

Ordinance No. 120293

Council Bill No. 113469

The City of Seattle  
Council Bill/Ordinance

AN ORDINANCE relating to land use and zoning, amending Title 23 of the Seattle Municipal Code (SMC) to consolidate land use code provisions on nonconformity, establish a new amnesty date for residential nonconformity, allow for rebuilding of nonconforming residential structures, resolve conflicts between provisions in different zones, and deleting current sections on nonconformity and replacing them with new sections in Chapter 23.42 to apply in all zones except the shoreline district.

3/20/01 Pass as Amended

CF No. \_\_\_\_\_

3-26-01 Pass

Date Introduced:	NOV - 6 2000	
Date 1st Referred:	To: (committee)	Landlord/Tenant & Land Use Committee
NOV - 6 2000		
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote:	
3-26-01	9-0	
Date Presented to Mayor:	Date Approved:	
3-27-01	3/20/01	
Date Returned to City Clerk:	Date Published:	T.O. <input type="checkbox"/>
4/2/01	1/20/01	F.T. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

This file is complete and ready

*Law Department*

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: John A. NICAstro  
Councilmember

**Committee Action:**

Pass as Amended (substitute version) 3-0 JN, RS, MP

3-26-01 Passed As Amended 9-0

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_

(initial/date)

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**ORDINANCE** 120293

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4 **AN ORDINANCE** relating to land use and zoning, amending Title 23 of the Seattle  
5 Municipal Code (SMC) to consolidate land use code provisions on nonconformity,  
6 establish a new amnesty date for residential nonconformity, allow for rebuilding of  
7 nonconforming residential structures, resolve conflicts between provisions in  
8 different zones, and deleting current sections on nonconformity and replacing them  
9 with new sections in Chapter 23.42 to apply in all zones except the shoreline district.

10  
11 **WHEREAS**, Council Resolution 30075 directed DCLU to proceed with a multiphase project  
12 to simplify the Land Use Code so that it will be more understandable and user-  
13 friendly, and can be administered and enforced in an efficient and effective manner;  
14 and

15  
16 **WHEREAS**, Council Resolution 30075 provided that consolidating provisions in the Land  
17 Use Code related to nonconformities would be one of the first options to pursue; and

18  
19 **WHEREAS**, DCLU has worked with a citizen advisory committee which has met numerous  
20 times in the last year to consider nonconformity issues and other simplification  
21 topics; and

22  
23 **WHEREAS**, a public meeting to discuss the proposed Land Use Code changes was held on  
24 September 28, 2000; and

25  
26 **WHEREAS**, the City Council finds that the proposed changes will work toward simplifying  
27 use and application of the Code on issues related to nonconforming sites, structures,  
28 uses, and developments.

29  
30  
31 **NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS**  
32 **FOLLOWS:**

33  
34 **Section 1.** New Sections 23.42.100, 23.42.102, 23.42.104, 23.42.106, 23.42.108,  
35 23.42.110, 23.42.112, 23.42.114, 23.42.116, 23.42.118, 23.42.120, 23.42.122, 23.42.124,  
36 23.42.126, 23.42.128, and 23.42.130 are added to the Seattle Municipal Code to read as  
37 follows:



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**23.42.100 Nonconformity: applicability and intent.**

A. The nonconformity provisions of this Chapter apply to uses and sites in all zones, except for the shoreline overlay district (see Chapter 23.60).

B. It is the intent of these provisions to establish a framework for dealing with nonconformity that allows most nonconformities to continue. The Code facilitates the maintenance and enhancement of nonconforming uses and developments so they may exist as an asset to their neighborhoods. The redevelopment of nonconformities to be more conforming to current code standards is a long term goal.

**23.42.102 Establishing nonconforming status.**

A. Any use that does not conform to current zoning regulations, but conformed to applicable zoning regulations at any time and has not been discontinued as set forth in Section 23.42.104 is recognized as a nonconforming use or development. Any residential development in a residential, commercial or downtown zone that would not be permitted under current Land Use Code regulations, but which existed prior to July 24, 1957, and has not been discontinued as set forth by Section 23.42.104, is recognized as a nonconforming use or development. A recognized nonconforming use shall be established according to the provisions of subsections B-D of this Section.

B. Any use or development for which a permit was obtained is considered to be established.

C. A use or development which did not obtain a permit may be established if the Director reviews and approves an application to establish the nonconforming use or development for the record.

D. For a use or development to be established pursuant to subsection C above, the applicant must demonstrate that the use or development would have been permitted under the regulations in effect at the time the use began, or, for a residential use or development, that the use or development existed prior to July 24, 1957 and has remained in continuous existence since that date. Residential development shall be subject to inspection for compliance with minimum standards of the Housing and Building Maintenance Code.



1 (Chapters 22.200 through 22.208). Minimum standards of the Housing and Building  
2 Maintenance Code must be met prior to approval of any permit to establish the use and/or  
3 development for the record.

4 E. Nonconforming uses commenced after July 24, 1957 and not discontinued (Section  
5 23.42.104) are also subject to approval through the process of establishing use for the  
6 record, if not established by permit. Residential nonconforming uses are subject to  
7 inspection under the Housing and Building Maintenance Code if in existence before January  
8 1, 1976. Conformance to the Seattle Building Code in effect at the time a use first began is  
9 required if the use first existed after January 1, 1976.

10  
11 **23.42.104 Nonconforming uses.**

12 A. Any nonconforming use may be continued, subject to the provisions of this section.

13 B. A nonconforming use that has been discontinued for more than twelve (12)  
14 consecutive months shall not be reestablished or recommenced. A use is considered  
15 discontinued when:

16 1. A permit to change the use of the lot or structure was issued and acted upon; or

17 2. The structure, or a portion of a structure is not being used for the use allowed by  
18 the most recent permit; or

19 3. The structure is vacant, or the portion of the structure formerly occupied by the  
20 nonconforming use is vacant. The use of the structure shall be considered discontinued even  
21 if materials from the former use remain or are stored on the property. A multifamily  
22 structure with one (1) or more vacant dwelling units is not considered vacant and the use is  
23 not considered to be discontinued unless all units in the structure are vacant.

24 4. If a complete application for a permit that would allow the nonconforming use to  
25 continue, or that would authorize a change to another nonconforming use, has been  
26 submitted before the structure has been vacant for twelve (12) consecutive months, the  
27 nonconforming use shall not be considered discontinued unless the permit lapses or the  
28 permit is denied. If the permit is denied, the nonconforming use may be reestablished  
29 during the six (6) months following the denial.



1 C. A nonconforming use that is disrupted by fire, act of nature, or other causes beyond  
2 the control of the owners may be resumed. Any structure occupied by the nonconforming  
3 use may be rebuilt in accordance with applicable codes and regulations to the same or  
4 smaller configuration existing immediately prior to the time the structure was damaged or  
5 destroyed.

6 1. Where replacement of a structure or portion of a structure is necessary in  
7 order to resume the use, action toward that replacement must be commenced within twelve  
8 (12) months after the demolition or destruction of the structure. Action toward replacement  
9 shall include application for a building permit or other significant activity directed toward  
10 the replacement of the structure. If this action is not commenced within this time limit, the  
11 nonconforming use shall lapse.

12 2. When the structure containing the nonconforming use is located in a PSM  
13 zone, the Pioneer Square Preservation Board shall review the exterior design of the structure  
14 before it is rebuilt to ensure reasonable compatibility with the design and character of other  
15 structures in the Pioneer Square Preservation District.

16  
17 **23.42.106 Expansion of nonconforming uses**

18 A. A structure occupied by a nonconforming residential use may be maintained, repaired,  
19 renovated or structurally altered:

20 1. As necessary to improve access for the elderly or disabled; or

21 2. To construct structural features including, but not limited to, exterior decks  
22 and balconies, bay windows, dormers, eaves and solar collectors added to a principal  
23 structure, or a new or expanded accessory structure may be constructed; provided that the  
24 addition or new accessory structure conforms to the development standards of the zone.

25 B. In addition to the standards in subsection A, a structure in a Single Family zone  
26 occupied by a nonconforming residential use may be allowed to expand subject to the  
27 following:

28 1. The number of dwelling units shall not be increased, except as may be  
29 allowed pursuant to Section 23.40.040 or Section 23.44.015.



1           2.       For a nonconforming residential use that is not a multifamily use, except as  
2 may be allowed pursuant to Section 23.40.040 or Section 23.44.015, the number of residents  
3 may not be increased beyond the maximum number that was allowed by the standards of the  
4 zone at the time of approval; if originally permitted by conditional use, the number shall not  
5 be allowed to increase above the number permitted by the conditional use approval.

6           3.       On lots less than ten thousand (10,000) square feet, an expansion of no more  
7 than 500 square feet of gross floor area, meeting the development standards for single family  
8 construction and not exceeding the average height of the closest principal structures on  
9 either side, is allowed.

10          4.       On lots less than ten thousand (10,000) square feet, an expansion greater than  
11 500 square feet of gross floor area and/or exceeding the average height of the closest  
12 principal structures on either side may be approved by DCLU through a special exception,  
13 Type II Master Use Permit, if the proposed expansion meets the development standards for  
14 single family construction and is compatible with surrounding development in terms of:

- 15           a. Architectural character,  
16           b. Existing streetscape and pattern of yards, and  
17           c. Scale and proportion of principal structures.

18          5.       If an addition proposed under subsection 3 or 4 above would require  
19 additional parking under the requirements of Section 23.54.015 for multifamily structures,  
20 that additional parking must be provided.

21          C.       In Multifamily zones, except in Lowrise Duplex/Triplex and Lowrise 1 zones,  
22 dwelling units may be added to a structure containing one or more nonconforming uses,  
23 even if in a structure nonconforming to development standards; provided that limitations on  
24 density shall apply. The structure may be expanded or extended; provided that the  
25 expansion or extension shall be for residential use, shall conform to the development  
26 standards of the zone, and shall not cause an already nonconforming structure to become  
27 more nonconforming to development standards.

28          D.       A nonconforming nonresidential use shall not be expanded or extended, except as  
29 follows:



1           1.     A structure occupied by a nonconforming nonresidential use may be  
2 maintained, repaired, renovated or structurally altered but shall not be expanded or extended  
3 except as otherwise required by law, to improve access for the elderly or disabled or as  
4 specifically permitted elsewhere in this Code.

5           2.     In the Seattle Cascade Mixed zone, general manufacturing uses exceeding  
6 twenty-five thousand (25,000) square feet of gross floor area and heavy manufacturing uses  
7 may be expanded or extended by an amount of gross floor area not to exceed twenty (20)  
8 percent of the existing gross floor area of the use, provided that this exception may be  
9 applied only once to any individual business establishment.

10  
11     **23.42.108     Change from nonconforming use to conforming use.**

12     A.     In any zone, a nonconforming use may be converted to any conforming use if all  
13 development standards are met.

14     B.     In single family zones, a nonconforming use may be converted to single family  
15 dwelling unit, even if all development standards are not met.

16     C.     In multifamily zones, a nonconforming nonresidential use may be converted to  
17 residential use, even if all development standards are not met; provided that the density  
18 limitations of the zone must be met and provided that parking nonconformity shall not be  
19 increased as a result of the conversion; in Lowrise Duplex/Triplex zones the total number of  
20 dwelling units in any structure is limited to three (3).

21     D.     In commercial and industrial zones, a nonconforming use may be converted to any  
22 conforming use even if all development standards are not met, provided that parking  
23 nonconformity shall not be increased as a result of the conversion.

24  
25     **23.42.110     Change from one nonconforming use to another nonconforming use.**

26     A nonconforming use may be converted by an administrative conditional use authorization  
27 to another use not otherwise permitted in the zone subject to the following limitations and  
28 conditions.





1 A. In single family, residential small lot, and Lowrise, Duplex/Triplex zones, a  
2 nonconforming multifamily use or structure may not be converted to any nonresidential use  
3 not otherwise permitted in the zone.

4 B. The proposed new use must be no more detrimental to properties in the zone and  
5 vicinity than the existing use. This determination shall be based on consideration of the  
6 following factors:

7 1. The zones in which both the existing use and the proposed new use are  
8 allowed;

9 2. The number of employees and clients associated or expected with the  
10 proposed use;

11 3. The relative parking, traffic, light, glare, noise, odor and similar impacts of  
12 the two uses and how these impacts could be mitigated.

13 C. The existence of a single residential unit, such as a caretaker's or proprietor's unit,  
14 accessory to a nonconforming commercial use shall not be treated as having established a  
15 residential use, and such a unit may be converted or changed provided that it is the only  
16 residential use in the structure and comprises less than half of the total floor area of the  
17 structure.

18 D. Parking requirements for the proposed use shall be determined by the Director.

19 E. If the new use is permitted, the Director may require mitigation measures, including  
20 but not limited to landscaping, sound barriers or fences, mounding or berming, adjustments  
21 to yards or parking standards, design modification, or limiting hours of operation.

22  
23 **23.42.112 Nonconformity to development standards.**

24 A. A structure nonconforming to development standards may be maintained, renovated,  
25 repaired or structurally altered but shall be prohibited from expanding or extending in any  
26 manner that increases the extent of nonconformity or creates additional nonconformity,  
27 except as otherwise required by law, as necessary to improve access for the elderly or  
28 disabled or as specifically permitted for nonconforming uses and nonconforming structures  
29 elsewhere in this Code.



1 B. A structure nonconforming to development standards and occupied by or accessory  
2 to a residential use may be rebuilt or replaced but may not be expanded or extended in any  
3 manner that increases the extent of nonconformity unless specifically permitted by this code.  
4

5 1. A survey by a licensed Washington surveyor, or other documentation acceptable to  
6 the Director, documenting the extent of nonconformity and confirming that the plans  
7 to rebuild or replace a residential structure create no unpermitted increase in  
8 nonconformity shall be required prior to approval of any permit to rebuild or replace  
9 a nonconforming residential structure.

10 2. Additions to a rebuilt nonconforming residential structure that meet current  
11 development standards are allowed.  
12

13 C. Any structure nonconforming to development standards that is destroyed by fire, act  
14 of nature, or other causes beyond the control of the owner, may be rebuilt to the same or  
15 smaller configuration existing immediately prior to the time the structure was destroyed.

16 D. Where replacement of a nonconforming structure or portion of a structure is  
17 permitted under this section, action toward that replacement must be commenced within  
18 twelve (12) months after the demolition or destruction of the structure, except for a  
19 nonconforming structure designated as a Landmark pursuant to Chapter 25.12. Action  
20 toward replacement of Landmark structures must be commenced within three (3) years after  
21 the demolition or destruction of the structure. Action toward replacement shall include  
22 application for a building permit or other significant activity directed toward the  
23 replacement of the structure. If this action is not commenced within this time limit, any  
24 replacement must conform to the existing development standards.

25 E. When the structure is located in a PSM zone, the Pioneer Square Preservation Board  
26 shall review plans for the exterior design of the structure to ensure compatibility with the  
27 design and character of other structures in the Pioneer Square Preservation District.  
28

29 **23.42.114 Multifamily structures nonconforming to development standards.**



1 The following provisions apply to multifamily structures that do not comply with current  
2 development standards.

3 A. A nonconforming ground-related multifamily structure or apartment located in a  
4 Lowrise Duplex/Triplex (LDT) or Lowrise 1 (L1) zone may be expanded or extended  
5 provided the expansion or extension shall conform to the development standards of the zone  
6 and shall not cause an already nonconforming structure to become more nonconforming to  
7 development standards.

8 B. Additional residential units may be added to a nonconforming ground-related  
9 multifamily structure or apartment structure, provided the addition shall conform to the  
10 development standards of the zone and shall not cause an already nonconforming structure  
11 to become more nonconforming to development standards.

12 C. In Lowrise Duplex/Triplex zones, a nonconforming ground related multifamily  
13 structure or an apartment may be converted to any permitted use if all development  
14 standards are met except for open space and ground level access.

15  
16 **23.42.116 Downtown structures nonconforming to development standards.**

17 A. Portions of structures that do not conform to the standards for minimum street facade  
18 height and/or facade setback limits for the downtown zone in which they are located may be  
19 expanded if the expansion reduces the nonconformity as regards one or both of these  
20 standards and, in the opinion of the Director, is consistent with the intent of the Code. If the  
21 Director determines that greater conformity is not structurally feasible, the expansion may  
22 increase the nonconformity in respect to these standards if all other standards are met.

23 B. Portions of structures that do not conform to the standards for required street-level  
24 uses and/or the street facade requirements for transparency, blank facades, or screening of  
25 parking for the downtown zone in which they are located may be expanded if:

26 1. The expansion does not cause the structure to exceed the base FAR for the zone  
27 and the nonconformity is not increased; or

28 2. When the nonconformity of the structure as regards these development standards  
29 is reduced, expansion of the structure up to the maximum FAR for the zone may be  
30 permitted by the Director through the use of the bonus system or transfer of development



1 rights. The appropriate level of expansion and the required reduction or elimination of  
2 nonconformity shall be determined by the Director according to the following criteria:

- 3 a. The extent of the proposed expansion,  
4 b. The impact of the proposed expansion on the pedestrian environment,  
5 c. The amount of the existing nonconformity, and  
6 d. The structural feasibility of remodeling the structure to meet these  
7 development standards.

8  
9 **23.42.118 Landmark structures.**

10 A. Landmark structures may be expanded even if the expansion increases the extent of  
11 nonconformity, when the Landmarks Board determines that there is no feasible alternative  
12 that meets the development standards of the zone while preserving the integrity of the  
13 landmark structure.

14 B. The Director may permit the proposed expansion if it is approved by the Landmarks  
15 Board and if:

- 16 1. The expansion does not have a significant adverse effect on the light, air,  
17 solar and visual access of properties within a three hundred (300) foot radius; and  
18 2. The expansion does not adversely affect the pedestrian environment in the  
19 vicinity.

20  
21 **23.42.120 Access easement nonconformity.**

22 A structure located on a lot nonconforming as to access easement requirements may  
23 be replaced, provided that the number of dwelling units to which access is provided by the  
24 easement shall not be increased and the new structure shall conform to all other  
25 development standards of the zone.

26  
27 **23.42.122 Height nonconformity.**

28 A. In single family and multifamily zones, a structure nonconforming as to height may  
29 be expanded or extended to add eaves, dormers and /or clerestories to an existing pitched  
30 roof provided the additions are constructed below the highest point of the roof. An existing



1 pitched roof that is above the height limit shall not be converted into a flat roof nor shall the  
2 slope of the roof be lowered below a four in twelve (4:12) pitch.

3 B. Structures originally constructed in Manufacturing zones, under Seattle Municipal  
4 Code Title 24, that exceed the permitted height in zones with height limits of thirty feet  
5 (30'), forty feet (40'), or sixty-five feet (65') shall be limited to an FAR (floor area ratio) of  
6 two and one-half (2 ½ ). Structures that exceed the permitted height in zones allowing  
7 heights greater than sixty-five feet (65') shall be limited to the FAR permitted in the  
8 respective zones.

9  
10 **23.42.124 Light and glare standards nonconformity.**

11 When nonconforming exterior lighting is replaced, new lighting shall conform to the  
12 requirements of the light and glare standards of the respective zone. See subsection H of  
13 Section 23.44.008 for single family zones; Section 23.45.017 for lowrise zones; Section  
14 23.45.059 for midrise zones; Section 23.45.075 for highrise zones; Section 23.46.020 for  
15 residential commercial zones; Section 23.47.022 for commercial zones; Section 23.49.010  
16 for downtown zones; and Section 23.50.046 for industrial buffer and industrial commercial  
17 zones.



1  
2 **23.42.126 Outdoor storage areas nonconformity.**

3 A. An outdoor storage area nonconforming as to screening and landscaping shall be  
4 required to be screened and landscaped at the time of any structural alteration or expansion  
5 of the outdoor storage area or the structure with which it is associated according to the  
6 provisions of:

- 7 1. Subsection D5 of Section 23.47.016, if located in a commercial zone;  
8 2. Section 23.48.024, if located in the Seattle Cascade Mixed (SCM) zone;  
9 3. Subsection C of Section 23.50.016, if located on an industrial street designated  
10 for landscaping;  
11 4. Section 23.50.036, if located in an Industrial Buffer zone; and/or  
12 5. Section 23.50.038, if located in an Industrial Commercial zone.

13 B. A business establishment in an NC1, NC2, NC3, or SCM zone with a nonconforming  
14 outdoor storage area may be extended, structurally altered or expanded if the outdoor  
15 storage area is not expanded and if it is screened and landscaped according to the standards  
16 of subsection D5a of Section 23.47.016, or Section 23.48.024 if the business is in the SCM  
17 zone.

18 C. A nonconforming use with a nonconforming outdoor storage area may be structurally  
19 altered, but not expanded, if the outdoor storage area is not expanded and if it is screened  
20 and landscaped according to the standards of subsection D5a of Section 23.47.016 or  
21 Section 23.48.024 if the nonconforming use with the nonconforming outdoor storage area is  
22 in the SCM zone.

23  
24 **23.42.128 Parking nonconformity.**

25 A. Existing parking deficits of legally established uses shall be allowed to continue even if  
26 a change of use occurs. This provision shall not apply to a change of use to one defined as a  
27 heavy traffic generator.

28 B. Nonconforming parking areas or nonconforming parking within structures may be  
29 restriped according to the standards of Section 23.54.030, Parking space standards.



1 C. Parking areas that are nonconforming uses may be restriped according to the standards  
2 of Section 23.54.030, Parking space standards.

3 D. In commercial zones, surface parking areas that are nonconforming due to lack of  
4 required landscaping and are proposed to be expanded by ten percent (10%) or more in  
5 number of parking spaces or in area are required to be screened and landscaped according to  
6 the standards of Section 23.47.016, or in the Seattle Cascade Mixed (SCM) zone, according  
7 to Section 23.48.024, to the extent feasible as determined by the Director.

8 E. See subsection C6 of Section 23.71.008 for requirements in the Northgate Overlay  
9 District regarding elimination of nonconformities with respect to location, screening and  
10 landscaping of existing parking areas along major pedestrian streets.

11  
12 **23.42.130 Nonconforming Solar Collectors**

13 The installation of solar collectors that cause a structure to become nonconforming  
14 or increase an existing nonconformity may be permitted as follows

- 15 A. In single family zones, pursuant to subsection B of Section 23.44.046;  
16 B. In multifamily zones, pursuant to subsection D of Section 23.45.146;  
17 C. In commercial zones, pursuant to subsection H of Section 23.47.012.

18  
19 **Section 2.** Section 23.84.026 of the Seattle Municipal Code, which Section was  
20 last amended by Ordinance 119239 is further amended as follows:

21  
22 **SMC 23.84.026 Definitions -- N.**

23 \*\*\*

24 (~~"Nonconforming structure" means a structure which was lawful when established which~~  
25 ~~does not now conform to the development standards of the zone in which it is located. A~~  
26 ~~structure shall be considered established if it conformed to applicable zoning regulations at~~  
27 ~~any time, or when it is built under permit, a permit for the structure has been granted and has~~  
28 ~~not expired, or the structure is substantially underway in accordance with~~  
29 ~~Section 23.04.010 D.))~~



1 “Nonconforming to development standards” means a structure, site or development that met  
2 applicable development standards at the time it was built or established, but that does not  
3 now conform to one or more of the applicable development standards. Development  
4 standards include, but are not limited to height, setbacks, lot coverage, lot area, number and  
5 location of parking spaces, open space, density, screening and landscaping, lighting,  
6 maximum size of nonresidential uses, maximum size of nonindustrial use, view corridors,  
7 sidewalk width, public benefit features, street level use requirements, street façade  
8 requirements, and floor area ratios.

9  
10 "Nonconforming use" means a use of land or a structure that was lawful when established  
11 and that does not now conform to the use regulations of the zone in which it is located, or  
12 means a residential use or development commenced prior to July 24, 1957, that has  
13 remained in continuous use since that date, subject to approval through the process of  
14 establishing the use for the record. See Section 23.42.102. A use that was legally  
15 established but which is now permitted only as a conditional use is not a nonconforming use  
16 and shall be regulated as if a conditional use approval had earlier been granted.

17 \*\*\*

18  
19 **Section 3.** The following Sections of the Seattle Municipal Code are repealed:  
20 Sections 23.43.080, 23.43.082, 23.44.080, 23.44.082, 23.45.180, 23.45.182, 23.45.184,  
21 23.45.190, 23.47.036, 23.47.038, 23.48.036, 23.49.028, 23.49.030, 23.50.008, 23.50.010,  
22 23.69.016, and 23.69.017.

23  
24 **Section 4.** Subsection F of Section 23.44.008 of the Seattle Municipal Code,  
25 which Section was last amended by Ordinance 119792, is further amended as follows:

26  
27 **23.44.008 Development standards for uses permitted outright.**

28 \*\*\*

29 F. A structure occupied by a permitted use other than single-family residential use may  
30 be converted to single-family residential use even if the structure does not conform to the





1 development standards for single-family structures. Expansions of converted nonconforming  
2 structures shall be regulated by Section 23.42.108~~((23.44.082))~~. Conversion of structures  
3 occupied by nonconforming uses shall be regulated by Sections 23.42.108 and 23.42.110  
4 ~~((23.44.080))~~.

5  
6 **Section 5.** Section 23.44.032 of the Seattle Municipal Code, which Section was  
7 last amended by Ordinance 118414, is further amended as follows:

8  
9 **23.44.032 Certain nonconforming uses.**

10 Nonconforming uses which are authorized pursuant to Section 23.42.110 ~~((23.44.080~~  
11 ~~H-))~~ may be permitted as a conditional use.

12  
13 **Section 6.** Subsection A of Section 23.45.006 of the Seattle Municipal Code,  
14 which Section was last amended by Ordinance 119242, is further amended as follows:

15  
16 **23.45.006 General development standards for structures in multifamily zones.**

17 A. Included within Sections 23.45.006 through 23.45.166~~((190))~~ are the development  
18 standards for structures in each multifamily zone. These standards shall also apply to uses  
19 accessory to multifamily structures unless specifically modified by development standards  
20 for those accessory uses.

21  
22 **Section 7.** Subsection G of Section 23.45.006 of the Seattle Municipal Code,  
23 which Section was last amended by Ordinance 119242, is further amended as follows:

24  
25 **23.45.006 General development standards for structures in multifamily zones.**

26 \*\*\*

27 G. A structure occupied by a permitted use other than single-family or multifamily  
28 residential use may be partially or wholly converted to single-family or multifamily  
29 residential use even if the structure does not conform to the development standards for  
30 residential uses in the multi-family zones. One (1) unit may be added without a parking



1 space according to provisions of Section 23.54.020. If the only use of the structure will be  
2 residential and if two (2) or more units are being created and there is no feasible way to  
3 provide the required parking, then the Director may authorize reduction or waiver of parking  
4 as a special exception according to the standards of Section 23.54.020 E. Expansions of  
5 nonconforming converted structures and conversions of structures occupied by  
6 nonconforming uses shall be regulated by Sections 23.42.108 and 23.42.110 (~~Subchapter~~  
7 ~~IV, Nonconforming Uses and Structures, of this chapter~~)).

8  
9 **Section 8.** Section 23.48.038, which Section was last amended by Ordinance  
10 118302, is further amended as follows:

11  
12 **23.48.038 Relocating landmark structures (~~Nonconforming structures~~)** (~~The~~  
13 ~~standards for nonconforming structures in Section 23.47.038 shall apply except as follows~~)  
14 When an historic landmark structure is relocated, any nonconformities with respect to  
15 development standards shall transfer with the relocated structure.

16  
17 **Section 9.** Subsection C of Section 23.54.020 of the Seattle Municipal Code,  
18 which section was last amended by Ordinance - 119239, is further amended as follows:

19  
20 **23.54.020 Parking quantity exceptions.**

21 C. Parking Exception for Landmark Structures. The Director may reduce or waive the  
22 minimum accessory off-street parking requirements for a use permitted in a Landmark  
23 structure, or when a Landmark structure is completely converted to residential use according  
24 to Sections 23.42.108 or 23.45.006, or for a use in a Landmark district which is located in a  
25 commercial zone(~~, or 23.45.184~~)~~)~~as a special exception(~~(, or for a use in a~~  
26 ~~Landmark district which is located in a commercial zone~~)).  
27

28 1. In making any such reduction or waiver, the Director shall assess area parking  
29 needs. The Director may require a survey of on- and off-street parking availability. The  
30 Director may take into account the level of transit service in the immediate area; the



1 probably relative importance of walk-in traffic; proposals by the applicant to encourage  
2 carpooling or transit use by employees; hours of operation; and any other factor or factors  
3 considered relevant in determining parking impact.

4 2. The Director may also consider the types and scale of uses proposed or practical  
5 in the Landmark structure, and the controls imposed by the Landmark designation.

6 3. For conversion of structures to residential use, the Director shall also determine  
7 that there is no feasible way to meet parking requirements on the lot and that the proposal  
8 meets the objectives of the Multi-Family Land Use Policies.

9  
10 **Section 10.** Section 23.72.014 of the Seattle Municipal Code, which section was last  
11 amended by Ordinance 118624, is further amended as follows:

12  
13 **23.72.014 Nonconformity~~((Noneonforming structures))~~.**

14 The provisions of Chapter 23.42 ~~((the underlying zone))~~ pertaining to nonconformity  
15 apply except that further subdivision of property may be permitted by the Director even if  
16 nonconformity would be created with respect to a structure's relationship to lot lines or lot  
17 area. This provision shall only apply to structures in existence on the effective date of this  
18 chapter.



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**Section 11.** This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 26<sup>th</sup> day of March, 2001, and signed by me in open session in authentication of its passage this 26<sup>th</sup> day of March, 2001.

Margaret Elger  
President of the City Council

Approved by me this 30<sup>th</sup> day of MARCH, 2001.

Paul Schell  
Paul Schell, Mayor

Filed by me this 2nd day of April, 192001.

Janet Scheppe  
City Clerk

(SEAL)



**Director's Report**  
**Proposed Ordinance Relating To Nonconformity**  
**(Land Use Code Simplification Project)**  
October 2000

**INTRODUCTION**

On November 30, 1998, the Seattle City Council adopted Resolution 29860, which directed the Department of Design, Construction and Land Use (DCLU) to begin work on a project to simplify the Land Use Code. The objective of Land Use Code simplification was set forth in Resolution 29860. The Resolution outlined three main options to be done by DCLU staff, as follows:

- Reorganize the Code and improve formatting, so that the Code is easier to understand and use.
- Evaluate and potentially reduce the number of zoning overlays.
- Consolidate and standardize Code provisions, with the goals of eliminating unnecessary repetition and placing all or most regulations for a certain subject in one chapter.

One of the subjects in the Code identified as ripe for reorganization and consolidation was the regulation of so-called "nonconforming" uses, structures, sites, and development. Nonconformity, as regulated in the existing Land Use Code, includes all uses, structures, sites, or developments that were lawful when built or started, but that do not meet the requirements of today's Land Use Code. Nonconforming uses range from gas stations, grocery stores or other retail or commercial uses in residential zones, to duplex or multifamily use in a single family zone, to any use in any zone that once was permitted, but now is not. Other types of nonconformity relate to development standards. Each time the Land Use Code changes – to increase setbacks, to require more open space, parking or landscaping, to set size limits on certain uses, to decrease height limits or density, etc. – some existing sites or structures become nonconforming.

A consultant review of the Land Use Code found more than 77 references to nonconformity scattered throughout the Code. Many of these references contain the same or similar regulatory language repeated for each chapter dealing with a different zoning classification or series of classifications, such as single family, multifamily, commercial, and industrial zones. However, the basic rules for each chapter are essentially the same. Thus, the similar regulations for nonconformity in each chapter could be consolidated into a single chapter applicable to all the different zones, without making substantive changes in the meaning or application of the regulations. The effect of consolidation would not only reduce the length of the Code but also provide Code users, to the greatest extent possible, with a single point of reference in the Code on the subject of nonconformity.

## ISSUE

As staff began to work on consolidating the nonconformity regulations, a number of substantive issues for possible change were also raised. The primary question is whether City controls over nonconformity should be changed to recognize that in a built-up city, many existing structures are nonconforming in some way, and to reflect a more flexible approach that will make the Code easier to interpret, administer, and enforce, benefiting property owners and the city alike. The proposed consolidated chapter addresses this policy question, as described in detail in this report, with two major proposals for change, and makes additional minor changes from existing Code language. The minor changes are intended as clarification, and do not significantly alter existing regulations.

## CURRENT REGULATIONS

### *Discussion*

The issue is best understood by considering the current method of regulating nonconformity and some examples of the problems experienced by property owners and DCLU with the current system. Classic zoning thinking calls for the separation of *incompatible* uses. That thinking is still appropriate today. The definition of what types of uses are incompatible with other uses, however, may be evolving. The City's current Comprehensive Plan advances the desirability of diversity and promotes maintaining neighborhood character. In many neighborhoods, key elements of "character" are tied to uses, structures, or sites that do not fully comply with current development standards but reflect an historical pattern of development.

For example, older single family neighborhoods such as Wallingford, Ballard, Queen Anne, and similar areas, were developed to the standards of Seattle's first Zoning Code, effective in 1923, or even prior to the effective date of the 1923 code. The Zoning Code of 1923 required three-foot side yards between the side of a house and the lot line with the adjoining property, where the current Land Use Code requires five-foot side yards. Prior to 1923, the only setback standard was a Building Code requirement of a three-foot separation between houses, regardless of the location of lot lines. Thus, in older areas of the city, it may not make sense to require conformity to all current standards. It is worth noting, as well, that the City amends the current Code frequently, and nonconformity is often created by these code changes, even in fairly new developments.

DCLU believes that most nonconforming uses and developments existing today are well tolerated by their neighbors and have a relatively minor impact on their surroundings. A limited review of potential nonconformity created as part of the light rail station areas planning project disclosed that nonconformity to parking standards is common, and nonconforming uses in station areas would range from libraries, museums, and community centers to vehicle repair, gas stations, and fast food restaurants. Impacts from



these types of nonconformity may not be comparable to an old manufacturing plant in the middle of a residential zone, but it could be argued that impacts are more than minor.

More often than not, however, nonconformity regulations affect home owners. The vast majority of questions and issues about nonconformity raised by the public concern small residential development. Often a property owner finds that a feature on a home does not meet current residential zoning standards. A deck or garage may be located in a required setback. If the structure was built prior to 1957, it may have less than a five foot side yard. Or the home may be a legal duplex, constructed in a single family zone when duplexes were allowed. Nonconforming duplex uses and similar types of small multifamily uses are tightly controlled by the current Code, with strict limits placed on even minor expansions.

Current regulations are primarily structured to facilitate the reduction or elimination of nonconformity, yet, at the same time, the regulations clearly allow nonconformity to continue. The goal of bringing all uses, structures, and other site development standards into conformance with current code requirements is, no doubt, in the general public interest, but it might be argued that if all types of nonconformity were eliminated immediately, an irreplaceable part of the city would be lost.

In fact, over the years a number of exceptions for nonconformity have been added to the Code, recognizing a need for flexibility. For example, Code language in both the single family and multifamily zones allow single-family residences that are already nonconforming with respect to a yard or setback to be extended further into the yard or setback, subject to certain limitations. Also, structures containing nonconforming residential uses in single family zones, such as duplexes or triplexes, may be expanded within certain limits, although additional dwelling units may not be added.

Understanding the current regulations and policy is best illustrated by some examples. Following the discussion of examples, an analysis of the number of DCLU projects, as well as time and cost of implementing current regulations, is provided.

### *Case Examples*

The most common issue is difficulty determining when a nonconforming use commenced or when a nonconforming structure was built, and whether the use or structure was legal at the time the use began or the structure was built.

In one case, an elderly couple had to give up their duplex unit, which had been in existence since at least the 1940's. Their house had always been in a Single Family zone, and the couple lacked evidence to prove that the use existed prior to the first Zoning Code in 1923, or could otherwise have been permitted.

The difficulty for these homeowners was in part due to lack of public records from times prior to the 1950's and 60's. Most of the available records from this period at DCLU are copies of permits, which often don't provide sufficient information about details, such as numbers of apartment units, size of yards, or details about issues like height or architectural features (decks, dormers, bay windows, etc.). Plans for small residential buildings (single family homes, duplexes, triplexes, etc.) were not maintained prior to about 1975. Permits were not required for any structures built before 1894, and permits between 1894 and 1908 are not indexed. Permits even into the 1920's are poorly microfilmed and hard to read. Property owners and DCLU staff are often frustrated because they cannot find permits, or the permits they do find are hard to interpret. For example, old permits may just use the term "residence" for a single-family home or a small apartment building. They also use passe terms like "sleeping porch" or "flat" that have no definitions under current Code and confuse both customers and DCLU staff.

King County tax assessor records are a valuable alternative source of information, especially about structures built prior to annexation of property into the city, specific dates of construction, architectural details, and numbers of units. They often include photographs and information about location of kitchens, bathrooms, and other interior details. Even so, these records are often difficult to interpret and are still no substitute for plans. Also, the records were not compiled until the late 1930's and give few or no clues about the status of structures existing when the Zoning Code of 1923 first became effective. Finally, the historic records are not available for every structure.

Other sources of documentation of uses and structures include utility records, photos, reverse telephone directories showing owners of telephones in a structure, and sometimes business records such as tax returns, rent receipts, or financial records of a business. Typically, the chief difficulty with most of these sources is that they don't go very far back in time, and the older records are usually difficult to interpret. The same is true of signed statements from persons having no financial interest in the subject property. While this sort of "testimony" can be valuable, it is less and less likely, as time goes on, that there will be eyewitness testimony from as long ago as 1923. DCLU customers are often frustrated by their inability to obtain records showing the existence of a use or structure that they know has been in existence for many years. DCLU is often left in the position of understanding that a nonconformity has existed for a long time, but lacks any basis in the records for officially approving it.

In another example, DCLU and the City's Law Department spent hundreds of collective hours analyzing records submitted by and then later litigating with a property owner to require her to discontinue allowing her tenants to park in the required front yard of a nonconforming duplex in a Single Family zone. She produced evidence that the front yard parking had existed since the 1960's but could not satisfy the City that it existed before 1953, when parking in the front yard was first prohibited by the Zoning Code. Similarly, property owners have been cited for converting garages to family rooms, eliminating required on-site parking, even though the conversion occurred years ago, but



the owner could not prove that the conversion occurred before 1957, when the City first adopted parking requirements.

Two houses on one lot in Single Family zones are another frequent source of controversy. In the area of Seattle north of 85<sup>th</sup> Street, large areas were annexed in the late 1940's and early 1950's. County records prior to annexation are nonexistent, and it is often a challenge for persons to produce documentation that their houses were legally constructed. Similar situations arise for homeowners in other, older areas of Seattle, where they are unable to locate permits, or the permits are too illegible to understand and interpret.

Some nonconforming uses and structures, especially accessory uses like boathouses, garages in required yards, or outdoor parking in required yards, are not the subject of detailed record keeping, such as usually exists for residences. Similar problems exist for nonconforming portions of residences, such as decks and outside stairways in required yards. The result is that the existence of these uses and structures may only be supported by documentation like fuzzy photographs, including aerial photos that were taken from too high in the air, or signed statements that are vague or just cannot go far enough back to the current dates used to determine when a nonconformity was legal.

DCLU also frequently deals with the issue of repair and replacement of nonconforming structures or structures containing a nonconforming use. Persons desiring to rebuild their nonconforming structures or maintain existing nonconformities are required to obtain permits to replace them in stages, so that the building will continue to appear to be in continuous existence. This is somewhat disingenuous, since a persistent applicant can completely replace a structure, at greater expense and with sufficient time, and thereby achieve the same result as if the building was demolished and rebuilt all at once. The current system tends to tempt people to either rebuild without permits or invent all sorts of reasons why piecemeal replacement is not practical. The usual argument is that the structure was destroyed by an act of nature (e.g., termites, dry rot, etc.), since the Code presently allows complete replacement of structures destroyed by act of nature. As with proof of historic existence of nonconformity, most of the replacement issues are related to small residential development.

### *Time and Cost Analysis*

As can be seen from the examples, issues of nonconformity often require a considerable investment of both time and money from homeowners and applicants. These individuals are usually not large developers. Instead, they tend to be individual homeowners or owners of a small number of multifamily structures. Some are elderly. These individuals often have to hire private-sector architects, planners, real estate professionals, or even land use attorneys to conduct research of old records to determine when a nonconformity commenced, prepare plans, and negotiate the application process at DCLU. The cost of research, preparing applications, and in some cases attending administrative hearings or

making court appearances can easily run into hundreds or even thousands of dollars for small projects. The process can often be frustrating for these homeowners and applicants, and require months to complete.

Other applicants seeking to remodel or rebuild nonconforming structures or developments find the current DCLU practice of allowing piecemeal repair and replacement, but not a complete rebuild unless destroyed by fire or other cause beyond the owner's control, to be costly and frustrating. Piecemeal replacement of a nonconforming structure may require a series of permits instead of just one. In one example, the policy made it difficult for a small developer who had purchased a single-family lot with two existing houses on it, both established by permit, to quickly and economically remodel the two structures and market the property.

Regulating nonconformity also involves a substantial investment in time and money by DCLU, as follows:

1. For staff in the DCLU Applicant Services Center, which is responsible for intake of projects and answering technical questions for customers, approximately 37.5 hours per week are devoted to answering questions and reviewing plans that have issues of nonconformity. This amounts to 1,950 hours per year or roughly one full time employee. The cost is about \$80,000.
2. Time spent on issues of nonconformity by zoning inspectors responsible for enforcing the Land Use Code regulations in the field is about 1,000 hours per year, or a half-time employee, for a cost of about \$40,000.
3. Land use project review and Code interpretation staff review applications to establish nonconforming uses for the record, conditional use and variance applications involving nonconformity, and write letters addressing issues of nonconformity. Time spent explaining issues of nonconformity to customers is around 500 hours per year. Also, about 100 letters per year are written on issues of nonconformity, which amounts to about 400 hours of research and writing time. If responding to questions from other staff is included, approximately 1000 hours per year is spent on these issues, or \$40,000 per year (a half-time employee).
4. Applications to establish nonconforming uses for the record average 35-40 per year. Most of these applications require 2-6 hours of review by Land Use Review and Building Code Review staff, as well as inspection time in the field. Variance and conditional use applications involving nonconformity average 20 per year. The total time spent on project review of nonconformity issues, including pre-application work and internal DCLU review of draft decisions, is about \$40,000 per year or a half-time employee.

Thus, the total cost of regulating nonconformity is approximately \$200,000 per year for the Department. This figure does not capture additional time spent on Code development, tenant relocation, building inspections, review of nonconformity issues

under the Shoreline Code, or other aspects of DCLU regulation where issues of nonconformity require working time. The figure also does not include time spent by the City Law Department on litigation stemming from issues of nonconformity. Establishing an "amnesty date" for nonconformity that obviates the need to review very early zoning codes and allowing increased flexibility to repair and rebuild existing nonconformity, as discussed in detail below, would greatly reduce the time devoted by staff to these issues by half, for a savings of about \$100,000-\$125,000 per year.

### **PROPOSED OPTIONS FOR CHANGE**

Three specific issues or options have been identified by DCLU, accompanied by the pros and cons of the potential changes. Each proposal is followed by a recommendation, along with a brief rationale for each recommendation. The discussion of the issues is followed by discussion of how other cities similar in size to Seattle address issues of nonconformity. The issues identified are as follows:



1. AMNESTY: Should a general amnesty date be set? This would be a cut-off date to legalize some or all uses, structures, and developments that existed as of the chosen date. Three potential dates are: July 24, 1957 (Title 24, the former Zoning Code, adopted); June 11, 1982 (Title 23, current Land Use Code, first part adopted); and a rolling date set back a given number of years, e.g. 10, 15, 20, or more years.

PRO

The City already has a de facto amnesty date of 1923, which was the year Seattle's first zoning code took effect. Any use or development established prior to 1923 is considered legal. (North of 85<sup>th</sup> street, the annexation date in 1954 is used.)

As time passes, it becomes increasingly difficult to trace uses and development back all the way to 1923. A later amnesty date would make historical research to prove whether a use or development existed at a particular time much easier.

An amnesty date acknowledges that if a use or development has been around for "long enough," it is likely not creating significant problems. For structures, it would still have to be shown that building code requirements are met.

**Recommendation: Set July 24, 1957 as a general date for establishing a nonconforming residential use or development in all zones other than industrial zones. Retain existing regulations for nonresidential uses and development.**

Residential nonconforming uses would have to meet current housing code requirements, just as they must under the present system for recognizing certain legal nonconforming uses.

Rationale: Most issues of nonconformity that DCLU must address involve single family and small multifamily development. Moving the general date for establishing a nonconforming use or development somewhat forward in time for these types of uses helps to promote affordable housing and encourages property owners to maintain and improve existing housing stock. Maintaining current Code regulations for all other types of nonconformity, including prohibiting residential uses in industrial zones, continues to ensure that incompatible uses are kept separate or, where they do exist near each other, the nonconforming uses that are not residential are controlled and may eventually be discontinued or moved to more appropriate zones.

CON

If a later date were used as the amnesty date instead of 1923, certain types of nonconformity would be allowed to continue, which could legalize some uses or developments that were not legal when initiated.

A too lenient amnesty date undermines the goal of eliminating nonconformity.

A rolling amnesty date, legalizing uses or developments that can be shown to have existed for a certain number of years, might encourage people to build or establish uses without going through the permit process – hoping they could get away with something for long enough to make it legal.



2. **REBUILDS: Should the City allow a nonconforming structure to be torn down and entirely rebuilt with the same types of nonconformity?** Current single family language: "*A nonconforming accessory structure or nonconforming part of a principal structure located in a yard which is required by the development standards of the zone may be rebuilt or replaced, but may not be expanded or extended....*" Current multifamily language: "*A nonconforming accessory structure or nonconforming deck, porch or balcony of a principal structure may be rebuilt or replaced, but may not be expanded or extended....*"

PRO

The current code language forces homeowners into a phased rebuilding process that is more expensive and more time consuming, but allows the same result as if a full rebuild were allowed. (Only *parts* of the structure are rebuilt at one time).

If an owner can document that a structure was legally built, allowing a full rebuild is consistent with the City's current policy of allowing nonconformity to continue. (No increase in nonconformity would be allowed.)

Allowing rebuilds could be considered consistent with the current practice of allowing a full rebuild after a fire.

DCLU spends a great deal of time on projects involving remodels and rebuilds of nonconforming structures. Distinguishing "repair" from "rebuild" is often very difficult.

Most code requirements were developed for new buildings on vacant sites. Some allowance could be made for re-using existing foundations on developed sites.

**Recommendation: Allow rebuilding with the same types of nonconformity, based on a survey documenting structure location, size and bulk. No expansion of nonconformity would be allowed. Expansions meeting current code requirements would be permitted. Limit this change of policy to residential uses and development only, with existing regulations for nonresidential uses and development unchanged.**

Rationale: Changing the current regulations on rebuilds to a process that is easier to understand and apply will encourage property owners to maintain and improve existing housing. Requiring a survey to document structure location, size and bulk will help

CON

A full rebuild is like a new structure on a vacant lot. It should be required to meet current code.

Allowing full rebuilds could undermine the basis for our current, larger, setback requirements, as well as other code standards.

It would be too difficult to document the extent of an existing nonconformity and to ensure that a rebuild does not go beyond what was there originally.

There is no guarantee that rebuilds would be done in a manner consistent with neighborhood character. A boxy contemporary house in place of a classic Seattle bungalow does nothing to preserve neighborhood character.

The code has been changed for reasons related to public health, safety and welfare, so forcing compliance over time with the current standards is in the public interest.



ensure that no expansion occurs that increases the nonconformity, and will thus protect neighborhood character. Existing controls on nonresidential uses would remain, and thus ensure that these types of uses are controlled and encouraged to discontinue or move to a more appropriate zone.

### 3. EXPANSION: Should nonconforming uses be allowed to expand?

#### PRO

One benefit of expansion can be an overall facelift on a site.

*Intensification* of nonconforming uses is currently allowed. These changes are sometimes very like an expansion, i.e. adding pumps at an existing gas station or restriping an existing parking lot to add spaces.

Current limitations may result in some uses not receiving the level of remodeling or upkeep that might otherwise occur.

#### CON

Allowing nonconforming uses to expand could change or undermine the general and planned character of a neighborhood.

Neighborhoods are accustomed to current nonconforming uses, but allowing them to expand could create a new and higher level of impacts.

Some expansion is already allowed, e.g., for residential uses adding decks, balconies, and small additions to living areas. Further expansion opportunities are not needed.

It is enough to allow most nonconforming commercial uses to continue in their original size, location and configuration. When they are ready to expand, they can move to a location where the use is permitted outright.

**Recommendation: Existing regulations for the single family and multifamily zones already allow sufficient flexibility for minor expansion of nonconforming residential uses. No change in policy for nonresidential uses or for residential uses in nonresidential zones is warranted.**

Rationale: Several Code provisions now allow minor expansions of residential uses. For example, small multifamily uses in single-family zones can add up to 500 square feet of additional floor area, provided that the addition meets development standards, such as yard requirements and height limits. Aside from minor exceptions like the example above, there is no compelling policy reason to allow nonconforming uses to expand, as allowing expansion may undermine the still valid policy of encouraging discontinuance of most types of nonconforming uses and development.

## PRACTICES IN OTHER CITIES

A survey was taken of whether other cities had some type of amnesty provision for nonconformity and what their regulations on rebuilding of nonconformity allowed. Denver, Colorado, has a cutoff date for review of nonconformity of November 8, 1956, which is noted directly in its Zoning Code. San Francisco, California, has a similar date, also in the Code, of May 2, 1960. Vancouver, British Columbia, uses June 18, 1956, as the cutoff date, partly because Vancouver has very good records from that time forward but, as in Seattle, fewer records with less clarity prior to that time. Oakland, California, recognizes as legal all nonconformity established by building permits issued prior to 1965, which was the date of Oakland's first comprehensive zoning code (replacing partial codes that existed prior to 1965). Portland, Oregon, does not have a specific date in the Code, but the practice in Portland is to recognize any nonconformity in existence prior to 1959.

Denver allows legally nonconforming structures to be rebuilt within their original nonconforming envelope, but expansion beyond the envelope requires a variance. San Francisco allows rebuilding of nonconforming structures and development in the event of destruction by acts of nature and other causes beyond the control of the owner. The Code language is similar to language in the current Seattle Land Use Code. Portland is more restrictive on rebuilding than the current Seattle Land Use Code. Nonconforming structures and development may be rebuilt if "accidentally damaged" up to 75% of their replacement cost. Oakland has regulations very similar to Portland on this issue, and uses 75% as the cutoff. Unlike Seattle, rebuilding in the event of complete destruction, even if beyond the control of the owner, is not allowed in Portland or Oakland. Vancouver, B.C. has regulations similar to Portland and Oakland, but their figure is 60% destruction or, if more than 60% destroyed, more rebuilding may be allowed through administrative review.

## SUMMARY

It is clear that consolidation of the many regulations on nonconformity into a single Chapter of the Land Use Code would advance two primary goals of the Code Simplification Project: (1) Reorganization to make the Code easier to understand and use; and (2) Consolidation and standardization of Code provisions to eliminate redundancy. These goals can be advanced even without changes to current policies and regulations addressing nonconformity. However, considerable evidence has been presented to suggest that establishing more flexibility for residential structures, by allowing voluntary rebuilding of nonconformity and recognizing nonconforming residential uses as legal if commenced before July 24, 1957, would improve Code administration and benefit property owners. As has been shown, changing these policies and regulations as proposed would be comparable to practices in other cities, particularly with respect to establishing a reasonably recent cutoff date for recognizing existing nonconformity as established and legal. Changing the policies and regulations also

promotes affordable housing and maintenance of existing housing, and has the potential to save substantial time and money. By limiting changes to residential uses and maintaining existing policies and regulatory practice for nonconformity that was commenced or built after 1957, including residential, the Code would continue to help ensure that neighborhood character is generally preserved and incompatible uses are separated.





## ORDINANCE

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4 **AN ORDINANCE** relating to land use and zoning, amending Title 23 of the Seattle  
5 Municipal Code (SMC) to consolidate land use code provisions on nonconformity,  
6 establish a new amnesty date for residential nonconformity, allow for rebuilding of  
7 nonconforming residential structures, resolve conflicts between provisions in  
8 different zones, and deleting current sections on nonconformity and replacing them  
9 with new sections in Chapter 23.42 to apply in all zones except the shoreline district.  
10

11 WHEREAS, Council Resolution 30075 directed DCLU to proceed with a multiphase project  
12 to simplify the Land Use Code so that it will be more understandable and user-  
13 friendly, and can be administered and enforced in an efficient and effective manner;  
14 and  
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16 WHEREAS, Council Resolution 30075 provided that consolidating provisions in the Land  
17 Use Code related to nonconformities would be one of the first options to pursue; and  
18

19 WHEREAS, DCLU has worked with a citizen advisory committee which has met three  
20 times in the last six months to consider nonconformity issues and other  
21 simplification topics; and  
22

23 WHEREAS, a public meeting to discuss the proposed Land Use Code changes was held on  
24 September 28, 2000; and  
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26 WHEREAS, the City Council finds that the proposed changes will work toward simplifying  
27 use and application of the Code on issues related to nonconforming sites, structures,  
28 uses, and developments.  
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30  
31 **NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS**  
32 **FOLLOWS:**  
33

34 **Section 1.** New Sections 23.42.100, 23.42.102, 23.42.104, 23.42.106, 23.42.108,  
35 23.42.110, 23.42.112, 23.42.114, 23.42.116, 23.42.118, 23.42.120, 23.42.122, 23.42.124,  
36 23.42.126, 23.42.128, and 23.42.130 are added to the Seattle Municipal Code to read as  
37 follows:



1  
2 **23.42.100 Nonconformity: applicability and intent.**

3 A. The nonconformity provisions of this Chapter apply to uses and sites in all zones,  
4 except for the shoreline overlay district (see Chapter 23.60).

5 B. It is the intent of these provisions to establish a framework for dealing with  
6 nonconformity that allows most nonconformities to continue. The Code facilitates the  
7 maintenance and enhancement of nonconforming uses and developments so they may exist  
8 as an asset to their neighborhoods. The redevelopment of nonconformities to be more  
9 conforming to current code standards is a long term goal.  
10

11 **23.42.102 Establishing nonconforming status.**

12 A. Any use that conformed to applicable zoning regulations at any time and has not  
13 been discontinued as set forth in Section 23.42.104 is recognized as a nonconforming use or  
14 development. Any residential development in a residential, commercial or downtown zone  
15 that would not be permitted under current Land Use Code regulations, but which existed  
16 prior to July 24, 1957, and has not been discontinued as set forth by Section 23.42.104, is  
17 recognized as a nonconforming use or development. A recognized nonconforming use shall  
18 be established according to the provisions of subsections B-D of this Section.

19 B. Any use or development for which a permit was obtained is established. Before a  
20 recognized nonconforming use not established by permit may be established, the Director  
21 shall review and approve an application to establish the nonconforming use for the record.

22 C. For a nonconforming residential use to be established pursuant to subsection B  
23 above, an application to establish the use for the record must be approved by the Director.  
24 The applicant must demonstrate that the use existed prior to July 24, 1957 and has remained  
25 in continuous existence since that date. The development shall be subject to inspection for  
26 compliance with minimum standards of the Housing and Building Maintenance Code.  
27 (Chapters 22.200 through 22.208). Minimum standards of the Housing and Building  
28 Maintenance Code must be met prior to approval of any permit to establish the development  
29 for the record.

1 D. Nonconforming uses commenced after July 24, 1957 and not discontinued (Section  
2 23.42.104) are also subject to approval through the process of establishing use for the  
3 record, if not established by permit. Residential nonconforming uses are subject to  
4 inspection under the Housing and Building Maintenance Code if in existence before January  
5 1, 1976. Conformance to the Seattle Building Code in effect at the time a use first began is  
6 required if the use first existed after January 1, 1976.

7  
8 **23.42.104 Nonconforming uses.**

9 A. Any nonconforming use may be continued, subject to the provisions of this section.

10 B. A nonconforming use that has been discontinued for more than twelve (12)  
11 consecutive months shall not be reestablished or recommenced. A use shall be considered  
12 discontinued when:

13 1. A permit to change the use of the property or structure was issued and acted upon;  
14 or

15 2. The structure, or a portion of a structure is not being used for the use allowed by  
16 the most recent permit; or

17 3. The structure is vacant, or the portion of the structure formerly occupied by the  
18 nonconforming use is vacant. The use of the structure shall be considered discontinued even  
19 if materials from the former use remain or are stored on the property. A multifamily  
20 structure with one (1) or more vacant dwelling units shall not be considered unused unless  
21 the total structure is unoccupied.

22 4. If a complete application for a permit that would allow the nonconforming use to  
23 continue, or that would authorize a change to another nonconforming use, has been  
24 submitted before the structure has been vacant for twelve (12) consecutive months, the  
25 nonconforming use shall not be considered discontinued unless the permit lapses or the  
26 permit is denied. If the permit is denied, the nonconforming use may be reestablished  
27 during the six (6) months following the denial.

28 C. A nonconforming use that is destroyed by fire, act of nature, or other causes beyond  
29 the control of the owners may be resumed. Any structure occupied by the nonconforming

1 use may be rebuilt to the same or smaller configuration existing immediately prior to the  
2 time the structure was destroyed.

3 1. Where replacement of a structure or portion of a structure is necessary in  
4 order to resume the use, action toward that replacement must be commenced within twelve  
5 (12) months after the demolition or destruction of the structure. Action toward replacement  
6 shall include application for a building permit, commencement of construction, or other  
7 significant activity directed toward the replacement of the structure. If this action is not  
8 commenced within this time limit, the nonconforming use shall lapse.

9 2. When the structure containing the nonconforming use is located in a PSM  
10 zone, the Pioneer Square Preservation Board shall review the exterior design of the structure  
11 before it is rebuilt to ensure reasonable compatibility with the design and character of other  
12 structures in the Pioneer Square Preservation District.

13  
14 **23.42.106 Expansion of nonconforming uses**

15 A. A nonresidential nonconforming use shall not be expanded or extended. A structure  
16 occupied by a nonresidential nonconforming use may be maintained, repaired, renovated or  
17 structurally altered but shall not be expanded or extended except as otherwise required by  
18 law, to improve access for the elderly or disabled or as specifically permitted elsewhere in  
19 this Code.

20 B. Any structure occupied by a residential nonconforming use may be maintained,  
21 repaired, renovated or structurally altered:

22 1. As necessary to improve access for the elderly or disabled; or

23 2. To construct structural features including, but not limited to, exterior decks  
24 and balconies, bay windows, dormers, eaves and solar collectors added to a principal  
25 structure, or a new or expanded accessory structure may be constructed; provided that the  
26 addition or new accessory structure conforms to the development standards of the zone.

27 C. In addition to the standards in subsection B, structures in Single Family zones occupied  
28 by a residential nonconforming use may be allowed to expand subject to the following:

29 1. The number of dwelling units in a nonconforming residential use shall not be  
30 increased.

1           2.     For a nonconforming residential use that is not a multifamily use, the number  
2 of residents may not be increased beyond the maximum number that was allowed by the  
3 standards of the zone at the time of approval; if originally permitted by conditional use, the  
4 number shall not be allowed to increase above the number permitted by the conditional use  
5 approval.

6           3.     On lots less than ten thousand (10,000) square feet, an expansion of no more  
7 than 500 square feet of gross floor area, meeting the development standards for single family  
8 construction and not exceeding the average height of the closest principal structures on  
9 either side, is allowed.

10          4.     On lots less than ten thousand (10,000) square feet, an expansion greater than  
11 500 square feet of gross floor area and/or exceeding the average height of the closest  
12 principal structures on either side may be approved by DCLU through a special exception,  
13 Type II Master Use Permit, if the proposal meets the development standards for single  
14 family construction and is compatible with surrounding development in terms of:

- 15           a. Architectural character,  
16           b. Existing streetscape and pattern of yards, and  
17           c. Scale and proportion of principal structures.

18          5.     If an addition proposed under subsections 3 or 4 above would require  
19 additional parking under the requirements of Section 23.54.015 for multifamily structures,  
20 then that additional parking shall be provided.

21          D.     In Multifamily zones, except in Lowrise Duplex/Triplex and Lowrise 1 zones,  
22 dwelling units may be added to a structure containing one or more nonconforming uses,  
23 even if in a nonconforming structure. The structure may be expanded or extended; provided  
24 that the expansion or extension shall be for residential use, shall conform to the development  
25 standards of the zone, and shall not cause an already nonconforming structure to become  
26 more nonconforming to development standards.

27          E.     In the Seattle Cascade Mixed zone, general manufacturing uses exceeding twenty-  
28 five thousand (25,000) square feet of gross floor area and heavy manufacturing uses may be  
29 expanded or extended by an amount of gross floor area not to exceed twenty (20) percent of



1 the existing gross floor area of the use, provided that this exception may be applied only  
2 once to any individual business establishment.

3  
4 **23.42.108 Change from nonconforming use to conforming use.**

5 A. In any zone, a nonconforming use may be converted to any conforming use if all  
6 development standards are met.

7 B. In single family zones, a nonconforming use may be converted to single family  
8 residential use, even if all development standards are not met.

9 C. In multifamily zones, a nonconforming use may be converted to residential use,  
10 even if all development standards are not met; provided that the density limitations of the  
11 zone must be met and provided that parking nonconformity shall not be increased as a result  
12 of the conversion; in Lowrise Duplex/Triplex zones the total number of dwelling units in  
13 any structure is limited to three (3).

14 D. In commercial and industrial zones, a nonconforming use may be converted to any  
15 conforming use even if all development standards are not met, provided that parking  
16 nonconformity shall not be increased as a result of the conversion.

17 E. A converted structure may be expanded or extended provided that the expansion or  
18 extension shall conform to the development standards of the zone and shall not cause an  
19 already nonconforming structure to become more nonconforming to development standards.

20  
21 **23.42.110 Change from nonconforming use to another nonconforming use.**

22 A nonconforming use may be converted by an administrative conditional use authorization  
23 to another use not otherwise permitted in the zone subject to the following limitations and  
24 conditions.

25 A. In single family, residential small lot, and Lowrise, Duplex/Triplex zones, a  
26 nonconforming multifamily use or structure may not be converted to any nonresidential use  
27 not otherwise permitted in the zone.

28 B. The Director must find that the new use is no more detrimental to properties in the  
29 zone and vicinity than the existing use. This determination shall be based on consideration  
30 of the following factors:

1           1.     The zones in which both the existing use and the proposed new use are  
2 allowed;

3           2.     The number of employees and clients associated or expected with the  
4 proposed use;

5           3.     The relative parking, traffic, light, glare, noise, odor and similar impacts of  
6 the two uses and how these impacts could be mitigated.

7           C.     The existence of a single residential unit, such as a caretaker's or proprietor's unit,  
8 accessory to a nonconforming commercial use shall not be treated as having established a  
9 residential use, and such a unit may be converted or changed provided that it is the only  
10 residential use in the structure and comprises less than half of the total floor area of the  
11 structure.

12          D.     Parking requirements for the proposed use shall be determined by the Director.

13          E.     If the new use is permitted, the Director may require mitigation measures, including  
14 but not limited to landscaping, sound barriers or fences, mounding or berming, adjustments  
15 to yards or parking standards, design modification, or limiting hours of operation.  
16

17           **23.42.112     Nonconformity to development standards.**

18          A.     A structure nonconforming to development standards may be maintained, renovated,  
19 repaired or structurally altered but shall be prohibited from expanding or extending in any  
20 manner that increases the extent of nonconformity, or creates additional nonconformity,  
21 except as otherwise required by law, as necessary to improve access for the elderly or  
22 disabled or as specifically permitted for nonconforming uses and nonconforming structures  
23 elsewhere in this Code.

24          B.     A nonconforming residential accessory structure or nonconforming residential  
25 principal structure may be rebuilt or replaced but may not be expanded or extended in any  
26 manner that increases the extent of nonconformity unless specifically permitted.

27           1.     A survey by a licensed Washington surveyor, or other documentation  
28 acceptable to the Director, documenting the extent of nonconformity and confirming that the  
29 plans to rebuild or replace a residential structure create no unpermitted increase in



1 nonconformity shall be required prior to approval of any permit to rebuild or replace a  
2 nonconforming residential structure.

3 2. Additions to a rebuilt nonconforming residential structure that meet current  
4 development standards are allowed.

5 C. Any structure nonconforming to development standards that is destroyed by fire, act  
6 of nature, or other causes beyond the control of the owner, may be rebuilt to the same or  
7 smaller configuration existing immediately prior to the time the structure was destroyed.

8 D. Where replacement of a nonconforming structure or portion of a structure is  
9 permitted under this section, action toward that replacement must be commenced within  
10 twelve (12) months after the demolition or destruction of the structure, except for a  
11 nonconforming structure designated as a Landmark pursuant to Chapter 25.12. Action  
12 toward replacement of Landmark structures must be commenced within three (3) years after  
13 the demolition or destruction of the structure. Action toward replacement shall include  
14 application for a building permit, commencement of construction, or other significant  
15 activity directed toward the replacement of the structure. If this action is not commenced  
16 within this time limit, any replacement must conform to the existing development standards.

17 E. When the structure is located in a PSM zone, the Pioneer Square Preservation Board  
18 shall review plans for the exterior design of the structure to ensure compatibility with the  
19 design and character of other structures in the Pioneer Square Preservation District.

20  
21 **23.42.114 Multifamily structures nonconforming to development standards.**

22 The following provisions apply to multifamily structures that do not comply with current  
23 development standards.

24 A. A nonconforming ground-related multifamily structure or apartment located in a  
25 Lowrise Duplex/Triplex (LDT) or Lowrise 1 (L1) zone may be expanded or extended  
26 provided the expansion or extension shall conform to the development standards of the zone  
27 and shall not cause an already nonconforming structure to become more nonconforming to  
28 development standards.

29 B. Additional residential units may be added to a nonconforming ground-related  
30 multifamily structure or apartment structure, provided the addition shall conform to the





1 development standards of the zone and shall not cause an already nonconforming structure  
2 to become more nonconforming to development standards.

3 C. In Lowrise Duplex/Triplex zones, a nonconforming ground related multifamily  
4 structure or an apartment may be converted to any permitted use if all development  
5 standards are met except for open space and ground level access.  
6

7 **23.42.116 Downtown structures nonconforming to development standards.**

8 A. Portions of structures that do not conform to the standards for minimum street facade  
9 height and/or facade setback limits for the downtown zone in which they are located may be  
10 expanded if the expansion reduces the nonconformity as regards one or both of these  
11 standards and, in the opinion of the Director, is consistent with the intent of the Code. If the  
12 Director determines that greater conformity is not structurally feasible, the expansion may  
13 increase the nonconformity in respect to these standards if all other standards are met.

14 B. Portions of structures that do not conform to the standards for required street-level  
15 uses and/or the street facade requirements for transparency, blank facades, or screening of  
16 parking for the downtown zone in which they are located may be expanded if:

17 1. The expansion does not cause the structure to exceed the base FAR for the zone  
18 and the nonconformity is not increased; or

19 2. When the nonconformity of the structure as regards these development standards  
20 is reduced, expansion of the structure up to the maximum FAR for the zone may be  
21 permitted by the Director through the use of the bonus system or transfer of development  
22 rights. The appropriate level of expansion and the required reduction or elimination of  
23 nonconformity shall be determined by the Director according to the following criteria:

- 24 a. The extent of the proposed expansion,  
25 b. The impact of the proposed expansion on the pedestrian environment,  
26 c. The amount of the existing nonconformity, and  
27 d. The structural feasibility of remodeling the structure to meet these  
28 development standards.

1  
2 **23.42.118 Landmark structures.**

3 A. Landmark structures may be expanded even if the expansion increases the extent of  
4 nonconformity, when the Landmarks Board determines that there is no feasible alternative  
5 which meets the development standards of the zone while preserving the integrity of the  
6 landmark structure.

7 B. The Director may permit the proposed expansion if it is approved by the Landmarks  
8 Board and if:

- 9 1. The expansion does not have a significant adverse effect on the light, air,  
10 solar and visual access of properties within a three hundred (300) foot radius; and  
11 2. The expansion does not adversely affect the pedestrian environment in the  
12 vicinity.

13  
14 **23.42.120 Access easement nonconformity.**

15 A structure located on a lot nonconforming as to access easement requirements may  
16 be replaced, provided that the number of dwelling units to which access is provided by the  
17 easement shall not be increased and the new structure shall conform to all other  
18 development standards of the zone.

19  
20 **23.42.122 Height nonconformity.**

21 A. In single family and multifamily zones, a structure nonconforming as to height may  
22 be expanded or extended to add eaves, dormers and /or clerestories to an existing pitched  
23 roof provided the additions are constructed below the highest point of the roof. An existing  
24 pitched roof that is above the height limit shall not be converted into a flat roof nor shall the  
25 slope of the roof be lowered below a four in twelve (4:12) pitch.

26 B. Structures originally constructed in Manufacturing zones, under Seattle Municipal  
27 Code Title 24, that exceed the permitted height in zones with height limits of thirty feet  
28 (30'), forty feet (40'), or sixty-five feet (65') shall be limited to an FAR (floor area ratio) of  
29 two and one-half (2 ½ ). Structures that exceed the permitted height in zones allowing

1 heights greater than sixty-five feet (65') shall be limited to the FAR permitted in the  
2 respective zones.

3  
4 **23.42.124 Light and glare standards nonconformity.**

5 When nonconforming exterior lighting is replaced, new lighting shall conform to the  
6 requirements of the light and glare standards of the respective zone. See subsection H of  
7 Section 23.44.008 for single family zones; Section 23.45.017 for lowrise zones; Section  
8 23.45.059 for midrise zones; Section 23.45.075 for highrise zones; Section 23.46.020 for  
9 residential commercial zones; Section 23.47.022 for commercial zones; Section 23.49.010  
10 for downtown zones; and Section 23.50.046 for industrial buffer and industrial commercial  
11 zones.

12  
13 **23.42.126 Outdoor storage areas nonconformity.**

14 A. An outdoor storage area nonconforming as to screening and landscaping shall be  
15 required to be screened and landscaped at the time of any structural alteration or expansion  
16 of the outdoor storage area or the structure with which it is associated according to the  
17 provisions of:

- 18 1. Subsection D5 of Section 23.47.016, if located in a commercial zone;  
19 2. Section 23.48.024, if located in the Seattle Cascade Mixed (SCM) zone;  
20 3. Subsection C of Section 23.50.016, if located on an industrial street designated  
21 for landscaping;  
22 4. Section 23.50.036, if located in an Industrial Buffer zone; and/or  
23 5. Section 23.50.038, if located in an Industrial Commercial zone.

24 B. A business establishment in an NC1, NC2, NC3, or SCM zone with a nonconforming  
25 outdoor storage area may be extended, structurally altered or expanded if the outdoor  
26 storage area is not expanded and if it is screened and landscaped according to the standards  
27 of subsection D5a of Section 23.47.016, or Section 23.48.024 if the business is in the SCM  
28 zone.

29 C. A nonconforming use with a nonconforming outdoor storage area may be structurally  
30 altered, but not expanded, if the outdoor storage area is not expanded and if it is screened

1 and landscaped according to the standards of subsection D5a of Section 23.47.016 or  
2 Section 23.48.024 if the nonconforming use with the nonconforming outdoor storage area is  
3 in the SCM zone.

4  
5 **23.42.128 Parking nonconformity.**

6 A. Existing parking deficits of legally established uses shall be allowed to continue even if  
7 a change of use occurs. This provision shall not apply to a change of use to one defined as a  
8 heavy traffic generator.

9 B. Nonconforming parking areas or nonconforming parking within structures may be  
10 restriped according to the standards of Section 23.54.030, Parking space standards.

11 C. Parking areas that are nonconforming uses may be restriped according to the standards  
12 of Section 23.54.030, Parking space standards.

13 D. In commercial zones, surface parking areas that are nonconforming due to lack of  
14 required landscaping and are proposed to be expanded by ten percent (10%) or more in  
15 number of parking spaces or in area are required to be screened and landscaped according to  
16 the standards of Section 23.47.016, or in the Seattle Cascade Mixed (SCM) zone, according  
17 to Section 23.48.024, to the extent feasible as determined by the Director.

18 E. See subsection C6 of Section 23.71.008 for requirements in the Northgate Overlay  
19 District regarding elimination of nonconformities with respect to location, screening and  
20 landscaping of existing parking areas along major pedestrian streets.

21  
22 **23.42.130 Nonconforming Solar Collectors**

23 The installation of solar collectors that cause a structure to become nonconforming  
24 or increase an existing nonconformity may be permitted as follows

25 A. In single family zones, pursuant to subsection B of Section 23.44.046;

26 B. In multifamily zones, pursuant to subsection D of Section 23.45.146;

27 C. In commercial zones, pursuant to subsection H of Section 23.47.012.

28  
29 **Section 2.** Section 23.84.026 of the Seattle Municipal Code, which Section was  
30 last amended by Ordinance 119239 is further amended as follows:

1  
2 **SMC 23.84.026 Definitions -- N.**

3 \*\*\*

4 (~~"Nonconforming structure" means a structure which was lawful when established which~~  
5 ~~does not now conform to the development standards of the zone in which it is located. A~~  
6 ~~structure shall be considered established if it conformed to applicable zoning regulations at~~  
7 ~~any time, or when it is built under permit, a permit for the structure has been granted and has~~  
8 ~~not expired, or the structure is substantially underway in accordance with~~  
9 ~~Section 23.04.010 D.))~~

10  
11 "Nonconforming to development standards" means a structure, site or development that met  
12 applicable development standards at the time it was built or established, but that does not  
13 now conform to one or more of the applicable development standards. Development  
14 standards include, but are not limited to height, setbacks, lot coverage, lot area, number and  
15 location of parking spaces, open space, density, screening and landscaping, lighting,  
16 maximum size of nonresidential uses, maximum size of nonindustrial use, view corridors,  
17 sidewalk width, public benefit features, street level use requirements, street façade  
18 requirements, and floor area ratios.

19  
20 "Nonconforming use" means a use of land or a structure that was lawful when established  
21 and that does not now conform to the use regulations of the zone in which it is located, or  
22 means a residential use or development commenced prior to July 24, 1957, that has  
23 remained in continuous use since that date, subject to approval through the process of  
24 establishing the use for the record. See Section 23.42.102. A use that was legally  
25 established but which is now permitted only as a conditional use is not a nonconforming use  
26 and shall be regulated as if a conditional use approval had earlier been granted.

27 \*\*\*

28  
29 **Section 3.** The following Sections of the Seattle Municipal Code are repealed:  
30 Sections 23.43.080, 23.43.082, 23.44.080, 23.44.082, 23.45.180, 23.45.182, 23.45.184,

1 23.45.190, 23.47.036, 23.47.038, 23.48.036, 23.49.028, 23.49.030, 23.50.008, 23.50.010,  
2 23.69.016, and 23.69.017.

3  
4 **Section 4.** Subsection F of Section 23.44.008 of the Seattle Municipal Code,  
5 which Section was last amended by Ordinance 119792, is further amended as follows:

6  
7 **23.44.008 Development standards for uses permitted outright.**

8 \*\*\*

9 F. A structure occupied by a permitted use other than single-family residential use may  
10 be converted to single-family residential use even if the structure does not conform to the  
11 development standards for single-family structures. Expansions of converted nonconforming  
12 structures shall be regulated by Section 23.42.108((23.44.082)). Conversion of structures  
13 occupied by nonconforming uses shall be regulated by Sections 23.42.108 and 23.42.110  
14 ((23.44.080)).

15  
16 **Section 5.** Section 23.44.032 of the Seattle Municipal Code, which Section was  
17 last amended by Ordinance 118414, is further amended as follows:

18  
19 **23.44.032 Certain nonconforming uses.**

20 Nonconforming uses which are authorized pursuant to Section 23.42.110 ((23.44.080  
21 H-)) may be permitted as a conditional use.

22  
23 **Section 6.** Subsection A of Section 23.45.006 of the Seattle Municipal Code,  
24 which Section was last amended by Ordinance 119242, is further amended as follows:

25  
26 **23.45.006 General development standards for structures in multifamily zones.**

27 A. Included within Sections 23.45.006 through 23.45.166190 are the development  
28 standards for structures in each multifamily zone. These standards shall also apply to uses  
29 accessory to multifamily structures unless specifically modified by development standards  
30 for those accessory uses.

1  
2           **Section 7.** Subsection G of Section 23.45.006 of the Seattle Municipal Code,  
3 which Section was last amended by Ordinance 119242, is further amended as follows:

4  
5           **23.45.006     General development standards for structures in multifamily zones.**

6           \*\*\*

7           G. A structure occupied by a permitted use other than single-family or multifamily  
8 residential use may be partially or wholly converted to single-family or multifamily  
9 residential use even if the structure does not conform to the development standards for  
10 residential uses in the multi-family zones. One (1) unit may be added without a parking  
11 space according to provisions of Section 23.54.020. If the only use of the structure will be  
12 residential and if two (2) or more units are being created and there is no feasible way to  
13 provide the required parking, then the Director may authorize reduction or waiver of parking  
14 as a special exception according to the standards of Section 23.54.020 E. Expansions of  
15 nonconforming converted structures and conversions of structures occupied by  
16 nonconforming uses shall be regulated by Sections 23.42.108 and 23.42.110~~Subchapter IV,~~  
17 ~~Nonconforming Uses and Structures, of this chapter.~~

18  
19           **Section 8.** Section 23.48.038, which Section was last amended by Ordinance  
20 118302, is further amended as follows:

21  
22           **23.48.038     Relocating landmark structures ~~Noneonforming structures~~**

23           ~~((The standards for nonconforming structures in Section 23.47.038 shall apply,~~  
24 ~~except as follows:-))~~When an historic landmark structure is relocated, any nonconformities  
25 with respect to development standards shall transfer with the relocated structure.

26  
27           **Section 9.** Subsection C of Section 23.54.020 of the Seattle Municipal Code,  
28 which section was last amended by Ordinance - 119239, is further amended as follows:



1  
2 **23.54.020 Parking quantity exceptions.**

3 C. Parking Exception for Landmark Structures. The Director may reduce or waive the  
4 minimum accessory off-street parking requirements for a use permitted in a Landmark  
5 structure, or when a Landmark structure is completely converted to residential use according  
6 to Sections 23.42.108 or 23.45.006, or for a use in a Landmark district which is located in a  
7 commercial zone, ~~or 23.45.184 as a special exception, pursuant to Chapter 23.76,~~  
8 ~~Procedures for Master Use Permits and Council Land Use Decisions, or for a use in a~~  
9 ~~Landmark district which is located in a commercial zone.~~

10 1. In making any such reduction or waiver, the Director shall assess area parking  
11 needs. The Director may require a survey of on- and off-street parking availability. The  
12 Director may take into account the level of transit service in the immediate area; the  
13 probably relative importance of walk-in traffic; proposals by the applicant to encourage  
14 carpooling or transit use by employees; hours of operation; and any other factor or factors  
15 considered relevant in determining parking impact.

16 2. The Director may also consider the types and scale of uses proposed or practical  
17 in the Landmark structure, and the controls imposed by the Landmark designation.

18 3. For conversion of structures to residential use, the Director shall also determine  
19 that there is no feasible way to meet parking requirements on the lot and that the proposal  
20 meets the objectives of the Multi-Family Land Use Policies.

21  
22 **Section 10.** Section 23.72.014 of the Seattle Municipal Code, which section was last  
23 amended by Ordinance 118624, is further amended as follows:

24  
25 **23.72.014 Nonconformity~~Nonconforming structures.~~**

26 The provisions of Chapter 23.42 ~~the underlying zone~~ pertaining to nonconformity  
27 apply except that further subdivision of property may be permitted by the Director even if  
28 nonconformity would be created with respect to a structure's relationship to lot lines or lot





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area. This provision shall only apply to structures in existence on the effective date of this chapter.

**Section 11.** This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2000, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
President of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Paul Schell, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
City Clerk

(SEAL)



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STATE OF WASHINGTON – KING COUNTY

--SS.

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129906  
City of Seattle, Clerk's Office

No. FULL ORDINAN

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:120293 ORDINANCE

was published on

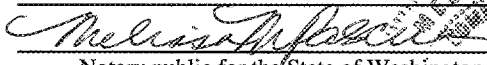
04/16/01

The amount of the fee charged for the foregoing publication is the sum of \$ 0.00, which amount has been paid in full.



Subscribed and sworn to before me on

04/18/01



Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication

