1. CALL TO ORDER

2. ROLL CALL
Chair Riley
Vice-Chair Cuity
Commissioner Andrade
Commissioner DeBolt
Commissioner Grose
Commissioner Loe
Commissioner Sofelkanik

3. PLEDGE OF ALLEGIANCE
4. **ORAL COMMUNICATIONS**
   At this time any individual in the audience may address the Planning Commission and speak on any item within the subject matter jurisdiction of the Commission. If you wish to speak on an item listed on the agenda, please sign in on the Oral Communications Sign In sheet located on the podium. *Remarks are to be limited to not more than five minutes.*

5. **APPROVAL OF MINUTES**
   None.

6. **CONSENT CALENDAR**
   None.

7. **STAFF REPORTS**
   None.

8. **PUBLICATION HEARINGS**
   A. **Zoning Ordinance Amendment No. 15-07**
      **Marijuana Regulation**
      Consideration of an ordinance to prohibit commercial cannabis activities, including the sales, cultivation, distribution, delivery, storage and manufacturing of cannabis medical marijuana, and marijuana in response to three State of California bills signed into law on October 9, 2015 (AB 266, AB 243, and SB 643) which are known collectively as the Medical Marijuana Regulation and Safety Act. The ordinance will also prohibit cultivation for personal use by Qualified Patients and Caregivers.

      Recommendation:

      1. That the Planning Commission adopt Resolution No. 15-19 entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-07 TO ADD CHAPTER 17.39 TO THE LOS ALAMITOS MUNICIPAL CODE PROHIBITING ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY AND PROHIBITING CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER AND AMENDING TABLES 2-02, 2-04, AND 2-06 TO REFLECT THE SAME, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (CITYWIDE) (CITY INITIATED)."
B. **Zoning Ordinance Amendment No. 15-04**

*Administrative Permitting of Restaurants with Outside Seating Areas*

A continued hearing to consider zoning code changes that will allow restaurant outside seating on private sidewalks as an administratively permitted use. The draft ordinance is brought back to the Planning Commission for recommendation to the City Council (Citywide) (City initiated.)

Recommendation:

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

2. Recommend that the City Council determine that the proposed project is exempt from CEQA pursuant to Guidelines Section 15305, minor alterations in land use limitations; and,

3. Staff recommends that the Planning Commission adopt Resolution No. 15-18 entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-04 TO AMEND SECTIONS 17.76.020 AND 17.10.020 - TABLE 2-04, AND ADDING SECTION 17.38.190 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO OUTSIDE SEATING AREAS FOR RESTAURANTS (CITY INITIATED)."

C. **Continued Discussion of Nonconforming Use Provisions**

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

Recommendation:

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

2. Direct Staff to draft an ordinance incorporating amendments that are agreed upon by the Commissioners at the end of tonight's discussion; or alternatively,

3. Resolve to continue or cease continued discussion of this subject.

9. **ITEMS FROM THE COMMUNITY DEVELOPMENT DIRECTOR**

10. **COMMISSIONER REPORTS**

None.
11. ADJOURNMENT

APPEAL PROCEDURES
Any final determination by the Planning Commission may be appealed to the City Council, and must be done so in writing at the Community Development Department, within twenty (20) days after the Planning Commission decision. The appeal must include a statement specifically identifying the portion(s) of the decision with which the appellant disagrees and the basis in each case for the disagreement, accompanied by an appeal fee of $1,000.00 in accordance with Los Alamitos Municipal Code Section 17.68 and Fee Resolution No. 2008-12.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 72 hours prior to the meeting.

________________________
Tom Oliver
Associate Planner

________________________
Date

Planning Commission Meeting
November 18, 2015
Page 4 of 4
City of Los Alamitos
Planning Commission

Agenda Report
Public Hearing
November 18, 2015
Item No: 8A

To: Chair Riley and Members of the Planning Commission
Via: Steven Mendoza, Development Services Director
From: Lisa Kranitz, Assistant City Attorney
Subject: Zoning Ordinance Amendment 15-07
Marijuana Regulation

Summary: Consideration of an ordinance to prohibit commercial cannabis activities, including the sales, cultivation, distribution, delivery, storage and manufacturing of cannabis, medical marijuana, and marijuana in response to three State of California bills signed into law on October 9, 2015 (AB 266, AB 243, and SB 643) which are known collectively as the Medical Marijuana Regulation and Safety Act. The ordinance will also prohibit cultivation for personal use by Qualified Patients and Caregivers.

Recommendation: Staff recommends that the Planning Commission adopt Resolution No. 15-19 entitled, “A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-07 TO ADD CHAPTER 17.39 TO THE LOS ALAMITOS MUNICIPAL CODE PROHIBITING ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY AND PROHIBITING CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER AND AMENDING TABLES 2-02, 2-04, AND 2-06 TO REFLECT THE SAME, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (CITYWIDE) (CITY INITIATED).”

Applicant: City Initiated
Location: Citywide
Approval Criteria: Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment be recommended by a resolution to the City Council.

Noticing: Since the number of real property owners exceeds 1,000, notices announcing the Public Hearing were published as a 1/8 page ad in the News Enterprise on November 4, 2015 for a hearing on November 18, 2015.
The proposed ordinance has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 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.

Background

Recent legislation signed by the Governor (AB 266, AB 243 & SB 643) warrants the adoption of code that will need to be effective March, 2016 in order to be effective. The League of California Cities recommends beginning this process immediately to meet the March, 2016 implementation requirement. The Medical Marijuana Regulation and Safety Act consist of three separate pieces of legislation:

- AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) – Establishes dual licensing structure requiring state license and a local license or permit. Department of Consumer Affairs heads overall regulatory structure imposing health and safety and testing standards.
- AB 243 (Wood) – Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- SB 643 (McGuire) - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

This legislation protects local control in the following ways:

- Dual licensing: A requirement in statute that all marijuana businesses must have both a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- Effect of Local Revocation of a Permit or License: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- Enforcement: Local governments may enforce state law in addition to local ordinances if they request that authority, and if it is granted by the relevant state agency.
- State law penalties for unauthorized activity: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
• Expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

Recommendation

Last month, the Planning Commissioners approved a Resolution of Intent and directed Staff to draft an ordinance and a recommendation of it to the City Council. Those drafted documents are attached to this report.

Staff recommends that the Planning Commission conduct a Public Hearing to discuss this subject and then adopt Resolution No. 15-19 recommending that the City Council adopt Ordinance No. TBD, making changes to the Los Alamitos Municipal Code concerning marijuana (cannabis).

Also attached are definitions from State law; the highlighted ones are referenced in the draft ordinance. Additionally, a summary memo from the City Attorney’s office is attached.

Attachments:  
1) Planning Commission Resolution 15-19  
2) Draft Ordinance No. 2015-TBD  
3) Definitions Handout  
4) Memo from Assistant City Attorney
RESOLUTION NO. 15-19

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-07 TO ADD CHAPTER 17.39 TO THE LOS ALAMITOS MUNICIPAL CODE PROHIBITING ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY AND PROHIBITING CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER AND AMENDING TABLES 2-02, 2-04, AND 2-06 TO REFLECT THE SAME, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (CITYWIDE) (CITY INITIATED).

WHEREAS, on October 9, 2015, Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities; and,

WHEREAS, on October 28, 2015, the Planning Commission approved a Resolution of Intention to make zoning code changes concerning the sales, cultivation, distribution, delivery, storage and manufacturing of “Cannabis, Marijuana and Medical Marijuana; and,

WHEREAS, the Planning Commission believes that cultivation and all commercial medical marijuana uses are prohibited under the City’s permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City; and,

WHEREAS, the Planning Commission held a duly noticed public hearing on this Ordinance on November 18, 2015 at which time it considered all evidence presented, both written and oral, and after the close of the public hearing adopted Resolution No. 15-19, recommending that the City Council adopt this Ordinance; and,

WHEREAS, after consideration of all applicable Staff Reports and all public testimony and evidence presented at the Public Hearings, the Planning Commission does hereby make the following findings for a Zoning Ordinance Amendment as required by Los Alamitos Municipal Code Section 17.70.050:

1. The proposed amendments ensure and maintain consistency with the General Plan and the Zoning Code. The proposed code amendment to prohibit cultivation and all commercial medical marijuana land uses in all zones throughout the
City is consistent with General Plan Land Use Policy as it continues the prohibition of federally prohibited land uses as has been the policy of the City.

2. The proposed amendments will not adversely affect the public convenience, health, interest, safety, or welfare of the City as land uses and cultivation of commercial medical marijuana will be prohibited by this ordinance since there are questions as to the health and safety of Marijuana (Cannabis) which have not been adequately addressed to the satisfaction of the City.

3. 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.

4. The proposed amendments have 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 Section 15061(b) (3) of the California State Government Code because the Code Amendments will have no significant effect on the environment and pursuant to Section 15305 as a minor alteration in land use limitations.

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

SECTION 1. The Planning Commission of the City of Los Alamitos, California, finds that the above recitals are true and correct, which findings are incorporated by reference herein.

SECTION 2. Based upon such findings and determinations, the Planning Commission hereby recommends to the City Council of the City of Los Alamitos to approve Zoning Ordinance Amendment 15-07 as shown in Attachment 2, which ordinance is attached hereto and incorporated by reference herein.

PASSED, APPROVED, AND ADOPTED this 18th day of November, 2015.

__________________________
John Riley, Chairperson

ATTEST:

__________________________
Steven Mendoza, Secretary
APPROVED AS TO FORM:

________________________________________________________________________
Lisa Kranitz
Assistant 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 18th day of November, 2015, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____________________________________________________________________
Steven Mendoza, Secretary
ORDINANCE NO. 2015 - TBD

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, ADDING CHAPTER 17.39 TO THE LOS ALAMITOS MUNICIPAL CODE PROHIBITING ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY AND PROHIBITING CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER AND AMENDING TABLES 2-02, 2-04, AND 2-06 TO REFLECT THE SAME, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (CITYWIDE) (CITY INITIATED).

The City Council of the City of Los Alamitos does hereby ordain as follows:

Section 1. Findings and Purpose. The City Council finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

D. In City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . . " Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that
“there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

E. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

F. On October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.

G. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

H. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

I. The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.
J. While the City Council believes that cultivation and all commercial medical marijuana uses are prohibited under the City’s permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

K. The Planning Commission held a duly noticed public hearing on this Ordinance on November 18, 2015 at which time it considered all evidence presented, both written and oral, and after the close of the public hearing adopted Resolution No. 15-19, recommending that the City Council adopt this Ordinance.

L. The City Council held a duly noticed public hearing on this Ordinance on December ____ , 2015 at which time it considered all evidence presented, both written and oral.

Section 2. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

Section 3. Chapter 17.39 is hereby added to the Los Alamitos Municipal Code to read as follows:

Chapter 17.39

MEDICAL MARIJUANA AND CULTIVATION

17.39.010 Definitions

“Cannabis” shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.
“Cultivation site” shall have the same meaning as set forth in Business & Professions Code § 19300.5 (x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.

“Dispensary” shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, “Dispensary” shall also include a cooperative. “Dispensary” shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

“Dispensing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Business & Professions Code § 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Business & Professions Code § 19300.5(y) as the same may be amended from time to time.

“Manufacturing site” shall have the same meaning as set forth in Business & Professions Code § 19300.5(af) as the same may be amended from time to time.

“Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.
"Testing laboratory" shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

"Transport" shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

"Transporter" shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

17.39.020 Prohibition.

A. Commercial cannabis activities of all types are expressly prohibited in all zones in the City of Los Alamitos. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

B. To the extent not already covered by subsection A above, all deliveries of medical cannabis are expressly prohibited within the City of Los Alamitos. No person shall conduct any deliveries that either originate or terminate within the City.

C. This section is meant to prohibit all activities for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

D. Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones in the City of Los Alamitos. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

17.39.030 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter 17.39 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.

17.39.040 Civil Penalties.

In addition to any other enforcement permitted by this Chapter 17.39, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.24 of this code against any person or entity that violates this Chapter.
any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

Section 4. Table 2-02 is hereby amended by adding the following:

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<th>Specific Use Regulations</th>
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<tbody>
<tr>
<td>CANNABIS USES</td>
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<tr>
<td>Cannabis delivery</td>
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<tr>
<td>Commercial cannabis activities</td>
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<tr>
<td>Cultivation, even by Qualified Patients and Caregivers</td>
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Section 5. Table 2-04 is hereby amended by adding the following:

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<td>Cannabis delivery</td>
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<tr>
<td>Commercial cannabis activities</td>
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<tr>
<td>Cultivation, even by Qualified Patients and Caregivers</td>
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Section 6. Table 2-06 is hereby amended by adding the following:

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<th>Specific Use Regulations</th>
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<td>Commercial cannabis activities</td>
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<tr>
<td>Cultivation, even by Qualified Patients and Caregivers</td>
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</tbody>
</table>
Section 7. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 8. Nothing in this Ordinance shall be interpreted to mean that the City’s permissive zoning scheme allows any other use not specifically listed therein.

Section 9. CEQA. This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and Section15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City’s permissive zoning provisions already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Section 10. To the extent the provisions of the Los Alamitos Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 11. 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 adoption and shall post a certified copy of this Ordinance, including the vote for and against same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ___ day of __________, 2016.

_________________________________________
Richard D. Murphy, Mayor
ATTEST:

________________________
Windmera Quintanar, CMC, City Clerk

APPROVED AS TO FORM:

________________________
Cary S. 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. 15-TBD was duly introduced and placed upon its first reading at a regular meeting of the City Council on the ___ day of ____________, 20___ and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ___ day of ____________, 20___, by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

________________________
Windmera Quintanar, CMC, City Clerk
Business & Professions Code § 19300.5.

19300.5.
For purposes of this chapter, the following definitions shall apply:

(a) “Accrediting body” means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) “Applicant,” for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, “owner” includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, “owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) “Batch” means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) “Bureau” means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) “Cannabinoid” or “phytocannabinoid” means a chemical compound that is unique to and derived from cannabis.

(f) “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” does not include the mature stalks of the plant, fiber
produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) "Chief" means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) "Commercial cannabis activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) "Dispensary" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an
establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) “Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) “Distributor” means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) “Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) “Fund” means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) “Identification program” means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) “Labor peace agreement” means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant’s employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.
(w) “Licensing authority” means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) “Cultivation site” means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) “Testing laboratory” means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) “Transporter” means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) “Licensee” means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) “Live plants” means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) “Lot” means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, “lot” means a specifically identified amount produced in a unit of time or a quantity in a
manner that ensures its having uniform character and quality within specified limits.

(ae) “Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) “Manufacturing site” means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) “Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) “Permit,” “local license,” or “local permit” means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) “State license,” “license,” or “registration” means a state license issued pursuant to this chapter.

(al) “Topical cannabis” means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) “Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted
business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.
Health & Safety Code § 11362.5

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
(e) For the purposes of this section, “primary caregiver” means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.
Health & Safety Code § 11362.7

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.
MEMO
from the desk of:
Lisa E. Kranitz

To: City Clients
CC: Cary Reisman, Peter Wallin, Bob Kress
From: Lisa Kranitz
Re: Medical Marijuana Regulation and Safety Act
Date: November 12, 2015

This memo is to provide a brief overview of the Medical Marijuana Regulation and Safety Act ("Act") as it pertains to local governments. Like the Massage Therapy Act, there is a lot in the Act which relates more to State Regulation than local matters.

The Act consists of 3 separate bills that were all dependent upon each other passing. Two previous laws also relate to this subject matter.

**Compassion Use Act of 1996 (Health & Safety Code § 11362.5)**

This was the 1996 voter initiative that provides immunity from criminal action for patients and primary caregivers for possession and cultivation of marijuana if there has been a doctor recommendation for medical use.

**Medical Marijuana Program (Health & Safety Code §§ 11362.7 – 11362.9)**

Established a voluntary program for identification cards for qualified patients and primary caregivers and provides immunity for certain activities involving medical marijuana.

**Medical Marijuana Regulation and Safety Act (SB 643, AB 266, AB 243)**

In general, the Act sets up a State regulatory scheme and establishes various licensing categories relating to commercial cannabis activity. Although not always specifically stated, the Act relates only to medical marijuana as recreational marijuana still remains illegal. Local control is maintained in that the State will not issue licenses if the activity is banned in the local jurisdiction or a local permit is required and has not been obtained.
Definitions

Some of the more important definitions are as follows:

- Commercial cannabis activity - includes "cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product related to qualifying patients and primary caregivers. Commercial activity does not include a qualified patient who cultivates, possesses, stores, manufactures, or transports for personal medical use or a primary caregiver who does the same for no more than five specified patients for which s/he is the primary caregiver; therefore, these people do not need state licenses.

- Qualified Patient – means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article, i.e., someone who has a doctor recommendation for medical marijuana.

- Primary caregiver - means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

- Cultivation – means any activity including the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

- Dispensary – a facility where medical cannabis, medical cannabis products, or devices for use of such products are offered for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

- Delivery – means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient or testing laboratory. Delivery also include the use by a dispensary of any technology platform which it owns and controls or is independently license, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary (think Uber type of platform).

- Distributor – means a person licensed to engage in purchasing medical cannabis or medical cannabis project from a licensed cultivator/manufacturer for sale to a licensed dispensary.

- Transport – means the transfer of medical cannabis or medical cannabis products between the permitted business locations of licensees for conducting commercial cannabis activities. With limited exceptions, only licensed transporters may transport medical cannabis or medical cannabis products between licensees.
Licenses

There are 17 different state license categories which break down into the following categories; licensees may only hold state licenses in up to 2 separate categories as specified:

- Cultivation (10 types) – no state license needed for cultivation for personal medical use as described above. However, case law holds a local government may ban this type of cultivation as well, although not all cities do.
- Manufacturer (2 types)
- Testing
- Dispensary (2 types)
- Distribution
- Transporter

Local Control

These licenses do not supersede or limit existing local authority, including local zoning requirements. Furthermore, cities can adopt additional standards and requirements for commercial cannabis activities provided that they are no less stringent than the state standards. If a local permitting requirement exists, then no state license may be applied for or issued until the local permit is obtained. Revocation of a local permit essentially prevents the state licensee from operating in that jurisdiction.

In order to understand what regulations cities may need to take, it is necessary to understand the difference between permissive zoning and explicit prohibitions. Permissive zoning is the type of zoning that most cities have in their zoning ordinance, i.e., everything that is not listed is prohibited. However, some cities do not have this explicit statement, but have a list of permitted uses and then a “similar use” type of determination. At least one appellate court, after considering all of the evidence, determined that the “similar use” language was meant to be permissive zoning and the disputed use was banned. However, during the League’s webinar, the recommendation was made to do explicit bans rather than rely on permissive zoning in order to avoid such arguments and eliminate all doubt. Additionally, as one attorney pointed out, backyard gardens are not specifically listed, but does that really mean they are prohibited? And if one can grow tomatoes, then why not cannabis, especially since the Act provides that medical cannabis is an agricultural product.

Persons may not cultivate medical marijuana without a local permit and a state license (unless for personal medical use). If the local government wishes to allow local cultivation, it may inspect the site for suitability. If a local jurisdiction does not prohibit the cultivation of marijuana, either expressly or through permissive zoning, or chooses not to enact a conditional use permit program, then on March 1, 2016, only a state license will be required for medical marijuana cultivation. As set forth immediately above, it is best not to rely on a permissive zoning scheme. While there is supposed to
be clean-up language to eliminate the March 1, 2016 deadline, there is no assurance this fix will actually happen in time.

The section relating to the need for both a state license and local permit specifically does not apply to a qualified patient who cultivates no more than 100 square feet for personal medical use or a primary caregiver cultivating no more than 500 square feet for up to five specified qualified patients and such cultivation is specifically excluded from the definition of commercial cannabis activity. However, case law is clear that a local jurisdiction may independently ban such cultivation if it so desires.

Deliveries where the starting and/or ending point is within the city limits can only be made in a city that does not explicitly prohibit it by local ordinance. This means that for deliveries, including deliveries to qualified patients and primary caregivers, the local government must have language in its code that explicitly prohibits this use. While there is no specific deadline for adopting such an ordinance stated in the Act, it was recommended that it be in place by at least 2018 when the state expects to start issuing licenses. Local government cannot prohibit deliveries by licensees from going through its jurisdiction on public roads as long as they do not begin or end in the jurisdiction.

Although the Act specifically calls out cultivation and delivery, it provides that no person shall engage in commercial cannabis activity without a local permit.

What Next

In order to insure that commercial cannabis cultivation is prohibited in the local jurisdiction, an ordinance should be in place by March 1, 2016 to specifically prohibit such activity. In order for the ordinance to be effective by this date, the 2nd reading before the City Council must take place by January 29, 2016. As these prohibitions will most likely be in the zoning ordinance, this means that items need to get to the Planning Commission in November so there is adequate time to notice and get to the City Council for 1st and 2nd readings in December and January.

A draft ordinance has been drafted which will explicitly ban all commercial cannabis activities, as well as ban cultivation of marijuana by qualified patients and primary caregivers.
# City of Los Alamitos
Planning Commission

## Agenda Report

**Public Hearing**

**November 18, 2015**

**Item No: 8B**

**To:** Chair Riley and Members of the Planning Commission

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

**From:** Tom Oliver, Associate Planner

**Subject:** Zoning Ordinance Amendment 15-04
Administrative Permitting of Restaurants with Outside Seating Areas

## Summary:
A continued hearing to consider zoning code changes that will allow restaurant outside seating on private sidewalks as an administratively permitted use. The draft ordinance is brought to the Planning Commission for recommendation to the City Council (Citywide) (City initiated).

## Recommendation:

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

2. Recommend that the City Council determine that the proposed project is exempt from CEQA pursuant to Guidelines Section 15305, minor alterations in land use limitations; and,

3. Staff recommends that the Planning Commission adopt Resolution No. 15-18 entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-04 TO AMEND SECTIONS 17.76.020 AND 17.10.020 - TABLE 2-04, AND ADDING SECTION 17.38.190 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO OUTSIDE SEATING AREAS FOR RESTAURANTS (CITY INITIATED)."

## Applicant:
City Initiated

## Project Location:
Citywide

## Approval Criteria:
Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment be recommended by a resolution to the City Council.
Noticing: Since the number of real property owners exceeds 1,000, notices announcing the Public Hearing were published as a 1/8 page ad in the News Enterprise on October 14, 2015 for a hearing on October 28, 2015.

Environmental: The proposed ordinance is exempt from CEQA under CEQA Guidelines section 15305, which exempts projects that consist of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in changes in land use or density. Outdoor seating at restaurants is currently allowed in the City with a CUP. This ordinance creates a minor change by allowing outside seating areas of 300 square feet or less to be approved by an administrative use permit to be issued by the Community Development Director.

Background

Creating an environment where shoppers and diners feel safe and comfortable outdoors is one way to provide shopping interest and a social life to a neighborhood. Outdoor dining areas are a great way to initiate this type of environment. Outdoor seating areas along sidewalks are recognized to be part of a “complete street” which means that pedestrians, private businesses, and all modes of transportation can share the public right-of-way. While the City’s code does not currently encourage outdoor dining, the newly adopted General Plan recognized the importance of such dining and Land Use Action 1.11 provided: “[a]mend the zoning ordinance to incentivize and encourage outdoor dining.”

To begin this process, in September, the Planning Commission approved a Resolution of Intention and directed Staff to bring back suggested code changes to a future meeting of the Planning Commission. On October 28th, the Planning Commission opened the public hearing and the Commissioners discussed other cities’ codes concerning outside dining for restaurants. The October public hearing was continued in order for Staff to bring back an ordinance based on the direction that was given during that meeting, which included approving small outdoor dining areas by an administrative permit approval.

Discussion

In the October Planning Commission meeting, Staff was given direction to essentially follow the City of Murrieta’s “Outdoor Dining & Seating Information and Guidelines” to draft new code amendments for the City of Los Alamitos. Tonight Staff returns to the Commission with a draft ordinance based on those guidelines. This ordinance provides standards for the location and appearance of outdoor dining and/or seating areas in the City of Los Alamitos. The intent is to maintain a quality and consistent appearance of outdoor seating areas in keeping with existing Municipal Code standards.
This code section is intended to save time and expense by pre-establishing standards that must be followed for all outdoor dining set-ups. Under the ordinance, small outdoor seating areas, defined as 300 feet or less, will only require an Administrative Use Permit which will be issued by the Community Development Director, even if alcohol is to be served (assuming there is already a CUP that has been issued for alcohol service indoors). As drafted, the permit will have to be renewed on an annual basis. Large outdoor seating areas, i.e., anything over 300 square feet, will require a CUP.

In addition to establishing standards for outdoor seating, the ordinance also adopts a new Chapter to the Los Alamitos Municipal Code relating to Administrative Use Permits to be issued by the Community Development Director.

**Recommendation**

Staff recommends that the Planning Commission spend some time in discussion of the attached ordinance, to see if the draft zoning ordinance is acceptable. If so, then Commissioners should adopt the attached resolution of recommendation to the City Council in order to help satisfy what is an approved action of the City's new General Plan.

*Attachments: 1) Resolution of Recommendation to City Council No. PC 15-18
2) Draft Ordinance No. 2015-TBD*
RESOLUTION NO. PC 15-18

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-04 AMENDING SECTIONS 17.76.020, 17.10.020 - TABLE 2-04 AND 17.40.020 OF, AND ADDING SECTION 17.38.190 AND CHAPTER 17.41 TO, THE LOS ALAMITOS MUNICIPAL CODE RELATING TO OUTSIDE SEATING AREAS FOR RESTAURANTS AND ADMINISTRATIVE USE PERMITS (CITY INITIATED)

WHEREAS, the 2015-2035 Los Alamitos General Plan was approved by the City Council on March 23, 2015; and,

WHEREAS, the General Plan notes the following, concerning outdoor dining, in Land Use Action 1.11: “Outdoor dining. Amend the zoning ordinance to incentivize and encourage outdoor dining”; and,

WHEREAS, State law requires that there be consistency between the City’s zoning and the General Plan; and,

WHEREAS, the Planning Commission would like to reevaluate Chapter 17 of the Los Alamitos Municipal Code as it relates to the land use known as “Restaurants, with Outside Seating”; and,

WHEREAS, the Planning Commission adopted a Resolution of Intention for this item on September 23, 2015; and,

WHEREAS, the Planning Commission opened a duly noticed Public Hearing concerning this Amendment on October 28, 2015 at which time it directed Staff to come up with an administrative type of permit for small outdoor seating areas; and,

WHEREAS, the Planning Commission continued the hearing to November 18, 2015; 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 15-04), attached hereto.
SECTION 2. The Planning Commission hereby recommends that the City Council adopt a fee for administrative permits that is derived from the fee for Special Event Permits.

SECTION 3. In making this recommendation, the Planning Commission makes the following findings:

1. The proposed amendments ensure and maintain consistency with the General Plan and the Zoning Code. Land Use Action 1.11 of the newly adopted General Plan states, “Outdoor dining. Amend the zoning ordinance to incentivize and encourage outdoor dining”.

2. One way in which to encourage outdoor dining is to provide definitive standards and to make the process easy for small outdoor dining areas.

3. The proposed amendments will not adversely affect the public convenience, health, interest, safety, or welfare of the City and it is good planning practice, as well as a legal necessity, to create consistency between the General Plan and zoning. Further, the proposed amendments better the environment by creating desirable outdoor spaces.

4. 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.

5. The proposed amendments have 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 CEQA Guidelines Section 15305 as a minor alteration in land use limitations.

PASSED, APPROVED, AND ADOPTED this 18th day of November, 2015.

______________________________
John Riley, Chair

ATTEST:

______________________________
Steven Mendoza, Secretary
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 18th day of November, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven Mendoza, Secretary
ORDINANCE NO. 2015-TBD


WHEREAS, the 2015-2035 Los Alamitos General Plan was approved by the City Council on March 23, 2015; and,

WHEREAS, Land Use Action 1.11 of the General Plan provides as follows: “Outdoor dining. Amend the zoning ordinance to incentivize and encourage outdoor dining”; and,

WHEREAS, State law requires that there be consistency between the City’s zoning and the General Plan; and,

WHEREAS, the Planning Commission held a duly noticed public hearing concerning this Amendment on October 28, 2015 which was continued to the November Planning Commission meeting; and,

WHEREAS, the Planning Commission continued the public hearing concerning this Amendment on November 18, 2015; and,

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted a resolution recommending that the City Council adopt this Ordinance; and,

WHEREAS, the City Council concurs with the Planning Commission that outdoor dining should be encouraged and that an administrative permit procedure should be adopted in order to provide for uses such as this; and,

WHEREAS, the City Council held a duly noticed Public Hearing concerning this Amendment on _____ __, 2015; and,

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 17.10.020, Table 2-04, and adding Section 17.38.190 “Restaurants with outside seating area,” 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 these amendments implement. Land Use Action 1.11 which provides, “Outdoor dining. Amend the zoning ordinance to incentivize and encourage outdoor dining”;

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 amendments have 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 Section 15035 of the CEQA Guidelines, minor alteration in land use limitations in areas with an average slope of less than 20%. The changes do not result in a change in allowable land uses or density.

4. The Ordinance will not negatively impact the public convenience, health, safety or welfare. Instead, the Ordinance will positively improve the above by creating a better outdoor environment that better connects the community.

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

SECTION 1. The City Council of the City of Los Alamitos, California finds that the above recitals are true and correct and incorporates them by reference herein.

SECTION 2. The following definition shall be amended in Section 17.76.020 of the Los Alamitos Municipal Code to read as follows:

“Restaurant, with outside seating area” means an area used as a seating area with tables and chairs for the contiguous restaurant. This seating may be in addition to the indoor seating or it may be the only seating available for the restaurant.

1. “Restaurants, with small outside seating areas,” -- Outdoor restaurant seating that has a footprint occupying 300 square feet or less in area.

2. “Restaurants, with large outside seating areas,” -- Outdoor restaurant seating that has a footprint occupying more than 300 square feet.

SECTION 3. Table 2-04 of Section 17.10.020 of the Los Alamitos Municipal Code is hereby amended by adding the following Land Use to the Table:
**LAND USE** | **PERMIT REQUIRED BY ZONING DISTRICT** | **Specific Use Regulations**
---|---|---
**EATING AND DRINKING**
Bars/nightclubs | CUP | CUP | CUP
Employee’s cafeteria/coffee shop | — | — | P
Restaurants, with drive-through facilities | CUP | CUP | CUP
Restaurants, full service | P | P | CUP (13)
Restaurants, take-out | P | P | CUP
Restaurants, with large outside seating areas | CUP | CUP | —
Restaurants with small outside seating areas | AUP | AUP | —

**SECTION 4.** A new section 17.38.190 is hereby added to the Los Alamitos Municipal Code to read as follows:

**17.38.190 Restaurants, with outside seating areas.**

The following shall apply to the location and appearance of all outdoor seating areas for restaurants in the City of Los Alamitos.

A. Restaurants with outside seating. The City encourages the use of outdoor dining and seating areas, provided that business operators are mindful of two important considerations: (1) the safety and flow of pedestrian traffic; and (2) the visual appearance of the outdoor dining and/or seating areas. The standards set forth in this section are intended to ensure that outdoor seating is done in a way that is both safe for pedestrians and appropriate for the surroundings.

B. Application Process. Outdoor seating may be allowed on private property as an accessory use associated with a legally approved eating and/or drinking business upon approval of a permit application with the fee established by resolution of the City Council as set forth below.

1. Approving authority:

   a. Small outside seating areas – small outside seating areas that will not serve alcohol in the outside seating areas shall require an administrative use permit which shall be acted upon by the Director of Community Development in accordance with Chapter 17.41. If an applicant wishes to deviate from any of the requirements set forth in this section, a CUP shall be required, regardless of size.
b. Large outside seating areas – large outside seating areas shall require a conditional use permit which shall be acted upon by the Planning Commission in accordance with Chapter 17.42.

2. Submittal requirements
   
a. Floor Plan: A plan showing the layout of the indoor business space, the proposed outdoor seating area with appropriate setbacks indicated.
   
3. Site Plan & Vicinity Map. A drawing showing the location of the restaurant business within the entire shopping center. The center name – if applicable, business name, street address and surrounding streets must be noted.
   
   Furniture and Fixtures. The submittal must identify the exact style, color and materials of all fixtures that will be placed in the outdoor seating area, including but not limited to tables, chairs, umbrellas, planters, barriers.
   
4. Hold Harmless Agreement: For outdoor seating areas immediately adjacent to the public right-of-way, a Hold Harmless Agreement in a form approved by the City Attorney, shall be recorded releasing the City from any liability related to the outdoor seating area.
   
5. CUP Submittal Requirements: For outdoor seating areas requiring CUP approval, all Conditional Use Permit submittal requirements shall also apply in addition to the requirements set forth in this section.

C. Setbacks for outside seating area.

1. From Property Lines or Parking Lots. A minimum unobstructed setback of three (3) feet from property lines or parking lots, including cars overhanging the curb.

2. Residential Uses. A minimum setback of two hundred (200) feet from residential uses (except approved mixed-use projects).

3. From Other Businesses. The minimum setback necessary to maintain the visibility of neighboring businesses to pedestrians and motorists.

4. Pedestrian Space. A minimum of four (4) feet of totally unobstructed walkway space shall be maintained around the outdoor seating area, and outdoor seating areas shall not disrupt disabled access.

5. Perimeter Enclosure. Adequate space to ensure handicapped accessibility and to permit the movement of patrons and wait staff within the enclosure.

6. Potential Impacts. Outdoor seating should consider the location of sensitive land uses and proper measures.
D. Dining Barriers. Barriers are recommended, but are only required if alcohol will be served in the outdoor seating area.

1. Serving Alcohol. All areas where alcoholic beverages are served outside must comply with the standards established by the State Department of Alcoholic Beverage Control. Any perimeter fence and/or landscaped planter(s) shall be designed to clearly suggest that alcohol is not allowed outside the seating area.

2. Design & Appearance. Any barrier must be freestanding, without any permanent or temporary attachments to buildings, sidewalks or other infrastructure. The physical design of the fence, barrier and/or landscaped planter(s) shall be compatible with the design of the building. Seating area barriers (fences, gates, ropes, etc.) shall be visually appealing, and help to separate the seating area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. A variety of styles and designs are permissible for outdoor dining/seating area barriers, including the following:

a. Sectional Fencing. Sectional fencing is generally defined as rigid fence segments that can be placed together to create a unified fencing appearance. This type of fencing is portable, but cannot be easily shifted by patrons or pedestrians, as can less rigid forms of enclosures. Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be of a dark color (either painted or stained).

b. Rope and Chain Rails. Rope or chain-type barriers are generally defined as enclosures composed of a rope or chain suspended by vertical elements such as stanchions. These types of barriers are permitted if they meet the following guidelines:

1) The rope or chain must have a minimum diameter of 1 inch, in order to remain detectable by the visually impaired.

2) Vertical support posts (stanchions, bollards, etc) must be constructed of wood or metal (aluminum, steel, iron, or similar).

3) A stanchion or other vertical supporting member that has a base must not be a tripping hazard. The stanchion base shall not be domed, and shall not be more than one-half (1/2) of an inch above the sidewalk surface.

c. Planters. Planters may be used in addition to or in place of other barrier designs. Planters may be used in situations where no barrier is required in order to provide added visual interest and create a more attractive and welcoming atmosphere. All planters must have living plants contained within them. Dead plants within the planter must be replaced or the planter...
removed from public view. Artificial plants; empty planters; or planters with only bare dirt, mulch, straw, woodchips or similar material are not permitted. Seasonal, thematic planter displays are encouraged.

d. Prohibited Materials: Fabric inserts (natural or synthetic) of any size are not permitted to be used as part of a barrier. The use of chain-link, cyclone fencing, chicken wire, or similar material is prohibited. Materials not specifically manufactured for fencing or pedestrian control are prohibited unless they are expressly allowed elsewhere in these guidelines. Materials such as buckets, food containers, tires, tree stumps, vehicle parts, pallets, etc. are not permitted and shall not be used as components of a barrier.

e. Barrier Measurements. To ensure their effectiveness as pedestrian control devices and their ability to be detected by persons with vision impairments, barriers must meet the following measurements:

   1) Height. The highest point of a barrier (such as a stanchion) must measure at least 36 inches in height, with the exception of planters.

   2) Maximum Height of Planters and Plants. Planters may not exceed a height of 36 inches above the level of the sidewalk. Plants may not exceed a height of 96 inches (8 feet) above the level of the sidewalk.

   3) Rope/Chain Distance from Ground: In the case of a rope or chain enclosure, the bottom most point on a rope or chain must not exceed 27 inches in height.

   4) Maximum Distance from Ground. All barriers must be detectable to visually impaired pedestrians who employ a cane for guidance. Therefore, the bottom of barriers must be no greater than 27 inches above the sidewalk surface.

f. Open Appearance. Fences or other perimeter enclosures with a height of between 36 inches and 48 inches must be at least 50 percent open (see-through) in order to maintain visibility of street level activity. Any enclosure with a height over 48 inches must be at least 80 percent open.

g. Minimum Access Width: Any access opening within the barrier must measure no less than 44 inches in width.

h. Location. Access openings should be placed in a location that will not create confusion for visually impaired pedestrians. The seating area shall not be placed on landscaped areas.

E. Furniture and fixtures. To ensure compatibility with surrounding uses and a high standard of design quality, all physical elements associated with an outdoor seating
area shall be compatible with the overall design of the main structure. A wide range of furniture styles, colors and materials are permitted. All furniture and fixtures must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times. All furniture and fixtures must be durable and of sufficiently sturdy construction as not to blow over with normal winds. Furniture and fixtures must not be secured to trees, lampposts, street signs, hydrants, or any other public street infrastructure by any means, whether during restaurant operating hours or when the restaurant is closed. To ensure a quality visual appearance, the following standards apply to outdoor dining furniture:

1. Tables and Chairs: Tables and chairs need to be functional, not only for patrons, but also for pedestrians, given the limited space available in some areas. Outdoor dining furniture must also contribute to the overall atmosphere and be complementary in both appearance and quality. Tables may be a dark or earth tone color, or a natural unpainted material (i.e. wood, metal, etc.). Tables shall not be white plastic or any fluorescent or other strikingly bright or vivid color. Upholstered chairs are permitted. Upholstery is not permitted to be of any fluorescent or other strikingly bright or vivid color. All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction and color.

2. Umbrellas: Appropriately designed and sized umbrellas are permitted subject to the following conditions:

   a. Umbrellas must be free of advertisements or product names.

   b. All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

   c. When extended, the umbrella must measure at least 7 feet above the surface of the outdoor dining area in order to provide adequate circulation space below.

   d. The 7 foot minimum height includes not only the umbrella frame and panels, but also any decorative borders such as fringes, tassels or other such ornamentation.

   e. No part of an umbrella may exceed a height of 10 feet above the surface of the outdoor dining area to avoid an undue visual obstruction of other businesses.

   f. Umbrellas must blend appropriately with the surrounding built environment.
g. Umbrella fabric must be one solid color, and is not permitted to be a fluorescent or other strikingly bright or vivid color.

h. Given the constrained space of many outdoor dining areas, it is strongly recommended that square or rectangular umbrellas be used, as opposed to round or octagonal umbrellas.

i. Market-style umbrellas (those designed specifically for patio or outdoor restaurant use) are preferred for outdoor dining purposes. Umbrella fabric must be of a material suitable for outdoor use, and must be canvas-type. No plastic fabrics, plastic/vinyl-laminated fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor seating area.

j. Umbrellas must not contain signage for the restaurant or for any other entity in the form of wording, logos, drawings, pictorial or photographic representations, or any other similar identifying characteristics.

3. Prohibited Furniture. Unless allowed by the conditions of a CUP, all furniture other than tables, chairs, umbrellas and heaters are prohibited. This includes, but is not limited to, serving stations, bar counters, shelves, racks, sofas, televisions, cooking appliances and torches.

4. Prohibited Sidewalk Coverings. The floor of outdoor seating areas should be uncovered sidewalk material as to provide continuity with the adjacent public sidewalk or private walkway. Prohibited seating area floor coverings include carpet, fabric, canvas, wool, tile, linoleum, nylon, vinyl or any covering intended to resemble turf. Raised decks, platforms, or other such surfaces are not permitted within outdoor dining areas.

F. Signage. Signage is not permitted within an outside dining area except with a valid City permit. No extra or additional signage is permitted solely as a result of having an outdoor dining area.

G. Waste Receptacles. Waste receptacles shall be provided in outside seating areas for "quick serve" establishments (typically using disposable utensils) and/or when table service is not provided. Waste receptacles shall not be placed in outside seating areas when table service is provided unless required by the Planning Director.

H. Entertainment. Outdoor seating areas that include dancing, entertainment, or amplified music require the preparation of a noise analysis with the appropriate mitigation measures. Outdoor entertainment requires a separate application from the City.
I. Parking Requirements. Small outdoor seating areas will not be required to provide additional off-street parking. Large outdoor seating areas shall comply with the requirements for off-street parking for the full measurement of the seating area.

J. Compliance with Other Laws.

1. Handicapped Accessibility Requirements. If any of the standards listed above are found to be inconsistent with the American's with Disabilities Act (ADA) or California Building Code (CBC) requirements, the ADA and/or CBC standards shall apply.

2. To the extent any requirements of the ABC are more stringent than the standards listed above for restaurants serving alcohol, the ABC requirements shall apply.

SECTION 5. Table 4-1 of Section 17.40.020 is hereby amended by adding the following:

<table>
<thead>
<tr>
<th>Type of Entitlement or Decision</th>
<th>Chapter</th>
<th>Director (1)</th>
<th>Planning Commission</th>
<th>City Council</th>
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<tbody>
<tr>
<td>Administrative use permits</td>
<td>17.41</td>
<td>Decision</td>
<td>Appeal</td>
<td>Appeal/Call for review</td>
</tr>
</tbody>
</table>

SECTION 6. Chapter 17.41 is hereby added the Los Alamitos Municipal Code to read as follows:

Chapter 17.41 - ADMINISTRATIVE USE PERMITS

17.41.010 - General provisions.

Administrative use permits may be granted for any of the uses or purposes for which such permits are required by the provisions of this code.

17.41.020 - Application.

A. Filing. An application for an administrative use permit shall be filed with the Community Development Department in compliance with Chapter 17.40 (Applications, Processing, and Fees).

B. Contents. The application shall be accompanied by detailed and fully dimensioned site plans, architectural drawings/sketches, elevations, floor plans, landscape plans, and/or any other data/materials identified in the department handout for administrative use permit applications.
C. Fees. The required application fee shall be set by resolution of the City Council.

17.41.030 - Action by Community Development Director.

A. The Community Development Director or his designee shall process an application in accordance with the standards set forth herein and may impose reasonable conditions of approval.

B. Within ten working days from the date an application is deemed complete, the Community Development Director or his designee shall issue a written determination as to the approval, conditional approval or denial of the application. The written determination shall state the findings for decisions.

17.41.040 – Findings for Approval of Administrative Use Permits.

Before an administrative use permit may be granted, the following findings shall be made:

A. There is compatibility of the particular use on the particular site in relationship to other existing and potential uses within the general area in which the use is proposed to be located.

B. The proposed use is consistent and compatible with the purpose of the zone in which the site is located.

C. The proposed location and use and the conditions under which the use would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

17.41.050 – Expiration of Permit

A. An administrative use permit shall automatically expire one year from the date of approval unless an application for the renewal of the permit is submitted prior to expiration.

B. The Community Development Director or his designee may designate a longer expiration period in the written determination.

17.41.060 – Appeals

Appeals shall be in accordance with Chapter 17.68 of this Code.
SECTION 7. 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 8. This Ordinance shall take effect thirty days after approval as provided in Government Code Section 36937.

SECTION 9. Staff is hereby directed to file a Notice of Exemption with the County Clerk’s office.

PASSED, APPROVED AND ADOPTED THIS ___ 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 )

CC ORD 2015-TBD
Page 11 of 12
I, Windmera Quintanar, City Clerk of the City of Los Alamitos, do hereby certify that the foregoing Ordinance No. 2015-TBD was duly introduced and placed upon its first reading at a regular meeting of the City Council on the ___ day of __________, 20___ 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
# City of Los Alamitos
## Planning Commission
### Agenda Report
**Public Hearing**
**November 18, 2015**
**Item No: 8C**

<table>
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<th>To:</th>
<th>Chair Riley and Members of the Planning Commission</th>
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<tr>
<td>Via:</td>
<td>Steven A. Mendoza, Development Services Director</td>
</tr>
<tr>
<td>From:</td>
<td>Lisa Kranitz, Assistant City Attorney</td>
</tr>
<tr>
<td>Subject:</td>
<td>Continued Discussion of Nonconforming Use Provisions</td>
</tr>
</tbody>
</table>

**Summary:** Continue discussion with Staff of desired provisions relating to Nonconforming Use Provisions, Zoning Ordinance Amendment (ZOA) 15-05 (Citywide) (City Initiated).

**Recommendation:**
1. Continue the Public Hearing; and, if appropriate,
2. Direct Staff to draft an ordinance incorporating amendments that are agreed upon by the Commissioners at the end of tonight’s discussion; or alternatively,
3. Resolve to continue or cease continued discussion of this subject.

**Applicant:** City Initiated

**Project Location:** Citywide

**Approval Criteria:** Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment be recommended by a resolution to the City Council.

**Notice:** Since the number of real property owners exceeds 1,000, notices announcing the Public Hearing were published as a 1/8 page ad in the News Enterprise on October 14, 2015 for a hearing on October 28, 2015 which was continued to tonight.
Environmental: An environmental determination will be made after parameters are provided.

Background

Tonight’s discussion is a continued hearing from October 28, 2015. On September 23, 2015 the Planning Commission adopted a Resolution of Intention to amend the provisions of Chapter 17.64 of the Los Alamitos Code relating to the City’s nonconforming provisions. 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 City’s entire Nonconforming Use Chapter needs to be revised to be more “user friendly” for both Staff and the public. In order to revise the Code, Staff needs direction from the Planning Commission.

Discussion

To continue the discussion, below are definitions and the questions that Staff would like for Commissioners to discuss in tonight’s meeting:

The Los Alamitos Municipal Code contains the following definitions relating to nonconformities:

"Nonconforming lot" means a legal parcel of land having less area, frontage, or dimensions than required in the zoning district where it is located.

"Nonconforming structure" means a structure or a portion of a structure that was designed, and erected or structurally altered before the effective date of these regulations or subsequent amendments, and which, at the time it was constructed or altered, was in compliance with applicable building and zoning codes but no longer complies due to changes or amendments.

"Nonconforming use" means a use of a structure (either conforming or nonconforming) or land that was legally established and maintained before the adoption of this zoning code and that does not conform to current code provisions governing allowable land uses for the zoning district where the use is located.

While these definitions seem straightforward, the actual provisions relating to the continuance and elimination of nonconforming uses is very difficult to discern. Rather than try to examine the Code provisions section by section, Staff seeks input on the following questions. Once direction is provided, a draft ordinance will be brought back for the Planning Commission’s recommendation.

Staff plans on guiding the Planning Commission through this process in multiple steps. The first step will be to create an understanding of the different types of nonconformities
that can exist through use of the attached discussion paper prepared by the City of Tustin’s Community Development Department. Nonconformities include:

- Nonconforming parcel – a parcel that does not conform to current size requirements.

- Nonconforming use of land (no primary structure involved) – a use of land not allowed in a zone, such as a nursery in a residential zone.

- Nonconforming use of a structure – a use in a structure not allowed in a zone, such as a market in a residential zone.

- Nonconforming structures – a structure that does not comply with the development standards, such as a building that does not have sufficient parking or setbacks; another term for this could be nonconforming site development.

- Nonconforming building types – a use that is in an incorrect building type, such as a commercial enterprise in a building built for residential standards.

The City is concerned with legal nonconformities, i.e., those that were legal when established, but which no longer comply due to changes in regulations.

The second step will be for the Planning Commission to discuss various policy questions to provide direction to Staff. These questions include:

- What amortization period should be provided for a nonconforming structure, if any?
  - The Code is very difficult to understand but seems to provide between 30 and 50 years from the date that the certificate of occupancy was issued.
  - It is not uncommon to allow nonconforming structures to remain in perpetuity.
  - The Commission may want to consider an amortization period for structures if the Type of structure is incorrect (Type I vs. Type V) for the type of use.

- What amortization period should be provided for a nonconforming use of land with only accessory structures?
  - The Code currently provides a two year period.

- What amortization period should be provided for a nonconforming use of a conforming structure?

- What amortization period should be provided for a nonconforming use of a nonconforming structure?
• What amortization period for a conforming use in the wrong type of structure – such as businesses being run out of homes in the C-G zone and churches in industrial buildings?

• Should a nonconforming use in a structure be allowed to expand within that structure?

• What to do with legal, unbuildable lots –
  o Where there is existing development;
  o Where the lots are empty.

• Should maintenance of a nonconforming use require a CUP?

• What constitutes structural alteration that would trigger a CUP requirement – should it include changes that do not actually enlarge the building or use such as:
  o Façade improvements;
  o Tenant improvements – such as removal of interior partition walls;
  o Changes to entrance or loading docks?

As the Planning Commission analyzes this issue, it should keep in mind that the recent General Plan Amendments to the Land Use Chapter will create new nonconforming uses. Specifically:

• Site 1 (Industrial to Multi-family) – all existing industrial uses are nonconforming;
• All Planned Industrial – commercial recreation uses in this designation will become nonconforming;
• Site 6 (Retail Business to Mixed Use) – all uses that are not permitted/conditionally permitted in the General Commercial zone that are on Katella and Los Alamitos will become nonconforming;
• Site 7 (Professional Office & Community/Institutional to Retail Business) – all uses that are not commercial retail, personal services, general services will become nonconforming.

Attachment: 1) City of Tustin Nonconforming Uses
              2) Map of parcels made legal nonconforming by new General Plan
              3) Various code examples
NONCONFORMING STRUCTURES, USES AND LOTS

2003: Nonconforming Tustin Block

2011: Conforming Arbor Walk

Nonconforming Structures, Uses and Lots

A DISCUSSION OF THE INTENT AND PRACTICE OF CALIFORNIA LAND USE AND PLANNING LAW GOVERNING NONCONFORMING STRUCTURES, USES AND LOTS

September 2011

City of Tustin Community Development Department
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Nonconforming Structures, Uses and Lots

A DISCUSSION OF THE INTENT AND PRACTICE OF CALIFORNIA LAND USE AND PLANNING LAW GOVERNING NONCONFORMING STRUCTURES, USES AND LOTS

PURPOSE

On March 1, 2011, the Tustin City Council directed Community Development Department staff to draft a code amendment to provide clarity, provide consistency with prior practice, and reduce ambiguity of the term “nonconforming” throughout the Tustin City Code (TCC).

This document is intended to discuss the intent and practice of California Land Use and Planning Law governing nonconforming structures, uses and lots. Issues discussed in this report include:

- An analysis of the concept of nonconforming structures, uses, and lots.
- What is considered nonconforming?
- What is not considered nonconforming?
- How are non-conforming regulations applied?
- Enlargement, repair, and destruction of nonconformities.
- How illegal structures, uses, and lots are identified and addressed.
- Actual case example.
- Conclusion.

INTRODUCTION

One interest of community zoning/planning is to establish and control land use. The legal basis for all land use regulation is the police power of a city to protect the public health, safety, and welfare of its citizens. The City of Tustin has adopted codes and land use regulations to confine buildings and land uses to certain locations to protect the health, safety, and welfare of its citizens, and to shape the physical layout and appearance of the community including site planning and urban design. The Building Code, Zoning Code and Subdivision Ordinance are the primary regulatory tools used to accomplish these goals. Staff takes great care when preparing new ordinances for Planning Commission and City Council consideration to minimize the creation of nonconformities. However, as the community’s vision for its built environment continues to evolve and change, revision of the City’s regulations (use requirements, setbacks, height limitations, etc.) will inevitably result in the creation of nonconforming structures, uses or lots.
To ensure that a community’s adopted vision and goals are fully accomplished over time, regulatory provisions are put in place to require nonconforming structures, uses, or lots to be made conforming or ensure their replacement over time. Any change in a structure, use, or lot that gives permanency to, or expands the nonconformity would not be consistent with this purpose and are typically prohibited. In most cases, nonconformities are allowed to continue unaltered (structures may be repaired within certain limits) until the end of their economic life when they would eventually be replaced with a conforming structure, use or lot.

WHAT IS NONCONFORMING? |

Nonconforming structures, uses and lots are relatively commonplace, but the concept may not be completely understood. One might picture a dusty, old brick-making business, surrounded by single family homes, that long predates its current residential zoning; or, an old church that appears to be too close to a street property line because the City widened the right-of-way some time in the past and eliminated a portion of the property’s front yard.

The Zoning Code identifies development limitations associated with various Districts identified on the City’s Zoning Maps that establish uniform building setbacks, height limitations, parking requirements, minimum lot sizes, identify allowed uses, etc. Zoning rules change or are updated over time to guide, control and regulate future development.

A legal nonconforming structure, use or lot is caused by a governmental action that changes the Zoning Code, the Zoning Map, or the Subdivision Ordinance. All legal nonconforming structures, uses or lots were lawfully established under the codes at the time, but due to the adoption of a new ordinance, regulation, or map revision, the property no longer conforms to the policies and standards of the code in which the property resides. Legal nonconforming is sometimes referred to with the term “grandfathered.”

As a general rule, nonconforming regulations presume that a nonconformity is detrimental to the public interest (health, safety, morals or welfare), and that the nonconformity needs to be brought into

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2 Note: Under the Building Code, a lawfully constructed building is not affected by subsequent Building Code updates that may occur in future years. However, when an addition/alteration is proposed to a lawfully constructed older building, the addition/alteration would be required to meet current Building Code requirements and some existing building components (e.g. fire sprinklers, electrical panels, energy features, etc.) would be required to be upgraded at the time of permit issuance to current standards.
conformance with the current code at some point in time. For example, a community that finds that an existing code allows structures to be built too tall may adopt a code amendment to lower the height limit of new construction. The code looks to the future and assumes that existing, lawfully established nonconforming buildings that exceed the new height limit may continue to exist but will be brought into conformance or eliminated over time.

**Nonconforming Structures** — In regards to the built environment of a community, the Zoning Code implements the City's General Plan and translates the goals and principles of that Plan to parcel-specific regulations intended to guide or restrict development to the overall aesthetic vision of the community. To accomplish this vision, the Zoning Code identifies building limitations and design requirements that restrict the height, setback, design, parking, etc. to ensure that all buildings proposed within a particular Zoning District are similar in bulk, scale and purpose.

A nonconforming structure is a lawful structure existing on the effective date of a new zoning restriction that has continued since that time without conformance to the ordinance. Again, a new zoning ordinance anticipates that a nonconforming structure will be eliminated over time and replaced with a conforming structure.

**Nonconforming Structure** — In the example at right, the street setback was changed to require more open space adjacent to a street after the house was lawfully constructed.

**Nonconforming Structure** — In the example at left, this garage was built to accommodate one car before the adoption of the current zoning requirement for a two car garage.
Nonconforming Uses - The Zoning Code identifies the types of land uses that a community desires to be permitted, conditionally permitted, or prohibited within certain Districts identified on the City’s Zoning Map. A nonconforming use describes a lawful use existing on the effective date of a new zoning restriction that has continued since that time without conformance to the ordinance. Again, a new zoning ordinance anticipates that nonconforming uses will be eliminated over time and replaced with conforming uses.

Nonconforming Use - In the example at right, a single family residential use is a use that is nonconforming to current downtown retail/office zoning.

Nonconforming Lots - The Zoning Code and Subdivision Ordinance establishes minimum lot sizes for construction of a building. Some properties have developed prior to the establishment of these code restrictions. A nonconforming lot describes a lawful lot existing on the effective date of a new zoning or subdivision requirement that has continued since that time without conformance to the ordinance. Again, a new ordinance anticipates that nonconforming lots will be eliminated over time (possibly combined with an adjacent lot) and eventually made conforming.

Nonconforming Lot - In the example at left, a nonconforming lot has been developed into a single family use.
Nonconforming use - Existing manufacturing uses (above) were made nonconforming through adoption of the Pacific Center East Specific Plan which supports development of hotels, retail, office and related uses such as the Hilton Garden Inn (R.D. Olson Agreement approved by City Council in July 2011). Example pictured at upper right was built in Florida.

Nonconforming use - Tustin Block (left) on Newport Ave. was a nonconforming use that was replaced by the Arbor Walk residential project (below).
Nonconforming structures, uses, and lots are not always old. Sometimes nonconforming structures are new. There are recent examples of community actions aimed at correcting modern zoning situations. Specifically, when a community determines that the current code does not adequately protect the health, safety, morals and welfare of the community, the community may determine that the current code should be modified. Community’s can occasionally change their minds about how a community should be developed.

In the example at right, community concern after a tall residential building was approved could convince community leaders to enact a zoning code amendment limiting all future construction to 4-stories, the historic height limit of the existing neighborhood’s built environment. Should this occur, the new, lawfully established high-rise building would be made nonconforming.

WHAT IS NOT NONCONFORMING?

There are certain instances when an existing structure, use or lot is out of conformance with the adopted code but is not considered to be nonconforming. Public right-of-way takings, adaptive reuse of historic structures, illegal structures/alterations, illegal uses, and illegal lots are examples of these circumstances that are examined in more detail below.

Right-of-Way Takings — Periodically, a community may take actions that widen or improve public right-of-ways. [Pictured at right, the “Nisson House” front yard was eliminated by the widening of Red Hill Avenue]. Staff attempts to ensure that such “takings” will have little impact upon a lawfully established structure, use, or lot. Although right-of-way takings occur through an action by a governmental agency similar to the adoption of a more restrictive zoning code regulation, the code mandates that structures or lots made nonconforming (e.g.
setback, lot size, parking, etc.) as a result of the acquisition of public right-of-way be considered conforming unless determined to be a nuisance or threat to health.

Although legal in status, lots left as remnant parcels by a right-of-way taking are often unbuildable pursuant to the Zoning Code due to their small size, location or other constraints. Residential, commercial or industrial buildings affected by a right-of-way taking that are considered conforming may be altered or added to without restriction. Remnant (undersized or inaccessible) parcels are sometimes problematic when acquired by misled or uninformed owners who erroneously believe a small remnant parcel to be developable.

Adaptive Reuse of Historic Structures – The City of Tustin’s codes allow some expansion/alteration of a nonconforming, qualified historic structure (discussed later in this article). The City also supports adaptive reuse of historic structures. Sometimes, a community’s vision for the use of an area or the built environment can change. For example, a zone change from residential to commercial use may leave behind older buildings that may not appear to be consistent with the planned use of the area. Market pressures can result in many old buildings being torn down, altered, or replaced with buildings that are more supportive of the planned commercial use. Remember, the elimination of nonconforming buildings is a goal of the community’s new vision for the neighborhood and a requirement of new zoning regulations.

Adaptive reuse preserves the important physical attributes of a historic resource for future generations to appreciate by adapting it to purposes other than what the building was originally designed for (e.g., conversion of a historic sardine cannery into a museum, or a historic single family home into a teahouse use – such as the McCharles House shown at left). Generally, adaptive reuse converts a use (single family house) that is nonconforming because of its location (commercial zone) into a conforming use (restaurant). A lawfully established adaptive reuse may require an owner to make potential Building Code upgrades, and is considered conforming under the code. The McCharles Tea House (left) is an example of an adaptive reuse success story in Tustin. It was originally built as a single family house in 1899, and was converted to a commercial teahouse use in 1985. The owner and City staff were able to utilize the
California Historic Building Code to grant certain allowances (the Teahouse does not fully comply with zoning and building code standards) to ensure that the architectural design of this important historic resource was preserved for future generations while at the same time extending its economic life as a commercial building.

**Structures Where Exceptions Have Been Granted** – Variances and conditional use permits are methods by which a property owner may seek and obtain relief from the strict stipulations of a zoning code requirement. The allowances granted by a variance or use permit runs with the land, which means that subsequent owners may enjoy the benefits granted by the variance or conditional use permit as long as the stipulations or conditions of approval are met. Although variances may not be granted to authorize a use that is not otherwise allowed by the adopted zoning regulations, deviations from zoning regulations governing lot size, setback, height, parking, etc. may be granted, typically because the property experiences some hardship that prevents it from enjoying the same rights as other similar properties. Similarly, conditional use permits are utilized to authorize special development regulations that apply to the property.

Once granted, the variations in setback, parking, height, etc. are not considered to be nonconforming, but are recognized as conforming. Remember, a nonconforming structure, use, or lot lawfully existed prior to a change in a code. A structure developed utilizing a variance or conditional use permit differs from a nonconforming structure in that the variation occurred lawfully after the adoption of the code.

**Code Exceptions** – In the example at right, a railroad water tower was lawfully converted to a residence through discretionary approvals such as a variance and/or conditional use permit, exempting the structure from various zoning regulations (height, setback, etc.). (Adaptive reuse of historic buildings is discussed later in this report). Note: the structure is not considered nonconforming since the exceptions were lawfully established after the adoption of the code, not prior to.
Structures Approved But Never Built - Approval of a project proposal prior to a code amendment does not guarantee legal nonconforming status. Sometimes a code amendment is proposed while projects are “on the drawing board.” Projects may be in plan check or be issued permits during the time an amendment is proposed, adopted and made effective. In most cases, when a code amendment is adopted, projects in plan check or that have been issued a valid permit may continue to be implemented consistent with the previous code (some exceptions exist pertaining to urgency ordinances and urgent life-safety building code amendments). ³ However, the right to execute a project using a prior code typically expires when projects are not built in a timely manner, and when permits or plan checks are allowed to expire. An adopted moratorium can prevent the issuance of additional building permits to ensure that future development is consistent with a new code.

Again, a structure, use, or lot must be lawfully established (in place and given final City approval), and be later found to be inconsistent with a newer, adopted zoning regulation to be considered nonconforming.

Illegal Structures, Uses, or Lots - A structure, use or lot that is out of conformance with the adopted code is not considered to be nonconforming when it has been illegally established. An illegal structure, use, or lot is caused by the actions of a past or current owner, tenant or property manager, and not a governmental action.⁴ Because the structure, use or lot was not lawfully established, it is ineligible to utilize the responsibilities or privileges afforded to a lawfully established nonconforming structure, use, or lot. Specifically, illegal structures, uses or lots may not remain in their current state indefinitely, but are required to be brought into immediate compliance with current code standards. Illegal nonconformities can pose life-safety concerns to the property owner, neighbors and to others, including safety personnel such as fire and police.

³ Stubblefield Construction v. City of San Bernardino – 32 Cal. App. 4th 687, 38 Cal. Rptr. 2d 413 (1995) – The California Court of Appeals determined that the City followed proper procedures in adopting a moratorium and revising the zoning requirements prior to an apartment developer obtaining the required permit approvals.
⁴ United States v. Monsanto Company – 858 F. 2d 160, 28 ERC 1177, 57 USLW 2170, 19 Envtl. (1988) – The case involved determining responsibility for environmental contamination left by a lessee of a property owned by the Monsanto Company. The United States Court of Appeal (4th Circuit) ruled that an owner is responsible for the actions of a tenant and stated it did “not sanction such willful or negligent blindness on the part of absentee owners.”
respondents. The following discussion further describes illegal structures, uses, and lots.

- **Illegal Structure** – An illegal structure, sometimes referred to as a “bootlegged structure,” is a building constructed without permission of the City and without required plan check or building inspector oversight. Depending upon the expertise of the builder, an illegal structure may or may not meet the adopted code requirements (e.g. the Zoning Code, Building Code, etc.). Examples of illegal structures include room additions, converted garage apartments, signs erected without authorization, structural modification of the interior of an existing building without authorization, etc.

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**PANEL REJECTS BID TO LEGALIZE SOME GARAGE DWELLINGS**

May 28, 1997 | HUGO MARTIN | L.A. TIMES STAFF WRITER

A Los Angeles City Council panel rejected a proposal Tuesday to legalize some of the city's 50,000 to 100,000 bootleg garage dwellings, opting instead to crack down on landlords who rent out the illegally converted living spaces.

In response to eight deaths in three months from fires in converted garages, a joint council committee proposed making it a misdemeanor to rent out such accommodations. The penalty would be a $1,000 fine.

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**BOOTLEG DWELLINGS BECOMING A FIXTURE IN THE SOUTHLAND**

May 11, 1990 | SHAWN HUBLER | L.A. TIMES STAFF WRITER

Dennis Cassity's beach house is a modest place, really. OK, so it's a garage. But such a cozy garage! Tiled bathroom, kitchenette - and all for about $100 a month less than the cheapest apartment in town.

"Of course, I knew it was illegal," the 40-year-old computer repairman chuckled, recalling the day he found his Hermosa Beach apartment. "I was born and raised on the beach. I know a bootleg (apartment) when I see one." No matter. Cassity took the place anyway.

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When an illegal structure is constructed in noncompliance with the City's zoning requirements (i.e. setback, height, use, etc), the building is not considered nonconforming. When an illegal structure is discovered, an owner would be required by staff to submit plans showing that the building meets current Zoning and Building Code requirements, obtain a permit, and pass building inspections to legalize the illegal structure.

Even a structure erected with a City-issued permit could later be determined illegal if for instance a City official were to have mistakenly allowed the structure to be constructed in violation of the code. When discovered, false statements, errors and/or omissions made by the applicant, owner, architect, etc., can result in a structure, use, or lot being reclassified as illegal. Hypothetical example; an architect's plans approved by the City indicates that a proposed structure is legally set back from a property line. After a permit is issued and construction begun, a building inspector notes on the job site

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5 *Horwitz v. City of Los Angeles*, No. B172053, 04 C.D.O.S. 11002 (2005) – an appellant court ordered the City of Los Angeles to revoke all building permits and the certificate of occupancy issued in error for building additions to a single family home. "Just as the city has no discretion to deny a building permit when an applicant has complied with all applicable ordinances, the city has no discretion to issue a permit in the absence of compliance."
CRACKDOWN GOES BEYOND GARAGE CONVERSIONS

May 21, 2009 | LEILONI DE GRUY | LOS ANGELES WAVE STAFF WRITER

COMPTON — Citing what officials call a zero-tolerance policy on safety code violations, code enforcement officers here are cracking down on illegal garage conversions. These conversions, in which areas for automobile storage are modified into living spaces, are "a major problem," said City Manager Charles Evans. "Our problem is that many of our garages are converted illegally and they don't meet the health and safety requirements. And they pose a danger and a safety hazard to the people who occupy them."

"From the outside, a lot of these conversions look like they are garages but on the inside there is a wall," said Deputy Fire Chief Marcel Melanson. He said the lack of a proper exit endangers both residents and the fire fighters who might be called on to rescue them. "It definitely poses a danger to our fire fighters when they are working in that type of environment."

SISTERS KILLED BY FIRE MEMORIALIZED IN LONG BEACH ORDINANCE

December 15, 2010 | PAUL EAKINS | LONG BEACH PRESS TELEGRAM STAFF WRITER

Tuesday's City Council meeting had an emotional moment, when three sisters who were killed in a fire in an illegally converted garage were remembered.

Family and friends of the sisters, Jasmine, Jocelyn and Stephanie Aviles, were at the meeting, where the council unanimously voted to name a section of Long Beach's municipal code that addresses illegal garage conversions after the girls. The ordinance will be known as "Aviles Law."

Following the Dec. 14, 2007, fire, the city cracked down on illegal conversions. Fire officials said Tuesday that since 2007 Long Beach has cited more than 550 illegal conversions with fines totaling almost $200,000.
that the building is not set back as indicated on the approved plans. In fact, the structure is observed to project over the side property line into a neighbor's yard. Regardless of who is responsible for the error (e.g. the owner's architect, a City plan checker, etc.), and regardless of the fact that a building permit was issued, the building is illegally projecting over a property line and must be corrected immediately.

In addition, illegal additions to a lawfully established nonconforming structure or use often results in the loss of a structure's nonconforming status. As noted previously, a nonconforming structure, use or lot may continue indefinitely but *may not be enlarged, modified, etc.* When a nonconforming structure or use is expanded illegally, it loses its right to continue indefinitely and must be brought into full
conformance with the code. In some cases, a legal nonconforming status can be reestablished if the illegal modification is removed.

**Self-imposed hardships are not a finding to support Planning Commission issuance of a Variance to allow an illegal structure to violate a Zoning Code requirement**, so it is typical for an owner of an illegally established structure to either modify it to meet the Zoning and Building Codes or have it removed. An agency can actually abuse its discretion by granting a building permit in an attempt to legitimize an illegal nonconformity [see also Footnote 8, City and County of San Francisco v. Board of Permit Appeals, 207 Cal. App. 4th 687, 38 Cal. Rptr. 2d 413 (1995)].

Again, the purpose of nonconforming regulations is to eventually eliminate nonconformities. **Selective enforcement can jeopardize the City's fair application of the code in the eyes of a court.**

**What about illegal older Buildings?** - One might think that because a particular structure or use has been around for a long period of time that it is obviously nonconforming or “grandfathered,” or that because a structure is old that an owner should be allowed to continue to preserve it and use it “as is.” This idea is not consistent with the concept of adaptive reuse, which presumes that the owner of the property has legally obtained the proper permits and that the building was adapted (upgraded to meet applicable Building Codes). It is also not consistent with the goal that nonconforming structures, uses and lots be eventually made to conform. Illegal additions (even old ones) may detract from the social, cultural or historical significance of an important historic

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6 Goat Hill Tavern v. City of Costa Mesa, 6 Cal. App. 4th 1519, 8 Cal. Rptr. 2d 385 (1992) – The California Court of Appeals found that the City of Costa Mesa could not require the abandonment of a tavern after the expiration of a conditional use permit authorizing a game room in the tavern. The court ruled that the City could have required elimination of the game room but not the termination of a business that had operated legally for 35 years.

7 Stolman v. City of Los Angeles, No. B164169, 04 C.D.O.S. 30, 2004 DJDAR 22 (2004), an appellate court overturned the City of Los Angeles’s approval of a variance that allowed the expansion of a nonconforming use. The court determined that a proposal to expand a gas station located in a residential zone did not meet the city’s criteria for a variance; there was no evidence that imposing existing zoning requirements would create a hardship for the landowner or business owner — a requirement for a variance.
resource. Most importantly, old structures or uses must be lawfully established to ensure that they do not pose a hazard to occupants or the community.

**What about older buildings where no permits can be found?** - Many structures within the City of Tustin are old and permits may not be on file with the Community Development Department. An absence of proper legal documentation does not automatically result in a City determination that a structure, use or lot is legal or illegal. Tustin staff routinely works with affected property owners and various public agencies (Water Department, County Assessor, etc.) to review official and unofficial documentation to establish whether a structure, use or lot is legal or illegal. If an older structure is determined to be lawfully established, information would be added to City records documenting the fact in order to create a record for reference by future staff and property owners, and the matter would be closed. Based upon the whole record, if City staff concludes that a structure appears to be illegal, the property owner is requested to immediately correct the concern.

In fact, many permits are issued where no permits exist for older structures when it is clear that the construction was conventional and sound construction practices were employed consistent with the Building Code adopted at the time.

Illegal additions can be very damaging to historic structures since the original (and historically important) character and integrity of house can be lost or significantly harmed. Illegal improvements are often out of historical context, and are inappropriate for the style and period of the historic structure. Oftentimes, the historic integrity, character and context of the historic structure can only be restored through the removal of the illegal additions.

- **Illegal use** - The regulation and enforcement of land use regulations is important in preventing potential life-safety conflicts between land uses and ensures the health, safety and welfare of the
A lawfully established structure is constructed to support a specific intended use. Illegal uses pose serious safety risks to occupants and safety personnel by ignoring the requirement to install Building and Fire Code upgrades prior to such use. Illegal uses also can negatively impact community services (i.e. overcrowding and excessive street parking, classroom size, park use, water and sewer service, etc.), negatively impacting the overall quality of life of an affected neighborhood. The introduction of illegal uses can have a deleterious secondary effect upon sensitive uses and persons.

8 City and County of San Francisco v. Board of Permit Appeals, 207 Cal. App. 3d 1099, 255 Cal. Rptr. 307 (1989). The Board of Permit Appeals overruled a zoning administrator’s denial of a permit to allow an owner to retain an existing, illegal unit on a property zoned for single-dwelling use. The unit appeared to have been added over a period of years spanning 1926 and 1938, with a resulting financial benefit accrued to several subsequent property owners. The Board of Appeals partially based its decision on verbal testimony offered by neighbors but no reliable physical evidence was presented. The Court of Appeals of California reversed the Board of Permit Appeals decision and upheld the City/County determination that the unit was illegal.
Once identified, property owners are required to eliminate the violation. While owners have the option of applying for a zone change, the Planning Commission and City Council would be required to consider the effect of introducing the new land use into the property's zoning designation throughout the City, since spot zoning (applying a zoning regulation to only one site) is specifically prohibited by State law.

- **Illegal lot** – Illegal lots occur when a property owner illegally deeds or otherwise conveys a portion of a legal lot to another party without complying with the State Subdivision Map Act and the City's Subdivision Code. Illegal lots occur infrequently, but modern examples do occur. There are recent cases where real estate agents, escrow agents and others conspired to sell apartment units to unsuspecting buyers as condominiums. Such unscrupulous behavior typically results in prison sentences for guilty sellers.

Very old lots established prior to the enactment of modern subdivision laws are also sometimes considered illegal. Very few options exist for property owners of an illegal lot, but City staff and the City Attorney would work with citizen-victims to resolve the matter if possible.

**HOW ARE NONCONFORMING PROVISIONS APPLIED?**

Since most structures, uses and lots in a city conform to the code, the application of nonconforming regulations occur infrequently. For most cases, nonconformities are allowed to continue until the end of their economic life when they are *voluntarily replaced* with a conforming structure, use or lot. Although the adoption of new regulations does not typically include a requirement for an immediate discontinuance

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9 *Gardner v. County of Sonoma*, No. S102249, 03 C.D.O.S. 2003 DJDAR 1429 (2003) - The California Supreme Court clarified that maps recorded prior to 1893 do not create legal, developable lots for today’s purposes. And the court at least hinted that maps recorded between 1893 and 1929 might not be valid unless a city or county somehow exercised discretion in approving the map.

10 *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442, 453 (1954) – an appeals court ruled that it “is generally held that a zoning ordinance may not operate to immediately suppress or remove from a particular district an otherwise lawful business or use already established therein.” The court also ruled that a City may establish shorter timeframes for the nonconformity to be removed.
of an otherwise lawfully established structure, use or lot, a new zoning ordinance may compel the elimination of a nonconformity over a reasonable period of time through the establishment of an amortization period or “sunset clause” allowing the owner the opportunity to recoup some portion of his or her investment in the structure, use, or lot prior to the structure, use or lot being terminated. For some communities, the quick elimination of a certain type of legal nonconformity is a high priority, and a shorter amortization period is established to facilitate quicker compliance (e.g. elimination of improperly zoned adult businesses, or removal of billboard signage, etc.).

- **Enlargement, Repair, and Destruction of Nonconformities** - Any change in a nonconforming structure, use or lot that could extend the economic life, give permanency to, or expand the nonconformity would not be consistent with the community’s overall purpose and goal of eventually eliminating all nonconformities.

- **Nonconforming structures may not be enlarged or altered unless the alteration brings the property into conformance.** Again, the point of the nonconforming provisions is to protect a property right of an existing structure while preventing an extension of the economic life of the nonconforming structure, so that it is eventually replaced with a conforming structure.

Because the Zoning Code has changed over time, some older structures are nonconforming. If strictly applied, the City’s nonconforming regulations would discourage the expansion or alteration of historic resources, indirectly influencing some owners to possibly seek their demolition and replacement. The City of Tustin has an ongoing interest in supporting the preservation of important historic resources. Consequently, the Tustin City Code provides an exception for recognized nonconforming historic structures (structures listed on the City’s Cultural Resources Survey) to support the community’s goal to extend the economic life of these important historic resources. Allowing some modernization of historic structures encourages the preservation of the property to

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11. *City of Los Angeles v. Wolfe*, 6 Cal. 3d 326, 337 (1971) – the State Supreme Court ruled that “enforced relinquishment is inequitable…”

12. *National Advertising Company v. County of Monterey*, - the State Supreme Court ruled that City-established amortization periods were an acceptable means of eliminating nonconformities within a “reasonable time.”

13. *Baby Tam v. City of Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) – The United States Court of Appeals determined that an adult bookstore was required to comply with the City of Las Vegas’ zoning and licensing requirements even though the bookstore was established prior to the adoption of the City’s requirements for the business.


15. *County of San Diego v. McClurken*, 37 Cal. 2d 128, 131 (1952) – an appeals court ruled that a City ordinance that did not permit the enlargement of nonconforming use was lawful and consistent with the intent to gradually eliminate nonconformities.
be much more attractive, especially given the market trend for larger homes, businesses, etc. The current Code provisions/exceptions are as follows:

- TCC Section 9264b of the Tustin City Code allows recognized historic residential properties to propose additions or alterations without being required to be brought fully into compliance with the requirement for a two-car garage when it can be shown that insufficient space is available on the site.

- TCC Section 9271p allows building additions to recognized historic residential structures to continue the same setback as the historic structure.

- **Nonconforming structures may be repaired, but extensive repairs are typically not allowed** - For example, a nonconforming structure would be required to be made conforming if it is ever accidentally destroyed by fire, earthquake, etc.\(^{16}\) Most nonconforming codes include a threshold that triggers the need for a nonconformity to become more conforming at the time of a proposed repair or destruction.\(^{17}\) For Tustin, a nonconforming structure may be repaired, or replaced as long as the improvements do not exceed 50% of the building’s assessed valuation, as shown on the

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\(^{16}\) Ricciardi v. County of Los Angeles, 115 Cal. App. 2d 569, 576-577 (1953) – an appeals court ruled that a City ordinance may restrict the extent of repairs to a nonconforming structure.

\(^{17}\) Hansen Brothers Enterprises v. Nevada County, 12 Cal. 4th 533, 48 Cal. Rptr. 2d 778 (1996) – The California Court of Appeals determined that a mining company had a vested right to continue to engage in surface mining activity as a nonconforming use under a zoning ordinance.
County Assessor tax roll. When it can be shown that the cost of repairing a nonconforming structure destroyed is more than 50% of its assessed value, the structure must be made conforming. However, California Government Code Section 65852.25(a) exempts multifamily residential dwellings destroyed by fire and Government Code Section 43007 partially compensates an owner for the destruction and subsequent removal of a nonconforming structure by allowing property tax relief to owners of a destroyed property that cannot be rebuilt because of zoning prohibitions. Again, the point of the requirement is to prevent an extension of the economic life of a nonconforming structure, until such time that it would eventually be replaced with a conforming structure.

- **A legal nonconforming use may be replaced by the same or similar nonconforming use.** When structural alterations are proposed to a building containing a nonconforming use, the nonconforming use must be replaced with a conforming use. If a nonconforming use is ever replaced with a conforming use, the nonconforming use may never be reestablished at the site, accomplishing the goal of gradual elimination of nonconformities. Again, the point of the requirement is to prevent an extension of the economic life of a nonconforming use, so that it is eventually replaced with a conforming use.

Legal non-conforming uses may be considered abandoned. Absent any specific amortization period, the courts have ruled a use that has been discontinued for seven years is evidence by itself of the owner’s intent to abandon the use. However, the City’s nonconforming regulations state that a

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18 *Manhattan Sepulveda v. City of Manhattan Beach*, 22 Cal. App. 4th 865 (1994) – The California Court of Appeals determined that the 50% rule should be defined as the fair market value of the structure at the time of the fire, not 50% of the cost for replacement of the structure.

19 *Stokes v. Board of Permit Appeals*, 52 Cal. App. 4th 1348, 61 Cal. Rptr. 2d 181 (1997) – The California Court of Appeals determined that the owner of a business had voluntarily abandoned the use of a property and subsequently lost any vested right to the nonconformity.
Nonconforming use that ceases to operate for a period of one (1) year or more, or is changed to be a conforming use, is considered abandoned and may not be reestablished at the location. Vacant structures or lots are not restricted in this manner.

HOW ILLEGAL STRUCTURES, USES AND LOTS ARE IDENTIFIED AND ADDRESSED

Illegal structures, uses and lots come to the attention of City staff in a number of ways. The most common method is when a property owner approaches staff to propose an alteration of or addition to an existing structure (this includes when an owner desires to rebuild a structure damaged in a disaster). Another is when a real estate professional, mortgage lender, or prospective buyer contacts the City and requests documentation that room additions, etc. have been added legally. Another is when a property owner is seeking Mills Act property tax relief for a historic property and invites staff to the site.

Illegal structures, uses and lots also come to the attention of the City’s Code enforcement staff through complaints. Except for proactive neighborhood improvement efforts conducted in cooperation with the Tustin Police Department, City code enforcement is nearly always performed on a complaint basis only. Potentially unauthorized structures, uses or lots are brought to the attention of code enforcement staff through complaints and referrals from the following sources:

- Neighbor complaints
- Orange County Fire Authority or other County agency staff
- Tustin Police Department referral
- City plan check or building inspectors
- OC Health Department
- City Business License staff
- County fictitious business name clerk
- Real estate professionals including requests by lending institutions
- The property’s owners
- Tenants
- Utility providers
- Code Enforcement
- Staff inspection following fires and other disasters
- Others

When a potentially unauthorized structure, use or lot is identified, staff will confirm that the concern exists by visiting the site or by viewing plans, aerial photographs, etc. If a violation appears to exist at the site, staff will perform much more exhaustive research into the history of the potentially unauthorized structure, use or lot, to attempt to determine when it was added to the site, and whether it was lawfully established.
Staff often considers the following when attempting to develop a “whole record” by which to determine whether a potentially unauthorized structure, use or lot is legal or illegal:

- Building permits, Occupancy Permit, Variances, or other official records.
- County Tax Assessor records
- Property Title Reports and/or Record of Deed
- Historic photographs, aerials
- Historic phone books
- Water billing records
- Sewer connection records
- Other utility records (electrical, gas, etc.)
- Business license records
- Historic newspaper records
- Historic surveys or registers
- Historic Sanborn fire insurance maps
- Subdivision maps
- Written histories/letters from prior owners, residents, etc.
- Other evidence presented by the owner and/or occupants
- Other documents as may be available
- Physical inspection of the construction methodology, materials, etc. to determine whether the structure complied with building codes at the time of construction (see discussion below).
- As needed, request an independent licensed/qualified architect experienced to perform a site assessment.

City staff will always assist an owner in reviewing City records when available. In some cases, an owner may have additional official or unofficial records that may assist City staff in determining whether a particular structure, use or lot is or is legal. If, at the conclusion of staff review, the potentially unauthorized structure is determined to be lawfully established, pertinent information would be added to the City’s records documenting that fact, and the matter would be closed. However, if staff review concludes that a structure, use or lot appears to be illegal, cannot be
permitted, has not been constructed using conventional construction methods, etc., the property owner will be officially requested to correct the concern.

When informed by staff that an addition/alteration appears to be illegal, an owner will often pursue the matter further. Sometimes an owner will request another inspection of a potentially unauthorized structure by a City building inspector to ascertain whether the potentially unauthorized building improvements were done consistent with the Building Code adopted at the time of construction. A building inspector would typically visit the site to observe major life/safety related discrepancies in the workmanship and materials used to determine whether the work would have been in compliance with the Building Code requirements adopted at the time that the improvements were made (e.g. the addition did not have a foundation; electrical, water, sewer and gas installation was hazardous; required fire separation between units or floors was not installed, etc.). Note: a structure built consistent with the Building Code adopted at the time is evidence, considered with the whole record that a structure may have been lawfully established at the time. Again, compliance with the Building Code means that the person constructing the structure was knowledgeable of the Building Code, not that the structure was built legally. However, it is more likely that the opposite would occur, e.g. City inspection of a potentially unauthorized structure could result in the identification of tell-tale Building Code inconsistencies/violations that prove beyond a doubt that the structure was illegally constructed. Based upon a staff survey of the 34 Orange County cities, it is standard practice to use such inspection/investigative routines.

Current owners of the property may not have personally caused the illegal structure to be built. In fact, the owner may have purchased the property with an understanding that the property was legal. However, the current property owner bears full responsibility for establishing that their structure, use or lot is lawfully established. In response to the City’s request to correct an illegal structure, some owners work with staff to legalize it “after the fact.” Others may work with staff to remove the illegal structure. Under California law, affected owners may have legal recourse against a prior owner, real estate agent, or property title company for a failure to disclose the potentially illegal nature of a structure or addition.

**ACTUAL CASE EXAMPLE |**

The following facts have been taken from current or past code enforcement cases to illustrate the research and records review methodology currently utilized by Community Development Department staff in order to determine the legality of potentially unauthorized structures, uses or lots. The information discussed below is true, but does not pertain to any one particular property in order to preserve the Planning Commission’s objectivity in considering any future code enforcement case appeal.
• Staff receives a complaint that an illegal apartment is alleged to have been added to the rear of a single family home.

• Permit records are researched by staff. Recent re-roof permit issued for single family house, inspected and given final approval. City inspector did not raise a concern at this time.

• Sewer permit records researched. Connection authorized in 1962 for a single family residence.

• Water billing records researched. Water billing is based upon the number of units requested identified on the site by the owner/applicant. Water bill indicates five units served on the site.

• Planning records researched. Property owner applied for zone change in 1968 from R-1 to R-3 to allow five units on the property. Planning Commission denied the request; property owner appealed to City Council; City Council denied the appeal stating that the property should continue to be used as a single family residence.

• Deed and property title researched. Property identified as single family residence.

• Building identified on the City’s 2003 Cultural Resources Survey as a significant Craftsman style residence built in 1922. Survey indicates single family home in front and garage at rear of property converted to living quarters. Note: the Cultural Resources Survey was prepared by a City consultant that performed the survey from the public sidewalk only. No physical on-site inspections were conducted at that time.

• Business license records researched. Property owner does not hold a City Business License required for multifamily properties totaling four units or more.

• Current property tax information reviewed. Property owner is paying property tax on improvements described as “multifamily” with three units.

• Code enforcement performs a cursory inspection of the property with the permission of the property owner. Eight units exist at the site. Original single family house exists at the front of the property that is divided into four units. A detached garage is at the rear of the property that has been converted into two residential units. Two additional unit appears to be an illegally converted patio enclosure (the exterior walls
are thin and light is visible from the interior rooms between the bottom of the walls and the concrete floor – the rooms appear to have no foundation). One of the units has a dirt floor. An additional shed-unit (unit #9) is currently being constructed (the source of the current complaint) at the rear of the converted patio enclosure unit that extends to the rear wall, illegally within the side and rear setback. Electricity is provided to the new unit via an orange electrical cord draped across the roof of the unit. Children are observed playing in the area. Two of the existing units have no toilet, shower facilities, or kitchen. No covered parking is provided anywhere on site – residents park on a dirt portion of the lot, or the public street. Laundry room has been illegally added to garage structure.

- A building inspector inspects the structures to determine whether the buildings were built in compliance with the code adopted at the time of construction. Some units have bedrooms without windows, presenting Building Code light and ventilation concerns and fire safety violations since these rooms have no second means of exit during a fire emergency. The foundation and exterior walls appear to be failing, interior support beams may be clear inconsistencies in workmanship, methods, materials, etc. are noted as clearly in violation of the State Building Code. City inspector determines that all additions to the original single family home were illegally added and that they are potentially unsafe to the occupants and surrounding properties.

- Original complainant is questioned by staff. Complainant indicates that five units have existed on the property since 1959, but that the owner was “a good neighbor” so complainant didn’t want to cause problems. Original owner sold property last year and retired out of state. Complainant heard new owner adding the additional unit #9 at the rear of the property so complaint was filed.

Again, once the structure is determined to have been illegally established, and the construction methodology, materials or workmanship are not consistent with the requirements of the Building Code in effect at the time of construction, the owner would be required to correct the violation. Upgrades may be determined necessary to support the safe use of an illegally established nonconforming structure. The owner would be required to submit plans and documentation to make the nonconforming structure safe for habitation or occupancy for the intended use. This documentation is typically in the form of reports or plans prepared and certified by a licensed building design professional (e.g. architect, structural engineer, etc.). Compliance with zoning requirements may also be required.
The California Building Code mandates that health and safety issues associated with the illegal use of the structure be corrected. Left uncorrected, the violations could pose legal liabilities upon the City or more importantly would leave the building’s occupants and surrounding residents or businesses at significant risk. Thus, the property owner must provide sufficient documentation as determined by the Director of Community Development and Building Official to determine that an illegal structure is safe for habitation or occupancy for the intended or modified use (as may be approved by the City) as previously described above.

A similar approach is utilized in researching potentially unauthorized uses or lots. Along with the property owner, staff would perform significant research that can include business license and/or property tax information, business transaction receipts, utility statements, dated historic and aerial photographs, even historic telephone books can be used to establish a history of a use or lot.

CONCLUSION

All legal nonconforming structures, uses or lots were lawfully established under the codes at the time, but due to the adoption of a new ordinance or map revision, the property no longer conforms to the policies and standards of the code in which the property resides. A structure, use or lot that is out of conformance with the adopted code is not considered to be nonconforming when it has been illegally established.

The spirit of the City’s nonconforming provisions is to allow nonconformities to continue to exist, but not increase. With the exception of qualified historic resources, intensification or expansion of an existing nonconforming use is not permitted, and is even discouraged. The legal basis for all land use regulation is the police power of a city to protect the public health, safety, and welfare of its citizens. And, the legality of City enforcement of these provisions has been tested and proven in court. Zoning laws look to the future to ensure that all nonconformities are eventually brought into conformance or replaced. Any change in the premises which tends to give permanency to or expands the nonconformance would not be consistent with this purpose.
Industrial to Multi Family Residential
Office to Retail

Melodie's Dance
Watersafe Swim School
California Workout Studio
Sweat Fitness
Halau Hula O Noelani
Crossfit Recoil
The Cage

Deft Touch Soccer
Crossfit Los Alamitos
Aquatic Exploration
Impact Dance

PARCELS MADE NONCONFORMING BY NEW GENERAL PLAN
SAMPLE
ORDINANCES
(NON-CONFORMING)
Chapter 17.72 - NONCONFORMING STRUCTURES, USES AND LOTS

- 17.72.010 - Purpose.
- 17.72.020 - Restrictions on nonconforming structures and uses.
- 17.72.030 - Loss of nonconforming status.
- 17.72.040 - Nonconforming signs.
- 17.72.050 - Nonconforming lots.
- 17.72.060 - Nonconforming Use—Large farm animals.

Sections:

- 17.72.010 - Purpose.

This chapter establishes uniform provisions for the regulation of nonconforming structures, land uses and lots. Within the zoning districts established by title, there exist structures, land uses and lots that were lawful prior to the adoption, or amendment of this development code, but which would be prohibited, or regulated or restricted differently under the terms of this development code or future amendments. It is the intent of this development code to discourage the long-term continuance of these nonconformities, but to permit them to exist under limited conditions.

(Ord. No. 2010-265, § 3, 1-27-2010)

- 17.72.020 - Restrictions on nonconforming structures and uses.

Nonconformities may be continued subject to the following provisions, except as otherwise provided by Section 17.72.030.

A. Nonconforming Uses. A use, lawfully occupying a structure or a site on the effective date of this chapter or of amendments thereto, that does not conform with the use regulation for the applicable zoning district shall be deemed to be
a nonconforming use and may be continued, except as otherwise provided in this article. A site that does not conform with parking, loading, landscaping, or sign regulations of the applicable zoning district shall not be deemed a nonconforming use solely because of one or more of these nonconformities. A nonconforming use of land or within a structure may be continued, transferred or sold, provided that:

1. The use shall not be expanded or intensified without complying with all applicable provisions of this development code;

2. The use shall not be extended to occupy a greater area than it lawfully occupied before becoming a nonconforming use without complying with all applicable provisions of this development code; and

3. No additional uses are established on the site unless the nonconforming use is first discontinued, and any replacement use complies with all applicable provisions of this development code.

B. Nonconforming Structures. A nonconforming structure may continue to be used as follows:

1. Alterations and Additions to Structures. A building or structure that does not conform to the standards of the applicable zoning district may be structurally altered or enlarged, upon approval of any applicable permit, as follows:

a. The alteration or addition shall not increase the discrepancy between the existing conditions and the current development standards including site coverage, pervious surface, setbacks, and height.

b. A nonconforming setback may be continued provided the alteration or addition is an extension of that portion of the existing structure that encroaches into a required setback; provided, however, the alteration or addition shall not (i) extend into the required setback farther than the existing portion of the structure that encroaches into the required setback, (ii) have an area greater than fifty (50) percent of the area of the existing portion of the structure that encroaches into the required setback or (iii) exceed fifty (50) percent of the length or the existing structure that encroaches into the required setback. This provision may only be utilized once on a property. Future alterations or additions may not encroach into the required setback.
New construction on the second or third floors shall conform to the setback of the applicable zoning district except as provided in subsection b. above.

d. A reconstruction or alteration of a nonconforming accessory structure that are not considered part of the floor area of the main structure, such as attached or detached patio covers, may be remodeled or reconstructed utilizing the existing setback if the new structure has no greater floor area than existed before the reconstruction or alteration. For those structures without floor area, such as covered patios, the floor areas shall mean that area occupied by the structure. Measurement of this area shall be from post or other vertical support and shall not include any overhangs or projections.

e. Structures that are to be remodeled or renovated such that fifty (50) percent or greater of any existing exterior walls or existing square footage is demolished or removed within a two-year period, shall conform to all current development standards for that district.

2. Maintenance and Repair. A nonconforming structure may undergo normal maintenance and repairs provided no structural alterations are made involving the removal and reconstruction of fifty (50) percent or more of the non-conforming structure (exception: see subsection (B)(3), following); and

3. Seismic Retrofitting. Reconstruction required to reinforce unreinforced masonry structures shall be permitted without cost limitations, provided the retrofitting is limited exclusively to compliance with earthquake safety standards.

C. Nonconforming Use of a Conforming Structure. The nonconforming use of a building that otherwise conforms with all applicable provisions of this chapter may be continued, transferred and sold, as follows:

1. Expansion of Use. The nonconforming use of a portion of a structure may be extended throughout the building with conditional use permit approval.

2. Substitution of Use. The nonconforming use of a structure may be changed to a use of the same or more restricted nature, with conditional use permit approval.

D. Conforming Use of a Nonconforming Structure. A new use may occupy a non-conforming structure pursuant to the requirements herein for use permits. Structural alterations to a nonconforming structure shall be permitted when
necessary to comply with the requirements of law, or to accommodate a
conforming use when such alterations do not increase the degree of
nonconformance.

E.

Destroyed Structure. The reconstruction of a structure damaged by fire or
calamity, which at the time was devoted to a nonconforming use may be
authorized by the site plan permit approval, provided that an application shall
be submitted within twelve (12) months and reconstruction shall commence no
later than twenty-four (24) months after the date of the damage, and the
reconstructed building shall have no greater floor area than the one destroyed.

(Ord. No. 2010-265, § 3, 1-27-2010)

• 17.72.030 - Loss of nonconforming status.

If a nonconforming use of land or a nonconforming use of a conforming structure is
discontinued for a continuous period of one year, it shall be presumed that the use has
been abandoned. Without further action by the city, further use of the site or structure
shall comply with all the regulations of the applicable zoning district and all other
applicable provisions of this development code.

(Ord. No. 2010-265, § 3, 1-27-2010)

• 17.72.040 - Nonconforming signs.

Requirements for nonconforming signs are provided by
Sections 17.30.090, 17.30.100 and 17.30.110.

(Ord. No. 2010-265, § 3, 1-27-2010)

• 17.72.050 - Nonconforming lots.

A nonconforming lot of record that does not comply with the access, area or width
requirements of this development code for the zoning district in which it is located, shall
be considered to be a legal building site if it meets one of the criteria specified by this
section. It shall be the responsibility of the applicant to produce sufficient evidence to
establish the applicability of one or more of the following.

A.

Approved Subdivision. The lot was created through a subdivision approved by the
county of Los Angeles or the city.

B.

Individual Lot Legally Created by Deed. The lot is under one ownership and of
record, and was legally created by a recorded deed prior to the effective date
of the zoning amendment that made the parcel nonconforming.
C. Variance or Lot Line Adjustment. The lot was approved through the variance procedure (Section 17.62.080) or resulted from a lot line adjustment as provided in the Article IV.

D. Partial Government Acquisition. The lot was created in conformity with the provisions of this development code, but was made nonconforming when a portion of the lot was acquired by a governmental entity so that the lot size is decreased not more than twenty (20) percent and the yard facing any road was decreased not more than fifty (50) percent.

Where structures have been erected on a nonconforming lot, the area where structures are located shall not be later divided so as to reduce the building site area and/or frontage below the requirements of the applicable zoning district or other applicable provisions of this development code, or in any way that makes the use of the parcel more nonconforming.

(Ord. No. 2010-265, § 3, 1-27-2010)

17.72.060 - Nonconforming Use—Large farm animals.

Large farm animals in excess of the number allowed in Section 17.12.040 may be continued on a property if the property is sold or otherwise transferred, provided that the number of large farm animals shall not be expanded or intensified without complying with all applicable provisions of this development code.

(Ord. No. 2010-265, § 3, 1-27-2010)
17.16.010 Nonconformity resulting from amendment.

The provisions of this title and PVEMC Title 18 shall apply to uses which become nonconforming by reason of the adoption of the ordinances codified in this title and PVEMC Title 18 or any amendment thereof, as of the effective date of such adoption or amendment. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 496 § 2, 1989)

17.16.020 Continuation.

A. Nonconforming Buildings. Any nonconforming building may be continued and maintained provided there are no structural alterations except as otherwise permitted pursuant to this chapter.

B. Nonconforming Uses. Any nonconforming use may be continued and maintained, except as set forth in this subsection:

1. Any use which is made nonconforming because such use is prohibited by an ordinance adopted subsequent to the establishment of such use shall be discontinued no later than six months from the effective date of such ordinance.
Upon application submitted by the owner of such use, accompanied by: (a) the written consent of the owner of the building in which such use is located; and (b) evidence that such abatement period would effect a taking of property for which compensation would be required, the city council shall extend the date for termination of such nonconforming use to such date as is necessary to avoid that taking, as determined in the discretion of the city council. Notwithstanding PVEMC 17.04.100, such application shall not be considered by the planning commission nor shall a public hearing be required prior to the determination of the city council.

2. Any part of a building or land occupied by a nonconforming use which is changed to or replaced by a use conforming to the provisions of this title and PVEMC Title 18, as they apply to the particular district, shall not thereafter be used or occupied by a nonconforming use.

3. Any part of a building or land occupied by a nonconforming use, which use is discontinued and for which no new city business license for a similar nonconforming use is taken out for six months or more following such discontinuance, shall thereafter be used in conformity with the provisions of this title and PVEMC Title 18 and the nonconforming right shall be lost.

C. Change in Nonconforming Use. A nonconforming use of property may be changed to another nonconforming use of a more restrictive classification, provided no structural alterations are made and that the change of use is approved by the city. Application for such a change of use shall be processed using the same procedures as for an application for a conditional use permit.

D. New Conditional Uses. Any existing use which was permitted as a matter of right when established, but which is of the type that a subsequently enacted ordinance requires such type of use to obtain a conditional use permit before it may be implemented, shall not be deemed to be rendered nonconforming by such ordinance, but shall, instead, be deemed to have been granted a conditional use permit permitting such use to be operated in conformance with the operations existing on the effective date of such ordinance. Such deemed-approved conditional use permit shall be subject to all provisions of Chapter 17.20 PVEMC; provided, however, that notwithstanding the provisions of PVEMC 17.20.050 and 17.20.070, the deemed-approved conditional use
permit provided by this subsection shall expire without further hearing in any of the following situations:

1. The building or land occupied by the use with the deemed-approved conditional use permit is changed to or replaced by a use conforming to the provisions of this title and PVEMC Title 18, as they apply to the particular district; or

2. The use with the deemed-approved conditional use permit is discontinued and no city business license for a similar use is taken out for six months or more from the date of such discontinuance.

E. This section shall not apply to nonconforming satellite dishes, amateur radio antennas, and commercial antennas, which shall comply with all applicable city regulations and standards in effect as of the effective date of the ordinance enacting this subsection. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 675 § 1, 2006; Ord. 605 § 1, 1996; Ord. 496 § 2, 1989)

17.16.030 Alterations to nonconforming structures.
Structural alterations may be made to a nonconforming structure provided all of the following conditions are met:

A. All work related to the alteration complies with all applicable laws and regulations;

B. The nonconforming structure was built in compliance with all applicable laws and regulations in effect at the time it was constructed;

C. The alteration does not increase the nonconformity in any way; and

D. The total square footage of the structure that is proposed to be altered, or has been altered within the past five years, does not exceed fifty percent of the square footage of the existing structure. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 605 § 2, 1996)

17.16.040 Buildings under construction.
Any building for which a building permit has been issued and the construction of the whole or a part of which has been started prior to the effective date of the ordinance codified in this title and PVEMC Title 18 may be completed and used in accordance with the plans and application upon which the building permit was issued. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 496 § 2, 1989)
17.16.050 Reconstruction of damaged buildings.
A. The provisions of this title and PVEMC Title 18 shall not prevent the reconstruction, repairing or rebuilding and continued use of any nonconforming building accidentally damaged by fire, explosion or acts of nature or war, wherein the cost of such reconstruction, repairing or rebuilding does not exceed the fair market value of such building at the time such damage occurred.

B. In the event that an existing nonconforming building located in the commercial (C) zone of the city is demolished, reconstructed or remodeled and the previous lot coverage exceeded eighty percent, the building may be rebuilt to the previously approved lot coverage.

C. Notwithstanding subsection A of this section, the provisions of this title and PVEMC Title 18 shall not prevent the reconstruction, repairing or rebuilding and continued use of any nonconforming building located in the residential (R) or multifamily residential (R-M) zones of the city which is accidentally damaged by fire, explosion or acts of nature or war. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 496 § 2, 1989)

17.16.060 Off-street parking – R-M zone.
Any building or use located in the multifamily residential (R-M) zone of the city which is nonconforming because of changes in the city’s off-street parking requirements may not increase its habitable floor area unless the entire building is upgraded to meet current parking standards. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 496 § 2, 1989)

17.16.070 Off-street parking – C zone.
Any building or use which is nonconforming because of changes in the city’s off-street parking requirements may be expanded, increased or modified, and no addition to or change in the off-street parking facilities shall be required except as follows:

A. If the existing off-street parking facilities are not sufficient to comply with the new requirements after such expansion, increase or modification, additional parking facilities shall be added. The additional parking facilities to be added shall be the difference between the off-street parking facilities the new provisions would require for such use as expanded, increased or modified, and the required off-street parking facilities for such use before expansion, increase or modification under the prior requirements.
B. Any off-street parking facilities provided under these conditions shall be developed pursuant to the provisions of PVEMC 18.12.060. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 496 § 2, 1989)

17.16.080 Sign abatement.
A. All signs which are rendered nonconforming by reason of the adoption of PVEMC 18.12.050 shall be completely removed within the following time periods, which periods shall commence on the effective date of this section:

1. Temporary signs, sixty days;

2. Advertising displays pertaining to the business conducted, services available or rendered, or the goods produced, sold or available for sale, other than business identification signs, within sixty days of notification by the city.

B. Business identification signs in existence prior to adoption of Ordinance No. 89-496 may remain nonconforming; provided, that they remain unaltered, unmoved, or unchanged. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 496 § 2, 1989)