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) 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) 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 set forth in Section 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.

(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.

(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.)
(Amended 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)
§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**

<table>
<thead>
<tr>
<th>Type of Development Proposal</th>
<th>Process One Approval Required</th>
<th>Process Two Approval Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, repair, alteration or replacement in accordance with Section 127.0104</td>
<td>If a Coastal Development Permit is not required pursuant to Section 126.0704(b)</td>
<td>If a Coastal Development Permit is required pursuant to Section 126.0704(b)</td>
</tr>
<tr>
<td>Of a previously conforming structural envelope</td>
<td>If removal of less than 50 percent of the exterior walls of a structure containing a previously conforming use</td>
<td>If removal of 50 percent or more of the exterior walls of a structure containing a previously conforming use</td>
</tr>
<tr>
<td>Of a structure on a premises with previously conforming density</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of a structure containing a previously conforming use</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recreation (following fire, natural disaster, act of the public enemy) in accordance with Section 127.0105</td>
<td>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</td>
<td>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</td>
</tr>
<tr>
<td>Of a previously conforming structural envelope</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of a structure on a premises with previously conforming density</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of a residential structure with a previously conforming use</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of a non-residential structure with a previously conforming use and resumption of the use</td>
<td>If less than 50 percent of the structure’s exterior walls were destroyed</td>
<td>If 50 percent or more of the structure’s exterior walls were destroyed</td>
</tr>
</tbody>
</table>
### San Diego Municipal Code

#### Chapter 12: Land Development Reviews

#### 12.0106 Summary of Procedures

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

**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.

(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)
§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 on a premises that contains or abuts a coastal beach or a coastal bluff edge shall terminate upon:
(1) destruction, demolition, or removal of 50 percent or more of the structure’s exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after October 13, 2016, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status, or

(2) destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new structures shall then apply to the entire structure.

(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.)
(Retitled to “Maintenance, Repair, Alteration, or Replacement of Previously Conforming Structures” and amended 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)
(Amended 7-19-2016 by O-20672 N.S.; effective 10-6-2016.)

§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 on a premises that contains or abuts a coastal beach or a coastal bluff edge shall terminate upon:

(1) destruction, demolition, or removal of 50 percent or more of the structure’s exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after October 13, 2016, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status,
(2) destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new structures shall then apply to the entire structure.

(e) Any reconstruction is subject to Coastal Development Permit regulations and other regulations applicable to conforming development. Section 127.0105 does not provide an exemption from any requirement to obtain applicable construction permits or development permits.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Retitled to “Reconstruction Following Fire, Natural Disaster, or Act of the Public Enemy” and amended 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)
(Amended 7-19-2016 by O-20672 N.S.; effective 10-6-2016.)

§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, except that such development on a premises that contains or abuts a coastal beach or a coastal bluff edge, shall be subject to Section 127.0106(c):

(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*;
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* on a *premises* that contains or abuts a *coastal beach* or *coastal bluff edge*.

(c) For *structures* located on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge*, new additions or improvements to existing *structures* may be permitted subject to a Coastal Development Permit, in accordance with Section 126.0707, provided that all such new additions or improvements themselves do not increase the degree of non-conformity and comply with all of the following:
(1) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan;

(2) The proposed coastal development does not alter more than 50 percent of the exterior walls of the structure as measured in accordance with Section 127.0111;

(3) The proposed expansion does not exceed 500 square feet, except additional floor area may be permitted in exchange for the removal or relocation of an equivalent amount of existing floor area (from the primary structure or an accessory structure) from within a required setback from the coastal bluff edge or side yard setback to a location at least 40 feet from the coastal bluff edge;

(4) The proposed expansion does not include development of a basement with building area 5 feet or more below grade or the use of caisson foundations;

(5) The proposed expansion does not result in a cumulative increase greater than 50 percent of the gross floor area of the structure, where the total expansion area is measured over time and includes the sum of all additions to the structure approved on or after October 13, 2016. The applicant shall provide evidence of the nature and extent of the cumulative changes at the time of application for any construction permit.

(6) The proposed coastal development does not rely on existing shoreline protection; and

(7) The applicant agrees to execute and record a waiver of future shoreline protection, and the execution and recordation shall occur prior to the issuance of the first building permit.

(d) In the Coastal Overlay Zone, the previously conforming status for a structure located on a premises that contains or abuts a coastal beach or a coastal bluff edge shall terminate upon:
(1) destruction, demolition, or removal of 50 percent or more of the structure's exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after October 13, 2016, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status, or

(2) upon destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new structures shall then apply to the entire 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 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.

(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.)
(Retitled to “Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density” and amended 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)
(Amended 7-19-2016 by O-20672 N.S.; effective 10-6-2016.)
§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) 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.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)

§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 141.1002 or 141.1003;

(2) Very Heavy Industrial Uses subject to Section 141.1009.

(3) Wrecking and Dismantling of Motor Vehicles subject to Section 141.1010; 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).

(Amended 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)
(Amended 12-1-2016 by O-20752 N.S.; effective 12-31-2016.)
(Amended 10-17-2017 by O-20859 N.S.; effective 11-16-2017.)
§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.

(d)  When an exterior wall of a previously conforming structure is made an interior wall, the development shall comply with the regulations for expansion or enlargement in Section 127.0106.

("Rules for Calculation and Measurement of Exterior Walls" added 5-5-2015 by O-20482 N.S.; effective 6-4-2015.)
(Amended 7-19-2016 by O-20672 N.S.; effective 10-6-2016.)