

## ORDINANCE 16-16

AN ORDINANCE OF THE CITY OF WOODWAY, TEXAS AMENDING THE ZONING ORDINANCE OF THE CITY OF WOODWAY, APPENDIX A TO THE CODE OF ORDINANCES OF THE CITY OF WOODWAY, TEXAS, AMENDING PART TWO, SECTION 2.1, SUBSECTION 2.107 TO INCLUDE SELF-STORAGE AS AN APPROVED USE IN A PLANNED INDUSTRIAL ZONING DISTRICT, AND AMENDING PART TWO, SECTION 2.204 RELATING TO REGULATIONS FOR PLANNED DISTRICTS AND CITY COUNCIL APPROVAL, AND AMENDING PART TWO, SECTION 2.3 REGARDING NONCONFORMING USES, INCLUDING REGULATING NONCONFORMING USES, PROVIDING FOR ABANDONMENT OR LOSS OF NONCONFORMING USE STATUS; PROVIDING FOR APPEAL OF ABANDONMENT DETERMINATION AND FOR EXTENSION REQUESTS; PROHIBITING THE EXPANSION OR ENLARGEMENT OF NONCONFORMING USES AND EXCEPTIONS, PROVIDING FOR DISCONTINUANCE OF NONCONFORMING USE BY AMORTIZATION, PROVIDING FOR PROCEDURES AND APPEAL RIGHTS RELATED TO AMORTIZATION, AND AMENDING PART 8, SECTION 8.2 RELATING TO JURISDICTION OF THE BOARD OF ADJUSTMENT, PROVIDING A SEVERABILITY CLAUSE, EFFECTIVE DATE, AND FINDING OF ADOPTION AT AN OPEN MEETING HELD IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.

CAME ON, before the City Council of the City of Woodway, Texas certain amendments to the City of Woodway Zoning Ordinance proposed by staff and the City Attorney, and recommended by the Planning and Zoning Commission.

WHEREAS, the Council finds said amendments to be in the best interest of the orderly growth and development of the City; and

WHEREAS, the Council finds that any notices have been given and any public hearings have been held that are required for it to take action.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODWAY, TEXAS THAT:

**SECTION 1.** Part Two, Section 2.1, Subsection 2.107 of the Zoning Ordinance of the City of Woodway, Texas relating to Planned Industrial zoning districts is amended to include self-storage as an approved use within the zone and to remove self-storage as a prohibited use within the zone, and shall read as follows:

“2.107: In the M-P Planned Industrial District: (Amended 10-21-74, 7-10-06, 1-24-11, 12-\_-2016)

A. Land use permitted: (Amended 8-6-12, 12-\_-2016)

1. Except as provided in A.5. below, all legal, nonresidential uses.
2. Sales of goods and products at wholesale.
3. New or used trailer, motor vehicle, or watercraft sales.

4. Light industrial uses as long as such uses are not obnoxious or offensive because of odor, smoke, gas, dust, pollutants to air, water or land, noise, vibration, presence of vermin or rodents or similar nuisances.
  5. HUD-code manufactured home parks as provided in Chapter 9 of the Code of Ordinances of the City of Woodway, Texas.
  6. Self-storage.
- B. Special regulations contained in Section 2.2 shall apply to the approval of plans for M-P Districts.
- C. Land uses not allowed in the M-P Planned Industrial Districts include, but are not limited to: (Amended 8-27-07, 12-\_\_-2016)
1. Billboards of any size.
  2. Schools, public and private.
  3. Sexually oriented businesses.
  4. Undertaking establishments.
  5. The existence and, or operation of, an oil well, gas well, and/or drilling of an oil and, or, a gas well, or any combination of the foregoing, within one thousand (1,000) feet of any residential zone.”

**SECTION 2.** Part Two, Section 2.2 of the Zoning Ordinance of the City of Woodway, Texas relating to special regulations for planned districts is amended to add subpart C to Subsection 2.204, which reads:

“C. As part of the approval process, the City Council may approve deviations from, substitutes to, and/or partial exceptions from site development plan requirements based on the facts and circumstances specific to the property and its use. Factors that may be considered include, but are not necessarily limited to: non-financial hardships; existing mitigating features or measures; and zone/community benefits,

*Non-financial hardship factors* include: space limitations; topographical impediments; drainage impediments; absence of sufficient water supply or pressure; conflicts with other regulations; substantial interference with access; and substantial interference with the ability to use the property for its intended, lawful use.

*Existing mitigating features or measures* are existing conditions on the property that substantially serve the purpose of the site development plan requirement at issue (Ex. Trees that provide adequate screening).

*Zone/Community benefit factors* relate to situations where either:

- 1) A requested substitute or alternative actually provides greater benefit or protection to properties in the zone in relation to the purpose for the applicable site development plan requirement than the applicable site development plan requirement; or
- 2) The developer cannot fully comply with a site development plan requirement for non-financial reasons, and the betterment to the property's appearance and conformance with the zone that would be created by the project outweigh the benefits of full compliance with the particular site development plan requirement. (For example, a project to convert a lawfully existing non-conforming use to a conforming use; or a project to modify and improve a property previously operating as a lawful, nonconforming use that has become an authorized use in the zone by amendment, where the benefits of improved appearance and fit created by the project outweigh strict compliance with the site development plan requirements); or where a project would provide a needed community benefit within the zone.

Generally, except where an existing mitigating feature is involved, complete waiver of a site development plan requirement should not be granted. Rather, requirements should be modified, partially exempted, reduced, and/ or alternative measures should be required.”

**SECTION 3.** Part Two, Section 2.3 of the Zoning Ordinance of the City of Woodway, Texas relating to the regulation of nonconforming uses is amended in its entirety to read as follows:

**“Section 2.3 NONCONFORMING USES REGULATED**

- 2.301 Authority.** The provisions of this Section are adopted pursuant to Local Government Code Chapters 43, 211 and 212, and Texas common law.
- 2.302 General.** Nonconformities are those land uses, structures, signs or lots of record that do not conform with the requirements of the Zoning Ordinance. The adoption of the Zoning Ordinance does not make nonconformities illegal; however, nonconformities must not be modified except in accordance with the Zoning Ordinance. A change in ownership does not terminate the right of the new owner to continue the non-conforming use, but the new owner may not expand, enlarge, extend, or structurally alter the nonconforming use except as specifically allowed in the Zoning Ordinance.
- 2.303 Routine Repairs.** Nothing herein prohibits the ordinary repair and maintenance of a nonconforming use.
- 2.304 Nonconforming Status.** A nonconforming status for a use or structure exists when:
  - A. The use or structure was in existence and lawfully constructed, located and operating before the passage of zoning regulations, and has never lost its non-conforming use status;
  - B. The use or structure was in existence and lawfully constructed, located and operating in accordance with the provisions of the previously existing zoning ordinance; or

- C. As a result of amendments to the Zoning Ordinance, the use or structure does not comply with the standards of the Zoning Ordinance.

**Note:** Residential lots platted before the effective date of this Zoning Ordinance shall not be considered non-conforming if not less than six thousand (6,000) square feet in area nor less than sixty (60) feet in width.

**2.305 No Expansion or Enlargement.** A nonconforming use or structure lawfully existing and operating prior to the adoption of this Zoning Ordinance may not be increased, enlarged or expanded beyond that, as it existed, except in the following circumstances.

- A. To provide off-street loading or off-street parking spaces upon approval of the Zoning Board of Adjustment; or
- B. A nonconforming planned industrial use in a commercial district may be enlarged or structurally altered if such enlargements do not total more than a 50% increase in cubic content volume that existed on the date that the use became nonconforming; or
- C. A nonconforming industrial use in an industrial district may be enlarged or structurally altered if such enlargements do not total more than a 50% increase in cubic content volume that existed on the date that the use became nonconforming; or
- D. To replace a mobile home with a HUD-Code manufactured home or a HUD-Code manufactured home with a different HUD-Code manufactured home, on property where the existing mobile home or HUD-Code manufactured home was in existence and lawfully located before the passage of this Ordinance or annexation. This a one-time replacement and no further replacements will be allowed unless required to be allowed by law.

**2.306 Loss of Nonconforming Use Status.**

- A) Any nonconforming use may be changed to a conforming use; however, once such change is made, the use shall not be changed back to a nonconforming use. No nonconforming use may be changed to another nonconforming use.
- B) If a nonconforming use is abandoned, all nonconforming rights cease and the use of the premises must, from that point on, be in conformity with this Zoning Ordinance. Abandonment involves the intent of the user or owner to discontinue a nonconforming operation and the actual act of discontinuance. Discontinuance of a nonconforming use and the vacancy of a building or premises that the nonconforming use occupied is construed as conclusive proof of intent to abandon the nonconforming use. Any

nonconforming use that, not involving a permanent structure, is moved from the premises must be deemed to have been abandoned. Cessation of a nonconforming use of land for twelve (12) months creates a presumption of abandonment. Where not vacant, cessation of the nonconforming use of a building or structure for Eighteen (18) months creates a presumption of abandonment. Abandonment is considered conclusively established if the nonconforming use involves a building or structure that exists in a dilapidated or substandard condition throughout the time-period.

A determination of abandonment can be appealed to the Board of Adjustment within ten (10) days of the owner or operator receiving notice that City staff has determined that the nonconforming use has been abandoned. An operator or owner may also seek an extension of a time period stated above. In cases of undue hardship, the Board of Adjustment may extend a period by no more than 180 days.

A decision by the Board upholding that a nonconforming use has been abandoned is final unless appealed to state court within ten (10) calendar days in accordance with Chapter 211 of the Local Government Code.

- C) If a nonconforming structure, a structure occupied by a nonconforming use or a sign is destroyed or destroyed in substantial part by fire, the elements or other cause, it may not be rebuilt except to conform to the provisions of this Zoning Ordinance. A structure, other than a sign, is destroyed in substantial part when 60% or more of the structure has been destroyed or 60% or more of its value has been lost. For a sign, "destroyed in substantial part" means that the cost of repairing the sign is more than 60% of the cost of erecting a new sign of the same type at the same location. If the damage is less than "destroyed in substantial part" any reconstruction may not expand the nonconforming use.
- D) Where a lot, tract or parcel is occupied by a lawful structure, and where the acquisition of public street right-of-way by a City, county, state or federal agency causes such structure to become nonconforming regarding any requirement of this Ordinance, such structure must be deemed a conforming structure. Such designation applies only to nonconformity resulting directly from the acquisition of public street right-of-way. In the event that such structure is expanded or is partially or totally destroyed by natural or accidental causes, the structure may be expanded or rebuilt upon approval of a Building Permit.

- E)** Where a premises in an R District was used for open storage, such uses must be discontinued and the stored material removed within two years after the effective date of this Ordinance.

Where a premises was used for signs and billboards, such uses must be discontinued and the signs and billboards removed within ten (10) years from the date such signs were erected, or five (5) years after the effective date of this Ordinance, whichever is longer. Where the enforcement of this sub-section would impose an undue hardship on any property owner concerned, said property owner may seek an extension of time from the Board of Adjustment; provided, however, that such extension of time shall not be granted if it would be adverse to the best interest and general welfare of the citizens of Woodway, Texas.

### **2.307 Amortization of Nonconforming Uses**

#### **A. General**

Amortization is a method of City termination of a nonconforming use whereby the City allows the owner to continue the nonconforming use for a set period of time in order to recover capital investment, and after the amortization period ends the nonconforming use must end. Thereafter, the use of the property must conform to this Zoning Ordinance.

#### **B. Initiation**

Generally, a nonconforming use existing in a zone or under circumstances whereby it is believed that discontinuance by amortization would be in the best interests of the City, its citizens, and the growth and development of the City is identified by staff, and staff recommends discontinuance by amortization to the City Council. Prior to making a recommendation, staff should generally confer with the owner to verify the Owner's plans for the property and whether the owner intends to voluntarily discontinue the nonconforming use, and to explain the amortization process. However, this is not a condition precedent to making the recommendation to the City Council.

Only the City Council, by majority vote, may request that the Board of Adjustment consider establishing a compliance date for a nonconforming use.

#### **C. Public Hearing Process**

Upon receiving a request from the City Council, staff shall schedule the First Public Hearing before the Board. The Board may establish a compliance date only after holding two separate hearings. The owner or operator must be given written notice

of the date, time, place and subject matter of each hearing. Notice of the first hearing shall be provided to the owner or operator at least 20 calendar days before the hearing. Notice of the second hearing shall be provided to the owner or operator at least 30 calendar days before the hearing.

**1. First Public Hearing**

The Board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the Board determines that continued operation of the use will have an adverse effect on nearby properties, it shall schedule a second public hearing to establish a compliance date for the nonconforming use; otherwise, it shall not. In determining whether the continued operation will have an adverse effect on nearby properties, the Board shall consider the following factors:

- a. The character of the surrounding neighborhood.
- b. The degree of incompatibility of the use with the zoning district in which it is located.
- c. The manner in which the use is being conducted.
- d. The hours of operation of the use.
- e. The extent to which continued operation of the use may threaten public health or safety.
- f. The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- g. The extent to which public disturbances and nuisances may be created or perpetuated by continued operation of the use.
- h. The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- i. Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- j. Notwithstanding anything to the contrary, the Board cannot amortize a use brought into the City by annexation unless it finds that the use is a public nuisance and/or that the use presents a risk of imminent destruction of property or injury to persons.

## **2. Second Public Hearing**

- a. If the Board has determined in the first public hearing that the nonconforming use has an adverse effect on nearby properties, it shall hold a second public hearing to set a date for compliance. The Board shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. The following factors must be considered by the Board in determining a reasonable amortization period.
  - i. The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - ii. 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.
  - iii. Any return on investment since inception of the use, including net income and depreciation.
  - iv. The anticipated annual recovery of investment, including net income and depreciation.
  - v. A reasonable wind-up period for the nonconforming use.
- b. If the Board, at the first public hearing, requests financial documentation and/or records from the owner relating to the factors listed directly above, the owner shall provide said documents and/or records at least thirty (30) days before the second public hearing. If the owner does not provide said documentation, the Board is authorized to make its determination of a compliance date based upon any reasonably available public records as well as public testimony at the hearing. Failure by owner to provide the requested financial documents and records shall not prevent the Board from setting a compliance date.

The compliance date shall not be less than one (1) year in any case.



**D. Ceasing Operations**

If the Board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

**E. Definitions**

For purposes of this subsection, "owner" means the owner of the nonconforming use at the time of the Board's determination of a compliance date for the nonconforming use and any assignee thereof after the compliance date is set.

**F. Finality of Decisions**

**1. Decisions that cannot be Immediately Appealed**

A decision by the Board that the continued operation of a nonconforming use will have an adverse effect on neighboring property and the Board's decision to schedule a second public hearing to establish a compliance date are not final decisions and cannot be immediately appealed.

**2. Decision to Deny a Request to Establish a Compliance Date**

A decision by the Board to deny a request to establish a compliance date is final unless appealed to state court within ten (10) calendar days in accordance with Chapter 211 of the Local Government Code.

**3. Decision Setting a Compliance Date**

A decision by the Board setting a compliance date is final unless appealed to state court within ten (10) calendar days in accordance with Chapter 211 of the Local Government Code."

**SECTION 3.** Part Eight, Section 8.2 of the Zoning Ordinance of the City of Woodway, Texas, relating jurisdiction of the Board of Adjustment, is amended to add Subsection 8.204a, which reads as follows:

"8.204a. To hear or determine any matter provided to be heard or determined by the Board in this Zoning Ordinance or other City ordinance"

**SECTION 4.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would


have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.** This ordinance shall become effective upon passage and in accordance with the applicable laws of the State of Texas and the Charter of the City of Woodway.

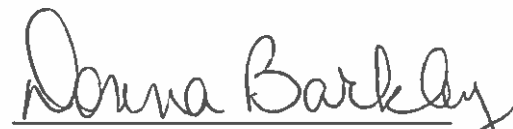
**SECTION 6.** It is found and declared that the City Council meeting at which this Ordinance has been adopted was open to the public and was noticed and held in accordance with Chapter 551 of the government code.

**PASSED AND APPROVED** this 5th day of December 2016.


**CITY OF WOODWAY, TEXAS**

  
\_\_\_\_\_  
Donald J. Baker, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Donna Barkley, City Secretary

**APPROVED:**

  
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Mike Dixon, City Attorney