

**CITY OF PACIFIC
WASHINGTON**

ORDINANCE NO. 2015-1895

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO LAND USE AND ZONING, CLARIFYING THE DEFINITIONS OF NONCONFORMING USES AND STRUCTURES; ADDING A PROCEDURE FOR THE ESTABLISHMENT OF A NONCONFORMING USE FOR THE RECORD; IDENTIFYING RESTRICTIONS ON NONCONFORMING USES AND STRUCTURES; ESTABLISHING THE CRITERIA FOR A PERMIT TO RECORD A NONCONFORMING USE OR STRUCTURE, DESCRIBING THE PERMIT APPLICATION PROCEDURE, REPEALING CHAPTER 16.12 OF THE PACIFIC MUNICIPAL CODE AND ADOPTING A NEW CHAPTER 20.12 OF THE PACIFIC MUNICIPAL CODE.

WHEREAS, the City desire to revise and clarify its regulations relating to nonconforming uses and structures; and

WHEREAS, on December 26, 2014, the City's SEPA Responsible Official issued a threshold decision of nonsignificance which was not appealed; and

WHEREAS, on December 12, 2014, a copy of this ordinance was sent to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS on February 24, 2015, the Planning Commission held a public hearing on this Ordinance and made a recommendation to the City Council; and

WHEREAS, on March 16, 2015, the City Council considered the Planning Commission's recommendation and this ordinance at a workshop; and

WHEREAS, on March 23, 2015, the City Council approved the changes the legal nonconforming uses regulations; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 16.12 of the Pacific Municipal Code is hereby repealed.

Section 2. A new chapter 20.12 is hereby added to the Pacific Municipal Code,

which shall read as follows:

Chapter 20.12
NONCONFORMING USES AND STRUCTURES

Sections:

- 20.12.010 Non-Conforming Uses and Structures – Purpose.**
- 20.12.020 Definitions.**
- 20.12.030 Establishing a Legal Non-Conforming Use or Structure for the Record.**
- 20.12.040 Restrictions on Legal Non-Conforming Uses.**
- 20.12.050 Restrictions on Legal Nonconforming Structures.**
- 20.12.060 Permit Required.**
- 20.12.070 Administration of Nonconforming Permits.**
- 20.12.080 Requirements for Complete Application.**
- 20.12.090 Criteria for Approval – Establish Nonconforming Use or Structure for the Record.**
- 20.12.100 Final Decision.**
- 20.12.110 Appeals.**

20.12.010 Non-Conforming Uses and Structures – Purpose.

This Chapter provides standards and procedures for identifying non-conforming situations, establishing restrictions on the alteration or expansion of a non-conforming situation, specifying when a nonconforming situation must be brought into compliance with the Code. This Chapter also establishes a process for a property owner to obtain a determination that a use or structure is legally nonconforming so that the property owner may use such determination for purposes of property sale/transfer, or to defend in a code enforcement action.

20,12.020 Definitions.

A. Legal Nonconforming Use -- Definition. A legal nonconforming use is a use which was lawful under the City Municipal Code or the King and Pierce County Codes when established, and which has lawfully existed and been maintained thereafter, although it does not comply with the current City Zoning and Building Codes. The use of property must actually be established on the effective date of the Code to qualify as a nonconforming use thereafter. To establish a valid nonconforming use, the use must have been more than intermittent or occasional prior to the change in the Code.

B. Legal Nonconforming Structure -- Definition. A legal nonconforming structure is

a structure which was lawful under the City Municipal Code or the King and Pierce County Codes when established, which lawfully existed and has been maintained thereafter, although the structure could not be built under the current City Zoning and Building Codes by reason of restrictions on lot area, lot coverage, height, yard, equipment, access, parking, landscaping, its location on the lot or any other development standards in the current Codes.

20.12.030 Establishing a Legal Nonconforming Use or Structure for the Record.

A. Permit Required. A landowner may establish that he/she has a valid nonconforming use or structure for the record by obtaining the permit described in Section 20.12.060 through 20.12.120.

B. Abandonment or Discontinuance. In order to establish a legal nonconforming use or structure, the use or structure must not have been abandoned or discontinued, under the criteria in Section 20.12.040(C).

C. Destruction. Should a nonconforming use, structure or nonconforming portion of a structure be destroyed by any means to an extent more than fifty (50) percent of its replacement cost at the time of its destruction, as determined by the City Building Official, it shall be reconstructed only in conformity with this Code, and only under the following conditions: (1) a complete application for a building permit is filed with the City within twelve months after the damage occurred, and the permit issues, with not more than one 180-day extension; (2) the cause of the damage or destruction was not the act of the owner or the owner's agent; (3) the cause of the damage or destruction was not due to the ongoing neglect of the owner or the owner's agent.

D. Enforcement. If a landowner is not able to establish a legally nonconforming use or structure, or, if the City proves that a legal nonconforming use or structure was abandoned or discontinued, then the use or structure may be subject to an enforcement action. In this enforcement action, the landowner will either be required to terminate the use, demolish the structure or conform the structure to the requirements of this Code.

E. Applicability of New Regulations to Legal Nonconforming Uses and Structures. Legal nonconforming uses and structures have only a vested right not to have the use, structure or development immediately terminated when a new Code provision is adopted prohibiting the use or structure. The use or structure may still be subject to newly adopted reasonable police power regulations.

A legal use of land does not become nonconforming because the zone in which it is located is changed to a zoning district which requires a conditional use permit for the use. However, any alteration, expansion or intensification of a conditional use must follow the process in chapter 20.20 PMC for approval of a conditional use permit.

20.12.040 Restrictions on Legal Nonconforming Uses.

A. Enlargement, increase, intensification and extension prohibited. A legal nonconforming use may not be enlarged, increased, intensified or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.

B. Use cannot be moved to new location. No legal nonconforming use shall be moved in whole or in part to any portion of the building or lot other than that occupied by such use at the effective date of adoption or amendment of this Code.

C. No discontinuation or abandonment. The legal nonconforming use of land cannot be discontinued or abandoned for any reason for a period of more than one hundred-eighty (180) days or more. For purposes of calculating the 180-day period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

1. On the date when the use of land is physically vacated;
2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

Uses which vary seasonally (such as agricultural uses) shall be deemed abandoned if the seasonal use is not utilized during one full season, consistent with the traditional use.

D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than one hundred-eighty days, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use district in which such land is located.

20.12.050 Restrictions on Non-conforming Structures.

A. Alterations and Maintenance. A nonconforming structure may not be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or in a way that will not increase its nonconformity. Ordinary maintenance and repair shall be permitted.

B. Roadway Access. The owner of a non-conforming access connection (i.e., street or highway access) may be required to bring the non-conforming access into conformance with this Code and other applicable standards as a condition of the City or other

roadway authority approving a new access connection permit, or a change in land use.

C. Relocation or Removal. Should the nonconforming structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of this Code. However, a structure may be moved on the same site without full compliance if the movement reduces the degree of nonconformity with the Code.

D. Historic Structures. Nothing in this Chapter shall prevent the full restoration by reconstruction of a building or structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, or the Washington State Cultural Resource Inventory, as shown in a historical survey meeting the standards of the State Department of Archaeology and Historic Preservation. “Restoration” means reconstruction of the historic building or structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code and any code provisions adopted by the City on the subject of Historic Preservation. The reconstruction of all such historic buildings and structures shall comply with the life safety provisions of the State Building Code.

E. Mobile Homes or Manufactured Homes. Any mobile home or manufactured home located in a residential district which is a legal nonconforming use may be replaced with an approved manufactured home that conforms to the applicable requirements of PMC Titles 17 and 20.

20.12.060 Permit Required. A property owner may obtain a nonconforming determination to establish a legal nonconforming use or structure for the record. This determination is not required, unless the City has brought a code enforcement action relating to the property. In such event, the property owner has the burden to follow the procedures set forth herein to establish that the condition of the property is legally nonconforming. The Director may place the code enforcement action in abeyance for a reasonable time in order to allow a property owner to gather the necessary information to demonstrate that the property is legally nonconforming.

20.12.070 Administration of Nonconforming Permits. The Director is authorized and directed to administer the provisions of this Chapter relating to Nonconforming Permits. There is no public hearing prior to the final decision, and after issuance of the final decision, the appeal of such decision shall be forwarded to the Hearing Examiner in an open record hearing, under the procedures set forth in chapter 16.06. Because the processing of these permit applications requires the submission of different information for approval, imposes different burdens on the applicant and the City, and varies in other material respects from the processing of a project permit application, these permits are exempt under RCW 36.70B.140 from all project permit processing requirements (identified in Title 16 PMC), other than those set forth in this chapter.

20.12.080 Requirements for a Complete Application. A complete application for a Nonconforming Permit application shall include:

- A. Application form. Five (5) copies of a completed application form;
- B. Date, name, address, telephone number and e-mail of the applicant;
- C. Name, address, telephone number and e-mail of the owner of the property identified in the application;
- D. Legal description, street address and Assessor's Parcel Number of the subject property;
- E. The use of the subject property or structure on the subject property that is allegedly legally nonconforming. Description and photographs of existing site conditions, any plans, information and/or relevant to the proposed applicant's demonstration of a legal nonconforming use/structure;
- F. Information demonstrating that (1) the use is not permitted outright under the City's Code, including, but not limited to, the use standards of the current zoning or applicable district; (2) the current Zoning Code or Building Code standards for the use or structure are not met; and (3) the use has not been abandoned or discontinued for the period identified in Section 20.12.040(C).
- G. Proof of legal nonconforming status, including, but not limited to, planning permits/approvals, building permits, leases, aerial maps showing the structure and footprint, listings in business or phone directories (or directory with a list of businesses and residents referenced by address), etc.
- H. If the application is for a remodel, a complete description of the proposed remodeling relating to such section(s) of the structure or the entire structure;
- I. The applicant's narrative statement describing the manner in which the application satisfies the criteria for approval in the applicable section of this Chapter;
- J. A SEPA Checklist (unless categorically exempt);
- K. The application fee established by the City.

20.12.090 Criteria for Approval – Permit to Establish Legal Nonconforming Use or Structure for the Record.

A. Criteria. A permit will be approved establishing the legal nonconforming status of the use or structure if the applicant demonstrates:

- 1. That the use or structure satisfies the definition for a legal nonconforming use in Section 20.12.200; and
- 2. That the use or structure has been in existence and maintained continuously, with no interruption that would constitute abandonment or discontinuance under either former or current City Codes.

B. Acceptable Documentation. The City may accept the following as documentation of the existence of a use from a time when it would have been permitted outright and as documentation of its uninterrupted continuation:

- 1. Signed written statements from persons having no financial interest in the property and who are not relatives of the applicant or property owner. Notarization is not required.

2. Occupancy listing from the Polk Directory or Reverse Telephone Directories.
3. Business and/or licensing records.
4. County records showing the previous permitted use if the property was formerly not part of the City.
5. Assessment records.
6. Evidence of more than one electric or gas meter or sewer hookup.
7. Other evidence that the Director deems useful and reliable, based on the circumstances of the individual case. Examples include, but are not limited to, photographs, U.S. Census reports, and signed written statements of experts.

It is the responsibility of the applicant to furnish at least two different types of documentation from the sources listed above. The City may, in its discretion, require further documentation if the documentation submitted by the applicant does not demonstrate the existence of the use from a time when it was permitted outright, or fails to show continuous, uninterrupted maintenance of the use. The City may also accept only one type of documentation from the sources listed above, if that documentation is particularly persuasive. Any number of written, signed statements, however, are not sufficient by themselves to document the existence of a use.

20.12.100. Final Decision. Because this procedure is exempt under RCW 36.70B.140, there is no deadline for the City's issuance of a final decision.

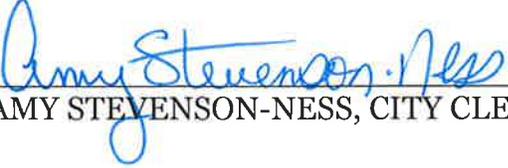
20.12.110. Appeals. An open public hearing shall be held on an appeal of the Director's decision to grant or deny a permit under this chapter, as described in Chapter 16.20.¹

Passed by the City Council of the City of Pacific, the 23rd day of March, 2015.

APPROVED:


 LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:


AMY STEVENSON-NESS, CITY CLERK

APPROVED AS TO FORM:


CAROL MORRIS, CITY ATTORNEY