

ORDINANCE NO. 1917

AN ORDINANCE OF THE CITY OF EULESS, TEXAS, AMENDING ARTICLE III "NONCONFORMANCE" OF CHAPTER 84 "UNIFIED DEVELOPMENT CODE" TO PROVIDE FOR AN EXEMPTION FROM DEVELOPMENT REGULATIONS WHERE NONCOMPLIANCE WITH THE REGULATIONS IS CAUSED BY ACQUISITION OF RIGHT-OF-WAY BY A GOVERNMENTAL AGENCY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Euless has adopted a Unified Development Code, Codified as Chapter 84 of the Code of Ordinances of the City of Euless, which provides for the establishment of zoning districts in order to regulate the location and use of buildings, structures and land for trade, industry, residence and other purposes; and

WHEREAS, the City Council desires to amend the regulations for nonconforming uses to provide for the continuance of uses made nonconforming by the acquisition of right of way by governmental agencies; and

WHEREAS, the Planning and Zoning Commission held a public hearing on June 21, 2011, and the City Council held a public hearing on June 28, 2011, with respect to the amendments described herein; and

WHEREAS, the City has complied with all requirements of Chapter 211 of the Local Government Code, and all other laws dealing with notice, publication and procedural requirements for the amendment of the Unified Development Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS, THAT:

SECTION 1.

All of the findings contained hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2.

Section 84-52 of Article III "Nonconformance" of Chapter 84 "Unified Development Code" Code of Ordinances be, and the same is, hereby amended to read as follows:

Section 84-52. Recognition of nonconformity.

(a) A nonconforming status under the provisions of this chapter shall exist under the following circumstances:

- (1) *Pre-existing to chapter.* (A nonconformity shall exist) when a use or structure which does not conform to the regulations prescribed for the district in which such use or structure is located, was in existence and lawfully constructed, located and operating on the effective date of this chapter and has since been in regular and continuous use.
 - (2) *Pre-existing at annexation.* (A nonconformity shall exist) 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 constructed, located and operated at the time of annexation to the city and has since been in regular and continuous use.
- (b) *Right-of-way acquisition by governmental agency.*
- (1) *Definitions.* As used in this subsection, the following terms shall have the respective meanings ascribed to them:
 - a. *Building Official* shall mean the building official of the City of Euless, Texas or his designee.
 - b. *City Manager* shall mean the city manager of the City of Euless, Texas or his designee.
 - c. *Damages to the remainder* shall mean the diminution or reduction of value of the remainder property suffered as a result of the acquisition of portion of a property for public right of way.
 - d. *Governmental agency* shall mean the United States of America, State of Texas, County of Tarrant, City of Euless, or any other governmental agency with the power to acquire property through the exercise of eminent domain under federal or state laws.
 - e. *Right-of-way acquisition* shall mean the securing of right-of-way through negotiation, purchase, bargain, trade, donation, eminent domain, or other means but not including the dedication of right-of-way through the platting or zoning processes.
 - (2) *Exemption from Nonconforming Status.*
 - a. Except as otherwise provided in this section, in the event a right-of-way acquisition by a governmental agency causes a property or its existing improvements to be in violation of

then existing development provisions of the Unified Development Code, the City Manager is authorized to exempt the property from the provisions of the Unified Development Code to the extent the violation is caused by the right of way acquisition, subject to the provisions set forth in this section. Upon approval of such exemption, the property shall be considered to be in conformity with the development regulations of the Unified Development Code and shall not be subject to the provisions of this article regarding registration, termination, changing or other limitations on nonconforming uses.

- b. The owner of property eligible for exemption under this subsection may apply to the City Manager for approval of an exemption. The City Manager may grant an exemption, in whole or in part, from the requirements of otherwise applicable development regulations, after taking into consideration the following factors:
1. Whether the benefits to the public from exempting the property from the development regulations outweigh any adverse effects that might be caused by noncompliance with such regulations;
 2. Whether the exemption will cause the property to be inadequately served by utilities, road access, drainage and other necessary supporting facilities;
 3. Whether the location and arrangement of all public and private streets, driveways, parking spaces, entrances and exits provide for a safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or the use of adjacent properties;
 4. Whether the approval of the exemption will impede the normal and orderly development and improvement of neighboring vacant property;
 5. Whether the use of the property will be compatible with and not injurious to the use and enjoyment of neighboring property, nor significantly diminish or impair property values within the vicinity;
 6. Whether there is sufficient landscaping and screening to ensure harmony and compatibility with adjacent properties;

7. Whether the property remaining after the right-of-way acquisition is reasonably configured to allow compliance with the applicable development regulations that are not covered by the exemption;
 8. Whether the owner of the property has made reasonable efforts to meet the development standards applicable to the property;
 9. Whether the cost to bring the property into compliance would be unreasonable compared to the benefits that would be gained from doing so.
- c. In approving an exemption under this subsection, the City Manager may place reasonable terms, conditions, or limitations on the exemption as deemed necessary to protect the public health, safety or welfare or that otherwise limit the adverse impact of the property. The City Manager may revoke an exemption if he determines that the property fails or has ceased to be in compliance with any terms, conditions or limitations that are placed on the exemption.
 - d. In granting an exemption under this subsection, the City Manager may authorize the relocation of existing signs that were in compliance with City sign regulations prior to the acquisition of the right-of-way but are required to be moved because of their location within the acquired right-of-way. The City Manager shall determine a location on the property for the relocation of the signs that minimizes the impact of the signs on traffic safety, aesthetics, and the use and enjoyment of adjacent properties.
 - e. Property shall not be eligible for exemption under the following circumstances:
 1. *Zoning change.* An exemption shall not be valid on property that undergoes a zoning change initiated by the property owner subsequent to the right-of-way acquisition; instead, the property shall have a non-conforming status to the extent that any nonconformance with city ordinances resulted from a right-of-way acquisition by a governmental agency prior to the rezoning, and shall be treated as a nonconforming use or structure pursuant to the provisions of Article III "Nonconformance" of the Unified Development Code. A zoning change initiated by the City shall not cause property to lose the exemption provided by this subsection.

2. *Compensation for noncompliance.* The exemption shall not apply to property if the right-of-way acquisition is determined to render the remainder of the property unusable pursuant to agreement with the governmental agency or judicial determination, and the governmental agency compensates the property owner for the damage to the remainder. Where such compensation is provided, the property owner is responsible for any curative measures necessary to bring the property into compliance with the development regulations of the Unified Development Code.

3. *Safety hazard.* An exemption shall not be granted to any development regulation if doing so would create a traffic safety hazard or other life safety hazard on the property or adjacent thereto.

f. The approval or denial of an exemption by the City Manager may be appealed, in whole or in part, to the Board of Adjustment in accordance with the procedures set forth in Section 84-27.

g. Property not eligible for an exemption under this subsection may still be eligible for a variance under the procedures set forth in Section 84-27.

(c) *Process to be followed if property is in Noncompliance.*

(1) For property in which an exemption is not granted, the City Manager, Building Official or other authorized city official is authorized to:

a. Provide notice to any affected property owner, lien holder, and/or certificate of occupancy holder, listing any items of noncompliance;

b. Revoke a certificate of occupancy of any building or structure for noncompliance with a code, ordinance, or regulation; and

c. File an affidavit in the Tarrant County Deed Records noting the item(s) of noncompliance, and that a certificate of occupancy shall not be reissued until such noncompliance is cured. Once the property and its improvements are brought into full compliance with all applicable ordinances of the City,

an affidavit shall be filed in the Tarrant County Deed Records noting such compliance.

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances of the City of Euless, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections 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 from and after its date of passage in accordance with law. The provisions of this Ordinance shall apply to any right-of-way acquired by a governmental agency on or after January 1, 2011.

PRESENTED AND PASSED ON FIRST AND FINAL READING at a regular meeting of the Euless City Council on the 28th day of June 2011, by a vote of _____ ayes, _____ nays, and _____ abstentions.

APPROVED:

Mary Lib Saleh, Mayor

ATTEST:

Susan Crim, TRMC, City Secretary

APPROVED AS TO FORM:

Wayne K. Olson, City Attorney