

CITY OF CROWLEY, TEXAS: CHAPTER 106 - ZONING ORDINANCE

ARTICLE 9: NONCONFORMITIES

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CITY OF CROWLEY, TEXAS: CHAPTER 106 - ZONING ORDINANCE

ARTICLE 9: NONCONFORMITIES

106.101 APPLICABILITY

A. PURPOSE AND GENERAL PROVISIONS

- (1) Purpose: This Article governs uses, structures, lots, and other situations that came into existence legally prior to the effective date of this Ordinance or the effective date of future amendments to this Ordinance, but do not comply with or conform to one or more requirements of this Ordinance. All such situations are collectively referred to as “nonconformities”.
- (2) General Policy: Nonconformities are deemed to be incompatible with permitted uses and structures in the applicable zoning district and are contrary to the stated purposes of this Chapter. With due regard for the property rights of the persons affected when considered in light of the public welfare and in view of protecting the use and enjoyment of adjacent conforming properties, it is the declared purpose of this Article that nonconformities be eliminated and be required to conform to the regulations in this Chapter. Notwithstanding the above, such nonconformity may be continued, subject to the conditions and limitations set forth in this Article.
- (3) Continuation Permitted: Any nonconformity that legally exists on the adoption date of this Chapter, or that becomes nonconforming upon the adoption of any amendments to this Chapter, may be continued in accordance with the provisions of this Article.
- (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.
- (5) Repairs and Maintenance: Incidental repairs and normal maintenance of nonconformities shall be permitted, per Section 106.104.
- (6) Tenancy and Ownership: The status of a nonconformity is not affected by changes of tenancy, ownership, or management.
- (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. Where a variance or modification has been granted for a development standard that does not otherwise conform to the requirements of this Chapter, that development standard shall be deemed conforming.
- (8) Enforcement of Requirements: The city may withhold necessary permits, inspections, or other approvals to ensure compliance with this Article.
- (9) Nonconformity Due to Governmental Action: A lot, site, or structure conforming to city ordinances shall not be considered nonconforming in the event a governmental entity 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, county, or state’s eminent domain power. Any status claimed under this subsection must be the result of city, county, or state action only and not otherwise result in a situation that jeopardizes the public health, safety, or welfare. Further, city, county, or state’s action must make

it impossible or highly impracticable for the structure, site, or lot to be brought into conformity with this Chapter. 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 lot or structure immediately after such city, county, or state action, only with regard to the following requirements:

- (1) the amount of square footage removed from the structure's minimum required lot area by city, county, or state action;
- (2) the number of linear feet removed from the minimum required lot depth or width by city, county, or state's action;
- (3) the number of linear feet removed from the structure or lot's minimum required front setback, side setback, or rear setback by city, county, or state's action;
- (4) the number of then-existing properly-marked parking spaces removed from the structure's minimum required off-street parking by city, county, or state's action;
- (5) the increased percentage of lot coverage directly attributable to city, county, or state's action; and
- (6) the amount of landscaping removed from the existing property by city, county, or state's action.

106.102 NONCONFORMING USES

A. GENERAL

Any use of land that was legally in existence and nonconforming on the effective date of this Chapter and has been in regular and continuous use, but which does not conform to the use regulations prescribed by this Chapter, shall be deemed a nonconforming use. However, any single family use lawfully existing on the effective date of this Chapter shall be hereafter deemed a lawful use.

B. CHANGE OF USE

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

C. ENLARGEMENT OR EXTENSION OF NONCONFORMING USE

- (1) 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.
- (2) No such nonconforming use shall be moved, in whole or in part, to any portion of the same lot or parcel than that occupied by such use at the effective date of this Chapter.

D. LOSS OF LEGAL NONCONFORMITY STATUS

(1) Abandonment or Discontinuance

- a. Abandonment occurs when:
 1. The owner closes or ceases using a property; or
 2. The owner makes any act or statement that manifests an intent to make such closure or cessation permanent; and
 3. The closure or cessation of the uses lasts for a period of at least six months.
- b. Abandonment is conclusively deemed to have occurred if the Administrator has determined that:
 1. The structure is in an advanced state of dilapidation;
 2. The property owner has received notice that the structure or use is non-compliant with one or more health and safety codes such as the building, plumbing, electrical, and mechanical codes that govern the use of structures designed for human occupancy and has failed to obtain necessary permits and commence work to repair or remove the deficiencies within six months of the notice; or
 3. The structure or use is unsafe for the continuation of such use or occupancy.
- c. *Discontinuance*: Discontinuance occurs when there is a closure or cessation of a use or occupancy of a structure for a period of 180 consecutive days, irrespective of whether the owner has an intent to abandon the use. When land or a structure that is nonconforming has historically been used only on a seasonal basis, such use shall be deemed to have been discontinued if, irrespective of whether the owner has an intent to abandon the use, such property is not operated as a nonconforming use in a bona fide manner during the normal and customary season or period of operation during which such nonconforming use has historically operated.
- d. Once abandoned or discontinued, 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.
- e. 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.

(2) Damage or Destruction:

- a. 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 assessed value at the time of its destruction, the use may not be re-established except in compliance with all regulations applicable to the zoning district in which it is located.

- b. If the structure in which a nonconforming use is housed, operated, or maintained is partially destroyed, where the damage does not exceed 50 percent of its assessed value, the nonconforming use may be allowed to continue and the structure may be rebuilt but not enlarged upon approval of a building permit subject to Section 106.106(C)(2).
 - c. In all zoning districts, a nonconforming single family dwelling use that is involuntarily destroyed in whole or in part due to fire or other calamity may be continued and the structure may be rebuilt to its original condition but not enlarged upon approval of a building permit.
- (3) Action by the Zoning Board of Adjustment: The right to maintain or operate a nonconforming use shall be determined by the Zoning Board of Adjustment in accordance with the provisions of this Chapter outlined in **Article 2: Procedures and Administration**.

106.103 NONCONFORMING LOTS

A. 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 for the zoning district in which it is located established, except as otherwise provided for in this section.

B. SINGLE FAMILY RESIDENTIAL LOTS

- (1) 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 on the lot.
- (2) Setbacks: Single family dwellings with setbacks made nonconforming by the adoption of this Chapter are exempt from the requirements of this section if the following findings can be made for building additions or alterations:
 - a. 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
 - b. The proposed alteration or addition is located on the side of the existing dwelling, and there is a minimum setback of five feet from the property line such that there is a minimum distance of 10 feet between the side of the existing structure and the nearest dwelling on the adjoining property.
- (3) ROW and Easements: 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 findings above.
- (4) 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 for the district in which they are located under

this Chapter. Any construction, replacement, or enlargement of a dwelling or building shall require a combination or replatting of all necessary lots in order to achieve compliance with the provisions of this Chapter.

106.104 NONCONFORMING STRUCTURES OR SITES

A. GENERAL

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

B. CONTINUATION OF NONCONFORMING STRUCTURE OR SITE

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

C. 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 or exacerbate (make worse) any existing nonconformity. For the purposes of this subsection, “maintenance and minor repair” means:

- (1) 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;
- (2) Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and
- (3) Repairs that are required to remedy unsafe conditions that cause a threat to public safety.

106.105 ENLARGEMENT AND EXPANSION

A nonconforming structure in which only permitted uses are operated may be enlarged or expanded if the enlargement or expansion neither creates any new nonconformity nor increases the degree of the existing nonconformity of all or any part of such structure or site and the enlargement or expansion can be made in compliance with all of the provisions of this Chapter with respect to the district in which it is located. Such enlargement or expansion shall also be subject to all other applicable city ordinances.

106.106 LOSS OF NONCONFORMING STATUS; DAMAGE OR DESTRUCTION

A. CONTINUATION OF NONCONFORMING STRUCTURE OR SITE

The use of a nonconforming structure or site may be continued subsequent to the effective date of this Chapter, 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 or site.

B. ALTERATION OR ENLARGEMENT OF A NONCONFORMING STRUCTURE OR SITE

Any nonconforming structure or site that is altered beyond what is allowed under Section 106.105 above shall lose its nonconforming status and is subject to appeal to the Zoning Board of Adjustment.

C. DAMAGE OR DESTRUCTION OF A NONCONFORMING STRUCTURE OR SITE

- (1) If a nonconforming structure or site is allowed to deteriorate to a condition that the structure or site is rendered uninhabitable or nonconforming and is not repaired or restored within six months after written notice to the property owner that the structure or site is uninhabitable and nonconforming and the structure or site is voluntarily demolished or is required by law to be demolished, then the structure or site shall not be restored unless it complies with all the regulations of the zoning district in which it is located.
- (2) In addition to standards in Section 106.102(D)(2) if a nonconforming structure or site is involuntarily destroyed in whole or in part due to fire or other calamity less than 50 percent of its assessed value and the structure has not been abandoned, the structure may be restored to its original condition, provided such work is started within six months of such calamity, completed within 18 months of work commencement, and no prior nonconformity is increased.

D. ACTION BY THE ZONING BOARD OF ADJUSTMENT

The right to maintain or operate a nonconforming structure or site may be determined by the Zoning Board of Adjustment in accordance with the provisions of this Chapter.

106.107 AMORTIZATION OF NONCONFORMING USES, STRUCTURES, OR SITES**A. INITIATION OF PROCEEDINGS**

- (1) The City Council may initiate the process to amortize a nonconforming land use, structure, or lot by filing an application to the Zoning Board of Adjustment. All actions to discontinue a nonconforming use of land, structure, or lot shall be taken with due regard for the investment of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconformity and the conservation and preservation of property.
- (2) Written notice of the hearing before the Zoning Board of Adjustment shall be mailed to the owner of the use and the owner of the property at least 30 days before the hearing.

B. CONSIDERATION BY ZONING BOARD OF ADJUSTMENT

- (1) The Zoning Board of Adjustment may require the discontinuance of nonconforming uses of land, structures, or lots under a plan whereby the full 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 chapter, and any other factors the Zoning Board of Adjustment considers relevant. The compliance date for discontinuance of a nonconforming use, structure, or lot shall be prescribed by the Zoning Board of Adjustment at a public hearing, after hearing testimony from the owner, the operator, neighboring property owners, community organizations and other interested parties.

- (2) In prescribing a reasonable amortization period for the nonconformity and to give the property owner an opportunity to recover his/her investment from the time the nonconformity was established, as allowed by law, the Zoning Board of Adjustment shall consider the following factors:
 - a. The owner's capital investment in structures, fixed equipment and other assets (excluding the land and any inventory and other assets that may be feasibly transferred to another site) on the property before the time the nonconformity commenced. Any such investment made after the nonconformity commenced shall not be included;
 - b. Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages;
 - c. Any return on investment since establishment of the nonconformity, including net income and depreciation;
 - d. The anticipated annual recovery of investment, including net income and depreciation; and
 - e. Any other factors allowed by law.
- (3) If the Zoning 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.
- (4) If the Zoning Board of Adjustment determines that there is no public necessity for establishing a compliance date, the Zoning Board of Adjustment shall request that the City Council initiate rezoning of the property to bring the said nonconformity into compliance with applicable zoning regulations.

106.108 ILLEGAL USES

A. IMMEDIATE TERMINATION OF ILLEGAL USES

- (1) 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:
 - 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 or nonconforming structure;
 - e. Unlawful outside display or storage in required parking spaces;
 - f. Violation of any provision of a federal or state statute with respect to a nonconforming use;
 - g. Violation of any provision of an ordinance of the city with respect to a nonconforming use.

- (2) 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.

106.109 – 106.114: RESERVED