

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-20482 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 5, 2015

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.]

~~(e)~~ 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 *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 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 <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	127.0105(a), (b) and (e)	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	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 <i>setbacks</i> .	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 <i>Development</i> Proposal	Applicable Sections	Required- Development- Permit/Decision- Process
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104.	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104.	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	127.0105(a), (b) and (e)	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	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 <i>setbacks</i> .	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 <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	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 <i>setbacks</i> .	127.0106(c)	NDP/Process 2 ⁽³⁾
Change to another <i>previously conforming use</i> within the same use category.	127.0107	CP/Process 1
Operating a <i>previously conforming use</i> , including resumption of <i>previously conforming use</i> up to 2 years after discontinuance.	127.0108(a) and (c)	CP/Process 1
Resumption of a <i>previously conforming use</i> after 2 years discontinuance.	127.0108(b) and (c)	NUP/Process 2
Increase in <i>floor area</i> to a <i>previously conforming use</i> (less than or equal to 20% of <i>gross floor area</i> of the existing <i>structure</i>).	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

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

<u>Type of Development Proposal</u>	<u>Process One Approval Required</u>	<u>Process Two Approval Required</u>
	<u>destroyed</u>	<u>destroyed</u>
<u>Expansion/enlargement in accordance with Sections 127.0106 and 127.0109</u>		
<u>Of a previously conforming structural envelope</u>	<u>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</u>	<u>If proposed development in the setback meets the criteria specified in Section 127.0106(b)</u>
<u>Of a structure on a premises with previously conforming density</u>		
<u>Of a previously conforming use</u>	<u>N/A</u>	<u>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)</u>
<u>Change in use of previously conforming uses in accordance with Section 127.0107</u>		
	<u>If a change to another previously conforming use within the same use category</u>	<u>N/A</u>
<u>Resumption of a previously conforming use after a temporary discontinuance in accordance with Section 127.0108(d)</u>		
	<u>If resumption of a</u>	<u>If resumption of a</u>

<u>Type of Development Proposal</u>	<u>Process One Approval Required</u>	<u>Process Two Approval Required</u>
	<u>previously conforming use within two years after discontinuance</u>	<u>previously conforming use two or more years after discontinuance</u>

Footnote to Table 127-01A

- 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.

~~(e) 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.

~~(e) 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.

~~(e)~~(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.

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