

**City Of Woodland  
City Council Meeting Agenda Summary Sheet**

**Agenda Item:** Adopt Ordinance No. 1278 – amending the Pre-Existing Uses and Structures section of Title 17. (FIRST READING )

**Agenda Item #:** ( G ) Action

**For Agenda of:** 08/19/2013

**Department:** Planning

**Date Submitted:** 08/14/2013

**Cost of Item:** 0

**Amount Budgeted:**

**Unexpended Balance:**

**BARS #:**

**Description:**

**Department Supervisor Approval:** Amanda Smeller, Community Development Planner

**Committee Recommendation:** On June 18, 2013, the Planning Commission made an **Affirmative** recommendation to the City Council for the approval of the proposed ordinance.

**Agenda Item Supporting Narrative (list attachments, supporting documents):**

1. Staff Report
2. Ordinance (showing changes)
3. Ordinance (final for signatures)
4. Minutes from July 18, 2013 Public Hearing

**Summary Statement**

Please see attached staff report.

## **STAFF REPORT: *Pre-Existing Uses and Structures***

To: City Council  
From: Amanda Smeller, Community Development Planner  
Date: August 13, 2013  
Re: Pre-Existing Uses & Structures

### **SUMMARY**

Updating the Pre-Existing Uses and Structures section of Title 17 is a 2013 Planning Priority. Amendments are being sought to address a number of issues. The existing code uses terms such as “actively used” that are undefined and difficult to interpret. Further, our existing code is unclear on what changes in use are acceptable when dealing with a property with non-conforming use rights. Finally, the Hearing Examiner’s Final Order on the 208 Buckeye (Foglia House) matter called in question current code language and the way the ordinance has been administered.

Two recent land use disputes (208 Buckeye / Foglia House and 1773 Goerig St / Schurman Machine Shop) involving non-conforming uses resulted in hearing examiner decisions that shed light on the City’s pre-existing, non-conforming code. In amending the code, the City has the benefit of the hearing examiner’s legal analysis of these two cases. This staff report includes key portions of these decisions documents as they relate to our code amendment.

### **Change of Use**

Under Washington law, a nonconforming use is limited to the specific use occurring when the use became nonconforming. A nonconforming use cannot change from one type of use to another, even though the uses, and their associated impacts, are very similar<sup>1</sup>.

### **Discontinuance / Abandonment**

Woodland Municipal Code section 17.60.030, Discontinuance, states “If a pre-existing use is nonconforming and not actively used for a period of six months, it shall be deemed discontinued.” The courts have repeatedly held that “discontinuance” is synonymous with abandonment. “A discontinuance results from the concurrence of an intent to abandon and some overt act or failure to act which carries the implication of abandonment.”<sup>2</sup> The Choi case (appears to) allow the City to avoid the need to prove an "intent to abandon" by using the term "vacate" for a specified period. In addition, the Courts have held that where a use that is "discontinued" for a period specified in the local code it creates a presumption that the use has

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<sup>1</sup> Coleman v. City of Walla Walla, 44 Wn.2d 296, 300-301, 266 P.3d 1034 (1954) (nonconforming rooming house cannot be changed to fraternity house). See, also, Open Door Baptist Church v. Clark County, 14 Wn.2d 143, 150-151, 995 P.2d 33 (2000), (legal nonconforming use as church could not be resumed after intervening years as art school); Shields v. Spokane School Dist. No. 81,31 Wn.2d 247, 255, 196 P.2d 352 (1948). (nonconforming elementary school cannot change to trade school)

<sup>2</sup> Andrew v. King County, 21 Wn.App. 566, 572, 586 P.2d 509 (1978)

been abandoned<sup>3</sup>. A proponent can still overcome the presumption of abandonment by showing they did not intend to abandon the use. However where a use has been vacant, intent appears to be irrelevant.

Once a property owner meets the burden of proof that a nonconforming use was established, the burden of proof shifts to the City to prove that the use was discontinued or abandoned<sup>4</sup>. In order to prove discontinuance or abandonment, the City must establish “(1) intent [to abandon] and (2) an overt act, or failure to act, which carries with it the implication that the owner does not claim or retain any interest in the right to the nonconforming use.” *Id.* at 648.

*The intent [to abandon] cannot be inferred from or established by a period of nonuse alone, but must be shown by the owner or occupier's overt acts or failure to act, such as written or oral statements evincing an intent to abandon the use, structural alterations to the building inconsistent with the continuance of the nonconforming use, or failure to take some step such as license renewal necessary to the continuance of the use. Id. at 653.*

In the Foglia case, the property owner did not alter the physical structure of the building to convert the building into a single-family residence. The Foglias neither expressed any intent to convert the structure to a single-family residence nor to abandon the multi-family use. They took no material steps to either convert the structure to a single-family residence or to abandon the multi-family use.

## **PUBLIC INPUT AND PROCESS**

The Planning Commission has reviewed this ordinance during meetings in 2012 and early 2013.

A Notice of Application, likely SEPA Determination of Non-significance (DNS), and a public hearing notice were issued on June 28, 2013 in conjunction with other code amendments including Site Plan Review and Sign Requirements. The comment period ended July 12, 2013 at 5 PM. One comment letter was received by the deadline: Department of Commerce acknowledging receipt of the documents. The final DNS was issued July 15, 2013.

A public hearing before the Planning Commission was held on July 18, 2013. No one from the public or outside agencies attended the meeting and no testimony was received. Meeting minutes from the public hearing are included in your packet. Following public testimony, the Commission made an *Affirmative* recommendation to City Council for the approval of the proposed ordinance.

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<sup>3</sup> Andrew v. King County, 21 Wash.App. 566, 572, 586 P.2d 509 (1978) (the cessation of a use for the period prescribed by the zoning code is prima facie evidence of an intent to abandon the nonconforming use)

<sup>4</sup> Van Sant v. City of Everett, 69 Wn.App. 641, 647-648, 849 P.2d 1276 (1993). “Nonconforming uses are vested property rights which are protected. Protected property rights cannot be lost or voided easily.” *Id.* 69 Wn.App. at 649 (internal citations omitted).

# DRAFT Ordinance

The text **highlighted** and *italicized* are proposed amendments to the current code. Text ~~struck through~~ is proposed to be eliminated from the current code.

## Chapter 17.60 - PRE-EXISTING USES AND STRUCTURES

Sections:

**17.60.010 – Purpose.**

**17.60.020 – Nonconforming uses, structures and lots.**

**17.60.030 – Abatement of illegal use, structure or development**

**17.60.040 – Continuation.**

**17.60.050 – Modification.**

**17.60.060 – Discontinuance.**

**17.60.070 – Change of use.**

**17.60.080 – Destruction.**

**17.60.090 – Completion of structure.**

**17.60.100 – Single-family dwellings.**

**17.60.110 – Nonconforming lots.**

**17.60.010 - Purpose.**

*The purpose of this chapter is to provide for those circumstances, uses and lots that are inconsistent with regulations of this title but which enjoy rights based on their previous legal existence. The intent of this chapter is to permit legal nonconforming developments, lots, structures, and uses to continue until they are removed but not to encourage their perpetuation.*

**17.60.020 - Nonconforming uses, structures and lots.**

*A nonconforming use is a use of property that was allowed at the time the use was established but which, because of changes in zoning regulation, is no longer permitted. A nonconforming structure is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations. A nonconforming lot is one that, at the time of its establishment, met the*

*minimum lot size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, no longer complies with requirements.*

**17.60.030 - Abatement of illegal use, structure or development.**

*Any use, structure, lot or other site improvement not established in compliance with use, lot size, and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.*

**17.60.040 - Continuation.**

A pre-existing use or structure which is nonconforming may be continued and maintained in reasonable repair and safe condition; provided that the use or structure is not enlarged, increased, made more nonconforming, or extended to occupy a greater area than was occupied on the date of adoption of the ordinance codified in this title or applicable amendments thereto. The extension of said pre-existing use to a portion of a structure which was built for the pre-existing use at the time of the passage of the ordinance codified in this title is not considered an extension of a nonconforming pre-existing use. A nonconforming, pre-existing use or structure may not be moved in whole or in part to any other portion of the lot or zoning district in which it is located. If moved, it must be to a district in which the use is permitted. *Any nonconformance that is brought into conformance for any period of time shall forfeit status as nonconformance.* For single-family dwelling exception, see Section **17.60.100**.

**17.60.050 - Modification.**

**A.** A pre-existing structure nonconforming with respect to height, yard requirements, lot coverage, or density may be utilized by a use which is permitted in the district in which the structure is located. In order to accommodate a permitted use, the structure may be repaired, modified, or altered, internally and externally; provided such repairs and modifications do not increase the nonconformance of the structure and that they meet the International Building Code standards.

**B.** In addition, a pre-existing structure which is non-conforming according to the description contained in subsection (A) of this section may be modified or altered in such a manner that it conforms to the standards of the district, this title, and the International Building Code.

*C. The owner of a pre-existing use which is non-conforming, may be able to expand with special permission of the hearing examiner through a conditional use permit.*

**17.60.060 - Discontinuance.**

*A pre-existing, nonconforming use that lies vacant for a period of six months or that is abandoned by the property owner, shall be deemed discontinued. Abandonment is evidenced by an overt act, or failure to act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use. A period of nonuse alone does not prove intent to abandon a nonconforming use. Instead, the intent to abandon must be shown by the owner or occupier's overt acts, or failure to act, such as a written statement showing an intent to abandon the use, structural alterations to the building*

*inconsistent with the continuance of the nonconforming use, or the listing of the property or structure for sale or lease in a manner inconsistent with the continuance of the nonconforming use.* If a pre-existing use is nonconforming and not actively used for a period of six months, it shall be deemed discontinued. A discontinued pre-existing use which is nonconforming cannot be revived and any further uses of the property must conform to the provisions of this title as provided for above.

**17.60.070 - Change of use.**

If a pre-existing use which is nonconforming is changed, it shall be changed to a use conforming to the regulations of the **zoning** district in which it is located, and after change, it cannot be changed back again. *A pre-existing use cannot be changed into some other kind of nonconforming use but is limited to either retaining the specific pre-existing, nonconforming use legally established or changing to a use allowed by the zoning code.*

**17.60.080 - Destruction.**

If a pre-existing use or structure which is nonconforming is destroyed by any cause to an extent exceeding fifty percent of the cost of replacement of the structure, using new materials, a future structure or use of the property shall conform to the provisions of this title. For single-family dwelling exception, see Section **17.60.100**.

**17.60.090 - Completion of structure.**

Nothing contained in this title shall require any change in the plans, construction, alternation, or designated use of a structure for which a building permit has been legally issued and construction commenced prior to the adoption of the ordinance codified in this title and subsequent amendments thereto.

**17.60.100 - Single-family dwellings.**

**A.** Single-family dwellings, *including manufactured homes*, existing in the C-1, C-2, **C-3, I-1, and I-2** districts at the time of passage of the ordinance codified in this title shall be allowed to remain, and any addition or improvements thereto shall meet the standards of the LDR-6 district.

~~**B.** If said single-family dwelling existing at the time of passage of the ordinance codified in this title are destroyed by any cause to an extent exceeding fifty percent of the cost of the structure, such dwellings are permitted to be improved or reconstructed; provided the standards of the LDR-6 district are maintained.~~

***B. In any zone, a single-family dwelling destroyed by any cause to any extent, shall be allowed to be improved or reconstructed, provided the setback standards of the LDR-6 district are maintained or provided that the original footprint of the destroyed dwelling is maintained.***

~~**17.60.110 - Manufactured home on an individual lot.**~~

A manufactured home legally sited on an individual lot outside of a manufactured home park or subdivision, may be replaced by another manufactured home, provided the replacing manufactured home meets the standards set forth in Section [17.16.080\(L\)](#) of this code.<sup>1</sup>

**17.60.110 – Nonconforming lots.**

*Any permitted use may be established on an undersized lot that cannot satisfy lot size or width requirements of this Title; provided that:*

1. *All other applicable zoning development standards, such as building setback requirements and lot coverage requirements, are met or a variance has been granted;*
2. *The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;*
3. *No unsafe condition is created by permitting development on the nonconforming lot; and*
4. *The lot was not created as a “special tract” to protect critical area, provide open space, or as a public or private access tract.*

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<sup>1</sup> SB 6593 (2004) requires that cities regulate manufactured homes no differently than they regulate other types of homes.

**ORDINANCE NO. 1278**

***THE CITY OF WOODLAND, WASHINGTON***

**AN ORDINANCE AMENDING WMC TITLE 17 PRE-EXISTING USES, STRUCTURES AND NON-CONFORMITIES.**

**WHEREAS**, amending the Pre-Existing Uses and Structure section of Title 17 is a 2013 Planning Priority;

**WHEREAS**, recent land use disputes involving properties within the City of Woodland's boundaries involving non-conforming uses resulted in hearing examiner decisions that shed light on the City's pre-existing non-conforming code;

**WHEREAS**, under Washington law, a non-conforming use is limited to the specific use occurring when the use became non-conforming. A non-conforming use cannot change from one type of use to another, even though the uses, and their associated impacts, are very similar;

**WHEREAS**, clarification for the terms discontinuous and abandonment were necessary;

**WHEREAS**, SB 6593 (2004) requires that cities regulate manufactured homes no differently than they regulate other types of homes;

**WHEREAS**, a public hearing was held before the Woodland Planning Commission on July 18, 2013 and, following the hearing, the Commission made a motion to forward the ordinance to the Woodland City Council with an *Affirmative* recommendation;

**WHEREAS**, pursuant to RCW 35A.11.020 and the Constitution of Washington, Article 11, Section 11, cities have the power to enact regulations in the interest of the health, safety, and welfare of their residents;

**WHEREAS**, all procedural requirements of the Woodland Municipal Code (WMC) for these amendments have been met; and

**NOW THEREFORE BE IT ORDAINED** by the City Council of the City of Woodland as follows:

## **Chapter 17.60 - PRE-EXISTING USES AND STRUCTURES**

### **Sections:**

**17.60.010 – Purpose.**

**17.60.020 – Nonconforming uses, structures and lots.**

**17.60.030 – Abatement of illegal use, structure or development**

**17.60.040 – Continuation.**

**17.60.050 – Modification.**

**17.60.060 – Discontinuance.**

**17.60.070 – Change of use.**

**17.60.080 – Destruction.**

**17.60.090 – Completion of structure.**

**17.60.100 – Single-family dwellings.**

**17.60.110 – Nonconforming lots.**

### **17.60.010 - Purpose.**

The purpose of this chapter is to provide for those circumstances, uses and lots that are inconsistent with regulations of this title but which enjoy rights based on their previous legal existence. The intent of this chapter is to permit legal nonconforming developments, lots, structures, and uses to continue until they are removed but not to encourage their perpetuation.

### **17.60.020 - Nonconforming uses, structures and lots.**

A nonconforming use is a use of property that was allowed at the time the use was established but which, because of changes in zoning regulation, is no longer permitted. A nonconforming structure is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations. A nonconforming lot is one that, at the time of its establishment, met the minimum lot size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, no longer complies with requirements.

### **17.60.030 - Abatement of illegal use, structure or development.**

Any use, structure, lot or other site improvement not established in compliance with use, lot size, and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.

#### **17.60.040 - Continuation.**

A pre-existing use or structure which is nonconforming may be continued and maintained in reasonable repair and safe condition; provided that the use or structure is not enlarged, increased, made more nonconforming, or extended to occupy a greater area than was occupied on the date of adoption of the ordinance codified in this title or applicable amendments thereto. The extension of said pre-existing use to a portion of a structure which was built for the pre-existing use at the time of the passage of the ordinance codified in this title is not considered an extension of a nonconforming pre-existing use. A nonconforming, pre-existing use or structure may not be moved in whole or in part to any other portion of the lot or zoning district in which it is located. If moved, it must be to a district in which the use is permitted. Any nonconformance that is brought into conformance for any period of time shall forfeit status as nonconformance. For single-family dwelling exception, see Section 17.60.100.

#### **17.60.050 - Modification.**

**A.** A pre-existing structure nonconforming with respect to height, yard requirements, lot coverage, or density may be utilized by a use which is permitted in the district in which the structure is located. In order to accommodate a permitted use, the structure may be repaired, modified, or altered, internally and externally; provided such repairs and modifications do not increase the nonconformance of the structure and that they meet the International Building Code standards.

**B.** In addition, a pre-existing structure which is non-conforming according to the description contained in subsection (A) of this section may be modified or altered in such a manner that it conforms to the standards of the district, this title, and the International Building Code.

**C.** The owner of a pre-existing use which is non-conforming, may be able to expand with special permission of the hearing examiner through a conditional use permit.

#### **17.60.060 - Discontinuance.**

A pre-existing, nonconforming use that lies vacant for a period of six months or that is abandoned by the property owner, shall be deemed discontinued. Abandonment is evidenced by an overt act, or failure to act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use. A period of nonuse alone does not prove intent to abandon a nonconforming use. Instead, the intent to abandon must be shown by the owner or occupier's overt acts, or failure to act, such as a written statement showing an intent to abandon the use, structural alterations to the building inconsistent with the continuance of the nonconforming use, or the listing of the property or structure for sale or lease in a manner inconsistent with the continuance of the nonconforming use. A discontinued pre-existing use which is nonconforming cannot be revived and any further uses of the property must conform to the provisions of this title.

#### **17.60.070 - Change of use.**

If a pre-existing use which is nonconforming is changed, it shall be changed to a use conforming to the regulations of the zoning district in which it is located, and after change, it cannot be changed back again. A pre-existing use cannot be changed into some other kind of nonconforming use but is limited to either

retaining the specific pre-existing, nonconforming use legally established or changing to a use allowed by the zoning code.

**17.60.080 - Destruction.**

If a pre-existing use or structure which is nonconforming is destroyed by any cause to an extent exceeding fifty percent of the cost of replacement of the structure, using new materials, a future structure or use of the property shall conform to the provisions of this title. For single-family dwelling exception, see Section 17.60.100.

**17.60.090 - Completion of structure.**

Nothing contained in this title shall require any change in the plans, construction, alternation, or designated use of a structure for which a building permit has been legally issued and construction commenced prior to the adoption of the ordinance codified in this title and subsequent amendments thereto.

**17.60.100 - Single-family dwellings.**

**A.** Single-family dwellings, including manufactured homes, existing in the C-1, C-2, C-3, I-1, and I-2 districts at the time of passage of the ordinance codified in this title shall be allowed to remain, and any addition or improvements thereto shall meet the standards of the LDR-6 district.

**B.** In any zone, a single-family dwelling destroyed by any cause to any extent, shall be allowed to be improved or reconstructed, provided the setback standards of the LDR-6 district are maintained or provided that the original footprint of the destroyed dwelling is maintained.

**17.60.110 – Nonconforming lots.**

Any permitted use may be established on an undersized lot that cannot satisfy lot size or width requirements of this Title; provided that:

1. All other applicable zoning development standards, such as building setback requirements and lot coverage requirements, are met or a variance has been granted;
2. The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;
3. No unsafe condition is created by permitting development on the nonconforming lot; and
4. The lot was not created as a “special tract” to protect critical area, provide open space, or as a public or private access tract.

**ADOPTED** this \_\_\_\_\_ day of September, 2013.

**CITY OF WOODLAND, WASHINGTON**

Approved:

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Grover Laseke, Mayor

Attest:

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Mari E. Ripp, Clerk / Treasurer

Approved as to form:

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William Eling, City Attorney

July 18, 2013 Public Hearing Minutes

**PUBLIC HEARING**

**SEPA issued for: Signs, Site Plan Review Ordinance, and Non-Conforming Uses**

- Sign code was cleaned up, clearing up any gray areas in the code.
- Open public comment: [7:33:03 PM](#), Close public comment: [7:33:17 PM](#). No comments received.

Commissioner Deans made a motion to send the Sign Ordinance, Site Plan Review Ordinance and the Non-Conforming Use Ordinance to City Council. Commissioner Jensen seconded. Discussion followed. The motion passed unanimously.