

**Matrix of proposed amendments to BMC 20.54 Nonconforming Provisions (Draft Chapter follows this matrix):**

<b>Zoning Code Chapter/Section (Bremerton Municipal Code)</b>	<b>Proposed Amendments Summary</b>	<b>Further Information</b>
<b>20.54 Nonconforming Provisions</b>	Discussed in February’s Workshop with additional analysis can be seen in the Workshop’s Staff Report.	
20.54.040 Definitions	Revised definition of Substantial Destruction.	Revised substantial destruction to be consistent with the Shoreline Master Program definition and to provide further clarification to Staff and developers.
20.54.060 Nonconforming Uses	Removed provisions that if you ever had a house on the lot, it can be reestablished.	This is an open ended provision that circumvents the City code in trying to get areas into conformance. Example is: if a dilapidated house is located in the middle of an Industrial zone, per this code, it could always be rebuilt. Staff is proposing to remove this provision.
20.54.110 Unlawful Uses, Structures and Lots.	Minor revisions to this section to include “lots”	This should have been in place as the remaining portions of this chapter refer to “nonconforming lots” yet it is silent in this portion of the code. This will assist Staff in provide clarification for those who go through a Boundary Line Adjustment through the Kitsap County Auditors, and create a nonconforming lot.



## Chapter 20.54 NONCONFORMING PROVISIONS

Sections:

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[20.54.050 NONCONFORMING LOTS.](#)

[20.54.060 NONCONFORMING USES.](#)

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[20.54.090 CONDITIONAL NONCONFORMING USES.](#)

[20.54.100 NONCONFORMING SIGNS.](#)

[20.54.110 UNLAWFUL USES, ~~AND~~ STRUCTURES, AND LOTS.](#)

### **20.54.010 INTENT.**

(a) Within the zones established by BMC Title [20](#) and amendments thereto, there exist lots, structures, uses of land and structures which were lawful at the time of their establishment but are prohibited, regulated, or restricted under the existing zone requirements. These nonconformities are declared incompatible with the zone because they do not conform to the requirements of the zone in which they are located.

(b) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building or site legally established. The intent of this chapter is to set forth the conditions under which these nonconformities may continue to exist until such time they are discontinued as prescribed by law.

### **20.54.020 ESTABLISHMENT OF A LEGAL NONCONFORMITY AND APPLICABILITY.**

(a) A party asserting the existence of a lawfully established nonconforming lot, use or structure has the burden of proof that the lot, use or structure was not substandard in meeting the requirements of the zone which were in effect at its creation.

(b) The rules of this chapter are applied by first reviewing which provisions are applicable to the nonconformity. (Does the nonconformity involve a lot, use, structure or a combination?) When a combination of nonconforming lot, structure or use exists, each segment of the nonconformity is reviewed independent of the others. Example: a legally established single-family dwelling not allowed in the zone and not meeting setback requirements would be allowed to rebuild from substantial destruction (BMC [20.54.060\(e\)\(2\)](#)), but the new structure would have to comply with the current setback requirements (BMC [20.54.070\(c\)](#)).

### **20.54.030 ANNEXATION.**

Lots, structures, uses of land and structures that were legally in existence prior to annexation to the City, but that do not conform to the requirements of the zone in which they are located following the date of annexation, shall become a legal nonconformity subject to the requirements of this chapter.

### **20.54.040 DEFINITIONS.**

The following definitions are applicable to this chapter:

(a) Nonconforming Lots. A lot that does not meet the lot area, width, ~~or~~ street frontage, ~~or other~~ requirements of the zone in which it is located, but was lawfully created prior to the effective date of the zone or subsequent amendments thereto.

(b) Nonconforming Use. Any activity, development or condition that by the zone in which it is located is not permitted outright or as an accessory use, or is not permitted by a conditional use permit or other special permitting process; but was lawfully created prior to the effective date of the zone or subsequent amendments thereto and was continually maintained as defined in this chapter. A nonconforming use may or may not involve buildings or structures and may involve part of or all of a building or property.

(c) Nonconforming Structure. A building or structure that does not comply with the required setbacks, height, lot coverage and other development requirements of the zone in which it is located, but was lawfully constructed prior to the effective date of the zone or subsequent amendments thereto and was continually maintained as defined in this chapter. This term does not apply to any substandard condition that was legally granted a variance.

~~(d) Substantial Destruction. For the purpose of this chapter, "substantial destruction" means the repair or replacement of a building or structure which exceeds one of the following: seventy-five (75) percent of the replacement cost of the entire building, excluding the foundations. The replacement cost shall be derived from the market value of the structure or the value as defined by the City's building code, whichever is greater.~~

(1) Seventy five percent (75%) of the assessed value of the structure as determined by the Kitsap County Assessor. An appraised value may be substituted for the assessed value at the request of the applicant and as deemed appropriate by the Director.

(2) For accessory structures which are typically not assessed (such as decks, sheds, garages, and retaining walls) and the value cannot be determined, substantial destruction will occur at the point that seventy five percent (75%) or more of the structure is replaced.

#### **20.54.050 NONCONFORMING LOTS.**

The following provisions shall apply to all lots meeting the definition in BMC [20.54.040](#)(a):

(a) Continuation and Development. A nonconforming lot may be developed for any use allowed by the zone, provided the development meets, through design or by an approved variance, the requirements of the zone in which it is located.

(b) Illegal Lot Modifications or Split. The following is applicable to all lots:

(1) No lot may be modified, divided or adjusted in a manner that would violate ~~the~~ dimensional, or area, or other requirements of the zone in which it is located.

(2) A government agency may lawfully modify a lot in a manner that would result in nonconformity, if portions of a lot are acquired for a public use or purpose, or is allowed otherwise by law.

#### **20.54.060 NONCONFORMING USES.**

The following provisions shall apply to all uses meeting the definition in BMC [20.54.040](#)(b):

(a) Continuation. Any legally established nonconforming use may be continued until such time that it is discontinued as prescribed in subsection (d) or (e) of this section.

(b) Change of Use. A structure or property containing a nonconforming use may be changed to the following:

(1) A use that conforms to the requirements of the zone; or

(2) Another nonconforming use; provided, that:

(i) A conditional use permit is approved pursuant to BMC [20.58.020](#);

(ii) The existing nonconforming use was not discontinued as prescribed in subsection (d) or (e) of this section;

(iii) The new use is clearly a reduction in the nonconformity and intensity of the existing nonconforming use; and

(iv) The applicant demonstrates that there is a demand for the use in the neighborhood that provides a public benefit.

- (c) Expansion. A nonconforming use may not be expanded or enlarged, except under one (1) of following circumstances:
- (1) Alterations are permitted, provided it is within the existing physical space of the building or use.
  - (2) Residential dwellings may have the building area expanded if the number of dwelling units is not increased above or below the requirements of the zone in which it is located, there is no decrease in the number of off-street parking spaces below the minimum requirements and the addition complies with all zoning requirements.
  - (3) The acquisition of additional accessory off-street parking is not an expansion of a nonconforming use.
- (d) Discontinuation. A nonconforming use that is discontinued shall have its legal nonconforming status terminated and any subsequent use of the property or building shall be that of a use that conforms to the requirements of the zone. A nonconforming use is determined to be discontinued if any of the following circumstances apply:
- (1) The nonconforming use is changed to a conforming use;
  - (2) Another nonconforming use is approved pursuant to subsection (b)(2) of this section; or
  - (3) The nonconforming use has ceased for a period of more than one (1) year.
- (e) Damage or Destruction. If a structure containing a nonconforming use experiences substantial destruction, it shall constitute a discontinuation of the nonconforming use, except the nonconforming use may be allowed to continue under any of the following circumstances:
- (1) The structure has suffered substantial destruction as a result of fire or other casualty not intentionally caused by the owner or tenant and a complete building permit application is filed within one (1) year of such fire or other casualty.
  - ~~(2) The use is a detached or attached single family dwelling located anywhere in the City.~~
  - ~~(23)~~ A conditional use permit was approved pursuant to BMC [20.54.090](#).
- (f) Repair and Maintenance. A building or structure containing a nonconforming use may be repaired and maintained if the work does not restore it from substantial destruction.

#### **20.54.070 NONCONFORMING STRUCTURES.**

The following provisions shall apply to all structures and buildings meeting the definition in BMC [20.54.040](#)(c):

- (a) Continuation. Any legally established nonconforming structure may be continued until such time that it is discontinued as prescribed in subsection (c) of this section.
- (b) Expansion. Buildings may be expanded, provided:
  - (1) A nonconforming structure may be enlarged, extended or structurally altered, provided the enlargement or alteration complies with the setback, height, lot coverage, and other site development requirements of the zone in which the structure is located.
  - (2) Structures not conforming to the setback may be expanded by up to twenty (20) percent of the gross floor area and to the building line, provided the enlargements do not further violate setback requirements.
- (c) Damage or Destruction. A nonconforming structure experiencing substantial destruction shall be considered discontinued and have its nonconforming status terminated. Any subsequent repair or reconstruction of the structure shall comply with the requirements of the zone, with the following exception:-
  - (1) The nonconforming structure may be allowed to be rebuilt within the same footprint and size if the structure has suffered substantial destruction as a result of fire or other casualty not intentionally caused by the owner, and a complete building permit application is filed within one (1) year of such fire or other casualty.

(d) Partial Damage or Destruction. A nonconforming structure suffering from less than substantial destruction may have its nonconforming status suspended for a time period determined by the Director and be considered conforming for the purpose of improvements and repair, if:

(1) The structure is damaged by fire or other casualty not intentionally caused by the owner or tenant and a complete building permit application is filed within one (1) year of such fire or other casualty; or

(2) A building permit application is submitted prior to partial destruction. The building permit must remain active and if it is allowed to expire, the legal nonconforming status shall terminate and subsequent repairs and improvements shall comply with the requirements of the zone.

(3) In no case shall the nonconformity be allowed to expand.

(e) Repair and Maintenance. Normal repair and maintenance work on a nonconforming structure may be performed that maintains continued safe and sanitary conditions.

#### **20.54.080 NONCONFORMING LANDSCAPING.**

Uses which were lawfully established which do not conform to landscaping requirements need not provide additional landscaping, except:

(a) Expansion of a Structure. If an existing structure or use is expanded, additional landscaping shall be provided in accordance with the requirements of Chapter [20.50](#) BMC. The amount of additional landscaping shall be computed only to the extent of the expansion regardless of whether existing landscaping complies with the requirements.

(b) Change of Use. A change to a use that requires greater amounts of landscaping than the former use shall provide landscaping in accordance with the requirements of Chapter [20.50](#) BMC. The Director may modify the amount of landscaping required if providing the required landscaping would result in a reduction of the parking below the minimum required by Chapter [20.48](#) BMC.

(c) Parking Lot. When an existing unpaved parking area is paved, it shall be landscaped in accordance with the requirements of Chapter [20.50](#) BMC. The Director may modify the amount of landscaping required if the landscaping would result in a reduction of the parking below the minimum required by Chapter [20.48](#) BMC.

#### **20.54.090 CONDITIONAL NONCONFORMING USES.**

(a) Unsuitable Structures for Uses. An existing structure constructed for a use no longer allowed by the zone, which has lost its legal nonconforming status, and is not suited for other uses permitted by the zone, may have its use re-established if a conditional use permit is approved pursuant to BMC [20.58.020](#); provided, that:

(1) The applicant demonstrates that the remaining life of the structure is adequate to warrant the proposed use of the structure;

(2) The applicant demonstrates that an allowed use of the zone cannot be established;

(3) The applicant demonstrates that there is a demand for the use in the community or region that provides a public benefit; and

(4) The applicant demonstrates that the use and renovation to the structure is not inconsistent with the goals and policies of the Comprehensive Plan.

#### **20.54.100 NONCONFORMING SIGNS.**

Refer to Chapter [20.52](#) BMC for regulations pertaining to nonconforming signs.

#### **20.54.110 UNLAWFUL USES, ~~AND STRUCTURES,~~ AND LOTS.**

(a) Nothing in this chapter shall be interpreted to be authorization for, or approval of, the continuation of the use of a structure that is in violation of any ordinance in effect at the time of the passage of the

ordinance codified in this chapter. The intermittent, temporary, or illegal use of land or structures shall not be sufficient to establish the existence of a nonconforming, ~~use and/or~~ structure, ~~and/or~~ lot.

(b) Any use, structure or lot which did not comply with the zoning code requirements at the time it was established or constructed and does not comply with the current zoning code is illegal and shall be brought into compliance with the provisions of BMC Title [20](#), Division III.