BILL NO. ___-C.S.
ORDINANCE NO. ___-C.S.

AN ORDINANCE OF THE CITY OF EUREKA AMENDING SECTION 155.245 PERTAINING TO NONCONFORMING USES, STRUCTURES AND SIGNS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.
Title 15, Chapter 155, Section 155.245 et seq., is hereby amended to read as follows:

Section 155.245. Title: **NONCONFORMING USES, STRUCTURES AND SIGNS**

§ 155.~~245~~ 244 PURPOSES.

This subchapter is intended to limit the number and extent of nonconforming uses by prohibiting their enlargement. While permitting the use and maintenance of nonconforming structures and signs, this subchapter is intended to limit the number and extent of nonconforming structures and certain nonconforming signs by prohibiting their being moved, altered, or enlarged in a manner that would increase the discrepancy between existing conditions and the standards prescribed in this chapter and by prohibiting their restoration after destruction. Eventually certain classes of nonconforming uses, nonconforming structures of nominal value, and certain nonconforming signs are to be eliminated or altered to conform.

§ 155.245 DEFINITIONS.

ALTERATON. Structural repairs or maintenance including, but not limited to replacement or reconstruction of foundations, bearing walls and trusses. "Voluntary razing" is considered an ***ALTERATION***.

HISTORIC STRUCTURE. Any building or~~,~~ structure lawfully occupying a site on October 16, 1966, ~~over 50 years old~~or that is listed in the "Green Book" EUREKA, An Architectural View, or on or potentially eligible for the Local Register of Historic Places as an individual or contributing building or structure in a district which is historically or archaeologically significant, or which is significant in architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural history of the city, county, state, or nation. ~~Structures less than 50 years old may also be historic if they possess exceptional significance.~~

ROUTINE MAINTENANCE AND REPAIRS. Non-structural repairs or maintenance, including, but not limited to reroofing; replacement of fixtures, wiring or

plumbing; window replacement; painting; replacement of trim and siding; and repair or relocation of non-bearing walls.

§ 155.246 CONTINUATION AND MAINTENANCE.

(A) A use lawfully occupying a structure or a site on October 16, 1966, or at the time of subsequent amendments to this chapter, that does not conform with the use regulations or the site area per dwelling unit regulations for the district in which the use is located shall be deemed to be a nonconforming use and may be continued except as otherwise provided in this subchapter.

(B) A structure lawfully occupying a site on October 16, 1966, or at the time of subsequent amendments to this chapter, that does not conform with the standards for front yard, side yards, rear yard, height, or basic floor area of structures, distances between structures, courts, or usable open space for the district in which the structure is located shall be deemed to be a nonconforming structure and may be used and maintained, except as otherwise provided in this subchapter, and for Historic Structures as defined in this subchapter.

(C) A sign, outdoor advertising structure, or display of any character, lawfully occupying a site on October 16, 1966, or at the time of subsequent amendments to this chapter, that does not conform with the standards for subject matter, location, size, lighting, or movement prescribed for signs, outdoor advertising structures, and displays for the district in which it is located shall be deemed to be a nonconforming sign and may be displayed and maintained, except as otherwise provided in this subchapter.

(D) Routine maintenance and repairs may be performed on a structure or site the use of which is nonconforming, on a nonconforming structure, and on a nonconforming sign.

§ 155.247 ALTERATIONS AND ADDITIONS.

(A) No structure, the use of which is nonconforming, and no nonconforming sign shall be moved, altered, or enlarged unless required by law or unless the moving, alteration, or enlargement will result in the elimination of the nonconformity, except that a structure housing a nonconforming residential use in an A, R, OR, HM, C, ML, NR or S District may be altered or enlarged, provided that the number of dwelling units is not increased.

(B) No structure partially occupied by a nonconforming use shall be moved, altered, or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use, except as permitted in this section.

(C) Except as provided in division (A) of this section, no nonconforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site or

another structure or site which it did not occupy on October 16, 1966, or at the time of subsequent amendments to this chapter, that caused it to become a nonconforming use, or in such a way as to displace any conforming use occupying a structure or site, except as permitted in this section.

(D) Except as provided in Division (H) of this section, n~~N~~o nonconforming structure shall be altered or reconstructed so as to increase the discrepancy between existing conditions and the standards for front yard, side yards, rear yard, height of structures, distances between structures, courts, or usable open space prescribed in the regulations for the district in which the structure is located. No nonconforming structure shall be moved or enlarged unless the new location or enlargement shall conform to the standards for front yard, side yards, rear yard, height of structures, basic floor area, distances between structures, courts, or usable open space prescribed in the regulations for the district in which the structure is located except for Historic Structures as defined in this subchapter.~~.~~

(E) The nonconforming use of a structure or site shall not be changed to another nonconforming use.

(F) No use which fails to meet the required conditions for the district in which it is located by reason of air pollution, emissions, smoke, noise, odor, vibration, heat, cold, glare, electrical disturbance, radiation, or insect nuisance shall be enlarged or extended or shall have equipment replaced unless the enlargement, extension, or replacement will result in elimination of nonconformity with required conditions.

(G) For each structure or sign, ***ALTERATIONS*** are limited to a cumulative total of 50% or less, as percentage is defined in §155.249.

(H) Alterations and additions to Historic S~~s~~tructures as defined in this subchapter ~~listed on the Local Register of Historic Places~~ may be allowed provided:

(1) The structure shall be compliant with the existing underlying zoning and development standards, excluding setbacks; and

(2) The Building Code can allow the proposed alteration or addition.

(3) Non-conforming front yard setbacks or non-conforming projections into front yard setbacks are not increased; however, structures may be extended laterally from the existing footprint at the front of the structure to within 5 feet of the side property line, or to a point not closer then the extension of the greatest projection on the side of the structure, whichever is greater, except to provide for new covered parking.

(4) Non-conforming rear yard setbacks or projections into rear yard setbacks are not increased; however structures may extend laterally from the existing footprint at the rear of the structure to within 5 feet of the side property line,

or to a point not closer then the extension of the greatest projection on the side of the structure, whichever is greater.

§ 155.248 ABANDONMENT OF NONCONFORMING USES.

Whenever a nonconforming use has been abandoned, discontinued, or changed to a conforming use for a continuous period of 90 days or more, the nonconforming use shall not be reestablished, and the use of the structure or site thereafter shall be in conformity with the regulations for the district in which it is located, provided that this section shall not apply to nonconforming dwelling units. Abandonment or discontinuance shall include cessation of a use regardless of intent to resume the use.

§ 155.249 RESTORATION OF DAMAGED STRUCTURES.

(A) Whenever a structure which does not comply with the standards for front yard, side yards, rear yard, height of structures, distances between structures, courts, or usable open space prescribed in the regulations for the district in which the structure is located, or the use of which does not conform with the regulations for the district in which it is located, is destroyed by fire or other calamity, by act of God, or by the public enemy to the extent of 50% or less, the structure may be restored and the nonconforming use may be resumed provided restoration is started within one year and diligently pursued to completion.

(B) Except as provided in Division (D) of this section, w~~W~~henever a structure which does not comply with the standards for front yard, side yards, rear yard, height of structures, distances between structures, courts, or usable open space prescribed in the regulations for the district in which it is located, or the use of which does not conform with the regulations for the district in which it is located, is destroyed by fire or other calamity, by act of God, or by the public enemy to an extent greater than 50% or is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located, and the nonconforming use shall not be resumed. Before issuing a zoning permit for a structure to be restored, the Director of Community Development shall determine that the structure will be suitable for occupancy by a use permitted in the district in which it is located.

(C) The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be made by, or shall be reviewed and approved by, the Director of Public Works.

(D) ~~This subsection shall not apply to Historic Structures as defined in this subchapter.~~ This subsection shall not apply to Historic Structures as defined in this subchapter.

(E) Previously existing structures on ~~that were listed on the Local Register of Historic places immediately prior to being damaged, destroyed, or voluntarily razed more than 50%, or~~ properties that are listed on the Local Register of Historic Places may be reconstructed on their previously existing footprint provided:

(1) Proof of the previous existence of the structure, and the location on the property is provided to the satisfaction of the Community Development Department. Proof shall include, but not be limited to, Sanborn maps, personal photographs, old plans, historical photographs, Assessor's records, witness marks, or foundations;

(2) The Building Code can allow the proposed reconstruction;

(3) The use complies with the existing underlying zoning and development standards, excluding setbacks; and

(4) Reconstruction shall comply with the current Building Code in effect at the time of application for reconstruction.

~~§ 155.250 ELIMINATION OF NONCONFORMING USES, STRUCTURES AND SIGNS.~~

~~Nonconforming uses, structures, and signs listed in the following table shall be discontinued and removed from their sites, altered to conform, or altered as prescribed to decrease the degree of nonconformity within the specified time after they become nonconforming:~~

~~***Removal or Alteration Required***~~	~~Max. Time Permitted for Removal or Alteration After Use Becomes Nonconforming~~
~~Removal or alteration of a nonconforming fence, wall, or hedge~~	~~1 year~~

~~Removal of a nonconforming use that does not occupy a structure~~	~~3 years~~
~~Removal of a nonconforming use occupying a structure having an assessed valuation of less than $500~~	~~3 years~~
~~Removal of an advertising sign or structure in an R District~~	~~3 years~~
~~Removal of a nonconforming advertising sign or structure that is not directly lighted in an F, A, OR, HM, C, or M District~~	~~3 years~~
~~Compliance with screening and landscaping provisions of §§ 155.025 through 155.036 of this chapter for the district in which the use is located, provided that removal or alteration of a nonconforming structure having an assessed valuation of $500 or more shall not be required~~	~~3 years~~
~~Compliance with § 155.118(E), (F), and (G) of this chapter~~	~~3 years~~
~~Compliance with the air pollution, emission, smoke, noise, odor, vibration, heat and cold, glare, electrical disturbance, radiation and insect nuisance requirements for the district in which a permitted use or a preexisting~~	~~3 years~~

~~conditional use is located~~	
~~Compliance with the air pollution, emission, smoke, noise, odor, vibration, heat, cold, glare, electrical disturbance, radiation, and insect nuisance requirements for the district in which a nonconforming use is a permitted use or a conditional use, provided that a nonconforming use permitted only in an M District shall comply with the requirements for the ML District~~	~~3 years~~

~~Removal or Alteration Required~~	~~Max. Time Permitted for Removal or Alteration After Use Becomes Nonconforming~~
~~Removal or alteration of a nonconforming structure having an assessed valuation of less than $500~~	~~5 years~~
~~Removal or alteration of a sign having nonconforming lighting or movement~~	~~5 years~~
~~Removal or alteration of a directly-lighted nonconforming advertising sign in an F, A, OR, HM, C, or M District~~	~~5 years~~

~~('63 Code, § 10-5.2206) (Ord. 80-C.S., passed 10-16-66)~~

~~**§ 155.251 TIME PERIOD WHEN USES, STRUCTURES, OR SIGNS BECOME NONCONFORMING.**~~

~~Whenever a use, structure, or sign becomes nonconforming because of a change of zoning district boundaries or a change of regulations for the district in which it is located, the period of time prescribed in this subchapter for the elimination of the use or the removal of the structure or sign shall be computed from the effective date of the change of district boundaries or regulations.~~

~~('63 Code, § 10-5.2207) (Ord. 80-C.S., passed 10-16-66)~~

~~**§ 155.252 NOTICE OF REMOVAL.**~~

~~The Director of Community Development shall determine the existence of the nonconforming uses listed in § 155.250 of this subchapter and shall promptly notify the owner of each nonconforming use, structure, or sign by certified or registered mail of the date by which compliance with the provisions of § 155.250 of this subchapter will be required. Notification shall precede the date by which elimination is required by not less than the time periods prescribed in § 155.250 of this subchapter.~~

~~('63 Code, § 10-5.2208) (Ord. 80-C.S., passed 10-16-66)~~Section 2.

Title 15, Chapter 155, Section 155.377, is hereby amended to read as follows:

§ 155.377 DUTIES OF CITY OFFICIALS.

The Community Development Director shall be the official responsible for the enforcement of the zoning regulations~~, except for §§ 155.215 and 155.216 and §§ 155.245 through 155.252 of this chapter, enforcement of which shall be the responsibility of the Director of Community Development~~. The Director of Community Development ~~Building Official~~ and the ~~Director of Community Development~~ Building Official, or their deputies, shall have the right to enter on any site or to enter any structure for the purpose of investigation and inspection related to any provision of this chapter, provided that the right of entry shall be exercised only at reasonable hours and that in no case shall any structure be entered in the absence of the owner or tenant without the written order of a court of competent jurisdiction. The Director of Community Development or the Building Official may serve notice requiring the removal of any structure or use in violation of the regulations on the owner or his authorized agent, on a tenant, or on an architect, builder, contractor, or other person who commits or participates in any violation. The Director of Community Development or the Building

Official ~~or the Director of Community Development~~ may call upon the City Attorney to institute necessary legal proceedings to enforce the provisions of this chapter, and the City Attorney hereby is authorized to institute appropriate actions to that end. The Director of Community Development or the Building Official may call upon the Chief of Police and his authorized agents to assist in the enforcement of this chapter.

Section 3.
This ordinance becomes effective thirty (30) days after the date of its enactment.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the _____ day of _____, 2011 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

_____
Lance Madsen, Mayor Pro Tem

THE ABOVE ORDINANCE WAS SUBMITTED TO THE MAYOR on the ____ day of _____, 2011, and hereby approved.

_____
Frank Jäger, Mayor

Approved as to Administration:

_____
David. W. Tyson, City Manager

Approved as to form:

_____
Cyndi Day-Wilson, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the _____ day of _____, 2011

_____
Pamela J. Powell, City Clerk