



MEMORANDUM TO MUNICIPAL COUNCIL

DATE: August 5, 2014
FROM: Mike DeSimone, Director
SUBJECT: LDC Text Amendment ~ Legally Existing Nonconformities Amendment

Summary of Planning Commission Proceedings

Project Name: Track 1 Review Process Amendment
Request: Code Amendment
Project Address: City-wide
Recommendation of the Planning Commission: Approval with modification

On May 22, 2014, the Planning Commission recommended that the Municipal Council **approve** a request to amend the Land Development Code Chapter 17.59 (Legally Existing Nonconformities) by clarifying the language and intent of minor repair/normal maintenance.

Planning Commissioners vote (6 - 0):

Motion to recommend approval: R. Price

Second: S. Sinclair

Yea: D. Adams, A. Fannesbeck, R. Price, S. Sinclair, G. Smith, A. Davis Nay: none

Attachments:

Staff Report

Ordinance 14-47

PC Meeting Minutes

CITY OF LOGAN, UTAH
ORDINANCE NO. 14-47

AN ORDINANCE AMENDING TITLE 17 THE LAND DEVELOPMENT CODE OF LOGAN CITY, UTAH

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF LOGAN, STATE OF UTAH AS FOLLOWS:

SECTION 1: That certain code entitled "Land Development Code, City of Logan, Utah" Chapter 17.59: "Legally Existing Nonconformities" is hereby amended as attached hereto as Exhibit A, respectively:

SECTION 2: This ordinance shall become effective upon publication.

PASSED BY THE LOGAN MUNICIPAL COUNCIL, STATE OF UTAH, _____
THIS DAY OF _____, 2014.

AYES:
NAYS:
ABSENT:

Karl Ward, Chair

ATTEST:

Teresa Harris, City Recorder

PRESENTATION TO MAYOR

The foregoing ordinance was presented by the Logan Municipal Council to the Mayor for approval or disapproval on the ____ day of _____, 2014.

Karl Ward, Chairman

MAYOR'S APPROVAL OR DISAPPROVAL

The foregoing ordinance is hereby _____ this ____ day of _____, 2014.

Craig Petersen, Mayor

EXHIBIT A

Chapter 17.59: Legally Existing Nonconformities

§17.59.010. Purpose

This chapter is intended to govern the uses, structures, lots, and other situations that came into being lawfully but that do not conform to one or more standards of the land development code. The regulations are intended to recognize the interests of property owners in continuing to use nonconforming property, and to manage the expansion of legally existing nonconformities, to regulate re-establishment of abandoned uses, and to limit re-establishment of structures that have been substantially destroyed. It is the policy of the Municipal Council that as legally existing nonconformities obtain permits or reviews pursuant to this chapter, that the objective is to ultimately replace the legally existing nonconformity with a conforming use or structure.

§17.59.020. Types of Legally Existing Nonconformities

This Chapter addresses the following types of legally existing nonconformities:

- A. Nonconforming Uses;
- B. Nonconforming Structures;
- C. Nonconforming Lots;
- D. Nonconforming Signs; and
- E. Other Legally Existing Nonconformities:
 1. Fences and walls with heights, materials, setbacks, or locations that are not in conformance with City requirements;
 2. Parking lots, facilities, structures, or sites that are not in conformance with City requirements; or
 3. Other site development characteristics that are not in conformance with City requirements and standards.

§17.59.030. Policy

- A. Legally existing nonconforming uses shall be permitted to continue operating in the same way the use operated at the time the zoning regulations were enacted, revised, or amended which rendered the use nonconforming.
- B. Owners of land upon which there are legally existing nonconforming land uses may be granted a conditional use permit to substitute a use or expand a use within acceptable limits pursuant to this Chapter.
- C. The Planning Commission may, at its discretion, approve, conditionally approve, or deny an expansion of a nonconforming use, an expansion of the structure, or a legally existing non-conforming substitution of use subject to the following:
 1. The conditional use permit procedures outlined in Chapter 17.49 shall be followed, ~~for consideration of the proposed change of the nonconforming use.~~
 2. The Planning Commission may deny the change or expansion of use, a substitution of use, or an expansion of a non-conforming structure or other non-conformity identified in Section 17.59.020 or its expansion if the Commission it finds that the continued use or expansion is incompatible with conforming uses in the area.
 3. The Planning Commission may deny the substitution of use if it cannot substantiate, by evidence in the administrative record, the findings required for conditional use permit approvals, ~~or if it finds that the proposed substituted use is incompatible with conforming uses in the area.~~
 4. ~~When a legally existing nonconforming land use or legally existing nonconforming structure is abandoned for a period of 12 or more calendar months, the legally existing nonconforming status is no longer considered valid and the use or structure may be established only as a conforming use or structure.~~

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D. When a legally existing nonconforming land use or legally existing nonconforming structure is abandoned for a period of 12 or more calendar months, the legally existing nonconforming status is no longer considered valid and the use or structure may be established only as a conforming use or structure.

~~D.~~ E. A use or structure which becomes legally existing nonconforming upon the adoption, revision, or amendment of applicable regulations may continue. However, if the structure or use is vacated for 12 or more months following the modifications to the ordinance that rendered it nonconforming, it shall lose its legally existing status and shall be brought into conformance with appropriate codes prior to subsequent use.

EF. Each of the sections in this Chapter addressing the process for obtaining approvals for nonconforming uses, nonconforming structures, nonconforming lots, nonconforming signs, and other legally existing nonconformities are separate components of an approval. There can be a nonconforming use in a conforming structure; a conforming use in a nonconforming structure; a nonconforming use in a nonconforming structure, among other considerations. Each issue of nonconformity requires a separate action. These actions may occur as a part of the same application.

§17.59.040. Authority to Continue

A. Continuing Legally Existing Nonconformities.

Legally existing nonconformities may be allowed to continue in accordance with all of the regulations of this chapter.

B. Determination of Nonconformity Status.

The burden of proof establishing that a nonconformity lawfully exists rests with the owner, not the City. The Municipal Council may establish fees to cover the cost of Department of Community Development staff providing research services to determine nonconformity status in order to support the proponent's burden of proof requirement.

C. Repairs and Maintenance.

Minor repairs and normal maintenance required to keep legally existing nonconformities in a safe or aesthetically attractive condition are permitted, provided that all alterations meet current code requirements. Minor repairs and normal maintenance contemplated in this Chapter generally includes such things as installing new roofing, windows, doors and siding, painting, replacing rotten framing members, repairing cracked foundations, and repairing plumbing, mechanical and electrical systems. Minor repairs and normal maintenance does not include completely rebuilding a nonconformity such that it is an entirely new structure or building.

D. Change of Tenancy or Ownership.

Changes of tenancy, ownership or management of an existing nonconformity are permitted, provided there is no change in the nature, character, extent, density or intensity of the nonconformity.

§17.59.050. Nonconforming Uses

Nonconforming uses are subject to the following standards.

A. Enlargement.

A nonconforming use may **not** be enlarged, expanded, or extended to occupy more land area or floor area than was occupied at the time the use became nonconforming without first obtaining a conditional use permit as identified in Section 17.59.030. Additional accessory uses or structures may be established on the site of a nonconforming use following the review for consideration of a conditional use permit. The conditional use permit ~~use permit~~ is a discretionary action and the effect of the nonconformity on the conforming uses and structures shall be considered in the review. ~~Legally existing nonconforming uses may be extended throughout any part of a currently occupied~~

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~~building or other structure in which the use was lawfully located on the date the use become nonconforming.~~

B. Relocation.

Nonconforming uses shall not be transferred or moved to another lot unless the use will be in conformance with the use regulations of the district into which it is moved, and the relocation activities and construction meet current building code regulations.

C. Discontinuance and Abandonment.

If a nonconforming use ceases to exist for any reason for a period of more than 12 consecutive months, subsequent uses shall conform to all regulations of the district in which such lot is located.

D. Damage or Destruction.

In the event that any structure devoted in whole or in part to a nonconforming use is damaged or destroyed, through actions other than neglect or intentional demolition, the use may be restored to the intensity or density that existed prior to the damage or destruction. In such cases, the use shall be re-established within 12 months of the date of damage occurrence.

E. Substitution of Use.

1. An application for a conditional use permit to substitute a nonconforming use may be submitted provided that the new use is of the same general character as defined in subsection 17.59.050.E.2 of this section as the legally existing nonconforming use being replaced. The determination of whether a proposed use is a continuing use or is of the same general character shall be considered as one of the findings to be substantiated with review of the application for a conditional use permit.

2. "Same general character" means a substituted land use for which compatibility is determined utilizing a combination of the following resources:

- a. North American Industrial Classification (NAIC): the substituted land use shall be within the same secondary business classification as the use being replaced;
- b. Traffic generation: the number of vehicles per measurable unit for the substituted use shall be within 15% of the number of vehicles per measurable unit as identified in the current Institute of Transportation Engineers (ITE) Trip General Manual as the use being replaced;
- c. The substituted use shall be permitted for not more than 10% more employees or fewer number than the number of employees utilized in the use being replaced;
- d. The substituted use shall not generate or cause any measurable impacts on the neighborhood that are greater than the use being replaced. Impacts the Planning Commission shall consider in its decision include and are not limited to:
 - (1) Customer traffic as compared to the use being replaced;
 - (2) Audible noise in excess of levels generated by the use being replaced;
 - (3) Particulate emissions or odors generated in any amount; or
 - (4) Atmospheric emissions, storm water discharge or sewer discharge.
- e. The Commission shall address each of the following issues in its deliberations on the substitution of a use:
 - (1) The Commission may combine compliance with these standards with other facts in the administrative record and other findings as required by ordinance or statute in determining the compatibility of the substituted use with conforming uses in the neighborhood;
 - (2) The Commission has the discretion to deny a substitution of use when facts in the administrative record substantiate that there is a fair argument that

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the substituted use will adversely affect the character of a neighborhood, or the public health, safety, and general welfare, and

- (3) The Commission has the discretion to deny a substitution of use, even if the use is of the same general character as the use being replaced, when it finds that the substituted use will adversely affect the neighborhood or impact the public health, safety, and welfare.

3. Following substitution of use:

- a. If changed to a conforming use, a nonconforming use shall not be permitted nor conditionally permitted to be established; or
- b. If a substituted use has been approved for the location, the standard of review for "same general character" shall be based on the most recent substituted use, not the original or any previous legally existing nonconforming land use.

F. Accessory Uses.

No accessory use to a primary nonconforming use may continue after the principal primary use ceases or terminates unless it is conforming.

G. Illegally Established Uses.

No use may be considered a legally existing nonconforming use under the provisions of this Title if the use was never lawfully established, including and not limited to, any combination of appropriate license, permits, or fees (see definition for Nonconforming Use §17.62).

§17.59.060. Nonconforming Structures

Nonconforming structures are subject to the following standards.

A. Enlargement.

Expansion or enlargement of a nonconforming structure that increases the degree of nonconformity shall be prohibited. The initial determination of whether a proposed expansion increases the degree of nonconformity shall be made by the Director.

B. Extension of a Legally Existing Single Family Structure.

An existing structure used as a single family dwelling that does not conform to side yard requirements, but having a minimum side setback of not less than three feet, may be extended in depth along the nonconforming building line to the extent of ½ of the length of the existing structure. This extension of a nonconforming side setback may be permitted at the discretion of the Director if the extension is for the purpose of enlarging or maintaining the existing dwelling and is subject to the following findings:

1. The extension will not increase the number of dwelling units;
2. The extension will not result in a change of the use as a single family dwelling;
3. The extension complies with all other regulations in the zoning district in which the dwelling is located; and
4. The extension will comply with applicable building code regulations.

C. Damage or Destruction.

In the event that any nonconforming structure is damaged or destroyed through actions other than neglect or intentional demolition, it may be restored provided a building permit is obtained within 12 months of the date of damage occurrence. Restoration shall be started immediately following the issuance of a building permit and diligently pursued in accordance with the terms of the building permit.

D. Relocation.

Nonconforming structures shall not be moved or relocated to another location unless the movement or relocation will bring the structure into compliance with all applicable zoning district regulations and building code requirements.

E. **Illegal Structures.**

No structure may be considered a legally existing nonconforming structure under the provisions of this chapter if the structure was never lawfully established.

§17.59.070. Nonconforming Lots

A legal lot created in conformance with State and City regulations in effect at the first date of recordation may be occupied and used although it may not conform in every respect with the dimensional requirements of this Code, subject to the provisions of this section.

A. **Undeveloped Lots.**

If a legally existing nonconforming lot is undeveloped, then the owner may use the property as permitted by the applicable zoning district, provided that any structures shall comply with applicable site development standards of this Title.

B. **Developed Lots.**

If a legally existing nonconforming lot is developed, then the owner may use the property as permitted by the applicable zoning district, provided that any additional structures or development shall comply with applicable site development standards of this Title.

C. **Illegal Lots.**

No lot shall be considered a legally existing nonconforming lot under the provisions of this chapter if the lot was never lawfully established.

§17.59.080. Nonconforming Signs

A. **Change of Copy.**

Change of copy, or the substitution of panels or faces of the same or less square feet on nonconforming signs, shall be permitted in accordance with Chapter 17.40.070. Minor repairs and normal maintenance of nonconforming signs such as repainting and electrical repairs shall be permitted. Change of copy shall not be made by replacement with an electronic message center without obtaining a Design Review Permit in conformance with 17.40.

B. **Enlargement or Expansion.**

A legally existing nonconforming sign may at the discretion of the decision-making body be remodeled or redesigned for aesthetic or safety purposes. This discretionary action may be approved with a Design Review Permit if it is found that the design and appearance of the sign is an aesthetic improvement over the nonconforming sign.

C. **Moving.**

It shall be unlawful to move or relocate any existing sign, except in accordance with the provisions of Chapter 17.40.

D. **Abandoned Signs.**

Any nonconforming sign that ceases being used for a continuous period of 90 days, shall not be reused for sign purposes until it is brought into full compliance with the standards of the sign regulations in effect at the time a permit for a new sign is proposed.

E. **Abandoned Businesses.**

Any nonconforming sign that pertains to a business or institution that ceases operation for a period of 90 days or more shall not be reused for sign purposes until it is brought into full compliance with the standards of sign regulations in effect at the time a permit for a new sign is proposed.

F. **Illegal Signs.**

No sign may be considered a legally existing nonconforming sign under the provisions of this chapter if the sign was never lawfully established.



**Project #14-025
Nonconformities (17.59)
Code Amendment**

REPORT SUMMARY...

<i>Project Name:</i>	Legally Existing Nonconformities Amendment
<i>Proponent/Owner:</i>	Community Development Department
<i>Project Address:</i>	Citywide
<i>Request:</i>	Code Amendment
<i>Type of Action:</i>	Legislative
<i>Date of Hearing:</i>	May 22, 2014
<i>Submitted By:</i>	Mike DeSimone, Director

RECOMMENDATION

Staff recommends that the Planning Commission recommend **approval** to the Municipal Council for the following amendments to the Land Development Code (LDC): Sections 17.59 (Legally Existing Nonconformities).

REQUEST

This proposed text amendments to the Land Development Code would amend the Nonconformity standards contained in Chapter 17.59. The purpose of these amendments is to clarify language and clarify the intent of minor repair and normal maintenance.

There are also a few minor "clean-up" language changes in which are highlighted in red.

GENERAL PLAN

The Land Development Code was prepared and adopted to implement the vision expressed in the General Plan. This proposed amendment clarifies the legally existing nonconforming standards. The proposed amendments are consistent with the General Plan.

STAFF RECOMMENDATION AND SUMMARY

Staff would recommend that the Planning Commission forward a recommendation of approval to the Council for their consideration.

PUBLIC COMMENTS

As of the time the staff report was prepared, no public comments had been received.

PUBLIC NOTIFICATION

Legal notices were published in the Herald Journal on May 8, 2014, posted on the City's website and the Utah Public Meeting website on April 22, 2014, and noticed in a quarter page ad on May 4, 2014.

AGENCY AND CITY DEPARTMENT COMMENTS

No comments have been received.

RECOMMENDED FINDINGS FOR APPROVAL

The Planning Commission bases its decisions on the following findings:

1. Utah State Law authorizes local Planning Commission to recommend ordinance changes to the legislative body (Municipal Council).

2. The Code Amendment is done in conformance with the requirements of Title 17.51 of the Logan Municipal Code.
3. The proposed Code Amendments clarifies the intent of the repair and maintenance provisions within Chapter 17.59 (legally existing nonconformities).
4. The provisions of these amendments are consistent with the overall goals and objectives of the Logan General Plan.
5. No public comment has been received regarding the proposed amendment.

This staff report is an analysis of the application based on adopted city documents, standard city development provisions, and available information. The report is to be used to advise and inform the staff of the application prior to and during the course of the Planning Commission meeting. Additional information may be provided by participants at the Planning Commission meeting which may modify the staff report and require the Certificate of Decision. The Director of Community Development reserves the right to supplement the analysis in the report with additional information at the Planning Commission meeting.



APPLICATION FOR PROJECT REVIEW

Planning Commission Board of Adjustment Board of Appeals Other

Date Received 4-21-14	Received By	Receipt Number	Zone	Application Number PC 14-025
Type of Application (Check all that apply):				
<input type="checkbox"/> Design Review <input type="checkbox"/> Conditional Use <input type="checkbox"/> Subdivision <input type="checkbox"/> Zone Change <input type="checkbox"/> Boundary Line Adjustment <input type="checkbox"/> Code Amendment <input type="checkbox"/> Appeal <input type="checkbox"/> Variance <input type="checkbox"/> 4950' Design Review <input type="checkbox"/> Other _____				
PROJECT NAME				
TEXT AMENDMENT - LOGAN LAND DEVELOPMENT CODE				
PROJECT ADDRESS				COUNTY PLAT TAX ID #
CITYWIDE - TEXT AMENDMENT.				- -
AUTHORIZED AGENT FOR PROPERTY OWNER (Must be accurate and complete)				MAIN PHONE #
LOGAN CITY COMMUNITY DEVELOPMENT DEPARTMENT				(435) 716-9021
MAILING ADDRESS		CITY	STATE	ZIP
290 NORTH 100 WEST		LOGAN	UTAH	84321
EMAIL ADDRESS				
WWW.LOGANUTAH.ORG ; MIKE.DESIMONE@LOGANUTAH.ORG				
PROPERTY OWNER OF RECORD (Must be listed)				MAIN PHONE #
CITYWIDE				
MAILING ADDRESS		CITY	STATE	ZIP
EMAIL ADDRESS				
DESCRIBE THE PROPOSED PROJECT AS IT SHOULD BE PRESENTED (Include as much detail as possible - attach a separate sheet if needed)				
AMEND LOGAN LAND DEVELOPMENT CODE SECTIONS 17.59 TO CLARIFY THE NON-CONFORMING POLICIES, PROCEDURES AND STANDARDS.				
				Size of Proposed New Building (square feet)
				Number of Proposed New Units/Lots
I certify that the information contained in this application and all supporting plans are correct and accurate. I also certify that I am authorized to sign all further legal documents and permits on behalf of the property owner.		Signature of Property Owner's Authorized Agent		
I certify that I am the property owner on record of the subject property and that I consent to the submittal of this project. I understand that all further legal documents and permits will be sent to my authorized agent listed above.		Signature of Property Owner		

mc workshop: Jun. 17
mc hearing: Jul. 1



PUBLIC NOTIFICATION

PC 14-025

Project Name: LDC – 17.59 Nonconforming Policies
Project Address:
Project TIN:
Meeting Date: May 22, 2014

- Attachment 1: **Public Notice** - **N/A**
- Attachment 2: **Legal Notice** published in Herald Journal – **5/8/14**
- Attachment 3: **Utah Public Meeting Notice website** – **4/22/14**
- Attachment 4: **Qtr Page Ad** published in Herald Journal – **5/4/14**
- Attachment 5: **Municipal Council - Legal Notice** published in Herald Journal – **6/3/14**
- Attachment 6: **Municipal Council - Utah Public Meeting Notice website** – **4/22/14**