

## ARTICLE 11. NONCONFORMITIES

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### **11.1. PURPOSE AND GENERAL PROVISIONS**

#### **11.1.1. PURPOSE**

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

#### **11.1.2. GENERAL POLICY**

While nonconformities may continue, the provisions of this article are designed to curtail substantial investment in nonconformities to bring about their eventual improvement or elimination in order to preserve the integrity of this Code and the character of the City. Any nonconforming use, structure, lot, or site condition that becomes nonconforming as a result of any subsequent rezoning or amendment to this text of this Code, 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.

#### **11.1.3. CONTINUATION PERMITTED**

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

#### **11.1.4. 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.

#### **11.1.5. 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 Code. Structures may be structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

#### **11.1.6. TENANCY AND OWNERSHIP**

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

#### **11.1.7. 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<sup>1</sup>. Where a variance or modification has been granted for a development standard that does not otherwise

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<sup>1</sup> Language may be needed to address standards changed an alternative equivalent compliance plan approved by the Zoning Administrator, or modifications made by City Council as part of an SUP or PD.

conform to the requirements of this Code, that development standard shall be deemed conforming.

#### **11.1.8. ENFORCEMENT OF REQUIREMENTS**

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

#### **11.1.9. NONCONFORMITY DUE TO CITY ACTION**

A use, lot, or structure conforming to City ordinance shall not be considered nonconforming in the event the City 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's eminent domain power. Any status claimed under this subsection must be the result of City action only and not otherwise result in a situation that jeopardizes the public health, safety, or welfare. Further, the City's action must make it impossible or highly impracticable for the structure to be brought into conformity with this Code. 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 action, only with regard to the following requirements:

- A. the amount of square footage removed from the structure's minimum required lot area by the City action;
- B. the number of linear feet removed from the structure's minimum required lot depth or width by the City's action;
- C. the number of linear feet removed from the structure's minimum required front setback, side setback, or rear setback by the City's action;
- D. the number of then existing properly marked parking spaces removed from the structure's minimum required off-street parking by the City's action;
- E. the increased percentage of lot coverage directly attributable to the City's action; and,
- F. the landscaping requirement.

### **11.2. NONCONFORMING USES**

#### **11.2.1. GENERAL**

Any use of land that was legally in existence and nonconforming on the effective date of this Code and has been in regular and continuous use, but which does not conform to the use regulations prescribed by this Code, shall be deemed a nonconforming use.

#### **11.2.2. REGISTRATION OF NONCONFORMING USES<sup>2</sup>**

The operator, owner, or occupant of any nonconforming uses of land or buildings shall, within 12 months after the date on which the same became nonconforming, register such nonconforming use by obtaining a certificate of occupancy from the Building Official. The

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<sup>2</sup> This procedure is specified in the current zoning ordinance, though I'm unsure how often it is used. The text has been altered slightly from its current form. An alternative process could be implemented to require registration with the Building Official or Zoning Administrator. San Antonio uses a 'certificate of nonconforming use' instead of a certificate of occupancy.

certificate of occupancy (nonconforming) shall be considered as evidence of the legal existence of a nonconforming use, as contrasted to an illegal use or violation of this Code. The Building Official shall maintain a register of all certificates of occupancy issued for nonconforming uses.

**11.2.3. CHANGE OF USE**

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

**11.2.4. 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.

**11.2.5. LOSS OF LEGAL NONCONFORMITY STATUS**

**A. Abandonment**

If a nonconforming use is discontinued or ceases for any reason for a period of more than 180 calendar days, the use shall be considered abandoned. 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<sup>3</sup>.

**B. Damage or Destruction<sup>4</sup>**

- 1. 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. This shall not be applicable to "auto service center", "car wash", and "motor vehicle sales, used" in the GC district.
- 2. 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.

<sup>3</sup> This second paragraph is optional. It is intended to allow for a nonconforming use to be re-established before the 180 days expire. While this could be done today through an interpretation of the code, this would make the policy clear.

**C. Action by the Zoning Board of Adjustment**

The right to maintain or operate a nonconforming use may be terminated by the Zoning Board of Adjustment in accordance with the provisions of this Code.

**11.3. NONCONFORMING LOTS****11.3.1. 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 established in this Code for the zoning district in which it is located, except as otherwise provided for in this section.

**11.3.2. 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:

1. The lot is at least 50 feet in width and 5,000 square feet in area<sup>5</sup>; or
2. 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 Code are exempt from the requirements of this section if the following findings can be made:

1. 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; and
2. If the proposed alteration or addition is located on the side of the existing dwelling, there is a minimum distance of 10 feet between the side of the existing structure and the nearest dwelling on the adjoining property.

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.

**11.3.3. 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 of this Code for the district in which they are located. Any construction, replacement, or enlargement of a

<sup>5</sup> The lot width and area noted are equivalent to the RS-5 zoning district proposed in the code. These are the narrowest and smallest lot size allowed for single family development under the new code.

dwelling or building shall require a combination or replatting of all necessary lots in order to achieve compliance with the provisions of this Code.

## **11.4. NONCONFORMING STRUCTURES**

### **11.4.1. GENERAL**

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

### **11.4.2. CONTINUATION OF USE**

Except where prohibited by this article, a nonconforming structure may be used for any use allowed in the underlying zoning district, including a legal nonconforming use.

### **11.4.3. 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. For the purposes of this subsection, "maintenance and minor repair" means:

- A.** 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;
- B.** Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and
- C.** Repairs that are required to remedy unsafe conditions that cause a threat to public safety.

### **11.4.4. ENLARGEMENT AND EXPANSION**

A nonconforming structure in which only permitted uses are operated may be enlarged or expanded if the enlargement or expansion can be made in compliance with all of the provisions of this Code established for structures in the district in which the nonconforming structure is located. Such enlargement or expansion shall also be subject to all other applicable City ordinances.

### **11.4.5. LOSS OF NONCONFORMING STATUS; DAMAGE OR DESTRUCTION**

#### **A. Continuation of Nonconforming Structure**

The use of a nonconforming structure may be continued subsequent to the effective date of this Code, provided that such continuance is in accordance with the provisions of this article and all other applicable codes of the City necessary to ensure adequate protection and safety of adjacent property and the users and occupants of such nonconforming structure. However, the right to continue a nonconforming structure shall cease and such use contained therein shall conform to the provisions of this Code under any of the following circumstances:

- 1.** If a nonconforming structure is destroyed by any means to the extent of more than 50 percent of its fair market value, it may not be re-established

except in compliance with all regulations applicable to the zoning district in which it is located. This provision shall not apply to single-family dwelling units in residential zoning districts, which may be reconstructed with substantially the same floor area, provided there is no increase in any other nonconformity.

2. If the nonconforming structure is partially destroyed, where the damage does not exceed 50 percent of its fair market value, the nonconforming structure may be rebuilt but not enlarged upon approval of a building permit.

**B. Action by the Zoning Board of Adjustment**

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

**11.5. AMORTIZATION OF NONCONFORMING USES OR STRUCTURES**

**11.5.1. INITIATION OF PROCEEDINGS**

The Zoning Administrator, the Zoning Board of Adjustment, or the City Council may request the Zoning Board of Adjustment initiate proceedings to amortize a nonconforming land use or structure. All actions to amortize a nonconforming use of land or structure 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.

**11.5.2. CONSIDERATION BY ZONING BOARD OF ADJUSTMENT**

- A. 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 and the necessity for all property to conform to the regulations of this Code.
- B. **Criteria For Determining Amortization Period.**  
Before the Zoning Board of Adjustment may determine an amortization period, it must consider the following factors:
  1. The owner's capital investment in the structures on the property at the time the use became nonconforming.
  2. The amount of the investment realized to date and the amount remaining, if any, to be recovered during the amortization period.
  3. The life expectancy of the investment.
- C. If the Board of Adjustment establishes a termination date for a nonconforming use, the use must cease operations on that date and the owner may not operate it after that date unless it becomes a conforming use.

**11.6. ILLEGAL USES**

**11.6.1. IMMEDIATE TERMINATION OF ILLEGAL USES<sup>6</sup>**

- A.** 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:
- 1.** Constructing, maintaining, or operating a use conducted in, or associated with, a building or structure erected without a permit from the City;
  - 2.** Operating a use or occupying a building or structure without a valid Certificate of Occupancy from the City;
  - 3.** Operating a use in violation of a valid Certificate of Occupancy;
  - 4.** Unlawful expansion of a nonconforming use or nonconforming structure;
  - 5.** Unlawful outside display or storage in required parking spaces;
  - 6.** Violation of any provision of a federal or state statute with respect to a nonconforming use;
  - 7.** Violation of any provision of an ordinance of the City with respect to a nonconforming use.<sup>7</sup>
- B.** 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.
- C.** For purposes of this subsection, the term "violation" shall mean a final finding by a court of record that an ordinance has been violated.

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<sup>6</sup> New section.

<sup>7</sup> Alternatively, specific chapters in the Code could be referenced since many of the chapters do not deal with land use issues. The current zoning ordinance makes a general reference such as this.