

## Chapter 20.54

### NONCONFORMITIES

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#### 20.54.010 Purpose.

This chapter provides standards and procedures for identifying nonconforming situations, establishing restrictions on the alteration or expansion of a nonconforming situation, and it also specifies when a nonconforming situation must be brought into compliance with the code. In addition, this chapter also establishes an optional process for a property owner to obtain a determination that a building, use or lot is legally nonconforming so that the property owner may use such determination for purposes of property sale/transfer, or to defend in a code enforcement action. For properties within the city's shoreline zone, the standards of the city's shoreline master program also apply, including regulations for nonconforming uses and structures within the shoreline zone. For nonconforming signs, please also see Chapter 20.132 POMC.

#### 20.54.020 Definitions.

(1) Nonconforming Building Type. A nonconforming building type is a building type which lawfully existed in a zoning district prior to the adoption of this zoning code, but which is not one of the building types allowed in the current zoning district pursuant to Chapter 20.32.

(2) Nonconforming Lot. A nonconforming lot is a lot which lawfully existed prior to the adoption of this zoning code, but which does not comply with one or more of the lot standards for the applicable zoning district in the current code, such as minimum lot size, minimum lot width or required access.

(3) Nonconforming Use. A nonconforming use is a use which lawfully existed in a zoning district prior to the adoption of this zoning code, but which is not one of the uses that is permitted or conditionally permitted in the current zoning district per Chapter 20.39.

(4) Nonconforming Structure. A nonconforming structure is a structure which lawfully existed in a zoning district prior to the adoption of this zoning code, but which does not comply with one or more requirements for the applicable zoning district in the current code for maximum height, minimum setbacks, maximum lot coverage or impervious surface coverage, or design standards.

**20.54.030 Establishing a legal nonconforming building type, lot, use or structure for the record.**

(1) Permit Required. A landowner may establish that he/she has a legal nonconforming building type, use or structure for the record by obtaining the permit described in POMC 20.54.080. This process is optional in situations other than code enforcement actions (in which the landowner may choose to utilize the process in order to establish the legality of the nonconforming building type, use or structure).

(2) Abandonment or Discontinuance. In order to establish a legal nonconforming building type, use or structure, the use or structure must not have been abandoned or discontinued, under the criteria in POMC 20.54.050(4).

(3) Destruction. Should a nonconforming building type, structure or nonconforming portion of a structure be destroyed by any means to an extent more than fifty percent of its replacement cost at the time of its destruction, as determined by the city building official, it shall be reconstructed only in conformity with this code, and only under the following conditions: (a) a complete application for a building permit (or other applicable permit) is filed with the city within twelve (12) months after the damage occurred, and the permit issues, with not more than one (1) 180-day extension; (b) the cause of the damage or destruction was not the willful act of the owner or the owner's agent; and (c) the cause of the damage or destruction was not due to the ongoing neglect of the owner or the owner's agent.

(4) Enforcement. If a landowner is not able to establish a legally nonconforming building type, use or structure, or, if the city proves that a legal nonconforming building type, use or structure was abandoned or discontinued, then the building type, use or structure may be subject to an enforcement action. In this enforcement action, the landowner will either be required to terminate the use, demolish the building or other structure or conform the building or other structure to the requirements of this code, including the provisions of Chapter 20.02 POMC, Administration and Enforcement.

(5) Applicability of New Regulations to Legal Nonconforming Building Types, Uses and Structures. Legal nonconforming building types, uses and structures have only a vested right not to have the building type, use or structure or other development immediately terminated when a new code provision is adopted that prohibits the building type, use or structure. The building type, use or structure may still be subject to newly adopted reasonable police power regulations.

A legal use of land does not become nonconforming because the zone in which it is located is changed to a zoning district which requires a conditional use permit for the use. However, any alteration, expansion or intensification of a use previously approved as a conditional use must follow the process in Chapter 20.50 POMC for approval of a new conditional use permit unless the zoning changes such that the use is now permitted outright.

**20.54.040 Establishing a legal nonconforming lot for the record.**

(1) Permit Required. A landowner may establish that he/she has a legal nonconforming lot for the record by obtaining the permit described in POMC 20.54.060 through 20.54.080. This process is optional in situations other than code enforcement actions.

(2) Enforcement. If a landowner is not able to establish a legally nonconforming lot, then the lot may be subject to an enforcement action. In this enforcement action, the landowner will either be required to establish a legally conforming lot through subdivision, boundary line adjustment, legal adjudication or other legally-accepted method of lot creation, or else abandon the claim to ownership of a legal lot of record, subject to the requirements of this code.

(3) Applicability of New Regulations to Legal Nonconforming Lots. Legal nonconforming lots have only a vested right not to have any use, structure or other development immediately terminated when a new code provision is adopted which creates or increases the nonconformity of a lot. The lot may still be subject to newly adopted reasonable police power regulations.

**20.54.050 Restrictions on legal nonconforming uses.**

(1) Enlargement, Increase, Intensification and Extension Prohibited. A legal nonconforming use may not be enlarged, increased, intensified or extended to occupy a greater area of land or space, including air space, than was occupied at the effective date of adoption or amendment of this code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.

(2) Use Cannot Be Moved to New Location. No legal nonconforming use shall be moved in whole or in part to any portion of the building or any lot other than that occupied by such use except where that use is permitted outright at the effective date of adoption or amendment of this code.

(3) Change in Use. A nonconforming use cannot be changed to another nonconforming use. A change in tenancy or ownership is not considered a change to another nonconforming use, provided that the use itself remains unchanged.

(4) No Discontinuation or Abandonment. In order to retain its legally nonconforming status, the legal nonconforming use of land cannot be discontinued or abandoned for any reason for a period of more than one hundred eighty (180) days, or for eighteen (18) months in a three (3) year period. For purposes of calculating the 180-day or 18-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

(a) On the date when the use of land is physically vacated;

(b) On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;

(c) On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or

(d) On the date a request for final reading of water and power meters is made to the applicable utility districts.

(5) Uses which vary seasonally (such as agricultural uses) shall be deemed abandoned if the seasonal use is not utilized during one full season, consistent with the traditional use.

(6) Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason (other than seasonal use as allowed by subsection (5) of this section) for a period of more than one hundred eighty (180) days or for eighteen (18) months in a three (3) year period, any subsequent use of land shall conform to the applicable standards and criteria specified by this code for the land use zone in which such land is located.

**20.54.060 Restrictions on legal nonconforming building types and structures.**

(1) Alterations and Maintenance. A nonconforming building type or structure may not be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this code or in a way that will not increase its nonconformity. Ordinary maintenance and repair shall be permitted.

(2) Roadway Access. The owner of a nonconforming access connection (i.e., street or highway access) may be required to bring the nonconforming access into conformance with this code and other applicable standards as a condition of the city or other roadway authority approving a new access connection permit, or a landowner's requested change in land use.

(3) Relocation or Removal. Should the nonconforming building type or structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of this code. However, a structure may be moved on the same site without full compliance if the movement reduces the building type or structure's degree of nonconformity with the code.

(4) Historic Buildings and Structures. Nothing in this chapter shall prevent the full restoration by reconstruction of a building or structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, or the Washington State Cultural Resource Inventory, as shown in a historical survey meeting the standards of the State Department of Archaeology and Historic Preservation. "Restoration" means reconstruction of the historic building or structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code and any code provisions adopted by the city on the subject of historic preservation. The reconstruction of all such historic buildings and structures shall comply with the life safety provisions of the State Building Code.

(5) Mobile Homes or Manufactured Homes. Any mobile home or manufactured home located in a residential district which is a legal nonconforming use may be replaced with an approved manufactured home that conforms to the applicable requirements of this title.

**20.54.070 Restrictions on legal nonconforming lots.**

(1) A nonconforming lot may not be altered in size or shape in any way that increases its nonconformity, but it may be altered in a way that satisfies the current requirements of this code or in a way that will not increase its nonconformity.

(2) Use of Legal Nonconforming Lot as a Building Site. A legal nonconforming lot may be used as a building site, provided that all other requirements of the applicable zoning district are met or a variance is obtained.

#### **20.54.080 Permit required.**

A property owner may obtain a nonconforming permit to establish a legal nonconforming building type, lot, use or structure for the record. This permit is not required, unless the city has brought a code enforcement action relating to the property, or if the property owner desires the permit for another purpose, such as to obtain a building permit consistent with the desired legal nonconforming building type, lot, use or structure. In such event, the property owner has the burden to follow the procedures set forth herein to establish that the condition of the property is legally nonconforming. In the case of a code enforcement action, the director may place the code enforcement action in abeyance for a reasonable time in order to allow a property owner to gather the necessary information to demonstrate that the property is legally nonconforming.

#### **20.54.090 Administration of nonconforming permits.**

(1) The following steps shall be followed in the processing of nonconforming permits:

- (a) Determination of complete application (POMC 20.24.050);
- (b) Determination of consistency (POMC 20.24.090);
- (c) Notice of decision by director (POMC 20.24.100); and
- (d) Administrative appeal, if any (open record hearing, POMC 20.24.040).

(2) Because the processing of these permit applications requires the submission of different information for approval, imposes different burdens on the applicant and the city, and varies in other material respects from the processing of a project permit application, these permits are exempt under RCW 36.70B.140 from all project permit processing requirements (identified in Chapter 20.22 POMC), other than those set forth in this chapter.

#### **20.54.100 Requirements for a complete application.**

A complete application for a nonconforming permit shall include the following items as applicable to each classification of nonconformity (building type, lot, use, structure). Refer to the relevant city application form for numbers of copies of each item that must be included and the type of accompanying electronic submittal that is required (if relevant):

- (1) Completed application form;
- (2) Date, name, address, telephone number and email of the applicant;
- (3) Name, address, telephone number and email of the owner of the property identified in the application;
- (4) Legal description, street address and assessor's parcel number of the subject property;
- (5) A description and photographs of existing site conditions, any plans or permit approvals, and/or information relevant to the proposed applicant's demonstration of a legal nonconforming building type, lot, use or structure;

(6) Information demonstrating that (a) the building type, structure or use is not permitted outright under the city's code, including, but not limited to, the use standards of the current zoning or applicable district; (b) the current zoning code or building code standards for the building type, lot, use or structure are not met; and (c) the use has not been abandoned or discontinued for the period identified in this chapter;

(7) Proof of legal nonconforming status, including, but not limited to, planning permits/approvals, building permits, leases, aerial maps showing the structure and footprint, listings in business or phone directories (or directory with a list of businesses and residents referenced by address), etc.;

(8) If the application is for a remodel, a complete description of the proposed remodeling relating to such section(s) of the structure or the entire structure;

(9) The applicant's narrative statement describing the manner in which the application satisfies the criteria for approval in the applicable section of this chapter;

(10) A SEPA checklist (unless categorically exempt);

(11) The application fee established by the city; and

(12) Any other required information as indicated by city staff in a preapplication meeting.

**20.54.110 Criteria for approval – Permit to establish legal nonconforming building type, use or structure for the record.**

(1) Criteria. A permit will be approved establishing the legal nonconforming status of the building type, use or structure if the applicant provides sufficient evidence and demonstrates to the director's satisfaction:

(a) That the building type, use or structure satisfies the definition for a legal nonconforming building type, use or structure in this chapter; and

(b) That the building type, use or structure has been in existence and maintained continuously, with no interruption that would constitute abandonment or discontinuance under either former or current city codes.

(2) Acceptable Documentation. The evidence presented by the applicant may include, but is not limited to, the following as documentation of the existence of a building type, use or structure from a time when it would have been permitted outright and as documentation of its uninterrupted continuation:

(a) Signed written statements from persons having no financial interest in the property and who are not relatives of the applicant or property owner. Notarization is not required.

(b) Occupancy listing from the Polk directory or reverse telephone directories.

(c) Business and/or licensing records.

(d) County records showing the previous permitted use if the property was formerly not part of the city.

(e) Assessment records.

(f) Evidence of more than one electric or gas meter or sewer hookup.

(g) Other evidence that the director deems useful and reliable, based on the circumstances of the individual case. Examples include, but are not limited to, photographs, U.S. Census reports, and signed written statements of experts.

(3) It is the responsibility of the applicant to furnish at least two different types of documentation from the sources listed above. The city may, in its discretion, require further documentation if the documentation submitted by the applicant does not demonstrate the existence of the building type, use or structure from a time when it was permitted outright, or fails to show continuous, uninterrupted maintenance of the use. The city may also accept only one type of documentation from the sources listed above, if that documentation is particularly persuasive. Any number of written, signed statements, however, are not sufficient by themselves to document the existence of a building type, use or structure.

#### **20.54.120 Criteria for approval – Permit to establish legal nonconforming lot for the record**

(1) Criteria. A permit will be approved establishing the legal nonconforming status of a lot if the applicant provides sufficient evidence and demonstrates to the director’s satisfaction that the lot was lawfully created and recorded with the county auditor’s office.

(2) Acceptable Documentation. The evidence presented by the applicant may include, but is not limited to, a recorded subdivision, large lot subdivision, testamentary subdivision (provided that the testamentary subdivision conformed to zoning at the time of recording), short plat or binding site plan; a recorded boundary line adjustment approved by the City if such approval was required at the time of recording; or a legal adjudication requiring the creation of the lot with subsequent recording with the county auditor’s office.

#### **20.54.130 Final decision on nonconforming permit.**

Because the city has excluded nonconforming permits from the procedures set forth in RCW 36.70B.140, there is no deadline for the city’s issuance of a final decision.

#### **20.54.140 Appeals of nonconforming permit.**

A nonconforming permit is a Type I decision per Section 20.22.020 of this Title. If an appeal of the director’s decision is filed, the procedures in POMC 20.22.030(7) and (8) shall be followed.

#### **20.54.150 Nonconformities and Build-To Zone Requirements.**

“Build-to zone” requirements may apply to certain development proposals in residential, commercial and mixed-use zoning designations. For information on build-to zone requirements and their applicability to a proposal, refer to Chapters 20.34 and 20.35.

(1) Building Additions. When an existing building is being expanded and the building does not meet the build-to requirement, the following provisions apply:

(a) Front. Any addition to the front of the building must be placed in the build-to zone. The addition does not have to meet the build-to percentage for the lot.

(b) Rear. Rear additions are allowed because the addition does not increase the degree of the nonconformity.

(c) Side. Side additions are not allowed because the extension increases the width that is not located in the build-to zone.

(2) New Buildings. When a new building is proposed on a site with an existing building that does not meet the build-to requirement, the following provisions apply:

(a) Front. All new buildings must be placed in the build-to zone until the build-to percentage for the lot has been met.

(b) Rear. New buildings located outside of the build-to zone are not allowed until the build-to percentage for the lot has been met.

(c) Side. New buildings located outside of the build-to zone are not allowed until the build-to percentage for the lot has been met.