

**CITY OF ENNIS, TEXAS
UNIFIED DEVELOPMENT ORDINANCE
Article X – Nonconformities**

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**CITY OF ENNIS, TEXAS
UNIFIED DEVELOPMENT ORDINANCE**

Article X – Nonconformities

10.1 PURPOSE AND GENERAL PROVISIONS

10.1.1 Purpose

This chapter governs uses, structures, lots, and other situations that came into existence legally prior to the effective date of this ordinance or the effective date of future amendments to this ordinance, but do not comply with or conform to one or more requirements of this ordinance. All such situations are collectively referred to as “nonconformities.”

10.1.2 General Policy

While nonconformities may continue, the provisions of this Article are intended to create a more balanced approach to nonconformities. The city acknowledges the need for ongoing maintenance and a market driven approach to substantial redevelopment under the requirements of this ordinance while discouraging perpetuation of nonconformities through minimal investments intended to circumvent the overall intent of zoning regulations to create adjacency predictability and gradually increasing property values based on public and private investment. Any nonconforming use, structure, lot, or site condition that becomes nonconforming as a result of this ordinance and any subsequent rezoning or amendment to this text of this ordinance may be continued or maintained only in accordance with the terms of this article. This article is also intended to reduce vacancies, promote appropriate redevelopment and re-use of existing structures and lots, and set forth requirements.

10.1.3 Continuation Permitted

Any nonconformity that legally exists on the adoption date of this ordinance, or that becomes nonconforming upon the adoption of any amendments to this ordinance may be continued in accordance with the provisions of this article.

10.1.4 Determination of Nonconformity Status

In all cases, the burden of establishing that any nonconformity is a legal nonconformity shall be solely upon the owner of such nonconformity.

10.1.5 Repairs and Maintenance

Incidental repairs and normal maintenance of nonconformities shall be permitted, unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by this ordinance. Structures may be structurally strengthened or restored to a safe condition, in accordance with an official order of a public official or other authorized person or entity.

10.1.6 Tenancy and Ownership

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

10.1.7 Exception Due to Variance or Modification

This article shall not apply to any development standard or feature that is the subject of a variance or modification granted by the Zoning Board of Adjustment. Where a variance or modification has been granted for a development standard that does not otherwise conform to the requirements of this ordinance, that development standard shall be deemed conforming.

10.1.8 Enforcement of Requirements

The city may withhold necessary permits, inspections, or other approvals to ensure compliance with this article.

10.1.9 Nonconformity Due to Governmental

A use, lot, or structure conforming to city ordinances shall not be considered nonconforming in the event a governmental entity reduces the size of the lot on which the structure is located by widening an abutting street or through the exercise, or potential exercise, of the city, county, or state's eminent domain power. Any status claimed under this subsection must be the result of city, county, or state action only and not otherwise result in a situation that jeopardizes the public health, safety, or welfare. Further, the city, county, or state's action must make it impossible or highly impracticable for the structure to be brought into conformity with this ordinance. The right to rebuild or add-on shall not be given to properties described in this subsection. This subsection is intended to provide conforming status for the use, lot, or structure immediately after such city, county, or state action, only with regard to the following requirements:

- (1) the amount of square footage removed from the structure's minimum required lot area by the city, county, or state action
- (2) the number of linear feet removed from the structure's minimum required lot depth or width by the city, county, or state's action
- (3) the number of linear feet removed from the structure's minimum required front setback, side setback, or rear setback by the city, county, or state's action
- (4) the number of then existing properly marked parking spaces removed from the structure's minimum required off-street parking by the city, county, or state's action
- (5) the increased percentage of lot coverage directly attributable to the city, county, or state's action
- (6) the amount of landscaping removed from the existing property by the city, county, or state's action

10.2 NONCONFORMING USES

10.2.1 General

Any use of land that was legally in existence and nonconforming on the effective date of this ordinance and has been in regular and continuous use, but which does not conform to the use regulations prescribed by this ordinance, shall be deemed a nonconforming use. However, any single-family use lawfully existing on the effective date of this ordinance shall be hereafter deemed a lawful use.

10.2.2 Change of Use

- (1) A nonconforming use may only be changed to a conforming use allowed in the zoning district in which it is located.
- (2) Once a nonconforming use is converted to a conforming use, it shall not be changed back to a nonconforming use.
- (3) A nonconforming use shall not be changed to another nonconforming use.

10.2.3 Enlargement or Extension of Nonconforming Use

There shall be no increase in the floor area or the land area devoted to a nonconforming use or other enlargement or extension of a nonconforming use beyond the scope and

area of its operation at the time the regulation that made the use nonconforming was adopted.

10.2.4 Loss of Legal Nonconformity Status

(1) ABANDONMENT

If a nonconforming use is discontinued or ceases for any reason for a period of more than 180 continuous calendar days, the use shall be considered abandoned unless the owner of the property presents documentation of the intent to continue the nonconforming use. Once abandoned, the legal nonconforming status shall be lost, the right to operate the nonconforming use shall cease, and re-establishment of the nonconforming use shall be prohibited. Any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

If a nonconforming use is discontinued or ceases, but is re-established within 180 calendar days, then the nonconforming use may continue, provided the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was abandoned.

(2) DAMAGE OR DESTRUCTION

If the structure in which a nonconforming use is housed, operated, or maintained is destroyed by any means to the extent of more than 50 percent of its fair market value, the use may not be re-established except in compliance with all regulations applicable to the zoning district in which it is located.

If the structure in which a nonconforming use housed, operated, or maintained is partially destroyed, where the damage does not exceed 50 percent of its fair market value, the nonconforming use may be allowed to continue and the structure may be rebuilt but not enlarged upon approval of a building permit.

(3) ACTION BY THE ZONING BOARD OF ADJUSTMENT

The right to maintain or operate a nonconforming use or structure shall be determined by the Zoning Board of Adjustment in accordance with the provisions of this Ordinance outlined in **Article III**.

10.3 NONCONFORMING LOTS

10.3.1 Nonconforming Lots of Record

No use or structure shall be established on a lot of record that does not conform to the lot area, lot width, or lot depth requirements for the zoning district in which it is located established, except as otherwise provided for in this section.

(1) Single Family Residential Lots

(a) Lot Size: If a lot of record created by a subdivision plat has less width or area than the minimum requirements of the district in which the lot is located, the standard for width or area shall not prohibit the erection of a detached single-family dwelling or an accessory structure provided that:

- i. The lot is at least 25 feet in width and 2,500 square feet in area
- ii. The lot width and area do not vary more than 10 percent from the minimum requirements of the district in which the lot is located

(b) Setbacks. Single-family dwellings with setbacks made nonconforming by the adoption of this ordinance are exempt from the requirements of this section if the following findings can be made:

- i. The proposed addition or alteration will either meet current setback requirements or will not encroach any further into the required setback than the existing structure
- ii. If the proposed alteration or addition is located on the side of the existing dwelling, and there is a minimum distance of 10 feet between the side of the existing structure and the nearest dwelling on the adjoining property
- (c) Single family residential parcels with setbacks made nonconforming by the installation of roadways or other easements/property line adjustments created or enacted by a governmental entity are also exempt from the requirements of this section, and shall not be required to address the finding above.

(2) **Adjacent Lots in Single Ownership**

If two or more adjacent and vacant nonconforming lots are in single ownership at any time, and such lots individually have less width or area than the minimum requirements of the district in which such lots are located, then such lots shall be considered in combination and treated as a single lot or several lots that meet the minimum requirements for the district in which they are located under this ordinance. Any construction, replacement, or enlargement of a dwelling or building shall require a combination or replatting of all necessary lots in order to achieve compliance with the provisions of this ordinance.

10.4 NONCONFORMING STRUCTURES OR SITES

10.4.1 General

A nonconforming structure or site is a building or site with improvements, the size, dimension, design, or location of which was lawful prior to the adoption, revision, or amendment of this ordinance, but which fails to conform to the requirements of the development regulations applicable to the property by reasons of such adoption, revision, or amendment.

10.4.2 Continuation of Nonconforming Structure or Site

Except where prohibited by this article, a nonconforming structure or site may be used, subject to the provisions of this ordinance, for any use allowed in the underlying zoning district, including a legal nonconforming use.

10.4.3 Maintenance and Minor Repair

The maintenance or minor repair of a nonconforming structure is permitted, provided that the maintenance or minor repair does not extend or expand the nonconforming structure or exacerbate (make worse) any existing nonconformity. For the purposes of this subsection, "maintenance and minor repair" means:

- (1) Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure
- (2) Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses
- (3) Repairs that are required to remedy unsafe conditions that cause a threat to public safety

10.4.4 Enlargement and Expansion

A nonconforming structure in which only permitted uses are operated may be enlarged or expanded if the enlargement or expansion neither creates any new nonconformity nor

increases the degree of the existing nonconformity of all or any part of such structure or site and the enlargement or expansion can be made in compliance with all of the provisions of this ordinance with respect to the district in which it is located. Such enlargement or expansion shall also be subject to all other applicable city ordinances.

10.4.5 **Loss of Nonconforming Status; Damage or Destruction**

(1) **DAMAGE OR DESTRUCTION OF A NONCONFORMING STRUCTURE OR SITE**

If a Nonconforming Structure or Site is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six (6) months after written notice to the Property Owner that the Structure is uninhabitable and the Nonconforming Structure is voluntarily demolished or is required by law to be demolished, the Structure shall not be restored unless it complies with all the regulations of the zoning district in which it is located. If a Nonconforming Structure is involuntarily destroyed in whole or in part due to fire or other calamity (such that the destruction does not exceed 50 percent of the fair market value of the improvements) and the Structure has not been abandoned, the Structure may be restored to its original condition, provided such work is started within six months of such calamity, completed within eighteen (18) months of work commencement, and no prior nonconformity is increased.

(2) **ACTION BY THE ZONING BOARD OF ADJUSTMENT**

The right to maintain or operate a nonconforming structure or site may be determined by the Board of Adjustment in accordance with the provisions of this Ordinance.

10.5 **AMORTIZATION OF NONCONFORMING USES, STRUCTURES OR SITES**

10.5.1 **Initiation of Proceedings**

The Administrator, the Zoning Board of Adjustment, or the City Council may request the Zoning Board of Adjustment initiate proceedings to amortize a nonconforming use or structure or site. All actions to amortize a nonconforming use of land or structure or site shall be taken with due regard for the investment of the persons affected when considered in the light of the public welfare, the character of the area surrounding the designated nonconforming use, and the conservation and preservation of property.

10.5.2 **Consideration by Zoning Board of Adjustment**

(1) The Zoning Board of Adjustment may require the termination of nonconforming uses of land or structure under a plan whereby the value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood, degree of incompatibility of the nonconforming use or structure, effect of the nonconforming use or structure on the surrounding area, the necessity for all property to conform to the regulations of this ordinance and other factors that the Board considers relevant.

(2) **CRITERIA FOR DETERMINING AMORTIZATION PERIOD**

Before the Zoning Board of Adjustment may determine an amortization period, it must consider the following factors:

- (a) The owner's capital investment in the structures on the property at the time the use became nonconforming
- (b) The amount of the investment realized to date and the amount remaining, if any, to be recovered during the amortization period

- (c) Any costs attributable to compliance with the standards in the Ordinance, including demolition expenses, moving/relocation expenses, termination of leases, and discharge of mortgages
- (d) The life expectancy of the investment
- (3) PROCESS: The Board of Adjustment shall conduct a public hearing per the process established in **Article III**.
- (4) If the Board of Adjustment establishes a termination date for a nonconforming use, or structure the use must cease operations on that date and the owner may not operate it after that date unless it becomes a conforming use.

10.6 ILLEGAL USES

10.6.1 Immediate Termination of Illegal Uses

- (1) The violation of any of the provisions of one or more of the following categories or ordinances or requirements shall cause the immediate termination of the right to operate such nonconforming use:
 - (a) Constructing, maintaining, or operating a use conducted in, or associated with, a building or structure erected without a permit from the city
 - (b) Operating a use or occupying a building or structure without a valid Certificate of Occupancy from the city
 - (c) Operating a use in violation of a valid Certificate of Occupancy
 - (d) Unlawful expansion of a nonconforming use or nonconforming structure
 - (e) Unlawful outside display or storage in required parking spaces
 - (f) Violation of any provision of a federal or state statute with respect to a nonconforming use
 - (g) Violation of any provision of an ordinance of the city with respect to a nonconforming use
- (2) It is the clear intent of this subsection that nonconforming uses that operate unlawfully shall be considered illegal uses. Illegal uses shall not be considered nonconforming regardless of remedial measures taken to resurrect nonconforming status.