

0006.900000
WSS/gjz
8/9/06
R:9/12/06gjz
R:6/5/07gjz
R;6/22/07gjz
R:7/30/07gjz
R:11/1/07rwc
R.8/21/08gjz

ORDINANCE NO. 3696

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE COMMUNITY DEVELOPMENT CODE BY THE REPEAL AND REENACTMENT OF CHAPTER 17.40 NONCONFORMING USES, BUILDINGS, SIGNS AND LOTS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, existing Chapter 17.40 Nonconforming Uses, Buildings, Signs and Lots was enacted in 1980 with the goal of achieving strict compliance with the City's zoning code; and

WHEREAS, significant changes have occurred including but not limited to the enactment of Historic Preservation provisions, changes in the state regulatory structure and the City's Comprehensive Plan designed to encourage mixed use development, preserve affordable housing and permit reuse and reconstruction of buildings within the City; and

WHEREAS, in order to encourage annexations to the City, the City wishes to provide for greater flexibility in the preservation of existing legally non-conforming uses, buildings and structures; and

WHEREAS, the City Council finds that the business environment and economic development can be stimulated by allowing greater flexibility regarding the reuse of nonconforming signs, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. _____

Chapter 17.40

NONCONFORMING USES, BUILDINGS, SIGNS AND LOTS

Sections:

- 17.40.000 Purpose.**
- 17.40.010 Nonconforming uses.**
- 17.40.020 Nonconforming buildings.**
- 17.40.030 Nonconforming accessory dwelling units.**
- 17.40.040 Nonconforming lots.**
- 17.40.050 Nonconforming signs.**
- 17.40.060 Nonconforming community facilities**

17.40.000 Purpose.

The purpose of this chapter is to allow certain nonconforming uses, buildings, signs and lots to continue while limiting the continuation of certain aspects of nonconformity. Other nonconforming uses, buildings, signs and lots, which are declared to be nuisances, are required to be eliminated.

17.40.010 Nonconforming uses.

A. Definition. A nonconforming use is one which was once allowed by applicable land use regulations, but is no longer allowed, due to the passage or later change of this or a prior ordinance.

B. Continuation. A nonconforming use may continue, unless required to be abated by subsection C of this section, but it may not be expanded in any way, including additional lot area, floor area, height, number of employees, equipment, or hours of operation except as otherwise provided in ECDC 17.40.060.

C. Lapse of Time.

1. If a nonconforming use ceases for a period of six continuous months, any later use of the property occupied by the former nonconforming use shall conform to this zoning ordinance. Uses such as agricultural uses, which vary seasonally, shall be deemed abandoned if the seasonal use is not utilized during one full season consistent with the traditional use.

2. If a nonconforming residential use ceases because its building is damaged in excess of seventy-five (75) percent of its replacement cost, the use may be reestablished if, but only if, an

application for a building permit which vests as provided in ECDC 19,00.015, et seq, is filed within 18 months of the date such damage occurred. After the application has been filed, only one 180-day extension may be granted.

3. The right of reestablishment of use described in ECDC 17.040.10.C.2, above, shall not apply if:

(a) The building or structure was damaged or destroyed due to the unlawful act of the owner or the owner's agent;
or

(b) The building is damaged or destroyed due to the ongoing neglect or gross negligence of the owner or the owner's agent.

In the event that 17.40.010.C.3(a) or (b) apply, the nonconforming use shall be abated if damage exceeds twenty-five (25) percent of replacement cost. "Replacement cost" shall be determined as provided in ECDC 17.40.020(F).

D. Conditional Uses. A legal use does not become nonconforming because the zone in which it is located is changed to a zone district which requires a conditional use permit for the use. However, the use may not be expanded, as provided for in subsection B of this section, without obtaining a conditional use permit.

17.40.020 Nonconforming building and/or structure.

A. Definition. A nonconforming building is one which once met bulk zoning standards and the site development standards applicable to its construction, but which no longer conforms to such standards due to the enactment or amendment of the zoning ordinance of the City of Edmonds or the application of such ordinance in the case of a structure annexed to the City. Subject to the other provisions of this section, an accessory building that is not an accessory dwelling unit shall be presumptively nonconforming if photographic or other substantial evidence conclusively demonstrates that the accessory building existed on or before January 1, 1981. In the case of a property that was annexed after January 1, 1981, then the date shall be that of the effective date of the annexation of the City of Edmonds. Such presumption may be overcome only by clear and convincing evidence.

B. Continuation. A nonconforming building or structure may be maintained and continued, unless required to be abated elsewhere in this chapter or section, but it may not be changed or

altered in any manner which increases the degree of nonconformity of the building except as expressly provided in subsection C through I.

C. Historic Buildings and Structures. Nothing in this section shall prevent the full restoration by reconstruction of a building or structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, the Washington State Cultural Resource Inventory, the Edmonds Register of Historic Places, or is listed in a Council-approved historical survey meeting the standards of the State Department of Archaeology and Historic Preservation. "Restoration" means reconstruction of the historic building or structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code and consistent with the requirements of Chapter 20.45 ECDC Edmonds Register of Historic Places. The reconstruction of all such historic buildings and structures shall comply with the life safety provisions of the State Building Code.

D. Maintenance and Alterations.

1. Ordinary maintenance and repair of a nonconforming building or structure shall be permitted.

2. Alterations which otherwise conform to the provisions of the zoning ordinance, its site development and bulk standards, and which do not expand any nonconforming aspect of the building, shall be permitted.

3. In an effort to provide modular relief, minor architectural improvements in commercial and multiple family residential zones may encroach into a nonconforming setback adjacent to an access easement or public right-of-way not more than 30 inches or one half of the distance to the property line whichever is less. "Minor architectural improvements" are defined as and limited to bay windows, eaves, chimneys and architectural detail such as cornices, medallions and decorative trim. Such improvements shall be required to obtain administrative design review. Nothing herein shall be interpreted to exempt such improvements from compliance with the state building and fire code.

4. Alterations required by law or the order of a public agency in order to meet health and safety regulations shall be permitted.

E. Relocation. Should a nonconforming building or structure be moved horizontally for any reason for any distance, it shall thereafter come into conformance with the setback and lot coverage requirements for the zone in which it is located. Provided, however, that a building or structure may be moved on the same site without full compliance if the movement reduces the degree of nonconformity of the building or structure. Movement alone of a nonconforming building or structure to lessen an aspect of its nonconformity shall not require the owner thereof to bring the building or structure into compliance with other bulk or site development standard of the city applicable to the building or structure.

F. Restoration. If a nonconforming building or structure is destroyed or is damaged in an amount equal to seventy-five (75) percent or more of its replacement cost at the time of destruction, said building shall not be reconstructed except in full conformance with the provisions of the Edmonds Community Development Code. Determination of replacement costs and the level of destruction shall be made by the building official and shall be appealable as a staff decision under the provisions of ECDC 20.105.030. Damage of less than 75 percent of replacement costs may be repaired, and the building returned to its former size, shape and lot location as existed before the damage occurred, if, but only if, such repair is initiated by the filing of an application for a building permit which vests as provided in ECDC 19,00.015, et seq, within one year of the date such damage occurred. This right of restoration shall not apply if:

1. The building or structure was damaged or destroyed due to the unlawful act of the owner or the owner's agent; or
2. The building is damaged or destroyed due to the ongoing neglect or gross negligence of the owner or the owner's agents.

G. Residential buildings in commercial zones. Existing nonconforming buildings in commercial zones in use solely for residential purposes – or structures attendant to such residential use – may be remodeled or reconstructed without regard to the limitations of ECDC 17.40.020(B), (E) and (F), if, but only if the following conditions are met:

1. The remodel or reconstruction takes place within the footprint of the original building or structure. "Footprint" shall mean an area equal to the smallest rectangular area in a plane

parallel to the ground in which the existing building could be placed, exclusive of uncovered decks, steps, porches, and similar features and provided that the new footprint of the building or structure shall not be expanded by more than ten (10) percent and is found by the City Staff to be substantially similar to the original style and construction after complying with current codes.

2. All provisions of the state building and electrical code can be complied with entirely on the site. No nonconforming residential building may be remodeled or reconstructed if, by so doing, the full use under state law or city ordinance of a conforming neighboring lot or building would be limited by such remodel or reconstruction.

3. These provisions shall apply only to the primary residential use on site and shall not apply to nonconforming accessory buildings or structures.

4. A nonconforming residential single-family building may be rebuilt within the defined building envelope if it is rebuilt with materials and design which are substantially similar to the original style and structure after complying with current codes. "Substantial compliance" shall be determined by the City Staff as a Staff Decision – Notice Required under the provisions of ECDC 20.95.050, except that any appeal of the Staff Decision shall be to the ADB rather than to the Hearing Examiner. The decision of the ADB shall be final and appealable only as provided in ECDC 20.105.070.

H. Subject to the other provisions of this section, an accessory building that is not an accessory dwelling unit shall be presumptively nonconforming if photographic or other substantial evidence conclusively demonstrates that the accessory building existed on or before January 1, 1981. In the case of a property that was annexed after January 1, 1981, then the date shall be that of the effective date of the annexation to the City of Edmonds. Such presumption may be overcome only by clear and convincing evidence.

I. BD-5 Zone. The BD-5 zone was created in part to encourage the adoption reuse of existing residential structures to live/work and commercial use as set forth in ECDC 16.43.030(B)(5). In the BD-5 zone, conforming and nonconforming buildings may be converted to commercial or other uses permitted by ECDC 16.43.020 without being required to come into compliance with the ground floor elevation requirements of ECDC 16.43.030(B).

17.40.025 Vested nonconforming or illegal accessory dwelling units.

A. Illegal or nonconforming accessory dwelling units which registered with the City during the registration period which ended October 16, 2000, at 5:00 p.m. are hereby declared to be legal nonconforming detached and attached accessory dwelling units (ADU). Accessory dwelling unit (ADU) is defined in Chapter 20.21 ECDC.

B. Once registered, a formerly illegal or nonconforming ADU shall enjoy all the protections and privileges afforded to a nonconforming building under the provisions of ECDC 17.40.020; provided, however, that such ADU shall be subject to the permit review requirement of ECDC 20.100.040 to the end that the city council reserves the right to impose additional conditions on the continued use and occupancy of the formerly illegal ADU if it is found to constitute a nuisance or present a hazardous condition, or to revoke such registration and permit if a nuisance or hazardous condition relating to the ADU is not abated.

C. Legal nonconforming units which received a permit certificate confirming such status and listing the physical dimensions and other characteristics of the structure may be continued in accordance with such permit certificate; provided, however, that the registration and permit of a formerly illegal ADU may be revoked and/or conditioned in accordance with the provisions of ECDC 20.100.040.

D. Failure to register a structure within the time period established by the provisions of this section shall be considered to be presumptive proof that such a unit is an illegal unit and subject to abatement. The owner of such structure may overcome such a presumption only by presentation of substantial and competent evidence which establishes the legal nonconforming nature of such building by clear and convincing evidence that the structure was permitted by Snohomish County or the city of Edmonds, was permitted by such agency and was in complete compliance with the applicable provisions of state law and county or city ordinance, at the date such construction was initiated and was completed.

17.40.030 Nonconforming lots.

A. Definition. A nonconforming lot is one which met applicable zoning ordinance standards as to size, width, depth and other dimensional regulations at the date on which it was created but which, due to the passage of a zoning ordinance, the

amendment thereof or the annexation of property to the city, no longer conforms to the current provisions of the zoning ordinance. A lot which was not legally created in accordance with the laws of the local governmental entity in which it was located at the date of the creation is an illegal lot and will not be recognized for development.

B. Continuation. A nonconforming lot may be developed for any use allowed by the zoning district in which it is located, even though such lot does not meet the size, width, depth and other dimensional requirements of the district, so as long as all other applicable site use and development standards are met or a variance from such site use or development standards has been obtained. In order to be developed a nonconforming lot must meet minimum lot size standards established by the provisions of this code, subject to the provisions of subsection D of this section.

C. Combination. If, since the date on which it became nonconforming due to its failure to meet minimum lot size or width criteria, an undeveloped nonconforming lot has been in the same ownership as a contiguous lot or lots, the nonconforming lot is and shall be deemed to have been combined with such contiguous lot or lots to the extent necessary to create a conforming lot and thereafter may only be used in accordance with the provisions of the Edmonds Community Development Code, except as specifically provided in subsection D of this section.

D. Exception for Single-Family Dwelling Units. An applicant may build one single-family residence consisting of no more than one dwelling unit on a lot or parcel regardless of the size of the lot or parcel if, but only if, one of the following exceptions applies:

1. In an RS zone, such nonconforming lot may be sold or otherwise developed as any other nonconforming lot pursuant to the following conditions and standards:

a. The lot area of the nonconforming lot is not less than the minimum lot area specified in the table below for the zoning district in which the subject property is located, and

b. Community facilities, public utilities and roads required to serve the nonconforming lot are available concurrently with the proposed development, and

c. Existing housing stock will not be destroyed in order to create a new buildable lot.

Lot Area Table

	Zone	% Needed for Legal Lot	Lot Size Needed for legal Lot
(1)	RS-20	60%	12,000
(2)	RS-12	70%	8,400
(3)	RS-10	75%	7,500
(3)	RS-8	80%	6,400
(4)	RS-6	90%	5,400

2. An applicant applies for necessary permits to construct the unit within five years to the date the lot or parcel is annexed into the city and the lot or parcel was lawfully created under provisions of Snohomish County subdivision and zoning laws as well as the laws of the state of Washington; or

3. An applicant may remodel or rebuild one residence on a nonconforming lot without regard to the seventy-five (75) percent destruction requirement of ECDC 17.40.020(F) if a fully completed building permit application is submitted within one year of the destruction of the residence and all other development requirements of this code are complied with; or

4. The lot lines defining the lot or parcel were recorded in the Snohomish County recorder's office prior to December 31, 1972, and the lot or parcel has not at any time been simultaneously owned by the owner of a contiguous lot or parcel which fronts on the same access right-of-way subsequent to December 31, 1972, and the lot or parcel has access to an access right-of-way which meets the minimum requirements established by this code; or

5. The owner of a lot which was lawfully created under the Snohomish County subdivision and zoning laws and which was annexed to the city of Edmonds on or after December 16, 1958, may file a fully completed building permit application for a development lot in accordance with the provisions of this chapter and develop the lot if a fully completed building application to develop said lot was filed with the city on or before the date established by Ordinance No. 3024. This paragraph (D)(5) shall sunset and be removed from the code two years after the effective date of the passage of Ordinance No. 3024 and is intended to provide a window of opportunity for those persons who comply with the provisions of subsection D of this section but who

are barred due to the passage of time an equal opportunity to develop a lot in accordance with the provisions of the code.

17.40.040 Nonconforming signs.

Nonconforming signs are injurious to the health, safety and welfare and destructive of the aesthetic and environmental living conditions which this zoning ordinance is intended to preserve and enhance. Nonconforming signs shall be brought into compliance with the provisions of Chapter 20.60 ECDC under the following terms and conditions:

A. No nonconforming sign shall be expanded, extended, rebuilt, reconstructed or altered in any way, except as provided below. The following acts are specifically permitted and shall not in and of themselves require conformance with the provisions of Chapter 20.60 ECDC:

1. Normal maintenance of the sign;
2. A change in the name of the business designated on the sign; or
3. Any action necessary to preserve the public safety in the event of damage to the sign brought about by an accident or an act of God.

B. Any nonconforming sign shall be brought into immediate compliance with the code in the event that it is expanded in violation of subsection A above.

C. None of the foregoing provisions relating to permitted maintenance, name change or preservation of the sign under paragraph A of this section shall be construed so as to permit the continuation or preservation of any nonconforming off-premises sign.

17.40.050 Nonconforming local public facilities.

A. Local Public Facilities. Existing legal nonconforming local public facility uses, buildings, and/or signs, owned and/or operated by local, state, or federal governmental entities, public service corporations, or common carriers (including agencies, districts, governmental corporations, public utilities, or similar entities) may be expanded, enlarged, altered, or modified, subject to review under the Essential Public Facilities provisions of this code.

Section 2. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

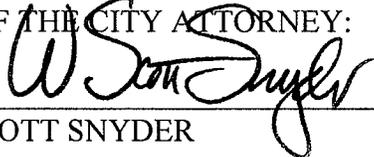
APPROVED:


MAYOR GARY HAAKENSON

ATTEST/AUTHENTICATED:


CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	08/22/2008
PASSED BY THE CITY COUNCIL:	08/26/2008
PUBLISHED:	08/31/2008
EFFECTIVE DATE:	09/05/2008
ORDINANCE NO. <u>3696</u>	

SUMMARY OF ORDINANCE NO. 3696

of the City of Edmonds, Washington

On the 26th day of August, 2008, the City Council of the City of Edmonds, passed Ordinance No. 3696. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE COMMUNITY DEVELOPMENT CODE BY THE REPEAL AND REENACTMENT OF CHAPTER 17.40 NONCONFORMING USES, BUILDINGS, SIGNS AND LOTS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 27th day of August, 2008.



CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

SUMMARY OF ORDINANCE NO. 3696
of the City of Edmonds, Washington
On the 26th day of August, 2008, the City Council of the City of Edmonds, passed Ordinance No. 3696. A summary of the content of said ordinance, consisting of the title, provides as follows:
AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE COMMUNITY DEVELOPMENT CODE BY THE REPEAL AND REENACTMENT OF CHAPTER 17.40 NONCONFORMING USES, BUILDINGS, SIGNS AND LOTS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.
The full text of this Ordinance will be mailed upon request, DATED this 27th day of August, 2008.
CITY CLERK, SANDRA S. CHASE
Published: August 31, 2008.

Summary of Ordinance No. 3696

Amending the Community Development Code

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

August 31, 2008

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Inhoff

Principal Clerk

Subscribed and sworn to before me this

1st

day of September, 2008

Bobbe J. Alf

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

