

Chapter 22 Non-Conforming Uses

22.010 - Purpose

The purpose of the regulation of non-conforming uses is to control, reduce, or eliminate conflicts arising from the presence in any district of uses or structures not conforming to district regulations. Where the degree of conflict is sufficiently great as to constitute an impairment of public welfare, peace, or safety, it is the intent of this Chapter to provide an equitable process for the removal of such uses or structures.

22.020 - Definitions

- A. **Non-conforming use.** A non-conforming use is one which was originally legal, but which does not presently conform to the provisions of the district in which it is situated. Any previously existing use for which district regulations now require a use permit shall be deemed to be non-conforming until such a permit is secured.
- B. **Non-conforming structure.** A non-conforming structure is one which was legal at the time of construction, but which does not presently conform to the provisions of the district in which it is situated. Any previously existing structure, including a sign or sign structure, for which district regulations now require a use permit, shall be deemed to be non-conforming until such a permit is secured.

22.030 - Regulation of Non-conforming Uses and Structures

Except as provided at Section 22.035, All non-conforming uses and structures ~~or~~ shall be subject to the following regulations:

- A. **Modifications to Non-Conforming Uses and Structures.** A non-conforming use or structure shall not be enlarged, extended, or moved to a different portion of the lot or parcel of land occupied by such use, except that a non-conforming structure may be reconstructed in such a way as to make it conforming, and residential and accessory structures located in appropriate residential districts which have non-conforming setbacks may be altered or added to, provided that such alterations and additions would not result in a greater non-conformity of setbacks and provided further that minimum setback of ten (10) feet are maintained for a principal structure's front and rear setbacks, three (3) feet for a principal structure's side setback, and three (3) feet side and rear setbacks for accessory structures, including telecommunications facilities (except for exempt facilities).
- B. **Modifications to Non-Conforming Structures and Accessory Dwelling Unit Conversions.** A non-conforming structure that will be converted to an accessory dwelling unit may be reconstructed to occupy the same location, building footprint, and height as the existing structure. A conversion or reconstruction for the purposes of creating a new accessory dwelling unit that is proposing expansion to a nonconforming structure, such as a second story, must provide setbacks of no less than four feet from the side and rear lot lines.
- C. **Change of Use.** No non-conforming use shall be changed to another non-conforming use without approval by the Planning Commission and then only to a use which, in the opinion of the Commission, is of the same or of a more restricted nature.
- D. **Discontinuation of a Non-Conforming Use of a Structure.** A non-conforming use of a structure shall not be re-established if such use has been discontinued for a period of twelve (12) months or more, or has been changed to, or replaced by, a conforming use. Intent to resume use of a non-conforming structure shall not confer the right to do so.
- E. **Discontinuation of a Non-Conforming Use of Land.** A non-conforming use of land, not involving a structure other than fences, signs, and buildings less than four hundred (400) square feet in area shall not be re-established if such use of land has been discontinued for a period of three (3) months or more, or has been changed to, or replaced by, a conforming use. Intent to resume a non-conforming use of land shall not confer the right to do so.
- F. **Damage to a Non-Conforming Structure.** A non-conforming structure which is damaged by fire, flood, or act of God to an extent exceeding fifty (50) percent of its value, as determined by a methodology based on comparable neighborhood values as approved by the Director, shall not be restored or reconstructed except in such a manner

and for such a use as will conform to the regulations for the district in which it is situated.

- G. **Maintenance and Repair.** Notwithstanding any of the foregoing regulations, nothing in this section shall be deemed to prevent normal maintenance and repair of any use or structure or the carrying out upon the issuance of a building permit or major structural alterations or demolitions necessary in the interest of public safety. In granting such a building permit, the Building Official shall state the precise reason why such alterations were deemed necessary.

22.035 - Regulation of Non-conforming Fueling Station/Gas Station Uses and Structures

- A. **Purpose.** To support implementation of General Plan Policy 4-P-10 through regulations that:
1. Provide for the continued operation of Fueling Station/Gasoline Station uses as legal non-conforming uses and describe when they may be deemed abandoned.
 2. Allow alterations to Fueling Station/Gasoline Stations when such changes provide greater protection of the environment, safeguard public health and safety, facilitate the use of zero emission vehicles, or enable other uses permitted within the respective zoning district.
 3. Prohibit Fueling Station/Gasoline Station operations from increasing the storage and dispensing capacity of gasoline and any other fossil fuel.
- B. **Applicability.** This section applies to:
1. All lawfully developed and operating Fueling Station/Gasoline Station uses in existence prior to [insert ordinance effective date; e.g., April 16, 2020].
 2. All Fueling Station/Gasoline Station uses not yet developed and/or operating but subject to an approved and unexpired land use permit.
- C. **Modifications to Fueling Stations/Gas Station Uses, Generally.** Except as provided below, Fueling Station/Gas Station uses and structures related thereto shall not be enlarged, extended, reconstructed or moved to a different portion of the lot or parcel of land occupied by such use. As determined by the Zoning Administrator, examples of features subject to this provision include, but are not limited to, those related to the sale, storage, conveyance, and dispensing of gasoline and any other fossil fuel (e.g., storage tanks, pumps, dispensers).
- D. **Modifications to Improve Soil, Groundwater and Stormwater Quality.** Fueling Station/Gas Station uses may be modified to conform to current stormwater quality control regulations or remediate contamination of the soil or groundwater.
- E. **Modifications to Improve Traffic Safety.** As determined by the City Engineer, the pedestrian and vehicular circulation features (e.g., curbing, sidewalks, traffic control devices) of a Fueling Station/Gas Station use may be modified to improve public safety.
- F. **Modifications to Enable Zero Emission Vehicles (Battery Charging Station).** Fueling Station/Gas Station uses may be modified to accommodate battery charging station(s) for zero emission vehicles. Pursuant to Government Code Section 65850.7, this Zoning Ordinance requires no permit for battery charging stations.
- G. **Modifications to Enable Zero Emission Vehicles (Hydrogen Fuel Cell Station).** Fueling Station/Gas Station uses may be altered to include facilities for the storage, conveyance and dispensing of hydrogen to zero emission vehicles.
- H. **Modifications for Commercial Uses Other Than Fossil Fuel Sales.** Fueling Station/Gas Station uses may be altered to accommodate commercial uses that are not related to fossil fuel sales and provided for in the respective zoning district.
- I. **Discontinuation of a Fueling Station/Gas Station Uses or Structures.** A Fueling Station/Gas Station use shall

not be re-established if such use has been discontinued for a continuous period of twelve (12) months or more, or has been changed to, or replaced by, a conforming use.

- J. Relationship to Section 22.030. All provisions at Section 22.030(C), (F) and (G) are incorporated here by reference and affirmed as applicable to this section.

22.040 - Non-Conformity by Reason of Non-Compliance with Performance Standards or Absence of a Conditional Use Permit

- A. Any use which is non-conforming at the time of the adoption of this Ordinance by reason of non-compliance with performance standards established in Chapter 21 shall adopt measures necessary to conform therewith within five (5) years of the adoption of this Ordinance.
- B. Any use which is non-conforming by reason of failure to secure a use permit shall be subject to the regulations of Section 22.030 until such time as a use permit is secured.

22.050 - Construction Approved Prior to Ordinance

A building, structure or part thereof which does not conform to the regulations for the district in which it is situated, but for which a building permit was issued prior to the enactment of this Ordinance may be completed providing work is prosecuted continuously and without delay. Such building, structure or part thereof shall be deemed to be a non-conforming use and shall thereafter be subject to the restrictions set forth herein.