

KEY COUNTY CODE PROVISIONS REGARDING REBUILDING AFTER FIRE DISASTER

8/24/20

1. **MOST SINGLE FAMILY RESIDENTIAL PROJECTS REQUIRE BUILDING PERMIT ONLY**, and do NOT require a discretionary/zoning permit, and no CEQA environmental review. However, some locations or projects may need a discretionary development permit, environmental resource permit, or other special exception or consideration. If had been issued, generally runs with the land". Variety of exemptions or exceptions in Code for rebuilding after disaster, including for non-conforming uses and structures.
 - a. **Coastal Zone: See 13.20.063: Replacement After Disaster Exemption** (unless on coastal bluff). Can't exceed prior FAR, Height, Bulk/Volume by more than 10%. If more than 10%, it is possible that the replacement project would still be either exempt or excluded from CDP requirement.
 - a. **In Riparian Corridor: See 16.30.050(A) Exemptions:** Continuance of any preexisting non-ag use, provided not lapsed for >1 year. Including changes of uses that do not significantly increase degree of encroachment into or impact on riparian corridor as determined by Planning Director. *Planning Director may include rebuilding homes after fire disaster in that category (decrease encroachment if feasible). Reasonable extensions > year if good faith progress. If needed, Riparian Exceptions processed as staff-level minor (Level III) process (no notice, no hearing), are also possible.*
 - b. **Area of Biotic Concern:** (Area for which a development may affect a sensitive habitat) **Exempted from Requirement – see 16.32.060(B):** A biotic assessment shall not be required for repair or reconstruction of a structure damaged or destroyed as a result of a natural disaster for which a local emergency has been declared by the Board of Supervisors, when: (1) the structure, after repair or reconstruction, will not exceed the floor area, height or bulk of the damaged or destroyed structure by (more than) 10 percent; (2) the new structure will be located in substantially the same location. See **16.32.100 for Biotic Exceptions** if a project is not exempt; may be approved if technical information demonstrates exception is needed to protect public health, safety or welfare.
 - c. **Grading Permits (exempt < 100 cubic yards, <5' excavation, <2' fill, fill not placed on slopes >20%, fill not obstructing a drainage course or used for structural support, excavations for wells, utilities and permitted septic installations) / Erosion Control / Land Clearing Permits (> ¼ acre):** Chapters 16.20 and 16.22. Level III Grading Permits for grading not meeting exemption requirements may be processed concurrently with Building Permits.
 - d. **Non-Conforming Uses and Structures (Legal):** See Section 13.10.260, -261, -262. See Below for Expanded Discussion. By definition, non-conforming uses/structures are LEGAL, ie. they pre-dated the County Zoning Ordinance (< 1956), or they obtained required permit.
 - e. **Unpermitted Uses and/or Structures ("Unpermitted"/Not Legal):** These situations are more complex. Examples include non-habitable structures that were being used for habitation, and/or structures that were built, or added to, with no building permit or inspections. At times, permits were not obtained because county requirements such as access, compliant septic, etc. could not be met. For these types of uses/structures, a "Safe Structures" / Limited Immunity Amnesty Program (LIAP) approach could perhaps be considered, depending on location and nature of deficiencies.

DEFINITIONS:

Non-conforming Structure: *Structure lawfully erected prior to adoption, revision or amendment of the County Zoning Code, but that does not conform to current standards for lot coverage, setbacks, height, number of stories, distance between structures, or floor area ratio currently prescribed in the zoning district regulations.*

Non-conforming Use: *Use of a structure legally established, but that does not conform to current use standards, and density standards as applicable, of the General Plan/LCP land use designation.*

Reconstruction: *means modification or replacement of 65% of more of the Major Structural Components (MSCs) of an existing structure within any consecutive five-year period: MSCs include foundation, floor framing, exterior wall framing and roof framing of a structure. See Admin Guidelines for calculations.*

2. **NONCONFORMING PARKING.** 13.10.260(C)(4): In accordance with 13.10.575, no legal existing use of land or structure shall be deemed to be a nonconforming use solely because of lack of off-street parking or loading facilities.
3. **DETERMINATION NONCONFORMING STATUS -- 13.10.250(C)(1):** The property owner may need to present documentation to establish the legal status of any nonconforming use or structure.
 - a. *County Assessor's Records – owner can obtain copies of records*
 - b. *Planning Department Records – request records from Planning Dept archives*
 - c. *Insurance Company Records*
 - d. *Appraisals of property (e.g. from when purchased or refinanced)*
4. **Calculations of MSCs for Determining "Structural Alteration Project" vs. "Reconstruction Project":**
 - a. Work performed to comply with a notice or requirement of the County Building Official to correct dangerous building elements shall not count towards overall limits on reconstruction in 13.10.262(A)(3). If below 65% of MSCs then project is a Structural Alteration project rather than a Reconstruction project that may need a discretionary Level IV Administrative Site Development Permit (public notice; no public hearing).
 - b. Relocation of Proposed Reconstruction may require Variance or Minor Exception to authorize non-conforming aspects of proposed relocated, reconstructed structure.
 - c. Work to comply with historic regulations or accessibility Requirements shall be excluded from calculations of reconstruction or alteration for purpose of nonconforming regulations.
5. **RECONSTRUCTION OF A NONCONFORMING STRUCTURE AFTER CATASTROPHIC EVENT ***
 Reconstruction of a legal, nonconforming structure after Fire is allowed with a Building Permit IF:
 - a. Obtain other approvals that may be needed by other Code sections (e.g. Title 16)
 - b. The reconstructed structure does not increase the nonconforming dimensions of the structure
 - c. It is located in substantially the same location as the current / prior structure
 New locations on the site may be considered without the need for an administrative site development permit, if the Planning Director finds that the new location results in greater conformance with code requirements. Relocation that does not result in greater conformance requires variance (13.10.230) or minor exception (13.10.235).

** See other rules in 13.10.262(A)(7) if structure located Over a Property Line, In a Riparian Corridor, Within Five Feet of a Vehicular Right of Way or Planned ROW. Structural Alteration can be allowed with building permit, but Reconstruction requires Admin Site Development Permit 13.10.262(B) and (C).*
6. **CHANGES TO NONCONFORMING STRUCTURES OR USES MAY REQUIRE DISCRETIONARY PERMIT**
 - a. See 13.10.260(B)(1) for definition of "Intensification of Use, Nonresidential"; See 13.10.260(B)(2) for definition of "Intensification of Use, Residential" (bedroom addition is intensification). See regulations and permit requirements of 13.10.261(C) regarding Changes to Nonconforming Uses.
 - b. If cessation of use (nonconforming use does not occur for at least 3 out of past 5 years), then usually discretionary permit if required. **However, per 13.10.261(B)(1): If cessation of use is caused involuntarily by fire or other catastrophic event,** nonconforming rights are retained for 3 years after the event, by which time a building permit must be obtained and exercised to repair or reconstruct the nonconforming use in order to retain nonconforming rights. If nonconforming rights are lost due to failure to obtain and exercise a building permit within three years after a catastrophic event, and a conforming use has not been established at the site, the property owner may apply for a conditional use permit (Level V, public notice and public hearing) to reinstate the legal nonconforming use. Findings for approval of such a conditional use permit for reinstatement must be made, as well as compliance with other permit requirements and GP/LCP policies.
7. **Emergency Building Permits:** Building Official may grant for repair or reconstruction of structures damaged or destroyed by natural disaster; start work within 45 days; 90-day follow up with regular BP.

8. **For alterations/repairs to existing residential buildings for which there is no record that the structure had been issued a building permit for its construction**, the Building Official will consider on case-by-case basis, potential for retroactive permit, potential for use of the "legacy" building standards in the Building Code that had existed at that time of construction. (*Section 17958.12 CA Health & Safety Code*)