

**Article 35 Nonconforming Uses and Structures (City-wide)**

**Sections:**

- 3501 Purpose
- 3502 Nonconformity Resulting from Reclassification, Change of Ordinance or Annexation
- 3503 Determination of Nonconformity
- 3504 Nonconforming Use of Land When No Structure Is Involved
- 3505 Abatement Period of Nonconformity
- 3506 Exception of Mobile Home Parks
- 3507 Abatement of Nonconforming Use of a Conforming Building
- 3508 Abatement of Nonconforming Buildings or Structures
- 3509 Termination of Nonconforming Status
- 3510 Reconstruction of Nonconforming Building Partially or Totally Destroyed
- 3511 Commission to Determine Conditions of Abatement
- 3512 Hearing, Notice
- 3513 Hearing, Evidence
- 3514 Hearing, Decision
- 3515 Decision, Notice to Owner
- 3516 Appeal
- 3517 Recordation

**3501 Purpose**

The purpose of this Article is to establish procedures for the continuance or abatement of existing uses and structures that do not conform to the provisions of the Zoning Ordinance, and which may be detrimental to the orderly development of the City and adverse to the general welfare of persons and property.

**3502 Nonconformity Resulting from Reclassification, Change of Ordinance or Annexation**

Uses, buildings, structures or lots that become nonconforming due to reclassification, ordinance changes, or annexations may be continued subject to the provisions of this Article.

**3503 Determination of Nonconformity**

In order to legally continue a use or structural aspect of a building, structure or improvement that is not consistent with the zoning standards of this Ordinance, the person claiming a legal nonconforming use or structural nonconformity has the burden of proof to establish that the use or structural feature qualifies in accordance with the provisions of this Article.

The City Planner shall determine the nonconformity of any use, building, structure, or lot. Any use, building, structure, or lot found to be inconsistent with the provisions of the Zoning Ordinance shall be deemed to be nonconforming except that any building, structure or lot which, by reason of height, area or yard requirements is conforming prior to the

effective date of this Zoning Ordinance or any amendment thereto, shall be deemed to be conforming, provided further that any additions, alterations or changes shall conform to all provisions of the Zoning Ordinance.

**3504 Nonconforming Use of Land When No Structure Is Involved**

In any district, the nonconforming use of land wherein no structure is involved shall be abated within one year from the date this ordinance becomes effective, and any future use of such land shall conform to the provisions of this ordinance. If the nonconforming use of land existing at the time this ordinance takes effect is thereafter discontinued for six months or more, any future use of such land shall conform to the provisions of this ordinance.

**3505 Abatement Period of Nonconformity**

Uses, buildings, or structures determined to be nonconforming shall be abated within the time limits specified by the Planning Commission, Harbor Board of Directors or Community Development Commission. Such abatement period shall not be less than three years nor longer than 25 years from the date of determination of nonconformity.

**3506 Exception of Mobile Home Parks**

Parking areas for recreation facilities in mobile home parks shall be brought into conformance with Article 31, Section 3107, within the time limits established by the Planning Commission, Harbor Board of Directors or Community Development Commission. Such abatement period shall not be less than one year.

**3507 Abatement of Nonconforming Use of a Conforming Building**

Nonconforming uses of a conforming building or structure shall be discontinued within the time limits specified by the Planning Commission, Harbor Board of Directors or Community Development Commission, but shall not exceed the following maximum time limits:

A. R districts: 5 years;

B. C districts: 10 years;

C. I districts: 10 years.

**3508 Abatement of Nonconforming Buildings or Structures**

The abatement period of nonconforming buildings or structures in any district shall be established by the Planning Commission, Harbor Board of Directors or Community Development Commission provided that the maximum time limit for abatement of any nonconforming structure shall not exceed 25 years.

### **3509 Termination of Nonconforming Status**

A nonconforming use or structure shall conform to the regulations of the district in which such property is located when one or more of the following events occur:

- A. Unless otherwise provided in the article, a nonconforming use which remains inactive for 180 consecutive days, shall be deemed to have ceased, and shall not thereafter be renewed (provision applicable citywide).
- B. If a nonconforming use or structural nonconformity is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this Ordinance, then, in addition to any other consequences imposed by this Ordinance, any entitlement to thereafter maintain the nonconformity is terminated (provision applicable to non-coastal zone properties).
- C. A change, expansion, enlargement or intensification of any use or the addition of a new use of the property not specifically named or described in the resolution establishing an abatement period (provision applicable to coastal zone properties).
- D. A nonconforming use or structure shall conform to the regulations of the district in which the property is located upon expiration of the period of time provided in a resolution establishing an abatement period (provision applicable citywide).

If a nonconforming, legally conducted use is changed to a use that conforms to or is more consistent with the regulations of this Ordinance, then any entitlement to maintain the nonconforming use is modified in that same degree.

### **3510 Reconstruction of Nonconforming Building Partially or Totally Destroyed**

A nonconforming building destroyed to the extent of no more than 50 percent of its replacement value at the time of its destruction by fire, explosion or other casualty or Act of God, or the public enemy, may be restored and the occupancy or use of such building or part thereof which existed at the time of such partial destruction may be continued subject to all other provisions of this Article.

In addition, the following regulations shall apply for the following buildings:

- A. Multifamily Residential Buildings: Nothing in this section shall prohibit the right to reconstruct, restore or rebuild a multifamily dwelling unit that is damaged or destroyed by fire, or other catastrophic event, or the public enemy as provided in Government Code Section 65852.25, unless the City Planner makes one of the findings in Government Code Section 65852.25(b).
- B. Commercial Buildings in the Townsite and South Oceanside Neighborhood: A nonconforming commercial building located within a commercial zoning district within the Townsite and South Oceanside Neighborhood, destroyed to an extent of more than fifty percent (50%) of its replacement value at the time of its destruction by fire, explosion, or Act of God, or the public enemy, may be restored to its original

density, height, and configuration which existed at the time of such destruction, subject to all other provisions of Article 35 and providing that there is no reduction to the amount of off-street parking which had existed on site prior to such destruction.

The use of the rebuilt building shall be subject to current zoning at the time of the destruction. Existing uses operating under a use permit which is in compliance with existing zoning shall not be required to obtain a new use permit.

Exterior appearance and facade plans for nonconforming commercial buildings destroyed to an extent beyond 50%, shall be subject to approval by the Planning Commission.

### **3511 Commission to Determine Conditions of Abatement**

When a determination of nonconformity has been made by the City Planner, he shall schedule a public hearing by the Planning Commission, Harbor Board of Directors or Community Development Commission to establish the conditions of abatement and the abatement period.

### **3512 Hearing, Notice**

Notice of said hearing shall be given as required by Article 45.

### **3513 Hearing, Evidence**

The Commission shall consider at the public hearing all pertinent data to enable it to arrive at an equitable abatement period which will protect the public welfare, yet will allow the owner of record, or lessee if there be such, to amortize his investment so that any loss will be minimized. Said owner or lessee shall be allowed to present such evidence as he may possess and which may relate to the case. The Commission shall take into consideration any structural alterations or enlargements, or the installation of major equipment designed into the building prior to the date of nonconformity when setting the abatement period.

### **3514 Hearing, Decision**

After the close of the public hearing, the Planning Commission, Harbor Board of Directors or Community Development Commission, as the case may be, shall determine and establish by resolution the abatement period, and shall set forth in said resolution all findings and facts upon which the date of such abatement is based.

### **3515 Decision, Notice to Owner**

The Secretary of the Planning Commission, Harbor Board of Directors or Community Development Commission, as the case may be, shall formally notify the owner of such nonconforming property of the decision-making body's action by mailing to such owner a copy of the resolution not later than 10 days following the date of its adoption.

**3516 Appeal**

The above action shall be final unless an appeal is filed in accord with the procedure provided in Article 46 of this ordinance.

**3517 Recordation**

The Secretary of the Planning Commission, Harbor Board of Directors or Community Development Commission, as the case may be, shall transmit a copy of the final resolution to the County Recorder of San Diego for recordation.