

Subchapter 1: General Standards

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1.3.6 Transfer of Ownership

Permits, licenses, or approvals authorizing a particular use of land or structure shall transfer with the ownership of the land or structure so long as the land or structures, or any portion of the land or structures, continue to be used for the purpose and in the manner authorized by a permit, license, or approval. No person, including a successor or assignee of the person who obtained the permit or approval, may use the land or structure except in accordance with all the terms, conditions, and requirements of the permit or approval.

1.3.7 Emergency Powers

The Mayor may authorize any deviation from this DDC during a local state of disaster as prescribed in Chapter 418 of the Tex. Gov't. Code.

1.4 Severability

In the event one or more of the provisions of this DDC shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of the City Council that such illegality or invalidity shall not affect any other provision in this DDC, but this DDC shall be construed and enforced as if such illegal or invalid provision had not been contained.

1.5 Nonconformities

1.5.1 Purpose

The purpose of Section 1.5 is to regulate and limit the development and continued existence of land, buildings, structures, uses, and site features such as parking and landscaping, that were lawfully established prior to the effective date of this DDC, but that no longer conform to the requirements of this DDC. All such situations are collectively referred to in this section as "nonconformities." While nonconformities may continue, the provisions of this section are designed to curtail substantial investment in nonconformities to bring about their eventual elimination in order to preserve the integrity of this DDC and the goals of the City of Denton.

1.5.2 Regulations Applicable to All Nonconformities

A. Authority to Continue

Nonconformities may continue to be used and occupied, subject to regulations as to the maintenance of premises and conditions of operations set forth in this section, or unless such nonconformity is terminated as provided in this section.

B. Determination of Nonconformity Status

The burden of establishing the existence of a nonconformity shall be solely on the owner of the property containing the nonconformity. An applicant may use the procedure in Subsection 2.5.4, *Certificate of Zoning Compliance*, to establish the existence of a nonconformity.

C. Maintenance and Minor Repair

Minor repairs and maintenance of nonconformities are permitted and encouraged, provided that the repairs and maintenance do not increase the degree of nonconformity. Minor repairs and maintenance include the following:

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1.5.2 Regulations Applicable to All Nonconformities

1. Repairs necessary to maintain and to correct any damage or deterioration to the structural soundness of, or the exterior or interior appearance of, a building or structure without expanding the height or footprint of the building or structure, unless compliant with this DDC;
2. Maintenance of land to protect against and mitigate health and environmental hazards;
3. Resurfacing or restriping parking areas (but no enlargement of parking area) pursuant to Section 7.9, *Parking and Loading*;
4. Replacing diseased or dead plant materials pursuant to Section 7.7, *Landscaping, Screening, Buffering, and Fences*;
5. Repairs that are required to remedy unsafe conditions; and
6. Repairs necessary to comply with current building code requirements.

D. Change of Ownership or Tenancy

Changes in ownership, tenancy, or management of property with an existing nonconformity may occur, but such nonconformities shall continue to be subject to the standards of this Section 1.5.

E. Compliance to the Maximum Extent Practicable

Where compliance with the requirements of this section is precluded by a lack of sufficient developable area due to the size of the lot, the layout of existing development, or the presence of significant wetlands, floodplains, watercourses, hazard areas, or other significant environmental constraints, the applicant shall comply with the requirements of this section to the maximum extent practicable, as determined by the Director.

F. Discontinuance

1. Whenever a nonconforming use or structure is discontinued for one year or more, all nonconforming rights shall cease, and the use of the premises or the structure shall be in conformance with this Subchapter and all applicable codes of the City. For purposes of this provision, the following actions shall create a rebuttable presumption of "discontinue:" the property or structure is vacant and no attempt to market the property is observable on the property or from the exterior of any structure, or that the property or structure is vacant and City taxes owed on the property are delinquent. The determination of discontinued status may be delayed for up to one year by the Director upon written request, if the applicant provides documentation that the property has been actively marketed for at least six months during the previous, first year.
2. The right to maintain or operate a nonconforming structure or use may be terminated by the Zoning Board of Adjustment in accordance with Subsection 1.5.8, *Amortization of Nonconforming Uses or Structures*. Any appeal of the termination of nonconforming rights by the Zoning Board of Adjustment under this Subchapter shall be made to the District Court within 10 days of receipt of written notice of the termination by the Director.

G. Nonconformity Due to Outside Action

1. Where a lot, tract, or parcel is occupied by a lawful structure, and where the acquisition of right-of-way, by eminent domain, dedication, or purchase, by a city, county, state, or federal agency creates noncompliance of the structure or property regarding any requirement of this DDC, such structure or property shall be deemed nonconforming, and acquiring agency shall provide a compliance plan. Such designation shall apply only to

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noncompliance that results directly from the acquisition of right-of-way or by acquisition through eminent domain.

2. In the event that such structure is partially or totally destroyed by natural or accidental causes, the structure may be rebuilt upon approval of a building permit by the Building Official, subject to Subsection 1.5.4D, *Damage or Destruction of More than 50 Percent of the Gross Floor Area*.

H. Prior Construction Approved

Nothing contained in this section shall require any change in the plans, construction, or designated use of a building legally under construction, or for which a permit for construction has been issued, at the time of passage of this DDC or amendments.

I. Applicability of this Code to Existing Residential Uses and Structures

The adoption of this DDC shall not cause any existing, legal single-family detached dwelling, townhome, or duplex use or structure to become nonconforming. Any single-family detached dwelling, townhome, or duplex structure, lot, and associated site features lawfully existing on the effective date of this DDC shall be deemed a lawful structure, lot, or site feature.

1.5.3 Nonconforming Uses

A. Limitations on Continuation of Nonconforming Uses of Land

1. A nonconforming use may be extended throughout the same building, provided that:
 - a. No structural alteration of the building (or portion of such building containing the nonconforming use in the case of buildings with multiple uses) shall be permitted;
 - b. No additional dwelling units shall be permitted in the building; and
 - c. No additional nonresidential units and/or uses shall be permitted.
2. No nonconforming use shall expand into an additional structure.
3. Any use of land that was established in the City's extraterritorial jurisdiction and annexed into the City shall be subject to the provisions established in Tex. Gov't. Code, Section 43.002, as amended.

B. Change of Use

1. A nonconforming use may be changed to another nonconforming use, provided the Director determines that the new use creates lesser impacts on surrounding properties and is no more intensive than the use it replaces, and no structural alterations to the building are required to accommodate such change, except those alterations necessary to meet accessibility provisions required by state and federal law.
2. A nonconforming use that has been changed to a less nonconforming use pursuant to this subsection may not subsequently be changed back to a more nonconforming use.
3. A nonconforming use, if changed to a conforming use, may not subsequently be changed back to any nonconforming use unless otherwise permitted by this DDC.

C. Pre-Existing Specific Use Permits

The adoption of this DDC shall not cause any existing, legal use that now requires a specific use permit pursuant to Subsection 2.5.2: *Specific Use Permit (SUP)*, to become nonconforming. Any legal use lawfully existing on the effective date of this DDC that has been damaged or destroyed

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by fire or other natural or accidental causes in whole or in part may be restored to its original condition and is not required to obtain another specific use permit.

1.5.4 Nonconforming Structures

A. Expansion of a Nonconforming Structure

A nonconforming structure may only be expanded or enlarged pursuant to Subsection 1.5.2C, and any such expansion or enlargement shall be in full compliance with this DDC.

B. Increasing Level of Nonconformity Prohibited

A nonconforming structure shall not be altered in a way that increases the nonconformity of the structure, but any structure or portion of a structure may be altered to decrease the nonconformity of the structure.

C. Damage or Destruction of Less than 50 Percent of the Gross Floor Area

A nonconforming structure that has been damaged or destroyed by fire or other natural or accidental causes may be restored to its original condition, provided that:

1. The extent of the damage does not require the reconstruction of more than 50 percent of the gross floor area of the nonconforming structure;
2. For purposes of this provision, the 50-percent threshold shall apply to each individual structure, and not cumulatively to multiple structures on one lot.
3. A building permit is issued for the work to be performed;
4. Such work is commenced within one year of such event and completed within 18 months of such event;
5. By written request from the property owner, the Director may grant one extension of either the work commencement and/or the completion of work time period.
6. A restoration or reconstruction of the structure in violation of this subsection immediately terminates the right to operate the nonconforming structure.

D. Damage or Destruction of More than 50 Percent of the Gross Floor Area

A nonconforming structure that has been damaged or destroyed by fire or other natural or accidental causes shall not be rebuilt or occupied, except in conformance with this DDC.

1.5.5 Nonconforming Lots

- A.** A structure situated on a nonconforming lot shall be considered a nonconforming structure, subject to the provisions of this Section 1.5.
- B.** A nonconforming lot that was made nonconforming by virtue of enactment of this DDC may be used for construction of a building allowed in the applicable zoning district, provided that all other zoning district and dimensional standards are met, unless as otherwise provided for in this Section 1.5.
- C.** A structure on a nonconforming lot deemed nonconforming by virtue of Subsection 1.5.4C may be restored to its original condition pursuant to Subsection 1.5.4C.

1.5.6 Nonconforming Site Features

- A.** For purposes of this provision, the term "nonconforming site feature" includes any driveway, off-street parking or loading area, building coverage, landscaping, buffer, or screening element that

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lawfully existed per regulations in place prior to the effective date of this DDC, as well as the lack of any such feature required by subsequently enacted City regulations.

- B. A lawfully nonconforming site feature may continue in its existing condition unless and until full or limited compliance with the development standards of this DDC as required in Section 7.2: *Applicability*.
- C. No action shall be taken that increases the degree of the nonconformity of a site feature.

1.5.7 Nonconforming Signs

Nonconforming signs shall comply with the Municipal Code of Ordinances, Chapter 33.10, *Nonconforming Signs*.

1.5.8 Amortization of Nonconforming Uses or Structures

A. Initiation of Proceedings

The City Council may initiate proceedings to amortize a nonconforming land use or structure.

B. Consideration by Zoning Board of Adjustment

1. Generally

The Zoning Board of Adjustment may require the termination of nonconforming uses of land or structures 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 DDC.

2. Criteria for Determining Amortization Period

Before the Zoning Board of Adjustment may determine an amortization period, it shall 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 from revenue generated by the property and the amount remaining, if any, to be recovered during the amortization period;
- c. The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such leases;
- d. Removal costs that are directly attributable to the establishment of a termination date; and
- e. Other costs and expenses that are directly attributable to the establishment of a termination date.

3. Cessation of Use

If the Zoning Board of Adjustment establishes a termination date for a nonconforming use or structure, the use shall cease operations on that date and the owner shall not operate it after that date unless it becomes a conforming use or structure.

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1.5.9 Illegal Nonconformities

A nonconformity becomes illegal when:

- A. A nonconforming structure is destroyed or substantially destroyed by an intentional act of the owner or an agent without a proper permit or other required city approval. If this occurs, the nonconforming structure shall lose its nonconforming status and shall be required to conform to existing codes. If a nonconforming use was also in the structure, the nonconforming use and all site improvements shall lose their nonconforming status and be required to come into compliance with existing codes; and
- B. A use, structure, or site improvement results in a nonconformity without being lawfully authorized in accordance with the provisions of this DDC. Such use and/or structure shall cease operations until the required City approvals are obtained.

1.6 Enforcement

1.6.1 Purpose

This Section 1.6 establishes procedures through which the City seeks to ensure compliance with the provisions of this DDC and obtain corrections for violations of this DDC. This section also sets forth the remedies and penalties that apply to violations of this DDC.

1.6.2 Violations

A. Generally

Any person who violates any applicable provision of this DDC shall be deemed guilty of a violation punishable in accordance with Subsection 1.6.5. For purposes of this section, the term "violation" shall mean a final finding by a court of record that an ordinance has been violated.

B. Prior Violations

If a development or activity in violation of the prior development regulations fully complies with this DDC, such development or activity shall no longer be deemed a violation. Unpaid fees and/or penalties from prior enforcement of violations are still valid and shall remain the responsibility of the violator under the prior regulations.

C. Violations within the Extraterritorial Jurisdiction

Any person who violates any applicable provision of this DDC within the extraterritorial jurisdiction shall not be guilty of a misdemeanor; however, the City may institute any appropriate action or proceeding in the District Court to enjoin the violation of this DDC.

D. Activities Constituting a Violation

1. Activity Inconsistent with this DDC

Any erection, construction, reconstruction, remodeling, alteration, maintenance, expansion, movement, or use of any land, building, structure, or sign that is inconsistent with this DDC.

2. Activity Inconsistent with a Permit or Approval

Any development, use, or other activity that is in any way inconsistent with the terms or conditions of any permit or approval required to engage in such activity under this DDC.