

**Sec. 146-40. Nonconforming uses and nonconforming structures.**

(a) *Purpose.* This section is intended to establish regulations for the allowance and alteration of uses, lots, and/or structures which do not conform to currently applicable regulations, but which have been in continuous use and were in conformance with the regulations in place at the time of their inception and have been rendered nonconforming due to a change in the applicable regulations.

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(b) *Nonconforming status.* A nonconforming status shall exist under the following provisions of this chapter:

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(1) When a use, lot, or structure, which does not conform to the current regulations of this chapter, was in existence and lawfully operating prior to April 29, 1968, and has been operating since without discontinuance.

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~~(1)(2)~~ When a use, lot, or structure which does not conform to the regulations prescribed in the district in which such use or structure is located was in existence and lawfully operating prior to April 29, 1968, and has been operating since without discontinuance. does not conform to the current regulations of this chapter, but was legally established at a prior date when the use, lot, or structure was in conformance with applicable regulations and such use, lot, or structure has been in continuous use or operation since its establishment.

~~(2)~~ When, on the effective date of the ordinance from which this chapter is derived, the use or structure was in existence and lawfully constructed, located and operating in accordance with the prior zoning ordinance or which was a nonconforming use thereunder, and which use or structure does not now conform to the regulations herein prescribed for the district in which such use or structure is located.

(3) When a use, lot, or structure, which does not conform to the current regulations prescribed in the district in which such use or structure is located of this chapter, was in existence at the time of annexation to the city, and has since been operating since without discontinuance in regular and continuous use.

~~(4)~~ Single family or two-family dwellings constructed prior to the effective date of the ordinance from which this chapter is derived which do not provide off-street parking as required in section 146-130 shall be considered conforming in regard to parking.

~~(5) Existing residences located in the "MP", "O", "ML", "MH", "AP" and "GC" districts may be improved, maintained, or rebuilt as conforming structures.~~

~~(c) Burden to establish legal nonconformity of demonstration. The burden of demonstrating that any use, lot, or structure is a legal nonconformity as defined by this section shall belong to the owner(s)<sup>1</sup> or the proponent of such purported nonconformity.~~

~~(d) Continuation for definite periods of time Continuing lawful use of property and structures. Any nonconforming use, lot, of land or structures may be continued for definite periods of time as indicated herein-below subject to the board of adjustment's power of amortization; subject to such regulations as the board of adjustment may require for immediate preservation of the adjoining property, prior to the ultimate removal of the nonconforming use.~~

(1) Uses.

~~i. Nonconforming uses may continue to operate indefinitely unless the use ceases to operate for a period longer than six (6) months. If a nonconforming use ceases to operate for a period longer than six (6) months, the nonconforming use shall be deemed permanently abandoned. The nonconforming use shall not thereafter be renewed or instituted on that property or another property in any district which does not permit the abandoned use, unless otherwise approved by the Board of Adjustment. For the purposes of this paragraph, the phrase "ceases to operate" shall mean to intentionally terminate operations of the nonconforming use. Any nonconforming use that does not involve a permanent type of structure and which is moved from the property shall be deemed permanently abandoned.~~

~~ii. A nonconforming use may not be replaced by or changed to another nonconforming use.~~

~~iii. The Board of Adjustment shall have the authority to reinstate the nonconforming status of a use if the Board finds there was clear intent not to abandon the use even though the use was discontinued for more than six (6) months. The failure of the owner and/or operator to remove on-premise signs related to the nonconforming use shall not be sufficient, as the sole evidence presented by the applicant, to establish a clear intent not to abandon the use.~~

(2) Structures.

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~~i. Nonconforming structures may be occupied by conforming uses and may be repaired and maintained to preserve or extend their usability.~~

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~~ii. Structures conforming to all currently applicable regulations may be constructed on nonconforming lots provided that all setbacks and yard areas are observed.~~

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~~iii. Nonconforming structures may be relocated within the same lot so long as no existing nonconformity is exacerbated.~~

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~~(3) Lots.~~

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~~i. Any nonconforming lot may be replatted so long as the existing nonconformities of the lot are not exacerbated by the replat and the size of the nonconforming lot is not reduced.~~

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~~ii. Lots containing nonconforming structures may be replatted so long as the nonconformities of the structure are not exacerbated by the replat and the size of the nonconforming lot is not reduced.~~

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~~(b) Classification requirement for change of occupancy.~~

~~(1) The chief building official may not grant a change of occupancy from one nonconforming use to another unless the use is within the same, or higher or more restrictive classification as the original nonconforming use.~~

~~(2) In the event a nonconforming use of a building may be changed to another nonconforming use of more restricted classification, it shall not later be changed to a less restrictive classification of use and the prior less restrictive classification shall be considered to have been abandoned.~~

~~(e) Expansion beyond original lot of nonconforming uses or structures. A nonconforming use or structure shall not be expanded or increased, except as follows:~~

~~No nonconforming use may be expanded or increased beyond the lot or tract upon which such nonconforming use is located as of the effective date of the ordinance from which this chapter is derived, except to provide off-street parking or off-street loading space upon approval of the board of adjustment.~~

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~~(1) A nonconforming use located within a building may be expanded throughout the existing building, provided:~~

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i. No alterations to the building are required by ordinance to accommodate the expansion of the nonconforming use; and

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ii. The number of dwelling units in a building is not increased.

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(2) The minimum single family residential lot width, depth, and/or area for the various zoning districts shall be in accordance with their respective district's standards, except that a lot having less width, depth, and/or area than herein required, which lot was a lot of record prior to the adoption of the chapter, may be used for a single family residential use.

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(e)(f) Destruction of structure by fire, the elements, or other cause. If a nonconforming structure is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this chapter. A restoration or reconstruction in violation of this subsection immediately terminates the right to occupy the nonconforming structure except as specifically provided otherwise herein-below.

(1) Partial Destruction:

(1)i. In the case of partial destruction of a nonconforming structure not exceeding 50 percent of its reasonable total appraised value as determined by the Collin Central Appraisal District, reconstruction will be permitted but the size or function of the nonconforming structure shall not be expanded beyond the lot on which it is located to restore the nonconforming structure to its previously existing condition.-

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(2) The chief building official shall determine the reasonable value of the structure and the percentage of destruction to the structure. Should the property owner not agree with the determination of the chief building official, the property owner may appeal the determination of the chief building official to the board of adjustment, in accordance with this chapter.

(3)ii. The nonconforming structure may only be restored or reconstructed so as to have the same, but not greater, height, shape, and floor area, and appearance that it had immediately prior to the damage or destruction. The chief building official shall estimate the height, shape and, floor area, and appearance of the structure immediately prior to the damage or destruction, and shall consult with the property owner, if necessary, to make a determination. Should the property owner not agree with the

determination of the ~~chief-Chief building-Building official~~Official, the property owner may appeal the determination of the ~~chief-Chief building-Building official-Official~~ to the ~~board-Board of adjustment~~Adjustment, in accordance with this chapter.

~~(4) A restoration or reconstruction in violation of this subsection immediately terminates the right to occupy the nonconforming structure.~~

(2) Total Destruction:

i. If a nonconforming structure is totally destroyed by fire, the elements, or other cause, it may not be rebuilt unless it adheres to all applicable regulations. Total destruction for the purposes of this section shall mean destruction of 50 percent or more of the structure's total appraised value as determined by the Collin Central Appraisal District.

(3) Multi-Family Residential Destruction. In the case of the destruction of a multi-family residential structure or development that is nonconforming due to the adoption of Ordinance 2010-05-011 (adopted on May, 17, 2010), the following shall apply:

i. The non-conforming structure(s) may be restored or reconstructed so as to have the same, but not greater, height, shape, floor area, and appearance that it had immediately prior to the damage or destruction if the damage to the structure(s) represents less than 50 percent of its appraised value, as determined by the Collin Central Appraisal District.

ii. The non-conforming structure(s) may be restored or reconstructed so as to have the same, but not greater, height, shape, floor area, and appearance that it had immediately prior to the damage or destruction if the damage to the structure(s) equals or exceeds 50 percent of its appraised value, as determined by the Collin Central Appraisal District, but the damage to the structure(s) represents less than 50 percent of the appraised value of the overall development, as determined by the Collin Central Appraisal District.

iii. The non-conforming structure(s) must be rebuilt to all currently applicable regulations if the damage to the structure(s) equals or exceeds 50 percent of its appraised value, as determined by the Collin Central Appraisal District, and the damage to the structure(s) equals or exceeds 50 percent of the appraised value of the overall development, as determined by the Collin Central Appraisal District.

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iv. The Chief Building Official shall estimate the height, shape, floor area, and appearance of the structure immediately prior to the damage or destruction, and shall consult with the property owner, if necessary, to make a determination. Should the property owner not agree with the determination of the Chief Building Official, the property owner may appeal the determination of the Chief Building Official to the Board of Adjustment, in accordance with this chapter.

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~~(g) Abandonment; discontinuance. Whenever a nonconforming use or nonconforming structure is abandoned, all nonconforming rights shall cease and the use of the premises shall be in conformance to this chapter. Abandonment shall involve the intent of the user or owner to discontinue a nonconforming operation and the actual act of discontinuance. Any nonconforming use which is discontinued for or which nonconforming structure remains vacant for a period of six months shall be considered to have been abandoned.~~

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(g) *Completion of structures.* Nothing contained herein shall require any change in the plans, construction, or designated use of a structure for which a building permit has been issued or a site plan approved prior to the effective date of this section, nor shall any structure for which a substantially complete application for a building permit was accepted by the Chief Building Official on or before the effective date of this section, provided that the building permit shall comply with all applicable regulations on the date that the application was filed and the building permit is issued within 30 days of the effective date of these regulations.

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