

City Council

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Nonconforming and Procedurally Conforming Text Amendments

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Text Amendment Overview

- Chapter restructured based on nonconformities for easier administration
- Add new definitions:
 - Legal Nonconforming Uses
 - Legal Nonconforming Structures
 - Legal Nonconforming Lots or Parcels
 - Legal Nonconforming Sites
- Existing definitions do not specify the conditions (e.g., setbacks, density, lack of required approvals etc.) that make each (i.e., use, lot, structure) nonconforming
- Do not distinguish between legal and illegal nonconformities



Proposed Text Amendments

- Repealing Chapter 36 - Nonconforming Uses, Structures, and Lots
- Replacing it with a new Chapter 36 - Nonconforming and Procedurally Conforming
- Modernizing, simplifying, and clarifying regulations related to legal nonconforming uses, lots or parcels, structures, and sites
- Adding regulations for legal procedurally conforming uses and structures

Proposed Text Amendments

- Clarify regulations for partially destroyed Legal Nonconforming Structures
- Cannot be reconstructed or restored if cost exceeds 75% of the cost to rebuild the entire structure
- Add provisions for Legal Nonconforming Sites
 - Previously not addressed
 - Mirror Current practices and other provisions of the MZO
 - Allow modifications through a Substantial Conformance Improvement Permit (SCIP) that conform with development standards and bring the site into further conformance





Proposed Text Amendments

- MZO does not address nonconformities resulting from a Zoning Administrator Interpretation
- Add definitions and regulations for Legal Procedurally Conforming Uses and Legal Procedurally Conforming Structures
 - Project that received zoning entitlements and buildings permits
 - Use was later determined by the Zoning Administrator to not be within any land use classification
 - Use determined to be prohibited
 - Regulations mirror those for Legal Nonconforming Uses and Structures
 - Except use can be completely rebuilt if destroyed



Relationship to BESS Project

- Effect of Interpretation on the first BESS project:
 - Made the project a nonconformity under Chapter 36
 - Prior to the Interpretation, the project received site plan approval and a construction permit
 - The project is currently being built in compliance with City-issued approvals and permits
 - Limitations on ability to rebuild project if destroyed—created financing issues for developer



Relationship to BESS Project

- How this ordinance resolves the issue:
 - First BESS project will be considered “Legal Procedurally Conforming” Use and Structure
 - Can rebuild if destroyed - but cannot expand
 - Ensures use is legal, can be built and operated in compliance with any City-issued approvals and permits that were issued prior to Interpretation
- Ordinance gives Council the flexibility to determine in the future that certain uses and structures are “legal procedurally conforming” via ordinance
 - Modified version of ordinance being introduced that does not include this language

Questions





Relationship to BESS Project Timeline

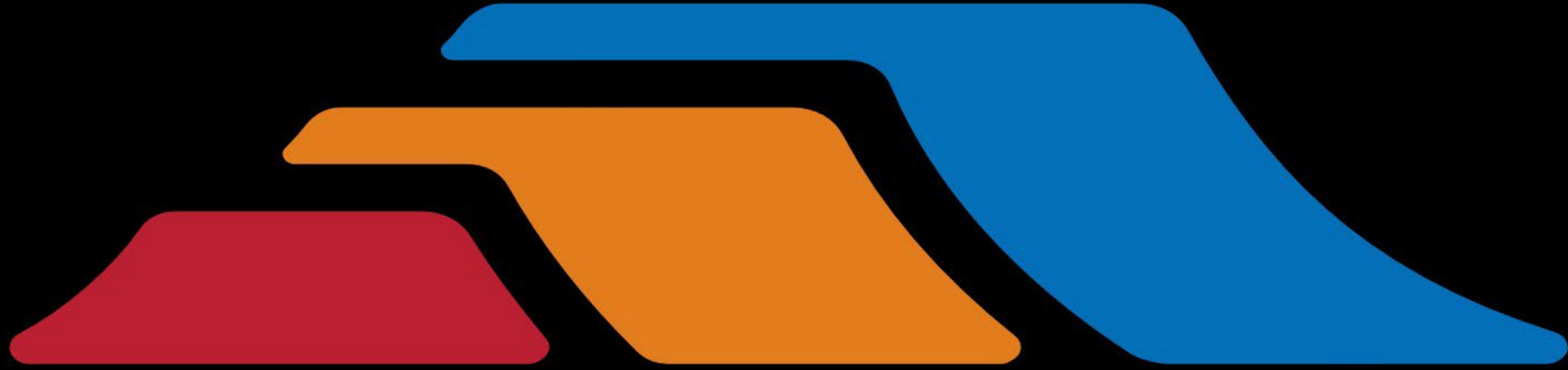
- December 12, 2022: City received its first ever application for a battery energy storage system (BESS) project (located at 3246 S. Signal Butte)
- August 6, 2024: The first BESS project received Administrative Site Plan Approval (classified as a minor utility)
- October 7, 2024 and March 4, 2025: City received pre-submittal applications for second and third BESS projects (still under review, no formal applications submitted yet)



Relationship to BESS Project

Timeline

- May 15, 2025: The first BESS project received its construction permit (is currently being built)
- May 28, 2025: Zoning Administrator Interpretation determined BESS is not within any land use classification in the Zoning Ordinance and is prohibited in every zoning district
 - Interpretation contemplated presenting future ordinance to Council to regulate BESS, including location requirements and mitigation of risks to health and safety
 - Until such ordinance is adopted, BESS is prohibited in Mesa
 - Staff intends to present the BESS Ordinance to City Council in December; if adopted, the ordinance would replace the Interpretation



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