

ORDINANCE NO. 2020-29

**AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING
HIGHLAND CITY DEVELOPMENT CODE IN SEVERAL SECTIONS AS
SHOWN IN FILENAME TA-20-15.**

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Commission held a public hearing on this Ordinance on August 25, 2020 and

WHEREAS, the City Council held a public hearing on this Ordinance on September 15, 2020.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: AMENDMENT “3-201 Nonconforming Uses May Be Continued” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-201

3-201 Nonconforming Uses ~~May Be Continued~~

~~The owners of land and buildings shall not be deprived of the use of any property for the purpose to which it is lawfully devoted at the time of the adoption of this Code or any zoning ordinance which makes such use a nonconforming use. Nonconforming buildings or structures or uses of land may be continued to the same extent and character as that which legally existed on the effective day of the applicable ordinance restricting the same. Repairs may also be made to a nonconforming building or to a building housing a nonconforming use.~~

1. As used in this ordinance, “governing law” means all codes and ordinances that have been adopted by Highland City or the State of Utah that regulate the use, construction, occupancy, subdivision, or development of land or structures within the city;

2. The purpose of this ordinance is to establish the terms and conditions of the regulation and gradual elimination of nonconforming structures, uses, and lots.

3. Nothing in this ordinance shall be construed as authorizing or approving any structure, lot, or use of land that was not permitted under the governing law at the time the structure, lot, or use was established.

SECTION 2: AMENDMENT “3-202 Nonconforming Uses May Be Enlarged - Limitations” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-202

3-202 Continuation of Nonconforming Structures and Uses ~~Nonconforming Uses May Be Enlarged – Limitations~~

~~Nonconforming uses within a building may be expanded within the same building in which said nonconforming use is located, provided that no structural alteration of the building is proposed or made for the purpose of the extension. For purposes of this section, the addition of a solar energy device to the building is not a structural alteration.~~

5. A nonconforming structure or use may be continued by the present or a future property owner, subject to the terms, conditions, and limitations of this ordinance.
6. Nonconforming structures shall not be expanded or extended unless all portions of the structure are brought into compliance with governing law.
7. Nonconforming uses shall not be expanded or extended and shall be limited to those structures and portions of property that contained the nonconforming use when such use was legal, except that nonconforming uses may be expanded through the same structure in which the use is contained, provided no structural alteration of the structure is proposed or made for the purpose of the extension.
8. For purposes of this section, the addition of a solar energy device to the structure is not a structural alteration, expansion, or extension.

SECTION 3: AMENDMENT “3-203 Damaged Buildings May Be Restored” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-203

3-203 Burden of Proof of Nonconforming Use or Nonconforming Structure Damaged Buildings May Be Restored

~~A nonconforming building or structure and a building or structure occupied by a nonconforming use which is damaged or destroyed by fire, flood, or other calamity, or act of nature may be restored, and the building or structure or use of such building, structure, or part thereof, may be continued or resumed; provided that such restoration is started within a period of one year from the date of destruction and is diligently prosecuted to completion. Such restoration shall not increase the floor space devoted to the nonconforming use over that which existed at the time the building became nonconforming.~~

6. There is no presumption of the legal existence of nonconforming structures or uses.
7. Any person or entity asserting the existence of a nonconforming structure or use shall have the burden to prove the legal existence of the nonconforming structure or use.
8. A person or entity desiring to establish the existence of a nonconforming structure or use shall submit an application to the Zoning Administrator that includes an application form, a fee (if required), and the following information:
 - a. The nature, extent, and location of the nonconforming structure or use;
 - b. The date of the establishment of the nonconforming structure or use;

- c. Any and all evidence, including witness testimony, affidavits, correspondence, declarations, historical documents and records, maps, and official permits or licenses, that establishes:
 - i. The nonconforming structure or use was originally established in conformance with the governing law in place at the time of establishment or was otherwise approved, in writing, by the city;
 - ii. The nonconforming structure or use has continuously and legally existed from its establishment to the present and there have been no circumstances that would result in a presumption of abandonment;
 - iii. The nonconforming structure or use has not been expanded or extended except as permitted under the governing law in place at the time of expansion or extension.
9. Within a reasonable time after receiving an application for a nonconforming structure or use, the Zoning Administrator shall issue either a certificate of nonconformity approving the application or a written decision rejecting the application.
10. No evidence or witnesses not included or listed in the application filed with the Zoning Administrator may be presented by an applicant upon appeal.

SECTION 4: AMENDMENT “3-204 Discontinue or Abandonment” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-204

3-204 Reconstruction of Nonconforming Structures ~~Discontinue or Abandonment~~

~~A nonconforming building or structure or portion thereof or a lot occupied by a nonconforming use which is, or which hereafter becomes, abandoned, or which is discontinued for a continuous period of fifteen months or more, shall not thereafter be occupied, except by a use which conforms to the restrictions of the zone in which it is located.~~

A nonconforming structure or a structure containing a nonconforming use that is involuntarily destroyed in whole or in part due to fire or other calamity may be reconstructed or restored if:

5. The structure or use has not been abandoned;
6. All egress or emergency escape windows within bedrooms in the reconstructed or restored structure comply with current governing law to the extent possible;
7. Such reconstruction or restoration is completed within one year from the date of destruction; and
8. Such reconstruction or restoration does not extend or expand the structure or the use beyond that which lawfully existed at the time the structure was destroyed.

SECTION 5: AMENDMENT “3-205 Change To A Conforming Use” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-205

3-205 Termination of Nonconforming Structures ~~Change To a Conforming Use~~

~~Any nonconforming building or use which has been changed to a conforming building or use shall not thereafter be changed back to a nonconforming use.~~

A nonconforming structure shall not be reconstructed or restored, and a nonconforming use of a structure shall be terminated if:

3. The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after the day on which written notice is served to the property owner that the structure is uninhabitable and that the nonconforming structure or use will be lost if the structure is not repaired or restored within six months; or
4. The property owner voluntarily demolishes a majority of the nonconforming structure or the structure that contains the nonconforming use without prior written agreement with the city regarding the extension of the nonconforming structure or use.

SECTION 6: AMENDMENT “3-206 Change to Another Nonconforming Use Prohibited” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-206

3-206 Termination of Nonconforming Use ~~Change to Another Nonconforming Use Prohibited~~

~~A nonconforming use of a building or lot shall not be changed to any other nonconforming use. Changes in use shall be made only to a conforming use.~~

A nonconforming use may be terminated by written notice to the property owner if

3. The nonconforming use is abandoned; or
4. The city council adopts a resolution terminating a specific nonconforming use and providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of their investment in the nonconforming use, if any.

SECTION 7: AMENDMENT “3-207 Reclassification Of Territory” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-207

3-207 Abandonment of Use ~~Reclassification Of Territory~~

~~The provisions pertaining to nonconforming uses of land and buildings shall also apply to land and buildings which hereafter become nonconforming due to an amendment in the Development Code or the Official Zoning Map.~~

4. Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
5. Abandonment may be presumed to have occurred if:
 - a. a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the city regarding an extension of the nonconforming use;
 - b. the use has been discontinued for a minimum of one year; or
 - c. the primary structure associated with the nonconforming use remains vacant for a period of one year.
6. The property owner may rebut the presumption of abandonment and has the burden of establishing that any claimed abandonment has not occurred.

SECTION 8: AMENDMENT “3-208 Nonconforming Lots of Record, Dwelling Permitted - Conditions” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-208

3-208 Change in Structure of Use ~~Nonconforming Lots of Record, Dwelling Permitted - Conditions~~

- ~~1. No building permit shall be issued for the construction of a dwelling which is to be located on a lot or parcel outside of an approved subdivision unless such lot or parcel meets the standards set forth in this subsection (3):~~
 - ~~1. The street or streets on which the lot or parcel fronts shall have a minimum width of 56 feet or such greater width as necessary to meet the minimum standards established in Section 5B8-105 of this Code and the Highland City General Plan for roads designated as arterial and collector roads. The owner of the lot or parcel shall dedicate to the city such portion of the lot or parcel necessary for the road or roads to meet the width required by this paragraph.~~
 - ~~2. The street or streets on which the lot or parcel fronts shall be fully improved to city specifications. Such improvements shall include:~~
 - ~~1. All utilities extended the full width of the lot or parcel, including sewer, if available;~~
 - ~~2. A minimum pavement width of 34 feet in the street or streets fronting the lot or parcel, and, if curb and gutter is installed, such greater width as is necessary for the pavement to abut the curb and gutter, unless construction is postponed pursuant to subsection (2) below;~~
 - ~~3. Curb and gutter, unless installation is postponed pursuant to section (2) below; and~~
 - ~~4. Sidewalk unless waived by the planning commission and city council, provided, however, the sidewalk requirement shall not be waived on any~~

- ~~street for which sidewalks are required by Subsection 5-9-104 of this Code, or unless installation is postponed pursuant to subsection (2) below; and~~
- ~~3. Sewer connection fee for the dwelling has been paid or a percolation test has been approved according to Section 3-608.~~
 - ~~4. All drainage sumps, fire hydrants, safety devices, and other improvements deemed necessary by the city engineer for safety, sanitation, flood control, and similar reasons have been completed.~~
 - ~~5. The engineering fee required by the city's current fee resolution has been paid.~~
 - ~~6. If the lot or parcel is in the R-1-40, R-1-20 or A-1 zones, placement of the dwelling shall conform to the front and rear set back distances as established by Sections 3-4104, 3-4204 and 3-4404 of this Code. In the case of a lot of record created before July 1, 1977, which has a frontage of less than 100 feet, the building inspector may reduce the side set back distance to not less than 10 feet on either side with the total distance of the two side set backs not less than 24 feet.~~
 - ~~7. All water rights have been transferred to the city and irrigation water piping installed as required by Section 5-123 of this Code.~~
- ~~2. If the zoning administrator, after consulting with the city engineer, determines that it will be in the best interest of the city to postpone installation of curb and gutter, sidewalk, an irrigation water conveyance system or other improvements required under Section 3-208(1)(b), until a future time, the applicant for the building permit shall execute and deliver to the city a written agreement to install such improvements within 120 days after written demand by the City that such improvements be installed. The agreement shall be secured by a cash bond, irrevocable letter of credit or other guarantee approved by the city council. All guarantees shall be in such form as may be approved from time to time by the city council.~~
 - ~~3. An applicant for a building permit may, in lieu of installing the improvements required by subsection (1) above prior to obtaining a building permit, include such improvements in his construction plans and sign an agreement with the City to install such improvements. If the applicant signs an agreement pursuant to this subsection, the Zoning Administrator shall require, prior to issuance of the building permit that the applicant post with the city a guarantee of performance. The purpose of the guarantee shall be to assure that all improvements required by this section, unless installation is postponed pursuant to subsection (2), will be completed to City standards and specifications. All performance guarantees will be in an amount determined to be adequate by the Zoning Administrator to protect the interest of the City, but the amount thereof shall be no greater than \$10.00 per front foot of the lot or parcel for which the building permit is sought. All guarantees shall be in such form as may be approved from time to time by the City Council.~~

~~(Amended 8/21/07)~~

3. Any nonconforming structure or use which has been changed to a conforming structure or use shall not thereafter be changed back to a nonconforming structure or use.
4. A nonconforming use of a structure or property shall not be changed to any other nonconforming use. Changes in use shall be made only to a conforming use.

SECTION 09: ADOPTION “3-209 Nonconforming Lots of Record” of the Highland Development Code is hereby *adopted* as follows:

Adoption Section 3-209

3-209 Nonconforming Lots of Record

4. It is hereby declared city policy that each lot or parcel which is or is proposed to be occupied or developed for residential, commercial, or industrial uses be served by all improvements required for the proposed use under current governing law. Such improvements shall include streets, curb, sidewalk, gutter, culinary water facilities and rights, irrigation water facilities and rights, sewer, drainage, and all other utilities, safety devices, and improvements serving the lot that are required by this Code for new zoning lots or subdivisions.
5. Development of a nonconforming lot of record shall comply with current governing law for its land use designation, provided that if the nonconforming lot is in the R-1-40, R-1-20 or A-1 zones, placement of the dwelling shall conform to the front and rear set back distances as established by Sections 3-4104, 3-4204 and 3-4404 of this Code, and in the case of a lot of record created before July 1, 1977, which has a frontage of less than 100 feet, the building inspector may reduce the side set back distance to not less than 10 feet on either side with the total distance of the two side set backs not less than 24 feet.
6. No building permit or other authorization shall be issued for a nonconforming lot authorizing any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that increases the impact on public facilities unless all improvements required by this Code are completed for the nonconforming lot or the lot is otherwise made to conform as a zoning lot. Such changes include:
 - a. The construction of a new dwelling unit, if no dwelling units currently exist on the lot;
 - b. The construction of additional dwelling units; and
 - c. The development of new or expanded commercial or industrial uses or structures.

SECTION 10: AMENDMENT “3-209 Existing Planning Residential Development” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-209

3-20910 Existing Planning Residential Development

SECTION 11: AMENDMENT “3-210 Nonconforming Building Setbacks – Cottages on the Green Planned Unit Development” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-210

3-21011 Nonconforming Building Setbacks – Cottages on the Green Planned Unit Development

SECTION 12: AMENDMENT “3-615 All Lots Shall be On Record at the County Recorder’s Office” of the Highland Development Code is hereby *amended* as follows:

Amended Section 3-615

3-615 Building Permit Bond ~~All Lots Shall be On Record at the County Recorder’s Office~~

- ~~1. No building permit shall be issued for the construction of a dwelling or commercial or industrial structure which is to be located on a lot or parcel outside of an approved subdivision or large-scale development, the plat of which is recorded at the county recorder's office; except that a permit is for a nonconforming lot of record as defined in section 3-208.~~
2. The Building Inspector shall require, prior to issuance of the building permit, that the applicant post with the City a Bond for the protection of the cities offsite improvements. Said bond will be released after occupancy and an inspection has been conducted to insure that no damage is evident in the improvements.

SECTION 13: AMENDMENT “10-102 Definitions” of the Highland Development Code is hereby *amended* as follows:

Amended Section 10-102

10-102 Definitions

41. **Lot of Record.** A parcel of land which is shown as a separate and independent parcel on the records of ~~the plat records filed with~~ the county recorder. ~~Also a portion of a larger parcel of land for which a notice of interest has been filed with the county recorder indicating that said portion is in the process of being sold under contract.~~
42. **Lot, Zoning.** A lot of record ~~parcel of land~~ which:
 - a. Complies with all existing area, frontage, width, setback, and supplementary requirements of the zone in which it is located, and
 - b. Has frontage on a City street, which street has been improved in accordance with City standards and is in use by the public, and
 - c. Is shown as a separate lot in an approved subdivision plat which has been approved in accordance with the applicable ordinances, or which is exempted from compliance with said ordinances.
45. **Nonconforming Structure.** A structure, or portion thereof, which legally existed before its current **zoning land use** designation and, because of subsequent ~~zoning~~ changes **to governing law**, does not conform with the ~~zoning regulations, setback, height restrictions, or other regulations~~ **zoning, setback, height, size, material, access, or other regulations and restrictions** that govern the structure.
46. **Nonconforming Use.** A use of land that legally existed before its current ~~zoning land use~~ designation, has been maintained continuously since the time ~~the zoning regulation~~ **governing law regulating** the land changed, and because of

subsequent ~~zoning~~ changes to governing law, does not conform with the ~~zoning~~ regulations that now govern the land.

47. **Nonconforming Lot of Record.** A lot of record that was legally created and, because of subsequent changes to governing law, does not conform as a zoning lot under its current land use designation. ~~A parcel of land which does not conform to the area, frontage, or width requirements of the zone classification in which said parcel is now situated but which was legally created as a conforming lot of record prior to the effective date of the new controlling provision.~~

SECTION 14: AMENDMENT “11-102 Buildings To Be On Zoning Lot” of the Highland Development Code is hereby *amended* as follows:

Amended Section 11-102

11-102 Buildings To Be On Zoning Lot or Nonconforming Lot of Record

No building permit authorizing the use of land or the construction or alteration or moving of a building or structure on a lot shall be issued, unless the parcel of land upon which the use is to be conducted or the building constructed, altered or moved shall qualify as a zoning lot **or nonconforming lot of record** as defined in this Code.

SECTION 15: That the Mayor, the City Administrator, the City Recorder and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

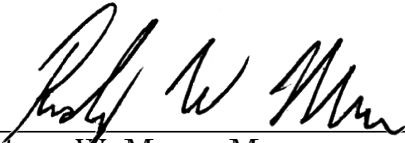
SECTION 16: REPEALER CLAUSE All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 17: SEVERABILITY CLAUSE Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 18: EFFECTIVE DATE This Ordinance shall be in full force and effect from September 15, 2020, or after the required approval and publication according to law, whichever is later.

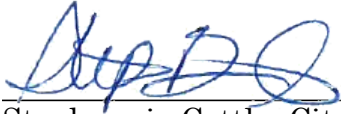
PASSED AND ADOPTED by the Highland City Council, September 15, 2020

HIGHLAND CITY, UTAH



Rodney W. Mann, Mayor

ATTEST:



Stephannie Cottle, City Recorder



COUNCILMEMBER	YES	NO
Timothy A. Ball	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brittney P. Bills	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kurt Ostler	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kim Rodela	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott L. Smith	<input checked="" type="checkbox"/>	<input type="checkbox"/>