements of Section 27.72.060:

(1) In any R district, where a building is nonconforming only as to the number of dwelling units it contains, provided no such building shall be altered in any way so as to increase the number of dwelling units therein;

(2) In any R district, where a use permitted in the C1 district occupies ground floor space within a multiple family dwelling located on a corner lot;

(3) In any C or M district, where the use is less distant from an R district than that specified in the regulations for the district in which it is located;

(4) In any district, where an established building, structure or use is nonconforming with respect to the standards prescribed in this chapter for any of the following:

(A) Floor area ratio,

(B) Yards, front, side, or rear,

(C) Off-street parking or loading,

(D) Lot area,

(E) Gross floor area,

(F) Garages or carports,

(G) Lot coverage. (Ord. 1995-23 § 2, 1995; Ord. 1981-27 § 53, 1981; Ord. 1970-15 § 2, 1970: prior code § 144.09).

27.72.100 CONVERSION TO SPECIAL USE.

Any nonconforming use may be made a special use by the granting of a special use permit as authorized by Chapter 27.74. (Prior code § 144.10).