

Division 6: Nonconforming Uses, Structures, and Lots

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Section 9106.01 – General Nonconforming Provisions

Subsections:

- 9106.01.010 Intent and Purpose
- 9106.01.020 Establishment of Legal Nonconforming Status
- 9106.01.030 Continuation and Maintenance
- 9106.01.040 Continuation of Incidental Nonconformity
- 9106.01.050 Revocation of Nonconforming Use or Structure
- 9106.01.060 No Reversion to Nonconformance

9106.01.010 Intent and Purpose

A. **Intent.** The following provisions shall apply to all nonconforming uses, structures, and lots existing as of the effective date of this Division. A mere change in ownership or tenancy without any change in use, occupancy, or development shall not affect any of the legal nonconforming rights, privileges, and responsibilities provided under this Division.

1. To limit the number and extent of nonconforming uses, structures, lots, parking, signs, and characteristics of use created by adoption of this Development Code, it is the City's intent to generally allow nonconformities to continue until they are removed, but not to encourage their continuance.
2. It is further the intent of this Division that nonconformities shall not be altered, enlarged, expanded, extended, moved, reestablished, or changed to another nonconforming use after abandonment or discontinuance or restored after involuntary destruction, except in compliance with this Division.
3. The eventual intent is that nonconformities, including certain classes of nonconforming uses, nonconforming structures of nominal value, and certain uses not meeting parking, performance, or screening standards, are to be altered to conform.
4. This Division shall not apply to any use or structure established in violation of the previously adopted Zoning Ordinance for the City, unless the use or structure presently conforms to the provisions of this Development Code.

B. **Purpose.** This Division provides regulations for nonconforming land uses, structures, and lots that were lawful before the adoption or amendment of this Development Code, but which would be prohibited, regulated, or restricted differently under the current terms of this Development Code or an amendment that changed applicable requirements.

9106.01.020 Establishment of Legal Nonconforming Status

A. Time of Beginning of Nonconformity

1. **Development Code or Previous Zoning Ordinance** The effective date of this Development Code or previous Zoning Ordinance shall determine the time of beginning for all existing nonconformities.

2. Zoning Map Amendments

- a. The provisions of this Division shall apply to uses, structures, and lots which become nonconforming due to any Zoning Map amendment which reclassifies any zone in compliance with this Development Code.
- b. The effective date of Zoning Map amendments and related boundary adjustments shall determine the time of beginning of a nonconforming use, structure, lot, or nonconformity with parking, performance, screening standards, or other applicable Development Code provisions.

3. **Annexations.** The effective date of an annexation shall determine the time of beginning for a nonconformity in a newly annexed area.
- B. **Proof of Legal Nonconformity.** The property owner has the burden to prove the claim of legal nonconformity and the related protected status that comes with that claim as specified in this Division.
 1. **Property Owner's Responsibility.** The property owner shall provide sufficient evidence to the satisfaction of the Director that the subject property or use is a legal nonconformity as specified in this Division.
 2. **City is Not Responsible.** The City is not responsible to prove the absence of legal nonconformity.
 3. **Director's Determination**
 - a. The process begins with the property owner submitting sufficient written evidence to the Director justifying that the nonconformity is legal and subject to the protected status specified in this Division.
 - b. The Director shall consider the evidence and make a determination as to the legality of the nonconformity and the available protections provided by this Division.
 - c. The Director's determination of legal nonconformity shall be appealable in compliance with Section 9108.07 (Appeals).
- C. **By Reason of a Subsequent Reduction.** Whenever any lot or structure is rendered nonconforming within the meaning of this Division solely by reason of a reduction in a required front, side, or rear setback; yard area; lot area; or reduction in off-street parking facilities, and solely by reason of: (1) dedication to, or customary purchase by, the City for any public purpose; or (2) eminent domain proceedings, which result in the acquisition by the City of a portion of the subject property, the same shall not be deemed nonconforming within the meaning of this Division.

9106.01.030 Continuation and Maintenance

- A. **Continuation.** Except as otherwise provided in this Division, any use, structure, or lot legally in place on the effective date of any ordinance creating the nonconformity may continue as a legal nonconforming use, structure, or lot, respectively.
 1. If the nonconforming use of land is discontinued or changed, as those terms are defined in this Development Code, any future use of the land shall be in conformity with the provisions of this Development Code.
 2. The nonconforming use of land shall not, in any way, be expanded or extended either on the same or adjoining property.
- B. **Maintenance.** Routine maintenance and repair of uses, structures, or lots which do not increase or alter the nonconformity may be performed.

9106.01.040 Continuation of Incidental Nonconformity

Notwithstanding any other provision of this Division, when a nonconformity exists incidental to a nonconforming use, that nonconformity may continue, provided the nonconforming use is brought into compliance with the regulations that would be applicable to the use if it were located in the most restrictive zone which permits the use by-right.

9106.01.050 Revocation of Nonconforming Use or Structure

The Commission may revoke the right to continue a nonconforming use or structure. Revocation procedures, including notice and hearing, shall be in compliance with the provisions specified in Section 9108.09 (Permit Modifications and Revocations).

9106.01.060 No Reversion to Nonconformance

When any nonconformity is eliminated or brought into conformance with the current regulations of this Development Code, the nonconforming rights and privileges with respect to that nonconformity are terminated and shall not be restored.

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Section 9106.03 – Nonconforming Uses

Subsections:

- 9106.03.010 Continuation of Legal Nonconforming Uses
- 9106.03.020 Nonconforming Uses Eligible for Conditional Use Permit or Other Approval
- 9106.03.030 Modifications or Extensions of Legal Nonconforming Use or Structure
- 9106.03.040 Discontinuance of Legal Nonconforming Uses

9106.03.010 Continuation of Legal Nonconforming Uses

Except as otherwise listed below, a legal nonconforming use of a structure(s) may continue indefinitely.

- A. Nonconforming Residential Uses.** A nonconforming use located in a residential zone may be maintained and continued. Alterations or expansions may be allowed upon the approval of a Modification granted in compliance with Division 7 (Permit Processing Procedures).
- B. Nonconforming Commercial and Industrial Uses.** Sites with nonconforming commercial and industrial uses shall be properly maintained, provided that there is no addition, alteration, or enlargement to any use.
- C. Nonconforming Animal Keeping.** Any nonconforming animal keeping, whether a primary use or an accessory use, shall be terminated or made conforming within three years from the date on which the use was rendered nonconforming.
- D. Conversion of a Nonconforming Use.** If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed.

9106.03.020 Nonconforming Uses Eligible for Conditional Use Permit or Other Approval

- A. Nonconforming Until Approval is Granted.** Any nonconforming use that is eligible to be considered for a Conditional Use Permit, Minor Use Permit, or other discretionary approval under this Development Code shall be considered to be a nonconforming use unless and until the permit or other approval is granted.
- B. Absence of Conditional/Minor Use Permit.** A use lawfully existing without the approval of a Conditional Use Permit or Minor Use Permit that would be required by this Development Code shall be deemed conforming only to the extent of its previous lawful use (e.g., maintaining the same site area boundaries, hours of operation, etc.).
- C. Previous Conditional/Minor Use Permit in Effect.** A use that was authorized by a Conditional Use Permit or Minor Use Permit but is not allowed by this Development Code in its current location may continue, but only in compliance with the original Conditional Use Permit or Minor Use Permit conditions of approval.

9106.03.030 Modifications or Extensions of Legal Nonconforming Use or Structure

Amended by Ord. No. 2401

- A. A legal nonconforming use shall not be modified in any manner that expands, extends, or enlarges the use beyond its existing scope/area, or other portion(s) of a structure, upon the date the nonconformity was created, except as specified below.
 1. The changes are, in and of themselves, in conformance with the provisions of this Development Code.
 2. The changes are limited to minor alterations, improvements, or repairs that do not increase the degree of nonconformity present and do not constitute or tend to produce an expansion or intensification of a nonconforming use.
 3. The changes are required by other laws.

4. The changes are determined, by the Director, to be small additions to legal-nonconforming single-family residential properties (including multifamily dwelling units on a single-family lot) and are subject to the approval of a Modification granted in compliance with Division 7 (Permit Processing Procedures).
5. The changes are incidental to the public acquisition of a portion of a site, no greater degree of nonconformity will be created other than that caused as a result of the public acquisition, and the changed development will conform to current regulations to the maximum extent feasible.

B. If the nonconforming use is discontinued, any future use of the structure(s) shall be in compliance with the provisions of this Development Code; provided, however, that all nonconforming uses of a conforming structure shall be discontinued as provided in this Division.

C. No change made to any development or use shall be construed as automatically allowing an extension of any time limit for the termination of a nonconformity.

D. Allowable changes to nonconforming uses within a commercial or industrial development. A nonconforming use located within a commercial or industrial development may be replaced by another similar nonconforming use only after the Director first finds all of the following:

1. The nonconforming use is similar to or less intensive than the use originally allowed in the development;
2. The nonconforming use generally adheres to the intent of the General Plan and any applicable specific plan;
3. The nonconforming use will not adversely affect or be materially detrimental to adjoining properties; and
4. The use of the entire development has not been ceased or discontinued for a period of 180 consecutive days or more.

9106.03.040 Discontinuance of Legal Nonconforming Uses

Amended by Ord. No. 2401

A. **Effect of Discontinuance.** If any legal nonconforming use ceases to operate or is discontinued for a period of 180 consecutive days or more, subsequent use of the land shall be in compliance with the applicable provisions of this Development Code. Maintenance/retention of a valid City issued Business License shall of itself not be considered a continuation of the use.

B. **Cessation or Discontinuance Defined.** A nonconforming use shall be considered ceased or discontinued when any of the following apply:

1. Cessation or discontinuance of a nonconforming use shall be deemed by the Director as an abandonment of the use, irrespective of the owner's or occupant's intent;
2. Discontinuance shall include cessation of a use regardless of intent to resume the use;
3. The intent of the owner to cease or discontinue utilization of the nonconforming use is apparent, as determined by the Director;
4. Where characteristic furnishings and equipment associated with the nonconforming use have been removed and not replaced with equivalent furnishings and equipment during this time, and where normal occupancy and/or use has been ceased or discontinued for a period of 180 consecutive days or more; or
5. Where there are no business receipts or utility payments for the 180-day period.

C. **Discontinuance of Use.** If the conforming use is discontinued, the nonconforming structure shall either be removed or made to comply with the regulations governing the zone in which the structure is located.

Section 9106.05 – Nonconforming Structures

Subsections:

- 9106.05.010 Continuation of Legal Nonconforming Structures
- 9106.05.020 Modification or Expansion of Legal Nonconforming Structures
- 9106.05.030 Destruction of Legal Nonconforming Structures
- 9106.05.040 Residential Exceptions
- 9106.05.050 Discontinuance of Legal Nonconforming Structures
- 9106.05.060 Off-Site Relocation

9106.05.010 Continuation of Legal Nonconforming Structures

- A. May Be Continued.** Any legally established nonconforming structure that does not conform to the provisions of this Development Code may be continued indefinitely, provided no additions, enlargements, or structural alterations are made. If a nonconforming structure is removed, every future use of the premises shall be in compliance with the provisions of this Division.
- B. Exceptions.** The following are exceptions to the indefinite continued use of a legal nonconforming structure as specified in Subsection A, above:
 - 1. Residential Structures.** Any increase in the number of residential units of nonconforming structures designed and occupied for residential use shall be prohibited.
 - 2. Residential Zones.** Every nonconforming structure (other than a residential structure), which was designed or intended for a use not allowed in the subject zone, shall be completely removed or structurally altered to conform to the standards of the subject zone, and every nonconforming use of a conforming structure shall be discontinued, in each instance within the time fixed by the Commission and approved by the Council. The time for the removal or alteration of nonconforming structure(s) shall not be fixed for a date before the expiration of the normal life of the structure(s) as determined in compliance with the evidence received by the Commission and Council. In no event shall the normal life of the structure(s) be fixed at less than 10 years from the date of its original construction.
 - 3. Utilities.** This Division shall not be construed or applied so as to require the removal of a Federal or State regulated public utility's structures or structures which house or support operating electrical and mechanical equipment, only used to provide service to the public, nor to prohibit structural alteration required to accommodate the equipment, provided that there is no change of use or enlargement of the lot area devoted to the use; and provided further that any existing variation from height limits and established setbacks in the applicable zone not be increased.
 - 4. Encroachments in Commercial Zones.** Within the commercial zones, any nonconforming encroachment into required setbacks may be required to be removed or reduced upon review by the Review Authority as follows:
 - a. When an expansion in floor area which is greater than 50 percent of the existing floor area is proposed for any structure maintaining a nonconforming encroachment; or
 - b. When an expansion in floor area anywhere within an integrated development is greater than 50 percent of the total floor area of all structures within the integrated development.
 - 5. Trash Facilities, Outdoor Storage, and Display.** Trash areas or facilities, outdoor storage areas, and outdoor display areas shall be made fully conforming at the time of any expansion or intensification of use on the site.

9106.05.020 Modification or Expansion of Legal Nonconforming Structures

A. Allowed Exceptions. A legal nonconforming structure shall not be modified in a manner that expands, extends, or enlarges the structure in any manner beyond its existing scope/area upon the date the nonconformity was created, except as follows:

1. The modifications are, in and of themselves, in compliance with the applicable provisions of this Development Code.
2. The modifications are limited to minor alterations, improvements, or repairs that do not increase the degree of nonconformity present and do not constitute or tend to produce an expansion or intensification of a nonconforming structure.
3. The modifications are required by other laws.
4. The modifications are incidental to the public acquisition of a portion of a site, no greater degree of nonconformity will be created other than that caused as a result of the public acquisition, and the changed development will conform to current regulations to the maximum extent feasible.

B. Allowable Additions to Nonconforming Residential Structures. Additions may be made to residential structures that are nonconforming due to their placement on the lot as long as the additions are in compliance with the current applicable regulations of this Development Code.

C. Nonconforming Structures in the R-M, R-0, and R-1 Zones

1. Nonconforming structures and structures for which construction was commenced and completed in compliance with the Municipal Code under the authority of a valid Building Permit need not be brought into compliance with the Development Code regulations unless removal and reconstruction of the destroyed structure would result in the removal and replacement of 50 percent or more of the previously existing structure's exterior walls or foundation.
2. A nonconforming structure may be maintained and continued, provided there is no physical change other than necessary maintenance and repair to the structure.
3. An addition or alteration is allowed only if the new or altered portions of the structure comply with current applicable Development Code regulations, or may be allowed upon the approval of a Modification granted in compliance with Division 7 (Permit Processing Procedures).

D. Nonconforming Structures in the R-3 Zone

1. No Building Permit shall be issued for any structure to be erected upon property regulated by this Development Code unless the plans accompanying the application include the removal or remodeling to conform to the provisions of this Development Code of all nonconforming structures on the property, provided that a permit for the specified purposes listed below may be issued for any property containing a nonconforming single-family dwelling. Any construction on the property other than for the specified purposes shall require removal or remodeling in compliance with the provisions of this Division.
2. The specified purposes are limited to the following:
 - a. For 500 square feet of additional floor area (cumulative), including covered patios proposed to be added to the main single-family dwelling on the lot. A Modification, granted in compliance with the Modification procedures specified in Division 7 (Permit Processing Procedures), may allow for an additional 500 square feet of floor area (cumulative).
 - b. Other alterations to the main single-family dwelling, which do not create additional space.
 - c. Required parking facilities for the main single-family dwelling.
 - d. A swimming pool.

3. The R-1 zone regulations shall apply to the above specified purposes.

E. No Extensions of Time Limits. No change made to any development or structure shall be construed as automatically allowing an extension of any time limit for the termination of a nonconformity.

F. Allowable Nonstructural Alterations to Commercial, Industrial, Mixed-Use, or Institutional Structure(s). Necessary repairs and desired alterations may be made to nonconforming commercial, industrial, mixed-use, or institutional structures, provided that no structural alterations shall be made that would prolong the life of the supporting members of a structure (e.g., beams, bearing walls, columns, girders, etc.). Structural elements may be modified or repaired only if the Building Official first determines that the modification or repair is immediately necessary to protect the health and safety of the public or occupants of the nonconforming structure, or adjacent property and the cost does not exceed 50 percent of the appraised value of the nonconforming structure. However, structural improvements required to ensure greater protection from earthquakes shall be allowed without replacement cost limitations, provided the retrofitting is strictly limited to compliance with earthquake safety standards.

9106.05.030 Destruction of Legal Nonconforming Structures

A nonconforming structure(s) involuntarily damaged or partially destroyed by explosion, fire, act of nature, or act of the public enemy may be repaired or rebuilt and re-occupied only as follows:

A. Cost Does Not Exceed 75 Percent. If the cost of repairing or replacing the damaged portion of the structure(s) does not exceed 75 percent of the structures' appraised value, immediately preceding the involuntary destruction, the structure may be restored, provided all of the following conditions are met:

1. The reconstruction meets all applicable current Building Code requirements.
2. Reconstruction begins within 12 months of the date of damage, unless otherwise allowed by the Director, and is diligently pursued to completion.

B. Cost Does Exceed 75 Percent. If the cost of repairing or replacing the damaged portion of the structure(s) does exceed 75 percent of its appraised value, immediately preceding the involuntary destruction, the structure may not be restored, and any reconstruction or new construction shall be in full compliance with the current Development Code provisions.

C. Appraised Values and Repair/Replacement Estimates

1. All appraised values referred to in this Division shall be determined by a State licensed appraiser and confirmed by the Building Official.
2. Estimates of repairing or replacing the damaged portion of the structure(s) for purposes of this Division shall be made by or shall be reviewed and approved by the Building Official and shall be based on the minimum cost of construction in compliance with the Building Code.

9106.05.040 Residential Exceptions

A. Reconstruction or Replacement – Single-Family Dwelling. An involuntarily damaged or destroyed single-family nonconforming dwelling may be reconstructed or replaced with a new structure but only in compliance with all of the following provisions and the current Building and Fire Code requirements:

1. Subject to all other regulations of this Development Code, a structure destroyed to the extent of not more than 75 percent of its appraised value by fire, explosion, or other casualty or Act of God or the public enemy, may be restored and the occupancy of use of the structure or part thereof which existed at the time of the partial destruction may be continued.
2. When the site is legal-nonconforming based upon floor area ratio requirements in the single-family residential zones, the following applies if the main dwelling unit is damaged or destroyed in excess of 75 percent of its appraised value by fire or other causes beyond the control of the owner:

- a. If a Building Permit is issued within three years following the damage or destruction, legal-nonconforming rights are maintained for floor area ratio and the main dwelling unit may be built to its original gross floor area; and
- b. If a Building Permit is not issued within three years following the damage or destruction, the legal-nonconforming rights shall be deemed to have terminated.

B. Reconstruction or Replacement – Multifamily Dwelling. An involuntarily damaged or destroyed multifamily nonconforming dwelling unit(s) located in any zone other than M-1 (Industrial Zone) may be reconstructed or replaced with a new structure with the same footprint (including preexisting nonconforming setbacks), height, and number of dwelling units, in compliance with current Building and Fire Code requirements and Government Code Sections 65852.25 and 65863.4.

9106.05.050 Discontinuance of Legal Nonconforming Structures

Amended by Ord. No. 2401

- A. If Abandoned or Discontinued.** If any legal nonconforming structure, except for residential structures located in single-family residential zones, is abandoned or the use thereof discontinued for a period of 180 consecutive days or more, subsequent structural and site development shall be in full compliance with all applicable provisions of this Development Code. Maintenance of a valid City issued Business License shall of itself not be considered a continuation of the structure.
- B. Cessation or Discontinuance Defined.** Use of a nonconforming structure shall be considered ceased or discontinued when any of the following apply:
 1. Cessation or discontinued use of a nonconforming structure shall be deemed as an abandonment of the structure, irrespective of the owner's or occupant's intent;
 2. Discontinuance shall include cessation of the use of a structure regardless of intent to resume the use;
 3. The intent of the owner to cease or discontinue use of the nonconforming structure is apparent, as determined by the Director;
 4. Where characteristic furnishings and equipment associated with the use of the structure have been removed and not replaced with equivalent furnishings and equipment during this time, and where normal occupancy and/or use has been ceased or discontinued for a period of 180 consecutive days or more; or
 5. Where there are no business receipts or utility payments available for the 180-day period.
- C. Properties on the Market - Exempt.** Any property which is listed on the real estate market shall not be considered abandoned or discontinued, but only if in compliance with all of the following provisions:
 1. On the market for up to 180 days; and
 2. The property shall be continually maintained in a proper condition subject to the approval of the Director.

9106.05.060 Off-Site Relocation

When a structure is relocated to another lot, it shall be made conforming in all respects with the provisions of this Development Code and all other applicable laws and regulations.

Section 9106.07 – Nonconforming Lot

9106.07.010 Continuation of Legal Nonconforming Lot
9106.07.020 Modification of Legal Nonconforming Lots

9106.07.010 Continuation of Legal Nonconforming Lot

Any lawfully created lot which becomes nonconforming with regard to lot area, street frontage, lot width, lot depth, or accessibility may continue indefinitely with the nonconformity and may be developed and used as if it were a conforming lot.

9106.07.020 Modification of Legal Nonconforming Lots

Legal nonconforming lots may not be modified in any manner that increases the degree of nonconformity. Where feasible, lot modifications (through lot merger or lot line adjustment – Division 5 [Subdivisions]) are encouraged to eliminate or minimize the degree of nonconformity.

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Section 9106.09 – Miscellaneous Nonconforming Provisions

- 9106.09.010 DBS Antennas
- 9106.09.020 Fencing and Wall Materials
- 9106.09.030 Landscaping
- 9106.09.040 Parking Nonconformities

9106.09.010 DBS Antennas

- A. Direct broadcast satellite (DBS) antennas constructed before April 3, 2009, when revised regulations regarding DBS antennas under Ordinance No. 2255 became effective, and which do not conform to all of the requirements of this Division, shall constitute a nonconforming use.
- B. No person shall maintain or operate any DBS antenna not fully in compliance with the provisions of Ordinance No. 2255 after two years from the effective date of Ordinance No. 2255.

9106.09.020 Fencing and Wall Materials

- A. Legally established nonconforming fencing material shall be allowed to continue. Where the nonconforming fencing material is to be replaced with a new fencing material, it will be subject to the requirements specified in Subsection 9103.05.040 (Prohibited Fencing Materials in All Zones).
- B. Any fences and landscaped buffers that are required along property lines shall be provided at the time of any expansion or intensification of a nonresidential use, unless this requirement is modified or waived through the approval of a Modification, granted in compliance with Division 7 (Permit Processing Procedures).
- C. Barbed wire fencing installations which legally exist at the time of the adoption of the Development Code shall be deemed legal nonconforming uses and are therefore allowed without approval by a Modification.

9106.09.030 Landscaping

- A. **Nonconforming Landscaping.** Any lawfully created use or structure that becomes nonconforming with regard to landscaping, including, but not limited to, landscaping coverage, parking lot coverage, distribution, installation, or maintenance of the landscaping, may continue indefinitely with the nonconformity as long as the use or structure continues as originally and lawfully created and allowed.
- B. **Floor Area Expansion.** If any floor area expansion is proposed and approved, all required landscaping shall be provided in compliance with the requirements specified in Section 9103.09 (Landscaping).

9106.09.040 Parking Nonconformities

- A. **Parking Spaces and Improvements.** Any nonconformity with respect to parking spaces or improvements may continue indefinitely, except that with any change of use, or an expansion or intensification of use, the additional parking required for the change, expansion, or intensification shall be in full compliance with the parking provisions specified in Section 9103.07 (Off-Street Parking and Loading).
- B. **Loading Spaces.** Any nonconformity with respect to loading areas may continue indefinitely, except that with any change, expansion, or intensification of use, the additional loading areas required for the change, expansion, or intensification shall be in full compliance with the loading space provisions specified in Section 9103.07 (Off-Street Parking and Loading).

C. Parking Lot Landscaping. Upon a review for any expansion, intensification, or reconfiguration of an existing parking lot, the designated Review Authority may require that any nonconformity with respect to interior landscaping and landscaped yards along streets and alleys for parking lots be made conforming with the landscaping provisions specified in Subsection 9103.07.120 (Landscape Standards for Parking Lots), to the fullest extent feasible as, determined by the Review Authority.

D. Nonconformities Regarding Garages

1. Any lawfully created use that becomes nonconforming with regard to garages, including but not limited to the number of parking spaces, may continue indefinitely with the nonconformity as long as the use continues as allowed. However, upon any change in land use, occupancy, or expansion of the use or structure, adequate off-street parking shall be in full compliance with the parking provisions specified in Section 9103.07 (Off-Street Parking and Loading).
2. Garages illegally converted to habitable rooms are strictly prohibited.