

ORDINANCE # 371

LAND USE ORDINANCE AMENDMENTS

AN ORDINANCE AMENDING THE LAND USE ORDINANCE OF HARRISVILLE CITY, UTAH BY REPEALING CHAPTER NINE IN ITS ENTIRETY RELATING TO NONCONFORMING BUILDINGS AND USES AND REPLACING IT WITH THE NEW CHAPTER NINE, NONCOMPLYING AND NONCONFORMING REGULATIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Harrisville City is a municipal corporation, duly organized and existing under the laws of the state of Utah;

WHEREAS, Utah Code Annotated §§ 10-8-84 and 10-8-60 allow municipalities in the State of Utah to exercise certain police powers and nuisance abatement powers, including but not limited to providing for safety and preservation of health, promotion of prosperity, improve community well-being, peace and good order for the inhabitants of the City;

WHEREAS, Utah Code Annotated Title 10 Chapter 9a enables municipalities to regulate land use and development;

WHEREAS, the City finds it necessary to update its land use ordinances in order to meet the challenges presented by development and to protect public health, safety, and welfare; and,

WHEREAS, after publication of the required notice, the Planning Commission held its public hearing on October 12, 2005, to take public comment on the proposed ordinance, and subsequently gave its recommendation to the City Council to approve this ordinance;

WHEREAS, the City Council received that recommendation from the Planning Commission and held its public meeting on November 22, 2005;

NOW, THEREFORE, be it ordained by the Harrisville City Council as follows:

- Section 1: Repealer. Chapter Nine entitled Nonconforming Buildings and Uses is hereby repealed in its entirety.
- Section 2: Land Use Ordinance re-enactment. Chapter Nine entitled Noncomplying and Nonconforming Regulations is hereby re-enacted to read as shown in Exhibit A.
- Section 3: Severability. If any section, paragraph, sentence, clause or phrase of this Ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.
- Section 4: Effective Date: This Ordinance shall be effective 14 days after posting or publication.

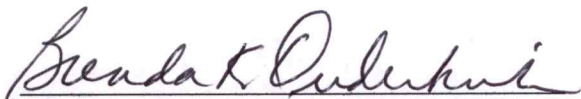
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PASSED, ADOPTED AND ORDERED POSTED this 22nd day of November, 2005



Mayor Fred W. Oates

ATTEST:



City Recorder

Ordinance 371
EXHIBIT A

CHAPTER 9

NONCOMPLYING AND NONCONFORMING REGULATIONS

- 9-1. Noncomplying structure:
- 9-2. Noncomplying Structure: Additions, Enlargements, Moving and Construction.
- 9-3. Nonconforming Use.
- 9-4. Nonconforming Use of Buildings and Use: Damage or Destruction.
- 9-5. Nonconforming Use: Loss of Right.
- 9-6. Nonconforming Use Compliance.
- 9-7. Signs Permitted With Nonconforming Uses.

9-1. **Noncomplying Structure:**

A noncomplying structure, or what has been referred to as a nonconforming building, is any building or structure that legally existed before its current land use designation, and because of one or more subsequent changes to the land use regulations does not conform to the setback, height restrictions, lot coverage parking locations, number of parking places, lot area or other regulation governing the location or land development standard excluding use of a property. If a property is both noncomplying and nonconforming it shall be governed by the nonconforming use regulations.

- 1. A noncomplying structure may be maintained.
- 2. Repairs and structural alterations may be made to a noncomplying structure so long as such work does not increase the noncomplying conditions of the building or structure.
- 3. A noncomplying structure which is involuntarily damaged or destroyed, in whole or in part, by fire, flood, wind, earthquake, or other natural disaster or calamity may be restored or rebuilt; provided that such restoration is started within a period of one (1) year and is diligently pursued to completion and the noncompliance is not increased. A noncomplying structure shall not be rebuilt or restored if:
 - a. The structure is allowed to deteriorate to a condition that the building is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the right to rebuild or restore such noncomplying structure will be lost if the structure is not repaired and restored within six months; or
 - b. The property owner has voluntarily demolished or removed a majority of the noncomplying structure. .

9-2. **Noncomplying Structure: Additions, Enlargements, Moving and Construction.**

- 1. A building or structure noncomplying as to height requirements can be expanded provided the addition meets all setback requirements of the zone in which it is located and does not increase any other noncomplying status on the property on which it is located. If only a portion of the existing building is noncomplying as to height, then the addition or expansion must meet the height regulations of the zone in which it is located.
- 2. A building or structure noncomplying as to setback or yard regulations may be expanded if the following conditions exist;

- a. The noncomplying condition is only the front yard setback or the side yard facing a street on a corner lot and the expansion or addition is to a portion of the building where the noncomplying condition does not exist and such addition or expansion meets the setback requirements of the zone in which the building or structure is located and does not require any other variance;
 - b. The noncomplying condition is only the rear yard setback and the expansion or addition meets the other setback requirements of the zone in which the building or structure is located and the expansion or addition maintains the noncomplying rear yard distance or creates a larger rear yard setback.
 - c. A residential main building noncomplying to the side yard setback may expand a maximum distance one half the depth of the existing building provided the noncomplying side setback of the existing building is not less than three feet from the property line and the expansion either meets all the setback requirements of the zone in which the building or structure is located and does not require any other variance or the expansion maintains the noncomplying side yard distance provided it is not less than three feet and meets all the setback requirements of the zone in which the building or structure is located and does not require any other variance.
3. A building or structure lacking sufficient automobile parking space in connection therewith as required by this ordinance may be altered or enlarged, provided, additional automobile parking space is supplied to meet the requirements of this ordinance for such alterations or enlargements.
 4. No noncomplying building or structure shall be moved in whole or in part to any other location of the lot, unless every portion of such building or structure is made to conform to all the regulations of the district in which it is located.
 5. A residentially zoned lot noncomplying to lot area shall be allowed to have a single family dwelling constructed on it provided that the construction will meet all setback and height regulations of the zone in which the lot is located or that the required variances have been granted. An existing home on a lot noncomplying as to lot area shall be allowed to expand provided the addition or expansion meets all the setback requirements of the zone in which the building or structure is located and does not require any other variance.

9-3. **Nonconforming Use.**

A nonconforming use is a use of land, including the use of any building or structure located thereon that legally existed before its current land use designation, has been maintained continuously since the time the land use ordinance governing the land change, and because of one or more subsequent changes to the land use regulations does not now conform to the present land use regulations. The provisions of this section shall also apply to any nonconforming use which also has noncomplying buildings or structures.

1. The nonconforming use may be continued by the present or any future owner.
2. A vacant nonconforming building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one year after the building or structure became nonconforming.
3. A nonconforming use may be extended to include the entire floor area of the existing building provided no structural alteration of the building is proposed or made for the purpose of the expansion.

4. A nonconforming use may not be changed except to a conforming use; but where such change is made to a conforming use, the use shall not thereafter be changed back to a nonconforming use.

9-4. **Nonconforming Use of Buildings and Uses; Damage or Destruction.** A building or structure which contains a nonconforming use and is involuntarily damaged or destroyed by fire, flood, wind, earthquake or other natural disaster or calamity may be restored or rebuilt and the occupancy or use of such building, structure or part thereof, which existed at the time of such destruction, may be continued or resumed; provided that such restoration shall be started within a year period of time and diligently pursued to completion. In restoring such building or structure, the nonconforming use shall not be changed nor shall the floor area of the new building be enlarged from the original floor area or the building or land use expand from what had existed prior to the damage or destruction.

9-5. **Nonconforming Use Loss of Right.**

1. A nonconforming use of a building or structure shall be terminated if the building or structure in which the use is located is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the nonconforming use shall be lost if the building or structure is not repaired or restored within six months.
2. A nonconforming use of a building or structure shall be lost if the property owner voluntarily demolishes a majority of the building or structure that contains the nonconforming use.
3. The nonconforming use of a building, structure or tract of land that has been abandoned shall be terminated and not occupied or used except in conformance with the present land use regulations governing the property. Any party claiming that a nonconforming use has been abandoned shall have the burden of proof of establishing the abandonment.
4. A use shall be presumed to be abandoned if;
 - a. A majority of the primary structure associated with the nonconforming use has been voluntarily demolished;
 - b. The use has been discontinued for a continuous period of one year; or
 - c. The primary structure associated with the nonconforming use remains vacant for a continuous period of one year, excluding vacancies due to remodeling or renovation under a valid building permit or pending court actions which affect occupancy or possession of the property.
5. The property owner may rebut the presumption of abandonment and shall have the burden of establishing that any claimed abandonment has not in fact occurred.

9-6. **Nonconforming Use Compliance.** Any building structure, or use for which a valid building permit has been issued and actual construction was lawfully begun prior to the effective date of this ordinance, or amendments to this ordinance, may be completed and used in accordance with the plans, specifications and permit on which such building permit was granted. Actual construction is hereby defined to be: The actual placing of construction materials in their permanent position, fastened in a permanent manner, actual work in excavating a basement or the demolition or removal of an existing structure begun preparatory to rebuilding;

provided that in all cases actual construction work shall be diligently carried on until the completion of the building or structure involved.

9-7. **Signs Permitted With Nonconforming Uses.** The permitted sign regulations for a nonconforming use as set forth in Chapter 23 of this Ordinance.