

**MUNICIPAL LAND USE PROVISIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill amends municipal land use provisions relating to nonconforming uses and noncomplying structures.

**Highlighted Provisions:**

This bill:

- ▶ amends municipal land use provisions relating to nonconforming uses and noncomplying structures; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-9a-511**, as last amended by Laws of Utah 2009, Chapter 170

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **10-9a-511** is amended to read:

**10-9a-511. Nonconforming uses and noncomplying structures.**

(1) (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no

30 structural alteration of the building is proposed or made for the purpose of the extension.

31 (c) For purposes of this Subsection (1), the addition of a solar energy device to a  
32 building is not a structural alteration.

33 (2) The legislative body may provide for:

34 (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or  
35 substitution of nonconforming uses upon the terms and conditions set forth in the land use  
36 ordinance;

37 (b) the termination of all nonconforming uses, except billboards, by providing a  
38 formula establishing a reasonable time period during which the owner can recover or amortize  
39 the amount of his investment in the nonconforming use, if any; and

40 (c) the termination of a nonconforming use due to its abandonment.

41 (3) (a) A municipality may not prohibit the reconstruction or restoration of a  
42 noncomplying structure or terminate the nonconforming use of a structure that is involuntarily  
43 destroyed in whole or in part due to fire or other calamity unless the structure or use has been  
44 abandoned.

45 (b) A municipality may prohibit the reconstruction or restoration of a noncomplying  
46 structure or terminate the nonconforming use of a structure if:

47 (i) the structure is allowed to deteriorate to a condition that the structure is rendered  
48 uninhabitable and is not repaired or restored within six months after written notice to the  
49 property owner that the structure is uninhabitable and that the noncomplying structure or  
50 nonconforming use will be lost if the structure is not repaired or restored within six months; or

51 (ii) the property owner has voluntarily demolished a majority of the noncomplying  
52 structure or the building that houses the nonconforming use.

53 (c) (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may  
54 permit a billboard owner to relocate the billboard within the municipality's boundaries to a  
55 location that is mutually acceptable to the municipality and the billboard owner.

56 (ii) If the municipality and billboard owner cannot agree to a mutually acceptable  
57 location within 90 days after the owner submits a written request to relocate the billboard, the

58 provisions of Subsection 10-9a-513(2)(a)(iv) apply.

59 (4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of  
60 legal existence for nonconforming uses, the property owner shall have the burden of  
61 establishing the legal existence of a noncomplying structure or nonconforming use.

62 (b) Any party claiming that a nonconforming use has been abandoned shall have the  
63 burden of establishing the abandonment.

64 (c) Abandonment may be presumed to have occurred if:

65 (i) a majority of the primary structure associated with the nonconforming use has been  
66 voluntarily demolished without prior written agreement with the municipality regarding an  
67 extension of the nonconforming use;

68 (ii) the use has been discontinued for a minimum of one year; or

69 (iii) the primary structure associated with the nonconforming use remains vacant for a  
70 period of one year.

71 (d) The property owner may rebut the presumption of abandonment under Subsection  
72 (4)(c), and shall have the burden of establishing that any claimed abandonment under  
73 Subsection (4)(~~e~~)(b) has not in fact occurred.

74 (5) A municipality may terminate the nonconforming status of a school district or  
75 charter school use or structure when the property associated with the school district or charter  
76 school use or structure ceases to be used for school district or charter school purposes for a  
77 period established by ordinance.

78 (6) A municipal ordinance adopted under Section 10-1-203 may not:

79 (a) require physical changes in a structure with a legal nonconforming rental housing  
80 use; or

81 (b) be enforced to terminate a legal nonconforming rental housing use.

82 (7) A legal nonconforming rental housing use may not be terminated under Section  
83 10-1-203.