

Subchapter 8. NONCONFORMITIES

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Section 8.1 GENERAL

8.1.1 Purpose

The purpose of this Subchapter is to regulate the cessation, continuation, maintenance, improvement, modification, replacement and termination of uses, lots, structures, and sites that do not conform to this Code.

8.1.2 Authority

The provisions of this Chapter are adopted pursuant to Texas Local Government Code Chapters 43, 211 and 212, and the City Charter.

8.1.3 Applicability

The provisions of this Subchapter 8 shall be applicable to any use, lot, structure, and site within the City and ETJ that is not compliant with this Code.

8.1.4 Nonconforming Status

- A. The following are types of nonconforming situations for which nonconforming status shall be determined:
 - 1. Nonconforming Uses;
 - 2. Nonconforming Lots;
 - 3. Nonconforming Structures; and
 - 4. Nonconforming Sites.

- B. Determination of Nonconforming Status. The Planning Director shall make determinations of nonconforming status. The Planning Director's determination may be appealed to the Board of Adjustment in accordance with Subchapter 3 of this Code.

- C. Legal Nonconforming Status
 - 1. A structure, lot, site, or use which was lawfully in existence, constructed, or located on the effective date this Code or was legally constructed to meet previous requirements of this Code and has been in regular and continuous use, but which does not conform to the current requirements of this Code, shall be granted legal nonconforming status, except as specifically exempted or prohibited by other sections of this Subchapter. A legal nonconforming structure, lot, site, or use may remain or continue, subsequent to the effective date of this Code, provided that such continuance is in accordance with the provisions of this Subchapter and all other applicable provisions of the City Code.

 - 2. The violation of any of the following provisions may cause the Planning Director to terminate the legal right to operate such nonconforming structure,

lot, site, or use, subject to appeal to the Board of Adjustment pursuant to Subchapter 3 of this Code:

- 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, lot, site, or structure;
- e. Any other violation of this Code as determined by the Planning Director.

8.1.5 PROVING A LEGAL NONCONFORMITY

It shall be the property owner's responsibility to provide information and documents to the City establishing the nonconforming status of the owner's property.

8.1.6 Illegal Nonconforming Status

A structure, lot, site, or use that is in violation of the requirements of this Code and was constructed or established since the adoption of this Code without the necessary approvals, permits, or authorizations from the City is considered illegal nonconforming. In addition, a structure, lot, site, or use that was constructed or established at any time prior to the adoption of this Code that was not in compliance with the then applicable regulations is considered illegal nonconforming. The owner and/or operator of an illegal nonconforming structure, lot, site, or use shall be subject to actions and penalties allowed by this Code 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 Code.

8.1.7 Change of Ownership

The lawful change of ownership of property in which there is a nonconforming situation without any change in the nonconforming situation shall not cause the loss of legal nonconforming status.

8.1.8 Reversal Prohibited

Once a nonconforming use, structure, site, or lot has been changed to conform to the provisions of this Code or to more nearly conform to the provisions of this Code, the use, structure, site, or lot shall not thereafter be changed so as to be nonconforming again.

8.1.9 Legal Nonconforming Status for Newly Annexed Territory

After annexation of an area: (1) a person may continue to use the land in the newly annexed area in the same manner in which the land was used on the date annexation proceedings were instituted if the land use was legal at the time; or (2) a person may begin to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if: (a) one or more licenses, certificates, permits, approval, or other forms of authorization by a governmental entity were required by law for the planned land use; and (b) a completed application for the initial authorization was filed with the governmental entity before the date of the annexation proceedings were instituted.

However, the following regulations apply to newly annexed territories:

- 1) Regulations related to the location of sexually oriented business;
- 2) Regulations related to preventing imminent destruction of property or injury to persons;
- 3) Regulations related to public nuisances;
- 4) Regulations related to flood control;
- 5) Regulations related to the storage and use of hazardous substances; and
- 6) Regulations related to the sale and use of fireworks.

After the 20th anniversary of the date of the annexation of an area that includes a permanent retail structure (1) which is more than 5,000 square feet and (2) was authorized under State law to be used for the indoor seasonal sale of retail goods, a person shall not continue the use of the structure for the indoor seasonal sale of retail goods.

8.1.10 Exemptions

A. Residential Structures.

Any residential dwelling or dwelling unit that meets the conditions for legal nonconforming status as set forth in Section 8.1.4 of this Subchapter shall be exempt from any and all of the restrictions, limitations and conditions contained in Subsections 8.2 and 8.4 and 8.5 of this Subchapter concerning nonconforming uses and nonconforming buildings. Such nonconforming use shall continue until the use is abandoned as defined by Section 8.1.11 of this Subchapter. If, at any point, the nonconforming residential use is converted to a commercial use, it may not revert to a residential use except upon a zoning reclassification, as provided for by Subchapter 3 of this Code.

B. Prior Construction Plans.

Nothing contained herein shall require any change in the plans, construction, or designated use of a building legally under construction or for which a permit for construction had been issued before the effective date of this Code. Construction may be completed in accordance with the terms of the permits, so long as those permits were validly issued and remain unrevoked and unexpired.

C. Prior Undeveloped Site Plans.

Nothing contained herein shall require any change in the plans and subsequent construction of a site subject to an approved and valid, but undeveloped, site plan approved before the effective date of this Code. Construction may commence in accordance with the terms of the site plan and any required permits, so long as

those permits were validly issued and remain unrevoked and unexpired. If a site plan has expired or, in the case of a phased site plan, the construction of subsequent phases has not commenced prior to expiration, this exemption shall not be applicable.

D. Prior Approval Granted.

Structures, lots, and sites that are nonconforming due to prior variance, administrative waiver, or other approval shall not be subject to the provisions of this Subchapter to the extent of such variance, administrative waiver or other approval, but shall conform to the terms and processes of their approval.

E. Governmental Acquisition of Property.

A lawful structure, lot, site, or use that is made noncompliant regarding any requirement of this Code due to the acquisition of property by eminent domain, dedication, or purchase by a city, county, state, or federal agency shall be deemed legally nonconforming. Such exemption shall apply only to noncompliance that is a direct result of the acquisition.

F. Accessory Structures for Agricultural Purposes.

The provisions of this Subchapter shall not prevent the repair, restoration, replacement, or construction of accessory structures necessary for or directly related to agricultural purposes on a site zoned as Agricultural/Conservation (A), including, but not limited to, barns, shelters, sheds, or other structures. However, a second dwelling unit in an Agricultural/Conservation district shall not be considered an accessory structure for the purposes of this provision.

8.1.11 Abandonment of a Nonconforming Situation

A. Effect of Abandonment

Abandonment of a legal nonconforming situation shall result in the loss of the existing legal nonconforming status previously granted. All use of the premises shall cease and any future use of the premises may only occur as provided for in this Subchapter.

B. Determination of Abandonment

1. A legal nonconforming use shall be considered abandoned after the nonconforming use has been out of use for a period of six (6) months or more.
2. A legal nonconforming structure shall be considered abandoned after the structure has been vacant for a period of six (6) months or more.
3. A legal nonconforming site shall be considered abandoned after the site has been vacant for a period of six (6) months.
4. Occurrence of one or more of the following situations shall be evidence of vacancy or lack of occupancy for the purposes of determining abandonment, when the intention of the owner to discontinue the use is apparent:
 - a. The building, structure, activity or land has been unoccupied or out of use;
 - b. One or more utility accounts have been discontinued;
 - c. Utility meters are removed;
 - d. Taxes are delinquent on the property;

- e. The site or structure has not been maintained;
 - f. The unit has not been made available for occupancy;
 - g. The characteristic equipment and furnishings of a nonconforming use have been removed from the premises; or
 - h. A nonconforming use has been replaced by a conforming use.
5. All of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole for the purposes of determining abandonment. A multi-tenant site, building or shopping center shall be considered occupied for the purposes of this Subchapter, provided it remains at least 30% occupied. The failure to rent one space in a nonconforming building or on a nonconforming site shall not result in a loss of the right to rent space thereafter so long as the building or site as a whole is continuously maintained and at least 30% of the units remain rented.
 6. The time period for determining abandonment shall exclude any period of discontinuance of use caused by government actions impeding access to the premises without any contributing cause by the owner of the legal nonconforming use, site, or structure.

8.1.12 Variance Not Precluded

Nothing within this Subchapter precludes the application for, or approval, of a variance meeting the standards for such under Subchapter 3 of this Code.

8.1.13 Application of Legal Nonconforming Use, Structure, Lot, or Site

The owner of a commercial or industrial nonconforming use, structure, lot, or site shall register such nonconforming use, structure, lot, or site with the City by filing an application for registration of legal nonconforming status. The application shall contain the following items.

A. General

The application may be made by, or on behalf of, the owner by any person, firm, corporation or other entity which has a legal or equitable interest in the nonconforming use, site, lot or structure. Applications shall include a disclosure of the complete ownership of the land and/or structure and shall be in such form and require the furnishing of such information and representation as are needed to show the following:

1. That the use, structure, lot or site was lawfully established prior to the effective date of this Code.
2. That the use, structure, lot or site has been continuously maintained since it was established.
3. That the use, structure, lot or site has not been abandoned.

B. Denial of Legal Nonconforming Status

The Planning Director may deny any application if it appears that the documents relied thereon are not valid, or that the documents produced do not show the existence of a prior nonconformity in accordance with the criteria set forth in

subsection A., immediately above. The applicant may appeal this determination to the Board of Adjustment in accordance with Subchapter 3 of this Code.

C. Amendment of Legal Nonconformity Certificate

At any time after the City certifies a legal nonconformity, upon application to the Planning Department and with the written consent of the owner affected thereby, a Legal Nonconformity Certificate may be amended to indicate changes in ownership. A copy of each certificate shall be returned to the owner and a copy filed among the records of the Planning Department. The Planning Director shall accept and file all tendered certificates within the permitted time period outlined within Section 8.1.13 D., but the acceptance of such certificates shall not constitute an authorization to operate an unlawful use or structure. The filing of a false application with the department shall constitute a violation of this chapter.

D. Time Period for Registering Nonconformities

The owner of a use, structure, lot, or site which is rendered nonconforming as a result of the adoption of this Code shall have one (1) year from the effective date of this Code to register such nonconformity. The owner of a use, structure or site which is rendered nonconforming as a result of a city-initiated rezoning project or in newly annexed territory, subsequent to the adoption of this Code is permitted one (1) year after the effective date of the rezoning to register such nonconformity. Provided, however, that after the time periods prescribed above, nonconforming rights may be established only upon submission by the owner of sufficient evidence for the Planning Director to find that the nonconformity existed prior to the date of rezoning and was in legal compliance with all applicable laws.

E. When Registration Not Required

It is not required to register a use, structure, lot or site that is made nonconforming by any governmental action other than annexation or rezoning, including condemnation.

F. Vesting

It is the responsibility of the applicant to inform the Administrator if vesting is claimed in accordance with Chapter 245 of the Texas Local Government Code. The Administrator may attempt to inform the applicant if a situation is able to vest to a previously adopted Unified Development Code. Notwithstanding anything in this Code to the contrary, vesting shall be determined in accordance with Chapter 245 of the Texas Local Government Code and other applicable law.

8.1.14 Termination of Nonconforming Situation

The right to operate or maintain a legal nonconforming situation may be terminated by the Administrator in accordance with the provisions of this Subchapter. The determination by the Administrator may be appealed to the Board of Adjustment in accordance with the provisions of Subchapter 3 of this Code.

Any appeal of the termination by the Board of Adjustment of nonconforming rights under this Subchapter shall be made to a court of competent jurisdiction within 10 days of receipt of written notice of the termination by the Board of Adjustment.

Section 8.2 NONCONFORMING USES

8.2.1 Nonconforming Uses Generally

- A. A nonconforming use is one that is not permitted within the zoning district assigned to the property upon which the use is located.
- B. In addition, a use located in a zoning district in which it could lawfully locate with the approval of a specific use permit but lacking such a permit or a use allowed with land use conditions per Subchapter 4 that does not conform to such conditions shall also be considered nonconforming.
- C. Nonconforming uses lawfully existing and located on the property on the effective date of this Code shall be considered legal nonconforming uses.

8.2.2 Elimination of Nonconforming Use Status

The owner of a nonconforming use may employ the following mechanisms in an attempt to eliminate the nonconformity:

- A. Replace the nonconforming use with a conforming use;
- B. Rezone to a district where the use is permitted by right;
- C. Obtain a specific use permit, provided the use is listed as one that would be allowed in the zoning district with a specific use permit;
- D. Comply with the applicable land use conditions, provided that the primary land use is listed as one that is allowed in the zoning district subject to conditions set forth in Subchapter 4; or
- E. Obtain a special exception from the Board of Adjustment pursuant to Subchapter 3 of this Code, if the special exception is allowed by this Code and would make the use legal nonconforming.

8.2.3 Change of Use

- A. A nonconforming use may be replaced by the same use provided that use has not been abandoned. A change of use occurs when the current use of a site or structure is replaced with a use that is not listed as the same use in the land use tables in Subchapter 4.

- B. The Board of Adjustment may approve the change of a nonconforming use to a new nonconforming use as a special exception pursuant to Subchapter 3 and this section of the Code.
1. In order to approve a special exception under this section, the Board of Adjustment must find that the degree of negative impact of the proposed nonconforming use to the surrounding area is less than the degree of negative impact of the existing nonconforming use. Specifically, the Board of Adjustment must find all of the following:
 - a. The noise that will be generated by the proposed nonconforming use shall be less than the noise generated by the existing nonconforming use.
 - b. If the nonconforming use is in a residential district with the exception of multifamily zoning, the traffic generated by the by the proposed nonconforming use shall be less than the traffic generated by the existing nonconforming use.
 - c. The light pollution generated by the proposed nonconforming use shall be less than or equal to the light pollution generated by the existing nonconforming use.
 - d. The proposed nonconforming use is more compatible with the existing and future use of land in the surrounding area than is the existing nonconforming use.
 2. In order to better assure that the degree of negative impact of the proposed nonconforming use to the surrounding area is less than the degree of negative impact of the existing nonconforming use, the Board of Adjustment may impose the following requirements:
 - a. Set hours and day of operation;
 - b. Limit the square footage occupied;
 - c. Specify minimum/maximum off-street parking required;
 - d. Specify requirements to reduce noise and light pollution; and
 - e. Require nonconforming site design elements to be brought into compliance with this Code.
 3. In granting a special exception under this section, the Board of Adjustment shall issue an order memorializing its finding and requirements. The order shall be non-severable.
- C. In no event may a change of use occur that would allow a use that would increase the degree or intensity of nonconformity or result in the expansion of any existing nonconforming situation or the creation of any new nonconforming situation.

8.2.4 Abandonment of Nonconforming Use

In the event a nonconforming use is determined to be abandoned, the structure or site shall thereafter only be occupied in accordance with the provisions of this Code. See Section 8.1.11 of this Subchapter for the time frame for the determination of abandonment.

8.2.5 Expansion of a Nonconforming Use

- A. A legal nonconforming use shall not be expanded, enlarged, or increased.
- B. A legal nonconforming use shall be considered enlarged, expanded, or increased if there is:
 - 1. An increase the square footage of the building housing the nonconforming use;
 - 2. An expansion of the square footage occupied by a nonconforming use within an existing building;
 - 3. Occupation of a greater portion of the tract on which the use is located;
 - 4. Construction of additional buildings associated with the nonconforming use; or
 - 5. An increase the scope, volume, or intensity of the use in a significant way.

8.2.6 Destruction or Damage of Structure Housing Nonconforming Use

- A. Natural or Accidental Causes
 - 1. Whenever the structure in which a legal nonconforming use is housed, operated, or maintained is damaged or destroyed by natural or accidental causes to the extent of more than fifty percent (50%) of the appraised value of the structure on the date of the damage, the right to operate such nonconforming use shall cease unless a special exception is granted by the Board of Adjustment, pursuant to Subchapter 3 of this Code.
 - 2. In the event that a structure in which a legal nonconforming use is housed, operated, or maintained is partially damaged or destroyed by natural or accidental causes such that the damage does not exceed fifty percent (50%) of the appraised value of the structure on the date of the damage, the nonconforming use shall be allowed to continue and the structure may be repaired or restored upon issuance of a building permit by the Building Official.
 - 3. Permitting for any allowed reconstruction of the structure must thereafter commence within six (6) months of the damaging event and reconstruction shall be completed, as determined by issuance of a certificate of occupancy, within one (1) year of the event. The timeframes herein may be extended for good cause as proven to the Planning Director, provided there is no adverse effect on the community.
 - 4. A structure restored under this section must be restored or reconstructed so as to have no greater gross floor area, building footprint, or height as the damaged or destroyed structure and shall be constructed in accordance with the current architectural standards of the respective zoning for which the use located. The property owner has the burden of proof to establish the dimensions of the structure immediately prior to the damage or destruction.
 - 5. The value of the structure and the percent value lost due to any destruction shall be determined according to the appraised value.
- B. Intentional Destruction

A legal nonconforming use terminates when the structure housing the nonconforming use is destroyed by the intentional act of the owner or his agent.

8.2.7 Nonconforming Wireless Telecommunications Facilities

Additional telecommunications antennae and necessary equipment may be attached to a preexisting nonconforming telecommunications tower provided the addition causes no expansion of the footprint or height of the tower and meets the requirements of Subchapter 4 of this Code.

Section 8.3 NONCONFORMING LOTS

8.3.1 Nonconforming Lots Generally

A nonconforming lot is a lot of record that does not meet the minimum area or dimensional requirements of the zoning district in which the lot is located. Those nonconforming lots lawfully existing on the effective date or applicability of this Code or subsequent amendments thereto shall be considered legal nonconforming lots.

8.3.2 Use of a Legal Nonconforming Lot

A legal nonconforming lot may continue to exist indefinitely and may be developed and used as if it were a conforming lot, provided the proposed use is permitted and all development standards of the applicable zoning district of this Code are met. This provision does not preclude a landowner from seeking a variance or other exception from zoning requirements under other sections of this Code.

8.3.3 Elimination of Nonconforming Lot Status

The owner of a nonconforming lot may employ the following mechanisms in an attempt to eliminate the nonconformity.

- A. Combine the lot with an adjacent property to conform to current standards;
- B. Apply for a subdivision waiver, pursuant to Subchapter 15 of this Code, to allow the lot as is; or
- C. Rezone to a district where the lot would conform.

8.3.4 No New Division

No new division of any legal nonconforming lot or parcel shall be made that (1) increases the level of existing nonconformity; (2) leaves any lot, parcel, or remnant with width or area below the requirements stated in this Code; or (3) creates any new nonconforming situation.

8.3.5 Illegal Nonconforming Lot

It is a violation of this Subchapter to create or subdivide a nonconforming lot.

Section 8.4 NONCONFORMING STRUCTURES

8.4.1 Nonconforming Structures Generally

A nonconforming structure is one that does not meet the setbacks, height limitations, material requirements, or architectural articulation as required by this Code. Those nonconforming structures lawfully constructed and existing on the effective date of this Code shall be considered legal nonconforming structures. For the purposes of this section, the term structure means anything constructed or erected on the ground or which is attached to something located on the ground, except signs, and includes buildings, telecommunications towers, utility improvements and sheds. These provisions shall be applicable to all structures regardless of whether they are deemed principal or accessory. Nonconforming signs are governed pursuant to Chapter 154 of the Code of Ordinances.

8.4.2 Elimination of Nonconforming Structure Status

The owner of a nonconforming structure may employ the following mechanisms in an attempt to eliminate the nonconformity.

- A. Modify the structure to conform to current standards;
- B. Apply for a variance pursuant to Subchapter 3 of this Code to allow the structure to remain as built; or
- C. Rezone to a district where the structure would conform.

8.4.3 Repair and Maintenance

A legally nonconforming structure shall be maintained in accordance with the applicable codes in effect when the building was constructed or as deemed necessary by the Building Official for the general safety and welfare of the occupant and the public. The repairs required by the Building Official shall not be construed as to allow an addition to or expansion of a nonconforming structure. Except as otherwise expressly provided for in this Subchapter, no repair or maintenance may result in the expansion of any existing nonconformity or the creation of any new nonconformity.

8.4.4 Unsafe Situations

- A. Nothing in this Subchapter shall be construed to prohibit the strengthening or repair of any part of any nonconforming structure declared unsafe by the Building Official, unless such repairs exceed fifty percent (50%) of the value of the structure. In such case the right to operate, occupy or maintain such structure may be terminated by action of the Board of Adjustment and such structure shall be demolished. The value of the structure and the percent value lost due to any destruction shall be determined by the most recent appraisal value.

- B. Nothing in this Subchapter shall be construed to permit the continued use of a building or structure found to be in violation of building, basic life safety, or health codes of the City. The right to continue any nonconformity shall be subject to all applicable housing, building, health, and other life safety codes.

8.4.5 Abandonment of a Nonconforming Structure

In the event a nonconforming structure is determined to be abandoned, the structure shall be modified to conform to all applicable requirements of this Code. However, a variance may be granted by the Board of Adjustment pursuant to Subchapter 3 of this Code, or an architectural waiver granted by the Administrator if it is determined that conformance with all requirements of this Code will cause the expansion or creation of another nonconformity, or where it is determined that all provisions of this Code cannot be reasonably met. Refer to Section 8.1.11 of this Subchapter for the time frame for the determination of abandonment.

8.4.6 Interior Alterations to a Legal Nonconforming Structure

Interior remodeling of a legally nonconforming structure is allowed and will not result in loss of legal nonconforming status regardless of the cost or extent of the interior remodel, as long as no exterior remodeling is involved. If exterior alteration in conjunction with interior remodeling is involved, loss of legal nonconforming status will be determined pursuant to the provisions set forth in this Subchapter related to such alteration.

8.4.7 Movement of a Nonconforming Structure

A nonconforming building or structure must not be moved in whole or in part to any other location on the lot, or on any other lot, unless every portion of such building or structure is made to conform to all the regulations of the district, except as authorized by a variance or architectural waiver pursuant to Subchapter 3 of this Code.

8.4.8 Expansion of a Nonconforming Structure

- A. A legal nonconforming structure may be expanded or enlarged up to fifty percent (50%) of its size, provided the use is permitted by right within the respective district, the expansion is in accordance with the architectural and building height requirements, and there are no further encroachments into the required building setbacks established in Subchapter 4. If the expansion is equal to or less than two hundred (200) square feet, the Planning Director may allow for a deviation in architectural building materials in order to maintain architectural consistency.
- B. A legal nonconforming structure may be expanded or enlarged in excess of fifty percent (50%) of its size provided that all provisions of this Code shall be applicable to the existing structure or structures as well as any new construction on the lot or parcel. For the existing structure, where it is determined that all provisions of this Code cannot be reasonably met or conformance with all requirements of this Code will cause the expansion or creation of another nonconformity, the applicant may request approval of a variance by the Board of Adjustment pursuant to Subchapter

3 of this Code. Any expansion or enlargement under this section is subject to applicable setback requirements in place at the time of the expansion or enlargement, regardless of encroachment of the existing legal nonconforming structure into the applicable setback area.

- C. For purposes of determining the expansion or enlargement of a nonconforming structure, the square footage of all previous expansions under this section shall be cumulative and the square footage of the original structure shall be the original size for purposes of the calculation.
- D. All expansion or enlargement of structures under this section shall be in compliance with all applicable regulations of the zoning district in which such structure is located. In no event may the expansion or enlargement result in the increase of any existing nonconformity or the creation of any new nonconformity.

8.4.9 Destruction or Damage of a Nonconforming Structure

A. Natural or Accidental Causes

1. A legal nonconforming structure, which is damaged or destroyed by natural or accidental causes, may only be reconstructed as it was before such happening within the timelines herein.
2. Permitting for reconstruction of such structure must thereafter commence within six (6) months of the damaging event and reconstruction shall be completed, as determined by issuance of a certificate of occupancy within one (1) year of the damaging event. The timeframes herein may be extended for good cause as proven to the Planning Director, provided there is no adverse effect on the community.
3. A structure restored under this section must be restored or reconstructed so as to have no greater gross floor area, building footprint, or height as the damaged or destroyed structure.

B. Intentional Destruction

A nonconforming structure which is damaged or destroyed by the intentional act of the owner or his agent may not be restored or reconstructed as it was before such happening.

Section 8.5 NONCONFORMING SITES

8.5.1 Nonconforming Sites Generally

A nonconforming site is one where one or more existing site improvements, including but not limited to parking areas, sidewalks and landscaping, do not conform to one or more of the regulations of this Code applicable to the property. Those nonconforming sites lawfully existing on the effective date of this Code shall be considered legal nonconforming sites.

8.5.2 Elimination of Nonconforming Site Status

The owner of a nonconforming site may employ the following mechanisms in an attempt to eliminate the nonconformity.

- A. Modify the site to conform to current standards;
- B. Apply for a variance pursuant to Subchapter 3 of this Code to allow the site to remain as built;
- C. Apply for an administrative waiver, where applicable; or
- D. Rezone to a district where the site would conform.

8.5.3 Repair and Maintenance

A legally nonconforming site shall be maintained in accordance with the Code in effect when the site was constructed or as deemed necessary by the Planning Director for the general safety and welfare of the occupant and the public. Any repairs or maintenance required by the Planning Director shall not be construed as to allow an addition to or expansion of a nonconforming site. Except as otherwise provided for in this Subchapter; no repair or maintenance may result in the expansion of any existing nonconformity or the creation of any new nonconformity. Maintenance of a site includes maintenance of landscaping, pavement, lighting, and detention ponds.

8.5.4 Continuation of a Legal Nonconforming Site

A change in the tenant of a legal nonconforming site may cause the site to lose its legal nonconforming status based on the following provisions. For the continuation of the existing legal nonconforming site, where it is determined that all provisions of this Code cannot be reasonably met or conformance with all requirements of this Code will cause the expansion or creation of another nonconformity, the applicant may request an administrative waiver from the Planning Director. The applicant may appeal the Planning Director's determination by requesting a variance from the Board of Adjustment or administrative waiver pursuant to Subchapter 3 of this Code, where applicable.

- A. Tenant with Same Use
A change in tenant of a legal nonconforming site to a tenant with the same use, as listed in the land use tables in Subchapter 4, is permitted without any required changes to the nonconforming site; provided the restrictions below are met.
 - 1. The use shall not increase the amount of impervious cover, the amount of outside storage, or the amount of space for outdoor business operations previously existing.
 - 2. The average daily vehicle trips generated by the new use shall be less than or equal to the previous use.
 - 3. The use shall not produce more noise, vibration, dust, odor, fumes, glare, or smoke than the previous use.
 - 4. The site shall be maintained and in conformance with any site plan or regulations in effect when the site was established or last improved. This includes the replacement of any dead plants or trees, the re-striping of parking spaces, and the repaving of deteriorated pavement.

5. The use shall meet all limitations or requirements of Chapter 4 for such use without alteration to the site.

B. Tenant with Similar or Less Intense Use

A change in tenant of a legal nonconforming site to a tenant with a similar or less intense use as the previous tenant may be allowed without any required changes to a nonconforming site; provided the restrictions below are met.

1. The new use shall have a parking requirement less than or equal to the previous use.
2. The new use shall not increase the amount of impervious cover, the amount of outside storage, or the amount of space for outdoor business operations previously existing.
3. The average daily vehicle trips generated by the new use shall be less than or equal to the previous use.
4. The new use shall not produce more noise, vibration, dust, odor, fumes, glare, or smoke than the previous use.
5. The site shall be maintained and in conformance with any site plan or regulations in effect when the site was established or last improved. This includes, but is not limited to, the replacement of any dead plants or trees, the re-striping of parking spaces, and the repaving of deteriorated pavement.
6. The new use shall meet all limitations or requirements of Chapter 4 for such use without alteration to the site.

C. Tenant with More Intense Use

Any change in tenant that does not meet the provisions of the preceding categories shall be determined to be a change in use. A change in tenant of a legal nonconforming site to a tenant with a different use as the previous tenant shall be governed under the provisions of Section 8.5.5 Abandonment of a Nonconforming Site in terms of the required site improvements prior to a certificate of occupancy.

8.5.5 Abandonment of a Nonconforming Site

In the event a nonconforming site is determined to be abandoned, the site shall be altered to conform to all applicable requirements of this Code, as outlined below, upon re-occupancy. However, a variance may be granted by the Board of Adjustment, pursuant to Subchapter 3 of this Code, if it is determined that conformance with all requirements of this Code will cause the expansion or creation of another nonconformity or where it is determined that all provisions of this Code cannot be reasonably met. Refer to Section 8.1.11 of this Chapter for the time frame for the determination of abandonment.

A. Parking and Parking Lot Design

An abandoned site shall be altered to provide parking numbers and parking lot design in conformance with the following.

1. All required parking spaces for the subject use must be provided. Construction of additional required parking spaces shall be in conformance with Subchapter 10 of this Code. If the additional spaces required cannot be met on site, the

applicant may request the requirement be met off-site pursuant to Subchapter 10 of this Code.

2. All deteriorated pavement, as determined by the City Engineer, must be repaved in accordance with this Code and the Engineering Design Manual, as applicable.
3. All existing parking spaces and maneuvering areas shall be re-striped to be in conformance with the dimensional requirements of Subchapter 10 of this Code.
4. Those nonconforming parking spaces that have direct access to public right-of-way shall be removed and those spaces replaced elsewhere on the site if those spaces are necessary to meet the minimum parking requirements. This provision does not apply to any on-street parking spaces otherwise approved by the City Engineer.

B. Driveways

An abandoned site containing driveways not conforming to the number, spacing, or width requirements of this Code shall be altered to be in conformance with such. Nothing herein shall be construed as to require the removal of all driveway access to a property.

C. Landscaping

An abandoned site shall be altered to conform to all applicable streetscape yard landscaping, bufferyards, and screening requirements of Subchapter 11 of this Code. Any area on site that is available for landscaping shall be so utilized to meet these requirements. When the City grants permission, the owner or operator of the site may also use areas within the public right-of-way to satisfy landscape planting requirements provided that such landscaping does not conflict with existing or proposed utilities. Where landscaping in accordance with the provisions of Subchapter 11 of this Code cannot be reasonably met, the applicant may request the Planning Director consider an alternative plan that meets the intent of the requirements.

D. Land Use Conditions of Subchapter 4

The abandoned site shall be altered to conform to all applicable land use conditions established in Subchapter 4 of this Code for the new use.

E. Sidewalks

An abandoned site that does not have sidewalks in conformance with Subchapter 10 of this Code shall be altered to include such.

F. Incidental Site Features

All incidental nonconforming site features including fences, dumpster enclosures, and exterior lighting must be altered to conform to the provisions of this Code.

8.5.6 Process for Review of Required Improvements

Site improvements that are required to meet the provisions of this Code shall be reviewed pursuant to the site development process detailed in Subchapter 3 of this Code.

8.5.7 Expansion of a Nonconforming Site

- A. Providing that all new site improvements are constructed and installed in accordance with the provisions of this Code, a legal nonconforming site may only be expanded or enlarged upon approval of a waiver by the Administrator pursuant to Subchapter 3 of this Code, unless the expansion or enlargement is required by City ordinance, State law, or federal law.
- B. For the expansion or enlargement of the existing legal nonconforming site, where it is determined that all provisions of this Code cannot be reasonably met or conformance with all requirements of this Code will cause the expansion or creation of another nonconformity, the applicant may request approval of a waiver by the Administrator, pursuant to Subchapter 3 of this Code.
- C. A legal nonconforming site shall be considered enlarged or expanded by the following:
 - 1. Occupying a greater portion of the tract;
 - 2. Construction of additional buildings; or
 - 3. Construction of any additional improvements on a portion of the tract that was not previously developed.
- D. For purposes of determining the expansion or enlargement of a nonconforming site, the square footage of all previous expansions under this section shall be cumulative and the square footage of the original site shall be the initial size for purposes of the calculation.
- E. Expansion of a nonconforming site in this Subchapter does not include the expansion of an abandoned site.

All expansion or enlargement of sites under this section must be in compliance with all applicable regulations of this Code. In no event may the expansion or enlargement result in the increase of any existing nonconformity or the creation of any new nonconformity.

8.6 Residential Exemption from Non-Conforming Uses and Sites

Any residential dwelling or dwelling unit which meets the conditions for nonconforming status as set forth in subsection 8.1 of this Subchapter shall be exempt from any and all of the restrictions, limitations and conditions contained in Subsection 8.2, 8.3, 8.4 and 8.5 of this Subchapter concerning nonconforming uses and/or nonconforming buildings.