

ORDINANCE NO. 2019-05-XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MCKINNEY, TEXAS, AMENDING SECTION 146-40 (NONCONFORMING
USES AND NONCONFORMING STRUCTURES) OF THE ZONING
REGULATIONS; ESTABLISHING PRESUMPTIONS; PROVIDING FOR
THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE;
REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A
SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE
DATE HEREOF**

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council and the Planning and Zoning Commission have recognized that certain provisions of the Code of Ordinances should be reviewed and updated; and

WHEREAS, amendments to these provisions have been proposed and the City Council and the Planning and Zoning Commission of the City of McKinney are of the opinion that these chapters should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
MCKINNEY, TEXAS, THAT:**

Section 1. That the Code of Ordinances, City of McKinney, Texas, Section 146-40 of the Zoning Ordinance, is hereby amended and shall read as follows:

“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.

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

(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.

(2) When a use, lot, or structure 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.

(3) When a use, lot, or structure, which does not conform to the current regulations of this chapter, was legally established prior to and in existence at the time of annexation to the city, and has been operating since without discontinuance.

(c) *Burden to establish legal nonconformity.* 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) or the proponent of such purported nonconformity.

(d) *Continuing lawful use of property and structures.* Any nonconforming use, lot, or structure may be continued for definite periods of time as indicated herein-below subject to the board of adjustment's power of amortization:

(1) *Uses.*

a. Nonconforming uses may continue to operate indefinitely unless the use ceases to operate for a period longer than 12 months. If a nonconforming

use ceases to operate for a period longer than 12 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.

- b. A nonconforming use may not be replaced by or changed to another nonconforming use.
- c. 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 12 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 or an exigent circumstance not to abandon the use.

(2) *Structures.*

- a. Nonconforming structures may be occupied by conforming uses and may be repaired and maintained to preserve or extend their usability.
- b. Structures conforming to all currently applicable regulations may be constructed on nonconforming lots provided that all setbacks and yard areas are observed.
- c. Nonconforming structures may be relocated within the same lot so long as no existing nonconformity is exacerbated.

(3) *Lots.*

- a. 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.
- b. 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.

(4) *Certain Uses and Lots in Nonresidential Zoning Districts Existing on May 7, 2019.*

- a. Subsection (d)(4) shall apply only to certain uses and lots in existence on May 7, 2019.
- b. Single-family or two-family residential uses located in nonresidential districts may be improved, maintained, or rebuilt.
- c. Single-family or two-family dwellings may be constructed on any vacant lot(s) located within a residential subdivision for which such vacant lot was originally-platted solely for single-family or two-family dwellings.
- d. Any limitation on the construction or reconstruction of a single-family or two-family residential use pursuant to subsection (f) of this Section 146-40 shall not apply to single-family or two-family residential uses which meet the criteria in subsections (d)(4)(a) – (d)(4)(c) above.

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

- (1) A nonconforming use located within a building may be expanded throughout the existing building, provided:
 - a. No alterations to the building are required by ordinance to accommodate the expansion of the nonconforming use; and

- b. The number of dwelling units in a building is not increased.
- (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, and which lot was a lot of record prior to the adoption of the chapter, may be used for a single family residential use.
- (3) In the MTC - McKinney Town Center zoning district, a nonconforming structure may be altered or enlarged, provided that such alteration or enlargement shall neither create any new nonconformity nor shall increase the degree of the existing nonconformity of all or any part of such structure. An alteration for a non-air-conditioned space (e.g. patio, porch, roof terrace, balcony, arcade) shall be allowed under any circumstance."

(f) *Destruction of structure by fire, the elements, or other cause.* Subject to the provisions of subsection (d)(4) above, 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.*
 - a. In the case of partial destruction of a nonconforming structure not exceeding 50 percent of its total appraised value as determined by the Collin Central Appraisal District, reconstruction will be permitted to restore the nonconforming structure to its previously existing condition.
 - b. The nonconforming structure may only 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. 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.
- (2) *Total destruction.*
 - a. 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:
 - a. 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.
 - b. 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.
 - c. 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.

- d. 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.
- (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.

Section 2. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. That this Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 4. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 7th DAY OF MAY, 2019.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
MELISSA LEE
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney