

PARK CITY MUNICIPAL CODE
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**CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING
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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING
STRUCTURES

Chapter adopted by Ordinance No. 00-25

CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING STRUCTURES.

15-9-1. PURPOSE.

This Chapter regulates the continued existence of Non-Conforming Uses and Non-Complying Structures as defined in Chapter 15. While Non-Conforming Uses, Non-Complying Structures and improvements may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the Development standards prescribed by this Code. In addition, Applications are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the Structure and site through such measures as landscaping, Building design, or the improved function of the Use in relation to other Uses.

15-9-2. DETERMINATION OF NON-CONFORMING OR NON-COMPLYING STATUS.

(A) **BURDEN ON OWNER TO ESTABLISH LEGALITY.** The Owner bears the burden of establishing that any Non-Conforming Use or Non-Complying Structure lawfully exists.

(B) **DETERMINATION OF STATUS.** The Planning Director shall determine the Non-Conforming or Non-Complying status of Properties. Any decision of the Planning Director may be appealed within ten (10) calendar days of the decision to the Board of Adjustment. Upon appeal, the Board of Adjustment shall conduct a hearing and shall review the matter under de novo standard of review.

(Amended by Ord. No. 06-35; 15-35)

15-9-3. AUTHORITY TO CONTINUE.

(A) **CONTINUATION OF NON-CONFORMING USE.** A lawful Non-Conforming Use may continue subject to the standards and limitations of this Chapter.

(B) **CONTINUATION OF NON-COMPLYING STRUCTURE.** A Non-Complying Structure that was lawfully constructed with a permit prior to a contrary change in this Code may be used and maintained, subject to the standards and limitations of this Chapter.

(Amended by Ord. No. 15-35)

15-9-4. ABANDONMENT OR LOSS OF NON-CONFORMING USE.

(A) **ABANDONMENT OF NON-CONFORMING USE.** A Non-Conforming Use that is discontinued for a continuous period of one (1) year is presumed abandoned and shall not thereafter be reestablished or resumed. Abandonment may also be presumed to have occurred if a majority of the primary Structure associated with the Non-Conforming Use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the Non-Conforming Use; or the primary Structure associated with the Non-Conforming Use remains vacant for a period of one (1) year.

Any party claiming that a Non-Conforming Use has been abandoned shall have the burden of establishing the abandonment.

Any subsequent Use of the Building, Structure, or land must conform to the regulations for the Zoning District in which it is located.

(B) **REBUTTABLE PRESUMPTION OF ABANDONMENT.** The presumption

of abandonment may be rebutted upon a showing that during such period:

- (1) any period of discontinued Use caused by governmental actions or an Act of God without any contributing fault by the Owner and the Owner did not intend to discontinue the Use; or
- (2) the Owner has been actively and continuously marketing the Building, Structure, or land for sale or lease with the Use and the Owner has been maintaining the Building, Structure, or land in accordance with the Uniform Building Code; or
- (3) the Owner can demonstrate no abandonment of the Use.

The Property Owner shall have the burden of establishing that any claimed abandonment has not in fact occurred.

(Amended by Ord. No. 06-35; 15-35)

15-9-5. MOVING, ENLARGING, OR ALTERING NON-CONFORMING USES.

No Non-Conforming Use may be moved, enlarged, altered, or occupy additional land, except as provided in this Section.

(A) **ENLARGEMENT.** A Non-Conforming Use may not be enlarged, expanded, or extended to occupy all or a part of another Structure or site that it did not occupy on the date on which the Use became

non-conforming. A Non-Conforming Use may be extended through the same Building or Structure provided no structural alteration of the Building or Structure is proposed or made for the purpose of the extension and the parking demand is not increased.

(B) **EXTERIOR OR INTERIOR REMODELING OR IMPROVEMENTS TO BUILDING OR STRUCTURE.**

Exterior or interior remodeling or improvements to a Structure containing a Non-Conforming Use shall be allowed provided there is no expansion of the area of the Non-Conforming Use.

(C) **RELOCATION OF BUILDING OR STRUCTURE.** A Building or Structure containing a Non-Conforming Use may not be moved unless the Use shall thereafter conform to the regulations of the Zoning District into which the Building or Structure is moved.

(D) **CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OR A CONFORMING USE.** Except as provided in Section 15-9-5(E) below, no Non-Conforming Use may be changed to another Non-Conforming Use. Whenever any Non-Conforming Use is changed to a conforming Use, such Use shall not later be changed to any Non-Conforming Use.

(E) **HISTORICALLY SIGNIFICANT BUILDINGS EXCEPTION: CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OF SIMILAR OR LESS-INTENSIVE LAND USE TYPE.** Subject to the criteria

below, a Non-Conforming Use located on a Lot or Parcel containing a Building or Structure included on the Park City Historic Sites Inventory, may be changed to another Non-Conforming Use of a similar or less intensive land Use type. A Non-Conforming Use, which satisfies the criteria provided in Section 15-9-5(E)(4) herein shall be considered a similar or less intensive land Use type.

(1) **APPLICATION.**

Application for any Non-Conforming Use must be made upon forms provided by the Planning Department. Upon filing of a Complete Application, the City shall post the Property indicating that an Application for modification of a Non-Conforming Use has been filed and that more detailed information may be obtained from the City.

(2) **NOTIFICATION OF ABUTTING PROPERTY OWNERS.**

Notice shall be provided pursuant to the Notice Matrix in Chapter 1. See Section 15-1-19.

(3) **BOARD OF ADJUSTMENT HEARING.**

Within thirty (30) working days of the Planning Department's receipt of a Complete Application, and after giving public notice, the Board of Adjustment shall hold a public hearing on the Non-Conforming Use Application. The Board of Adjustment shall either grant the Application in whole or in part, with or without modifications or

conditions, or deny the Application. The Board of Adjustment's decision shall be made pursuant to criteria provided in Section 15-9-5(E)(4) below.

(4) **CRITERIA.** The Board of Adjustment shall approve an Application to change a Non-Conforming Use to another Non-Conforming Use if the Application complies with the following criteria:

(a) All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the Non-Conforming Use or Building upon abutting Properties or in the neighborhood;

(b) All changes, additions, or expansions comply with all current laws except as to Use;

(c) The new Use will provide for enclosed storage of necessary equipment, materials, and refuse, rather than create a need for additional outside storage; and

(d) The new Use does not increase the parking requirement; or if there is an increase, the site plan meets the parking requirement and the Board of Adjustment

finds that adjoining Properties and the neighborhood will not be adversely impacted by the increased parking demand.

(F) **DAMAGE OR DESTRUCTION OF BUILDING OR STRUCTURE WITH NON-CONFORMING USE.** If a Building or Structure that contains a Non-Conforming Use is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice to the Property Owner that the Structure is uninhabitable and that the Non-Conforming Use will be lost if the Structure is not repaired or restored within six (6) months; or the Property Owner has voluntarily demolished more than 50% of the Gross Floor Area of the Structure that houses the Non-Conforming Use; or if a Building or Structure that contains a Non-Conforming Use is voluntarily razed, or is required by law to be razed, the Non-Conforming Use shall not be resumed, and the Building or Structure shall not be restored unless it is restored to accommodate a conforming Use within a complying Structure. If a Building or Structure that contains a Non-Conforming Use is involuntarily destroyed in whole or in part due to fire or other calamity and the Structure or Use has not been abandoned, the Non-Conforming Use may be resumed and the Building or Structure may be restored to the condition prior to the destruction, provided such work is started within six months of such calamity, is completed within eighteen (18) months of work commencement, and the intensity of Use is neither increased nor changed.

(G) **LEGAL NON-CONFORMING RENTAL HOUSING USE.** Enforcement of this Ordinance is not intended to terminate a legal Non-Conforming rental housing Use. No physical changes shall be required to a Structure containing a legal Non-Conforming rental housing Use unless the change is for the following:

- (1) The reasonable installation of a smoke detector that is plugged in or battery operated.
- (2) A ground fault circuit interrupter protected outlet on existing wiring;
- (3) Street addressing;
- (4) An egress bedroom window if the existing bedroom window is smaller than that required by current state building code; unless such change would compromise the structural integrity of the building or could not be completed in accordance with current building codes, including Setbacks and window well requirements.
- (5) An electrical system or plumbing system, if the existing system is not functioning or is unsafe as determined by an independent, licensed electrical or plumbing professional.
- (6) Hand or Guard rails.
- (7) Occupancy separation doors as required by the IBC.
- (8) The abatement of a Structure.

(Amended by Ord. No. 06-35; 12-37; 15-35)

15-9-6. NON-COMPLYING STRUCTURES.

No Non-Complying Structure may be moved, enlarged, or altered, except in the manner provided in this Section or unless required by law.

(A) **REPAIR, MAINTENANCE, ALTERATION, AND ENLARGEMENT.**

Any Non-Complying Structure may be repaired, maintained, altered, or enlarged, provided that such repair, maintenance, alteration, or enlargement shall neither create any new non-compliance nor shall increase the degree of the existing non-compliance of all or any part of such Structure.

(B) **MOVING.** A Non-Complying Structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire Structure shall thereafter comply with the regulations of the zone in which it will be located.

(C) **DAMAGE OR DESTRUCTION OF NON-COMPLYING STRUCTURE.**

If a Non-Complying Structure is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice is provided to the Property Owner stating that the Structure is uninhabitable and that the Non-Complying Structure or the Building that houses a Non-Complying Structure shall not be restored unless it is restored to comply with the regulations of the Zoning District in which it is located.

If the Property Owner has voluntarily demolished, or is required by law to

demolish, more than 50A% of the Gross Floor Area of the Non-Complying Structure, the Structure shall not be restored unless it is restored to comply with the regulations of the Zoning District in which it is located.

If a Non-Complying Structure is involuntarily destroyed in whole or in part due to fire or other calamity and the Structure or Use has not been abandoned, the Structure may be restored to its original condition, provided such work is started within six months of such calamity, completed within eighteen (18) months of work commencement, and the intensity of Use is not increased.

(Amended by Ord. No. 06-35; 15-35)

15-9-7. ORDINARY REPAIR AND MAINTENANCE AND STRUCTURAL SAFETY.

The Owner may complete normal maintenance and incidental repair on a complying Structure that contains a Non-Conforming Use or on a Non-Complying Structure. This Section shall not be construed to authorize any violations of law nor to prevent the strengthening or restoration to a safe condition of a Structure in accordance with an order of the Building Official who declares a Structure to be unsafe and orders its restoration to a safe condition.

15-9-8. APPEALS.

The City or any Person with standing adversely affected by a decision of the Board of Adjustment under this Chapter may

petition the District Court in Summit County for a review of the decision, and such review shall be made according to the requirements of the Utah State Code.

(Amended by Ord. No. 15-35)