



# AGENDA REPORT

**Department:** Planning  
**Prepared by:** Martin Reeder, AICP – Planning Manager  
**Meeting Date:** Tuesday, March 21, 2023  
**Approved by:** Brad Raulston, City Manager

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## **SUBJECT:**

Amendment to Title 18 (Zoning) of the National City Municipal Code to create an Interim Use Ordinance related to the use of nonconforming buildings within the City.

## **RECOMMENDATION:**

Introduce the Ordinance

## **BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

The Planning Commission

## **EXPLANATION:**

### Overview

In recent years, multiple buildings have lost their nonconforming status as structures due to discontinuance of use and are currently vacant. As nonconforming structures, they may no longer be used as they were designed (e.g., a nonconforming commercial building in a residential zone) without either redevelopment of the property or significant and expensive alteration. As a result, these buildings are languishing, in addition to not creating any income for their owners nor business taxes for the City. Furthermore, some could potentially be in danger of becoming nuisances if the nonuse continues indefinitely.

### Proposal

Staff suggests adding a new subsection to NCMC Chapter 18.11 (Nonconforming uses, structures, and parcels) that would permit the use of a nonconforming building for a set amount of time in the interim period of time between the current nonconforming situation and the eventual redevelopment of the property. The maximum suggested timeframe for this Interim Use Permit (IUP) is seven years and would be staff-level approval. No development would be allowed without remedying the nonconforming condition.

The proposed initial expiration of the permit would be five years with the ability to extend for two additional years (one year at a time). The current Minor Use Permit (MUP) fee is recommended as it is considered to be a similar amount of work and such fee would need to be approved by City Council following a public hearing. The current fee for an MUP is \$700, which would be the fee for each stage of the permit (initial application and extension request). As with all staff-level decisions, said decision would be appealable to the Planning Commission. The current fee for an appeal is \$1,000.

## Analysis

NCMC Chapter 18.11 (Nonconforming uses, structures, and parcels) of the Land Use Code (Title 18 of the Municipal Code) outlines the regulations afforded to properties that are considered lawful nonconforming. A lawful nonconforming use, building, or property (“use”) is one that was legally established, but is no longer consistent or conforming with the Municipal Code due to subsequent changes in zoning or allowable uses. Examples include churches in single-family residential zones, residential uses in the industrial zones west of Interstate 5, and commercial buildings in residential zones of the Downtown Specific Plan (to name a few).

Generally-speaking, Chapter 18.11 allows for the continuation of lawful nonconforming uses, so long as they do not lapse for more than 12 months. If more than this period of time passes between lawful uses of the property in question, the property loses its lawful nonconforming status. Use of the property would henceforth revert to the current zoning. This is not always an issue with a lawful nonconforming commercial use in a commercial building, as the building may be leased to a different and conforming commercial use; however, if the building is an industrial building located in a residential zone of the Westside Specific Plan, the building may no longer be used for industrial purposes, as it was initially designed to do.

Since the creation of the Downtown and Westside Specific Plans, there have been issues with buildings and uses becoming nonconforming. The issues have been exacerbated by downturns in the economy and (in particular) the COVID-19 pandemic. Without timely replacement of tenants (within 12 months), some properties have lost their lawful nonconforming status and can no longer function as originally intended.

The intent of the proposed Interim Use Permit (IUP) is to allow use of a property for up to seven years so that property owners may create a revenue stream leading to eventual redevelopment or conversion. For the initial application submittal, the applicant will be required to provide a timeline for redevelopment of the property. Furthermore, any request for an extension would need to be accompanied by documentation that the timeline is being followed and that redevelopment is being pursued.

As previously mentioned, the application would be approved by staff and appealable to the Planning Commission. However, there will undoubtedly be times when more than seven years is needed. In this case. If there is to be consideration of additional time, it should be through a discretionary process. There is a “Time Extension with Public Hearing” fee of \$1,150 on the City’s fee schedule, which would be appropriate given the need to go to the Planning Commission. This option is not necessarily recommended, as it is the intention of this effort to encourage redevelopment rather than prolong a nonconforming situation. That being said, a case-by-case approach could be taken.

The proposed Interim Use Permit Ordinance will make reference to an approved list of uses for certain uses and structures (which will be developed and maintained by staff), with latitude given for staff-level determinations to be made in cases of unique proposed uses. Examples may include:

- Co-work office space
- Art studios or galleries
- Resource centers
- “Pop-up” retail

Previous discussions have also included addressing design-specific buildings (e.g., auto repair) or warehouses in Westside residential zones. Uses in these situations could include minor auto repair (e.g., oil change, tire installation, etc.) or interior storage in Westside areas. However, uses would need to be addressed on a case-by-case basis and would factor into approval of the permit. Ultimately, while this process is intended to allow interim use of the property for the owner to gain income, any interim uses should not be impactful upon neighboring uses.

### Planning Commission

The Planning Commission held a public hearing on the proposed Interim Use Ordinance and recommended approval of the Ordinance to the City Council. Three changes were made to the initial draft code section presented by staff as follows:

1. Extend the initial and maximum expiration period from three and five years respectively to five and seven years.
2. Prohibit expansion of premises approved for an Interim Use Permit.
3. Limit the Interim Use Program to 15 years from adoption of this Ordinance, with both the program and any active Interim Use Permits expiring at the end of that time.

The attached draft Ordinance takes these recommendations into account.

### Findings

There are two findings required for approval of a Code Amendment, one related to General Plan consistency and one related to compliance with the California Environmental Quality Act (CEQA).

### General Plan Conformance

The proposed amendment adding NCMC section 18.11.120 is consistent with the General Plan in that the uses permitted on an interim basis are those typically permitted by right elsewhere in the City and within buildings designed for the use and are temporary as means to accomplishing redevelopment consistent with the General Plan. The Interim Use Permit program would provide a revenue stream both for the property/business owner and for the City, as well as prevent site deterioration, ultimately increasing the likelihood of successful future redevelopment.

### CEQA compliance

The ordinance being proposed is categorically exempt from environmental review under CEQA pursuant to Class 1, Section 15301 (Existing Facilities) for which a Notice of Exemption will be filed subsequent to adoption of the ordinance. As proposed, the ordinance would allow the temporary continuance of existing nonconforming uses and would therefore have no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Additionally, each project would be subject to review under CEQA upon submission of an application.

### Summary and next steps

Staff is recommending an addition to the City's Municipal Code related to interim uses and recommends that the City Council approve the amendment. The Planning Commission voted unanimously (with one member absent) to recommend approval of the amendment to the City Council. Notice of this public hearing was published in the Star News.

**FINANCIAL STATEMENT:**

Not Applicable

**RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:**

Balanced Budget and Economic Development

**ENVIRONMENTAL REVIEW:**

This is a project under CEQA subject to a Categorical Exemption. Existing Facilities CCR 15301.  
This project qualifies for a Notice of Exemption. CCR 15374.

**PUBLIC NOTIFICATION:**

Agenda Report posted within 72 hours of meeting date and time in accordance with Brown Act.

**ORDINANCE:**

First Reading

**EXHIBIT:**

Exhibit A - Ordinance