

## **Memorandum 13-134 Amending the definition of “discontinued” in HCC 21.61.0015**

**Memorandum ID:** 13-134  
**Memorandum Status:** No Status

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MEMORANDUM 13-134

TO: MAYOR WYTHER AND HOMER CITY COUNCIL

FROM: RICK ABBOUD, CITY PLANNER

DATE: September 19, 2013

SUBJECT: Amending the definition of “discontinued” in HCC 21.61.0015

Procedural note: This item is considered legislative and not quasi-judicial. It is legislation that affects a large population and consideration any one property should not outweigh the entirety of its effect on the population as a whole. Based on procedural rules, the Planning Commission was not able to stray far from the item as advertised and would gladly consider an opportunity to address items surrounding the proposal if the council wishes.

A public hearing was held by the Planning Commission September 18, 2013 on the proposed ordinance. No one provided public testimony. A spirited debate started in the Work Session and continued at the regular meeting. Several issues were raised including:

- Using the undefined term of “operator”
- Does probate prohibit the operation of a business?
- How long does a probate process last?
- Should nonconformities be allowed to transfer after death?
- Is it in the best interest of the community that nonconformity cease someday?
- After closing, how long is a business viable?
- Is this exception too narrow? Should it be extended to other situations such as disability or other incapacities? Is it fair to offer an exception in this circumstance and not others?
- Has this situation ever happened in your career before? (no)
- Would the type of nonconformity make a difference?
- What is a legal nonconformity? (one that is formally accepted)

Consideration was given to a timeframe to deal with the circumstance such as 5 years. After debate this was not supported as it seemed to be too long of a time.

It is very difficult to analyze what particular legal relationship would constitute the situation which this remedies and that it would not. There is no guidance found in any planning related materials (sample codes, books, papers or presentations) for this circumstance.

The Commission decided not to support the proposed ordinance in its current form. The decision was based on the

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fact that this was such a specialized exception and other circumstances could be just as compelling yet would not be supported by the ordinance. The commission feels it is best to deal with nonconformities and issues surrounding the entire class rather than one special circumstance.

### **Recommendation:**

The Homer Advisory Planning Commission does not recommend adoption of the proposed amendment to the definition of “discontinued”. It does welcome continued discussion on issues surrounding the proposal such as; review of uses allowed in residential and other districts, review of the city’s expectation as to the continuance of any nonconforming use or structure, or any issue in relevance to the item.

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