

## Nonconformities

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### **1.10 EFFECT ON EXISTING CONDITIONS (NONCONFORMITIES).**

#### **1.10.1 GENERAL PROVISIONS.**

##### **1.10.1.1 PURPOSE.**

- (1) The purpose of this section is to regulate lots, land uses, sites, structures, signs, and characteristics of uses that were lawful before this LDC was enacted, amended, or otherwise made applicable to such lots, land uses, sites, structures, signs, and characteristics of uses, but that do not now conform to the standards of this LDC.
- (2) It is the intent of this LDC to permit such nonconforming lots, sites, structures, signs or uses to continue, if the conditions within this section and other applicable sections are met.

##### **1.10.1.2 APPLICABILITY.**

These regulations apply to any lots, land uses, sites, structures, signs, and characteristics of uses within the city limits and extraterritorial jurisdiction as described in Section 1.10.2.2 Legal Nonconforming Status below.

##### **1.10.1.3 LEGAL NONCONFORMING STATUS**

Any lots, land uses, sites, structures, signs, or characteristics of uses which do not conform with the regulations of this LDC shall be deemed legal nonconforming when:

- (1) Such lots, land uses, sites, structures, signs, or characteristics of uses were in existence and lawfully operating as of the effective date of this LDC; or
- (2) Such lots, land uses, sites, structures, signs, or characteristics of uses were in existence and lawfully operating as of the effective date of any amendment to this LDC, but by such amendment are no longer in conformance with this LDC, and have since been in regular and continuous use; or
- (3) Such lots, land uses, sites, structures, signs, or characteristics of uses were in existence and lawfully operating on the date that annexation

proceedings were instituted and have since been in regular and continuous use.

#### 1.10.1.4 ILLEGAL NONCONFORMING STATUS.

- (1) Any lots, land uses, sites, structures, signs, or characteristics of uses that were established in violation of the regulations at the time are considered illegal nonconforming. The provisions of this section do not apply to illegal nonconformities.
- (2) The owner and/or operator of an illegal nonconforming lot, site, structure, sign, or use of land shall be subject to actions and penalties allowed by this LDC and all other applicable City ordinances and shall be required to correct the nonconforming situation to come into conformance with all applicable standards and regulations of this LDC.

#### 1.10.2 CONTINUITY AND DETERMINATION OF STATUS.

##### 1.10.2.1 Authority to Continue

Any nonconformity that legally existed on or before the adoption of this LDC that becomes nonconforming upon the adoption of this LDC or past or future amendments may be continued, subject to the regulations of this section.

##### 1.10.2.2 Repairs and Maintenance

Nothing in this LDC shall prohibit the routine operation and maintenance of legal nonconformities in such a manner as to not exacerbate any existing nonconformity.

##### 1.10.2.3 Change in Ownership or Tenancy

Nonconforming status runs with the land and is not affected by changes in tenancy, ownership, or management.

##### 1.10.2.4 Effect of Vacant Structure Registration

Registration of a structure as a “Vacant Structure” pursuant to Chapter 5, Article V, Division 2 of the Code of Ordinances shall not, by itself, constitute abandonment or termination of legal nonconforming status under this Section.

##### 1.10.2.5 Determination of Legal Nonconforming Status

- (1) The burden of proving that a nonconformity legally exists is the responsibility of the owner of the property.

(2) The Director of Development Services is authorized to determine whether reliable evidence of nonconforming status has been provided by the property owner. Resources for such evidence include but are not limited to, aerial photography, or utility billing records.

(3) Determinations of the Director may be subject to appeal to the ZBA.

#### 1.10.3 NONCONFORMITY LEGALIZATION.

##### 1.10.3.1 Director Adjustments

The Director has the discretion to approve variations that deviate less than five (5) percent from any specific standard prescribed in the LDC. If denied, the Applicant may request a Variance from the ZBA.

##### 1.10.3.2 Warrants

The Development Review Committee (DRC) has the discretion to approve Warrants, including Warrants for any Administrative Plat, Site Development permit, and/or building permit that deviate between five (5) and 10 percent from any specific standard prescribed in the LDC. If denied, or if the deviation is greater than 10 percent, the Applicant may appeal a Warrant denial or request a Variance from the ZBA.

##### 1.10.3.3 Zoning Variances

The ZBA may use the Zoning Variance process to bring any nonconformity into compliance, subject to the requirements of Section 2.2.15 Place Type Special Exception.

##### 1.10.3.4 Non-Numerical Variations

Deviations from specific provisions of the LDC that cannot be quantified shall be requested through the Place Type Warrant Process described in Section 2.2.1.6.

#### 1.10.4 NONCONFORMING LOTS.

1.10.4.1 A nonconforming lot is a lot that does not meet the current dimensional requirements established in this LDC.

1.10.4.2 Any platted lot is deemed a conforming lot.

1.10.4.3 Any variations to the dimensional requirements may be modified through the Warrant or Variance procedures described in this LDC.

1.10.4.4 Legal nonconforming lots may continue to be used for all legal purposes under this LDC until the nonconforming status has been abandoned.

(1) A legal nonconforming lot shall be considered abandoned after an application to amend or replat the lot has been approved.

1.10.4.5 No additional division of a legal nonconforming lot shall occur that will increase the level of nonconformity of the lot.

#### 1.10.5 NONCONFORMING SITES.

1.10.5.1 Nonconforming sites are legally occupied properties whose site improvements do not meet one or more provisions of this LDC such as parking location, landscaping, lighting, or stormwater drainage.

1.10.5.2 Nonconforming sites may not be expanded or modified in a way that increases or adds to the nonconformities of the site.

1.10.5.3 Nonconforming sites must be brought into conformance with the existing standards of this LDC in the following circumstances:

(1) Prior to reoccupying a legal nonconforming site that has been vacated for a period of ~~2~~5 years or longer; or

(2) At the time the nonconforming site is the subject of a Zoning Change, Neighborhood Plan, or Infill Neighborhood Plan.

#### 1.10.5.4 Administrative Extensions

(1) The Development Services Director may grant up to two (2) administrative extensions of the five-year vacancy period, each not exceeding six (6) months, upon written request by the property owner.

(2) An administrative extension may be granted if the Director determines that the delay is due to circumstances beyond the property owner's reasonable control and that the owner has demonstrated reasonable efforts to reoccupy the site.

(3) Any additional extension beyond the two (2) administrative extensions may be approved by the Zoning Board of Adjustment (ZBA), subject to the criteria in subsection (2) above.

1.10.5.5 Nonconforming sites that are individually listed as contributing properties within the National Register of Historic Places, registered as a

Recorded Texas Historic Landmark, or designated as contributing properties within a local historic district are not required to be brought into conformance with the existing standards of this LDC. The City reserves the right to require compliance for life, health, and safety issues.

1.10.5.6 When conformance with the existing standards of this LDC is required in accordance with Section 1.10.5.3 above, the owner of a nonconforming site must prepare a plan that demonstrates how the site may be brought into substantial compliance with this LDC.

(1) The Development Review Committee (DRC) shall have review and approval authority for the reoccupation of abandoned nonconforming sites.

(2) The Zoning Board of Adjustment (ZBA) shall hear appeals of DRC decisions regarding the reoccupation of abandoned nonconforming sites.

1.10.5.7 When conformance with the existing standards of this LDC is required in accordance with Section 1.10.5.3 above but the Director determines that all provisions of this LDC cannot be reasonably met or conformance with all requirements of this LDC will cause the expansion or creation of another nonconformity, the Applicant may request a Warrant to continue the use without meeting the current standards of this LDC in accordance with Section 2.2.1.6.

#### 1.10.6 NONCONFORMING STRUCTURES.

A nonconforming structure is a building or other construction that does not meet one or more of the standards of this LDC such as build-to line, height limitations, design standards, or performance standards.

1.10.6.1 A nonconforming structure or portion thereof may be altered to decrease its nonconformity as determined by the Development Services Director.

1.10.6.2 A nonconforming structure may be expanded, however, the expansion must conform to the LDC standards in place at that time and shall not result in increased or additional nonconformities.

1.10.6.3 Reconstruction of nonconforming structures or portions amounting to less than 50 percent of the existing square footage is permitted if the nonconformity is not enlarged in volume, area, or footprint.

1.10.6.4 Voluntary removal or destruction of a nonconforming structure or portion amounting to 50 percent or more of the existing square footage shall require either complete removal of the structure or its reconstruction in conformance with the existing regulations.

1.10.6.5 Involuntary damage to or destruction of a nonconforming structure (e.g., fire, winds, or other calamity) may be rebuilt, reconstructed, or restored on the same footprint of the original structure plus any addition or expansion that is allowed by and conforming to the applicable Place Type district. Such reconstruction is permitted as long as it begins within 2-5 years of the loss and complies with all other applicable zoning, development, and building codes.

(1) If reconstruction does not begin within 2-5 years of the loss, and the structure has been vacant and/or no certificate of occupancy has been in place, the structure loses its legal nonconforming status, unless an extension has been approved in accordance with subsection (2) below.

(2) Extensions

(a) The Development Services Director may grant up to two (2) administrative extensions of the five-year reconstruction period, each not exceeding six (6) months, upon written request by the property owner.

(b) An administrative extension may be granted if the Director determines that the delay is due to circumstances beyond the property owner's reasonable control and that the owner has demonstrated reasonable progress toward reconstruction.

(c) Any additional extension beyond the two (2) administrative extensions may be approved by the Zoning Board of Adjustment (ZBA), subject to the criteria in subsection (b) above.

1.10.6.6 A nonconforming structure may be moved to another location on the lot, provided that the moving will make it nonconforming to an equal or lesser extent. A nonconforming structure shall not be moved to an off-site location unless the nonconformity is eliminated through the relocation.

(1) Exception: A historic resource relocated in accordance with the applicable historic preservation provisions of the City's Code of Ordinances may retain existing nonconforming characteristics to the extent authorized by an approved certificate of appropriateness, provided

that the historic resource complies with all applicable siting requirements at the new location.

#### 1.10.7 NONCONFORMING SIGNS.

Permitted signs erected before the adoption of the LDC that do not meet the current standards of this LDC are considered to be legal nonconforming signs.

1.10.7.1 No person may increase the extent of nonconformity of a nonconforming sign. No nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.

1.10.7.2 When any sign is substantially damaged (i.e., the cost of restoring the sign is at least 50 percent of the market value of the sign before it was damaged), destroyed, taken down or removed for any purpose other than copy change or ordinary maintenance operation, it shall not be re-erected, reconstructed, or rebuilt except in full compliance with this LDC.

1.10.7.3 Any change in the use of any building or property on which a nonconforming sign is located will require that all nonconforming signs on that property be brought into compliance with all applicable sections of this LDC.

(1) Exception: The message of a nonconforming sign may be changed so long as this does not create any new nonconformities.

1.10.7.4 A nonconforming sign shall not be moved or replaced except to bring the sign into conformity with this section.

(1) For the purpose of this subsection, the term "replaced" means the replacing of any or all parts of a sign that would extend the normal life span of the sign. An example is replacing wood pole supports with metal I-beam supports.

#### 1.10.8 NONCONFORMING USES OF LAND.

1.10.8.1 A nonconforming use is a land use that is not permitted in the Place Type district in which it is located, or that does not meet the performance standards described in Sections 5.5 and 5.9 of this LDC.

1.10.8.2 If a nonconforming use is discontinued for a period of at least 12 months, the use shall not resume except in full conformance with this LDC.

(1) For the purpose of this paragraph, to “discontinue” shall mean to intentionally terminate operations of the nonconforming use.

1.10.8.3 Any nonconforming use that does not involve a permanent type of structure or operation that is moved from the premises shall be considered to have been discontinued, regardless of intent.

1.10.8.4 A nonconforming use shall not be expanded, except that the Development Services Director may authorize the expansion of a nonconforming use within an existing structure.

1.10.8.5 The Development Services Director may approve the replacement of a nonconforming use with a different nonconforming use if it is determined that the new nonconforming use will have a lesser impact on the surrounding neighborhood than the existing nonconforming use.