

**Chapter 17.80
Nonconforming Uses**

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17.80.010 Purpose and intent. Within the districts established by this title, or amendments that may later be adopted, there may exist lots, structures, and uses which were lawful before this title was adopted or amended, but because of the application of this title, no longer conform to the provisions and standards of the district in which they are located. This chapter provides for the regulation of these legal nonconforming lots, structures, and uses, and specifies those circumstances, conditions, and procedures under which such nonconformities shall be permitted to continue and expand.

Except as otherwise provided, it is the intent of this title to permit legal nonconforming uses or structures to continue to exist without specific limitations as to time. Modifications or changes to or involving such nonconformities are subject to the provision and policies of this title.

17.80.020 Illegal uses, structures and lots not permitted. Structures, lots, required site improvements, uses and/or developments which were not legally established or existing as of the effective date of this title retain their illegal status and must be abated or fully conform and comply with the procedural and substantive provisions of this title.

17.80.030 Establishment. The burden of establishing that any nonconformity is a legal nonconformity as defined herein shall, in all cases, be upon the owner of such nonconformity and not upon the city. Upon request, the planning official shall assist the property owner in locating public records which pertain to the legal status of the nonconformity.

17.80.040 Development on existing lots of record. In any zone, any permitted use or structure may be erected on any existing lot or parcel. Provided that no duplex or multifamily development shall be allowed on existing lots of record in the R-2 and R-3 zones unless the lot conforms to the minimum lot size of 8,000 square feet or the development involves the replacement or reconstruction of a damaged, duplex or multifamily development. This section shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the zone. Provided, that the setback dimensions of the structure shall

conform to the regulations of the zoning district in which the lot is situated. Development on nonconforming lots is governed by this section. Except as limited by this title, any permitted use may be erected on any lot legally created prior to the adoption of this title. Such development and structures are subject to the following additional provisions:

1. Detached single-family dwellings erected on nonconforming lots must meet the following criteria:
 - a. The setback dimensions of the structure conform to the regulations of this title;
 - b. The lot has at least twenty feet of frontage on, or a minimum twenty-foot wide access easement to, a public or private road;
 - c. All other site design and development criteria other than the lot size requirements are met.
2. Duplex development may be permitted on such lots in the R-2 zones only if lot meets or exceeds 8,000 square feet and lot coverage of 70% or less.
3. Multi-family development may be permitted in the R-3 zone only if the lot meets or exceeds 8,000 square feet and lot coverage of 70% or less.
4. Duplex or multi-family development are not allowed on such lots in the R-1, C-1 or M-1 zones unless such development is the replacement or reconstruction of a destroyed or damaged existing use.
5. Any permitted use or structure may be placed on a lot that is nonconforming as to width and/or lot area in the industrial and commercial districts, but only if the criteria of Subsection (1) (a, b and c above) of this section are met.

17.80.050 Continuation of nonconforming uses.

1. Generally. Any legal nonconforming use may continue as long as it remains otherwise lawful. Any change or expansion of the nonconforming use shall be made in accordance with the provisions of Sections 17.80.070 or 17.80.080.
2. Continuation When a Nonconforming Use is Damaged or Destroyed. When a nonconforming use and associated structure are damaged, the nonconforming use may be replaced as it was prior to the damage. If the structure was also nonconforming, the structure may be rebuilt as it was immediately prior to the damage or in a manner that is more conforming in accordance with Section 17.80.060 (3).

17.80.060 Nonconforming structures.

- A. Generally. Any legal nonconforming structure may continue so long as it remains otherwise lawful. A nonconforming structure other than a required site improvement may be included in and/or changed as part of any development, or modification to development, subject to review and approval under the procedures and provisions of this title.

- B. **Maintenance of a Nonconforming Structure.** Nothing in this chapter shall be construed to restrict normal structural repair and maintenance of a nonconforming structure, including the replacement of walls, fixtures and plumbing. Provided, that the value of work and materials in any twelve-month period does not exceed fifty percent of the value of the structure, if it exceeds fifty percent you could apply for a variance using the most recent IBC construction tables prior to such work. This chapter is not intended to apply to the rehabilitation of dwelling unit(s) when such rehabilitation does not expand the number of dwelling units nor physically expand the structure.
- C. **Reconstruction of a Nonconforming Structure.** When a nonconforming structure is damaged or destroyed, the building official shall issue a building permit allowing the structure to be rebuilt as it was immediately prior to the damage or in a manner that is less nonconforming. Provided, no reconstruction of a nonconforming structure shall be performed without the issuance of a building permit by the building official. Applications and permits for such reconstruction shall be made in accordance with this title.
- D. **The property owner shall provide the information necessary to reasonably assure the building official that the reconstruction being authorized complies with this section. The information provided shall include, but not be limited to:**
1. A general site plan showing the actual dimensions of the nonconforming structure, its height, and its exact placement on the lot prior to being damaged; and,
 2. Where a nonconforming use is involved, a written narrative describing the use or uses that existed immediately prior to damage; and,
 3. An affidavit or certificate that the narrative and site plan accurately represent the nonconforming structure and/or use as they were immediately prior to damage. The building official may approve reconstruction in conformance with the site plan or in a manner that is more conforming with the provisions and standards of the zoning district in which it is located. If the building official determines that the requested reconstruction amounts to an expansion of the nonconforming structure the request can be appealed to the Hearing examiner.

17.80.070 Change from a nonconforming use to a Permitted or Conditional use

The following procedures shall be followed for changing a nonconforming use:

1. **Change to a Permitted Use.** A Building Permit for changing a nonconforming use to a Class (1) use shall be made under the provisions of Class (1) review.
2. **Change to a Conditional Use.** Application for changing a nonconforming use to a permitted Conditional Use shall be made and reviewed under the provisions of Class (2) or (3) Review. The Hearing Examiner shall hold at least one public hearing on the proposed change prior to rendering a decision. The Hearing Examiner may approve the proposed Class (2) or (3) use when they determine it is compatible with the objectives of the Zillah Comprehensive Plan and the purpose and intent of this title.

17.80.080 Change from a nonconforming use to another nonconforming use- Expansion of a nonconforming use. The following procedures shall be followed to change a nonconforming use to a different nonconforming use, expand a nonconforming use throughout a structure, expand a nonconforming structure or use throughout a lot or onto an adjoining lot. These procedures shall be used to expand a nonconforming structure throughout a lot.

- A. Does not increase the degree of nonconformity of the structure; and,
- B. Complies with development standards of the zone in which it is located; and,
- C. The nonconforming structure is occupied by a Permitted use or is a single-family dwelling or duplex; and,
- D. In the case of expanding a nonconforming single-family dwelling or duplex, the proposed expansion is fifty percent or less of the existing building area.
 - 1. Application. The application procedures shall be the same as Conditional Use Permit established in Section 17.06.040 for Class (2) uses. A detailed site plan shall accompany any applications required by this section as determined by the Building Official.
 - 2. Public Hearing and Review. The planning department shall review and process the application under the provisions of Section 17.06.070. The Hearing Examiner shall hold at least one public hearing.
 - 3. Conditions for Approval. The Hearing Examiner may grant the relief requested if they find all of the following:
 - i. That the expansion, change, reconstruction or replacement requested would not be contrary to the public health, safety or welfare; and
 - ii. That the proposed expansion, change, reconstruction or replacement is compatible with the character of the neighborhood; and, in the case of an expansion or change, does not significantly jeopardize future development of the area in compliance with the provisions and the intent of the zoning district; and
 - iii. That the significance of the applicant's hardship is more compelling than, and reasonably overbalances, the public interest resulting from denial of the relief requested; and
 - iv. That the use or structure was lawful at the time of its inception; and
 - v. That the value of nearby properties will not be significantly depressed by approving the requested expansion, change, reconstruction or replacement.

The expansion, change, reconstruction or replacement requested shall be denied if the Hearing Examiner finds that one or more of the provisions in subsection D(3) (i) through (v) of this section are not met.

4. Findings and Conclusions. The Hearing Examiner shall prepare written findings and conclusions stating the specific reasons for their decision to approve, approve with conditions, or deny the application. The findings shall include the Hearing examiner's determination regarding compliance of the proposed expansion, change, reconstruction or replacement with the criteria established in Subsection D (3) above.
5. Conditional Approval. When approving a change in, or the expansion, reconstruction, or replacement of a nonconforming use or structure, the Hearing Examiner may attach conditions to the proposed change, expansion, replacement or reconstruction or any other part of the development in order to assure that the development is improved, arranged and screened to be compatible with the objectives of the comprehensive plan, this title, and neighboring land uses.

17.80.090 Discontinuance of a nonconforming use or structure A nonconforming use or structure shall become discontinued when it is:

1. Succeeded by a Permitted or Conditional use; or
2. Succeeded by another use or structure that is less nonconforming; or
3. Discontinued and not reestablished within twelve (12) months, unless an extension is granted by the Planning Official upon proper application. Denials of such requested extensions may be appealed under Chapter 17.06.040; or
4. Damage to the extent that reconstruction costs exceed seventy-five percent of assessed value using the most recent International Conference of Building Officials (ICBO) construction tables and the replacement of the nonconforming structure is denied through the Class (2) review process in accord with the provisions of Chapter 17.06.

When a nonconforming use becomes discontinued, it shall be deemed that such use has ceased to exist and thus loses its status as a legal nonconforming use. Any subsequent use shall conform to the provisions of the zoning district in which it is located.

17.80.100 Sale of a nonconforming use or structure. Property classed as nonconforming may be transferred without that fact alone affecting the right to continue the nonconforming use or use of a nonconforming structure.