ORDINANCE NUMBER O-20482 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 05 2015

ITEM # 55
SUB-B
4/7/15

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 127.0102, 127.0103, 127.0104, 127.0105, 127.0106, 127.0108, AND 127.0109, AND BY ADDING NEW SECTION 127.0111, ALL RELATING TO AMENDMENTS TO PREVIOUSLY CONFORMING LAND USES, PROPOSED AS PART OF THE 9TH UPDATE TO THE LAND DEVELOPMENT CODE.

WHEREAS, the Council of the City of San Diego desires to revise the formatting and organization of the previously conforming regulations of the San Diego Municipal Code to provide greater clarity and make the regulations easier to understand and apply; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 12, Article 7, Division 1 of the San Diego Municipal Code is amended by amending sections 127.0102, 127.0103, 127.0104, 127.0105, 127.0106, 127.0108, and 127.0109, and by adding new section 127.0111, to read as follows:

§127.0102 General Rules for Previously Conforming Premises and Uses

The following general rules apply to all *previously conforming premises* and uses:

(a) through (b) [No change in text.]

(c) *Previously conforming premises* and uses that comply with the provisions of this Division may continue to exist and operate unless termination in accordance with an amortization period is otherwise required in the San Diego Municipal Code or by ordinance.

(d) Sale or transfer of the property or change of ownership does not terminate rights to the *previously conforming premises* or use, unless the owner

agrees to such a condition as part of a permit or administrative or judicial order.

(e) *Development* involving *previously conforming premises* and uses is subject to all other regulations and any *development permits* that may otherwise be required by the Land Development Code. The decision process shown in Table 127-01A and described in Sections 127.0103 through 127.0109 pertains only to the review required for the aspects of a proposed *development* that may have *previously conforming* status.

(f) None of the *previously conforming* regulations in this Division grant any deviation from the height regulations of Section 132.0505 (Coastal Height Limit Overlay Zone), Section 132.1305 (Clairemont Mesa Height Limit Overlay Zone), or any other height limit overlay zone. Proposed *development* in overlay zones is also subject to the regulations of those overlay zones.

(g) If a *previously conforming premises* or use is brought into conformance by a change in use or new *development*, the *previously conforming* status is terminated and the *premises* or use cannot revert to a *previously conforming* status. A temporary discontinuance of operations in accordance with Section 127.0108(d) does not bring the *previously conforming* use into conformance or terminate the *previously conforming* status. See Section 127.0108 for additional regulations regarding discontinuance of *previously conforming* uses.

(h) [No change in text.]

(i) Regulations for *premises* that have *previously conforming* landscaping are set forth in Section 142.0410.

(j) [No change in text.]

(k) The regulations applicable to *development* involving *previously conforming* uses shall not apply to *multiple dwelling unit development* in a *single dwelling unit* zone that is *previously conforming* as to *density*.

§127.0103 Decision Process for Previously Conforming Premises and Previously Conforming Uses

The decision process for approval of proposed *development* or activity varies based on the *previously conforming* aspects of the *development*, as shown in Table 127-01A. If the proposed *development* includes more than one *previously conforming* aspect, all corresponding regulations, as described in Sections 127.0104 through 127.0109, apply.

Table 127-01A
Decision Process for Previously Conforming Premises and Uses[1]

Type of *Development* Proposal	Process One Approval Required	Process Two Approval Required
Maintenance, repair, alteration or replacement in accordance with Section 127.0104		
Of a *previously conforming structural envelope*	If a Coastal Development Permit is not required pursuant to Section 126.0704(b)	If a Coastal Development Permit is required pursuant to Section 126.0704(b)
Of a *structure* on a *premises* with *previously conforming density*		
Of a *structure* containing a *previously conforming* use	If removal of less than 50 percent of the exterior walls of a *structure* containing a *previously conforming* use	If removal of 50 percent or more of the exterior walls of a *structure* containing a *previously conforming* use
Reconstruction (following fire, natural disaster, act of the public enemy) in accordance with Section 127.0105		
Of a *previously conforming structural envelope*	If the new *structure* would not exceed *the gross floor area* or *height* of the destroyed *structure* by more than 10 percent and the *structure* would be located in substantially the same location as the destroyed *structure* or in a location that would reduce the level of non-conformity	If the new *structure* would exceed the *gross floor area* or *height* of the destroyed *structure* by more than 10 percent or the *structure* would be located in a substantially different location as the destroyed *structure* that would not reduce the level of non-conformity
Of a *structure* on a *premises* with *previously conforming density*		
Of a residential *structure* with a *previously conforming* use		
Of a non-residential *structure* with a *previously conforming* use and resumption of the use	If less than 50 percent of the *structure's* exterior walls were destroyed	If 50 percent or more of the *structure's* exterior walls were destroyed

Type of *Development* Proposal	**Process One Approval Required**	**Process Two Approval Required**
Expansion/enlargement in accordance with Sections 127.0106 and 127.0109		
Of a *previously conforming structural envelope*	If new construction conforms with current *development* regulations for *setbacks*, *floor area ratio*, and *structure height* and does not increase the level of non-conformity; or the expansion or enlargement is necessary to incorporate required public exits or fire walls to bring a *multiple dwelling unit development* or non-residential *development structure* into compliance with the California Building Code or Fire Code	If proposed *development* in the *setback* meets the criteria specified in Section 127.0106(b)
Of a *structure* on a *premises* with *previously conforming density*		
Of a *previously conforming* use	N/A	If an increase in floor area to a *previously conforming* use (up to a maximum of 20 percent expansion of *gross floor area* of the existing *structure* or up to the maximum *floor area ratio* of the underlying base zone, whichever is less)
Change in use of *previously conforming* uses in accordance with Section 127.0107		
	If a change to another *previously conforming* use within the same use category	N/A
Resumption of a *previously conforming* use after a temporary discontinuance in accordance with Section 127.0108(d)		
	If resumption of a *previously conforming* use within two years after discontinuance	If resumption of a *previously conforming* use after two or more years after discontinuance

Footnote to Table 127-01A

[1] *Development* that does not meet the criteria for a Process One or Process Two approval shall comply with all current regulations and the *previously conforming* aspect of the *premises* shall terminate.

§127.0104 Maintenance, Repair, Alteration, or Replacement of Previously Conforming Structures

(a) Maintenance, repair, alteration, or replacement of a *structure* with a *previously conforming structural envelope* is permitted in accordance with Process One, unless the proposed *development* otherwise requires a Coastal Development Permit pursuant to Section 126.0704(b).

(b) Maintenance, repair, alteration, or replacement of a *structure* with a *previously conforming structural envelope* for proposed *development* that requires a Coastal Development Permit pursuant to Section 126.0704(b) requires a Neighborhood Development Permit decided in accordance with Process Two.

(c) Maintenance, repair, alteration, or replacement of a *dwelling unit* or *multiple dwelling unit structure*, that makes the *premises previously conforming* for *density*, is permitted in accordance with Process One, unless the proposed *development* otherwise requires a Coastal Development Permit.

(d) Maintenance, repair, alteration, or replacement of a non-residential *structure* containing a *previously conforming* use is permitted in accordance with Process One if the proposed *development* would retain 50 percent or more of the exterior walls of the *previously conforming structure*. If the proposed *development* would retain less than 50 percent of the exterior walls of the *previously conforming structure*, the proposed *development* requires a Neighborhood Development Permit decided in

accordance with Process Two. The calculation of exterior walls shall be measured in accordance with Section 127.0111.

(e) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located within 50 feet of a *coastal bluff edge* shall terminate upon destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls.

§127.0105 Reconstruction Following Fire, Natural Disaster, or Act of the Public Enemy

(a) The reconstruction provisions of Section 127.0105 apply only to the reconstruction of a *previously conforming structure* destroyed, in whole or in part, as a result of fire, natural disaster, or act of the public enemy, that met one or more of the following conditions prior to the event that caused the destruction:

(1) The *structure* had a *previously conforming structural envelope*;

(2) The *structure* was a *dwelling unit*, or a *structure* that included a *dwelling unit* or *dwelling units*, that made the *premises previously conforming* for *density*; or

(3) The *structure* contained a *previously conforming* use.

(b) Reconstruction of any *previously conforming structure* described in Section 127.0105(a) is permitted in accordance with Process One as follows:

(1) Reconstruction of a non-residential *structure* containing a *previously conforming* use and resumption of the use where less than 50 percent of the *structure's* exterior walls were destroyed; or

(2) Reconstruction of a *structure* with a *previously conforming structural envelope* or a *structure* that makes the *premises previously conforming* for *density* where:

(A) The new *structure* would neither exceed the *gross floor area* nor the *structure height* of the destroyed *structure* by more than 10 percent; and

(B) The new *structure* would be located in substantially the same location as the destroyed *structure* or in a location that would reduce the non-conformity regarding *structural envelope* or *density*.

However, reconstruction of *previously conforming density* shall not exceed the number of *dwelling units* that existed prior to the event that caused the destruction.

(c) Reconstruction of any *previously conforming structure* described in Section 127.0105(a) requires a Neighborhood Development Permit decided in accordance with Process Two if the proposed *development* does not meet the criteria for Process One approval in Section 127.0105(b).

(d) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located within 50 feet of a *coastal bluff edge* shall terminate upon destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls.

(1) Such reconstruction is subject to Coastal Development Permit regulations and other regulations applicable to conforming *development.*

(2) The calculation of exterior walls shall be measured in accordance with Section 127.0111.

(e) Section 127.0105 does not provide an exemption from any requirement to obtain applicable *construction permits* or *development permits.*

§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density

(a) Proposed expansion or enlargement of a *structure* with a *previously conforming structural envelope* or of a *structure* on a *premises* with *previously conforming density* is permitted in accordance with Process One as follows:

(1) Where all new construction conforms with current development regulations for *setbacks*, *floor area ratio*, and *structure height* and does not increase the non-conformity regarding *structural envelope* or *density;*

(2) Where the proposed expansion or enlargement is necessary to incorporate required public exits or fire walls to meet public safety requirements of the California Building Code or California Fire Code for a conforming use in a *previously conforming multiple dwelling unit* or non-residential *structure* as long as the need is not one created by the proposed expansion or enlargement.

(b) Proposed expansion or enlargement of a *previously conforming structural envelope* within a *setback*, or of a *structure* on a *premises* with *previously conforming density* that does not meet the criteria for expansion or enlargement in accordance with Section 127.0106(a), requires a Neighborhood Development Permit decided in accordance with Process Two, which shall only be granted if the proposed expansion or enlargement meets all of the following criteria:

(1) Conforms to the *setback* observed by the existing *structure*;

(2) Complies with the *floor area ratio* and maximum *structure height* of the underlying base zone;

(3) Does not encroach into a front *yard* or extend outside of the developable area of the underlying base zone to within 10 feet of the front *yard setback* line, unless the proposed expansion or enlargement would reduce the non-conformity of existing *development* on a *coastal bluff*;

(4) Does not encroach more than 15 feet into any required side or rear *yard*;

(5) Does not result in a total *structure* length within the required *yard* that is greater than 50 percent of the length of the adjacent *property line*;

(6) Does not create any new habitable space within 3 feet of the *property line*;

(7) Is limited to additions at the first *story* level (as measured in accordance with Section 113.0261) and does not exceed the height of the existing *structure* within the *setback*;

(8) Does not result in more *dwelling units* than the underlying base zone allows; and

(9) Does not propose *development* within a required *coastal bluff setback.*

(c) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located within 50 feet of a *coastal bluff edge* shall terminate upon destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls.

(d) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* that is 100,000 or greater square feet of *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

§127.0108 Abandonment of Previously Conforming Uses

(a) If a *previously conforming use* is discontinued for a period of less than two consecutive years, operations may be resumed, or changed to another use in the same category in accordance with Section 127.0107.

(b) If a *previously conforming* use has been discontinued for a period of two or more consecutive years, resumption of the use requires a Neighborhood Use Permit. Discontinuance of the use for a period of two or more consecutive years creates a presumption in favor of abandonment, against which the owner or person asserting the *previously conforming* status may offer evidence sufficient to satisfy the City Manager that one or more of the following has occurred:

(1) The discontinuance is in accordance with Section 127.0108(d); or

(2) An active Neighborhood Use Permit approves or conditionally approves resumption of the *previously conforming* use.

(c) A *previously conforming* use that is brought into conformance is no longer *previously conforming* and shall not resume operations or revert to a *previously conforming* status. A *previously conforming* use can maintain *previously conforming* status during construction in accordance with Section 127.0108(d) without being considered to have been abandoned.

(d) If the *previously conforming* use is temporarily discontinued while repairs, remodeling, or major alterations of the *structure* are under construction, maintenance of an active *construction permit* and the Business Tax Certificate shall mean that the use has not been discontinued during the construction and the use's *previously conforming* status is maintained.

§127.0109 Expansion of a Previously Conforming Use

(a) A 20 percent or less *gross floor area* expansion of a *previously conforming* use requires a Neighborhood Use Permit decided in accordance with Process Two.

(b) Where located in residential zones, the following uses shall not be eligible to expand in accordance with Section 127.0109(a):

(1) Hazardous waste facilities subject to Sections 141.1001 or 141.1002;

(2) Very Heavy Industrial Uses subject to Section 141.1007;

(3) Wrecking and Dismantling of Motor Vehicles subject to Section 141.1008; and

(4) Commercial and personal vehicle repair and maintenance facilities that meet the use category description in Sections 131.0112(a)(8)(A) or (C).

§127.0111 Rules for Calculation and Measurement of Exterior Walls

(a) For the purpose of this Division, an exterior wall shall be considered removed if the Building Official determines that the structural integrity of that wall has been lost.

(b) The *applicant* shall provide sufficient information to demonstrate the extent of the proposed wall removal, or in the case of a *structure* destroyed by fire, natural disaster, or act of the public enemy, the extent of wall destruction, including, but not limited to:

(1) A *site* plan of the *structure* showing all existing exterior walls (and those that were destroyed in accordance with Section 127.0105, if applicable) identified and dimensioned in linear feet;

(2) A demolition plan with dimensions specified in linear feet for any existing exterior walls proposed to be demolished or removed and

replaced in accordance with Section 127.0111(a)(1) or showing the exterior walls that were destroyed in accordance with Section 127.0105, if applicable; and

(3) Structural calculations and details regarding all walls within the *structure* proposed to be modified or reconstructed.

(c) The length of the exterior walls shall be measured in linear feet.

Section 2. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That prior to becoming effective, this Ordinance shall be submitted to the San Diego County Regional Airport Authority (SDCRAA) for a consistency determination.

That if the SDCRAA finds this Ordinance consistent with the Airport Land Use Compatibility Plans (ALUCP) for San Diego International Airport, Marine Corps Air Station (MCAS) Miramar, Gillespie Field, Montgomery Field, and Brown Field Airports (collectively, Airports), this Ordinance shall take effect and be in force as of the date of the finding of consistency by SDCRAA, provided that and not until at least 30 days have passed from the final date of passage, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That if the SDCRAA determines that this Ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for the Airports, the Ordinance shall be submitted to the City Council for reconsideration.

That if the SDCRAA determines that this Ordinance is conditionally consistent with the ALUCPs for the Airports, but that consistency is subject to proposed modifications, the City Council may amend this Ordinance to accept the proposed modifications, and this Ordinance as amended shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this Ordinance as amended inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That a proposed decision by the City Council to overrule a determination of inconsistency or to reject the proposed modifications for a finding of conditional consistency shall include the findings required pursuant to Public Utilities Code section 21670 and require a two-thirds vote; the proposed decision and findings shall be forwarded to the SDCRAA, California Department of Transportation, Division of Aeronautics, and the airport operators for the Airports; and the City Council shall hold a second hearing not less than 45 days from the date the proposed decision and findings were provided, at which hearing any comments submitted by the public agencies shall be considered and any final decision to overrule a determination of inconsistency shall require a two-thirds vote.

Section 4. That no permits shall be issued for development that is inconsistent with the provisions of this Ordinance unless complete applications for such permits are submitted to the City prior to the date on which the applicable provisions of this Ordinance become effective, which date is determined in accordance with Section 3, above.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
03/22/2015
Or.Dept: DSD
Doc. No.: 962887_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 21 2015.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 4/29/15
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 127.0102, 127.0103, 127.0104, 127.0105, 127.0106, 127.0108, AND 127.0109, AND BY ADDING NEW SECTION 127.0111, ALL RELATING TO AMENDMENTS TO PREVIOUSLY CONFORMING LAND USES, PROPOSED AS PART OF THE 9TH UPDATE TO THE LAND DEVELOPMENT CODE.

§127.0102 General Rules for Previously Conforming Premises and Uses

The following general rules apply to all *previously conforming premises* and uses:

(a) through (b) [No change in text.]

~~(c)~~ ~~Documentation of *market value* shall be in accordance with procedures established by the City Manager.~~

~~(d)~~(c) *Previously conforming premises* and uses that comply with the provisions of this ~~d~~Division may continue to exist and operate unless termination in accordance with an amortization period is ~~specified elsewhere~~ otherwise required in the San Diego Municipal Code or by ordinance.

~~(e)~~(d) Sale or transfer of the property or change of ownership does not terminate rights to the *previously conforming premises* or use, unless the owner

agrees to such a condition as part of a permit or administrative or judicial order.

~~(f)~~(e) *Development* involving ~~P~~*previously conforming premises* and uses ~~are~~ is subject to all other regulations and any *development permits* that may otherwise be required by the Land Development Code. The ~~required review~~ decision process shown in Table 127-01A and described in Sections 127.0103 through ~~127.0108~~ 127.0109 pertains only to the review required for the ~~*previously conforming premises* or use~~ aspects of a proposed *development* that may have *previously conforming* status. ~~Proposed *development* sites located in the Coastal Overlay Zone or other geographic overlay zones are subject to the regulations of, and may require *development permit* review in accordance with, those overlay zones~~.

(f) None of ~~T~~the *previously conforming* regulations ~~do not~~ in this Division grant any deviation from the height regulations of ~~the~~ Section 132.0505 (Coastal Height Limit Overlay Zone), Section 132.1305 (Clairemont Mesa Height Limit Overlay Zone), or any other height limit overlay zone. Proposed *development* in overlay zones is also subject to the regulations of those overlay zones.

(g) If a *previously conforming premises* or use is brought into conformance by a change in use or new *development*, the *previously conforming* status is terminated and the *premises* or use cannot revert to a *previously conforming* status. A temporary discontinuance of operations in

accordance with Section 127.0108(d) does not bring the *previously conforming* use into conformance or terminate the *previously conforming* status. See Section 127.0108 for additional regulations regarding discontinuance of *previously conforming* uses.

(h) [No change in text.]

(i) Regulations for *premises* that have *previously conforming* landscaping are ~~found~~ set forth in Section 142.0410.

(j) [No change in text.]

(k) The regulations applicable to *development* involving *previously conforming* uses shall not apply to *multiple dwelling unit development* in a *single dwelling unit* zone that is *previously conforming* as to *density*.

§127.0103 ~~Review~~ Decision Process for Previously Conforming Premises and Previously Conforming Uses

The ~~required review~~ decision process for ~~different types~~ approval of proposed *development* or activity~~,~~ varies based on the *previously conforming* ~~category~~ aspects of the *development*, ~~such as existing *structural envelope*, *density*, and uses~~ ~~are~~ as shown in Table 127-01A ~~through 127-01C~~. If the proposed *development* includes more than one *previously conforming* ~~category~~ aspect, all corresponding regulations, as described in Sections 127.0104 through ~~127.0108~~ 127.0109, apply.

~~*(a) Previously Conforming Structural Envelope*~~

Table 127-01A

Review Process for Previously Conforming Structural Envelope

Type of *Development* Proposal	**Applicable Sections**	**Required Development Permit/Decision Process**
Maintenance, repair or alteration (less than or equal to 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	127.0104	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for residential *structures* or for nonresidential *structures* when the cost of reconstruction is less than 50 percent of *market value*.	127.0105(a), (b) and (c)	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential *structures* when the cost of reconstruction is greater than 50 percent of *market value*.	127.0105(c) and (d)	NDP/Process 2
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) and (e).	CP/Process 1
Expansion/enlargement where new construction requests a reduction of up to 20% from required *setbacks*.	127.0106(c).	NDP/Process 2

Legend to Table 127-01A:

CP = Construction Permit
NDP = Neighborhood Development Permit

(b) *Previously Conforming Density*

~~Table 127-01B~~
~~Review Process for Previously Conforming Density~~

~~Type of *Development* Proposal~~	~~Applicable Sections~~	~~Required Development Permit/Decision Process~~
~~Maintenance, repair or alteration (less than or equal to 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.~~	~~127.0104.~~	~~CP/Process 1~~
~~Maintenance, repair or alteration (greater than 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.~~	~~127.0104.~~	~~NDP/Process 2~~
~~Reconstruction (following fire, natural disaster, act of the public enemy) for residential *structures* or for nonresidenital *structures* when the cost of reconstruction is less than 50 percent of *market value*.~~	~~127.0105(a), (b) and (e)~~	~~CP/Process 1~~
~~Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential *structures* when the cost of reconstruction is greater than 50 percent of *market value*.~~	~~127.0105(c) and (d)~~	~~NDP/Process 2~~
~~Expansion/enlargement, where new construction conforms with all current development regulations.~~	~~127.0106(a) and (b).~~	~~NDP/Process 2~~
~~Expansion/enlargement where new construction requests a reduction of up to 20% from required *setbacks*.~~	~~127.0106(c).~~	~~NDP/Process 2~~

~~Legend to Table 127-01B:~~

~~CP = Construction Permit~~
~~NDP = Neighborhood Development Permit~~

(c) *Previously Conforming Use*

Table 127-01C
Review Process for Previously Conforming Use

Type of *Development* Proposal	Applicable Sections	Required Development Permit/Decision Process
Maintenance, repair or alteration (less than or equal to 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of *market value* of entire *structure* or improvement) that does not expand the *structural envelope*.	127.0104	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy).	127.0105	CP/Process 1(1) NDP/Process 2(2)
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b)	NDP/Process 2(3)
Expansion/enlargement where new construction requests a reduction of up to 20% from required *setbacks*.	127.0106(c)	NDP/Process 2(3)
Change to another *previously conforming* use within the same use category.	127.0107	CP/Process 1
Operating a *previously conforming* use, including resumption of *previously conforming* use up to 2 years after discontinuance.	127.0108(a) and (c)	CP/Process 1
Resumption of a *previously conforming* use after 2 years discontinuance.	127.0108(b) and (c)	NUP/Process 2
Increase in *floor* area to a *previously conforming* use (less than or equal to 20% of *gross floor area* of the existing *structure*).	127.0109	NUP/Process 2(3)

Legend to Table 127-01C:

CP = Construction Permit
NDP = Neighborhood Development Permit
NUP = Neighborhood Use Permit

Footnotes to Table 127-01C:

(1) Applies to reconstruction of *previously conforming structures*, with *previously conforming density* or *previously conforming* residential uses with no limitation on cost. Applies to partial

~~reconstruction of *structures* with *previously conforming* nonresidential uses (less than or equal to 50 percent of *market value* of entire *structure* or improvement).~~

~~(2) Applies to reconstruction of *previously conforming* nonresidential uses when the cost of reconstruction is greater than 50 percent of *market value*.~~

~~(3) *Findings* of fact for this permit shall include the presumption that expansion of the following *previously conforming* uses would be detrimental to the public health, safety, and welfare: industrial uses in residential zones, auto repair or dismantling uses in residential zones, and any use in a zone that would require a Conditional Use Permit in accordance with Section 126.0303.~~

Table 127-01A
Decision Process for Previously Conforming Premises and Uses[1]

Type of *Development* Proposal	Process One Approval Required	Process Two Approval Required
Maintenance, repair, alteration or replacement in accordance with Section 127.0104		
Of a *previously conforming structural envelope*	If a Coastal Development Permit is not required pursuant to Section 126.0704(b)	If a Coastal Development Permit is required pursuant to Section 126.0704(b)
Of a *structure* on a *premises* with *previously conforming density*		
Of a *structure* containing a *previously conforming* use	If removal of less than 50 percent of the exterior walls of a *structure* containing a *previously conforming* use	If removal of 50 percent or more of the exterior walls of a *structure* containing a *previously conforming* use
Reconstruction (following fire, natural disaster, act of the public enemy) in accordance with Section 127.0105		
Of a *previously conforming structural envelope*	If the new *structure* would not exceed *the gross floor area* or *height* of the destroyed *structure* by more than 10 percent and the *structure* would be located in substantially the same location as the destroyed *structure* or in a location that would reduce the level of non-conformity	If the new *structure* would exceed the *gross floor area* or *height* of the destroyed *structure* by more than 10 percent or the *structure* would be located in a substantially different location as the destroyed *structure* that would not reduce the level of non-conformity
Of a *structure* on a *premises* with *previously conforming density*		
Of a residential *structure* with a *previously conforming* use		
Of a non-residential *structure* with a *previously conforming* use and resumption of the use	If less than 50 percent of the *structure's* exterior walls were destroyed	If 50 percent or more of the *structure's* exterior walls were destroyed

Type of *Development* Proposal	**Process One Approval Required**	**Process Two Approval Required**
Expansion/enlargement in accordance with Sections 127.0106 and 127.0109		
Of a *previously conforming structural envelope*	If new construction conforms with current *development* regulations for *setbacks, floor area ratio*, and *structure height* and does not increase the level of non-conformity; or the expansion or enlargement is necessary to incorporate required public exits or fire walls to bring a *multiple dwelling unit development* or non-residential *development structure* into compliance with the California Building Code or Fire Code	If proposed *development* in the *setback* meets the criteria specified in Section 127.0106(b)
Of a *structure* on a *premises* with *previously conforming density*		
Of a *previously conforming* use	N/A	If an increase in floor area to a *previously conforming* use (up to a maximum of 20 percent expansion of *gross floor area* of the existing *structure* or up to the maximum *floor area ratio* of the underlying base zone, whichever is less)
Change in use of *previously conforming* uses in accordance with Section 127.0107		
	If a change to another *previously conforming* use within the same use category	N/A

Type of *Development* Proposal	Process One Approval Required	Process Two Approval Required
Resumption of a *previously conforming* use after a temporary discontinuance in accordance with Section 127.0108(d)		
	If resumption of a *previously conforming* use within two years after discontinuance	If resumption of a *previously conforming* use two or more years after discontinuance

Footnote to Table 127-01A

1 *Development* that does not meet the criteria for a Process One or Process Two approval shall comply with all current regulations and the *previously conforming* aspect of the *premises* shall terminate.

§127.0104 Maintenance, Repair, ~~or~~ Alteration, or Replacement of Previously Conforming Structures

(a) Maintenance, repair, ~~or~~ alteration, or replacement of a ~~*previously conforming* structure~~, with a *previously conforming structural envelope* is permitted in accordance with Process One, ~~where the new construction would not expand beyond the existing *structural envelope*, is subject to the review procedures required for conforming *structures* except as described in Section 127.0104(b)~~ unless the proposed *development* otherwise requires a Coastal Development Permit pursuant to Section 126.0704(b).

(b) Maintenance, repair, ~~or~~ alteration, or replacement of a *structure* with a *previously conforming structural envelope* ~~*structure* containing *previously conforming density* or a *previously conforming* use, where the cost of the new construction would be greater than 50 percent of the *market value* of the existing *structure*, and the new construction would not expand beyond the existing *structural envelope*, requires a Neighborhood Development Permit~~ for proposed *development* that requires a Coastal Development

Permit pursuant to Section 126.0704(b) requires a Neighborhood Development Permit decided in accordance with Process Two.

(c) Maintenance, repair, alteration, or replacement of a *dwelling unit* or *multiple dwelling unit structure*, that makes the *premises previously conforming* for *density*, is permitted in accordance with Process One, unless the proposed *development* otherwise requires a Coastal Development Permit.

(d) Maintenance, repair, alteration, or replacement of a non-residential *structure* containing a *previously conforming* use is permitted in accordance with Process One if the proposed *development* would retain 50 percent or more of the exterior walls of the *previously conforming structure*. If the proposed *development* would retain less than 50 percent of the exterior walls of the *previously conforming structure*, the proposed *development* requires a Neighborhood Development Permit decided in accordance with Process Two. The calculation of exterior walls shall be measured in accordance with Section 127.0111.

(e) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located within 50 feet of a *coastal bluff edge* shall terminate upon destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls.

§127.0105 **Reconstruction ~~of Previously Conforming Structures~~ Following Fire, Natural Disaster, or Act of the Public Enemy**

(a) The reconstruction provisions of ~~this section~~ Section 127.0105 apply only to ~~rebuilding~~ the reconstruction of a *previously conforming structure* ~~that~~

~~has been~~ destroyed, in whole or in part, as a result of fire, natural disaster, or act of the public enemy~~.~~, that met one or more of the following conditions prior to the event that caused the destruction:

(1) The *structure* had a *previously conforming structural envelope*;

(2) The *structure* was a *dwelling unit*, or a *structure* that included a *dwelling unit* or *dwelling units*, that made the *premises previously conforming* for *density*; or

(3) The *structure* contained a *previously conforming* use.

(b) ~~Reconstruction of any *previously conforming structure*, including a *structure* with *previously conforming density* or a *previously conforming* residential use, is subject to the same review procedures required for conforming *structures*.~~ Reconstruction of any *previously conforming structure* described in Section 127.0105(a) is permitted in accordance with Process One as follows:

(1) Reconstruction of a non-residential *structure* containing a *previously conforming* use and resumption of the use where less than 50 percent of the *structure's* exterior walls were destroyed; or

(2) Reconstruction of a *structure* with a *previously conforming structural envelope* or a *structure* that makes the *premises previously conforming* for *density* where:

(A) The new *structure* would neither exceed the *gross floor area* nor the *structure height* of the destroyed *structure* by more than 10 percent; and

(B) The new *structure* would be located in substantially the same location as the destroyed *structure* or in a location that would reduce the non-conformity regarding *structural envelope* or *density*.

However, reconstruction of *previously conforming density* shall not exceed the number of *dwelling units* that existed prior to the event that caused the destruction.

~~(c) Partial reconstruction of a *structure* containing a *previously conforming* nonresidential use is subject to the review procedures required for conforming *structures*, if the cost of the reconstruction is less than or equal to 50 percent of the *market value* of the *structure* prior to destruction.~~

~~(d)~~(c) Reconstruction of any *previously conforming structure* described in Section 127.0105(a) ~~of a *structure* containing a *previously conforming* nonresidential use~~ requires a Neighborhood Development Permit ~~if the cost of the reconstruction is greater than 50 percent of the *market value* of the *structure* prior to the destruction~~ decided in accordance with Process Two if the proposed *development* does not meet the criteria for Process One approval in Section 127.0105(b).

(d) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located within 50 feet of a *coastal bluff edge* shall terminate upon destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls.

(1) Such reconstruction is subject to Coastal Development Permit regulations and other regulations applicable to conforming *development.*

(2) The calculation of exterior walls shall be measured in accordance with Section 127.0111.

(e) ~~This section, or any Neighborhood Development Permit issued for reconstruction,~~ Section 127.0105 does not ~~exempt any person~~ provide an exemption from any requirement to obtain applicable *construction permits* or ~~other applicable~~ *development permits* ~~and does not grant any deviation from the height limit regulations of the Coastal Height Limit Overlay Zone or any other applicable height limit overlay zone. All *construction permits* that would be required for conforming *premises* or uses must be obtained for reconstruction of *previously conforming premises* or uses~~.

§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density

(a) Proposed expansion or enlargement of a *structure* with a *previously conforming structural envelope* ~~is subject to the procedural requirements for conforming *structures* if the existing *density* and use comply with all applicable development regulations of the Land Development Code and if the new construction will comply with all applicable development regulations.~~ or of a *structure* on a *premises* with *previously conforming density* is permitted in accordance with Process One as follows:

(1) Where all new construction conforms with current development regulations for *setbacks, floor area ratio,* and *structure height* and

does not increase the non-conformity regarding *structural envelope* or *density*;

(2) Where the proposed expansion or enlargement is necessary to incorporate required public exits or fire walls to meet public safety requirements of the California Building Code or California Fire Code for a conforming use in a *previously conforming multiple dwelling unit* or non-residential *structure* as long as the need is not one created by the proposed expansion or enlargement.

(b) Proposed expansion or enlargement of a *previously conforming structural envelope* within a *setback*~~, where the existing *previously conforming structure* does not comply with applicable zoning regulations as to *density* or use, requires~~, or of a *structure* on a *premises* with *previously conforming density* that does not meet the criteria for expansion or enlargement in accordance with Section 127.0106(a), requires a Neighborhood Development Permit~~.~~ decided in accordance with Process Two, which shall only be granted if the proposed expansion or enlargement meets all of the following criteria:

(1) Conforms to the *setback* observed by the existing *structure*;

(2) Complies with the *floor area ratio* and maximum *structure height* of the underlying base zone;

(3) Does not encroach into a front *yard* or extend outside of the developable area of the underlying base zone to within 10 feet of the front *yard setback* line, unless the proposed expansion or

enlargement would reduce the non-conformity of existing *development* on a *coastal bluff*;

(4) Does not encroach more than 15 feet into any required side or rear *yard*;

(5) Does not result in a total *structure* length within the required *yard* that is greater than 50 percent of the length of the adjacent *property line*;

(6) Does not create any new habitable space within 3 feet of the *property line*;

(7) Is limited to additions at the first *story* level (as measured in accordance with Section 113.0261) and does not exceed the height of the existing *structure* within the *setback*;

(8) Does not result in more *dwelling units* than the underlying base zone allows; and

(9) Does not propose *development* within a required *coastal bluff setback*.

~~(c) Proposed expansion or enlargement of a *previously conforming structural envelope* where the expansion would comply with regulations, but which proposes a reduction less than or equal to 20 percent from a required *setback*, requires a Neighborhood Development Permit.~~

~~(d)~~(c) ~~Within the Coastal Overlay Zone, if the proposal involves the demolition or removal of 50 percent or more of the exterior walls of an existing structure, the previously conforming rights are not retained for the new~~

~~structure.~~ In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located within 50 feet of a *coastal bluff edge* shall terminate upon destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls.

~~(e)~~(d) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* that is 100,000 or greater square feet ~~or greater~~ of *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

§127.0108 Abandonment of Previously Conforming Uses

(a) ~~A *previously conforming* use may continue to operate or may resume operations if~~ If a *previously conforming use* is discontinued for a period of less than ~~2~~ two consecutive years, operations may be resumed, or changed to another use in the same category in accordance with Section 127.0107. ~~Resumption of operations within 2 years is subject to the review procedures for conforming uses.~~

(b) ~~It is unlawful to reinstate any~~ If a *previously conforming* use ~~after the use~~ has been discontinued for a period of ~~2~~ two or more consecutive years, ~~unless the property owner has obtained~~ resumption of the use requires a Neighborhood Use Permit. Discontinuance of the use for a period of ~~2~~ two

or more consecutive years creates a presumption in favor of abandonment, against which the owner or person asserting the *previously conforming* ~~rights~~ status may offer evidence~~.~~ sufficient to satisfy the City Manager that one or more of the following has occurred:

(1) The discontinuance is in accordance with Section 127.0108(d); or

(2) An active Neighborhood Use Permit approves or conditionally approves resumption of the *previously conforming* use.

(c) A *previously conforming* use that is brought into conformance is no longer *previously conforming* and shall not resume operations or revert to a *previously conforming* status. A *previously conforming* use can maintain *previously conforming* status during construction in accordance with Section 127.0108(d) without being considered to have been abandoned.

~~(c)~~(d) If the *previously conforming* use is ~~discontinued~~ temporarily discontinued while repairs, remodeling, or major alterations of the *structure* are under construction, maintenance of an active *construction permit* and ~~continuance of~~ the Business Tax Certificate ~~constitutes conclusive evidence~~ shall mean that the use has not been ~~abandoned~~ discontinued during the construction and the use's *previously conforming* status is maintained.

§127.0109 Expansion of a Previously Conforming Use

(a) A 20 percent or less ~~gross floor area~~ *gross floor area* expansion of a ~~structure with a~~ *previously conforming* use requires a Neighborhood Use Permit decided in accordance with Process Two.

(b) ~~When making the *findings* for a Neighborhood Use Permit for the proposed expansion of a *previously conforming* use,~~ Where located in residential zones, the following uses ~~are conclusively presumed to be detrimental to public health, safety, and welfare~~ shall not be eligible to expand in accordance with Section 127.0109(a):

(1) ~~Industrial uses in residential zones~~ Hazardous waste facilities subject to Sections 141.1001 or 141.1002;

(2) Very Heavy Industrial Uses subject to Section 141.1007;

(3) Wrecking and Dismantling of Motor Vehicles subject to Section 141.1008; and

~~(2)~~(4) Commercial and personal vehicle repair and maintenance facilities that meet the use category description in Sections 131.0112(a)(8)(A) or (C) ~~in residential zones; and~~.

~~(3) Any use that requires a Conditional Use Permit in the applicable zone in accordance with Section 126.0303.~~

§127.0111 Rules for Calculations and Measurement of Exterior Walls

(a) For the purpose of this Division, an exterior wall shall be considered removed if the Building Official determines that the structural integrity of that wall has been lost.

(b) The *applicant* shall provide sufficient information to demonstrate the extent of the proposed wall removal, or in the case of a *structure* destroyed by fire, natural disaster, or act of the public enemy, the extent of wall destruction, including, but not limited to:

(1) A *site* plan of the *structure* showing all existing exterior walls (and those that were destroyed in accordance with Section 127.0105, if applicable) identified and dimensioned in linear feet;

(2) A demolition plan with dimensions specified in linear feet for any existing exterior walls proposed to be demolished or removed and replaced in accordance with Section 127.0111(a)(1) or showing the exterior walls that were destroyed in accordance with Section 127.0105, if applicable; and

(3) Structural calculations and details regarding all walls within the *structure* proposed to be modified or reconstructed.

(c) The length of the exterior walls shall be measured in linear feet.

SMT:als
03/22/2015
Or.Dept: DSD
Doc. No.: 962832_2

Passed by the Council of The City of San Diego on APR 21 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☑	☐	☐	☐
Lorie Zapf	☑	☐	☐	☐
Todd Gloria	☑	☐	☐	☐
Myrtle Cole	☑	☐	☐	☐
Mark Kersey	☑	☐	☐	☐
Chris Cate	☑	☐	☐	☐
Scott Sherman	☑	☐	☐	☐
David Alvarez	☐	☐	☑	☐
Marti Emerald	☑	☐	☐	☐

Date of final passage MAY 05 2015.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 07 2015, and on MAY 05 2015.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20482