

**20.20.561 Nonconforming Uses, Structures, and Sites****A. Applicability.**

1. General Applicability. Except as provided below, this section applies to nonconforming uses, nonconforming structures, and nonconforming sites located within any Land Use District established under LUC 20.10.020.
2. Exceptions.
  - a. Critical Areas Overlay District. If there is a conflict between the requirements of this section and the requirements contained in Part 20.25H LUC, then the requirements of Part 20.25H LUC shall control. If there is no such conflict, then the requirements of this section apply within the Critical Area Overlay District established under Part 20.25H LUC.
  - b. Shoreline Overlay District. The provisions of this section do not apply to uses, structures, or sites nonconforming to the requirements of Part 20.25E LUC. Refer to LUC 20.25E.040 and 20.25E.065.I for the requirements for such nonconforming uses, structures, and sites.
  - c. Existing Athletic Club and Accessory Hotel Uses in East Main Transit Oriented Development Land Use Districts. The provisions of this section shall not apply to existing athletic club and accessory hotel uses, as defined in LUC 20.25Q.040, located within any East Main Transit Oriented Development Land Use District.
  - d. Redevelopment of Existing Buildings. The requirements of this section shall apply to the redevelopment of existing buildings under LUC 20.20.727 only as provided in LUC 20.20.727.
  - e. Medical Institution District. The requirements of this section shall apply as normal in the MI land use district except as otherwise provided in LUC 20.25J.030 or LUC 20.25J.060.
  - f. BelRed Land Use Districts. The provisions of this section do not apply to uses, structures, or sites located within a BelRed Land Use District established under LUC 20.10.020 and described in LUC 20.10.375. Refer to LUC 20.25D.060 for the requirements for such nonconforming uses, structures, and sites.

**B. Documentation.**

The applicant shall submit documentation which shows that the nonconforming use, nonconforming structure, or nonconforming site was permitted when established and has been maintained over time. The Director shall determine based on subsections B.1

and B.2 of this section whether the documentation is adequate to support a determination that the use, structure, or site constitute a nonconforming use, nonconforming structure, or nonconforming site under the terms of this section. The Director may waive the requirement for documentation when a nonconforming use, nonconforming structure, or nonconforming site has previously been clearly established.

1. Use, Structure, or Site Permitted when Established. Documentation that the use, structure, or site was permitted when established includes, but is not limited to, the following:
    - a. Building, land use, or other development permits; and
    - b. Land Use Codes or Land Use District Maps.
  2. Use, Structure, or Site Maintained Over Time. Documentation that the use, structure, or site was maintained over time, and not discontinued or destroyed as described in this section. Documentation may include, but is not limited to, the following:
    - a. Utility bills;
    - b. Income tax records;
    - c. Business licenses;
    - d. Listings in telephone or business directories;
    - e. Advertisements in dated publications;
    - f. Building, land use or other development permits;
    - g. Insurance policies;
    - h. Leases; and
    - i. Dated aerial photos.
- C. Regulations Applicable to All Nonconforming Uses, Nonconforming Structures, and Nonconforming Sites.
1. Ownership. The status of a nonconforming use, nonconforming structure, or nonconforming site is not affected by changes in ownership.
  2. Maintenance and Repair. Routine maintenance and routine repair associated with a nonconforming use, nonconforming structure, or nonconforming site is allowed.

- a. "Routine maintenance" includes those usual acts to prevent decline, lapse, or cessation from a lawfully established condition. Routine maintenance includes, but is not limited to, alterations necessary to keep moisture or wind from entering or damaging a building. Routine maintenance does not increase the gross floor area of any building or increase the conditions that render the use, structure, or site nonconforming. Routine maintenance must conform to applicable development regulations.
- b. "Routine repair" includes like-for-like restoration to a state comparable to its original condition within a reasonable period after decay has occurred. Routine repair includes, but is not limited to, the like-for-like replacement of windows, doors, roofing, or exterior cladding that have decayed and are near the end of their functional life. Routine repair does not increase the gross floor area of any building or increase the conditions that render the use, structure, or site nonconforming. Routine repair must conform to applicable development regulations.

#### D. Regulations Applicable to Nonconforming Uses.

##### 1. Operations.

- a. Nonconforming uses may continue to operate, subject to the provisions of this subsection D.
- b. Nonconforming Uses – Hours of Operation. The hours of operation associated with a nonconforming use located in a land use district subject to this section that permits residential uses may only extend into the period of 9:00 p.m. to 6:00 a.m. subject to Administrative Conditional Use approval. Nonconforming uses which on INSERT EFFECTIVE DATE, already operated between these hours may continue without such approval, as long as the hours of operation between 9:00 p.m. and 6:00 a.m. are not expanded.

##### 2. Expansions. Nonconforming uses may expand under certain circumstances as described in this subsection:

- a. Expansions of Nonconforming Structures. If a nonconforming structure containing a nonconforming use is expanded in accordance with the requirements of this section, then the nonconforming use may expand in conjunction with, and in proportion to, the expansion of the nonconforming structure.
- b. Expansions of Nonconforming Sites. If a nonconforming site containing a nonconforming use is expanded in accordance with the requirements of this section, then the nonconforming use may expand in conjunction with, and in proportion to, the expansion of the nonconforming site.

- c. Limitation on Expansion. No expansion of hazards. No expansion in operations shall be permitted that increases the use or onsite quantity of flammable or hazardous constituents (e.g., compressed gases, industrial liquids, etc.), or that increases the amount of waste generated or stored that is subject to the Washington Hazardous Waste Management Regulations, RCW 70.105.210, as currently adopted or subsequently amended or superseded. The Director may, in consultation with the Fire Marshal, modify the requirements of this subsection if the Director determines that the expansion will not increase the threat to human health and the environment over the pre-expansion condition.

### 3. Loss of Nonconforming Use Status.

#### a. Discontinuance.

- i. If a nonconforming use is discontinued for a period of 12 months with the intention of abandoning that use, any subsequent use shall thereafter conform to the regulations of the land use district in which it is located. Discontinuance of a nonconforming use for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
- ii. If a nonconforming use is discontinued due to new development on the site on which the nonconforming use previously operated, then the right to continue operation of the nonconforming use no longer applies and the nonconforming use may not be re-established.

- b. Unanticipated Damage or Destruction. When a structure containing a nonconforming use is damaged or destroyed by fire or other causes beyond the control of the owner, the nonconforming use may be re-established in the same location within three years of the date that the damage or destruction occurred. When re-establishing a nonconforming use under this subsection, the nonconforming use may not be expanded. The structure may be repaired or reconstructed in accordance with applicable City Codes.

- c. Relinquishment. A nonconforming use is relinquished when the nonconforming use is replaced with a permitted or conditional use. Upon relinquishment, the right to continue operation of a nonconforming use no longer applies and the nonconforming use may not be re-established.

### E. Regulations Applicable to Nonconforming Structures and Nonconforming Sites.

#### 1. Right to Remain.

- a. Nonconforming structures may remain unless specifically limited by the terms of subsection E of this section.

- b. Nonconforming sites may remain unless specifically limited by the terms of subsection E of this section.

## 2. Permitted Alterations.

- a. If the following requirements are satisfied, then alterations may be made to a nonconforming structure, a nonconforming site, or to both a nonconforming structure and nonconforming site:

- i. The alterations conform to applicable development regulations; and
- ii. If required under subsection E.3 of this section, improvements are made that satisfy the proportional compliance requirements contained in subsection E.3 of this section.

- b. The following do not constitute an “alteration” for the purposes of subsection E of this section:

- i. If the project consists of multiple phases, as shown on a Master Development Plan submitted under Chapter 20.30V LUC, then the transfer of Floor Area Ratio (FAR) from one phase to another phase in amount that does not exceed 50% of the total FAR available in the sending phase.

(1).Exception: If unlimited FAR is available to all phases of the project, then the transfer of FAR in any amount between phases of the project does not constitute an “alteration” for the purposes of subsection E of this section.

- ii. “Routine maintenance” within the meaning provided in subsection C of this section;

- iii. “Routine repair” within the meaning provided in subsection C of this section.

- iv. The reconfiguration of existing parking lots within the existing hard surface area so long as the following requirements are met:

(1). The reconfiguration maintains a parking supply that conforms to all applicable parking requirements under this code; and

(2). The area of the existing parking lot containing hard surface does not increase.

- v. New development consisting of a single phase, so long as the following requirements are met:
  - (1). If the new development occurs on a nonconforming site, then the nonconforming site shall be brought into compliance with all applicable development regulations.
  - (2). All structures shall conform to all applicable development regulations.
- vi. In projects consisting of multiple phases, as shown on a Master Development Plan submitted under Chapter 20.30V LUC, any individual phase with a project limit that exclusively contains new development so long as the following requirements are met:
  - (1). If the new development occurs, wholly or partially, on a nonconforming site, then the portion of the nonconforming site within the project limit of the phase exclusively containing new development shall be brought into compliance with all applicable development regulations as part of the new development occurring in that phase.
  - (2). All structures within the project limit of the phase exclusively containing new development shall conform to all applicable development regulations.

### 3. Proportional Compliance.

- a. General Procedure. The following procedure shall be used to determine what improvements shall be required to be made in conjunction with alterations to a nonconforming structure, a nonconforming site, or to both a nonconforming structure and a nonconforming site:
  - i. Calculate the value of alterations in accordance with subsection E.3.b of this section.
  - ii. Determine if the value of alterations exceeds the threshold triggering required improvements under subsection E.3.c of this section.
    - (1). If yes, then proceed to subsection E.3.a.iii of this section.
    - (2). If no, then proportional compliance is not required.
  - iii. Determine the value of required improvements under subsection E.3.d of this section.
  - iv. Identify the list of required improvements for the applicable land use district contained in subsection E.3.e of this section.

- v. Construct the required improvements on the applicable list in the order provided in subsection E.3.f of this section, as may be modified, up to the value of required improvements.

b. Value of Alterations.

- i. Projects consisting of a single phase. This subsection applies to projects consisting of a single phase.
  - (1) Alterations made within the preceding three-years will be viewed as a single alteration for the purpose of determining the value of alterations.
  - (2) The value of alterations shall be determined based on all proposed alterations, except for those alterations listed in subsection 3.b.iii of this section, and not individual permits.
  - (3) The applicant shall use a construction cost estimator acceptable to the Director to estimate the value of alterations in accordance with subsection 3.b.i of this section.
  - (4) The applicant shall submit the estimate to the Director for approval. If the estimate, and the methodology used to produce the estimate, conform to the applicable requirements of this section, then the Director shall approve the estimate and accept it as the value of alterations for the development.
- ii. Projects consisting of multiple phases. This subsection applies to individual phases within a project consisting of multiple phases, as shown on a Master Development Plan submitted under Chapter 20.30V LUC, that have a project limit that either contains a nonconforming structure or is located, wholly or partially, on a nonconforming site.
  - (1) For each individual phase, alterations made within the project limit of that phase within the preceding three-years will be viewed as a single alteration for the purpose of determining the value of alterations.
  - (2) For each individual phase, the value of alterations shall be determined for that phase by the Director based on all proposed alterations within the project limit of that phase, except for those alterations listed in subsection 3.b.iii of this section, and not individual permits.
  - (3) The applicant shall use a construction cost estimator acceptable to the Director to estimate the value of alterations within the project limit for each individual phase in accordance with subsection 3.b.ii of this section.

- (4) The applicant shall submit the estimates for each individual phase to the Director for approval. If the estimate for a particular phase, and the methodology used to produce that estimate, conform to the applicable requirements of this section, then the Director shall approve the estimate for that phase and accept it as the value of alterations for that particular phase.
  - iii. The following alterations shall be excluded when calculating the value of alterations:
    - (1) Alterations required as a result of a fire prevention inspection;
    - (2) Alterations related to the removal of architectural barriers as required by the Americans with Disabilities Act, or the Washington State Building Code (Chapter 19.27 RCW);
    - (3) Alterations required for the seismic retrofit of existing structures; and
    - (4) Alterations required for onsite stormwater management facilities under Chapter 24.06 BCC.
- c. Threshold Triggering Required Improvements.
  - i. General: The standards of this subsection shall be met when the value of alterations to a nonconforming structure, a nonconforming site, or to both a nonconforming structure and nonconforming site exceed the threshold established in LUC 20.25D.060.G.3.a, as may be, or has previously been, administratively adjusted.
  - ii. Exception:
    - (1). In the LL-1, LL-2, SR-1, SR-2, SR-3, SR-4, and LDR-1 land use districts, the standards of this subsection shall be met when the value of alterations to a nonconforming structure, a nonconforming site, or to both a nonconforming structure and nonconforming site exceed the replacement value of all primary structures located on the site.
- d. Value of Required Improvements.
  - i. General: The value of required improvements shall be equal to 20 percent of the value of alterations calculated under subsection E.3.b of this section.
  - ii. Exceptions:

- (1). If all of the improvements that would otherwise be required under subsection E.3.f of this section have been constructed in a manner that complies with all currently applicable development regulations, then the value of required improvements shall be equal to the minimum amount necessary to bring the nonconforming structure or nonconforming site into full compliance with this Code.
- (2). In the LL-1, LL-2, SR-1, SR-2, SR-3, SR-4, and LDR-1 land use districts, the value of required improvements shall be equal to the minimum amount necessary to bring the nonconforming structure or nonconforming site into full compliance with this Code.

e. Required Improvements.

- i. If the value of alterations exceeds the applicable threshold specified in subsection E.3.c of this section, then improvements shall be constructed.
- ii. What improvements are required depends on the land use district in which the nonconforming structure or nonconforming site is located.
  - (1). In the LL-1, LL-2, SR-1, SR-2, SR-3, SR-4, and LDR-1 land use districts, improvements are required to the extent necessary to bring the nonconforming structure or nonconforming site into full compliance with this Code.
  - (2). Required improvements for each other land use district are listed in subsection E.3.f of this section.
- iii. If improvements are required to be constructed under subsection E.3.e in a land use district other than the LL-1, LL-2, SR-1, SR-2, SR-3, and LDR-1 land use districts, then they shall be constructed in the order provided in subsection 3.f of this section up to the value of required improvements calculated in subsection E.3.d of this section. The Director may approve a change in priority order for a specific development. The Director may only approve such a change when the applicant can demonstrate that the change in priority order is needed for one or more of the following reasons:
  - (1) A change in priority order is necessary due to the value of required improvements specified under subsection E.3.d of this section is insufficient to construct the site improvement that would be required under the normal order of priority due to the existence of a unique site condition;

- (2) A change in priority order would allow a site improvement to be constructed that would close a gap in existing improvements, such as, but not limited to, a gap in an access corridor or frontage path; or
    - (3) A change in priority order would allow the construction of a complete site improvement, rather than a partial site improvement, such as, but not limited to, a complete access corridor or frontage path.
  - iv. If the development both consists of multiple phases, as shown on a Master Development Plan submitted under Chapter 20.30V LUC, and the alteration occurs entirely within the project limit of only one phase, then no improvements shall be required by operation of this section within the project limit of any other phase.
  - v. If all of the improvements that would otherwise be required under subsection E.3.f of this section have been constructed in a manner that complies with all currently applicable development regulations, then the nonconforming structure or nonconforming site shall be brought into full compliance with this Code.
- f. Required Improvements by Land Use District Established Under LUC 20.10.020:
  - i. LDR-2, LDR-3, MDR-1, and MDR-2 Land Use Districts (Part 20.20 LUC):
    - (1). Compliance with the tree retention and replacement requirements contained in LUC 20.20.900. For the sole purpose of applying this subsection, the alteration shall constitute “development activity” under LUC 20.20.900 for the purposes of applying the tree retention and replacement requirements.
    - (2). If required for the site, then Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520.
    - (3). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and all applicable dimensional requirements, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 all applicable dimensional requirements.
    - (4). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.
  - ii. Downtown Land Use Districts (Part 20.25A LUC):

- (1). If required for the site under LUC 20.25A.175, then construction of the Grand Connection in a manner that meets the applicable requirements of LUC 20.25A.175.
- (2). If required for the site under LUC 20.25A.090, then the construction of walkways and sidewalks meeting the applicable requirements of LUC 20.25A.090.
- (3). If required for the site under LUC 20.25A.160, then the construction of through-block connections meeting the applicable requirements of LUC 20.25A.160.
- (4). If the site is located on an "A" Rights-of-Way under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.B.1 and LUC 20.25A.180.
- (5). If the site is located on a "B" Rights-of-Way under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.B.2 and LUC 20.25A.180.
- (6). If the site is located on a "C" Rights-of-Way under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.B.3 and LUC 20.25A.180.
- (7). If the site is located on a "D" Rights-of-Way under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.B.4 and LUC 20.25A.180.
- (8). If the site is located on an "E" Rights-of-Way under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.B.5 and LUC 20.25A.180.
- (9). If the site is located on an alley with addresses under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.C and LUC 20.25A.180.
- (10). If required for the site under LUC 20.25A.175, then construction of major public open space meeting the applicable requirements of LUC 20.25A.175.

- (11). If required for the site under LUC 20.25A.075, then outdoor plaza space meeting the applicable requirements of LUC 20.25A.075.
- (12). If required for the site, then construction of a new gateway meeting the applicable requirements of LUC 20.25A.150.
- (13). If the site contains second-level active uses under LUC 20.25A.170, then construction or installation of improvements necessary to meet the applicable requirements of LUC 20.25A.170.D.
- (14). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.25A.110 and LUC 20.25A.120.
- (15). If the site contains any existing fences, then removal or modification of the existing fences as necessary to meet the applicable requirements of LUC 20.25A.110.D.

iii. Factoria 1 Land Use District (Part 20.25F1 LUC):

- (1). If the site is adjoining SE 38th Street, then construct a second mid-block pedestrian connection across SE 38th Street in accordance with LUC 20.25F1.060 and LUC 20.25F1.110.
- (2). If the site is adjoining SE 41st Place, then construct a mid-block pedestrian connection across SE 41st Place in accordance with LUC 20.25F1.060 and LUC 20.25F1.110.
- (3). If the site is adjoining the intersection of 127th Avenue SE and SE 40th Street or the intersection of 125th Avenue SE and SE 40th Street, then construct a major gathering place in the vicinity of that intersection in accordance with LUC 20.25F1.090 and LUC 20.25F1.110.
- (4). If the site is adjoining the mid-block pedestrian connection across 124th Ave SE providing connection to the Factoria Trail, then construction of pedestrian path to continue the Factoria Trail into the F1 Land Use District in accordance with LUC 20.25F1.070 and LUC 20.25F1.110.
- (5). If the site is adjoining an on-site street depicted in LUC 20.25F1.015, then construct weather protection in accordance with LUC 20.25F1.115.D.
- (6). If the site is adjoining the intersection of Factoria Boulevard and SE 38th Street, SE 40th Street, or SE 41st Place, then construct a new gateway at the intersection(s) adjoining the project limit in accordance with LUC 20.25F1.080 and LUC 20.25F1.110.

- (7). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25F1.050.
  - (8). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and LUC 20.25F1.040, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 and LUC 20.25F1.040.
  - (9). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.
- v. Community Mixed-Use Design Districts (Part 20.25I LUC):
- (1). If required for the site under LUC 20.25I.050.A, then pedestrian-oriented frontage meeting the requirements of LUC 20.25I.050.
  - (2). If required for the site under LUC 20.25I.050.B, then transparency for the first story of any building fronting a public right-of-way meeting the requirements of LUC 20.25I.050.
  - (3). If required for the site under LUC 20.25I.050.B, then transparency and weather protection for publicly accessible entrances fronting a public right-of-way meeting the requirements of LUC 20.25I.050.
  - (4). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25I.050.C.
  - (5). If parking structures or surface parking are located on the site, then compliance with the applicable requirements of LUC 20.25I.050.C.
  - (6). If required for the site under LUC 20.25I.070, then compliance with transition standards under LUC 20.25I.070.
  - (7). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and LUC 20.20.010, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 and LUC 20.20.010.
  - (8). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.
- vi. The MI Land Use District (Part 20.25J LUC):
- (1). If the site is adjoining the Eastrail Corridor, then construction of a pedestrian and bicycle connection from the site to Eastrail in a manner

that meets the requirements of LUC 20.25J.080 and all other applicable city standards for pedestrian and bicycle connections.

- (2). If the site is adjoining NE 8th Street, NE 12th Street, NE 10th Street, or 116th Avenue NE, then construction of sidewalks meeting the requirements of LUC 20.25J.070.A and all other applicable city standards for sidewalks.
- (3). If the site is adjoining NE 8th Street, NE 12th Street, NE 10th Street, or 116th Avenue NE, then installation of street trees and plantings in a manner that meets the requirements of LUC 20.25J.070.A.
- (4). If the site is adjoining the intersections of 116th Ave NE and NE 8th Street, NE 10th Street, or NE 12th Street, then construct a new gateway at the intersection(s) adjoining the project limit in accordance with LUC 20.25J.070.B and LUC 20.25J.080.
- (5). If the site is adjoining a transit facility, then construct weather protection and other pedestrian amenities meeting the requirements of LUC 20.25J.080.B and LUC 20.25J.080.C.
- (6). If the site contains or is adjoining a parking structure, then construct improvements to pedestrian connections between the parking structure and the principal use in a manner that meets the requirements of LUC 20.25J.050, improves pedestrian safety, and reduces conflict between motor vehicles and other means of transportation.
- (7). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25J.060.
- (8). If the site is located within DA2 or DA3, then improvements to any existing blank facades, as defined in LUC 20.25J.080.D, located on the perimeter of the MI land use district or on buildings that are highly visible from any public right-of-way in a manner that meets the requirements of LUC 20.25J.080.D.
- (9). If the site is located within DA2 or DA3, then construction of weather protection meeting the requirements of LUC 20.25J.080.D.
- (10). If the site is located within DA2 or DA3, then construct or improve ground floor building elements adjoining public right-of-way that meet the requirements of LUC 20.25J.080.D.
- (11). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.

vii. The OLB-OS Land Use District (Part 20.25L LUC):

- (1). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25L.040.
- (2). Removal of invasive or noxious species, as defined in LUC 20.20.900, from the open space required to be retained or developed under LUC 20.25L.010 in a manner that complies with all applicable requirements governing such removal.
- (3). Construct or improve weather protection at building entrances in a manner that meets the requirements of LUC 20.25L.040.
- (4). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and LUC 20.25L.030, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 and LUC 20.25L.030.
- (5). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.

viii. The CCC Land Use District (Part 20.25N LUC):

- (1). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25N.060.
- (2). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and all applicable dimensional requirements, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 all applicable dimensional requirements.
- (3). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.

ix. Eastgate Transit Oriented Development Land Use District (Part 20.25P LUC):

- (1). If required for the site under LUC 20.25P.090, then construction or improvement of sidewalks meeting the requirements of LUC 20.25P.090.B.
- (2). If required for the site under LUC 20.25P.085, then construction of ground floor wholesale, retail and services uses in building frontages in a manner that meets the requirements of LUC 20.25P.085.

- (3). If required for the site under LUC 20.25P.080.C, then construction of ground floor habitable space within existing parking structures in a manner that meets the requirements of LUC 20.25P.080.C.
  - (4). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25P.070.
  - (5) If the site is adjoining an A street or B street on the figure in LUC 20.25P.090.A.3, then installation of street trees and plantings in a manner that meets the requirements of LUC 20.25P.070.B.
  - (6). If the site contains any existing fences, then removal or modification of the existing fences as necessary to meet the requirements of LUC 20.25P.070.C.
  - (7). If the site is adjoining the Eastgate Park and Ride, then construction of a pedestrian access connection to the Eastgate Park and Ride meeting the requirements of LUC 20.25P.100.
  - (8). If the site is adjoining to a pre-existing pedestrian access connection to the Eastgate Park and Ride, then construction of an extension to the pre-existing connection to allow access from the site to the Eastgate Park and Ride in a manner that meets the requirements of LUC 20.25P.100.
  - (9). If the site is adjoining to a gateway location, as shown in the street diagram contained in LUC 20.25P.090.A.3, then construction of a new gateway at that location meeting the requirements of LUC 20.25P.100.
  - (10). Construction of weather protection meeting the requirements of LUC 20.25P.100.
  - (11). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and LUC 20.25P.060, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 and LUC 20.25P.060.
  - (11). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.
- x. East Main Transit Oriented Development Land Use Districts (Part 20.25Q LUC):
- (1). If required for the site under LUC 20.25Q.100, then construction or improvement of sidewalks in a manner that meets the requirements of LUC 20.25Q.100.A.

- (2). If required for the site under LUC 20.25Q.100, then construction of a pedestrian and bicycle route to connect 112<sup>th</sup> Avenue SE to 114<sup>th</sup> Avenue SE in a manner that meets the requirements of LUC 20.25Q.100.B.
- (3). If a building exists on the site, then the construction of a six-foot-wide walkway from the nearest public sidewalk or street right-of-way to the main building entrance, unless the Director determines the walkway is not needed to provide safe pedestrian access to the building. The Director may allow modification to the width of walkways so long as safe pedestrian access to the Building is still achieved.
- (4). If required for the site under LUC 20.25Q.080, then installation of street trees and landscaping in a manner meeting the requirements of LUC 20.25Q.080.A.
- (5). Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520 and LUC 20.25Q.080.B.
- (6). If the site contains any existing fences, then removal or modification of the existing fences as necessary to meet the requirements of LUC 20.25Q.080.C.
- (7). If required for the site under LUC 20.25Q.130.D, the construction of a new gateway in a manner that meets the requirements of LUC 20.25Q.130.D.
- (8). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.

xi. PO, LI, and GC Land Use Districts:

- (1). Compliance with the tree retention and replacement requirements contained in LUC 20.20.900. For the sole purpose of applying this subsection, the alteration shall constitute “development activity” under LUC 20.20.900 for the purposes of applying the tree retention and replacement requirements.
- (2). If required for the site, then Install or improve landscaping in a manner that meets the applicable requirements of LUC 20.20.520.
- (3). If the site contains impervious surface in an amount that exceeds what is allowed under LUC 20.20.460 and LUC 20.20.010, then removal of impervious surfaces in an amount that results in compliance with both LUC 20.20.460 and LUC 20.20.010.

- (4). If a critical area or critical area buffer exists, wholly or partially, on the site, then compliance with the requirements of Part 20.25H LUC.

xii. UC, MU-H, MU-M, and MUR-M Land Use Districts (Part 20.25R LUC):

- (1). If required for the site under LUC 20.25R.020.C, then non-motorized access to Eastrail meeting the requirements of LUC 20.25R.020.
- (2). If required for the site under LUC 20.25R.020.C, then emergency vehicle access to the Eastrail corridor meeting the requirements of LUC 20.25R.020.
- (3). If required for the site under LUC 20.25R.030.C, then major public open space meeting the requirements of LUC 20.25R.030.C.
- (4). If required for the site under LUC 20.25R.030.G., then frontage paths along the Eastrail corridor meeting the requirements of LUC 20.25R.030.G.
- (5). If required for the site under LUC 20.25R.020.B, then access, block, and circulation required under LUC 20.25R.020.B.
- (6). Landscaping meeting the requirements of LUC 20.25R.030.C and LUC 20.20.520.
- (7). If required for the site under LUC 20.25R.030.G, then active uses along the Eastrail corridor meeting the requirements of LUC 20.25R.030.G.
- (8). If required for the site under LUC 20.25R.030.G, then active uses along the Grand Connection meeting the requirements of LUC 20.25R.030.G.
- (9). If required for the site under LUC 20.25R.030.E, then weather protection meeting the requirements of LUC 20.25R.030.E.
- (10). If required for the site under LUC 20.25R.030.G, then a landscape buffer from the property line adjoining Interstate 405 meeting the requirements of LUC 20.25R.030.E.

4. Unanticipated Damage or Destruction of a Nonconforming Structure or a Nonconforming Site.

- a. When a nonconforming structure or a nonconforming site is damaged by fire or other causes beyond the control of the owner, the nonconforming structure or the nonconforming site may be repaired. Changes to the footprint or exterior proposed as part of the repair must conform to this code.
- b. When a nonconforming structure or a nonconforming site is destroyed by fire or other causes beyond the control of the owner, the nonconforming structure or the nonconforming site may be reconstructed in its original configuration. Changes to the footprint or exterior proposed as part of the reconstruction must conform to this code.

F. Relationship to Title 14 BCC

The requirements of this section operate independently from the requirements of Title 14 BCC. In relation to the same development, the operation of the requirements of this section may result in no required improvements while the operation of the requirements of Title 14 BCC may require improvements.

**Conformance Edits.**

*The following are edits to the Land Use Code necessary to provide consistency with the proposed consolidation of the City’s various nonconforming code provisions and LUC 20.20.561, as revised above.*

**LUC 20.20.070. Lots nonconforming as to area, street frontage, width or depth – Status.**

...

- D. Any nonconforming lot used for a building site must meet the nonconforming [site](#) provisions of ~~LUC 20.20.560~~[LUC 20.20.561](#), the building height requirements of subsection B of this section, and the applicable dimensional requirements of LUC 20.20.010 for the district in which it is located, unless a variance has been granted pursuant to Part 20.30G or 20.30H LUC or modification has been granted pursuant to LUC 20.25H.040.B.

...

**LUC 20.20.590 Parking, Circulation, and walkway requirements.**

...

**B. Applicability.**

- 1. Number of Parking Stalls. The requirements of this section for the number of parking stalls apply to each new use and to each new tenant, ~~except as provided~~

in ~~LUC 20.20.560.D~~ for changes to a nonconforming use. See Part 20.25A LUC for the number of required parking stalls in Downtown Districts.

...

**D. Required Review.**

The Director ~~of the Development Services Department~~ shall review the proposed parking, circulation and walkways and may approve the proposed structure, substantial remodel, site development, use or occupancy only if the requirements of this section are met, subject to the provisions of ~~LUC 20.20.560~~ LUC 20.20.561 for nonconforming uses, structures, and sites.

...

**LUC 20.20.560 Nonconforming uses, structures, and sites – General.**

*This section is deleted in its entirety.*

**LUC 20.20.727 Redevelopment of existing buildings.**

...

B. For development applications meeting all of the requirements of subsection A of this section, the normal requirements of this Code shall apply during the land use or building permit review required for the application except as such requirements are modified below by this subsection:

...

5. The following sections of the Land Use Code, now or as hereafter amended, do not apply:

...

c. ~~LUC 20.20.560~~ LUC 20.20.561 (Nonconforming structures, uses and sites);

...

7. Nonconforming Uses, Structures and Sites. Except in any BelRed Land Use District, any nonconforming use, nonconforming structure, or nonconforming site may continue when all of the requirements of subsection B.7.a of this section are met. However, once a final certificate of occupancy is issued, such nonconformities may continue only to the extent allowed by ~~LUC 20.20.560~~,

~~20.25A.040, or 20.25Q.040, whichever is applicable given the location of the development~~LUC 20.20.561.

...

**LUC 20.25A.040 Nonconforming uses, structures and sites.**

*This section is deleted in its entirety.*

**LUC 20.25D.060 Existing Conditions.**

...

C. Applicability.

...

2. The nonconforming provisions of LUC 20.20.070 and ~~20.20.560~~20.20.561 do not apply within the BelRed land use districts.

...

**LUC 20.25E.040 Nonconforming shoreline conditions.**

...

C. Applicability.

...

4. The nonconforming provisions of LUC 20.20.070 and ~~20.20.560~~20.20.561 do not apply within the Shoreline Overlay District.

...

**LUC 20.25E.065 Residential shoreline regulations.**

...

I. Nonconforming Residential Development.

...

2. Applicability.

...

- c. The nonconforming provisions of LUC 20.25E.040 do not apply to residential development located within the Shoreline Overlay District. The nonconforming

provisions of ~~LUC 20.20.560~~[LUC 20.20.561](#) apply only to General Development Requirements of Chapter 20.20 LUC that are applicable Citywide and are not part of the SMP.

...

**LUC 20.25N.020 Master Development Plan Review required.**

...

**B. Standards and Requirements.**

...

1. At a minimum, the MDP shall depict the following:

...

- ii. The proposed continuation of existing conditions, including uses and structures and their current locations, which are not permitted in a CCC District. ~~The nonconforming provisions of LUC 20.20.560 and/or the temporary use provisions of Part 20.30M LUC apply to these existing conditions.~~

...

**LUC 20.25J.030 Dimensional requirements.**

...

**Footnotes:**

...

(7) If the Medical Institution District property line is modified as a result of expansion associated with widening of I-405 and/or associated access ramps, the setback from I-405 and I-405 access ramps will continue to be measured from the property line established as of the effective date of the Master Development Plan that predated the freeway widening. Development complying with this Note is conforming as to the I-405 setback and is not subject to the nonconforming provisions of ~~LUC 20.20.560~~[LUC 20.20.561](#).

...

**LUC 20.25J.060 Landscape requirements.**

...

**Footnotes:**

...

(2) Required landscaping displaced as a result of expansion associated with widening of I-405 and/or associated access ramps is not subject to the nonconforming provisions of ~~LUC 20.20.560~~ LUC 20.20.561.

**LUC 20.25Q.040 ~~Nonconforming uses, structures, and sites and exceptions~~  
Expansions of existing athletic club and accessory hotel  
uses.**

~~A. Nonconforming Uses.~~

- ~~1. A Nonconforming Use may be continued by successive owners or tenants, except where the use has been abandoned. No change to a different use classification shall be made unless that change conforms to the regulations of this Code.~~
- ~~2. If a Nonconforming Use of a Structure or land is discontinued for a period of 12 months with the intention of abandoning that use, any subsequent use shall thereafter conform to the regulations of the Land Use district in which it is located. Discontinuance of a Nonconforming Use for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.~~
- ~~3. A Nonconforming Use may be expanded pursuant to an Administrative Conditional Use Permit.~~

~~B. Nonconforming Structures.~~

- ~~1. A Nonconforming Structure may be repaired or remodeled, provided there is no Expansion of the Building; and provided further, that the remodel or Repair shall not increase the existing Nonconforming condition of the Structure.~~
- ~~2. A Nonconforming Structure may be expanded; provided, that the Expansion conforms to the provisions of the Land Use Code, except that the requirements of LUC 20.25Q.130 through 20.25Q.160 shall be applied as described in subsections B.3 and B.4 of this section.~~
- ~~3. For Expansions made within any 3-year period, which together do not exceed 50 percent of the Gross Floor Area of the previously existing Structure, the following shall apply:
  - ~~a. Where the property abuts SE 6th Street, SE 8th Street, 114th Avenue SE, or 112th Avenue SE (south of SE 6th Street) the Expansion is not required to comply with LUC 20.25Q.130 through 20.25Q.160.~~~~

- ~~b. Where the property abuts Main Street or 112th Avenue SE (north of SE 6th Street) the Expansion shall be in the direction of Main Street or 112th Avenue SE (north of SE 6th Street) so as to reduce the nonconformity of the Structure, except that an Expansion, which is no greater than 300 square feet in floor area and which is for the purpose of loading or storage, is exempted from this requirement.~~
- ~~4. For Expansions made within any 3-year period, which together exceed 50 percent of the Gross Floor Area of the previously existing Structure, the Structure shall be brought into conformance with LUC 20.25Q.130 through 20.25Q.160.~~
- ~~5. If a Nonconforming Structure is destroyed by fire, explosion, or other unforeseen circumstances to the extent of 100 percent or less of its Replacement Value, it may be reconstructed consistent with its previous nonconformity; provided, that the reconstruction may not result in an Expansion of the Building, nor an increase in the preexisting Nonconforming condition of the Structure.~~

#### ~~C. Nonconforming Sites.~~

- ~~1. A Nonconforming Site may not be changed unless the change conforms to the requirements of this Code, except that parking Lots may be reconfigured within the existing paved surface, except that this subsection shall not be construed to allow any parking Lot reconfiguration that would result in a parking supply that does not conform to the minimum/maximum parking requirements for East Main, LUC 20.25Q.090.~~
- ~~2. A Structure located on a Nonconforming Site may be repaired or remodeled, provided there is no Expansion of the Building; and provided further, that the remodel or Repair shall not increase the existing Nonconforming condition of the Site.~~
- ~~3. For Expansions of a Structure or additions of new Structures on a Nonconforming Site made within any 3-year period, which together exceed 20 percent of the Replacement Value of the previously existing Structures on the Site:
  - ~~a. Easements for public Sidewalks shall be provided, unless the Director of the Department of Transportation determines such Easements are not needed; and~~
  - ~~b. A six-foot-wide Walkway shall be provided from the public Sidewalk or street right-of-way to the main Building entrance, unless the Director determines the Walkway is not needed to provide safe pedestrian access to the Building. The Director may allow modification to the width of Walkways so long as safe pedestrian access to the Building is still achieved.~~~~
- ~~4. Expansions of a Structure or additions of new Structures located on a Nonconforming Site, made within any 3-year period, which together do not exceed~~

~~50 percent of the previously existing Gross Floor Area, do not require any increase in conformance of the existing and unaffected portions of the Site with the Site Development regulations of this Code, except as otherwise provided in subsection B.3 of this section.~~

~~5. Expansion of a Structure or additions of new Structures located on a Nonconforming Site made within any 3-year period, which together exceeds 50 percent of the Gross Floor Area of the previously existing Structure, the Site shall conform to the Site Development regulations of this Code.~~

~~D. Exceptions for Existing Athletic Club and Accessory Hotel Use.~~

A1. Purpose. The purpose of this section is to allow Expansions of existing Athletic Club and accessory Hotel use without requiring certain East Main District-specific requirements, standards, and guidelines in this Part 20.25Q LUC.

2B. Definition. A Development shall be considered an existing Athletic Club and accessory Hotel use when meeting the following conditions:

a1. An existing Athletic Club and accessory Hotel use shall be legally established as an Athletic Club and accessory Hotel Development as of January 1, 2021, and shall not have been abandoned, discontinued, or destroyed for any period of 12 months or more. The status of an existing Athletic Club and accessory Hotel use is not affected by changes in ownership;

b2. The boundary and size of an existing Athletic Club and accessory Hotel use shall be the extent of the legally established Lot or Lots as of January 1, 2021, upon which the existing Athletic Club and accessory Hotel use is located. Any changes to the boundary and/or size of the Lot or Lots, through a Subdivision, Short Subdivision, or other means of land division, a Boundary Line Adjustment, definition of Project Limit, or any other adjustment or agreement shall not add to the size or Development capacity of the Lot or Lots for the existing Athletic Club and accessory Hotel use.

c3. An existing Athletic Club and accessory Hotel use has a primary use as an Athletic Club pursuant to LUC 20.50.010, with an Accessory or Secondary Hotel Use; and

d4. The applicant shall submit documentation which shows that the existing Athletic Club and accessory Hotel use was permitted when established and has been maintained over time. The Director shall determine whether the documentation is adequate to support a determination that the Development

constitute an existing Athletic Club and accessory Hotel use as defined in this subsection. The Director may waive the requirement for documentation when an existing Athletic Club and accessory Hotel use has been clearly established.

~~3C~~. Applicability. The provisions in this ~~subsection D~~section apply only to existing Athletic Club and accessory Hotel use as defined in subsection ~~D.2B~~ of this section.

~~4D~~. Applicable Regulations.

~~a1~~. ~~The Nonconforming provisions in subsection A, B, and C of this section~~LUC 20.20.561 shall not apply to existing Athletic Club and accessory Hotel use as defined in subsection ~~D.2B~~ of this section and when the applicant is proposing to utilize the provisions in this subsection;

~~b2~~. Routine maintenance and Repair associated with an existing Athletic Club and accessory Hotel use is allowed outright and shall not be required to meet requirements, standards, and guidelines in this Part 20.25Q LUC, but shall comply with all other applicable requirements of the LUC and other City Codes. "Routine maintenance" includes those usual acts to prevent decline, lapse, or cessation from a lawfully established condition. "Routine Repair" includes in-kind restoration to a state comparable to its original condition within a reasonable period after decay has occurred;

~~e3~~. An existing Athletic Club and accessory Hotel use may be expanded as follows:

~~ia~~. An existing Athletic Club and accessory Hotel use may be expanded with additional floor area consisting of Athletic Club use and Hotel as an accessory use, up to the base FAR for nonresidential allowed in this Code, Part 20.25Q LUC;

~~ib~~. Exterior improved areas associated with and supporting an existing Athletic Club and accessory Hotel use may be expanded into any unimproved land within the legally established Lot or Lots as defined in subsection ~~D.2.bB.2~~ of this section; and

~~ic~~. Expansions as provided in subsection ~~D.4.dB.4~~ of this section shall be exempt from all requirements and, standards in this Part 20.25Q LUC, except for:

~~i(1)~~ LUC 20.25Q.030, Review required;

~~ii(2)~~ LUC 20.25Q.060, Dimensional requirements, only for maximum Building Height, Tower Setback, and Tower Separation. An existing Athletic Club and accessory Hotel use may be built above the base Building Height up to the maximum Building Height, without participation in the amenity incentive program;

~~iii(3)~~ LUC 20.25Q.080, Landscape development, except that landscape development requirements along 112th Avenue SE are not applicable;

~~iv(4)~~ LUC 20.25Q.090, Parking and circulation;

~~v(5)~~ LUC 20.25Q.130, Design standards;

~~vi(6)~~ LUC 20.25Q.150, Streetscape and public realm, only where applicable and feasible; and

~~vii(7)~~ LUC 20.25Q.160, Building design (base, middle, and top).

~~d4.~~ An existing Athletic Club and accessory Hotel use may be expanded with additional floor area consisting of Athletic Club use, and Hotel as an accessory use, beyond the base FAR up to maximum FAR for nonresidential allowed in this Code, Part 20.25Q LUC, and be exempted from the requirements, standards and guidelines in this Part 20.25Q LUC, as listed in subsection ~~D.4.c.iii~~D.3 of this section, through a Development Agreement, as provided in LUC 20.25Q.030.F; and

~~e5.~~ Maintenance, Repair, and Expansions of an existing Athletic Club and accessory Hotel use shall comply with all applicable requirements of Part 20.25H LUC, Critical Areas Overlay District. In the event of a conflict between this Part 20.25Q LUC and Part 20.25H LUC, the requirements of Part 20.25H LUC, Critical Areas Overlay District, shall control.

#### **LUC 20.50.036 N definitions.**

...

~~**Nonconforming.** A use, structure, site or lot which conformed to the applicable codes in effect on the date of creation but which no longer complies because of changes in Code requirements or annexation.~~

**Nonconforming Lot.** A lot which does not conform to the area, width, depth or street frontage regulations of the land use district in which it is located.

**Nonconforming Site.** A site or lot which conformed to the applicable development regulations in effect on the date of creation but which no longer complies because of

~~changes to development regulations or due to annexation. A lot which does not conform to site development regulations, including but not limited to, the landscaping, parking, fence, driveway, street opening, pedestrian amenity, screening and curb cut regulations of the district in which it is located due to changes in Code requirements, condemnation or annexation.~~

**Nonconforming Structure.** A structure which conformed to the applicable development regulations when constructed but which no longer complies because of changes to development regulations or due to annexation. ~~A structure which does not conform to the dimensional regulations, including but not limited to setback, height, lot coverage, density and building configuration regulations of the district in which it is located due to changes in Code requirements or annexation.~~ For structures not conforming to Building Code requirements, see the International Existing Building Code (IEBC).

**Nonconforming Use.** A use which conformed to the applicable development regulations in effect on the date the use was established but which no longer complies because of changes to development regulations or due to annexation. ~~The use of a structure or of land which does not conform to the regulations of the district in which the use exists due to changes in Code requirements or annexation.~~

...

**LUC 20.50.044 R definitions.**

...

**Replacement Value.** The replacement value of a structure is the amount it would cost to replace it, minus deferred maintenance. ~~The Director of the Development Services Department shall promulgate rules for determining the replacement value of structures in the context of this Code.~~

...