



# City of Santa Barbara

## NON-CONFORMING ORDINANCE\* (EXCERPT)

### 28.87.030 Uses Permitted.

A. LESS RESTRICTIVE USES PROHIBITED. The express enumeration and authorization in this title of a particular class of building, structure, premises or use in a designated zone shall be deemed a prohibition of such building, structure, premises or use in all zones of more restrictive classification, except as otherwise specified.

B. ADDITIONAL PERMITTED USES. Uses other than those specifically mentioned in this title as uses permitted in each of the zones may be permitted therein provided such uses are similar to those mentioned and are in the opinion of the City Council no more obnoxious or detrimental to the welfare of the community than the permitted uses in the respective zones. The City Council may approve such uses by ordinance amendment after a recommendation has been received from the Planning Commission.

C. EXCLUSION OF PERMITTED USES. The City Council after a recommendation has been received from the Planning Commission may by ordinance amendment, exclude any permitted use from any zone if in the opinion of the City Council it is obnoxious or detrimental to the welfare of the community.

D. NONCONFORMING BUILDINGS. The following provisions shall apply to all nonconforming buildings and structures or parts thereof legally existing at the effective date of this title.

1. Any nonconforming building or structure may be maintained, improved, or altered only as follows:

a. Improvements that do not change the use or the basic, exterior characteristics or appearance of the building or structure are allowed. Such improvements include but are not limited to the following:

(1) Interior alterations or upgrades to any portion of the nonconforming building or structure, including portions that exceed the current height limitation, such as:

- (a) The replacement of wall coverings;
- (b) The replacement of existing utilities, or the installation of new utilities;
- (c) The replacement of existing interior walls, or the construction of interior walls;
- (d) The replacement of existing insulation, or the installation of new insulation; or
- (e) The replacement of existing floor coverings, or the installation of new floor coverings;

(2) The replacement of structural members, such as studs, rafters, joists, beams, or other structural members, except where it will result in an increase in roof pitch;

(3) The replacement or installation of new foundations and slabs under the existing building footprint;

(4) Seismic safety retrofit improvements;

(5) The demolition and replacement of the nonconforming building or structure, provided that the following conditions are met:

(a) The basic, exterior characteristics of the replacement building or structure is not changed, except as allowed in this Section;

(b) The new structure complies with all applicable height and building story limitations; and

(c) The demolition and replacement of the nonconforming building or structure does not continue or perpetuate a nonconforming use.

(6) Additions that conform to the current Zoning standards for the zone.

(7) Solar energy systems, as defined in subdivision (a) of Civil Code section 801.5, that are installed roughly parallel to, and protrude no higher than ten inches (10”) above (measured from the top of the roof or other structure perpendicularly to the highest point of the solar energy system), a roof or other similar structure that is legally nonconforming as to the required yard, may extend into a required yard to the extent of the legal nonconforming roof or other similar structure.

b. Minor improvements that change the exterior characteristics are allowed. Such minor improvements are limited to the following:

(1) The replacement of exterior wall coverings with the same or different materials;

(2) The replacement of roofing materials with the same or different materials, except those that require an increase in roof pitch;

(3) Reduction in the number or size of window or door openings;

(4) Replacement of existing windows or doors where there is no increase in opening size, or changes in the location of the windows or doors.

c. Minor expansions of the net floor area on lots that are nonconforming as to the maximum net floor area or where the proposed expansion would otherwise be deemed precluded development as specified in Section 28.15.083 are allowed under the following conditions:

(1) The expansion may not exceed 100 square feet of net floor area over the net floor area legally existing on the lot as of the effective date of section 28.15.083;

(2) Only one expansion is allowed pursuant to this subparagraph (c) (even if the expansion is less than 100 square feet of net floor area); and

(3) A minor expansion of net square footage pursuant to this subparagraph (c) is not permitted in connection with the demolition and replacement of a nonconforming building.

2. Nothing in the above provisions shall be construed to prohibit any additions or alterations to a nonconforming structure as may be reasonably necessary to comply with any lawful order of any public authority, such as seismic safety requirements, the Americans with Disabilities Act, or a Notice and Order of the Building Official, made in the interest of the public health, welfare, or safety, provided that modification approvals pursuant to Chapter 28.92 of this Title may be required for such additions or alterations.

E. NONCONFORMING USES. Any nonconforming use of a conforming or nonconforming building may be maintained and continued, provided there is no increase or enlargement of the floor area of the buildings or structures on site which are occupied or devoted to such nonconforming use except as provided in this Subsection, and further provided there is no increase in the intensity of such nonconforming use except as otherwise provided in this title. When a building containing a nonconforming use is demolished, the nonconforming use shall be deemed discontinued, and such nonconforming use shall not be continued or perpetuated in any replacement building, except as provided in this Subsection. For the purposes of this section, an increase in intensity of use shall include but not be

limited to the following: An increase in the number of required parking spaces for the use, or increase in the amount of traffic, noise, odors, vibration, air pollution including dust and other particulate matter, hazardous materials or other detrimental effects on the surrounding community that are generated by the use.

1. Properties with Nonconforming Residential Density. Improvements or alterations to a residential structure are not allowed if the improvement or alteration does any of the following: 1. increases residential density, 2. increases floor area of any main or accessory building on the lot (except garages and carports), or 3. increases the amount of habitable space. For the purpose of this paragraph, residential density shall be defined as the number of dwelling units on a property, except in the R-3, R-4, R-O, C-1, C-2, C-M, HRC-2, and OC Zones, where residential uses are allowed, the residential density shall be defined as a combination of the number of dwelling units and the number of bedrooms per unit on a property. The following improvements are allowed, provided that any portion of a building or structure that is nonconforming as to the physical standards of the zone shall only be improved consistent with the provisions in SBMC §28.87.030.D.:

- a. New fences;
- b. New windows;
- c. New doors;
- d. Replace windows with doors;
- e. New ground floor or upper floor decks;
- f. New utilities;
- g. Re-roof, including changes in pitch up to 4 in 12;
- h. New interior or exterior wall coverings;
- i. New insulation;
- j. New foundations;
- k. Structural upgrades;
- l. Seismic Safety retrofit improvements;
- m. New exterior water heater enclosures;
- n. Interior floor plan changes, including converting existing floor area to bathrooms or laundry rooms, subject to the limitations specified above regarding residential density, floor area, and habitable space;
- o. New covered or uncovered parking spaces, up to the minimum number required by this Title for the existing dwelling units;
- p. Demolition and replacement, pursuant to the conditions in Section 28.87.038.B of this Title; or
- q. Other improvements which neither increase the residential density on site, add floor area, nor increase the amount of habitable space.

2. Residential Uses in the M-1 Zone. Buildings or structures containing residential uses in the M-1 Zone may be improved and upgraded as allowed in Paragraph 28.87.030.E.1., above, provided the following conditions are met:

- a. There is no increase in floor area, including accessory buildings;

b. There is no increase in residential density;

c. If a proposal to upgrade or improve a residential property in the M-1 zone requires discretionary review by the City, notice of such discretionary review shall be given as required by SBMC Sections 22.22.132, 22.68.040, 22.69.040 or 28.92.060, depending on the reviewing body.

3. Neighborhood Markets in Residential Zones. Nonconforming neighborhood markets in residential zones that are properly permitted as of September 1, 1998 may be improved and upgraded as allowed in Paragraph 28.87.030.E.1. above, subject to the following additional conditions:

a. There is no increase in floor area;

b. If a proposal to upgrade or improve a neighborhood market in a residential zone requires discretionary review by the City, notice of such discretionary review shall be given as required by SBMC Sections 22.22.132, 22.68.040, or 28.92.060, depending on the reviewing body.

For the purpose of this Section, a neighborhood market shall be defined as a small-scale market that may sell a full range of food and convenience products, including meat, dairy, vegetables, fruits, dry goods, beverages, and prepared food for off-site consumption.

4. Any part of a building, structure or land occupied by such a nonconforming use which is changed to or replaced by a use conforming to the provisions of this title shall not thereafter be used or occupied by a nonconforming use.

5. Any part of a building, structure or land occupied by such a nonconforming use, which use is discontinued or ceases for a period of one (1) year or more, shall not again be used or occupied except by a use allowed by the applicable zoning. This time limit shall not apply to a nonconforming use in a building or structure or on land located in an area which the City Council has, by resolution, found to be impacted by governmental action provided (i) the nonconforming use is resumed within one year of the completion of the governmental action and (ii) the nonconforming use is not more intense than the use which existed prior to the governmental action.

6. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or a more restrictive classification. In areas found by the City Council to be impacted by governmental action, any interim use not conforming to the zoning designation but found appropriate by the Planning Commission may be established upon issuance of a conditional use permit.

7. The foregoing provisions of this section shall also apply to buildings, structures, land or uses which hereafter become nonconforming due to any reclassification of zones under this title or any subsequent change in the regulations of this title.

8. The provisions of this Chapter 28.87 concerning the physical change, abandonment, structural alteration, removal, discontinuance, reconstruction, repairing or rebuilding of nonconforming buildings, structures and uses shall not apply to public utility buildings, structures and uses. Nothing in this part shall be construed or applied so as to prevent the expansion, modernization or replacement of public utility buildings, structures, equipment and facilities where there is no change of use or increase in area of the property so used.

9. An existing educational institution may use, for all educational purposes, buildings existing on the date that this subsection is adopted. (Ord. 5459, 2008; Ord. 5444, 2008; Ord. 5416, 2007; Ord. 5412, 2007; Ord. 5380, 2005; Ord. 5072, 1998; Ord. 4896, 1994; Ord. 4582, 1989; Ord. 4181, 1982; Ord. 3710, 1976; Ord. 3679, 1974; Ord. 2628, 1957; Ord. 2585, 1957.)

**28.87.036 Nonconforming Uses Resulting from Amendments.**

The provisions of this chapter shall apply to uses which become nonconforming by reason of any amendment to this title, as of the effective date of such amendment. (Ord. 3710, 1974; Ord. 2585, 1957.)

**28.87.038 Reconstruction of Damaged Nonconforming Structures.**

A. Nonresidential Structures. A nonconforming building or structure used for nonresidential purposes, which is damaged or partially destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy to the extent of not more than seventy-five percent (75%) of its market value immediately prior to the damage, as determined by the Community Development Director or designee, may be restored and the occupancy or use of such building, structure or part thereof which existed at the time of such partial destruction may be continued or resumed, provided that reconstruction, restoration or rebuilding shall commence within a period of one (1) year of the occurrence of the damage or destruction. The applicant shall demonstrate due diligence to complete the proposed reconstruction as determined by the Community Development Director. In the event such damage or destruction exceeds seventy-five percent (75%) of the market value of such nonconforming building or structure immediately prior to the damage, as determined by the Community Development Director or designee, no repairs or reconstruction shall be made unless every portion of such building is made to conform to all the regulations for new buildings in the zone in which it is located. The Community Development Director or designee may require the applicant to have the property appraised by a licensed real estate appraiser in order to determine the market value of such nonconforming building or structure immediately prior to the damage.

B. Residential Structures. Any nonconforming building or structure used for residential purposes, which is damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy may be restored or rebuilt and the occupancy and use may be continued or resumed provided the following conditions are met:

1. The net square footage of the replacement building or structure shall not exceed the net square footage of the building or structure that was legally permitted prior to the damage or destruction;
2. The number of dwelling units shall be not greater than the number existing prior to the damage or destruction;
3. In R-3, R-4, R-O, C-1, C-2, and C-M zones, the number of bedrooms per dwelling unit shall not be greater than the number existing prior to the damage or destruction;
4. The building setbacks shall not be less than those which existed prior to the damage or destruction;
5. The number of parking spaces shall be no less than the number of parking spaces in existence prior to the damage or destruction;
6. The building, plot and landscaping plans shall be reviewed and approved by the Architectural Board of Review, or the Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district or if the structure is a designated City Landmark, or the City Council on appeal, if such review would normally be required, except as allowed in this Section;
7. Any such reconstruction, restoration or rebuilding shall conform to all applicable adopted Uniform Codes in effect at the time of reconstruction, unless otherwise excused from compliance as a historic structure, pursuant to the Uniform Code for Building Conservation;
8. All permits required under the California Building Code as adopted and amended by the City shall be obtained. The Community Development Director or designee shall review and determine prior to issuance of said permits that the plans conform to the above;

9. Plans existing in the City's archives shall be used to determine the size, location, use, and configuration of nonconforming buildings and structures. Notwithstanding anything to the contrary above, if a property owner proposes to rebuild the building or structure in accordance with the City's archive plans, a building permit shall be the only required permit or approval. However, any exterior alterations shall be subject to design review, if such review would normally be required by the Santa Barbara Municipal Code. If plans do not exist in the City's archives, the City shall send a notice to all owners of property within 100 feet of the subject property, advising them of the details of the applicant's request to rebuild, and requesting confirmation of the size, location, use, and configuration of the nonconforming building that is proposed to be rebuilt. The public comment period shall be not less than 10 calendar days as calculated from the date that the notice was mailed.

10. The building permit for the reconstruction, restoration or rebuilding must be issued within three (3) years of the occurrence of the damage or destruction. (Ord. 5503, 2009; Ord. 5451, Section 5, 2008; Ord. 5072, 1998; Ord. 4851, 1994; Ord. 3916, 1977; Ord. 3915, 1977; Ord. 3710, 1974.)

**28.87.045 Demolition and Replacement of Potentially Hazardous Nonconforming Buildings Which are Subject to the Seismic Safety Ordinance.**

A. OWNER MAY ELECT TO DEMOLISH AND REPLACE. This section applies to potentially hazardous, nonconforming buildings which are required to, but have not yet complied with Chapter 22.18 of this Code as of the effective date of this amendment. An owner of a potentially hazardous, nonconforming building may elect to demolish that building, and construct a new building in order to meet the requirements of the Seismic Safety Ordinance provided that:

1. If the potentially hazardous, nonconforming building is a Landmark designated pursuant to the authority of Chapter 22.22, demolition of that building shall comply with the requirements contained in Chapter 22.22; and

2. The amount of interior building space (i.e., square footage) shall not be greater than the amount which is contained within the existing building; however, nothing herein shall preclude an addition of square footage pursuant to Section 28.87.300 of this Title; and

3. Setbacks shall not be less than those which currently exist; and

4. The number of parking spaces shall be no less than the number of parking spaces which currently exist; and

5. The number of stories in the building shall be no more than the number of stories which currently exist or which are allowed in the zone, whichever is greater; and

6. Any other existing elements or uses of the building or property which do not conform with the current applicable requirements of the Municipal Code shall not be increased or expanded, but may be retained; and

7. The building, site and landscaping plans shall be subject to the review and approval of the Architectural Board of Review, or the Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district, or if the structure is a designated City Landmark, or the City Council on appeal.

Nothing herein shall be deemed to exempt such demolition and replacement of a building from full compliance with the requirements of Charter Section 1506 with respect to the height of buildings in certain zones.

B. TENANT RELOCATION ASSISTANCE PLAN. Prior to an approval of the demolition of a residential hotel project pursuant to the provisions of this Section, the property owner shall submit a

proposed Tenant Relocation Assistance Plan. The plan, which shall be subject to the review and approval of the Planning Commission shall include, but not be limited to, the following components:

1. Notice: A certification that each non-transient tenant will receive a written Notice of Displacement not less than 180 days prior to issuance of a demolition permit for the unit occupied by that tenant.
2. Relocation Services: A description of how the property owner will provide relocation services to assist non-transient tenants in finding and securing suitable and comparable replacement housing.
3. Relocation Assistance: A description of the amount of monetary assistance (either in the form of cash, a rent credit or other similar credit or free relocation services or a combination thereof) each non-transient tenant will receive prior to the actual displacement of that tenant.
4. Schedule for Implementation: A relocation implementation schedule indicating when completion of the Tenant Relocation Plan will be accomplished.

C. PLANNING COMMISSION REVIEW. The Planning Commission shall hold a public hearing to review any request to demolish a nonconforming, potentially hazardous building, and construct a new building which may retain one or more nonconformities pursuant to this Subsection. The public hearings shall be held pursuant to Section 28.92.050 of this Title.

1. Notice of Planning Commission Public Hearing. Not less than 10 days before the date of the Planning Commission Public Hearing, a notice of the date, time and place of such hearing, the location of the property and the nature of the request shall be given in the following manner, unless otherwise directed by the Planning Commission:

- a. By publishing once in a newspaper of general circulation in the City; and
- b. By mailing a notice, postage prepaid, to the applicant, to each member of the Planning Commission, to the owners of all property within 300 feet of the exterior boundaries of the property involved, using for this purpose the last known name and address of such owners as shown upon the last Assessment Roll of the County of Santa Barbara.

If the proposed project involves the demolition of a residential hotel, a notice shall be mailed to all tenants of the residential hotel not less than 28 days before the date of the Planning Commission Public Hearing.

2. Findings. The Planning Commission may approve the demolition and replacement of such buildings upon finding that:

- a. Seismic upgrading of the building is necessary to increase the level of public safety in the event of an earthquake; and
- b. Demolition and replacement of the nonconforming building is the most effective method of significantly increasing the level of public safety for the building occupants and the community; and
- c. The new building or uses will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood involved; and
- d. Adequate access and circulation is provided in a manner so that the demands of the new development are adequately met without adversely altering the character of the public streets, sidewalks and walkways in the area; and
- e. The appearance of the developed site in terms of the arrangement, size, bulk, scale and architectural style of the buildings, location of parking areas, landscaping and other features is compatible with the character of the area; and

f. If the project involves the demolition of nonconforming residential hotels, the Tenant Relocation Assistance Plan is adequate to meet the needs of the tenants of the residential hotel which is proposed for demolition and replacement.

g. The parking demands of the replacement project (when contrasted with the demands of the demolished project) do not create a new and significant adverse impact on the parking resources located in the area of the project. If the replacement project results in a new and significant adverse impact on parking resources, the applicant shall make reasonable efforts to mitigate the impact. In such cases, the Planning Commission, or City Council on appeal, shall consider the parking impacts and proposed mitigation measures and may override the impacts if the benefits of the project outweigh the impact. (Ord. 5380, 2005; Ord. 4984, 1996.)

***\*Note: This is an excerpt from the General Provisions section of the Zoning Ordinance.***