

## Chapter 18.15

### GENERAL PROVISIONS AND EXCEPTIONS

#### Sections:

- 18.15.010** Addition of permitted uses.
- 18.15.020** Coverage—Measurement.
- 18.15.030** Yard spaces.
- 18.15.040** Yard requirements—  
Measurement.
- 18.15.050** Yard requirements—  
Exceptions.
- 18.15.060** Through lots.
- 18.15.070** Maintenance of landscaped  
areas.
- 18.15.080** Maintenance and elimination of  
nonconforming sites, uses and  
structures.
- 18.15.090** Clarification of ambiguity—  
Interpretation.
- 18.15.100** Height limitations—  
Measurement and exceptions.
- 18.15.110** Garage sales within residential  
areas.
- 18.15.120** Adult entertainment uses.

#### **18.15.010** Addition of permitted uses.

Upon receipt of an application, or on its own initiative, the city council may add a use to the lists of permitted uses, permitted uses subject to administrative approval and conditional uses prescribed in Chapters 18.04 through 18.12 of this title, if the council makes the following findings, as applicable:

A. That the addition of the use to the list of permitted uses will be in accordance with the purposes of the district in which the use is proposed.

B. That the use has the same basic characteristics as the uses permitted in the district.

C. That the use reasonably can be expected to conform with the required conditions prescribed for the district.

D. That the use will not be detrimental to the public health, safety or welfare, or adversely affect the character of any district in which it would be located.

E. That the use will not create more vehicular traffic than the volume normally created by the uses permitted in the district.

F. That the use will not create more odor, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amount normally created by any of the other uses permitted in the district.

G. That the use will not create any greater hazard of fire or explosion than the hazards normally created by any of the uses permitted in the district.

When a use has been added to a list of permitted uses in accordance with the procedure prescribed in this section, the use shall be deemed to be listed as a permitted use in the appropriate section and shall be added to the text of that section of the zoning ordinance when it is next published with a notation of the date when the use was added to the list. (Ord. 437 § 1 (part), 1989)

#### **18.15.020** Coverage—Measurement.

The percent of the site area covered by structures shall be measured by dividing the number of square feet of horizontal floor area covered by structures, open or enclosed, by the total horizontal area within the property lines of the site. (Ord. 437 § 1 (part), 1989)

#### **18.15.030** Yard spaces.

A. No yard space about any structure in compliance with the regulations for the district in which it is located shall be deemed to provide a yard for any other structure, and no yard on one site shall be deemed to provide a yard space for a structure on another site.

B. Where two or more dwellings are located on the same lot, and any one of them has a door facing a side yard, such dwelling shall be located not less than ten feet from the adjacent side lot line. A door shall be deemed to face a side yard if the wall in which the door is set is located at an angle of forty-

five degrees or less to the side yard. (Ord. 437 § 1 (part), 1989)

**18.15.040 Yard requirements—  
Measurement.**

Required yards shall be measured as the minimum horizontal distance from the property line of the site or street line to a line parallel thereto on the site; provided, that where a precise street plan has been adopted by the city council, required front yards shall be measured from the plan line, and no provision of this title shall be construed to permit a structure or use to extend beyond such line and, provided further, that where a site abuts on a street having only a portion of its required width dedicated or reserved for street purposes, site area and required yards shall be measured from a line representing the boundary of the additional width required for street purposes abutting the site. Where a site abuts a public alley, required yards shall be measured from the nearest line of the alley, except that garages and carports shall be located a minimum of twenty-seven feet from the opposite alley which has access perpendicular to the alley right-of-way line. (Ord. 437 § 1 (part), 1989)

**18.15.050 Yard requirements—Exceptions.**

A. Architectural features including sills, chimneys, fireplaces, cornices and eaves may extend into a required side yard, a required rear yard or a space between structures not more than thirty-six inches and may extend into a required front yard not more than six feet; provided, that where an architectural feature extends more than twenty-four inches into a required side yard, said extension shall be protected by a minimum one hour fire resistant standard. No building or projection thereof, except a garden structure, may extend into a public easement.

B. Open, unenclosed, uncovered metal fire escapes and depressed ramps or stairways may project into any required yard or space between buildings not more than four feet; planter boxes at-

tached to a building may be extended into a required front yard by not more than three feet.

C. Fences, walls, hedges, garden structures walks, driveways and retaining walls may occupy any required yard or other open spaces, subject to the limitations prescribed in the district regulations, and except that the provisions of this subsection shall not apply to a fence or wall necessary for public safety or as required by any law or regulation of the State or any agency thereof, and further that a chain link fence up to seven feet in height may be located in any required front yard in conjunction with public and quasi-public uses.

D. Where more than sixty percent of such portion of the linear frontage of lots improved with residential buildings within any block is comprised of lots with less than the minimum front yard requirement, the minimum front yard requirement for other residential buildings in such block may be reduced to the average of the actual front yards of all the lots in such block improved with residential buildings, counting those which have front yards greater than the minimum front yard requirement of the district as having the minimum requirement. (Ord. 437 § 1 (part), 1989)

**18.15.060 Through lots.**

A front yard shall be provided on each frontage of a through lot, except where a waiver-of-access has been dedicated to one of the frontages. (Ord. 437 § 1 (part), 1989)

**18.15.070 Maintenance of landscaped areas.**

A landscaped area provided in compliance with the regulations prescribed in this title or as a condition of a site plan review, a use permit or variance shall be planted with live and healthy plant materials suitable for screening or ornamenting the site, whichever is appropriate, and plant materials shall be replaced as needed to screen or ornament the site. Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed or otherwise maintained to assure compliance with the regulations requiring landscaped areas. Landscaped areas within sites

subject to site plan review shall be watered by automatic systems. (Ord. 437 § 1 (part), 1989)

**18.15.080 Maintenance and elimination of nonconforming sites, uses and structures.**

**A. Purposes and Application.**

1. A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this title, but which does not conform with the use regulations for the district in which it is located. This section is intended to limit the number and extent of nonconforming uses by limiting their enlargement and prohibiting their reestablishment after abandonment, and by prohibiting the alteration of the structures they occupy and their restoration after destruction.

2. A nonconforming structure is a structure which was lawfully erected prior to the adoption of this title, but which does not conform with the standards of coverage, yard space, height of structures or distance between structures prescribed in the regulations for the district in which the structure is located. While permitting the use and maintenance of nonconforming structures, this section is intended to limit the number and extent of nonconforming structures by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this title and by prohibiting their restoration after destruction, within a reasonable period of time.

3. Priorities for enforcement under this section shall be as follows, in descending order of importance:

- a. Uses listed under subsection G below.
  - b. Nonconforming uses.
- B. Continuation and Maintenance.**

1. A use lawfully occupying a structure or a site on the effective date hereof or of amendments thereto which does not conform with the use regulations for the district in which the use is located shall be deemed to be a nonconforming use and

may be continued, except as otherwise provided in this section.

2. A structure lawfully occupying a site on the effective date hereof or of amendments thereto, which does not conform with the standards of coverage, front yard, side yards, rear yard or distances between structures prescribed in the regulations for the district in which the structure is located, shall be deemed to be a nonconforming structure and may be used and maintained except as otherwise provided in this section.

3. A sign or outdoor advertising display of any character lawfully occupying a site on the effective date hereof or amendments thereto, which does not conform with the standards for subject matter, location, size, lighting or movement prescribed for the district in which it is located, shall be deemed to be a nonconforming sign or outdoor advertising structure, and may be displayed and maintained except as otherwise provided in this section.

4. Routine maintenance and repairs may be performed on a structure or site, the use of which is nonconforming, on a nonconforming structure and on a nonconforming sign or outdoor advertising structure.

**C. Alterations and Additions to Nonconforming Uses and Signs.** Except as provided in subsections D through I of this section, no structure, the use of which is nonconforming, and no nonconforming sign shall be moved, altered or enlarged unless required by law or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use. No structure partially occupied by a nonconforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use.

**D. Alterations and Additions to Nonconforming Structures.** No nonconforming structure shall be altered or reconstructed so as to increase the amount of floor space or the discrepancy between existing conditions and the standard of coverage, front yards, side yards, rear yard, height of structure or distances between structures prescribed in

the regulations prescribed for the district in which the structure is located, except as may be permitted through the granting of a conditional use permit under the provisions of Chapter 18.17. The modest expansion of a nonconforming use which may be allowed within any zoning district under conditional use permit procedures shall not exceed twenty-five percent of the existing floor area of the structure.

**E. Abandonment of a Nonconforming Use.** Whenever a nonconforming use has been abandoned, discontinued or changed to a conforming use for a continuous period of six months, the nonconforming use shall not be reestablished and the use of the structure or site thereafter shall be in conformity with the regulations for the district in which it is located.

**F. Restoration of a Damaged Structure.**

1. Whenever a nonconforming use, or a nonconforming structure shall be destroyed by fire or other calamity, or by an act of God or by the public enemy to the extent of less than sixty percent, the structure may be restored and the nonconforming use may be resumed; provided, that restoration is started within six months and diligently pursued to completion. The extent of damage to any structure shall be determined by the building official, and shall be based upon the ratio of the estimated cost of restoring the use or structure to its condition prior to such damage to the estimated cost of duplicating the entire structure as it existed prior thereto.

2. Whenever a nonconforming use or a nonconforming structure shall be destroyed by fire or other calamity, or by an act of God or by the public enemy to the extent of sixty percent or more, or shall be voluntarily razed or shall be required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located and the nonconforming use shall not be resumed.

**G. Elimination of Nonconforming Uses and Structures.**

1. The following nonconforming uses and structures shall be discontinued and completely removed or altered and converted to a conforming status within five years after the effective date of this title:

a. A nonconforming use which does not occupy a structure.

b. A nonconforming use occupying a structure having an assessed valuation of less than two hundred dollars.

c. A nonconforming outdoor advertising structure.

d. Abandoned or dilapidated signs in accordance with the provisions of Section 18.14.040(D)(11).

2. A nonconforming home occupation shall be discontinued within one year of the adoption of this title.

3. Uses permitted only within an RA, R or RM district which are located in a C or I district, and uses permitted only within a C or I district which are located within an RA, R or RM district shall be completely removed or altered and converted to a conforming status upon abandonment of the previous use for six months or more. When a nonconforming use is removed, every future use shall be in conformity with the provisions of this title. Repairs necessary to maintain a nonconforming use and other maintenance (excluding signs), not exceeding an assessed valuation of two thousand five hundred dollars, shall not be construed as lengthening the useful life of the nonconforming use.

4. Fences, walls and hedges which do not conform to the provisions of this title governing the erection of fences, walls and hedges in relation to street intersections shall, within one month of receipt of written notification by the community development department, be removed or made to conform.

**H. Time When Use, Structure or Sign Becomes Nonconforming.** Whenever a use or structure becomes nonconforming because of a change of zoning district boundaries or a change of regulations for the district in which the site is located, the pe-

riod of time prescribed in this section for the elimination of the use shall be computed from the effective date of the change of district or regulations, and the building official shall carry out the provisions of subsection I of this section, in respect thereto.

**I. Records and Notification of Nonconforming Status of a Use, Structure or Sign.**

1. Within one hundred eighty days after the effective date hereof, and amendments thereto, the community development department shall compile a list of all structures or uses which shall have become nonconforming by the adoption of this title under the provisions of subsection H of this section, together with a description of their locations and the names and addresses of all persons whose names appear on the latest adopted tax roll of Tulare County as owning such nonconforming structures, uses or signs, which list shall be recorded in the office of the Tulare County recorder with copies placed on file with each title company operating within Tulare County.

2. Within one year after the effective date hereof, the community development department shall notify, in writing, the owners of all nonconforming structures, uses, signs and fences, walls and hedges, of the nonconforming status of their property and the date when such structure or use shall be removed or made conforming by said owners, if such removal or conformance is required by the provisions of this title. An excerpt of this title will be attached to said notice which excerpt shall include all of the provisions of this section.

**J. Effect of Eminent Domain.** If any land, right-of-way or easement be taken by eminent domain, or be granted to the condemner under actual threat of suit in eminent domain, the following provisions and exceptions shall apply:

1. If the area of a lot is reduced below the minimum requirement thereby, such lot shall be deemed to be a legal substandard lot under the provisions of Section 18.02.030(G), and any exist-

ing building or structure thereon shall be deemed to be nonconforming.

2. If a required yard is reduced or eliminated thereby, any affected building or structure shall be deemed nonconforming; provided, however, that such building or structure may be structurally altered or enlarged as long as such alterations or enlargements comply with all other requirements of the zoning district.

3. If any required parking space on a lot is reduced or eliminated thereby, the provisions of Chapter 18.13 shall not be construed to require the replacement of the required parking space.

**K. Change of Nonconforming Use.** Except as otherwise set forth in this section, the nonconforming use of a structure or site may be changed to another nonconforming use provided the change of use is approved by the city council in accordance with the following procedure:

1. An application for a change of use shall be made to the city council on a form prescribed by the council, which form shall include the following data:

- a. The name and address of the applicant;
- b. A statement that the applicant is the owner of the property or is the authorized agent of the owner;
- c. The address or description of the property; and
- d. A statement of the precise nature of the existing or preexisting nonconforming use, the proposed nonconforming use, and any other data pertinent to the findings prerequisite to the granting of the application as set forth in subsection (K)(4) of this section.

The application shall be filed with the community development department. Notice shall be given to the applicant of the time when the application will be considered by the council, and notice may be given of the time to any other interested party.

2. The council shall hold a public hearing on an application for a change of use. Notice of the hearing shall be given not less than ten days nor

more than thirty days prior to the date of the hearing in the manner set forth in Chapter 18.17 of this code.

3. The community development director shall make an investigation of the application and shall prepare a written report thereon, which report shall be submitted to the council. The council shall consider the report of the director before taking action on the application.

4. The council may grant an application for a change of use if, on the basis of the application and the evidence submitted, the council makes the following findings:

a. That the proposed use is classified in a more restricted category than the existing or preexisting use by the district regulations of this title. The classification of a nonconforming use shall be determined on the basis of the district in which it is first permitted; provided, however, a conditional use shall be deemed to be in a less restrictive category than a permitted use in the same district;

b. That the proposed use will not more adversely affect the character of the district in which it is proposed to be located than the existing or preexisting use;

c. That the proposed use will not create more vehicular or rail traffic than the volumes created by the existing or preexisting use;

d. That the proposed use will not create more odor, dust, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amount created by the existing or preexisting use; and

e. That the proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

5. The city council may grant an application for a change of use for a limited time period, or subject to such conditions as the council may prescribe. The council may deny an application for a change of use.

6. An action of the council granting an application for a change of use shall become null and void

six months following the date of the action unless, prior to the expiration of six months, a building permit is issued by the chief building inspector and construction is commenced and diligently pursued toward completion on the site which was the subject of the application. The action of the council may be made effective for an additional six months if, within six months of the original application, an application to continue the action in effect is made to the council. The council may grant or deny an application to continue its action in effect.

7. An action of the council granting an application for a change of use subject to conditions shall be revoked by the council if the conditions are not complied with.

8. Following the date of denial of an application for a change of use or the revocation of an action of the council granting an application, no application for the same, or substantially the same, structure or on the same, or substantially the same, site shall be filed within six months of the denial of the application or the revocation of the action of the council.

L. Use of Nonconforming Sites. Except as otherwise provided in this section, a site having an area, frontage, width or depth less than the minimum prescribed for the district in which the site is located, which is shown on a duly approved and recorded subdivision map, or for which a deed or valid contract of sale was of record prior to the adoption of this title, and which had a legal area, frontage, width and depth at the time that the subdivision map, deed or contract of sale was recorded, may be used for any permitted use listed for the district in which the site is located, but shall be subject to all other regulations for such district. (Ord. 437 § 1 (part), 1989)

#### **18.15.090 Clarification of ambiguity— Interpretation.**

A. In event of need for any clarification or interpretation of the provisions of this title, the city council shall ascertain all pertinent facts and by resolution shall set forth its findings. If approved

by the council, said clarifications or interpretation shall govern until modified by resolution adopted in like manner or by appropriate amendment to this title.

B. The authority of the city council prescribed by this section shall apply in all of the following cases:

1. If ambiguity arises concerning the appropriate classification of a particular use within the meaning and intent of this title, subject to the additional requirements of Section 18.15.010;

2. If ambiguity exists with reference to matters of height, yard area and other requirements;

3. If uncertainty exists with reference to a zone district boundary;

4. If an unforeseen condition arises or technological changes have been introduced which require interpretation of their impact on the provisions of this title;

5. If ambiguity or uncertainty arises as to the meaning of any word or provision contained in this title. (Ord. 437 § 1 (part), 1989)

#### **18.15.100 Height limitations—Measurement and exceptions.**

A. The height of a structure shall be measured vertically from the average elevation of the surface of the ground covered by the structure to the highest point of the structure; provided, however, the provisions of this section shall not apply to the height of any structure necessary for public safety or as required by any law or regulation of the State or an agency thereof.

B. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, air conditioning equipment or similar equipment required to operate and maintain buildings, and fire and parapet walls, skylights, towers, spires, cupolas, road signs (where permitted), flagpoles, chimneys, smokestacks, television and radio masts, or similar structures, may be erected to a height not exceeding twenty-five feet above the height limit of the underlying zone district but shall not be allowed for the purpose of providing additional floor

space. This section shall not apply to wireless communication facilities (e.g., cellular phone, enhanced specialized mobile radio, personal communication systems, or other communication technologies based on wireless radio wave transmission) which emit, broadcast or repeat signals intended primarily for commercial use beyond the immediate site upon which the facility is located. Wireless communication facilities shall be subject to the provisions of Section 18.16.090. (Ord. 486 § 17, 1997; Ord. 437 § 1 (part), 1989)

#### **18.15.110 Garage sales within residential areas.**

Garage sales within residential districts shall be subject to the limitations of Municipal Code Chapter 8.16. (Ord. 489 § 1 (part), 1998; Ord. 437 § 1 (part), 1989)

#### **18.15.120 Adult entertainment uses.**

A. Purpose. The primary purpose of adult entertainment uses is the commercial exploitation of sexually oriented activities and displays. These uses have the effect of demeaning human sexuality and encouraging an attitude of disdain for women, in particular, as commercial commodities.

There is considerable national concern with many of the direct and secondary effects of adult uses, including their detrimental influence on children, increased criminal activity associated with these uses, and the disruptive effects that adult uses have on adjacent residential and commercial neighborhoods. These effects are significantly increased and intensified when adult uses are so concentrated as to transform the character of a given area into an adult use district which draws people from outside the city to this form of entertainment.

It is deemed necessary to protect the public health, safety and welfare to control the location and concentration of such uses. This section restricts the locations of adult uses to nonresidential areas and prohibits their location in close proximity to one another or to facilities primarily devoted to use by children and families, thereby lim-

iting the absolute number of adult uses in the city and, in addition, effectively preventing the over-concentration of such uses.

The adult entertainment uses defined in subsection C of this section are of such character that their unrestrained location can cause or contribute substantially to blighted neighborhoods; therefore, the following regulations are enacted in addition to all other applicable land use and development standards in the municipal code.

The language employed in this section is for the sole and exclusive purpose of adopting the restrictive provisions of the zoning legislation affirmed by the United States Supreme Court in *Young v. American Mini Theaters* 427 U.S. 50 (1976), *City of Renton v. Playtime Theaters Inc.* 475 U.S. 41 (1986), and *Barnes v. Glen Theater Inc.* 111 S.Ct. 2456 (1991).

Nothing set forth in this section shall authorize, legalize or permit the establishment, operation or maintenance of any business, building or activity which violates any municipal ordinance or provision of the California Penal or Civil Codes regarding nuisances, sexual conduct, lewdness, prostitution, or obscene or harmful matter, nor shall the use of such language be interpreted to legalize the types of businesses which promote such violations.

**B. Adult Entertainment Uses.** Adult entertainment uses shall be permitted only upon approval of a conditional use permit by the city council, in accordance with the provisions of Chapter 18.17 and the following criteria:

1. No person shall cause or permit the establishment of any defined adult use within one thousand feet of any church, public or private school or college, park, library, playground, or area zoned for residential use, or within one thousand feet of another adult use.

2. The establishment of an adult use shall include the opening of such business as a new business, the relocation of such business, the conversion of an existing business location to any adult use, or the granting of any permits which would

have the effect of the establishment of an adult use or the intensification of an existing adult use.

**C. Definitions.**

1. For purposes of this section, "adult uses" include:

a. **Adult Bookstore.** An establishment having at least ten percent of its retail floor area or stock in trade comprised of books, videos, films, magazines, or other periodicals which are distinguished or characterized by an emphasis on depicting or describing specified sexual conduct or specified anatomical areas.

b. **Adult Motion Picture Theater.** An outdoor theater or enclosed building used for presenting motion pictures or other visual material distinguished or characterized by an emphasis on depicting or describing specified sexual conduct or specified anatomical areas.

c. **Adult Motel.** A motel wherein material is presented which is distinguished or characterized by an emphasis on depicting or describing specified sexual conduct or specified anatomical areas.

d. **Adult Motion Picture Arcade.** Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual conduct or specified anatomical areas.

e. **Adult Cabaret.** A nightclub, theater, or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, "lap" dancers, "couch" dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual conduct or specified anatomical areas.

f. **Massage Parlor.** Any place where, for an admission fee or for any form of consideration or gratuity, massage, alcohol rub, administration of fomentation, electric or magnetic treatments, or

any other treatment or manipulation of the human body occurs where such treatment or manipulation is the principal business of the establishment and is not part of a medically recognized therapeutic regime.

g. **Adult Model Studio.** Any place featuring, for any form of consideration or gratuity, models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity. The definition of "adult model studio" shall not apply to accredited learning institutions, such as schools or colleges, which maintain continuous enrollment and regularly offer graded courses of study.

h. **Sexual Encounter Center.** Any business, agency, or person who, for an admission fee or for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in specified sexual conduct or exposing specified anatomical areas.

i. **Sexual Paraphernalia Store.** Any retail store specializing in the sale of paraphernalia (other than condoms), devices, or equipment distinguished or characterized by an emphasis on depicting or describing specified sexual conduct or used in connection with specified sexual conduct.

j. Such other uses or activities as the city council may find similar to those listed and distinguished by an emphasis on depicting, describing or providing specified sexual conduct or specified anatomical areas.

2. For the purposes of this section, "specified sexual conduct" includes:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy; or
- c. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

3. For purposes of this section, "specified anatomical areas" are defined as:

a. Less than completely and opaquely covered human genitals, pubic regions, buttocks, and female breasts below a point immediately above the top of the areola; or

b. Human male genitals, less than completely and opaquely covered, or human male genitals in a discernibly turgid state, even if completely and opaquely covered. (Ord. 486 § 18, 1997)