

**CITY OF AMARILLO, TEXAS
CODE OF ORDINANCES**

CHAPTER 4-10 - ZONING



**ARTICLE VI. – NONCONFORMITIES AND
VESTED RIGHTS**

PUBLIC REVIEW DRAFT

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ARTICLE VI. - NONCONFORMITIES AND VESTED RIGHTS

Sec. 4-10-270. - Purpose.

- (a) This Article provides for the regulation of Nonconformities and specifies the conditions under which legal Nonconformities may be maintained despite amendments to this Article subsequent to the lawful establishment of the Lot, Site Improvement,¹ Structure, or Use.
- (b) The City finds that Nonconformities adversely affect the orderly development and value of other property and should not continue except in compliance with this Article.
- (c) This Article does not confer legal nonconforming status to expired approvals under this Chapter, nor to Lots, Site Improvements, Structures, or Uses established inconsistent with City regulations in effect when the Lot, Site Improvement, Structure, or Use was established.

Sec. 4-10-271. - Generally.

- (a) **General definitions.** In addition to the definitions in Article IX, *Definitions and Rules of Interpretation*, the definitions below apply to this Article.

(1) Cost – means the total cost of reconstruction or repair, which is the fair market value of the materials, services, and labor necessary to accomplish the reconstruction of a Structure or the reconstruction or repair of a Nonconformity. No person may seek to avoid the intent of this Article by undertaking repairs incrementally.

(2) Effective Date – means the effective date of the application of this Chapter, or any amendment thereto, that creates a Nonconformity.

(3) Structural Value – means the present-day Cost of replacing a Structure.

- (b) **Continuation of Nonconformities.**

(1) Unless otherwise specifically provided in this Chapter and subject to the restrictions and qualifications set forth in this Article, Nonconformities that were otherwise lawful on the Effective Date may be continued, and may be referred to as a legal Nonconformity or as having legal nonconforming status.

¹ Defined as any improvement required by Article II, *Zoning Districts*; Article III, *Use Regulations*; or Article IV, *Development Standards*.

(2) The burden is on the Applicant or property owner seeking legal nonconforming status.

(c) **Repair, maintenance, and alterations.** Repairs, alterations, and maintenance of a legal conformity that do not increase the extent or nature of the Nonconformity are allowed if the repair, alternation, or maintenance is otherwise consistent with City requirements.

(d) **Government Action.** A Nonconformity exists when any developed Lot is reduced in size by a taking for public necessity and the reduction affects the Lot Area, Lot Width, Lot Depth, Building Setback, or Off-Street Parking Spaces of the Lot to the extent that the use at the time of taking would be rendered a violation of this Chapter.

Sec. 4-10-272. - Nonconforming Uses.

(a) **Applicability.** This Section applies to any Nonconforming Use.

(b) **Generally.** A Nonconforming Use may not be expanded or increased beyond the Lot on which the Nonconforming Use is located on the Effective Date, except the Planning Director may approve the provision of Off-Street Parking Spaces for the Nonconforming Use through the Site Plan procedure (see Article V, *Procedures*).

(c) **Change of Nonconforming Use.** Any Nonconforming Use may be changed to a conforming Use. However, once conforming use status is established, the Property Owner may not reestablish another or the same Nonconforming Use.

(d) **Abandonment.**

(1) Except as provided in **paragraph (2)** below, a Nonconforming Use discontinued for 180 consecutive calendar days is deemed abandoned, regardless of the intent of the Owner or occupant of the premises. Use of the Lot or Structure thereafter must comply with this Article and other City requirements in effect upon abandonment.

(2) Unless otherwise prohibited in **subsections (e)-(h)**, below, a Structure containing a Nonconforming Use that is damaged or destroyed by any cause may be reconstructed or repaired to the Structure's previous condition if the work is completed within two years of the date of the damage or destruction of the Structure.

(e) **Airport Overlay District.**

(1) A Nonconformity in the Airport Overlay District Wildlife Hazard Zone cannot be expanded in any way that creates a greater Hazard to Air Navigation than was present on the Effective Date.

(2) A Nonconforming Use in the Airport Overlay District Noise Zones may not be expanded or increased beyond the Lot on which the Nonconforming Use is located on the Effective Date.

(f) **Outdoor Storage.** For legal nonconforming Outdoor Storage uses for which this Chapter requires screening, the Owner or occupant of the Premises shall provide such screening not later than two (2) years from the Effective Date.

(g) **Adult Businesses.** An Adult Business that is in operation on the effective date of an annexation and that does not conform to the location and zoning requirements pertaining to an Adult Business is a Nonconforming Use. The Adult Business may continue for three (3) years from the effective date of annexation. Upon the expiration of three (3) years, all Nonconforming Use rights shall terminate, and the Nonconforming Use shall be illegal and shall terminate.

(1) Any Nonconforming Use as an Adult Business shall not be increased, enlarged or altered except to increase compliance with **Sec. 4-10-88**, *Adult Businesses*.

(2) If two (2) or more Adult Businesses are rendered Nonconforming by the required separation in **Sec. 4-10-88** only, first in time is first in right. It shall be the burden of the Adult Business asserting a priority to prove its prior right.

(3) If the Owner of an Adult Business is unable to recoup its investment in such business prior to termination, it may request an extension of time by filing a request with the Planning Department at least 90 days before to the termination date.

a. The Application for an extension shall contain all of the data the Applicant wishes to be considered in determining whether or not an extension should be granted.

b. The City Council may consider the Application for extension and may grant additional time not to exceed one (1) year if it finds that the Applicant's need outweighs the public interest in termination.

(h) **Alcohol vendors.** Any Nonconforming Use that includes the sale of alcoholic beverages shall be terminated within 90 calendar days of the expiration of any required state licenses.

Sec. 4-10-273. - Nonconforming Lots.

(a) **Applicability.** This Section applies to Nonconforming Lots that are vacant at the time an Applicant or Property Owner claims nonconforming status. A change in Use of a developed Nonconforming Lot may be accomplished only in accordance with Sec. 4-10-272(c).

(b) **Nonconforming Lots.** No Use or Structure shall be established on a Nonconforming Lot, except as otherwise provided for in this Section.

(c) **Residential Lot Area and dimensions.**² A vacant Nonconforming Lot in a Residential Zoning District may be used only for a detached, One-Family Housing Unit; a Manufactured Home; a Park or Playground; or a Community Garden if:

(1) The Uses are permitted in that Zoning District and

(2) All other City requirements are met.

(d) **Non-Residential Lot Area or dimensions.** A vacant Nonconforming Lot not located in a Residential District may be used for any Use permitted by this Chapter.

(e) **Setback reduction for Nonconforming Lots.**³ Minimum Setbacks for a Structure located on a Nonconforming Lot may be reduced as follows:

(1) Where a Lot is nonconforming with respect to Lot Depth, the minimum required Front and Rear Setbacks may be reduced by up to 10 percent.

(2) Where a Lot is nonconforming with respect to Lot Width, the minimum required Side Setback may be reduced by up to 10 percent.

(f) **Creation of Nonconforming Lots prohibited.** The subdivision of any land may not result in a Lot Area or dimension that does not meet the minimum standards of this Chapter.

² This consolidates the current requirements in Sections 4-10-167, 4-10-168, and 4-10-169. It makes the Uses allowed on a Lot that is nonconforming with respect to Lot Area or Lot Depth consistent with the Uses allowed on a Lot that is nonconforming with respect to Lot Width, and expands the uses to include Parks, Playgrounds, and Community Gardens..

³ This is a new provision that provides flexibility for Nonconforming Lots. There is a cross-reference to these provisions in Section 4-10-149, *Yards and Setbacks*.

Sec. 4-10-274. - Nonconforming Structures.

(a) Applicability.

(1) This Section applies to Nonconforming Structures.

(2) No alterations to a Nonconforming Structure are permitted unless:

a. The alterations are required by applicable building codes, safety codes, or other state or federal law preempting local ordinances; or

b. The alteration accommodates a Conforming Use and does not increase the degree or extent of the nonconforming status of the Nonconforming Structure.

(b) Repair, maintenance, and alterations.

(1) If a Nonconforming Structure is damaged by any cause, and the Cost to repair exceeds 50 percent of its Structural Value, the Structure shall not be restored to its nonconforming state unless approved by the Zoning Board of Adjustment through the Special Exception process (see Article V, *Procedures*).

(2) If a Nonconforming Structure is damaged by any cause, and the Cost to repair is 50 percent or less of its Structural Value, repairs and restoration may be permitted to restore the Structure to its previous nonconforming state, without Zoning Board of Adjustment review.

(c) When a Conforming Use is located in a Nonconforming Structure, the Use may be changed to another Conforming Use by securing a Certificate of Occupancy and Compliance (see Article V, *Procedures*).

(d) Airport Overlay District.

(1) This subsection applies to any Structure or Object of Natural Growth that exceeds any Height limit specified in Sec. 4-10-70, *A-O, Airport Overlay District*).

(2) A Nonconforming Structure in the Airport Overlay District shall not be expanded or extended in any way that creates an increased Hazard to Air Navigation, as determined by the Director of Aviation.

(3) In the event a property contains a Nonconforming Structure or Object of Natural Growth, the City will notify the property owner of:

- a. The property's nonconforming status;
- b. The local, state, or federal codes with which the Structure or Object of Natural Growth does not conform; and
- c. A proposed solution to mitigate the impact of the nonconformity on operations at the Amarillo International Airport.
 1. Such mitigation may include, as applicable, the installation, operation, and maintenance of markers and lights or cutting or topping of trees.
 2. The City will work with the property owner and other affected state and federal agencies to arrive at a mitigation plan acceptable to the property owner and agencies.
 3. However, this does not preclude other remedies available to the City to resolve issues critical to air operation safety and the public health, safety, and welfare.

(e) **Mobile and Manufactured Homes.**

(1) A Mobile or Manufactured Home that is a Nonconforming Structure is deemed abandoned when unoccupied for a period of 180 consecutive calendar days.

(2) The City may exercise its powers pursuant to Chapter 214 of the Texas Local Government Code and other applicable laws if any Mobile or Manufactured Home is or becomes dilapidated, substandard, unfit for human habitation, and is a hazard to the public health, safety, and welfare.

Sec. 4-10-275. - Nonconforming Site Improvements.⁴

(a) **Applicability.**

(1) This Section applies to Lots with Nonconforming Site Improvements.

(2) This Section does not apply to minor alterations of less than 10 percent of the Structural Value of a Structure, or alterations to a Structure pursuant to Sec. 4-10-274(c).

⁴ Nonconforming sign provisions should move here (or a section immediately preceding or following this one) if/when the sign ordinance is revised.

(b) Alterations to a Structure on a Lot with Nonconforming Site Improvements.

Alterations of any Structure located on a Lot with Nonconforming Site Improvements are not allowed unless the Nonconforming Site Improvements are brought into complete conformity with the regulations applicable to the Zoning District, except when the proposed alterations result in:

(1) An increase of no more than 3,000 square feet or 35 percent of the gross Floor Area of the existing Buildings, whichever is less; or

(2) An increase in the number of Off-Street Parking Spaces by not more than 35 percent.

Sec. 4-10-276. - Applications and projects in process; vested rights.⁵

(a) Vested rights balance the right of property owners to reasonably rely on official governmental acts and the City's obligation to reasonably respond to community changes and needs through revisions to this Chapter. By this Section the City recognizes and commits to protect vested rights as created by Texas Local Government Code, Chapter 245, Chapter 211, Chapter 43, and other applicable law, upon the City receiving all information necessary to determine whether vested rights arise from official City actions impacting a property.

(b) Per Chapter 245, as amended, vested rights apply only to projects in progress on or commenced after September 1, 1997. The City will make vested rights determinations, at Property Owner request, according to procedures, requirements, exemptions and other applicable provisions of state law.

Sec. 4-10-277. - Reserved.

Sec. 4-10-278. - Reserved.

Sec. 4-10-279. - Reserved.

⁵ The language in this Section is from [Sec. 4-6-26](#) (subdivision ordinance), with the addition of cross-references to [Texas LGC Chapter 211](#) and [Texas LGC Chapter 43](#). Chapter 211, Section 2211.017 and Chapter 43, Section 43.002, address continuation of land uses after annexation into a municipality.