# *City of El Paso – City Plan Commission Staff Report*

**Amendment to Title 20**
**Nonconforming Situations**
**Chapter 20.22**

The City Manager has directed staff to implement application processing changes and code amendments that are intended to streamline and simplify zoning processes.

The Planning Division prepared this amendment to Title 20, which codifies the number of documents required for registering a nonconforming building or use:

- Allow submittal of one document, either a building permit or an aerial photo, that clearly demonstrates the nonconformity as evidence of a legal nonconforming structure.

- Require submittal of two documents to demonstrate the legal nonconformity of a use.

- Currently, department policy is to require three supporting documents.

ORDINANCE NO._____

**AN ORDINANCE AMENDING TITLE 20 (ZONING), CHAPTER 20.22 (NONCONFORMING SITUATIONS), SECTION 20.22.030 (NONCONFORMING USES), SECTION 20.22.040 (NONCONFORMING STRUCTURES), AND (SECTION 20.22.070 (REGISTRATION AND CERTIFICATE OF OCCUPANCY REQUIRED) OF THE EL PASO CITY CODE, TO REVISE THE REGISTRATION PROCEDURES FOR A NON-CONFORMING BUILDING OR USE. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

**WHEREAS,** Title 20 (Zoning) of the El Paso City Code was adopted to promote the health, safety, morals and general welfare of the community; and

**WHEREAS,** City Council has determined that the regulation of non-conforming buildings and uses is necessary and reasonable to promote the health, safety, morals and general welfare of the community; and,

**WHEREAS,** the regulations are intended to encourage the eventual replacement of non-conforming buildings and uses that are incompatible with surrounding conforming buildings and uses and character of the surrounding area, having due regard for the property rights of persons affected, the public welfare, compatibility, and the character of the surrounding area;

**WHEREAS,** the City wishes to revise the registration procedure;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**SECTION 1.** That Title 20 (Zoning), Chapter 20.22 (Non-Conforming Situations), Section 20.22.030 (Nonconforming Uses ), Paragraph A, of the El Paso City Code be replaced in its entirety as follows:

20.22.030 Nonconforming Uses

A. Any use of a building, structure, or property or if a valid building permit has been issued for the use of the structure in that district, legally in existence at the time when any zoning restrictions as to use, area, yards, setbacks, or off-street parking (whether under this or any other ordinance or amendment) first became effective as to such use, and which does not conform to the regulations described in this title may continue the use so long as the use is registered in accordance with the provisions of 20.22.070 and verified by the zoning administrator as legal nonconforming and is subject to the following limitations:

1. A nonconforming use of a structure may not be enlarged or increased, except a nonconforming use may be extended to any portion of a building which portion was arranged or designed for such nonconforming use on or prior to the date on which the use became

nonconforming, or if required by law to meet minimum health and safety requirements required by a governmental entity. Written documentation establishing the date of the original design or arrangement of use, or requirement by a governmental entity shall be required at the time of submittal for a building permit, and the mere intent of the owner or occupant shall not satisfy this requirement; and,

2. A nonconforming use shall not be changed unless changed to a conforming use. A nonconforming use if changed to a conforming use may not thereafter be changed back to any nonconforming use. A nonconforming use may not be changed to any other nonconforming use.

**SECTION 2.** That Title 20 (Zoning), Chapter 20.22 (Non-Conforming Situations), Section 20.22.040 (Nonconforming Structures), Paragraph A, of the El Paso City Code be replaced in its entirety as follows:

20.22.040 Nonconforming Structures

A. Any nonconforming structure legally in existence at the time when any zoning restrictions as to use, area, yards, setbacks, or off-street parking (whether under this or any other ordinance or amendment) first became effective as to such use, and which does not conform to the regulations described in this title may continue in use and operation so long as the structure is registered in accordance with the provisions of 20.22.070 with the zoning administrator as legal nonconforming and is subject to the following limitations.

1. Unless otherwise provided, a nonconforming building or structure shall not be added to or enlarged in any manner unless the addition or extension meets the requirements of the district in which it is located.

2. If a nonconforming structure is nonconforming as to off-street parking requirements, a change of occupancy to another use permitted in the zoning district is allowed provided that the parking requirements are the same as the original nonconforming use. If a change of occupancy to a use that requires additional parking is requested, the additional off-street parking required for the new use must be provided.

**SECTION 3.** That Title 20 (Zoning), Chapter 20.22 (Non-Conforming Situations), Section 20.22.070 (Registration and Certificate of Occupancy Required), of the El Paso City Code be replaced in its entirety as follows:

Section 20.22.070 Registration required

A. Nonconforming uses and structures shall be registered with the zoning administrator by providing the following information:

1. File an application with the city and pay a nonrefundable fee established by the city council stating that such building or land occupied by the nonconforming building or use

was, to the best of the owner or occupant's knowledge, in lawful use and lawfully existing as of the date of adoption of the applicable code in effect at the time that the building or use became nonconforming.

2. Provide supporting documentation that may include, but is not limited to, building permits or certificates of occupancy that show or describe the non-conforming condition, aerial photography, central appraisal district records, affidavits of surrounding property owners or residents who are knowledgeable of the existence and use of the building or property, or any other information deemed necessary to determine the nonconforming status of the building or use by the zoning administrator.

a. Registration of a non-conforming structure. The preferred documentation is an aerial photo or building permit that clearly shows the non-conformity, and is dated prior to annexation of the property or adoption of the code regulation that rendered the structure non-conforming. If such a permit or photo is submitted it shall be sufficient to register the non-conforming structure. If the non-conforming structure is not shown in the permit or aerial photo, two supporting documents shall be required.

b. Registration of a non-conforming use. Two supporting documents shall be required.

B. Upon proper application and review and verification of the documents submitted establishing that the nonconforming building or use was legally in existence at the time when any zoning restrictions as to use, area, yards, setbacks, or off-street parking (whether under this or any other ordinance or amendment) first became effective as to such use, the city may register the building or use as legal nonconforming and maintain a record of all registrations.

**SECTION 4**. Except as expressly herein amended, Title 20, Zoning, of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS _____ day of _____ 2012.

CITY OF EL PASO

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ATTEST: John F. Cook, Mayor

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Richarda Duffy Momsen, City Clerk

SIGNATURES CONTINUE ON FOLLOWING PAGE

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Matthew S. McElroy, Deputy Director
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