Article 7: Previously Conforming Premises and Uses

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

Division 1: General Review Procedures for Previously Conforming Premises and Uses

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0101 Purpose of Procedures for Previously Conforming Premises and Uses

The purpose of these procedures is to establish a review process for the *development*, maintenance, and operation of *previously conforming premises* and uses. Because of changes in the City's zones and zoning regulations over the years, many *structures* that were built, or uses that were established, in compliance with the applicable regulations at the time of their *development* no longer comply with existing regulations. In order to clarify this status, and to avoid confusion with illegal premises and uses, the term "*previously conforming*" is used to describe these situations and has the same meaning as "*nonconforming*". The intent of these procedures is to allow certain, potentially compatible, *previously conforming premises* and uses, subject to special regulations and conditions, unless the *previously conforming premises* or uses adversely impact the public health, safety, or welfare. *(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

§127.0102 General Rules for Previously Conforming Premises and Uses

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

(a) *Previously conforming premises* or uses must have been established in compliance with all permit requirements and must have been lawful until a change in the applicable zoning regulations made the *premises* or uses *previously conforming*.

(b) The property owner or person asserting *previously conforming* rights for a *premises* or use has the burden to provide the City Manager with sufficient documentation to establish the existence of the *previously conforming premises* or use.

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

(d) *Previously conforming premises* and uses that comply with the provisions of this division may continue to exist and operate unless an amortization period is specified elsewhere in the Municipal Code.

(e) 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) *Previously conforming premises* and uses are subject to all other regulations and any *development permits* that may otherwise be required by the Land Development Code. The required review process shown in Table 127-01A and described in Sections 127.0103 through 127.0108 pertains only to the review required for the *previously conforming premises* or use. 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. The *previously conforming* regulations do not grant any deviation from the height regulations of the Coastal Height Limit Overlay Zone or any other height limit overlay zone.

(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.

(h) Regulations for *premises* that have *previously conforming* parking are found in Section 142.0510(d).

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

(j) Regulations for *premises* in the Airport Land Use Compatibility Overlay Zone that were legally established in an airport influence area prior to adoption of an Airport Land Use Compatibility Plan, or amendment thereto, are located in Section 132.1535.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 7-2-2013 by O-20268 N.S.; effective 8-2-2013.)

[Editors Note: Amendments as adopted by O-20261 N.S. and O-20268 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies them as Local Coastal Program Amendments.
Click the links to view the Strikeout Ordinances highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-20261-SO.pdf and http://docs.sandiego.gov/municode_strikeout_ord/O-20268-SO.pdf]

§127.0103 Review Process for Previously Conforming Premises and Uses

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

(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)
(Amended 6-15-2007 by O-19624 N.S.; effective 7-15-2007.)

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

(a) Maintenance, repair, or alteration of a *previously conforming structure*, 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).

(b) Maintenance, repair, or alteration of a *previously conforming 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.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

§127.0105 Reconstruction of Previously Conforming Structures

(a) The reconstruction provisions of this section apply only to rebuilding 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.

(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*.

(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) Reconstruction 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.

(e) This section, or any Neighborhood Development Permit issued for reconstruction, does not exempt any person from any requirement to obtain 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.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0106 Expansion or Enlargement of Previously Conforming Structures

(a) Proposed expansion or enlargement of 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.

(b) Proposed expansion or enlargement of a *previously conforming structural envelope*, where the existing *previously conforming structure* does not comply with applicable zoning regulations as to *density* or use, requires a Neighborhood Development Permit.

(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) 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.

(e) 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* 100,000 square feet or greater *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

(Amended 1-9-2001 by O-18910 N.S.; effective 8-8-2001.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)
(Amended 6-15-2007 by O-19624 N.S.; effective 7-15-2007.)

§127.0107 Change in Use of a Previously Conforming Use

(a) A change in use from a *previously conforming* use to another use within the same use category of the Use Regulations Tables of Chapter 13, Article 1, outside the Coastal Overlay Zone, is considered a change of use of equal intensity and retains the *previously conforming* rights for the new use. A change of use from a *previously conforming* use to a use in another use category or to a separately regulated use category of the Use Regulations Tables of Chapter 13, Article 1, is not allowed.

(b) Within the Coastal Overlay Zone, if a change in use from a *previously conforming* use to another use within the same use category of the Use Regulation Tables of Chapter 13, Article 1 involves any intensification of use, the *previously conforming* rights are not retained for the new use. For the purposes of Section 127.0107, intensification of use means a change in the use of a *lot* or *premises* which, based on the provisions of the applicable zone, requires more off-street parking than the most recent legal use on the *premises*.

(c) A change in the number of business licenses issued for the same use within the same square footage is not considered an intensification of use.

(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)

§127.0108 Abandonment of Previously Conforming Uses

(a) A *previously conforming* use may continue to operate or may resume operations if discontinued for a period of less than 2 consecutive years. Resumption of operations within 2 years is subject to the review procedures for conforming uses.

(b) It is unlawful to reinstate any *previously conforming* use after the use has been discontinued for a period of 2 or more consecutive years, unless the property owner has obtained a Neighborhood Use Permit. Discontinuance of the use for a period of 2 or more consecutive years creates a presumption in favor of abandonment, against which the owner or person asserting *previously conforming* rights may offer evidence.

(c) If the *previously conforming* use is discontinued temporarily 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 that the use has not been abandoned during the construction.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§127.0109 Expansion of a Previously Conforming Use

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

(b) When making the *findings* for a Neighborhood Use Permit for the proposed expansion of a *previously conforming* use, the following uses are conclusively presumed to be detrimental to public health, safety, and welfare:

(1) Industrial uses in residential zones;

(2) Commercial and personal vehicle repair and maintenance in residential zones; and

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

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)