City of Los Alamitos

Agenda Report Public Hearing	April 18, 2016 Item No: 9A

To: **Mayor Richard D. Murphy and Members of the City Council**

Via: **Bret M. Plumlee, City Manager**

From: **Steven Mendoza, Development Services Director**

Subject: **Introduce Ordinance No. 2016-04 – A Zoning Ordinance Amendment (ZOA) 15-05 Revising the Nonconforming Use Provisions of the Los Alamitos Municipal Code**

Summary: As recommended by the Planning Commission on February 24, 2016, the City Council will consider zoning code changes relating to Nonconforming Use Provisions, Zoning Ordinance Amendment (ZOA) 15-05 (Citywide) (City Initiated).

Recommendations:

1. Open the Public Hearing; and, if appropriate,

2. Determine that the proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment.

3. Introduce, waive reading in full and authorize reading by title only of Ordinance No. 2016-04, and set for second reading; and,

4. City Attorney Reisman read the title of Ordinance No. 2016-04, entitled, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, REPEALING CHAPTER 17.64 AND ADDING A NEW CHAPTER 17.64 RELATING TO NONCONFORMING USES."

Background

In its February 24, 2016 meeting, the Planning Commission adopted a Resolution of Recommendation to the City Council to amend the provisions of Chapter 17.64 of the Los Alamitos Code relating to the City's nonconforming use provisions.

From time to time Los Alamitos Municipal Code Chapter 17.64 *Nonconforming Uses and Structures*, with its difficult language, causes Staff, applicants for discretionary decisions, and Planning Commissioners to make difficult interpretations of the confusing verbiage contained in this chapter. All of these various participants who have been subject to the analysis of this code section agree that the passage can be read in various ways. While the move to amend the City's Code was spurred on by ambiguous provisions that were brought to light in relation to the expansion of a nonconforming use in an existing building, the Commission believes that the City's entire Nonconforming Use Chapter needs to be revised to be more "user friendly" for both Staff and the public. The Planning Commission recommends that the City Council approve the attached ordinance that the Commission has been working on over the last few months.

Fiscal Impact

None.

Submitted By:

Steven A. Mendoza
Development Services Director

Approved By:

Bret M. Plumlee
City Manager

Attachments:
1. *Approved Resolution of Recommendation PC 16-04*
2. *Ordinance No. 2016-TBD*
3. *Approved Minutes from Planning Commission Meeting of February 24, 2016*

RESOLUTION NO. PC 16-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-05 TO REPEAL CHAPTER 17.64 AND ADD A NEW CHAPTER 17.64 RELATING TO NONCONFORMING USES (CITY INITIATED)

WHEREAS, on September 23, 2015 the Planning Commission adopted a Resolution of Intention to amend the provisions of Chapter 17.64 of the Los Alamitos Municipal Code; and,

WHEREAS, the Planning Commission held a duly noticed Public Hearing to discuss the issue of nonconforming uses on October 28, 2015, which the hearing was opened and continued to November 18, 2015, and then continued to December 16, 2015, and then continued to January 27, 2016, and then again continued to February 24, 2016; and,

WHEREAS, the Planning Commission continued the duly noticed Public Hearing concerning this Amendment on February 24, 2016; and,

WHEREAS, the Planning Commission considered all applicable Staff reports and all public testimony and evidence presented at the Public Hearing.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby recommends that the City Council adopt Ordinance No. TBD (ZOA 15-05), attached hereto.

SECTION 2. In making this recommendation the Planning Commission makes the following findings:

1. The proposed amendments ensure and maintain consistency between the General Plan and the Zoning Code as this amendment works toward the policy of Economic Element Policy 2.2 *Effective land use regulation.* Ensure that development standards, use regulations, and the permitting process (especially discretionary permitting), are streamlined and effective; yet maintain protections for the community's quality of life.

2. The proposed amendments are internally consistent with other applicable provisions of this Zoning Code and do not provide any conflicts with any other provision of the Los Alamitos Municipal Code.

3. The proposed amendment has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's

environmental review procedures in that the proposed amendments are exempt from California Environmental Quality Act review per Sections 15305 – minor alterations in land use limitations and 15061(b) (3) – activity is not subject to CEQA where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

4. The Ordinance will not negatively impact the public convenience, health, safety or welfare. Instead, the Ordinance will positively improve the above by creating an understandable "nonconforming uses and structures" code that sets clear expectations for properties that fall under this often confusing term for those who are impacted.

PASSED, APPROVED, AND ADOPTED this 24th day of February, 2016.

Mary Anne Cuilty, Chair

ATTEST:

Steven Mendoza, Secretary

APPROVED AS TO FORM:

Cary S. Reisman, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LOS ALAMITOS)

I, Steven Mendoza, Planning Commission Secretary of the City of Los Alamitos, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission held on the 24th day of February, 2016, by the following vote, to wit:

AYES:	Cuilty, DeBolt, Grose, Loe
NOES:	None
ABSENT:	Andrade
ABSTAIN:	Riley, Sofelkanik

Steven Mendoza, Secretary

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, REPEALING CHAPTER 17.64 AND ADDING A NEW CHAPTER 17.64 RELATING TO NONCONFORMING USES

WHEREAS, City Staff, the Planning Commission, and the City Council have all recognized that the City's Code on nonconforming uses needs to be clarified and updated; and,

WHEREAS, on September 23, 2015 the Planning Commission adopted a Resolution of Intention to amend the provisions of Chapter 17.64 of the Los Alamitos Municipal Code; and,

WHEREAS, the Planning Commission held a duly noticed public hearing to discuss the issue of nonconforming uses on October 28, 2015, which hearing was opened and continued to November 18, 2015, and then again to December 16, 2015, and then again to January 27, 2016, and then again to February 24, 2016; and,

WHEREAS, after receiving input from the Planning Commission, Staff drafted a new Chapter 17.64 relating to nonconforming uses, and a categorical exemption from the California Environmental Quality Act; and,

WHEREAS, the Planning Commission took into consideration all information that was presented, both written and oral, at all of the public hearings; and

WHEREAS, the Planning Commission adopted Resolution No. 16-04 recommending that the City Council adopt this Ordinance; and,

WHEREAS, the City Council held a duly noticed public hearing on March 21, 2016 at which time it considered all evidence presented, both written and oral.

WHEREAS, after consideration of all applicable Staff reports and all public testimony and evidence presented at the Public Hearings, the City Council does hereby make the following findings for a Zoning Ordinance Amendment to modify Los Alamitos Municipal Code Section 17.64 "*Nonconforming Uses and Structures*," as required by Los Alamitos Municipal Code Section 17.70.050:

1. The proposed amendments ensure and maintain consistency between the General Plan and the Zoning Code as this amendment works toward the policy of Economic Element Policy 2.2 *Effective land use regulation.* Ensure that development standards, use regulations, and the permitting process (especially discretionary permitting), are streamlined and effective, yet maintain protections for the community's quality of life.

2. The proposed amendments are internally consistent with other applicable provisions of this Zoning Code and do not provide any conflicts with any other provision of the Los Alamitos Municipal Code.

3. The proposed amendment has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's environmental review procedures in that the proposed amendments are exempt from California Environmental Quality Act review per sections 15305 minor alterations in land use limitations and 15061(b)(3) - activity is not subject to CEQA where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment as the Ordinance allows the continuance of existing uses. Further, there is no evidence that any of the exceptions to the exemption applies.

4. The Ordinance will not negatively impact the public convenience, health, safety or welfare. Instead, the Ordinance will positively improve the above by creating an understandable "nonconforming uses and structures" code that sets clear expectations for properties that fall under this often confusing term for those who are impacted.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 17.64 of the Los Alamitos Municipal Code is hereby repealed.

~~**Chapter 17.64 NONCONFORMING USES AND STRUCTURES**~~

~~**17.64.010 Purpose.**~~

~~A. This chapter establishes uniform provisions for the regulation of legal nonconforming land uses, structures, and parcels. Within the zoning districts established by this zoning code, there exist land uses, structures, and parcels that were lawful before the adoption, or amendment of this zoning code, but that would be prohibited, regulated, or restricted differently under the terms of this zoning code or future amendments.~~

~~B. It is the intent of this zoning code to discourage the long-term continuance of these nonconformities, providing for their eventual elimination, but to permit them to exist under the limited conditions identified in this chapter.~~

~~C. Generally, this chapter is intended to be administered in a manner that encourages the eventual abatement of these nonconformities. (Ord. 688 § 1,2006)~~

~~**17.64.020 Applicability.**~~

The provisions of this chapter apply to structures, land, and uses that become nonconforming due to reclassification of zoning districts under this zoning code. The provisions shall also apply when standards or regulations are adopted or changed which cause previously conforming structures, land, or uses to become nonconforming. (Ord. 688 § 1, 2006)

17.64.030 Structures on substandard parcels.

A. Structures shall not be erected or enlarged on a substandard parcel unless the substandard parcel was a complete parcel of record on February 17, 1969, the effective date of Ordinance 169.

B. A lot or parcel which is substandard in area and/or dimension and which was of record before the incorporation of the city on March 1, 1960, shall be accepted as a conforming parcel subject to all other development standards of the zoning district. The parcel shall not be further reduced below the area or dimension identified on the recorded map or other documents that establish the date on which the parcel was officially created. (Ord. 688 § 1, 2006)

17.64.040 Exceptions—Public facilities and uses.

A. Facilities Directly Rendering Service. The provisions of this chapter shall not apply to public utility structures when the public utility structures pertain directly to the rendering of service or distribution, including generating plants, distribution, substations, water wells and pumps, gas storage, metering and valve control stations, but shall apply to structures or uses that do not immediately relate to direct service to consumers (e.g., including warehouses, corporation yards, storage, etc.)

B. Changes to Facilities. Nothing in this chapter shall be prevent the expansion, increase in capacity, modernization or replacement of public utility structures, provided that there shall be no change of an use unless approved by the commission, and further provided that all setback requirements of the zoning district in which the use is located shall be maintained. There shall be no enlargement of the site unless approved by the commission. (Ord. 688 § 1,2006)

17.64.050 Restrictions on nonconforming uses and structures.

A. Time Limitation in Residential Zoning Districts. In residential zoning districts, a nonconforming structure that was designed, arranged, or intended for a use not allowed in the residential zoning district shall be completely removed, or altered and converted to a conforming structure, or may reach the age of thirty (30) years, computed from the date the structure was erected; provided, however, that this regulation shall not become operative until ten (10) years from the effective date of the ordinance codified in this title.

B. Time Limitation on Use of Land. Nonconforming uses of land other than those specified in subsection F of this section, (where no main structure is involved) shall be discontinued within two years from the date of the of adoption of said ordinance.

C. Change to Another Nonconforming Use. If no structural alterations are made, a nonconforming use of a nonconforming structure may be changed to another use of the same or more restrictive classification upon the securing of a conditional use permit. If the nonconforming use is terminated or discontinued, the occupancy afterwards may not revert to a less restrictive use.

D. Expansion of Structure. A structure existing at the date of the adoption of said ordinance that is nonconforming in use, design, or arrangement shall not be extended, reconstructed, or structurally altered unless a conditional use permit is first secured in each case, or unless an enlargement, extension, reconstruction or alteration is in compliance with the regulations identified in this zoning code for the zoning district where the structure is located. A nonconforming structure may be maintained, repaired, or portions of it replaced without a CUP as long as the maintained, repaired, or replaced portion does not exceed twenty-five (25) percent of the square footage of the original structure.

E. No Extension to Occupy Greater Area of Land. Except as otherwise provided in this chapter, uses of land or structures existing at the time of the adoption of said ordinance, or amendments to this title, may be continued although the particular use or the structure does not conform to the regulations specified by this zoning code for the zoning district in which the particular structure is located or use is made; provided, however, no nonconforming structure or use of land may be extended to occupy a greater area of land upon which the structure is situated than is owned by the property owner at the time of the adoption of said ordinance.

F. Reuse of Damaged or Partially Destroyed Structures. A nonconforming structure destroyed to the extent of more than fifty (50) percent of the fair market value as determined by the director preceding its destruction by fire, explosion, or other casualty or act of God, may be restored and used only if a conditional use permit is first secured in each case, or used only in compliance with the regulations existing in the zoning district where it is located. (Ord. 688 § 1, 2006)

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17.64.060 Abandonment.

Abandoned nonconforming uses shall be subject to the following provisions:

A. After Abandonment. If a nonconforming use is discontinued or abandoned, a subsequent use of the land or structure shall conform to the regulations specified for the zoning district in which the land or structure is located.

B. Continuation of Abandoned Use.

1. Application to Continue Abandoned Use. However, if application is made for a continuation of an abandoned or discontinued nonconforming use, through a conditional use permit in compliance with Chapter 17.42 (Conditional Use Permits), within four

months from the date the discontinuation or abandonment occurred, then the commission may grant an extension of the nonconforming use for a specified term.

2. Factors to Be Considered by Review Authority. In considering whether the extension is to be granted, the commission shall consider the nature of the nonconformity as it relates to the surrounding area and shall consider the harmony, or lack of harmony, with surrounding uses and developments and shall also consider the effect upon the surrounding community if the continuation is denied or granted. (Ord. 688 § 1, 2006)

17.64.070 Amortization.

A. Amortization Time Schedule. Table 5-01 (Amortization Time Schedule) establishes the time schedule for the amortization of Type I, II, III, IV, and V structures. Structure type designations shall be as defined in the city building code. Time shall be measured from the date of issuance of certificate of occupancy for the structure.

TABLE 5-01

Amortization Time Schedule

Type of Structure	Date of Removal or Alteration
Type I and II	50 years
Type III and IV	40 years
Type V	30 years

B. Minimum Period. Except as otherwise provided in Section 17.64.050 (Time limitations on use of land), no structure shall be required to be removed or altered to conform before a date that is ten (10) years from the date it became nonconforming under this zoning code.

C. Process When Nonconforming Use or Structure. For purposes of notification to business and property owners of the nonconforming features and specific amortization dates applicable to various properties in the city, the following procedures shall apply:

1. Two Years' Notice Required. At least two years before the time when a structure or use shall be required to be altered or removed in compliance with the amortization schedule identified in subsection A of this section, the director shall notify the person or entity designated as the property owner on the latest available assessment roll.

2. Extension of Two-Year Time Period. If the notice is not sent at least two years before to that time, then the date for alteration or removal shall be extended so as to afford an affected owner two full years from the date notice is sent before the alteration or removal is required.

~~3. Contents of Notice. The notice shall contain a description of the nature of nonconforming structure or use, the date of construction, the date of expiration, and inform the property owner that the structure or use must be altered, changed, terminated, or removed as the case may be. The notice shall inform the owner of the right of appeal to the council as described in subsection D of this section. The notice shall be sent "Certified—Return Receipt Requested." The failure of the owner to receive the notice, or the refusal of acceptance of it, shall not toll the amortization period or the notice period.~~

~~4. Process When Use or Structure Nonconforming Due to Extension or Encroachment into Public Right-of-Way. Instead of the procedures outlined in subsections (C)(1), (2) and (3) of this section, the following provisions shall apply to a use of land or structure that is nonconforming in whole or in part because it extends or encroaches into an area that, but for the extension or encroachment, would be part of the paved and improved public right-of-way as established in the city's adopted plan of arterial highways.~~

~~a. In these cases, the nonconforming use of land or structure shall be altered or removed so as to comply with the regulations of this zoning code immediately after the time, as measured in subsection A of this section (Amortization time schedule), has passed and provided the owner has received a notice containing the following: a description of the nature of the nonconforming structure or use, the date of construction, the date of expiration, and notification informing the property owner that the structure or use must be altered, changed, terminated, or removed as the case may be.~~

~~b. The notice shall so inform the owner of the right of appeal to the council. The notice shall be sent "Certified — Return Receipt Requested." The failure of the owner to receive the notice, or the refusal of acceptance of it, shall not toll the amortization period or the notice period. If within thirty (30) days after the notice was mailed the owner requests in writing an appeal hearing before the Council, the hearing shall be noticed, conducted, and concluded in the same manner as identified in subsection D (Appeals procedure), of this section.~~

~~D. Appeals Procedure.~~

~~1. Time Period for Filing Appeal. The owner of a parcel who is notified of the parcel's nonconforming status may file a written appeal about the affected property with the director within thirty (30) days after the date when the notice was mailed to the owner as subsection C of this section (Process when nonconforming use or structure).~~

~~2. Contents of Appeal. The appeal shall state the ground or grounds of it and the appellant's address for receipt of notice of hearing on the appeal. The grounds may include, but shall not be limited to:~~

~~a. That the structure or use in not nonconforming;~~

~~b. That a different abatement period should be applied to the structure or use in question; or~~

~~c. Both of the previously mentioned grounds in the alternative.~~

~~3. Processing of Appeal.~~

~~a. Within thirty (30) days after receipt of a timely written appeal stating the ground or grounds for it and the address for receipt of notice, the director shall set the matter for hearing before the council and shall mail notice of the time, date, and place of the hearing to the appellant at the address stated in the written appeal.~~

~~b. The council shall then conduct a hearing on the validity of the ground or grounds stated in the written notice of appeal, which hearing may be continued from time to time.~~

~~c. The appellant shall have the burden of establishing the validity of the grounds. The council may consider staff reports presented and other evidence relevant to the issues raised. If the grounds include the appellant's contention that a different abatement period should be applied, the evidence may include, but shall not be limited to:~~

~~i. The date upon which the structure was constructed;~~

~~ii. The original cost of it; and~~

~~iii. Whether that cost could be recovered by the original owner or successor or successors within the stated abatement period under generally accepted accounting practices.~~

~~iv. Within thirty (30) days subsequent to the conclusion of the hearing, the council shall render its decision in writing and a copy of the decision shall be mailed to the appellant at the address specified in the written appeal. The decision of the council shall be final and conclusive upon adoption.~~

~~4. Exclusive Remedy. The procedures identified shall constitute the exclusive administrative remedy available to a person or entity affected by the amortization schedule identified in this chapter.~~

~~5. Validity of Appeal. An appeal shall not be effective for any purpose unless it is in writing and contains those items and is filed within the applicable period of time specified. In addition, an appeal shall not be valid for any purpose unless the fee as set by the city's fee resolution shall be paid contemporaneously with the filing of an appeal to the city clerk.~~

~~E. Amortization of Conditional Use Permit. If a property being operated or used in compliance with a conditional use permit is a nonconforming use at the time the permit is issued, or later becomes nonconforming due to amendments to this zoning code, the amortization schedule as identified in subsection A of this section, above, shall run against that property, beginning with the date of issuance of the permit or the date the use becomes nonconforming. (Ord. 688 § 1, 2006)~~

SECTION 2. Chapter 17.64 of the Los Alamitos Municipal Code is hereby amended in its entirety to read as follows:

Chapter 17.64

NONCONFORMING USES, STRUCTURES AND PROPERTY

17.64.010 Purpose.

A. This Chapter is intended to permit continuation of nonconformities as to parcel size, use, occupancy and building types that were legally established but no longer comply with all of the standards and requirements of this Title. To that end, this Chapter establishes the circumstances under which nonconformities may be continued or changed and provides for the removal of nonconformities when their continuation conflicts with the public health and safety.

B. This Chapter is not intended to limit the City's ability to eliminate a public nuisance.

C. Nothing herein shall prevent the City from declaring a nonconformity to constitute a danger to the public health or safety and take lawful action to remedy that danger.

17.64.020 Applicability.

A. The provisions of this Chapter apply to structures, land, and uses that have become nonconforming due to changes in this Title or reclassification of zoning districts under this zoning code. The provisions shall also apply when standards or regulations are adopted or changed which cause previously conforming structures, land, or uses to become nonconforming.

B. For purposes of this Chapter, the terms "nonconformity" or "nonconformities" shall refer to legal nonconforming uses, legal nonconforming structures, and legal nonconforming lots, all as more specifically defined in Chapter 17.76 of this Code.

17.64.030 Nonconforming Uses.

A. Nonconforming uses shall be allowed to remain provided such use is not abandoned, intensified, or the space that the nonconforming use is located in is not reconstructed.

B. If no structural alterations are made, a nonconforming use of a structure may be changed to a different type of nonconforming use upon approval of a conditional use permit by the Planning Commission. Once a nonconforming use is changed to a less intense use, i.e., one that requires less parking, it may not revert to the original nonconforming use. As part of the conditional use permit findings the Planning Commission must determine that the new use will be no less compatible with the purposes of the zone and surrounding uses than the nonconforming use it replaces.

C. A nonconforming use may not expand the area of its use beyond that for which it was legally approved.

D. Once a nonconforming use is terminated, discontinued, or abandoned, the occupancy afterwards may not revert to a nonconforming use.

17.64.040 Nonconforming Structures.

A. Nonconforming structures may only be continued and maintained provided there is no alteration, enlargement, or addition to any building or structure.

B. A use of a nonconforming structure shall not be allowed to change to any use which would increase the nonconformity of the structure, such as changing an office building to a medical office building if there was not sufficient parking.

C. A nonconforming use of a nonconforming structure may be changed to a conforming use of a nonconforming structure upon approval of a conditional use permit by the Planning Commission. Once a nonconforming use is changed to a conforming use, it may not revert to a nonconforming use.

D. Maintenance, repairs, nonstructural modifications and nonstructural interior alterations to a nonconforming structure are permitted if the changes and improvements do not enlarge or extend the structure, or otherwise increase the degree of the nonconformity. Exterior improvements, such as a façade improvement, which are intended to better the appearance of the property, are included in these types of allowed changes. Nothing herein supersedes the requirement to obtain site plan review approval if otherwise required.

E. In a building which is nonconforming due to parking, a change of use or intensification of the existing use shall only be allowed if the full amount of the required parking is provided.

F. A structure shall not be considered nonconforming if the nonconformity is caused due to a condemnation of a portion of the property by the City.

G. A structure shall not be considered nonconforming because of a loss of required parking spaces due to conformance with the Americans with Disabilities Act.

17.64.050 Nonconforming Lots.

A. Any lot that is smaller than the minimum lot size required by this Title, or does not meet any of the applicable dimensional requirements, shall be considered a legal nonconforming lot if it is described in the official records on file in the Office of the Orange County Recorder as a lot of record. The lot shall not be further reduced below the area or dimension identified on the recorded map or other documents that establish the date on which the parcel was officially created.

B. A lot of record may be used as a building site subject to compliance with all other applicable requirements, unless a variance or other modification or exception is approved as provided for in this Title.

17.64.060 Repair and Replacement of Damaged or Destroyed Nonconforming Structures.

If any nonconforming structure is destroyed by fire, explosion, act of God, or the public enemy such that the cost of restoration or replacement exceeds fifty percent (50%) of the replacement cost of the entire structure, the replacement shall conform to current regulations or a conditional use permit shall be obtained from the Planning Commission to allow a deviation from current standards. The City's Building Official shall determine the extent of destruction and costs of replacement. Reconstruction shall begin within twenty-four months from the date the damage occurred.

17.64.070 Continuation of Nonconformity.

A. Legal nonconformities may be continued and maintained in compliance with the requirements of this Chapter unless the Building Official deems the nonconformity to be a public nuisance because of health or safety concerns. If possible, the Building Official shall impose conditions on the nonconformity to eliminate the health or safety concerns.

B. The right to continue a legal nonconformity attaches to the land and shall not be affected by a change in ownership.

17.64.080 Abandonment.

A. A nonconforming use of land or a structure shall be considered to be abandoned after 180 days of nonuse, unless the interruption in use is involuntary due to casualty or other events outside the control of the owner or operator of the land or structure. Once abandoned, all subsequent uses of such land and structure shall conform to the regulations specified for the zoning district in which the land or structure is located.

B. Upon determination that a use has been abandoned, the Department of Community Development shall send a notice to the owner. If the owner disagrees with the City's determination, an appeal may be filed with the Planning Commission in accordance with Section 17.68.020 of the Los Alamitos Municipal Code. The burden of proof shall be on the owner to show that the use has not been abandoned. A determination that a use has been abandoned requires both (1) evidence of an intention to abandon, and (2) an act or failure to act which shows or implies that the owner does not continue to claim or retain an interest in the nonconforming use. Evidence may include, but is not limited to, removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or lack of business records to document continued operation. Maintenance of a valid

business license shall of itself not be considered a continuation of the use. However, lack of a business license may be considered as a factor in determining non-continuation of the use. A broker agreement to solicit tenants or purchasers to continue a nonconforming use shall be sufficient evidence that the nonconforming use has not been abandoned.

17.64.090 Exceptions—Public facilities and uses.

A. Facilities Directly Rendering Service. The provisions of this Chapter shall not apply to public utility structures when the public utility structures pertain directly to the rendering of service or distribution, including generating plants, distribution, substations, water wells and pumps, gas storage, metering and valve control stations, but shall apply to structures or uses that do not immediately relate to direct service to consumers (e.g., including warehouses, corporation yards, storage, etc.).

B. Changes to Facilities. Nothing in this Chapter shall prevent the expansion, increase in capacity, modernization or replacement of public utility structures, provided that there shall be no change of a use unless approved by the Commission, and further provided that all setback requirements of the zoning district in which the use is located shall be maintained. There shall be no enlargement of the site unless approved by the Commission.

SECTION 3. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a Certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

SECTION 4. This Ordinance shall take effect thirty days after approval as provided in Government Code Section 36937.

SECTION 5. Staff is hereby directed to file a Categorical Exemption from CEQA with the County Clerk's office.

PASSED, APPROVED AND ADOPTED THIS __th DAY OF _____, 2016.

_____
Richard D. Murphy, Mayor

ATTEST:

Windmera Quintanar, City Clerk, CMC

APPROVED AS TO FORM:

Cary Reisman, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LOS ALAMITOS)

I, Windmera Quintanar, City Clerk of the City of Los Alamitos, do hereby certify that the foregoing Ordinance No. 2016-TBD was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 21st day of March, 2016, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the __ day of _____, 2016, by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Windmera Quintanar, City Clerk, CMC

Mr. Crawford indicated that the Planning Department is amazing; easy to work with and they have been a delight which is not always the case in other cities.

Commissioner Loe indicated he would like to strike the condition to do underground utilities from the pole to the property.

Motion/Second: Loe/Grose
Carried 5/0/0 (DeBolt and Sofelkanik absent): The Planning Commission approved (with the above change) the adoption of Resolution No. PC 16-02, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, APPROVING SITE PLAN REVIEW 15-04 FOR THE ADDITION OF A 2,583 SQUARE FOOT RESIDENTIAL UNIT ON A PARCEL WITH AN EXISTING 1,158 SQUARE FOOT SINGLE FAMILY RESIDENCE, THEREBY PROVIDING TWO SINGLE-FAMILY RESIDENCES, AND REPLACING AN EXISTING GARAGE WITH ONE ATTACHED AND ONE DETACHED TWO-CAR GARAGE ON A 9,490 SQUARE FOOT PARCEL AT 4292 GREEN AVENUE IN THE MULTIPLE-FAMILY (R-3) ZONE, APN 222-131-06, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (APPLICANT: JASON HICKOX)."

D. Zoning Ordinance Amendment (ZOA) 15-05 – Nonconforming Use Provisions

Continued discussion with Staff of desired provisions relating to Nonconforming Use Provisions, Zoning Ordinance Amendment (ZOA) 15-05 (Citywide) (City initiated).

Assistant City Attorney Kranitz summarized the Staff report, referring to the information contained therein. She indicated she believes she has incorporated all of the changes that the Commission directed that the Staff make at the last meeting. This item wasn't agendized for adoption tonight; it will come back at the next meeting. They did have the environmental consultant take a look at it and he has determined that a Notice of Exemption would be appropriate. This is one thing Staff wanted to make sure of and he's comfortable that this can go on a Notice of Exemption so those findings will be incorporated into the resolution that will be before the Commission at the next meeting for them to recommend adoption. She indicated she's prepared to answer questions from the Planning Commission.

Chair Cuilty re-opened the continued Public Hearing.

Chair Cuilty reported that the Public Hearing will remain open for the February 24, 2016 Commission meeting.

Ms. Kranitz reported that this will come back in its final form with the appropriate findings. She said the only issue was the continuation of legal,

non-conforming lots; she said they did address it and put in the draft that you can build on it but just can't intensify the non-conformity.

E. Zoning Ordinance Amendment No. 15-09 – Allowing More Flexible Commercial Recreation Uses for Certain Parcels in the Planned Light Industrial Zone (City Initiated).

Continued consideration of a Zoning Ordinance Amendment (ZOA 15-09) to create a Limited Industrial Zone allowing more flexible commercial recreation uses for certain parcels in the Planned Light Industrial Zone to comply with the new 2015-2035 General Plan and to amend the Zoning Map by placing the Zone on specified parcels (City initiated).

Development Services Director Mendoza summarized the Staff report, referring to the information contained therein, and indicated he's prepared to answer questions from the Planning Commission.

Assistant City Attorney Kranitz explained that part of this was just redefining the terms so they seem to make more sense rather than having businesses falling into multiple categories.

Mr. Mendoza explained the idea around this was now the City can start improving the area that has these concentrations in them to address the drop off zones. There are some public improvements the City would like to do in this area so once this is done, Staff will start addressing this in the Capital Improvement Plan over the next seven years.

Vice Chair Andrade asked what the advantage is to not allowing a CUP for a business. If that type of a business wants to come in and they're limited to just the cross hatched areas, but those are all obviously occupied, there's nowhere else for them to go.

Associate Planner Tom Oliver said they could also go to the Commercial area. They have a large area, except for the commercial area often costs more to rent than the industrial area does and what this does, is this allows them to be in the industrial area.

Mr. Mendoza explained that another thing is compatibility. Staff was having applicants apply for things near places where trucks were waiting to load and off load and Staff just didn't see this as compatible and safe for kids.

Commissioner Riley said he agrees that maybe some of the buildings may be more appropriate for the business but that doesn't mean the surrounding area/street is always appropriate.

Ms. Kranitz explained that when the Planning Commission adopted the General Plan, the General Plan specifically states Commercial/Recreational uses are not permitted in the Planned Industrial General Plan category which