

Section 16: NON CONFORMING USES AND STRUCTURES

Section 16.01 Criteria for Non Conforming Status

A non conforming status shall exist under the following provisions of this ordinance:

1. When a use 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 November 20, 1974 and has been operating since without discontinuance.
2. When on the effective date of this ordinance, the use or structure was in existence and lawfully constructed, located and operating in accordance with the provisions of the prior zoning ordinance or which was a non conforming 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 or structure which does not conform to, the regulations prescribed in the district in which such use or structure is located was in existence at the time of annexation to the City of Harlingen has since been in regular and continuous use.

Section 16.02 Continuation or Discontinuation of a Non Conforming Use

1. Any non-conforming use of land or structures may be continued for definite periods of time subject to such regulations as the Board of Adjustments may require for immediate preservation of the adjoining property prior to the ultimate removal of the non conforming use. The Building Inspector may grant a change of occupancy from one non conforming use to another, providing the use is within the same, or higher, or more restrictive classification as the original non conforming use. In the event a non conforming use of a building may be changed to another non conforming use of more restrictive 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.
2. If a structure occupied by a non conforming use is destroyed by fire, the elements or other cause, it may not be rebuilt except to conform to the provisions of this ordinance. In case of partial destruction of a non conforming use not exceeding seventy-five percent (75%) of its current fair market value, reconstruction will be permitted but the size or function of the non conforming use cannot be expanded.
3. When a nonconforming use is discontinued for a consecutive period of ninety (90) days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use. However, a similar type of use in an existing vacant building that is using the same footprint that existed prior to the last approved occupancy, shall be permitted to operate with the existing parking.

4. All of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one (1) apartment in a nonconforming apartment building for ninety (90) days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

5. When a structure or operation made nonconforming by this ordinance is vacant or discontinued on the effective date of this ordinance, the ninety (90) day period for purposes of this section begins to run on the effective date of this ordinance.