



# Agenda Report

January 25, 2021

**TO:** Honorable Mayor and City Council  
**FROM:** Planning & Community Development Department  
**SUBJECT: ZONING CODE AMENDMENT: NONCONFORMING USES**

**RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the proposed Zoning Code Amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15305 (Class 5, Minor Alterations in Land Use Limitations) and 15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment);
2. Approve the Findings for Zoning Code Amendments (Attachment A);
3. Approve the proposed Amendments to Sections 17.71; and
4. Direct the City Attorney to prepare an ordinance within 60 days amending Title 17 of the Pasadena Municipal Code (Zoning Code) Section 17.71.

**PLANNING COMMISSION RECOMMENDATION:**

On December 17, 2020, the Planning Commission considered proposed amendments to Sections 17.71 of the City's Zoning Code, regulating nonconforming uses. The Commission voted to recommend that the City Council:

- 1) Find that the proposed Zoning Code Amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15305 (Class 5, Minor Alterations in Land Use Limitations) and 15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment);
- 2) Approve the Findings for Zoning Code Amendments; and
- 3) Approve the proposed Zoning Code Amendments to Section 17.71 (Residential Zoning Districts) the Zoning Code.

## **EXECUTIVE SUMMARY:**

The purpose of this report is to provide background information on existing nonconforming use regulations, present an issue that may result in quality of life impacts to residents and identify a discreet change to existing regulations that has been initiated by the City Manager.

### Nonconforming Uses

The Pasadena Municipal Code (PMC), similar to most jurisdictions' regulatory codes, recognizes that there exist land uses, structures, and lots that were lawful before the adoption or amendment of the Zoning Code, but which would be prohibited, regulated, or restricted differently under the current terms of the Zoning Code or under future amendments. These uses are considered to nonconforming because they do not conform to existing rules.

The City's intent with respect to nonconforming uses is specified in PMC Section 17.71.010 B:

***It is the overall intent of this Chapter to generally discourage the long-term continuance of nonconformities...[emphasis added].***

This section further provides, in part, that the City seeks to:

- Limit the number and extent of specific nonconforming uses and structures that conflict with the provisions of this Zoning Code by prohibiting their reestablishment after abandonment or, in some cases, their enlargement;
- Limit the extent to which nonresidential uses that are involuntarily damaged or destroyed can be restored;
- Limit the alteration, enlargement, or relocation of nonconforming structures in a manner that would further increase the difference between existing nonconforming conditions and the current provisions of this Zoning Code; and
- Eliminate specific nonconforming uses and structures.

### Abatement of Nonconforming Uses

Consistent with the Code's intent to "generally discourage the long-term continuance of nonconformities" the Code both prohibits the expansion of nonconforming uses and provides standards for when they must be discontinued. For instance, the Code provides a proactive abatement schedule for certain types of nonconforming uses in PMC 17.71.060 C:

Type of Nonconformity	Term of Abatement
<b>A. Nonconforming Uses.</b>	
1. Removal of a nonconforming use that does not occupy a structure, or a use occupying a structure having an assessed valuation of less than \$4,000.00.	3 years
2. Removal from an R district of a use occupying a structure having an assessed value over \$4,000.00 that is an allowed use only in an IG district, or not allowed in any district.	5 years
<b>B. Nonconforming Structures.</b>	
1. Removal or alteration of a nonconforming fence or wall.	1 year
2. Compliance with screening provisions requiring a fence or wall.	2 years
3. Removal or alteration of a nonconforming structure having an assessed valuation of less than \$2,000.00.	5 years
<b>C. Nonconforming with respect to standards.</b>	
Uses that are nonconforming with respect to the performance standards required by this Zoning Code.	3 years

The Code further requires abatement of a nonconforming use when the use is determined to be a public nuisance in compliance with Municipal Code Chapter 14.50 (Property Maintenance and Nuisance Abatement).

PMC Section 17.71.060 - Abatement and Termination, provides that whenever any of the following facts are found to exist with reference to a nonconforming use, the use shall be abated:

1. Violation of any applicable law;
2. A change from a nonconforming use to another nonconforming use;
3. A change from a nonconforming use to a conforming use;
4. An increase or enlargement of the area, space, or volume of the structure or land occupied by or devoted to the nonconforming use except if the structure is nonconforming with respect to setbacks, height, distance between structures, architectural projections, staircase and landing area encroachments, and the requirements of the City's adopted Building Code are met. No new additions or alterations shall increase existing nonconformities; or
5. A structural alteration, except as required by law.

Moreover, and absent a violation of law or change of use, the Code also specifies that, "...a nonconforming use shall lose its nonconforming status and shall not be reestablished if the nonconforming use is discontinued for any reason for a continuous period of at least 12 months."

## **ISSUE AND PROPOSED TEXT AMENDMENT**

### Overconcentration

The City Council has expressed concerns about potential impacts associated with certain types of land uses when they become concentrated in any one particular geographic region. Specifically, the overconcentration of land uses identified as Residential Care – General, may be incompatible with an otherwise residential neighborhood given their commercial nature and 24 hour operations. The Code defines these uses as:

*State licensed facility, family home, group care facility, or similar facility that is maintained and operated to provide 24-hour nonmedical residential care for seven or more adults, children, or adults and children in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or the protection of the individual. This use includes the administration of limited medical assistance.*

In response to the issue, the City Council prohibited these uses in the following areas/zones:

#### Region/Area:

Northwest (General boundary: Rose Bowl Drive to the west, City Boundary to the North, North Lake Avenue to the East, and the 210 Freeway to the South.

#### Specific Plans:

Fair Oaks Orange Grove SP  
East Pasadena SP: in CG, IG  
North Lake Specific Plan  
Lincoln Avenue SP

#### West Gate SP

South Fair Oaks SP, *except* on properties located west of Fair Oaks Avenue and south of Hurlbut Street.

#### Individual Zoning Districts:

RS, RM-12 Zoning Districts  
CG and IG Zoning Districts

This prohibition made these uses in this area legal nonconforming, subject to the abatement regulations identified above. The prohibition of these types of uses was further reinforced by the City Council in its adoption of an updated General Plan Land

Use Element for the Northwest Area of the City, where there was found to be an overconcentration. Specifically, Policy 40.2 Institutional Uses Overconcentration.

*Prohibit new development of but allow for the improvement of: Single-Room Occupancy, Adult Day Care, General, Medical Services – Extended Care (i.e., Convalescent Facilities), Detention Facilities, Hospitals, Maintenance and Service Facilities, Residential Care, General, or a use classification that includes a use listed here with another use.*

While the Covid-19 Pandemic has highlighted issues surrounding oversight and enforcement of facilities that are licensed by the state, the City has consistently sought to regulate all land uses in the City, whether they are licensed by the state, the City, or both. The City Council has consistently adopted land use regulations which seek to ensure a compatibility of uses and minimize the impacts of land uses on residential neighborhoods. In this regard, the City's prohibition on certain types of land uses addresses future concerns but does not address existing land uses, which may have impacts and are nonconforming. Over the years, on limited occasion, it has come to staff's attention that these state licensed facilities may be operating in violation of their state license and impacting their neighbors. The state has a process by which violations are dealt with and consequences range from written corrective violations, to suspension to revocation.

As indicated above, current regulations require that nonconforming uses be abated if (among other facts) they are discontinued for more than 12 months or if they are in violation of any applicable law. While it may be argued that violation of the requirements conveyed in a state license may be a violation of law, it is not a certainty. Therefore, if the state suspended or revoked the license of a nonconforming use, a new operator could apply to the state for a similar license and begin operations prior to the 12 month period, thereby continuing a use that is potentially incompatible with the neighborhood. This would result in a process and outcome that is completely counter to the Code's intent to *discourage the long-term continuance of nonconformities*. In this regard, the existing process could actually *encourage* the long-term continuance of a nonconforming use.

#### Proposed Text Amendment

In order to address this issue, a discreet amendment is proposed with new language proposed in **underline and bold** format below.

17.71.060 - Abatement and Termination Nonconforming uses and structures shall be subject to abatement and termination of the use, in the following manner:

**Termination for violation of or change of use.** Whenever any of the following facts are found to exist with reference to a nonconforming use, the nonconforming protection/benefits provided by this Chapter shall cease, and the use shall be abated, except as otherwise allowed by this Chapter.

1. Violation of any applicable law;
2. **The revocation or termination or suspension of any license or permit that is required in order to operate the nonconforming use;**
2. A change from a nonconforming use to another nonconforming use;
3. A change from a nonconforming use to a conforming use;
4. An increase or enlargement of the area, space, or volume of the structure or land occupied by or devoted to the nonconforming use except if the structure is nonconforming with respect to setbacks, height, distance between structures, architectural projections, staircase and landing area encroachments, and the requirements of the City's adopted Building Code are met. No new additions or alterations shall increase existing nonconformities; or
5. A structural alteration, except as required by law.

The proposed Text Amendment seeks to ensure that nonconforming uses that require a license or permit to operate, may not be re-established if that license is revoked or suspended

#### **REQUIRED FINDINGS:**

In order to amend the Zoning Code, the City Council is required to make certain findings as set forth in Section 17.74.070.B of the PMC. As detailed in Attachment A (Findings for Zoning Code Amendments), the required findings can be made for the proposed amendment.

#### **COUNCIL POLICY CONSIDERATION:**

The proposed amendment to the Zoning Code furthers the goals and policies of the General Plan related to compatible development, including Land Use Element Policy 4.11 – Development that is Compatible, as well as Land Use Element Policy 40.2 – Institutional Uses Overconcentration, both of which are intended to ensure that development is appropriate with its surroundings. Further discussion of these policies are described in Attachment A (Findings for Zoning Code Amendments).

#### **ENVIRONMENTAL ANALYSIS:**

The proposed Zoning Code Amendment is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15305 (Class 5, Minor Alterations in Land Use Limitations) and 15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment). Class 5 consists of minor alterations in land use limitations with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel; issuance of minor encroachment permits; and reversion to acreage in accordance with the Subdivision Map Act.

**FISCAL IMPACT:**

There is no direct fiscal impact associated with the adoption of the proposed Zoning Code Amendments, as recommended by staff.

Respectfully submitted,

  
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DAVID M. REYES  
Director of Planning & Community  
Development Department

Approved by:

  
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STEVE MERMELL  
City Manager

Attachments (1):

Attachment A – Findings for Proposed Zoning Code Amendments