

What is a Legal Nonconforming Use?

A "legal nonconforming use" is a use of land or structure which was legally established according to the applicable zoning and building laws of the time, but which does not meet current zoning and building regulations. A use or structure can become "legal nonconforming" due to rezoning, annexation, or revisions to the Zoning Code.

Must a Legal Nonconforming Use be abandoned or altered to meet current zoning and building regulations?

No, as long as the use is continuously operated and it is not discontinued or abandoned for more than a six month period. However, if a legal nonconforming use is discontinued for more than six (6) months but less than eighteen (18) months, the nonconforming use may be reinstated with the issuance of a **Special Use Permit**. A legal nonconforming use that is discontinued or abandoned for more than eighteen (18) months loses its "legal nonconforming status."

If a Legal Nonconforming Structure is destroyed by fire or other natural disaster can the use be re-established?

Yes. The building may be restored in its entirety if the new building does **not**:

- Occupy any portion of the lot that was not occupied by the destroyed building;
- Have a greater floor area than the destroyed building;

- Exceed the height or number of stories contained in the destroyed building; and
- Diminish the number or size of the off-street loading or parking spaces located on the property before the disaster.

Is there a time limit for the restoration of a Legal Nonconforming Use that has been destroyed by fire or other natural disaster?

Yes. The owner has nine (9) months from the date of the destruction to apply for a building permit, and three (3) months from the date of issuance of a building permit to begin construction. If these permits are not secured within the time limit specified, the use shall be considered discontinued and abandoned.

Will the Department of Planning, Building and Code Enforcement write a letter to a lender (i.e., a bank) confirming that a Legal Nonconforming building can be rebuilt after a fire or other natural disaster?

Yes. If your lender requires one, please request such a letter from the Department of Planning, Building and Code Enforcement in writing, and provide (1) your name and address, (2) the Assessor's Parcel Number (APN) of the property, and (3) the use which is allegedly legal nonconforming. The Department will send you a letter stating that a legal non-conforming use may be rebuilt after a natural disaster if all the applicable permits are secured. However, unless proof is provided, the letter written by the Department of Planning, Building and Code Enforcement will not prove that the use is legal nonconforming, but will only state that **if** the use is legal nonconforming, it may be rebuilt.

Will the Department of Planning, Building and Code Enforcement confirm in writing that a use is Legal Nonconforming?

Yes, if the property owner can prove that the use legally predates the current provisions of the Zoning Code and that it has been in continuous use since its establishment. A request for such a letter should be made in writing, and should include (1) your name and address, (2) the Assessor's Parcel Number (APN) of the property, (3) the use which is allegedly legal nonconforming, and (4) proof of its legal nonconforming status. Proof of legal nonconforming status could include such documents as Planning permits, building permits, leases, a building footprint shown on the Sanborn maps or listings in the Polk's Directory or Haines Directory. The directory is a list of businesses and residents which are referenced by address. The Sanborn maps are fire insurance reference maps. The Dr. Martin Luther King Jr. Main Library (150 E. San Fernando Street) has copies of the Sanborn maps and the directories dating from the turn of the century to present. History Park at Kelly Park located at 1650 Senter Road also has wide assortments of records (287-2290).

Can a Legal Nonconforming Use be expanded?

Possibly. A legal nonconforming use may be expanded through the issuance of a **Site Development Permit** (if the expansion involves new buildings or structures) or a **Special Use Permit** (if the expansion occurs within the existing building(s) or is an exterior expansion of a single-family detached dwelling). However, an expansion may only be approved if it does not increase

any identified impact such as traffic, on-street parking, or noise.

Can additional nonconforming uses be added to property which has an existing Legal Nonconforming Use?

No. However, a conforming use may be added to the site if it is compatible with the existing legal non-conforming use and its architecture. The addition of a conforming use will be considered by the Site Development Permit or Conditional Use Permit required for the new use by the Zoning Code, or, if neither permit is required, by a Special Use Permit.

Can an existing Legal Nonconforming Use be exchanged for a new nonconforming use?

Possibly. The legal nonconforming use of a building may be changed to another non-conforming use of “like nature” with a **Site Development Permit** (if the change involves new buildings or structures) or with a **Special Use Permit** (if the change does not involve new construction). Two uses are of “like nature” when the Director of Planning determines that the two uses are treated in essentially the same manner in the Zoning Code, and such change will not increase impacts such as traffic, parking, or noise.

For more information on Legal Nonconforming Uses, please refer to Part 4 of Chapter 20.150 of the Zoning Code.

For more information
call (408) 277-4576



Department of Planning, Building and Code Enforcement
City Hall Annex, Room 400
801 North First Street
San Jose, Ca 95110-1795

Legal Nonconforming Uses

