

DEPARTMENT OF SAFETY AND PERMITS
CITY OF NEW ORLEANS

LATOYA CANTRELL
MAYOR

TAMMIE JACKSON
DIRECTOR

ZONING INTERPRETATION MEMORANDUM

Memorandum Z-21-04

DATE: **October 8, 2021**

FROM: **Tammie Jackson, Director**

BY: Ashley Becnel, Chief Zoning Official & Nicholas Kindel, Zoning Administrator

RE: COVID-19 Related Impact on Non-Conforming Uses

In response to COVID-19 pandemic, the Governor of Louisiana and the Mayor of New Orleans issued States of Emergency to slow the spread of the disease. These States of Emergency resulted in Stay at Home directives and phased reopening guidelines that placed limitations on the operation and capacity for many types of businesses. As a result, many businesses were forced to close and/or were unable to operate full capacity for many months.

A non-conforming use is the use of land or a use within a structure that, as of the effective date of the Comprehensive Zoning Ordinance or subsequent amendment thereto, is used for a purpose not allowed in the zoning district in which it is located (CZO 25.3.A). A non-conforming use is deemed abandoned when that use is discontinued or becomes vacant or unoccupied for a continuous period of 180 days and cannot be reestablished once it is abandoned (CZO 25.3.C.1). Because the pandemic and related emergency orders affected whether businesses could be open and operating, the COVID-19 related business closures and limitations have impacted many non-conforming uses.

CZO 25.3.C.2 states that the calculation of the period of discontinuance does not include any period of discontinuance caused by state of emergency, force majeure, or acts of public enemy. Therefore, the time period where businesses were closed or were not able to be open at full capacity should not count towards the 180-day period where a non-conforming use is abandoned.

Mayor Cantrell issued the City's COVID-19 State of Emergency on March 16, 2020. The State of Emergency placed different restrictions on businesses, depending on their type. Some businesses were deemed essential and were allowed to operate throughout the State of Emergency, while other businesses were only permitted to operate at or near full capacity once the vaccination requirement was put into place on August 16, 2021. To calculate the non-conforming use abandonment period, Safety and Permits will consider the type of business, when that type of business was closed, and when that type of business was allowed to reopen at 100% indoors. Given the financial implications of opening a business for just partial capacity, many businesses chose not to immediately reopen. Therefore, the point at which the business could operate at 100% indoor



capacity is a reasonable point to determine that a business closure is no longer caused by the State of Emergency.

The following table summarizes the period when certain types of businesses were forced to close or operate at limited capacity and when those types of businesses were allowed to reopen at 100% indoor capacity. This time period should not be used when calculating the 180-day abandonment period where the non-conforming use would be lost.

The New Orleans Health Department has published business guidelines throughout the pandemic. Those guidelines, as well as a summary of the restrictions by business type, can be found on the NOLA Ready website.¹ The following table summarizes those restrictions to include the date when the restrictions were first put into place and the date when the business could operate at 100% indoor capacity.

Type of Business	Date of First Restriction	Date of 100% Capacity	Total Days
Indoor Gatherings	3/16/2020	5/26/2021	436
Outdoor Gatherings	3/16/2020	5/26/2021	436
Gyms	3/16/2020	5/26/2021	436
Houses of Worship	3/16/2020	5/15/2021	425
Salons	3/16/2020	5/15/2021	425
Restaurants	3/16/2020	5/15/2021	425
Bars	3/16/2020	5/15/2021	425
Movie Theatres	3/16/2020	5/15/2021	425
Live entertainment	3/16/2020	N/A ²	N/A
Retail stores	3/16/2020	5/15/2021	425
Adult Live Performance Venues	3/16/2020	8/16/2021	518
Tattoo, Massage, and Esthetician Services	3/16/2020	5/15/2021	425
Museums, Zoos, and Aquariums	3/16/2020	5/15/2021	425
Offices	3/16/2020	5/15/2021	425
Conference Venues and Meeting Rooms	3/16/2020	5/15/2021	425
Indoor Event Venues	3/16/2020	5/26/2021	436
Libraries	3/16/2020	5/15/2021	425
Community Centers	3/16/2020	5/15/2021	425

¹ <https://ready.nola.gov/incident/coronavirus/safe-reopening/phases/>

² Capacity limit are based on the venue type where the live entertainment takes place.

Recreation Spaces and Sports Complexes (including Outdoor Stadiums and Large Arenas)	3/16/2020	5/26/2021	436
Indoor Gymnasiums	3/16/2020	5/26/2021	436
Swimming Pools	3/16/2020	10/3/2020	201
Casinos, Racetracks, and Video Poker Establishments	3/16/2020	5/15/2021	425
Concert Halls	3/16/2020	5/15/2021	425
Walking and Biking Tours	N/A	N/A	
Carriage Tours	N/A	N/A	
Street Performers and Buskers	N/A	N/A	
Amusement Parks	3/16/2020	5/26/2021	436
Fairs and Festivals	3/16/2020	5/26/2021	436
Arcades	3/16/2020	5/26/2021	436
Indoor playground and play centers	3/16/2020	5/26/2021	436
Second Lines and Parades	N/A	N/A	
Dance Clubs	3/16/2020	5/26/2021	436

Each non-conforming use determination, including those with a COVID-19 related closures, will be considered on an individual basis. The figures in the table will be used in the non-conforming use determination, but they may be adjusted for good cause when warranted by the specific function of the business (for example the capacity of the business, if the business operates predominately indoors or outdoors, etc.).