

---

## SUBCHAPTER 153.200 – NONCONFORMING BUILDINGS, STRUCTURES, AND USES



### **Section      Contents:**

§153.200.010	Application
§153.200.020	Definition
§153.200.030	Continuation of Nonconforming Uses, Buildings and Structures
§153.200.040	Nonconformity
§153.200.050	Abandonment, Change or Increase in Use
§153.200.060	Expiration of Time
§153.200.070	Orders of Abatement
§153.200.080	Appeals from Decision of Director
§153.200.090	Appeals from Commission Decisions
§153.200.100	Notice of Decision
§153.200.110	Effective Date of Notice
§153.200.120	Perfecting Appeals
§153.200.130	Conduct of Hearings
§153.200.140	Repair; Maintenance
§153.200.150	Eminent Domain; Public Acquisition
§153.200.160	Permitted Repair and/or Maintenance of Nonconforming Buildings and Structures
§153.200.170	Effect of Work
§153.200.180	Exemptions and Exceptions
§153.200.190	Minor Additions to Dwellings in R-1 Zone
§153.200.200	Consistency with General Plan Required

### **§ 153.200.010 – Application**

Except as otherwise set forth in this subchapter, the regulations set out in this subchapter shall apply to each nonconforming use, building or structure located in the city.

### **§ 153.200.020 – Definition**

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**OWNER.** The owner or owners of the fee interest in the property to which an order relates, and the trustee and owner or owners of any beneficial interest under a trust deed relating to such property, and a tenant under a written recorded lease, as such interests are shown by a title search conducted by a qualified title company.

### § 153.200.030 – Continuation of Nonconforming Uses, Buildings and Structures

Each and every nonconforming use, building or structure may be continuously utilized and maintained, subject to the provisions of this subchapter; provided, that no alteration, addition or enlargement as to any such use, building or structure shall be permitted, except as otherwise expressly provided in this subchapter.

### § 153.200.040 – Nonconformity

**A. Limitation on other uses.** Except otherwise as expressly provided in this subchapter, so long as a nonconforming use, building or structure exists upon any lot, no new use, building or structure may be established, located or constructed on such lot.

**B. Change of use.**

1. **General.** Except as otherwise expressly prohibited in this chapter, a nonconforming use may be replaced by another nonconforming use; provided such new nonconforming use does not result in an expansion or enlargement of the degree or intensity of nonconformity. A determination of the Director made pursuant to this division shall be subject to review as provided in § 153.621.
2. **Commercial and industrial zones.** Where a use located on any lot classified in any zone, other than a residential zone, is nonconforming by reason of a lack of off-street parking facilities, that use may be succeeded by another use, subject to the provisions of division (A) above; provided that the new use does not require, pursuant to the provisions of this chapter, off-street parking facilities in excess of that required for the replaced use.
3. **F-C and I-C Zones.** Any use located on a lot classified in an F-C or I-C zone, which was lawfully established prior to July 14, 1986, which use became nonconforming as a result of the reclassification of the lot upon which located to the F-C or I-C zones, may be replaced with any use which is a principal use expressly allowed as such in the I-C zone, provided there is no expansion of the use, building or structure.

### § 153.200.050 – Abandonment, Change or Increase in Use

Whenever any of the following facts are found to exist with reference to a nonconforming use, building or structure, the same shall be forthwith abated and usage thereof shall be terminated:

- A. Abandonment.** Abandonment or termination of the usage of a nonconforming use, building or structure: there shall exist a rebuttable presumption of an intent by the owner thereof to permanently abandon the nonconforming status thereof, whenever the utilization of a nonconforming use, building or structure has been discontinued, for any reason, for a period of 6 consecutive months or more.
- B. Change in use.**
1. A change from a nonconforming use to another nonconforming use, except as expressly provided in this subchapter; and
  2. A change from a nonconforming use to a conforming use.
- C. Increase in use.** An increase or enlargement of the area, space or volume of the building, structure or land occupied by or devoted to such nonconforming use, except as otherwise provided in this subchapter.

### § 153.200.060 – Expiration of Time

Nonconforming buildings, uses and structures shall be abated and usage thereof shall be terminated upon the expiration of the periods of time indicated in this section. The periods of time shall be deemed to commence to run as of the date that such use, building or structure first became nonconforming by reason of the application thereto of the zoning regulations of the city:

- A. Where the lot is unimproved, including, but not limited to, areas used for vehicular off-street parking facilities, one year.
- B. Where the lot is unimproved, except for structures of a type for which the building code does not require a building permit, three years.
- C. Where the lot is unimproved except for buildings or structures which contain less than 100 square feet of gross floor area, three years.
- D. Nonconforming outdoor advertising signs and structures, three years.
- E. A nonconforming use, 20 years.
- F. A nonconforming use of a trailer park, five years.
- G. Nonconforming buildings and structures other than those referred to in divisions (B), (C), (D), (F) and (H) of this section, shall be abated, and the usage thereof terminated,

within the periods of time as set forth in this subchapter, based on the type of construction thereof as defined in the building regulations of the city, as follows:

1. Type IV and Type V buildings (light incombustible frame and wood frame), 35 years;
  2. Type III buildings (heavy timber construction and ordinary masonry), 40 years; and
  3. Type I and Type II buildings (fire-resistive), 50 years.
- H. A nonconforming use of a contractor or construction office, shop or yard, two years.
- I. The nonconforming maintenance of animals, fish, or fowl, two years.
- J. The nonconforming use of a game arcade or game machine, two years.
- K. An adult business use, two years.

### **§ 153.200.070 – Orders of Abatement**

Where any one of the facts set forth in §153.200.050(A) or (B) are found to exist by the Director or where the Director finds that, as to any use, building or structure, the applicable time set forth in §153.200.060 has expired as to such use, building or structure, the Director shall issue a written order of abatement, hereinafter referred to as the "order," and give notice thereof to the owners and/or persons in possession thereof. Each order shall contain a description of the property affected, the factual basis for the issuance of such order, the method of abatement, and the time within which such abatement shall occur. The order shall be deemed final and conclusive, as of the date of the giving of notice of the issuance thereof, in the absence of an appeal, timely filed and perfected as provided in this subchapter. The owner and/or person in possession of the property to which an order relates shall comply with the order, as of the date the order becomes final.

### **§ 153.200.080 – Appeals from Decision of Director**

- A. An order shall be, for all purposes, final and conclusive, unless within not to exceed 30 days after the giving of notice of the issuance of such order by the Director, an appeal is filed as provided in this subchapter contemporaneously with the payment of a filing and processing fee in a sum set by resolution of the City Council.
- B. All appeals from decisions of the Director shall be filed with the secretary of the Planning Commission appealing the decision of the Director to the Planning Commission with regard to the issuance of an order.

- C. The Secretary of the Commission, upon receipt of such a timely filed appeal, shall set the matter for a de novo hearing before the Planning Commission and shall cause notice of the time and place thereof to be given as specified in this subchapter.
- D. Based upon the evidence presented at such de novo hearing, the Commission shall determine whether the use, building and/or structure has lost its nonconforming status pursuant to the provisions of this subchapter.
- E. In the absence of the perfecting of an appeal, as provided in this subchapter, appealing the decision of the Commission to the City Council, the Commission's decision shall be final and conclusive as of the 30th day following the date of the adoption of the decision by the Commission.

### § 153.200.090 – Appeals from Commission Decisions

- A. A written appeal appealing the Commission's decision to the City Council, must be filed with the City Clerk within 30 days of giving notice of the Commission's decision with respect to such order.
- B. The City Clerk, upon receipt of a timely filed appeal, shall set the matter for a de novo hearing before the City Council and shall give notice of the time and place thereof, as specified in this subchapter.
- C. Based upon the evidence presented at such de novo hearing, the City Council shall determine whether the use, building and/or structure has lost its nonconforming status pursuant to the provisions of this subchapter.
- D. The decision of the City Council shall be final and conclusive.

### § 153.200.100 – Notice of Decision

- A. **By Director.** Upon issuance of an order by the Director, the Director shall give notice thereof by depositing a copy of such order in the course of transmission of the United States Postal Service, addressed to the owner and/or persons in possession of the property to which the order relates, postage prepaid, addressed at such person's last known address. Alternatively, the Director may personally serve such persons with copies of the order.
- B. **By Commission.** Upon the adoption by the Commission of a decision with reference to an order, the secretary of the Commission shall forthwith give written notice of the same. The notice of such decision shall be given in the same manner as set forth in division (A) above.

- C. **By Council.** Upon the adoption by the Council of a decision relating to an order, the City Clerk shall, forthwith, give written notice of the same. The notice of such decision shall be given in the same manner as set forth in division (A).

### § 153.200.110 – Effective Date of Notice

The notices required under this subchapter shall be deemed to have been given as of the date of personal service or two consecutive days after the date of deposit of such notice in the course of transmission of the United States Postal Service.

### § 153.200.120 – Perfecting Appeals

The owner of property to which an order relates, or his authorized agent, shall be qualified to file an appeal from a decision by the Director and/or the Commission relating to an order. No such appeal shall be effective for any purpose unless the same is filed within the times permitted pursuant to the provisions of this subchapter. In addition, no such appeal shall be valid for any purpose unless, contemporaneously with the filing of such an appeal, an appellate filing and processing fee in a sum set by resolution of the City Council is paid to the city.

### § 153.200.130 – Conduct of Hearings

A. **Hearing Procedures.**

1. At all hearings held pursuant to this subchapter, before either the Planning Commission or the City Council, any interested person shall be heard, and applicable staff reports relating to such matter shall be considered.
2. In proceedings pursuant to §153.200.060 to abate a nonconforming use, building or structure, the Commission and/or Council shall determine whether the applicable prima facie period, as set forth in §153.200.060, is appropriate as applied to the facts of that case. In making such determination, the Commission and/or Council shall consider the date the buildings or structures were constructed, the original costs thereof, whether such original cost has been, or could have been, recovered by the owner under generally accepted accounting practices, and whether it is feasible to relocate such building or structures.

- B. **Authority to Extend Abatement.** The Commission and/or Council may extend the prima facie periods of abatement, as set forth in §153.200.060, in order to establish a reasonable period of abatement, based upon the facts presented at the hearing.

**§ 153.200.140 – Repair; Maintenance**

The ordinary repair and maintenance of a nonconforming building or structure shall be permitted if the cost thereof does not exceed, in any consecutive 12-month period, an amount equal to one-half or more of the then established assessed value of the building or structure.

**§ 153.200.150 – Eminent Domain; Public Acquisition**

- A. Repair; public acquisition.** The repair, reconstruction or remodeling of any nonconforming building or structure shall be permitted where a part of such building or structure is taken for any public use by condemnation, dedication or purchase by an agency having the power of eminent domain. Such reconstruction, remodeling or repair shall be limited to that necessary to render the building or structure safe for continued use. Such repair, reconstruction or remodeling shall not have the effect of extending the period of abatement relating to such nonconforming building or structure.
- B. Acquisition causing nonconformity.** No building, structure or use shall be deemed to be nonconforming, where such nonconformity is caused, exclusively, by public acquisition, by condemnation, dedication, purchase or other form of public acquisition, of a portion of the building, structure or the lot upon which such is located.

**§ 153.200.160 – Permitted Repair and/or Maintenance of Nonconforming Buildings and Structures**

Nothing in this subchapter shall be deemed to prevent the repair, rehabilitation and reconstruction (hereinafter referred to as work) as to a nonconforming building or structure, under any of the following conditions:

- A. Elimination of nonconformity.** Such work shall be permitted in order to render the use, building or structure in conformity with the provisions of this chapter, except that the conversion of an existing residential structure or use to a nonresidential use permitted in the zone in which the lot upon which such building or structure is located, shall not be allowed unless and until a conditional use permit pursuant to the provisions of §§ 153.630 et seq. is first obtained.
- B. Compliance with laws.** Such work shall be permitted in order to comply with any laws, including, but not limited to, the zoning regulations set forth in this chapter as amended.
- C. Partial destruction.** Where any nonconforming building or structure is damaged or partially destroyed by any casualty, the same may be restored to the condition in which it existed immediately prior to the occurrence of such casualty; provided, that the aggregate total cost of the necessary work does not exceed a sum equal to one-half of the

then assessed value of the building or structure; provided, that all such work shall be completed within a period of 12 consecutive calendar months from and after the date of the occurrence of the casualty. Sureties may be required by the Director to assure timeliness of such work.

- D. **Nonconformity; existing yard areas.** Such work shall be permitted as to any existing building or structure which is nonconforming by reason of substandard yard areas.

### § 153.200.170 – Effect of Work

Accomplishment of any work permitted pursuant to this subchapter shall not be deemed, regardless of cost, to extend the abatement period of the nonconforming use, building or structure to which the same relates.

### § 153.200.180 – Exemptions and Exceptions

- A. **Public utilities exempted.** The provisions of this subchapter concerning the required abatement of nonconforming buildings, structures and/or uses, and the reconstruction of nonconforming buildings and structures partially destroyed, shall not apply to public utility buildings and structures when such buildings and structures pertain directly to the rendering of the service by a utility, such as steam electric generation stations, electric distribution and transmission substations, communication equipment building, water wells and pumps, gas storage, metering and valve control stations; nor shall any provision of this subchapter be construed or applied so as to prevent the expansion, modernization or replacement of such public utility buildings, structures, equipment and features, as are used directly for the delivery of or distribution of the service; provided, that this section shall not exempt such uses from the provisions hereof covering nonconformity of such buildings, structures or uses not immediately related to the direct service to consumers, such as warehouses, storage yards and the like.
- B. **Mixed uses.** Where uses, buildings and/or structures are located on a C or I zoned lot, or a combination of such lots which form a single complex under common ownership, or a portion of such uses, buildings and/or structures located thereon, are nonconforming solely by reason of the fact that one or more of the uses are not permitted uses in the zone, no additional use, building or structure shall be permitted on such lot or lots, unless all of the requirements of provisions of this chapter are met as to any such additional use.

### § 153.200.190 – Minor Additions to Dwellings in R-1 Zone

- A. **Nonconforming parking.** Where a single-family residence is located on any residentially zoned lot, and such use is nonconforming by reason of inadequate parking, that residence may be enlarged to a maximum addition of 600 square feet of floor area without the provision of conforming parking.

- B. Accessory building.** The construction of any accessory building or structure allowed pursuant to the zoning regulations applicable to the R-1 zone under this chapter shall also be permitted on any such lot.

### **§ 153.200.200 – Consistency with General Plan Required**

**A.** Notwithstanding anything else contained in this code or any rule or regulation of the city, but subject to the non-conforming use provisions of this subchapter, no permit of any kind shall be issued by or on behalf of the city for any use, building, structure, or business which is not consistent with the city's General Plan, as adopted on November 20, 2002.

**B.** Subject to the referral authority set forth in §§153.210.020(B) and the appeal process set forth in §153.210.150, the determination of consistency between the city's General Plan and the city's issuance of any permit for any use, building, structure, or business shall be made by the Zoning Administrator.