



City Council Report

Date: September 8, 2025
To: City Council
Through: Marc Heirshberg, Assistant 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 Title 11 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.

Additionally, certain updates to Chapter 36 are needed to address a battery energy storage system (BESS) project that has received construction permits and is currently under construction, as more specifically described in Section 3 below.

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.

Specifics related to the BESS Project

The addition of legal procedurally conforming use and legal procedurally conforming structure to Chapter 36 is needed to allow the already-permitted BESS project located at 3246 S. Signal Butte Road, north of the Church of Jesus Christ of Latter-day Saints, on the west side of Signal Butte Road, and north of Elliot Road (the Signal Butte BESS Project) to be considered a conforming use. The following information is intended to provide background and context for how this proposed ordinance relates to the Signal Butte BESS Project.

On September 24, 2020, a Pre-Submittal Application was submitted to the Development Services Department for the Signal Butte BESS Project. Comments were provided to the applicant on October 8, 2020, which indicated the proposed use was considered a “Utility, Major” and would require a Council Use Permit (CUP). On October 13, 2020, revised pre-submittal

comments were issued to the applicant that classified the use as a “Utility, Major” but because the property had opted in to the Elliot Road Technology Corridor, a CUP was not required.

On December 12, 2022, a Site Plan Review application for the Signal Butte BESS Project was submitted to the Development Services Department. It was the first application the Development Services Department had received for a BESS project. The City Code did not at that time, and still does not, address or regulate BESS as a separate land use. The property for the Signal Butte BESS Project was at the time of the application, and still is, zoned Light Industrial with a Planned Area Development Overlay (LI-PAD). Planning staff conveyed to the applicant that the proposed BESS use was classified as a “Utility, Minor” and therefore permitted by right in the LI District.

On August 6, 2024, Planning staff approved the site plan for the Signal Butte BESS Project, as a minor utility. On May 15, 2025, construction permit PMT24-19650 was issued and construction began and is currently underway.

Following receipt of the application for the Signal Butte BESS Project, the Development Services Department received Pre-Submittal applications for two additional BESS projects. On October 7, 2024, a Pre-Submittal application for a proposed BESS project located just southeast of the confluence of the 202 and 24 freeways, north of Ray Road, and west of Ellsworth Road (APN 304-31-044C) was submitted. On March 4, 2025, a Pre-Submittal application for a proposed BESS project located south of the Signal Butte BESS Project, south of the Church of Jesus Christ of Latter-day Saints, on the west side of Signal Butte Road, and north of Elliot Road was submitted.

On May 28, 2025, the Zoning Administrator issued a Zoning Interpretation that determined BESS is not included within any existing land use classification in Chapter 86 of the Zoning Ordinance and is prohibited in all zoning districts. The Interpretation was issued, in part, to inform the public and City staff how to classify BESS considering the increase in development proposals involving BESS. More importantly, the Interpretation considered the many real safety concerns with BESS and that the City Code does not currently address. The Interpretation also contemplated City staff presenting a future ordinance to the City Council to regulate BESS, which if adopted would replace the Interpretation. City staff intends to present such BESS ordinance to the City Council in December 2025.

The Interpretation resulted in the Signal Butte BESS Project being a nonconformity under Chapter 36, meaning it was permitted and legally in compliance with the City Code prior to the Interpretation but is now a prohibited use because of the Interpretation. According to the owners of the Signal Butte BESS Project, the nonconforming status created financing challenges. Therefore, two new classifications “legal procedurally conforming use” and “legal procedurally conforming structure” were created to address the effects a Zoning Administrator’s Interpretation could have on a legally established project. These would allow approved projects to be able to rebuild, per City-issued approvals, if damaged without the restrictions applicable to legal nonconforming uses; however, they would not be able to expand. If City Council adopts this Ordinance, the Signal Butte BESS Project would be classified as a procedurally legal conforming use and structure.

Additionally, the proposed ordinance puts a tool in place, which the City Council, at its discretion, could use in the future to determine that certain uses and structures are “legal procedurally conforming” via ordinance.

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