

**Council Member Balarin, on behalf of the Committee on Planning, Economic Development, and Land Use, introduced the following, which was approved:**

**ORDINANCE 16.82.25**

**AN ORDINANCE AMENDING CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE NONCONFORMITY DETERMINATION PROCESS**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Subsection (8) (Determinations of status of nonconformities) of Section 375-506 (Preexisting development and nonconformities) of Article V (Administration and Enforcement) of Chapter 375 (Unified Sustainable Development Ordinance) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to read as follows:

- (8) Determinations of status of nonconformities.
- (a) Any person having a legal or equitable interest in a preexisting development or nonconforming property may apply for a determination from the Chief Planning Official on such forms as the Chief Planning Official shall prescribe.
  - (b) Responsibility of the applicant/property owner. The burden of proving a structure or use is a legal nonconforming use resides with the property owner or other person with an equitable interest.
    - (i) It shall be the applicant and/or property owner's responsibility to provide any and all documentation or evidence required to support a preexisting development or nonconformity claim under the provisions of this § 375-506. Although City employees may assist applicants, no City employee or official shall be responsible for gathering evidence or documentation to support a claim of legal nonconformity.
    - (ii) Such evidence shall be sufficient to prove:
      - A. That the use was lawfully established in accordance with the applicable law and regulations in effect at the time of its establishment;
      - B. That the use has been continuously maintained since it was established; and
      - C. That the use has not been abandoned for a period in excess of one year.
    - (iii) Evidence may include but is not limited to photographs of the property or use (dated or with an affidavit as to the date of the photograph), utility bills, property tax statements or receipts, copies of leases or subleases, evidence of goods and services rendered from the property (dated or with an affidavit as to the date of the evidence), or notarized affidavits

Matter in ~~strike through~~ to be deleted. Matter underlined is new material.

from the owner(s) of one or more properties within 300 feet of the subject property.

- (iv) Where an applicant seeks a certificate to establish the legal or nonconforming status of a structure or other nonconformity only, the Chief Planning Official shall issue a determination upon review of a certified survey, building permits, or other documentation deemed necessary or sufficient by the Chief Planning Official.

~~(c) — Notice to interested parties.~~

~~(i) — The Chief Planning Officer shall provide interested property owners, members of the public, and the Common Council with notice of an application for a determination of legal nonconformity similar to the content of notices for applications for variances, and shall include information on how members of the public may submit comments or documentation to be considered by the Chief Planning Official.~~

~~(ii) — A notice of the application shall be posted at the property on each side the subject property faces a public street with the same information and in the same manner as is required for notice of a variance request and shall include information on how members of the public may submit comments or documentation to be considered by the Chief Planning Official.~~

~~(d) — The Chief Planning Official may not make a determination relating to a nonconforming use until 14 days after the date the public notices were mailed or the date the notice was posted at the subject property, whichever is later.~~

~~(i) — The Chief Planning Official shall review all proof submitted by the applicant and all other comments and documents submitted. The applicant shall only be entitled to a determination finding a legal nonconforming use or structure if the evidence submitted clearly establishes that the property meets each and every criteria of a legal nonconformity set forth in Subsection (1) above.~~

~~(e) — The determination of the Chief Planning Official shall be mailed to the applicant, the City Clerk, designated Common Council staff, any person who commented in writing regarding the application, and posted on the Planning Department website within five days of its issuance.~~

**Section 2.** This ordinance shall take effect immediately.

**APPROVED AS TO FORM THIS  
25<sup>TH</sup> DAY OF JULY, 2025**

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**Corporation Counsel**

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**To:** Shaniqua Jackson, City Clerk  
**From:** Brett Williams, Deputy Corporation Counsel  
**Re:** Common Council Legislation  
Supporting Memorandum  
**Date:** July 25, 2025  
**Sponsor:** Council Member Balarin, o/b/o Planning Committee

**ORDINANCE 16.81.25**

**TITLE**

AN ORDINANCE AMENDING CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE NONCONFORMITY DETERMINATION PROCESS.

**GENERAL PURPOSE OF LEGISLATION**

This ordinance amends the procedure under the USDO for determining the legality of a non-conformity by removing the existing requirement to provide legal notice to interested parties.

**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

A nonconformity refers to a use, lot, structure, standard, or circumstance that was legally established prior to the effective date of a regulation under Chapter 375 but does not conform to current zoning standards. Determining whether a nonconformity was legally established falls under the authority of the Chief Planning Official; however, the burden of proof lies with the property owner or an applicant with an equitable interest in the property.

The process for making such a determination is outlined in § 375-506(8). It begins with the submission of an application accompanied by supporting documentation (e.g., photographs, utility bills, tax statements, leases, notarized affidavits) demonstrating that the nonconforming use, structure, or other improvement predates the relevant zoning regulation. These applications are most commonly submitted during property sales or refinancing, typically to confirm that an existing use qualifies as a legal nonconformity. In many cases, this filing is preceded by a request for a zoning compliance certificate, which may indicate that the current use does not conform to zoning district allowances and trigger further review.

Although the nonconformity determination process has existed in some form since zoning was first adopted in the City, it was more clearly formalized with the adoption of the Unified Sustainable Development Ordinance (USDO) in 2017, and a public notice requirement was added in 2021. While this notice requirement was well-intentioned, it has introduced delays and uncertainty that hinder investment in nonconforming properties, particularly residential uses, without significantly advancing the public interest.

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Under the current process, applicants must:

- Send certified mail notices to all property owners within 250 feet of the subject site (typically between 50 and 100 recipients);
- Post a notice on the property with instructions for how the public may submit comments; and
- Submit an affidavit of compliance, after which the Chief Planning Official must wait at least 14 days before issuing a decision to allow time for public input.

Since these requirements were implemented, a total of 1,160 mailed notices for 23 nonconformity determination applications were sent by applicants. In response, only 6 public comments were received, a response rate of just 0.5%. Notably, the comments received have typically expressed opinions on whether the use should exist or continue, rather than whether it lawfully predates zoning changes. Because determinations are based on objective, factual evidence, often already available in public records or provided by applicants, public input rarely introduces new or relevant information.

At the same time, the current process imposes significant financial and administrative burdens on both applicants and City staff, delays that can obstruct real estate transactions, increase housing insecurity, and discourage reinvestment in older properties.

This legislation seeks to streamline the nonconformity determination process by eliminating the public notice requirement. In doing so, it aims to reduce burdens on applicants, preserve staff resources, and promote reinvestment, without compromising the integrity of the review process.

#### **FISCAL IMPACT**

None.

**Passed by the following vote of all the Council Members elected voting in favor thereof:**

Affirmative – Adams, Anane, Balarin, Clarke, Conti, Farrell, Flynn, Frederick, Hoey, Johnson, Keegan, Kimbrough, Love, Robinson, and Zamer

Affirmative: 15 | Negative: 0 | Abstain: 0

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Clerk of the Common Council

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President of the Common Council

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

I, Shaniqua Jackson, City Clerk and Clerk of the Common Council, do hereby certify that Ordinance 16.82.25 was passed at a meeting of the Albany Common Council on December 15, 2025.

In affirmation thereof, I hereto set my hand and affix The Seal of the City of Albany this 2nd day of January, 2026.

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Shaniqua Jackson, Clerk of the Common Council