



# City Council Report

**Date:** September 8, 2025  
**To:** City Council  
**Through:** Marc Heirshberg, Deputy City Manager  
**From:** Nana Appiah, Development Services Director  
Mary Kopaskie-Brown, Planning Director  
Rachel Phillips, Assistant Planning Director  
**Subject:** Mesa Zoning Ordinance Text Amendment (**Nonconforming and Procedurally Conforming Amendments**)- Proposed amendments to Chapter 36 of the Mesa City Code. (**Citywide**)

## Recommendation

Staff recommends that the City Council adopt the proposed Mesa Zoning Ordinance (MZO) Nonconforming and Procedurally Conforming text amendments.

On August 27, 2025, the Planning and Zoning Board voted to recommend (vote: 7-0) that City Council adopt the proposed Mesa Zoning Ordinance (MZO) Nonconforming and Procedurally Conforming text amendments.

Since the Planning and Zoning Board meeting, staff has updated the ordinance to minimize ambiguity from the definitions for Legal Procedurally Conforming Use and Legal Procedurally Conforming Structure in Section 11-36-2. The changes are shown below in **red, bold italics** for added text and ~~cross out, bold~~ for deleted text and include:

**Legal Procedurally Conforming Use.** A land use that meets one of the following criteria: (1) a building permit was issued for the land use prior to the issuance of a written interpretation by the Zoning Administrator in which the land use was determined to not be within any classification or use in the Zoning Ordinance and therefore prohibited in every zoning district, or (2) an ordinance was adopted that amends the ~~text of the~~ Zoning Ordinance **regulations applicable to a certain land use** and contains a section entitled **titled** "Legal Procedurally Conforming Use" that specifically provides how that ~~ordinance~~ **certain land use** will ~~allow for~~ **be, or will remain**, a Legal Procedurally Conforming Use ~~as to that ordinance~~.

**Legal Procedurally Conforming Structure.** A structure that meets one of the following criteria: (1) a building permit was issued for the structure prior to the issuance of a written interpretation by the Zoning Administrator in which the land use that the structure is occupied by or devoted to was determined to not be within any classification or use in the Zoning Ordinance and therefore prohibited in every zoning district, or (2) an ordinance was adopted that amends the ~~text of the~~ Zoning Ordinance **regulations applicable to a certain land use** and contains a section entitled **titled** "Legal Procedurally Conforming Structure" ~~with specific language~~ that **specifically** provides how ~~the application of a structure occupied by or devoted to~~ that ~~particular ordinance~~ **certain land use** will ~~allow for~~ **be, or will remain**, a Legal Procedurally Conforming ~~Structure as to that ordinance~~.

## Purpose

Chapter 36 of the Mesa Zoning Ordinance (MZO) governs nonconforming structures, uses, lots/parcels, and sites — i.e., development that was lawfully established before an MZO adoption or amendment, or prior to annexation, but that would be prohibited or regulated differently under today's code.

Chapter 36 has not been updated since 2011. Staff recommends repealing the current chapter and adopting a new Chapter 36, "Nonconforming and Procedurally Conforming," to modernize, simplify, and clarify regulations for legal nonconforming uses, lots/parcels, structures, and sites, and to add regulations for legal procedurally conforming uses and structures.

Details of the proposed text amendments are attached in Exhibit 1 – Nonconforming and Procedurally Conforming Ordinance. Specifically, the proposed text amendments:

1. Clearly define legal nonconforming uses, lots/parcels, structures, and sites and add definitions for legal procedurally conforming uses and structures.
2. Restructure the chapter so regulations are organized by topic for easier administration.
3. Add provisions governing legal procedurally conforming uses and structures.
4. Clarify standards for damaged or partially destroyed legal nonconforming structures.
5. Add provisions specific to legal nonconforming sites.

## Discussion

### **1. Clearly define legal nonconforming uses, lots/parcels, structures, and sites and add definitions for legal procedurally conforming uses and structures.**

Currently, Chapter 36 of the MZO defines "nonconformity" and "nonconforming uses, structures, and lots;" however, it does not (a) specify the conditions (i.e. setbacks, density, height, lack of required approvals, etc.) that render each nonconforming; (b) distinguish between legal and illegal nonconformities; or (c) address the effects a Zoning Administrator interpretation may have on a lawfully established use or structure.

The lack of individual definitions and identification of what conditions specifically makes uses, lots/parcels, and structures nonconforming has created uncertainty for staff and the public on which provisions apply. For example, where a development fails to meet current setback requirements, it is unclear whether the structure is nonconforming, the lot/parcel is nonconforming, or both.

The proposed amendments add separate definitions for: (1) legal nonconforming use; (2) legal nonconforming lot or parcel; (3) legal nonconforming structure; and (4) legal nonconforming site, along with specific conditions that make each nonconforming. This change helps clarify which provisions of Chapter 36 govern each.

The applicability section was also modified to clarify: (1) modifications approved through an established process (i.e. variance, Planned Area Development Overlay District, etc.) are not considered nonconforming and (2) that illegal nonconformities are ineligible for the provisions within Chapter 36 and are subject to enforcement actions, up to and including removal and termination.

Finally, the current MZO does not address how to treat uses and structures that were lawfully established — meaning that they were approved and development in compliance with the MZO — but were later determined by the Zoning Administrator not to be within any land use classification within the MZO and therefore not a permitted use within the City. To resolve this, the amendments introduce two new terms — legal procedurally conforming use and legal procedurally conforming structure — and establish provisions that apply to both.

**2. Restructure the chapter so regulations are organized by topic for easier administration.**

In addition to separately defining each nonconforming element — use, lot/parcel, structure, and site—the revisions to Chapter 36 organize the regulations into dedicated sections for each. This reorganization clarifies which provisions apply in any given situation.

**3. Add provisions governing legal procedurally conforming uses and structures.**

As discussed above, the proposed amendments add definitions for legal procedurally conforming uses and legal procedurally conforming structures to address the effect a Zoning Administrator interpretation may have on lawfully established use or structure. Regulations governing legal procedurally conforming uses and legal procedurally conforming structures were added to Chapter 36 and generally mirror those for legal nonconforming uses and structures, except for the rules governing reconstruction and restoration after damage or partial destruction.

Legal nonconforming structures were built in compliance with the development standards of their zoning district (or the prior jurisdiction before annexation) but no longer meet current standards. If damaged or destroyed, they may be repaired or rebuilt only as allowed in Chapter 36, so that the nonconformity is not perpetuated and is reduced or eliminated over time.

Legal procedurally conforming structures are generally those that were approved by the City, such as those that received a building permit, but the use within the structure was later determined by the Zoning Administrator to fall outside any permitted land use classification. Because the structure itself was previously approved, it may be maintained, repaired, reconstructed, and restored to its current or prior condition if partially or fully destroyed.

**4. Clarify standards for damaged or partially destroyed legal nonconforming structures.**

The current provisions allow a nonconforming structure to be repaired or rebuilt if it is damaged or partially destroyed. A structure may be rebuilt to its current condition when the estimated cost of reconstruction does not exceed 50% of the cost to rebuild the entire structure. If the cost exceeds 50%, the Zoning Administrator may authorize reconstruction to a reduced size and/or configuration. However, Chapter 36 does not clearly define “partially destroyed” or the scope of the Zoning Administrator’s discretion.

The proposed amendments establish an objective cap: in no case may a legal nonconforming structure be reconstructed or restored if the construction cost exceeds 75% of the cost to restore or rebuild the entire structure. This limitation exists to ensure that a nonconformity is not perpetuated and is reduced or eliminated over time.

**5. Add provisions specific to legal nonconforming sites.**

Chapter 36 currently defines nonconformity and identifies nonconforming uses, lots/parcels, and structures. However, many development standards — such as landscaping, screening/fencing, drive aisles, parking layout, lighting, and refuse/stormwater facilities — are site conditions that do not neatly attach to a use, lot/parcel, or structure.

In addition, the limitations on nonconforming structures do not align with other provisions and processes in the MZO for nonconformities, such as, the Substantial Conformance Improvement Permit (SCIP), which allows incremental improvements that bring the site into further conformance with the MZO. To close this gap, the proposed amendments add a section for legal nonconforming sites that allows for their maintenance; alterations and enlargements of the site that comply with the MZO, or alterations needed to meet city, state or federal requirements.

### **Implementation**

Staff recommends the ordinance approving the proposed text amendments become effective 30 days from the date of City Council approval.

### **Exhibits**

Exhibit 1 – Presentation

Exhibit 2 - Nonconforming and Procedurally Conforming Ordinance