



**DATE:** May 19, 2020

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Receive Informational Report Addressing Extended Timeframes to Reestablish Nonconforming Uses Due to COVID-19 Crisis

## **RECOMMENDATION**

That Council receives this informational item. Staff intends to administratively extend the timeframe to reestablish a nonconforming use at 30736-30760 Wiegman Road due to the COVID-19 crisis, as requested, and to review similar requests on an individualized basis consistent with the approach outlined in the attached informational memo.

## **SUMMARY**

Per the Nonconforming Ordinance, a nonconforming use may be re-established within six months of the prior use vacating a commercial or industrial building without approval of discretionary permits provided that the nonconforming use is similar to or less intensive than the one that vacated the space and that the nonconforming use will not adversely affect or be materially detrimental to adjoining properties.

The attached informational memo provides a process to administratively allow a six-month extension beyond that provided by the Nonconforming Ordinance to give property owners additional time to re-tenant buildings with the same use without having to go through a lengthy planning process. The unprecedented economic slowdown related to the COVID-19 pandemic and limited opportunities to show properties and relocate businesses is unusual and warrants flexibility from the standards in order to address the impact of the crisis.

## **BACKGROUND**

On April 13, 2020, the Planning and Economic Development Divisions received the attached letter (Attachment II) requesting an extension of the timeframe to reestablish a nonconforming use in an existing building located at 30736-30760 Wiegman Road in the IP (Industrial Park) District. The property owner is requesting the extension from the standard six-month timeframe permitted under nonconforming regulations to 12 months (an additional six months) due to difficulties identifying a tenant and leasing the property during the COVID-19 crisis.

The subject site has an approximately 459,000 square foot warehouse that was built in the 1980s. The building was occupied by a furniture warehouse and distributor that moved out in January 2020.

According to the recently updated zoning regulations, establishment of a Warehousing and Distribution use in a building over 150,000 square feet requires approval of a Conditional Use Permit (CUP) in the subject district. Due to the age and size of the building, the applicant believes that a warehouse and distribution use is the highest and best use for the building until the site can be redeveloped. However, the property owner is having a difficult time leasing out the building due to restrictions related to the COVID-19 crisis.

## DISCUSSION

Per the [Nonconforming Ordinance](#)<sup>11</sup>, a nonconforming use may be re-established within six months of the prior use vacating a commercial or industrial building without approval of discretionary permits provided that the nonconforming use is similar to or less intensive than the one that vacated the space and that the nonconforming use will not adversely affect or be materially detrimental to adjoining properties.

The owner has requested an extension for an additional six months (to January 2020) to provide adequate time to prepare and market the space and to move a new warehouse and distribution tenant into the building.

*Emergency Resolution:* According to the City Attorney's Office, the language in the Emergency Declaration Resolution to "otherwise take such steps .... as may be required for the general health, welfare..." supports a grant of administrative authority to address the impact of the current crisis, particularly if the impact of such a determination will be limited.

Planning staff does not believe that extending the timeframe to re-establish a warehouse and distribution use in the subject building will result in widespread issues for other properties within the industrial area. The specific circumstances of the site including the recent updates to the Industrial District, the timing of the discontinuation of the nonconforming use, and the delay in replacement of that use due to the COVID-19 slowdown are not likely to occur at a rate that will significantly delay implementation of the Industrial District rezoning effort as a whole.

*Extending Nonconforming Timeframes City-wide:* Although this request was initiated by a specific property owner in an industrial sub-district, staff recommends that a six month administrative extension be permitted for all non-conforming uses within commercial and industrial zoning districts under the following criteria: 1) the property owner submits a written request to the Development Services Director with the date that the property was

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<sup>11</sup> Hayward Municipal Code Section 1-1.2900, Nonconforming Uses.

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1Z\\_OOR\\_S10-1.2900NOUS](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z_OOR_S10-1.2900NOUS)

vacated and a description of the use; 2) that the previous use legally occupied the building with a valid use permit and/or City of Hayward business license; 3) the use is not considered sensitive (i.e. bar, nightclub, smoke shop); and 4) the use has not generated nuisances or other complaints according to Code Enforcement and Police Department records. Staff recommends that this administrative extension be made available to applicable properties vacated three months prior to or during the Alameda County shelter-in-place timeframes.

Allowing a six-month extension beyond that provided by the Nonconforming Ordinance will provide additional time for property owners to re-tenant buildings with the same use without having to go through a lengthy planning process. The unprecedented economic slowdown related to the COVID-19 pandemic and limited opportunities to show properties and relocate businesses is unusual and warrants flexibility from the standards in order to address the impact of the crisis.

### **ECONOMIC IMPACT**

The proposed extension would benefit property and business owners during the COVID-19 crisis in that they would have an extended timeframe in which to reestablish nonconforming uses provided that those uses do not generate a nuisance.

### **FISCAL IMPACT**

The staff time associated with reviewing the criteria to extend the nonconforming uses (checking current business license and Code Enforcement records) would be negligible in that it could be accomplished within the standard time that it takes to help an average customer at the Permit Center public counter.

### **STRATEGIC ROADMAP**

This agenda item is related to the COVID-19 crisis and does not relate to any of the six priorities outlined in the Council's Strategic Roadmap.

### **NEXT STEPS**

This is an informational item. Staff intends to administratively extend the nonconforming time frame for the property located at 30736-30760 Wiegman Road as requested, and to review similar requests on an individualized basis consistent with the approach outlined above.

*Prepared by:* Leigha Schmidt, Senior Planner

*Recommended by:* Laura Simpson, Development Services Director

*Approved by:*

A handwritten signature in black ink, appearing to read 'Kelly McAdoo', is written over a horizontal line.

Kelly McAdoo, City Manager