

ORDINANCE NO. 2018-08

AN ORDINANCE AMENDING CHAPTER 11-21: “NONCONFORMING USES AND NONCOMPLYING STRUCTURES” AND CHAPTER 11-36: “ADMINISTRATIVE INTERPRETATION” TO PROPOSE NEW DEFINITIONS, OUTLINE A PERMITTING PROCESS FOR NONCONFORMING USES AND STRUCTURES, AND OUTLINE A PROCESS TO OBTAIN AN ADMINISTRATIVE INTERPRETATION OF AN ORDINANCE AND OTHER RELATED ADMINISTRATIVE UPDATES

WHEREAS the City of Bluffdale has made an effort to update its land use code to conform with requirements of Utah State Law, and has proposed revisions to the chapter governing nonconforming uses to express general requirements and to discuss the burden of proof which must be met to establish a nonconforming use, structure, or lot and;

WHEREAS the City of Bluffdale has also proposed revisions to the chapter governing administrative interpretations of city ordinances to outline the required process to obtain an administrative interpretation or determination and;

WHEREAS the text amendments set forth herein have been reviewed by the Planning Commission and the City Council, and all appropriate public hearings have been held and public notice given in accordance with Utah law and local ordinance to obtain public comment regarding the proposed amendments to the Bluffdale City Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLUFFDALE, UTAH:

Section 1. Text Amendments. The City Council hereby amends Chapter 11-21 and Chapter 11-36 of the Bluffdale City Land Use Code.

Section 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

APPROVED, ADOPTED AND PASSED and ordered published by the Bluffdale City Council, this 28 Day of March, 2018.


CITY OF BLUFFDALE



Mayor

ATTEST:





Wendy Deppe

Bluffdale City Recorder

Council members	Voting:	
	AYE	NAY
Alan Jackson	<u> X </u>	_____
Ty Nielsen	<u> X </u>	_____
Boyd Preece	<u> X </u>	_____
Wendy Aston	Absent	_____
Dave Kallas	<u> X </u>	_____

Chapter 21

~~NONCONFORMING USES AND NONCOMPLYING STRUCTURES NONCONFORMITIES~~

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11-21-1: DEFINITIONS; BURDEN OF ESTABLISHING LEGAL EXISTENCE

A. Definitions:

NONCOMPLYING STRUCTURE: A structure that legally existed before its current land use designation and because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions or other regulations, excluding those regulations which govern the use of land.

NONCONFORMING USE: A use that legally existed prior to the adoption of this ordinance, has been maintained continuously since the time this ordinance was adopted, and because of one or more subsequent land use ordinance changes does not conform to the regulations that now govern the use of the land.

NONCOMFORMING LOT:

A lot that legally existed before its current land use (zoning) designation;

(b) has been shown continuously on the records of the Salt Lake County Recorder as an independently existing piece of property; and

(c) because of one (1) or more subsequent land use ordinance changes does not conform with the minimum size, width, frontage, depth or other applicable dimensional requirements of the zone where the lot is located.

OTHER NONCONFORMITY: A circumstance governed by a land use ordinance other than a nonconforming use or lot, or a noncomplying structure, or use that:

(a) legally existed before the current land use (zoning) designation of the lot where the nonconformity is located; and

(b) because of subsequent zoning land use ordinance changes does not conform with the regulations that now govern the use of the land.

B. Burden Of Property Owner: The property owner shall have the burden of establishing the legal existence of a noncomplying structure or a nonconforming use. (Ord. 2005-15, 7-12-2005) In all cases, the property owner shall have the burden of proving by a preponderance of evidence that a lot, structure, use or other circumstance which does not conform to the provisions of this title was legally established.

(a) A preponderance of evidence is evidence which is more credible and convincing than evidence offered in opposition to it.

(b) Evidence offered to prove a lot, structure, use, or other circumstance was legally established may include, but is not limited to:

(i) the date when the circumstance was created;

(ii) copies of applicable zoning, building, or other code provisions in effect at the time of creation;

(iii) documents showing the nonconforming circumstance was authorized such as building permits, letters, and meeting minutes of governmental bodies where the circumstance was discussed and/or authorized;

(iv) property inspection reports which indicate the degree that the nonconforming circumstance complies with applicable codes in effect at the time of creation; and

(v) affidavits of persons with personal knowledge of the circumstances of creation.

(c) If a previously existing land use ordinance applied to a claimed nonconforming circumstance, and no provision of such ordinance would have allowed such circumstance, it shall be prima facie evidence that the nonconforming circumstance was not legally established.

(d) If when established, a lot, structure, use or other circumstance did not conform to the provisions of applicable land use ordinance provisions, the fact that it has been occupied, used, or existed for a considerable period of time shall not be a factor in determining whether the circumstance should be deemed legally established.

11-21-2 PURPOSE:

The purpose of this chapter is to establish regulations governing legally established lots, structures, uses and other nonconformities that do not conform to applicable requirements of this Title. They may continue to exist and be put to productive use, but their nonconforming aspects shall be regulated as provided in this chapter. The intent of this chapter is to recognize the interests of property owners while controlling expansion of nonconforming conditions.

11-21-3 PERMIT PROCESS:

The Zoning Administrator shall review and process all applications to legally establish a nonconforming use or nonconforming structure or other nonconformities, and for any additions, enlargements and moving of legal nonconforming uses and a legal noncomplying structure.

11-21-2: MAINTENANCE PERMITTED:

~~A nonconforming use or noncomplying structure shall be maintained and kept in good repair. Basic repairs and structural improvements may be made to a noncomplying structure nonconforming or to a building housing a nonconforming use. (Ord. 2005-15, 7-12-2005)~~

11-21-3: ADDITIONS, ENLARGEMENTS AND MOVING:

~~A building or structure occupied by a nonconforming use and a building or structure nonconforming in height, area or yard requirements shall not be added to or enlarged in any manner, or moved to another location on the lot, except as provided herein:~~

~~A. The addition or enlargement of or moving of the building will be in harmony with one or more of the purposes of this title.~~

~~B. The addition, enlargement or movement will bring the nonconforming use or building into closer compliance with the current land use ordinance.~~

~~C. The proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure, nor does it violate the development policies adopted in the general plan. (Ord. 2005-15, 7-12-2005)~~

11-21-4: RESTORATION OF DAMAGED BUILDINGS:

~~A noncomplying structure or a building or structure occupied by a nonconforming use which is damaged or is destroyed by fire, flood, wind, earthquake or other calamity or act of God, or the public enemy, may be restored. The occupancy or use of such building, structure or part thereof which existed at the time of such damage or destruction may be continued or resumed; provided, that such restoration is started within a period of one year and is completed in conformance with the ordinances of the City within two (2) years. A noncomplying structure or a building or structure occupied by a nonconforming use which is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired within six (6) months after written notice to the property owner notifying them of the same and that the noncomplying structure or nonconforming use will be~~

lost if the structure is not repaired or restored within six (6) months or which is voluntarily destroyed by the property owner shall not be allowed to be rebuilt, repaired or restored. (Ord. 2005-15, 7-12-2005)

11-21-4 NONCONFORMING USES:

- (1) A legal nonconforming use may be continued by the present or future property owner.
- (2) Illegal Use. An illegal nonconforming use shall be terminated immediately without regard to this Section.
- (3) A legal nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purposes of the extension.
- (3) The owner of a parcel of property on which a nonconforming use exists may apply for a conditional use permit for a legal conforming use on the same parcel of property as the nonconforming use. An example Examples of legal conforming uses that may be allowed would be for a separate structure used for a legal conforming use and/or expanded parking to eliminate the need for vehicles related to the nonconforming use to park on a public street.
- (4) The City may require the termination of a legal nonconforming use by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use.
- (4) The City may not terminate a nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the use has been abandoned.
- (5) A nonconforming use of a structure shall terminate if:
 - (a) The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the property owner, by the zoning administrator or building official, that the structure is uninhabitable and that the nonconforming use will be lost if the structure is not repaired or restored within six (6) months.
 - (b) The property owner has voluntarily demolished a majority of the building that houses the nonconforming use.
 - (c) A nonconforming use may only be changed to a use allowed in this title, for the zoning district in which the property is located by following the approval procedures for such new use, as required by this title.

11-21-5: NONCOMPLYING STRUCTURES:

- (1) A noncomplying structure may be continued by the present or future property owner.
- (2) The City may not prohibit the reconstruction or restoration of a noncomplying structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure has been abandoned.

(3) Necessary maintenance and repairs may be made to a legal noncomplying structure by following the procedures for any approval, permit, or license, including the issuance of a building permit, for such maintenance and repairs, as required by all land use ordinances, and building code.

(4) A noncomplying structure shall terminate if:

(a) The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the property owner, by the zoning administrator or building official, that the structure is uninhabitable and that the noncomplying structure will be lost if the structure is not repaired or restored within six (6) months.

(b) The property owner has voluntarily demolished a majority of the noncomplying structure.

11-21-5: PREEXISTING USE MAY BE CONTINUED:

Land and/or buildings utilized prior to the effective date hereof for a use which, after the effective date hereof is nonconforming, may continue to be utilized as a nonconforming use, unless the building is vacated or the use ceased for a continuous period in excess of one year, as long as the use does not constitute a safety or health hazard, is not a nuisance nor is otherwise dangerous to life and property values. No such nonconforming use of land may in any way be expanded or extended, either in the same or on adjoining property. (Ord. 2005-15, 7-12-2005)

11-21-6 6: EFFECT OF VACATING NONCONFORMING USE OR BUILDING: TERMINATION OF NONCONFORMING USE DUE TO ABANDONMENT:

~~A. A vacant building may be occupied by a use for which the building or structure was used, designed or intended, if so occupied within a period of one year after the use became nonconforming.~~

~~B. However, a building or portion thereof occupied by a nonconforming use which is, or hereafter becomes, vacant and remains unoccupied by said nonconforming use for a continuous period in excess of one year, shall not thereafter be occupied except by a use which conforms to the use regulations of the district in which it is located.~~

~~C. Should a nonconforming use of land be ceased for a period in excess of one year, any future use of such land shall be in conformity with the provisions of this title and the previously authorized nonconforming use is expressly prohibited. (Ord. 2005-15, 7-12-2005)~~

(1) Any party claiming a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(2) Abandonment may be presumed to have occurred if:

(a) A majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the City regarding an extension of the nonconforming use;

(b) The use has been discontinued for a minimum period of one year; or

(c) The primary building associated with the nonconforming use remains vacant for a minimum period of one year.

(3) The property owner may rebut the presumption of abandonment made under this section and shall have the burden of establishing that any claimed abandonment under this section has not in fact occurred.

(4) The City may terminate the nonconforming use status of a school district or charter school when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a minimum period of one year.

11-21-7 NONCOMPLYING LOTS:

This section shall only apply to legal undeveloped lots or parcels.

(1) A legal lot of record, or any parcel of record, legally existing on the date of adoption hereof shall:

(a) Be eligible for a building permit authorizing the construction of one single-family dwelling, even though such lot or parcel may not conform to the requirements of the zoning district in which it is located, provided:

(i) That such lot or parcel of land is located in a zoning district that allows single-family dwellings, and

(ii) The proposed construction can qualify for the issuance of a building permit for a single-family dwelling, as required by the building code, and to the greatest extent possible, the zoning district requirements for setbacks and height, as adopted.

11-21-8 NONCOMPLYING SIGNS:

This section shall apply only to signs that were legal on the date of adoption hereof but which may now be a noncomplying sign.

(1) A noncomplying sign shall not be enlarged.

(2) A noncomplying sign shall not be moved or replaced, except to bring the sign into compliance with this title and all other land use ordinances.

(3) The text message of a noncomplying sign may be changed if such changes do not create any new nonconformities or other noncompliance.

(4) A noncomplying sign shall be considered abandoned if it advertises a business, service, commodity, or other activity that has been discontinued for a minimum period of one year.

(5) A noncomplying sign may be maintained as needed and shall be maintained in a clean, rust free, non-deteriorated condition.

11-21-9 OTHER NONCONFORMITIES:

(1) Application and Intent. This section shall apply to any other circumstance which does not conform to the requirements of this title including, but not limited to, fence height or location; lack of buffers or screening; lack of or inadequate landscaping; lack of or inadequate off-street parking; and any other nonconformity not covered by this chapter. Because the nonconformities regulated by this section involve less investment and are more easily corrected than those regulated by sections 11-21-4, 11-21-5, 11-21-6, 11-21-7 and 11-21-8 of this chapter, the intent of the City is to eliminate such nonconformities as quickly as practicable. The degree of such nonconformities shall not be increased.

(2) Nonconforming Development with Approved Site Plan. Any nonconforming development which is governed by an approved site plan shall be deemed to be in conformance with this title to the extent such development conforms to the plan.

(3) Compliance Required. A nonconformity other than those regulated in sections 11-21-4, 11-21-5, 11-21-6, 11-21-7 and 11-21-8 of this chapter shall be brought into conformance upon the occurrence of any one of the following:

(a) Any action which increases the floor area of the premises by more than thirty percent (30%).

(b) Any action which, when combined with one (1) or more previous expansions that have occurred over a period of time, causes the aggregate area of expansion to exceed thirty percent (30%) of the original floor area of the premises.

(c) For a lot located in a commercial or industrial zone, any change in use to a more intensive use when a new certificate of occupancy is required.

11-21-10 NONCONFORMITIES RESULTING FROM PUBLIC ACTION

When area or yard setbacks of a legally established lot are reduced as the result of conveying land to a federal, state or local government for a public purpose, such lot and yards shall be deemed to be in compliance with the minimum lot size and yard setback standards of this Title without any need for a variance.

11-21-11 BILLBOARDS EXEMPT.