

Previously Conforming Uses – Fact Sheet

The following responses are intended to provide a general understanding of previously conforming regulations in the City of San Diego. Specific situations will vary based on a variety of factors and unique circumstances. The Regulations for Previously Conforming Premises and Uses are located in Chapter 12, Article 7, Division 1 of the Municipal Code and can be found online at (<http://docs.sandiego.gov/municode/MuniCodeChapter12/Ch12Art07Division01.pdf>).

What does previously conforming mean?

Previously conforming means the circumstance where a use, structure, or premises complied with all applicable state and local laws when it was first built or came into existence, but because of a subsequent change in zone or development regulations, is not in conformance with the current zone or all development regulations applicable to that zone.

- Use – A use (residences and businesses) can become previously conforming when a new zone is applied and it does not permit the current use or the permitted uses of the existing zone are modified so that the existing use is no longer permitted.
- Structure – Buildings can become previously conforming when a new zone is applied or the regulations of the current zone change and make regulations for setbacks from property lines, height, maximum floor area (square feet) and other regulations more restrictive.
- Premises – The property (lot) can become previously conforming when a new zone is applied or the regulations of the current zone change and make regulations for lot size and dimensions more restrictive.

What will happen to a previously conforming *STRUCTURE* if new development regulations are applied with the new plan/zone?

A previously conforming structure can continue as it currently exists. No changes to the structure are required. The structure can be sold and continue as it currently exists.

Can a previously conforming *STRUCTURE* be maintained and repaired?

A previously conforming structure can continue to be maintained, altered, and repaired as needed when the cost of the alteration and repair is *less than or equal to* 50% of the market value of the structure provided that

- no more than 50% of the walls are removed to make the repair, and
- any increase in size of the structure complies with all current development regulations.

With a Neighborhood Development Permit a previously conforming structure can continue to be maintained, altered, and repaired as needed when the cost of the alteration and repair is *greater than* 50% of the market value of the structure with a provided that

- no more than 50% of the walls are removed to make the repair, and
- any increase in size of the structure complies with all current development regulations.

Can a previously conforming *STRUCTURE* be rebuilt after a natural disaster?

- A previously conforming structure can be reconstructed following a natural disaster where the cost to reconstruct is *less than or equal to* 50% of the market value.
- With a Neighborhood Development Permit a previously conforming non residential structure can be reconstructed following a natural disaster where the cost to reconstruct is *greater than* 50% of the market value (prior to destruction).

Can a previously conforming *STRUCTURE* be expanded?

- A previously conforming structure can be expanded provided that the new construction complies with all current development regulations.
- With a Neighborhood Development Permit a previously conforming structure can request to expand where the new development *requests a reduced setback* of up to 20% of the new required setback provided that no more than 50% of the walls are removed.

What will happen to a previously conforming *USE* if new development regulations are applied with the new plan/zone?

- A previously conforming structure can continue as it currently exists. No changes to the structure are required. The structure can be sold and continue as it currently exists.

Can a previously conforming use change or modify their *USE*?

- A previously conforming use can change to a use that is permitted at any time. However, once it changes to a permitted use it cannot change back to a previously conforming use.
- A change to another previously conforming use within the same use category provided that the change does not result in a required increase in off-street parking. An example would be if office use is no longer allowed an existing Business & Professional office could change to an office for a Medical, Dental & Health Practitioner provided that the parking requirements for the Medical, Dental & Health Practitioner office is not higher than the requirement for the Business & Professional office. The new business would also be previously conforming.

What happens if a previously conforming *USE* goes out of business? Can the same *USE* return to the location?

- A previously conforming use that has been discontinued, where no permitted use has been in operations since, may be reestablished if it is less than two years since the use was discontinued.
- With a Neighborhood Development Permit a business that was previously conforming but had been closed for *more than 2* years can be re-established.

Can changes be made to buildings containing a previously conforming *USE*?

- Previously conforming uses can continue to maintain, repair, or alter their structure as needed when the costs of the repairs are *less than or equal to* 50% of the market value of the structure provided that
 - no more than 50% of the walls are removed to make the repair, and
 - there is no increase in the building size.

- With a Neighborhood Development Permit a previously conforming use can continue to maintain their structure and make repairs as needed when the cost of repairs are *greater than 50%* of the market value of the structure provided that there is no increase in the building size.

Can a previously conforming *USE* be re-established if its building needs to be rebuilt after a natural disaster?

- Previously conforming uses that are in structures destroyed by a natural disaster can reconstruct their structures and re-establish their use following a natural disaster when the cost to reconstruct is *less than or equal to 50%* of the market value.
- With a Neighborhood Development Permit previously conforming non residential structures containing a previously conforming use can be reconstructed and re-establish their use following a natural disaster where the cost to reconstruct is *greater than 50%* of the market value (prior to destruction).

Can a previously conforming *USE* be expanded?

- With a Neighborhood Use Permit a previously conforming use may *increase its floor area up to 20%* provided that the previously conforming uses are not detrimental to the public health, safety, and welfare. The following uses are considered to be detrimental:
 - industrial uses in residential zones
 - auto repair or dismantling uses in residential zones
 - any use in a zone that would require a conditional use

Are there new restrictions on hours of operation, parking and other code issues for previously conforming uses?

- No, the regulations that pertained to the use when it was permitted continue to be applied.

Amortization Schedule for Non-Conforming Industrial Uses

A new zoning ordinance **may not compel immediate discontinuance** of what was otherwise a lawfully established use or business. A city can, however, provide a period of time to eliminate nonconforming uses. In general, courts have upheld local ordinances that provide for terminating a nonconforming use. Therefore, the City may provide for terminating the non-conforming industrial uses over an amortization period that generally allow a reasonable period of time for the property owner to recover his or her investment. A business owner would have to establish that their use falls under the protections of the previously conforming use section. For example, a previously conforming use “must have been established in compliance with all permit requirements and must have been lawful until a change in the applicable zoning regulations made the premises or uses previously conforming.” § 127.0102(a). More importantly, those uses that comply “may continue to exist and operate **unless an amortization period is specified elsewhere in the Municipal Code.**” § 127.0102(d). Thus, any amortization period for Barrio Logan uses should be specified elsewhere in the LDC. Note, however, that § 127.0109(b) states: when making the *findings* for a Neighborhood Use Permit for the proposed expansion of a *previously conforming* use, the following uses are conclusively presumed to be detrimental to public health, safety, and welfare: (1) **Industrial uses in residential zones**; (2) Commercial and personal vehicle repair and maintenance in residential zones; and (3) Any use that requires a Conditional Use Permit in the applicable zone in accordance with Section 126.0303.