

# PLANNING COMMISSION

Agenda Item No.: G.3  
Date: August 13, 2013

**CASE NUMBER:** AZ 13-0004

**APPLICANT:** City of Escondido

**LOCATION:** Citywide

**TYPE OF PROJECT:** Zoning Code Amendment for Cottage Foods, Home Occupations and Nonconforming Uses

**PROJECT DESCRIPTION:** Amendments to the Escondido Zoning Code to allow (1) State-mandated Cottage Food Operations in residential zones, (2) Home Occupation permits for existing nonconforming residential units in non-residential zones; and (3) general cleanup of the Non-Conforming code. Text revisions are proposed for Article 16: Commercial Zones, Article 26: Industrial Zones, Article 44: Home Occupations, Article 56: Miscellaneous Development Standards, Article 57: Miscellaneous Use Restrictions, and Article 61, Division 3: Non Conforming Uses and Structures.

**STAFF RECOMMENDATION:** Approval

**GENERAL PLAN DESIGNATION:** Citywide

**ZONING:** Citywide effecting industrial, commercial and residential zones

## BACKGROUND/SUMMARY OF ISSUES:

### COTTAGE FOOD OPERATIONS

In fall 2012 the State passed into law AB 1616, *the California Homemade Food Act*. This law took effect January 1, 2013, mandating that cities allow commercial preparation of food in a residence as a home occupation, allow one full-time non-resident employee to work alongside the home occupation permit holder, and allow the sale of such prepared foods directly from the residential location. The subject code amendments will make Escondido's Zoning Code consistent with this state law.

### HOME OCCUPATION PERMITS

A Home Occupation Permit is a supplemental business license application required to allow a person to operate a business from their residence. Present Zoning Code language addresses nonconforming residences located in non-residential zones (i.e.; within industrial and commercial zones). Home Occupation permits at these locations are not currently allowed. Since licenses are issued for businesses located in commercial and industrial zones, staff feels that the issuance of Home Occupation permits to existing legal residences within industrial and commercial zones should likewise be allowed.

### NONCONFORMING USES, STRUCTURES AND LAND

Article 61, Division 3 currently addresses nonconforming uses and structures. Certain sections regarding maintenance, additions and improvement costs to nonconforming structures need to be revised, and provisions added to address nonconforming lots.

### OUTDATED LANGUAGE

The Zoning Code sections being amended for the three areas above, also currently contain older references which no longer match recent changes in City management titles, definitions and procedures. In addition, there are some very minor grammar corrections that need to be made.

**REASONS FOR STAFF RECOMMENDATION:**

1. State law (AB1616) mandating that Cottage Food Operations be allowed in residential zones went into effect January 1, 2013. The conflicts with this law and our present Zoning Code need to be resolved or the City will face potential legal action.
2. The General Plan identifies economic and live-work opportunities and conserving resources as core themes and goals. One way to facilitate more economic opportunities is to expand the number of locations to which Home Occupation permits can be issued.
3. The Nonconforming sections of the Code need to be updated to fix inconsistencies and provided needed clarifications to assist City staff and owners of nonconforming structures and property.
4. The other proposed changes will cleanup some older references and language in the Code that are no longer valid.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Paul K. Bingham", with a stylized flourish extending to the right.

Paul K. Bingham  
Assistant Planner II

## ANALYSIS

### A. CONFORMANCE WITH CITY POLICY/ANALYSIS

#### General Plan

Section "E" of the *Land Use and Community Form* element of the General Plan contains two core themes that pertain to these proposed Zoning Code changes, namely: 1. *Opportunities to Live, Work and Play*; and 3. *Conserve and Sustain Resources*. In addition, the *Economic Prosperity* element's Goal #3 is to attract economically viable incubators and small businesses that offer the opportunity for long-term diversification and growth. Policy 3.1 says the city should provide assistance to facilitate the attraction, retention, and expansion of small businesses. Policy 3.2 encourages removing obstacles to the formation and expansion of local businesses, as may be appropriate. The proposed amendments to Articles 16, 26, 44, 57 and 61, would be consistent with the General Plan because they would provide a greater opportunity for Home Occupation businesses to become established.

#### Cottage Food Operations

With the passage of AB 1616, the State now requires cities to allow Cottage Food Operations (CFO's) in residential units. This business enterprise may include occupants of the residence as well as one full-time employee (who is not a resident) to assist in producing for sale homemade food products using a list of State-approved ingredients. Those products may then be sold directly from the residence. The level of maximum gross sales is capped for this year at \$35,000, \$45,000 in 2014 and \$50,000 in 2015 and beyond. A simple certificate from the County Health Department is also required. Currently our Zoning Code allows Home Occupations for sole proprietors with no employees and no customers coming to the residence. There is currently no cap imposed by the City on gross sales. These discrepancies will have to be changed in order to align with State law. If they are doing direct sales, the State requires the CFO applicant to submit a self-certification checklist to their county health department, take a food processor course and follow health-related guidelines. If the CFO is also doing indirect sales, an inspection by the health department is also required. The City does have some discretion in issuing business licenses to CFO's. Our current Home Occupation Permit and Business License processes will be used to approve these. New language proposed for Article 44 (Home Occupations) will specify only one CFO be allowed per dwelling unit and refer to State law for operating standards.

#### Home Occupation Permits

Due to periodic rezoning over the years, some legally developed residential properties now find themselves in non-residential zones. The Nonconforming Use sections of the Code have created a framework and procedures for such properties to continue as residences, addressing issues such as maintenance, expansion, reconstruction after a disaster, etc. However, Home Occupation permits afforded to other residential properties throughout the City are not available to residents living lawfully within commercial or industrial zones, but businesses surrounding them in these non-residential zones are able to obtain business licenses to operate. Changes to the language in Articles 16, 26 and 61 will allow these residents to operate a home-based business. Nonconforming residences in commercial and industrial zones may be converted fully to commercial and industrial uses through the Plot Plan review process.

#### Nonconforming Uses, Structures - and Land

The Nonconforming code (Article 61, Division 3) provides for the control, improvement and termination of uses, structures or parcels which do not conform to the current regulations for the land on which they are located. Single family residential lots that were created legally in the past sometimes find they no longer conform to all the standards for lot width, frontage or area after rezoning. Likewise the creation of nonconforming receptor sites for historic structures is authorized in Article 65 (Old Escondido Neighborhood). Since lot dimensions are not easily remedied, typically requiring a lot line adjustment or lot consolidation, staff proposes that these situations not be subject to the improvement valuation restrictions of the nonconforming code. In addition, owners wanting to do work that brings their properties more in conformance are

sometimes hindered in doing so by the current valuation restrictions. Therefore, staff recommends that this work be excluded from the valuation calculation of any other work proposed for the nonconforming use or structure. Section 33-1243 addresses routine maintenance of nonconforming structures, and includes window replacement as an example. Currently there is a problem with many owners of property in the Old Escondido neighborhood Historic District not checking with the City regarding the review process for window replacement, due to the misconception that the work is considered routine maintenance. Staff recommends deleting this example to reduce confusion. All of these inadequacies will be remedied in the proposed update.

#### Other Revisions

Some management titles, definitions and procedures have changed since the last major revision to these Zoning Code Articles. For example, the title "Planning Director" is no longer valid and will be replaced where ever it is referenced with "Director of Community Development." Some very minor grammar errors also exist which should be corrected.

#### **B. ENVIRONMENTAL STATUS**

1. The proposed amendments to the Zoning Code are exempt from the California Environmental quality Act in accordance with CEQA Section 15061(b)(3), "General Rule." A Notice of Exemption was issued on August 6, 2013.
2. Changes to Zoning Code will not have a significant effect on the environment.
3. The proposed Code Amendment does not involve physical modifications and will have no impact on fish and wildlife resources.

**FACTORS TO BE CONSIDERED**  
**AZ 13-0004**  
**EXHIBIT "A"**

1. The public health, safety and welfare would not be adversely affected by the proposed amendments to the Zoning Code Article 16 (Commercial Zones), Article 27 (Industrial Zones), Article 44 (Home-Occupations), Article 56 (Miscellaneous Development Standards), Article 57 (Miscellaneous Use Restrictions), and Article 61, Division 3 (Nonconforming Uses and Structures) because the amendments would: allow Cottage Food Operations use in residential units consistent with State law; allow Home Occupation permits in legal nonconforming residential units in commercial and industrial zones; clarify and clean up deficiencies in the current Nonconforming Uses and Structures sections; and eliminate errors and inconsistencies throughout the articles named, all to facilitate the ongoing efforts to promote business growth, economic stability and conservation of resources.
2. The proposed amendments to Articles 16, 26 and 61 involving Home Occupations in non-residential zones would not be detrimental to surrounding properties, since those properties are already operating as businesses and are located in areas where business-oriented infrastructure exists.
3. The proposed Zoning Code amendments would be consistent with the General Plan because they would provide a greater opportunity for home businesses to become established and expand the City's economy.



CITY OF ESCONDIDO  
 PLANNING DIVISION  
 201 NORTH BROADWAY  
 ESCONDIDO, CA 92025-2798  
 (760) 839-4671

**Notice of Exemption**

To: San Diego County Recorder's Office  
 Attn: Vanessa Esquivel  
 P.O. Box 121750  
 San Diego, CA 92112-1750

From: City of Escondido  
 201 North Broadway  
 Escondido, CA 92025

**Project Title/Case No.:** Zoning Code Amendment/AZ13-0004

**Project Location - Specific:** City of Escondido - Citywide

**Project Location - City:** Escondido, **Project Location - County:** San Diego

**Description of Project:** Proposed amendments to the Zoning Code text to:

- 1) Allow the Cottage Food Operations use in residential units in concurrence with California State law AB1616, the State's "Homemade Food Act," which took effect January 1, 2013;
- 2) Allow Home Occupation permits in nonconforming residential units which exist legally in commercial and industrial zones, and;
- 3) Clarify and clean up inconsistencies in the current Nonconforming Uses and Structures sections.

**Name of Public Agency Approving Project:** City of Escondido

**Name of Person or Agency Carrying Out Project:**

Name: Barbara H. Redlitz, Director of Community Development, City of Escondido Telephone: (760) 839-4546

Address: 20 N. Broadway, Escondido, CA 92025

Private entity  School district  Local public agency  State agency  Other special district

**Exempt Status:** Categorical Exemptions. Section 15361(b)(3), "General Rule"

**Reasons why project is exempt:**

1. Changes to Zoning Code will not have a significant effect on the environment.
2. The proposed Code Amendment does not involve physical modifications and will have no impact on fish and wildlife resources.

**Lead Agency Contact Person:** Paul Bingham

**Area Code/Telephone/Extension** (760) 839-4306

Signature: Paul K. Bingham  
 Assistant Planner II

August 6, 2013  
 Date

Signed by Lead Agency

Date received for filing at OPR: N/A

**ARTICLE 16: Commercial Zones**

**Sec. 33-333. Permitted accessory uses and structures.**

Accessory uses and structures are permitted in commercial zones, provided they are incidental to, and do not substantially alter the operating character of the permitted principal use or structure as determined by the director of planning and building. Such permitted accessory uses and structures include, but are not limited to, the following:

**Table 33-333**

**PERMITTED ACCESSORY USES AND STRUCTURES**

Use Title	CG	CN	CP	HP
Accessory buildings such as garages, carports and storage buildings clearly incidental to a permitted use	P	P	P	P
Bus stop shelters* (Article 57 & Article 9, Chapter 23 EMC)	P	P	P	P
Caretaker's or resident manager's quarters (for lodgings, motels, hotels, and funeral parlors)	P			P
<u>Cottage Food Operations and Home Occupations as provided for in Article 44.</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Employee recreational facilities	P		P	P
Live entertainment	P	P	P	P
Outdoor dining in conjunction with an approved eating place* (Article 57)	P	P	P	P
Outdoor display of merchandise* (Article 73)	P	P	P	P
Satellite dish antennas* (Article 34, CUP required for some sizes and heights)	P/C	P/C	P/C	P/C
Storage of materials used for the construction of a building, including the contractor's temporary office, provided that such use is on the building site or immediately adjacent thereto and provided further, that such use shall be permitted only during the construction period and the thirty (30) days thereafter	P	P	P	P
Swimming pools* (Article 57) and tennis courts	P		P	P
Temporary outdoor sales* (Article 73) and special events subject to the issuance of a temporary use permit	P	P	P	P
Vending machines* (Article 33)	P	P	P	P

\* = Subject to special regulations—see Article in parentheses.

P = Permitted Accessory Use

(Ord. No. 97-02, § 2 Exh. A., 1-22-97)

## ARTICLE 16: Commercial Zones

### Sec. 33-334. Prohibited uses.

(a) All uses and structures not listed as permitted primary or accessory uses, or conditionally permitted uses shall be prohibited. However, the director of planning and building, may approve a use, after study and deliberation, which is found to be consistent with the purposes of this article, similar to the uses listed as permitted uses, and not more detrimental to the zone than those uses listed as permitted uses.

(b) Any existing residential structure shall not be used for both residential and commercial purposes at the same time, except as provided for in Article 44. (Ord. No. 97-02, § 2 Exh. A, 1-22-97)



**ARTICLE 26: INDUSTRIAL ZONES**

**Sec. 33-565. Accessory uses and structures.**

Accessory uses and structures are permitted in the industrial zones, provided they are incidental to and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include but are not limited to the following:

**Table 33-565**

**PERMITTED ACCESSORY USES AND STRUCTURES**

<b>Use Title</b>	<b>I-O</b>	<b>M-1</b>	<b>M-2</b>	<b>I-P</b>
Bus stop shelters**	P	P	P	P
Cafeteria, operated in conjunction with a permitted use for the convenience of persons employed upon the premises	P	P	P	P
Caretakers' or watchman's dwelling	P	P	P	P
<u>Cottage Food Operations and Home Occupations as provided for in Article 44.</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Commercial sales and service clearly incidental and secondary to a principal permitted use	P	P	P	P
Employee recreational facilities and play areas	P	P	P	P
Other accessory uses and buildings customarily appurtenant to a permitted use	P	P	p	p
Satellite dish antennas*	P	P	P	P
Storage buildings incidental to a permitted use	P	P	P	P

\* Subject to special regulations—see Section 33-700.

\*\* Subject to special regulations—see Section 33-1118.

(Ord. 94-37 § 1 (part), 11-9-94)

## ARTICLE 44: Home Occupations

### Sec. 33-850. Permit required.

A legally established dwelling or dwelling unit in residential zone shall not be used for business purposes unless a home occupation permit has first been issued by the planning department. A Cottage Food Operation, as defined in the California Homemade Food Act, shall obtain a home occupation permit. (Zoning Code, Ch. 108, § 1087.1)

### Sec. 33-851. Procedure.

The ~~planning director~~ of community development may upon application issue a home occupation permit which shall state the home occupation permitted, the conditions attached and any time limitations thereon. The permit shall not be issued unless the ~~planning~~ director is satisfied that the applicant will meet all the conditions listed in section 33-852 of this article and the applicant has agreed in writing to comply with the conditions. (Zoning Code, Ch. 108, § 1087.3)

### Sec. 33-852. Conditions.

Each and every one of the following conditions must be observed at all times by the holder of a home occupation permit.

(a) Employees or assistants who are not occupants of the dwelling shall not be employed on the premises, except where specifically permitted by law.

(b) The home occupation shall be conducted wholly within the structures on the premises and shall not exceed twenty-five (25) percent of the total floor area of said structures. Required residential parking shall be maintained.

(c) Inventory and supplies for the home occupation shall not occupy more than fifty (50) percent of the permitted area.

(d) No customer services or sales of goods, wares or merchandise shall be made on the premises, except where specifically permitted by law.

(e) No sign or advertising shall be displayed on the premises ~~except as may be expressly where~~ specifically permitted by law this division.

(f) No display of any kind shall be visible from the exterior of the premises.

(g) No mechanical or electrical apparatus, equipment or tools shall be permitted except those items which are commonly associated with residential use or use customary to home crafts.

(h) All maintenance, ~~or service, or commercial~~ vehicles, trailers and equipment, or any vehicle bearing any advertisement related to the home occupation or any other similar vehicle shall be garaged parked or stored entirely within a building or structure.

(i) The home occupation shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located.

(j) There shall be complete conformity with fire, building, plumbing, electrical and health codes and to all state and city laws and ordinances.

(k) The home occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential uses.

(l) The home occupation shall not alter the residential character of the premises or unreasonably disturb the peace and quiet, including radio and television reception of the neighborhood by reason of color, design, materials, construction, lighting, sounds, noises or vibrations.

(m) Any special condition established by the ~~planning~~ director and made of record in the home occupation permit, as he/she may deem necessary to carry out the intent of this section, shall be met.

(n) No more than one (1) Home Occupation Permit for Cottage Food Operations is permissible per legally established dwelling unit.

(~~o~~) All home occupation permits are subject to immediate cancellation in the event that the zoning regulations applicable to the premises are amended to prohibit such use. (Zoning Code, Ch. 108, § 1087.5)

**Sec. 33-853. Noncompliance.**

Any home occupation permit shall be revoked by the ~~planning~~ director upon violation of any requirements of this article, or upon failure to comply with any of the conditions or limitations of the permit, unless such violation is corrected within three (3) days of the giving of written notice thereof. A permit may be revoked for repeated violation of the requirements of this article, notwithstanding compliance ~~of~~ with the notice. (Zoning Code, Ch. 108, § 1087.7)

**Sec. 33-854. Denial or revocation.**

In the event of denial of any permit, or the revocation thereof, or of objection to the limitations placed thereon, appeal may be had to the planning commission, whose decision shall be final. (Zoning Code, Ch. 108, § 1087.8)

**Sec. 33-855. Business license also required.**

A home occupation permit is not a business license and the granting of a home occupation permit shall not relieve the permittee of any other requirements of this code pertaining to business licenses and license taxes. (Zoning Code, Ch. 108, § 1087.9)

**Secs. 33-856—33-859. Reserved.**

## **ARTICLE 56. MISCELLANEOUS DEVELOPMENT STANDARDS**

### **Sec. 33-1070. Purpose.**

The purpose of this article is to provide for the several miscellaneous land development standards which are applicable throughout the city regardless of zones. The requirements of this article shall be in addition to the property development standards for each zone. The provisions of this article shall prevail over conflicting provisions of any other article. (Zoning Code, Ch. 107, § 1075.00)

### **Sec. 33-1071. Prohibitions.**

No lot shall be created, nor shall any structure be erected, nor shall any existing lot or structure be altered or changed in any manner which would result in noncompliance with the property development standards set forth in this article, except as allowed in Article 61, Division 3, Nonconforming Uses, Structures and Land, or where a variance has been granted in accordance with the provisions of this article. (Zoning Code, Ch. 107, § 1075.05)

**ARTICLE 57: Miscellaneous Use Restrictions**

**Sec. 33-1123.                     Cottage Food Operations.**

**Cottage Food Operations, as defined in the California Homemade Food Act and Article 44 of this chapter.**

**Sec. 33-1124 --- 33-1129.       **Reserved.****

## **ARTICLE 61, DIVISION 3. NONCONFORMING USES, ~~AND STRUCTURES,~~ AND LAND**

### **Sec. 33-1240. Definition and purpose.**

*Nonconforming use*, as used in this division, is the use of any building, structure or land which is prohibited by any city law, but which use was lawful prior to the effective date of such law. ~~Whenever property is initially zoned or annexed to the city, such property is subject to this division. The failure of certain uses and structures to meet applicable requirements of the Escondido Municipal Code and this chapter results in such uses and structures being incompatible with the purposes of such code and chapter. Therefore, it is intended that these uses and structures be brought into compliance with such code and chapter as quickly as the fair interests of the parties will permit. The purpose of this division is to provide for the control, improvement and termination of uses, structures or parcels which do not conform to the current regulations for the land on which they are located.~~ (Zoning Code, Ch. 108, § 1084.01; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

### **Sec. 33-1241. Continuing nonconforming use.**

(a) A nonconforming use may be continued even though such use does not conform with the revised provisions of applicable regulatory ordinances, but only if such use constitutes a legal nonconforming use as determined by the provisions of this division.

(b) This division does not authorize or approve the continuance of the use of any land, building or structure which was in violation of law at the commencement of such use.

(c) ~~Nonconforming~~ structures which have been designated as historical landmarks listed on the City's Local Register of Historic Places pursuant to the provisions of Article 40 of this chapter are ~~deemed to be legal nonconforming uses and~~ are exempt from the provisions of this division.

(d) Alterations or enlargements may be made to single-family residential structures in ~~residential~~ single-family zones notwithstanding the fact that such structure or lots may not conform to the minimum setback, lot size or lot width requirements of the current applicable zoning regulations, if the residential structure was built in conformity with the development standards in force at the time of construction.

Alterations or enlargements made to such nonconforming structures shall observe current front and rear yard setbacks, but may observe prior established nonconforming sideyard setbacks subject to current applicable building code requirements and subject to the limitations of section 33-1243.

(e) Notwithstanding the provisions of this chapter, the director of ~~planning and building~~ community development ("director") may determine that nonconforming status exists for residential, commercial or industrial zoned properties, even though permit documentation is not available, subject to the following findings:

(1) The structure was constructed prior to 1976 and subsequently annexed to the city.

(2) The structure or building does not create a public nuisance as a result of conditions that threaten the public health, safety and welfare.

(3) Except as noted in this subsection, all other provisions of this article shall apply.

(f) Investigation. Any request brought pursuant to this subsection, shall be made in writing to the ~~director of planning and building~~, and shall be accompanied by a filing fee, which shall be established by resolution of the city council. The director shall initiate an investigation of the request, together with any other information deemed relevant or necessary by the director. Any necessary information shall be the responsibility of the applicant to provide. Upon making the required findings of this subsection, the director shall grant, deny, or conditionally grant the request subject to the provisions of this article. (Zoning Code, Ch. 108, § 1084.02; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93; Ord. No. 96-7, § 1, 2-28-96; Ord. No. 96-20, § 1, 7-24-96)

Sec. 33-1242. Inapplicability of this division.

The following properties shall not be entitled to legal nonconforming use status under section 33-1241:

(a) Abandoned use of property. Any discontinuance of a nonconforming use for a continuous period of six (6) months shall be deemed to constitute abandonment of any preexisting nonconforming rights and such property shall not thereafter be returned to such nonconforming use;

(b) Altered property use. Nonconforming uses may not be repaired, altered, improved or reconstructed in such a way that the nonconforming use becomes more permanent or is expanded. Alterations, improvements and reconstruction are deemed to make the nonconforming use more permanent or expanded if cumulative expenditures on the nonconforming use exceed the percentages of replacement value set forth in section 33-1243. All percentages used in section 33-1243 shall be calculated on a cumulative basis commencing with the initial expenditure. Replacement values shall be calculated by the director of Community Development planning and building ("director"), using the most recent table of valuation multipliers of the International Conference of Building Officials, San Diego Chapter Code Council;

(c) Changed use. A nonconforming building, structure or use shall not be changed to another nonconforming use;

(d) Extended nonconforming use. A nonconforming use shall not be physically extended or enlarged, except as permitted in section 33-1243. Minor expansions of nonconforming buildings are permitted provided the degree of nonconformity is not increased and all applicable development standards are met. The extension or enlargement of a lawful use to any portion of a nonconforming use, or the issuance of a home occupation permit pursuant to Article 44, shall not be deemed the extension of such nonconforming use. (Zoning Code, Ch. 108, § 1084.03; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 92-11, §§ 1 and 2, 3-4-92; Ord. No. 92-47, § 5, 11-18-92; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1243. Exceptions to nonconforming use provisions.

(a) Routine maintenance. Nothing in this division shall prevent a property owner from performing routine maintenance on a nonconforming use. For the purposes of this section, the term, "routine maintenance," is minor work on a nonconforming use which does not require a permit of any kind and is primarily related to the aesthetics of a use or to alleviate normal wear and tear. Common examples of routine maintenance include, but are not limited to, painting, scraping, ~~window replacement~~, cleaning, pruning and so forth;

(b) Voluntary work. Nothing in this division shall prohibit the repair, alteration, improvement or reconstruction of a nonconforming use provided that the total cumulative costs of such work do not exceed twenty-five (25) percent of the replacement value of the nonconforming use. The twenty-five (25) percent limitation shall include the replacement costs of work conducted pursuant to subsection (c) of this section and shall not include work that brings the property more into conformance with the current code:

(1) Improvements, additions and/or alterations for a nonconforming single-family residential structure(s) in a ~~residential~~ single-family zone, including restoration pursuant to government order, may exceed the twenty-five (25) percent limitation up to fifty (50) percent of the replacement value of the nonconforming structure,

(2) Improvements, additions and/or alterations above fifty (50) percent for a nonconforming single-family residential structure(s) in a single-family zone, including restoration pursuant to governmental order, may be approved or conditionally approved by the director, pursuant to an administrative adjustment, upon demonstration that the proposed adjustment will be compatible with and will not be detrimental to adjacent property or improvements,

(3) The application for the administrative adjustment shall include a fee to the city in an amount to be established by resolution of the city council. The director may agendize the application for consideration by the planning commission. Replacement values shall be calculated by the director using the most recent table of valuation multipliers of the ~~International Conference of Building Officials, San Diego Chapter~~ Code Council,

(4) A nonconforming sign may be altered, improved or remodeled notwithstanding this section provided the cumulative costs of such improvements or remodeling of the sign does not exceed fifty (50) percent of the cost of reconstruction of the building, as determined by the director,

(5) City-wide zone change. Nothing in this division shall prohibit the repair, alteration, improvement or reconstruction of a residential use considered nonconforming due to the city-wide zone change program; provided, that the total cumulative costs of such work does not exceed fifty (50) percent of the replacement value of the nonconforming use, except as permitted within this subsection. ~~The fifty (50) percent limitation shall include the replacement costs of work conducted to section 33-1243;~~

(c) Restoration pursuant to governmental order. Nothing in this division shall prevent the repair, alteration, improvement or reconstruction of any portion of a nonconforming use if such work is ordered by a governmental authority having jurisdiction or if such work is necessary to bring the nonconforming use into compliance with any applicable building, plumbing, electrical or similar codes, provided the total cost of such work includes only restoration pursuant to government order to ensure health, safety and welfare;

(d) Restoration following disaster. Nothing in this division shall prevent the repair, alteration, improvement or reconstruction of any nonconforming use damaged by fire, collapse, explosion or acts of God, provided the total cumulative costs of such work does not exceed fifty (50) percent of the replacement value. Nonconforming residential structures are exempt from the fifty (50) percent limitation set forth in this subsection and may be constructed, repaired and rebuilt to nonconforming densities and the use thereof may be continued following damage by fire, collapse, explosion or acts of God without limitation as to cost. The percent limitations set forth in this subsection do not include work pursuant to subsections (b) or (c) of this section;



(e) Low and very low-income housing. Low and very low-income housing units may be repaired, altered, improved or reconstructed to a condition complying with all applicable building, electrical, plumbing and similar codes without regard to the percent limitations set forth in subsections (c) or (d) of this section, if the following conditions are satisfied:

(1) The housing units at issue have been inhabited continuously by individuals with low or very low income for at least one (1) year prior to the date of the proposed alteration, improvement or reconstruction,

(2) The property owner restricts the property for occupation solely by individuals of families of low and very low income for a period of at least ten (10) years. Such restrictions shall be in a form satisfactory to the city attorney,

(3) The property owner does not charge rent for the property which is in excess of thirty (30) percent of the gross household income of the residents of the property;

(f) Income definition. For the purposes of subsection (e) of this section, the term "low and very low income" shall mean eighty (80) percent and fifty (50) percent respectively of median income of the San Diego County metropolitan statistical area adjusted for household size or any more recent definition adopted by the Department of Housing and Urban Development;

(g) Any property owner electing to not be subject to restrictions imposed pursuant to subsection (e)(2) of this section shall immediately notify the city and shall terminate, demolish or bring the nonconforming use into compliance with all relevant zoning, building, plumbing, electrical and similar codes within thirty (30) days of terminating the low income use.

(h) Miscellaneous Exceptions. The following nonconforming situations are not subject to this division:

(1) Lots created in the Old Escondido Neighborhood Historic District pursuant to Article 65, Sec. 33-1376,

(2) Single Family residential lots that were created legally but now do not meet minimum lot width, lot frontage or lot area.

(Zoning Code, Ch. 108, § 1084.04; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93; Ord. No. 2005-10R, § 4,7-13-05; Ord. No. 2008-22, § 6, 9-10-08; Ord. No. 2011-19R, § 5, 1-11-12)

Sec. 33-1244. Appeals.

Any owner of a nonconforming use or structure who is notified by the city of the nonconformance and/or ordered to remove or abate said structure or use may appeal such order to the director pursuant to the terms and procedures set forth in the following sections of this division. (Zoning Code, Ch. 108, § 1084.05; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1245. Time for appeal.

Any notice of nonconformance or order for removal or abatement shall become final upon the expiration of thirty (30) days from the date of posting and mailing of the notice and order, unless an appeal to the director is filed prior to the expiration of said period of time. In the event that an appeal is timely filed, all

action to be commenced against a nonconforming structure or use shall be stayed until said appeal is finally decided, unless there is an immediate and imminent threat to the public health, safety or welfare, as determined by the director. (Zoning Code, Ch. 108, § 1084.06; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1246. Procedure for appeals.

(a) Form. Any appeal brought pursuant to section 33-1244 shall be submitted on an application form to be provided by the planning division~~city clerk~~ and shall be filed with the planning division~~city clerk~~. An appellant shall provide the following information as to each nonconforming structure or use that is the subject of an appeal:

(1) A detailed description of the use or structure, including legal description, assessor's parcel number, the method of its construction and dimensions;

(2) The name and address of each owner, occupant or tenant of the property upon which the use or structure is located;

(3) The date and value of original construction of the nonconforming structure or the date of commencement of the nonconforming use and investment in such use;

(4) The date and cost of appellant's purchase of the use or structure;

(5) The date or dates, and all expenditures for repairs, alterations, improvements or reconstruction on the nonconforming use;

(6) The current value of the use or structure.

(b) Investigation. The director shall initiate an investigation of each of the above points, together with any other information deemed relevant or necessary by the director. (Zoning Code, Ch. 108, § 1084.07; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1247. Hearing on appeal.

Within thirty (30) days of the filing of the appeal, the director shall commence a hearing during which the appellant may present evidence and argument. The Building Advisory and Appeals Board~~director~~ may grant or deny the appeal upon determining that the application of this division to the appellant is neither arbitrary nor unreasonable. (Zoning Code, Ch. 108, § 1084.08; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1248. Findings.

The Building Advisory and Appeals Board~~director~~ shall not grant an appeal until the following findings are made:

(a) The use or structures to which the legal nonconforming use applies was lawfully in existence prior to the imposition of the law to which the current use or structures do not conform;

(b) The use of the property or building does not constitute a public nuisance as a result of conditions that threaten the public health, safety and welfare. (Zoning Code, Ch. 108, § 1084.09; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1249. Appeal to planning commission and city council.

The decision of the Building Advisory and Appeals Board~~director~~ may be appealed to the planning commission and subsequently to the city council pursuant to section 33-1303 of this chapter. (Zoning Code, Ch. 108, § 1084.10; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Sec. 33-1250. Future entitlements.

A copy of all determinations on appeal shall be permanently maintained on file with the planning department. No building permit or ~~any~~ land use entitlement shall be issued for any property which does not conform to current laws. (Zoning Code, Ch. 108, § 1084.11; Ord. No. 89-36, § 1, 8-9-89; Ord. No. 93-16, § 1, 7-14-93)

Secs. 33-1251—33-1259. Reserved.