



# Town of Dewey Beach

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## ORDINANCE NO.

### **AN ORDINANCE TO AMEND CHAPTER 185, ZONING, ARTICLE IX, NONCONFORMITIES, OF THE MUNICIPAL CODE TO ADD A NEW SECTION §185-64 REGARDING REPAIR, RECONSTRUCTION AND REPLACEMENT OF NONCONFORMING SWIMMING POOLS AND SWIMMING POOL COMPLEXES**

**WHEREAS**, the Municipal Code establishes regulations governing green space, impervious surface area, and the location, setback, and placement of swimming pools; and

**WHEREAS**, certain swimming pools and swimming pool complexes may have been lawfully constructed prior to the adoption of regulations that subsequently caused such swimming pools and swimming pool complexes to become nonconforming with regard to required green space, impervious surface area, location, setback, or placement; and

**WHEREAS**, the Town recognizes the need to provide reasonable provisions for the continued repair, reconstruction and replacement of lawfully existing nonconforming swimming pools and swimming pool complexes; and

**WHEREAS**, establishing clear standards for the repair, reconstruction and replacement of such swimming pools and swimming pool complexes will allow existing lawful improvements to continue while preventing an increase in the degree of an existing zoning nonconformity.

**NOW THEREFORE, BE IT ENACTED AND ORDAINED**, by the Commissioners of the Town of Dewey Beach, Sussex County, Delaware, in session met, as follows:

**Section 1.** Amend Section 185-58, Discontinuance of nonconforming uses or buildings, by redesignating the existing language in the current section as subsection "A." and adding a subsection "B." which reads:

B. No swimming pool or swimming pool complex, that remains idle or unused for a continuous period of two years, whether or not equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such swimming pool or swimming pool complex is located, provided that if the swimming pool or the swimming pool complex becomes idle or unused due to fire, storm, infestation or other peril not caused intentionally by the property owner, then such swimming pool or swimming pool complex may remain idle or unused for a continuous period of three years, after which the use must conform to the regulation of the district in which such swimming pool or swimming pool complex is located

if such swimming pool or swimming pool complex continues to remain idle or unused. Notwithstanding anything to the contrary hereinabove, a nonconforming swimming pool or swimming pool complex may remain idle or unused for a period of two years during any major structural repair, construction or replacement thereof.

**Section 2.** Amend Chapter 185, Zoning, Article IX, Nonconformities of the Municipal Codes by adding a § 185-64 which reads:

§ 185-64 Nonconforming Swimming Pools or Swimming-Pool Complexes.

**A.** A lawfully existing swimming pool or swimming pool complex that is nonconforming as to green space, impervious surface area, location, setback, placement or other similar restriction within a required yard or front buildable area may be repaired, reconstructed, or replaced, provided that:

- 1) The swimming pool or swimming pool complex was lawfully constructed and existed prior to the adoption of the regulation that caused the swimming pool or swimming pool complex to become nonconforming; and
- 2) The repaired, reconstructed or replaced swimming pool or swimming pool complex shall be located in substantially the same location and shall not (i) exceed dimensions or footprint of the swimming pool or swimming pool complex existing at the commencement of the repair, restoration or construction thereof; and (ii) shall not reduce the green space or increase the impervious surface area existing on the Parcel on which the swimming pool or swimming pool complex is located at the commencement of the repair, restoration or construction thereof; and
- 3) The repair, restoration, or reconstruction shall not increase the degree of any existing nonconformity;
- 4) Nothing in this subsection shall exempt a swimming pool or swimming pool complex or the Parcel on which the aforesaid may exist from compliance with applicable building, safety, floodplain management, or other requirements of the Town Code, except for the lawful zoning nonconformities expressly permitted to continue under this subsection.

**Section 3.** If any provisions of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

**Section 4.** This Ordinance shall take effect immediately upon its passage by a majority vote of the Commissioners of the Town of Dewey Beach.

Adopted by at least a majority of the Commissioners of the Town of Dewey Beach on this \_\_\_\_ day of \_\_\_\_\_ 2026.

#### SYNOPSIS

This amendment establishes provisions allowing lawfully existing, nonconforming swimming pools and swimming pool complexes to be maintained, repaired, reconstructed or replaced when new regulations have caused existing swimming pools or swimming pool complexes to become nonconforming. The pool must have been lawfully constructed before the regulation creating the nonconformity, remain substantially in the same location and within its existing footprint, and not increase the degree of nonconformity and comply with all applicable building, safety, and floodplain requirements of the Municipal Code.

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Mayor, William Stevens

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Town Manager, Bill Zolper