

## Article 7 Nonconformities

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# Article 7 Nonconformities

*Purpose: Applying new regulations to existing development can create situations where existing lot dimensions, development density or intensity, land uses, buildings, structures, landscaping, parking areas, signs, or other conditions do not strictly comply with the new requirements. This Article protects and regulates nonconforming uses, buildings, structures, and lots (referred to collectively as “nonconformities”), and specifies the circumstances and conditions under which those nonconformities may continue. The City finds that nonconformities that adversely affect the orderly development and value of other property in the neighborhood or district should not continue unless restricted. At the same time, reinvestment in some properties that do not strictly comply with current regulations can maintain existing neighborhood assets and economic growth, and is allowed with appropriate conditions. For existing lots or development (including uses, buildings, structures, and signs) that are “legally nonconforming,” this Article sets out fair rules for whether, when, and how the regulations of this LDC apply.*

## 24.7.1 Generally

### (a) Applicability

- (1) This Article applies to any nonconformity. A “nonconformity” means any of the following on the effective date:
  - a. nonconforming use (Section 24.7.2),
  - b. nonconforming structure (Section 24.7.3),
  - c. nonconforming lot (Section 24.7.4),
  - d. nonconforming site improvement (Section 24.7.5), or
  - e. application or project in progress (Section 24.7.6).
- (2) For purpose of this Article, the “effective date” means the effective date of this Chapter, any amendment to this Chapter, or any annexation of territory, that creates a nonconformity.
- (3) Table 7.1-1 summarizes the permissible changes and activities for nonconformities as provided in this Article.

**(b) Continuation of Nonconformities.** Except provided below, the lawful use of a building or structure existing at the time of the adoption of this Chapter may continue, even if the existing use, building, or structure does not conform to the provisions of this Chapter for the district where it is located.

**(c) Removal of Building or Structure.** If a nonconforming use, building or structure is removed from a lot, the nonconformity terminates. Any use, building or structure established or constructed after that time shall comply with the then-existing provisions of this Chapter.

**(d) Replacing Damaged Building or Structure.** A non-conforming building or structure or group of non-conforming buildings or structures related to one use and under one



ownership, which is damaged by fire, flood, explosion, earthquake, war, or riot, may be reconstructed or replaced subject to this Section and used as before if:

- (1) the application for a permit is submitted within 12 months of the disaster, and
- (2) the area restored does not exceed the square footage of the area as it existed before the disaster.

**(e) Public Services.** Pursuant to Texas Local Government Code § 211.013(b), this Chapter (including subsections (c) and (d) above) does not require the removal or destruction of property that exists as of the effective date that is actually and necessarily used in a public service business. A “public service business” means a public utility or a business of like character.

**(f) Annexation.** The use of land after the City annexes territory is subject to Texas Local Government Code § 43.002.

Table 7.1-1 Legal Nonconformities

**P** = permitted, but not subject to zoning district dimensional standards; **x** = not permitted; **C** = allowed with conditional use permit, and not subject to zoning district dimensional standards; **D** = permitted, but subject to zoning district dimensional standards, zoning standards and any applicable supplemental use regulation (see Art. 6); **L** = subject to Texas Local Government Code Chapter 245; **B** = subject to building design standards of Art. 3 (Section 24.3.4)

	Legal Nonconforming Use	Legal Nonconforming Structure	Legal Nonconforming Lots	Legal Nonconforming Site Improvements	Legal Nonconforming Applications / Projects in Progress
<b>Change of use (see Use Chart (§ 24.2.17))</b>					
To a conforming use	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>L</b>
To a nonconforming use in the same use definition (in structure only)	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>L</b>
To another nonconforming use (not in a structure)	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>L</b>
Addition of nonconforming use	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>L</b>
Single-family detached dwelling (AG, RL, RM districts)	n/a	n/a	<b>P</b>	n/a	n/a
Any use permitted in district (C, I-1, I-2 districts)	n/a	n/a	<b>P</b>	n/a	n/a
<b>Maintenance</b>					
Structural alteration which do not expand	<b>x</b>	<b>D</b>	<b>D</b>	<b>D</b>	<b>L</b>
Repairs / alterations to maintain in sound condition	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
<b>Expansion / Enlargement</b>					
Within same or accessory structures or parking areas	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>L</b>
Nonconforming use prohibited in district	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
Nonconforming use designated as special use	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>L</b>
By 5% of lot area (see 24.7.3(c))	n/a	<b>D</b>	n/a	n/a	<b>L</b>
Reorientation of façade	n/a	<b>B</b>	n/a	n/a	<b>L</b>
> 1,000 sf or 25% with nonconforming site permit	n/a	<b>P</b>	n/a	<b>P</b>	n/a



## 24.7.2 Nonconforming Uses

- (a) **Applicability.** This section applies to any “**nonconforming use**,” defined as a use which lawfully occupies a building or land on the effective date and which:
- (1) Is no longer permitted in the applicable zoning district, or as a result of annexation, or
  - (2) Would require a special use permit in the applicable zoning district.
- (b) **Generally.** No existing building, structure or premises devoted to a use not permitted by this Chapter shall be enlarged or structurally altered unless required by law or court order, except as provided below.
- (c) **Discontinuance of a Use.** A building, structure, lot or parcel where a non-conforming use is discontinued for at least 6 months, regardless of the intent of the owner or occupant of the premises, may not be occupied by a non-conforming use after that time.
- (d) **Change in Nonconforming Uses**
- (1) A nonconforming use may change to a conforming use. After a nonconforming use changes to a conforming use, it may not change back to a nonconforming use.
  - (2) A nonconforming use conducted in a structure may change to another use within the same use definition if it is not relocated or expanded..
  - (3) A nonconforming use not conducted in a structure, or one in which a structure is incidental to the use of the land, shall not change to any other nonconforming use.
  - (4) A nonconforming use of any classification shall not be added where there is already an existing nonconforming use.
- (e) **Expansion or Enlargement of Nonconforming Uses.** A nonconforming use may be extended only within the premises on which the nonconforming use was located on the effective date. “Premises” means the building in which the use is being carried on and the accessory buildings, appurtenances, driveways, parking and loading spaces.
- (f) **Special Use.** A use that is nonconforming only because it requires a special use permit, and is permitted as a permitted use in the applicable district, may continue as a permitted use, and:
- (1) May be structurally altered within its existing footprint, and
  - (2) May change to another use subject to subsection (d) above without a special use permit, and
  - (3) May expand or enlarge outside of the areas allowed in subsection (e) above, subject to a special use permit.

## 24.7.3 Nonconforming Structures

- (a) **Applicability.** This section applies to any “nonconforming structure.” A “nonconforming structure” means a building or structure that:



- (1) lawfully exists on the effective date of this Chapter or any amendment to this chapter that would cause the building or structure not to comply with this Chapter, and
  - (2) does not conform to all of the regulations of the zoning district in which it is located.
- (b) Continuance of Nonconforming Structures.** Except as provided below, any nonconforming structure may be occupied and operated and maintained in a state of good repair.
- (c) Expansion**
- (1) A non-conforming structure on a lot may expand one time by as much as 20% of the building square footage if:
    - a. the expansion does not encroach on required setbacks,
    - b. paved parking, sidewalks, and landscaping, as required by this code is provided, and
    - c. the non-conforming building or structure is screened and buffered from adjacent uses and zones as determined by Section 24.3.5 of this Chapter.
  - (2) The non-conforming structure may expand by 20% of the building square footage only once as authorized by the Building Official.
  - (3) The expansion shall conform to all zoning district and development standards of this Chapter, and shall not create a new nonconformity.
- (d) Nonconforming Building Design**
- (1) *Generally*
    - a. This subsection applies to any building that is nonconforming as to the building design standards established in applicable zoning district (Article 2) or in Article 3.
    - b. Existing nonconforming buildings are not required to meet building design requirements unless the facade is reoriented.
  - (2) *Additions to Existing Buildings.* Additions to existing buildings may match the foundations, porch depth, and finished floor elevations of the existing building.

## 24.7.4 Nonconforming Lots

- (a) Applicability.** This section applies to any nonconforming lot. A “nonconforming lot” is a lot or parcel that, on the effective date of this Chapter or any ordinance that establishes a minimum or maximum lot area, frontage or lot width, is:
- (1) Not in compliance with the minimum or maximum lot area, frontage or lot width, and
  - (2) lawfully existing and of record, and
  - (3) held in separate and different ownership from any lot immediately adjoining and having continuous frontage.
- (b) Agriculture and Residential Districts.** In the AG, RL and RM districts, a nonconforming lot may be used as the building site for one (1) single-family detached dwelling.



- (c) **Commercial and Industrial District.** In the C, I-1 and I-2 districts, a nonconforming lot may be used as the building site for any use permitted in the district.

## 24.7.5 Nonconforming Site Improvements

- (a) **Applicability.** This section applies to any nonconforming site improvement.

- (1) A "Nonconforming Site Improvement" is a situation that occurs when, on the effective date:
  - a. an existing site improvement on a lot (including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping) no longer conforms to the applicable regulations of this Chapter, or
  - b. the lot does not include site improvements required by of this Chapter for any existing use, building or structure on the lot.
- (2) This section does not apply to repairs and renovations of less than 10% of the structural value of a structure or site improvements.

- (b) **Generally.** On lots with nonconforming site improvements, no additions to, or exterior repairs or alterations of any building, structure or site improvement that increases the square footage by the greater of at least 1,000 square feet or 25% are allowed, unless:

- (1) the nonconforming site improvements are brought into complete conformity with the regulations applicable to the use, building, structure or zoning district, or
- (2) the activity is authorized by a nonconforming site permit.

- (c) **Nonconforming Site Permit.** When an addition to, or repairs or alterations to, any structure or site improvement is proposed on a lot with a nonconforming site improvement, the Planning Director may approve a nonconforming site permit allowing the addition, repairs or renovation if:

- (1) The nonconforming site improvement(s) is the only nonconformity pertaining to the property; and
- (2) Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible. Mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements are not reasonably possible; and
- (3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety; and
- (4) If needed, the owner commits to other site design measures to reduce negative impacts associated with the nonconformity or to accomplish the purpose of the required site improvement.

## 24.7.6 Applications and Projects in Progress

- (a) **Applicability.** Applications and permits are subject to Texas Local Government Code, Chapter 245.



- (b) Temporary Variances.** Temporary variances granted by the Planning and Zoning Commission prior to the effective date of this Chapter may continue as a non-conforming use subject to the provisions of this Article and all platting requirements.

