



**CITY OF BEAVERTON
STAFF REPORT**

HEARING DATE: September 14, 2016

STAFF REPORT DATE: September 7, 2016

TO: Planning Commission

STAFF: Jana Fox, Associate Planner *JCF SF*

SUBJECT: **TA2016-0004 (Chapter 30 Nonconforming Use Text Amendment)**

REQUEST: The City proposes to amend the Beaverton Development Code to clarify the language in Chapter 30 (Non-Conforming Uses) and ensure process and language are up to date and consistent with other code provisions. The update affects Chapters 30 and 40 of the Development Code.

APPLICANT: City of Beaverton

APPLICABLE CRITERIA: Development Code Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

RECOMMENDATION: Staff recommend the Planning Commission review the proposal, take public testimony, deliberate on the proposal and make a recommendation to City Council.

1. Summary of Proposed Text Amendment

The text amendment proposes to clarify and update the language of Chapter 30 (Nonconforming Uses). Many of the changes are language changes for the purpose of clarity and consistency, which do not affect the substance of the text. These items are generally self-explanatory. Changes which affect the intent or process are discussed below.

30.25 Nonconforming Uses – The current code differentiates between ‘Nonconforming Uses of Land’ and ‘Nonconforming Uses of Structures.’ The provisions of both sections are primarily the same. After reviewing both sections, staff found that it made sense to combine the ‘Nonconforming Uses of Land’ and ‘Nonconforming Uses of Structures’ section into one ‘Nonconforming Uses’ section for clarity, since a nonconforming use could occupy both land and structure. Any text unique to one section was added to the combined section to ensure that the requirements were not lost in combining the two

sections. Staff finds that the combined section will make for easier interpretation and implementation of the code.

30.25.2. Means of Establishing Nonconforming Status – Staff included this new section to provide guidance to those trying to show legal nonconforming status. The items identified are ways to potentially show legal nonconforming status and continuation of use; however they do not preclude other means of showing nonconforming status.

30.25.3. & 30.30.2 Government Agency Action – In reviewing this section of code, staff found that the current code does not provide a clear process for addressing uses made nonconforming by governmental action. The current code calls for review by the Facilities Review Committee and potentially the Planning Commission but does not identify an appropriate land use application or process. In reviewing the existing applications in the development code, staff found that the Conditional Use application was most applicable to nonconforming uses. Staff will discuss the proposed new land use application (Modification of a Nonconforming Use) in Chapter 40 later in this section.

30.30.3. Setback Reductions for Nonconforming Structures – Adding a clarifying items regarding nonconforming setbacks created by required public dedications. The section clarifies that additional setback encroachment beyond what is required by the dedication is not permitted.

30.35 Nonconforming Use of Structure – Removal of this section as it has been combined with Nonconforming Use of Land to create the Nonconforming Use section. See above description of 20.25 Nonconforming Use.

30.45 Other Nonconforming Characteristics of Use – Addition of reference to nonconforming sign provisions in Section 60.40 of the Development Code to advise applicants of the additional provisions related to signs.

30.60 Historical Land Uses – After reviewing the historical uses of land section, staff and the city attorney determined that the provisions of these sections can be covered by the nonconforming uses section. To staff's knowledge, this section of the code has never been used. It does not provide a way to determine a historical use. If a use is nonconforming, this section contradicts the intent of the ordinance to bring uses into conformance over time by allowing certain uses to be exempt from nonconforming use standards. Historical structures, identified on local, state and/or federal registries have their own application processes identified under Section 40.35 Historic Review.

40.15.15.5. Modification of a Nonconforming Use – Inclusion of a new sub-type of Conditional Use application, Modification of a Nonconforming Use for situations where a nonconforming use is proposed to be modified, moved or reconstructed when adversely impacted or made nonconforming by a governmental agency action. Staff reviewed the Development Code for appropriate land use applications in which to place an additional threshold, but due to the unique nature of nonconforming uses, a new sub-type of Conditional Use application was deemed most appropriate to address the need for a

formalized process consistent with Chapter 30. The Modification of a Nonconforming Use addresses necessary modifications to nonconforming uses or structures impacted by government actions. Given the limited discretionary nature of the approval criteria for a Modification of a Nonconforming Use, the new application is proposed as a Type 2 application with review by the Director and appeal to the Planning Commission. The approval criteria for the Modification of a Nonconforming Use are consistent with the provisions in Chapter 30 for uses adversely impacted or destroyed as a result of government action, such as eminent domain or right-of-way dedication for public purposes.

2. Public Comment

Public notice was provided consistent with Section 50.50 of the Development Code. No public testimony has been received.

3. Facts and Findings

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA2016-0004 (Chapter 30 Nonconforming Use Text Amendment):

Development Code Approval Criteria

1. The proposal satisfies the threshold requirements for a Text Amendment application.

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA2016-0004 proposes to make changes to chapters 30 and 40 of the Development Code, as shown in Exhibits 1.1 and 1.2. Therefore, staff find that approval criterion one has been met.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Planning Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

Metro's Urban Growth Management Functional Plan (UGMFP) is the document that defines how local governments are to implement the Metro Regional Goals and Objectives. The UGMFP is comprised of the following titles:

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy (Repealed and moved to Title 4 of the Regional Transportation Functional Plan (RTFP))
- Title 3: Water Quality and Flood Management
- Title 4: Industrial and Other Employment Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Centers, Corridors, Station Communities and Main Streets
- Title 7: Housing Choice
- Title 8: Compliance Procedures
- Title 9: Performance Measures (Repealed)
- Title 10: Functional Plan Definitions
- Title 11: Planning for New Urban Areas
- Title 12: Protection of Residential Neighborhoods
- Title 13: Nature in Neighborhoods
- Title 14: Urban Growth Boundary

The City is required to bring its land use regulations into conformance with the UGMFP. The Development Code has been amended to incorporate several Policies of the UGMFP. This proposed text amendment does not conflict with the UGMFP.

No new land uses are proposed, the intent of the adoption is to clarify the language related to nonconforming uses and to align procedures in the Development Code. No substantive changes are proposed which would conflict with the UGMFP. Therefore, staff find that approval criterion three has been met.

4. *The proposed text amendment is consistent with the City's Comprehensive Plan.*

The Comprehensive Plan does not directly address nonconforming uses, however Chapter 30 is intended to bring nonconforming uses into conformance with the requirements of the Development Code which is the implementing tool of the Comprehensive Plan. The proposed amendments to Chapter 30 bring the nonconforming use text into alignment with other provisions of the Development Code.

Comprehensive Plan Compliance Summary: Therefore, staff find that the proposed amendment complies with all applicable Comprehensive Plan policies and is consistent with the City's Comprehensive Plan and that approval criterion four has been met.

5. *The proposed text amendment is consistent with other provisions within the City's Development Code.*

Staff proposes to modify Chapter 30 and Chapter 40 of the development code to update the Development Code provisions and processes related to nonconforming uses. The

proposal brings the nonconforming use section of the Development Code (Chapter 30) into conformance with the rest of the Development Code. The addition of a threshold for Conditional Use permits allows nonconforming uses to be addressed in a process consistent with other portions of the Development Code. The proposed amendments do not create conflicts with other provisions of the Development Code. Therefore, staff find that the approval criterion has been met.

6. *The proposed amendment is consistent with all applicable City ordinance requirements and regulations.*

Staff has not identified any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendment. Therefore, staff find that approval criterion six has been met.

7. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

Other applicable approval criteria

As a post-acknowledgement amendment to the City's Development Code, the proposed text amendment is subject to ORS 197.175(1), which requires that the City demonstrate that the proposed text amendment be consistent with the relevant Statewide Planning Goals. Staff have determined that the following goals apply:

Goal 1 Goal 2

Goal 1 Citizen Involvement To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Staff find that the City has provided adequate notice and opportunity for public involvement for the proposed text amendment and public hearing.

Goal 2 Land Use Planning To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Staff find that the proposed text amendment fits within the established process and framework. Furthermore, the findings contained within this report establish an adequate factual basis for the proposal.

State Land Use Goal Compliance Summary: Therefore, staff find that the proposed text amendment complies with all of the applicable State Planning Goals.

4. Conclusions

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7.

5. Staff Recommendation(s)

Staff offers the following recommendation for the conduct of the September 14, 2016 public hearing for TA2016-0004 (Chapter 30 Nonconforming Use Text Amendment):

- A. Conduct the public hearing and receive all public testimony relating to the proposal.
- B. Considering the public testimony and the facts and findings presented in the staff report, deliberate on policy issues and other issues identified by the Commission or the public.
- C. Recommend **APPROVAL** of text amendment application TA2016-0004 (Chapter 30 Nonconforming Use Text Amendment) to the City Council.

6. Exhibits

- Exhibit 1.1 Chapter 30 Proposed Text
- Exhibit 1.2 Chapter 40 Proposed Text
- Exhibit 1.3 Chapter 30 Proposed Text-Clean Copy

CHAPTER 30 - NONCONFORMING USES

30.05. Purpose.

1. Within the districts established by this ordinance or amendments that may later be adopted there ~~may exist~~ are lots, structures, uses of land and structures, and characteristics of uses ~~which that~~ were lawful ~~before the effective date of this ordinance~~ when established, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district except as specifically provided elsewhere in this ordinance.
2. Nonconforming uses are declared by this ordinance to be incompatible with Permitted uses in the district involved.

30.10. Pending Building Permits and Certain Existing or Approved Nonconforming Uses.

1. In order to avoid undue hardship, nothing in this ordinance shall require any change in the location, plans, construction, size, or designated use of any building, structure or part thereof, for which there exists a vested right to continue the development notwithstanding the enactment or amendment of this ordinance; for which a required City building permit ~~has been was~~ granted prior to the enactment or amendment of this ordinance, or ~~which~~ was lawfully permitted at the time the required building permit was issued, or and for which the required building permit ~~has been was~~ issued within an area annexed to the City prior to annexation thereof. If a building permit is revoked or for any reason becomes void, all rights granted by this subsection are extinguished and the project shall thereafter be required to conform to all the provisions of this ordinance.
2. The City Council may, by resolution duly passed prior to the effective date of this ordinance, establish certain classes of development which, notwithstanding the fact that building permits had not been issued prior to the effective date of this ordinance, shall be treated for the purpose of Section 30.10.1. as if such permit had been issued.

3. A lawful use ~~which that~~ would have been allowed pursuant to a master site plan or other development plan approved prior to the effective date of this ordinance by the ~~Board of Design Review~~, Planning Commission or City Council, which has become a nonconforming use by this ordinance, or any other lawfully established use which has become nonconforming ~~prior to or~~ as a result of ~~adoption amendment~~ of this ordinance, may be allowed, completed, or altered, as the case may be, as a Conditional Use, notwithstanding its nonconforming character, pursuant to the provisions stated below and the provisions and procedures of Section 40.15., except Sections 40.15.15.1.C., .2.C., and .3.C., as now or hereafter constituted. [ORD 4071; November 1999] [ORD 4584; June 2012]

Nonconforming uses are not favored by the City and therefore, the application for a Conditional Use permit pursuant to this section may be denied as inappropriate under the circumstances. In order for it to be granted, the Planning Commission or, upon review or appeal, the City Council shall make special findings of fact, in lieu of those required under Section 40.15.15.1.C., .2.C., and .3.C., herein, to support the following conclusions: [ORD 4584; June 2012]

- A. That the location, size, design and functional characteristics of the nonconforming use are such that it will be reasonably compatible with and not have a significant impact upon the livability of and development of other properties in the surrounding area, nor will it be significantly offensive or disruptive to residents or other persons acting pursuant to a conforming use allowed by this ordinance.
- B. That the nonconforming use, while not specifically permitted within the zone in which it is located, is generally consistent with the underlying general zoning classification (i.e., a residential, commercial or industrial use in corresponding Residential, Commercial or Industrial district) and is found not to be totally inconsistent with the comprehensive plan;
- C. That the allowance, completion or alteration will result in the City attaining one or more of the objectives set forth in Section 40.20.05. herein and that the benefit of meeting such objective(s) outweigh(s) any detriment of allowing or perpetuating a nonconforming use; and

- D. That the allowance, completion or alteration does not constitute an expansion or increase in activity over and above that previously approved by a master site plan, site plan or other development plan or of that existing within an established use. [ORD 3124; May 1979]

30.15. Existing Office Use and Structure Exemption. Office uses and structures existing on the effective date of this ordinance are Permitted outright and are exempt from site development requirements of Sections 20.05.15., 20.10.15., 20.15.15., and 20.20.15. that vary from the requirements in existence prior to the effective date of this ordinance. Such uses and structures are not subject to the nonconforming use and structure provisions of this ordinance (i.e. Sections 30.05. and 30.60.) and may be continued, sold or rented for other office use, reconstructed, remodeled, expanded and possess all other rights as any Permitted use in this section. Any accessory office use to a primary use permitted outright or conditionally prior to the date of this ordinance may not be expanded to replace the primary use but may become a primary use if it does not encroach into floor area used by the pre-existing primary use.

30.20. Nonconforming Lots of Record. [ORD 4584; June 2012]

1. In any district, ~~notwithstanding limitations imposed by other provisions of this ordinance,~~ Permitted Principal Uses and Structures, and accessory buildings may be erected on any single lots of record after the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership and not abut other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. Nonconforming lots of record shall be subject to all other applicable provisions of this code.

2. If two or more lots, or combinations of lots and portions of lots in single ownership are of record at the effective date of this ordinance and are made nonconforming as to lot width or area by this ordinance the lots involved shall be considered to be an undivided parcel for the purposes of this ordinance. No portion of said undivided parcel which does not meet the appropriate lot area and width requirements established by this ordinance shall be conveyed, transferred or used in any manner. No division of the parcel shall be made which leaves any lot remaining with the width or area of the lot below the requirements of this ordinance; provided, however, that if a series of two or more lots or portions of lots are in single ownership and can be used or subdivided in such a manner that each comes within 10% of meeting lot area and lot width requirements for the district, each may be used as an individual lot.
3. Except as provided in Section 20.05.50-1-B15. of this ordinance and notwithstanding the provisions of subsections 1. and 2., above, the use of a lot in any Residential district which has an area deficiency shall be limited to a single family dwelling.

30.25. Nonconforming Uses ~~of Land~~.

1. Except as provided in Section 30.10. where ~~at the time of passage of this ordinance lawful a use of land or of a structure exists which that was lawful at the time it was established, but that~~ would not be permitted by ~~the regulations imposed by~~ this ordinance ~~or subsequent amendments to this ordinance, and where such use involves no individual structure other than small or minor accessory buildings,~~ the use may be continued so long as it remains otherwise lawful, provided:
 - A. No such nonconforming use shall be enlarged, ~~or~~ increased ~~nor~~ extended to occupy a greater area of land ~~or of a structure~~ than ~~was it~~ occupied at the ~~time it became nonconforming due to the effective date of~~ adoption or amendment of this ordinance, ~~except that any nonconforming use may be extended to parts of a structure that were arranged or designed for such use prior to such adoption or amendment;~~
 - B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the ~~time it became nonconforming due to the adoption or amendment of this ordinance effective date of adoption or amendment of this ordinance;~~

- C. If any such nonconforming use of land or of a structure is discontinued ceases for any reason for a period of more than one year, any subsequent use of land shall conform to the regulations specified by requirements of this ordinance ~~for in~~ the zoning district in which where such land is located;
- D. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such a nonconforming use of land.

2. To show that a use was allowed when established, a property owner may rely on evidence such as land use applications, building, land use or development permits, zoning codes and maps. To show that a use has not been discontinued for more than one year, a property owner may rely on evidence such as utility bills; income tax records; business licenses; listings in telephone, business, or Polk directories; advertisements in dated publications; building, land use, or development permits; insurance policies; leases; and dated aerial photos.

3. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming use of land or any structure associated with that use which that would be adversely impacted or destroyed as a result of an government agency action by a governmental agency, such as where the agency takes property through the its exercise of its power of eminent domain, requires dedication of property for public purposes or limits restricts the use of property through a required by requiring a reservation of property for right-of-way purposes, may be moved to or reconstructed on the same lot and, if necessary, may be extended to an abutting lot in the same ownership in an area of land not occupied by the use on the effective date of this ordinance, provided that the use or structure does not occupy an area greater than that occupied prior to the move. Such modification of the use or structure shall be subject to Modification of a Nonconforming Use Permit review by the Facilities Review Committee, if within its established jurisdiction, the Director Planning Commission. Other required land use applications shall be requested concurrently with the Modification of a Nonconforming Use request. The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]

30.30. Nonconforming Structures.

1. Except as provided in Section 30.10., ~~where if~~ a lawful structure exists at the effective date of adoption or amendment of this ordinance, that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may ~~be continued remain~~ so long as it ~~remains is~~ otherwise lawful, subject to the following provisions:
 - A. No such nonconforming structure may be enlarged or altered in a way ~~which that~~ increases its nonconformity, but any structure or portion thereof may be altered in a way that will not change or will decrease its nonconformity;
 - B. Should such nonconforming structure ~~or nonconforming portion of structure~~ be damaged by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance;
 - C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
2. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming structure ~~which that~~ would be destroyed as a result of ~~an government agency~~ action ~~by a governmental agency such as~~ where the agency takes property through ~~the its~~ exercise of ~~its power of~~ eminent domain or requires dedication of property for public purposes, may be moved or reconstructed on the same lot, and if necessary, may be extended to an abutting lot in the same ownership provided that the resulting placement of the structure does not increase the nonconformity of the structure. Such modification ~~of the structure~~ shall be subject to Modification of a Nonconforming Use Permit review by ~~the Facilities Review Committee, if within its established jurisdiction, the Director Planning Commission. Other required land use applications shall be applied for concurrently with the Modification of a Nonconforming Use request.~~ The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]

3. Where an existing street setback must be reduced by a public dedication, rendering an existing structure nonconforming, the setback requirements of this ordinance which are no longer met as a result of the dedication shall not apply to the structure. Further encroachment into the setback beyond the reduction caused by the public dedication is not permitted.

~~30.35. Nonconforming Uses of Structures.~~

1. ~~Except as provided in Section 30.10., if a lawful use involving individual buildings or structures, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:~~
- A. ~~No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except to accommodate a changing of the use of the structure to a use permitted in the district in which it is located;~~
- B. ~~Any nonconforming use rendered nonconforming by the adoption or amendment of this ordinance may be extended throughout to any parts of a building which that were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such the use shall not be extended to occupy any land outside such the building.~~
- C. ~~If no structural alterations are made, any nonconforming use of structure and premises may be changed to another nonconforming use provided that the Planning Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accordance with the provisions of this ordinance. An appeal of the Planning Commission's decision shall be allowed in the same manner as provided in Section 50.75. [ORD 3293, November 1982].~~
- D. ~~When a nonconforming use of a structure and premises is discontinued or abandoned for one year or longer, the nonconforming use may not be reinstated, and the structure and~~

~~premises shall not thereafter be used except in conformity with the regulations of the district in which it is located.~~

~~E. Where If the structure containing a nonconforming use status applies to a structure and premises, is removed or destroyed removal or destruction of the structure shall eliminate the nonconforming use status of the land the nonconforming use may not be reinstated on the property. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50% of the replacement cost at the time of destruction.~~

~~2. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming use involving individual of a buildings or structures, or of structures and premises in combination which that would be is destroyed rendered impracticable as a result of an action by a governmental agency action, such as where the agency takes property through the its exercise of eminent domain, requires dedication of property for public purposes, or limits restricts the use of property through a required by requiring a reservation of property for right-of-way purposes, may be continued in a structure which that is moved or reconstructed in accordance with Section 30.30.2., provided that the resulting use of the structure is not enlarged or increased except under conditions allowed by Section 30.35.1.B. . Such modification of the use of a structure or premises shall be subject to New Conditional Use Permit review by the Facilities Review Committee, if within its established jurisdiction, the Planning Commission. Other required land use applications shall be applied for concurrently with the New Conditional Use request. The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]~~

30.40-35. Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, normal repairs or replacement on non-bearing walls, fixtures, wiring, or plumbing may be performed in a manner not in conflict with the other provisions of this section. However, nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

30.45.40. Uses Under Conditional Use Provisions Not Nonconforming Uses.

~~A Permitted use existing before the effective date of this ordinance that was permitted before this ordinance required a Conditional Use Permit which is permitted only upon receiving a Conditional Use Permit under the terms of this ordinance shall not be deemed a nonconforming use despite the failure to obtain a Conditional Use Permit in such district, but shall without further action be considered a conforming use.~~

30.50.45 Nonconforming Parking, Loading, Signs or Other Characteristics of Use.

If the characteristics of a use, such as signs, off-street parking, off-street loading, lighting or other matters required by this ordinance in relation to specified uses of land, water areas, structures or premises, are not in accord with the requirements of this ordinance, no change shall be made in such characteristics of use which increases nonconformity with such requirements. Change shall be permitted in the direction of conformity with such requirements. Non-conforming signs may be subject to additional conformance standards as described in Section 60.40 of the Development Code.

30.55.50 Determination of Nonconforming Status.

The property owner has the burden to show that a nonconforming use was lawfully established and that it has not been discontinued for more than one year. Determination of nonconforming status shall be processed as a Director's Interpretation. If the owner of a lot, structure or use is denied nonconforming status by the Director, the owner may appeal the Director's decision to the City Council. The appeal shall be heard in the manner set forth in Section 50.65. [ORD 4462; January 2008]

~~30.60. Historical Land Uses, Structures and Sites~~

- ~~1. The purpose of this section is to provide a means of exception from the provisions requirements of Chapter 30 for those uses, structures and sites which that existed prior to January 1, 1945 and that are found by the Planning Commission, after review as provided by this section, to possess sufficient historical significance to warrant such an exception. Such Uses, structures and sites gaining the status provided by this section shall be identified as historical uses.~~

~~2. The Planning Commission shall review and make decisions and recommendations on all applications for the historical status of historical use made pursuant to this section. Prior to considering any application for historical status, the Planning Commission shall meet for the purpose of developing and adopting the standards to be used in evaluating all applications.~~

~~3. The Planning Commission shall develop the standards to be used in making the determinations regarding historical uses, structures and sites. The Planning Commission may develop different standards for uses, structures or sites each. Prior to the implementation of any standards they shall be approved by formal action of the Council. The Council may revise, delete or supplement any standards developed by the Planning Commission.~~

~~The purpose of the standards is to shall provide a set of criteria articulating those characteristics which that the Planning Commission deems necessary to be possessed by characterized as a historical use. Such standards may include, but are need not be limited to items dealing with characteristics such as past ownership, occurrence of significant historical events, architectural style, location, impact upon the historical development of the neighborhood areas as a whole or of any group, association or business and other similar considerations. [ORD 3123; July, 1979]~~

~~4. Application shall be made on a form supplied by the Planning Director and shall be accompanied by the appropriate application fee. Application may be made by the property owner, the Mayor, or any resident, or In addition, the Planning Commission may initiate an application on its own motion. If a person other than the property owner makes the application, the property owner shall be notified in writing of the application, informed of the nature of this process, and, informed of his right to fully participate in all aspects of the processing and hearings of the application.~~

~~5. A report shall be prepared by the City staff. The form of the report shall be determined by the Planning Commission. Upon completion of the report, the application shall be agendaed scheduled for a hearing before the Planning Commission and copies of the report shall be sent to the applicant and the property owner.~~

- ~~6. A hearing shall be held before the Planning Commission on each application unless prior to the time of the hearing, the applicant withdraws his the application. Notice of the hearing shall be given consistent with Section 50.45 of the Development Code. Notice of the time, date, place and nature of the hearing shall be sent by mail to the applicant and property owner. Notice of the Planning Commission's agenda for every meeting, a brief description of each item on the agenda and the nature of the Planning Commission's jurisdiction and powers in the matters shall be published once a week for the two weeks immediately preceding the date of the Planning Commission's meeting. However, no date of publication shall be less than three days prior to the date of the meeting. Additional notice may be made given if as the Planning Commission may determinewishes.~~
- ~~7. A. The Planning Commission shall evaluate each application to determine whether the request satisfies the applicable criteria and standards established by the Commission applicable to such request. The Planning Commission shall make findings of fact to support the conclusions drawn in each case. The Commission and may attach impose only those conditions to an of approval that which are reasonably conceived to ensure that the intent and purpose and intent of this section are not violated met. A decision to approve a request must state with specificity from which provision of Chapter 30 the use, structure or site is exempt. [ORD 4584; June 2012]~~
- ~~B. If the Planning Commission's decision is for approval, approves an application, a report of the Commission's decision and its recommendation the approval and findings of fact shall be forwarded to the City Council. If the Planning Commission's decision is for denial denies an application, a statement of that decision the denial and findings of fact shall be in writing shall be sent to the applicant within 21 calendar days of the date of the Commission's decision. Only Tthe applicant or the property owner only may appeal a decision of denial to the City Council; a notice of such appeal must be filed within ten (10) days of the date of the Planning Commission's decision. The Council may hear the appeal on the record made before the Planning Commission or may hear the matter de novo.~~
- ~~8. A. The Council may adopt, modify or reject any recommendation or decision of the Planning Commission. It may also remand any matter back to the Planning Commission for further consideration. The Council's decision shall be in writing and shall~~

~~include findings of fact to support the conclusions drawn in each case.~~

- ~~B. Notice of any hearing by the Council of a Planning Commission recommendation or decision shall be sent by regular mail in the manner provided by Section 50.75. The notice shall be substantially the same as that required to be mailed in Section 30.60.6. [ORD 3293; November, 1982]~~
- ~~C. Upon approval of an application by the Council the suffix (HU) shall attach to the zone designation for the property and such a notation shall be made on the City zoning map. A record of each decision shall be maintained retained and made available to the public on request.~~
- ~~D. The effect of the approval is to exempts the historical use, structure or site from certain those restrictive provisions of Chapter 30 as specifically stated identified in the approval.~~
- ~~9. Like any other land use approval, historical The status of historical use once established attaches to the use, structure or site specified in an approval and is not personal in nature. A change in that is, ownership of the use, a site or structure or site may be changed, will not void its historical status, and an approved historical use may be continued by the subsequent owner, nor is it transferable to a different location.~~
- ~~10. The Historical status may be lost by violating any term or condition of the decision granting the status, by making a substantial change in the historical use from that as it which existed at the time of gaining the status, historical status approval or by the total destruction of structures possessing the status. Loss of historical the status shall immediately cause the exemption from the provisions of Chapter 30 to cease, and any subsequent development or use shall be in conformance with the terms of this ordinance.~~

40.15. CONDITIONAL USE

40.15.15. Application.

5. Modification of a Nonconforming Use.

A. Threshold. An application for a Modification of a Nonconforming Use shall be required when one or more of the following thresholds apply:

1. The proposal includes the modification, movement, or reconstruction of a nonconforming use or nonconforming structure which was adversely impacted or made nonconforming by a governmental agency action.

B. Procedure Type. The Type 2 procedure, as described in Section 50.40. of this Code, shall apply to an application for Modification of a Nonconforming Use. The decision making authority is the Director.

C. Approval Criteria. In order to approve a Modification of a Nonconforming Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Modification of a Nonconforming Use application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.

3. The structure or use proposed to be modified, moved, or reconstructed is a lawful nonconforming structure or use of land that was made nonconforming by a governmental agency action, as identified in Section 30.25.3 or Section 30.30.2 of the Development Code.

4. The structure or use is adversely impacted or destroyed as a result of a governmental agency action.

5. The reconstructed or relocated use does not occupy an area greater than that occupied prior to the relocation.

6. This Modification of a Nonconforming Use application was made prior to the adverse impact or destruction of the use or structure.

7. The reconstructed or relocated use is on the same property or an abutting property under the same ownership.

8. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

D. Submission Requirements. An application for a Modification of a Nonconforming Use shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Modification of a Nonconforming Use application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness), and any other information identified through a Pre-Application Conference.

E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Modification of a Nonconforming Use application to ensure compliance with the approval criteria.

F. Appeal of a Decision. Refer to Section 50.60.

G. Expiration of a Decision. Refer to Section 50.90.

H. Extension of a Decision. Refer to Section 50.93.

CHAPTER 30 - NONCONFORMING USES

30.05. Purpose.

1. Within the districts established by this ordinance or amendments that may later be adopted there are lots, structures, uses of land and structures, and characteristics of uses that were lawful when established, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district except as specifically provided elsewhere in this ordinance.
2. Nonconforming uses are declared by this ordinance to be incompatible with Permitted uses in the district involved.

30.10. Pending Building Permits and Certain Existing or Approved Nonconforming Uses.

1. In order to avoid undue hardship, nothing in this ordinance shall require any change in the location, plans, construction, size, or designated use of any building, structure or part thereof, for which there exists a vested right to continue the development notwithstanding the enactment or amendment of this ordinance; for which a required City building permit was granted prior to the enactment or amendment of this ordinance, or was lawfully permitted at the time the required building permit was issued, or for which the required building permit was issued within an area annexed to the City prior to annexation thereof. If a building permit is revoked or for any reason becomes void, all rights granted by this subsection are extinguished and the project shall thereafter be required to conform to all the provisions of this ordinance.
2. The City Council may, by resolution duly passed prior to the effective date of this ordinance, establish certain classes of development which, notwithstanding the fact that building permits had not been issued prior to the effective date of this ordinance, shall be treated for the purpose of Section 30.10.1. as if such permit had been issued.

3. A lawful use that would have been allowed pursuant to a master site plan or other development plan approved prior to the effective date of this ordinance by the Planning Commission or City Council, which has become a nonconforming use by this ordinance, or any other lawfully established use which has become nonconforming as a result of amendment of this ordinance, may be allowed, completed, or altered, as the case may be, as a Conditional Use, notwithstanding its nonconforming character, pursuant to the provisions stated below and the provisions and procedures of Section 40.15., except Sections 40.15.15.1.C, .2.C., and .3.C., as now or hereafter constituted. [ORD 4071; November 1999] [ORD 4584; June 2012]

Nonconforming uses are not favored by the City and therefore, the application for a Conditional Use permit pursuant to this section may be denied as inappropriate under the circumstances. In order for it to be granted, the Planning Commission or, upon review or appeal, the City Council shall make special findings of fact, in lieu of those required under Section 40.15.15.1.C., .2.C., and .3.C., herein, to support the following conclusions: [ORD 4584; June 2012]

- A. That the location, size, design and functional characteristics of the nonconforming use are such that it will be reasonably compatible with and not have a significant impact upon the livability of and development of other properties in the surrounding area, nor will it be significantly offensive or disruptive to residents or other persons acting pursuant to a conforming use allowed by this ordinance.
- B. That the nonconforming use, while not specifically permitted within the zone in which it is located, is generally consistent with the underlying general zoning classification (i.e., a residential, commercial or industrial use in corresponding Residential, Commercial or Industrial district) and is found not to be totally inconsistent with the comprehensive plan;
- C. That the allowance, completion or alteration will result in the City attaining one or more of the objectives set forth in Section 40.20.05. herein and that the benefit of meeting such objective(s) outweigh(s) any detriment of allowing or perpetuating a nonconforming use; and

- D. That the allowance, completion or alteration does not constitute an expansion or increase in activity over and above that previously approved by a master site plan, site plan or other development plan or of that existing within an established use. [ORD 3124; May 1979]

30.15. Existing Office Use and Structure Exemption. Office uses and structures existing on the effective date of this ordinance are Permitted outright and are exempt from site development requirements of Sections 20.05.15., 20.10.15., 20.15.15., and 20.20.15. that vary from the requirements in existence prior to the effective date of this ordinance. Such uses and structures are not subject to the nonconforming use and structure provisions of this ordinance (i.e. Sections 30.05. and 30.60.) and may be continued, sold or rented for other office use, reconstructed, remodeled, expanded and possess all other rights as any Permitted use in this section. Any accessory office use to a primary use permitted outright or conditionally prior to the date of this ordinance may not be expanded to replace the primary use but may become a primary use if it does not encroach into floor area used by the pre-existing primary use.

30.20. Nonconforming Lots of Record. [ORD 4584; June 2012]

1. In any district, Permitted Principal Uses and Structures, and accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership and not abut other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. Nonconforming lots of record shall be subject to all other applicable provisions of this code.

2. If two or more lots, or combinations of lots and portions of lots in single ownership are of record at the effective date of this ordinance and are made nonconforming as to lot width or area by this ordinance the lots involved shall be considered to be an undivided parcel for the purposes of this ordinance. No portion of said undivided parcel which does not meet the appropriate lot area and width requirements established by this ordinance shall be conveyed, transferred or used in any manner. No division of the parcel shall be made which leaves any lot remaining with the width or area of the lot below the requirements of this ordinance; provided, however, that if a series of two or more lots or portions of lots are in single ownership and can be used or subdivided in such a manner that each comes within 10% of meeting lot area and lot width requirements for the district, each may be used as an individual lot.
3. Except as provided in Section 20.05.15 of this ordinance and notwithstanding the provisions of subsections 1. and 2., above, the use of a lot in any Residential district which has an area deficiency shall be limited to a single family dwelling.

30.25. Nonconforming Uses.

1. Except as provided in Section 30.10. where a use of land or of a structure exists that was lawful at the time it was established, but that would not be permitted by this ordinance or subsequent amendments to this ordinance, the use may be continued so long as it remains otherwise lawful, provided:
 - A. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land or of a structure than it occupied at the time it became nonconforming due to the adoption or amendment of this ordinance, except that any nonconforming use may be extended to parts of a structure that were arranged or designed for such use prior to such adoption or amendment;
 - B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the time it became nonconforming due to the adoption or amendment of this ordinance;
 - C. If any such nonconforming use of land or of a structure is discontinued for any reason for a period of more than one year,

any subsequent use of land shall conform to requirements of this ordinance in the zoning district where such land is located;

- D. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with a nonconforming use of land.
2. To show that a use was allowed when established, a property owner may rely on evidence such as land use applications, building, land use or development permits, zoning codes and maps. To show that a use has not been discontinued for more than one year, a property owner may rely on evidence such as utility bills; income tax records; business licenses; listings in telephone, business, or Polk directories; advertisements in dated publications; building, land use, or development permits; insurance policies; leases; and dated aerial photos.
3. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming use of land or any structure associated with that use that would be adversely impacted or destroyed as a result of a government agency action, such as where the agency takes property through its exercise of eminent domain, requires dedication of property for public purposes or restricts the use of property by requiring a reservation of property for right-of-way purposes, may be moved to or reconstructed on the same lot and, if necessary, may be extended to an abutting lot in the same ownership, provided that the use or structure does not occupy an area greater than that occupied prior to the move. Such modification of the use or structure shall be subject to Modification of a Nonconforming Use Permit review by the Director. Other required land use applications shall be requested concurrently with the Modification of a Nonconforming Use request. The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]

30.30. Nonconforming Structures.

1. Except as provided in Section 30.10., if a lawful structure exists at the effective date of adoption or amendment of this ordinance, that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may remain so long as it is otherwise lawful, subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered in a way that will not change or will decrease its nonconformity;
 - B. Should such nonconforming structure be damaged by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance;
 - C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
2. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming structure that would be destroyed as a result of a government agency action such as where the agency takes property through its exercise of eminent domain or requires dedication of property for public purposes, may be moved or reconstructed on the same lot, and if necessary, may be extended to an abutting lot in the same ownership provided that the resulting placement of the structure does not increase the nonconformity of the structure. Such modification of the structure shall be subject to Modification of a Nonconforming Use Permit review by the Director. Other required land use applications shall be applied for concurrently with the Modification of a Nonconforming Use request, The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]
3. Where an existing street setback must be reduced by a public dedication, rendering an existing structure nonconforming, the setback requirements of this ordinance which are no longer met as a result of the dedication shall not apply to the structure. Further encroachment into the setback beyond the reduction caused by the public dedication is not permitted.

30.35. Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, normal repairs or replacement on non-bearing walls, fixtures, wiring, or plumbing may be performed in a manner not in conflict with the other provisions of this section. However, nothing in

this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

30.40. Uses Under Conditional Use Provisions Not Nonconforming Uses.

A use that was permitted before this ordinance required a Conditional Use Permit shall not be deemed a nonconforming use despite the failure to obtain a Conditional Use Permit, but shall without further action be considered a conforming use.

30.45. Nonconforming Parking, Loading, Signs or Other Characteristics of Use.

If the characteristics of a use, such as signs, off-street parking, off-street loading, lighting or other matters required by this ordinance in relation to specified uses of land, water areas, structures or premises, are not in accord with the requirements of this ordinance, no change shall be made in such characteristics of use which increases nonconformity with such requirements. Change shall be permitted in the direction of conformity with such requirements. Non-conforming signs may be subject to additional conformance standards as described in Section 60.40 of the Development Code.

30.50. Determination of Nonconforming Status.

Determination of nonconforming status shall be processed as a Director's Interpretation. If the owner of a lot, structure or use is denied nonconforming status by the Director, the owner may appeal the Director's decision to the City Council. The appeal shall be heard in the manner set forth in Section 50.65. [ORD 4462; January 2008]