

Non-Conforming Uses

11.15.8800 Nonconforming Uses

- A. The purpose of this section is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming uses. The intent is to allow procedures for considering changes to nonconforming uses that do not increase the level of adverse impacts on the neighborhood, or changes required for the use to comply with State or County health or safety requirements.
- B. Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC .8805 or .8810.
- C. If a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be reestablished unless the resumed use conforms with the requirements of this Zoning Code at the time of the proposed resumption.
- D. Notwithstanding any other provisions of this Code, a surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:
 - 1. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a State of Oregon exemption from surface mining regulation; and
 - 2. The surface mining use was not inactive for a period of 12 consecutive years or more.
 - 3. For purposes of this subsection, inactive means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.
- E. A nonconforming use may be maintained with ordinary care.
- F. A change in ownership or occupancy of a nonconforming use is permitted.

11.15.8805 Restoration or Replacement Due to Fire, other Casualty or Natural Disaster

- A. After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC .8815, the Planning Director may authorize restoration or replacement of that nonconforming use based on findings that:
 - 1. The restoration or replacement is made necessary by fire, other casualty or natural disaster, and
 - 2. The restoration or replacement must be commenced within one year from the date of occurrence of the fire, casualty or natural disaster.
- B. Any decision on restoration or replacement of a nonconforming use due to fire, other casualty or natural disaster shall:
 - 1. Provide notice as required by MCC .8220,
 - 2. Be final at the close of business on the twelfth calendar day following the filing of the written decision with the Director of the Department of Environmental Services unless prior thereto, any party as defined by MCC .8225 files a Notice of Appeal with the Planning Director pursuant to MCC .8290(B) and (C). Upon receipt of a Notice of

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Appeal, the Planning Director shall schedule a public hearing on the appeal for the next available hearing of the Hearing Officer.

11.15.8810 Alteration, Expansion or Replacement of Nonconforming Uses

- A. Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.
- B. After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC .8815, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:
 - 1. The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or
 - 2. The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.
- C. After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC .8815, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood.
 - 1. The character and history of the use and of development in the surrounding area;
 - 2. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;
 - 3. The comparative numbers and kinds of vehicular trips to the site;
 - 4. The comparative amount and nature of outside storage, loading and parking;
 - 5. The comparative visual appearance;
 - 6. The comparative hours of operation;
 - 7. The comparative effect on existing flora;
 - 8. The comparative effect on water drainage or quality; and
 - 9. Other factors which impact the character or needs of the neighborhood.
- D. Any decision on alteration, expansion or replacement of a nonconforming use shall:
 - 1. Provide notice as required by MCC .8220,
 - 2. Be final at the close of business on the twelfth calendar day following the filing of the written decision with the Director of the Department of Environmental Services unless prior thereto, any party as defined by MCC .8225 files a Notice of Appeal with the Planning Director, pursuant to MCC .8290(B) and (C). Upon receipt of a Notice of Appeal, the Planning Director shall schedule a public hearing on the appeal for the next available hearing of the Hearing Officer.

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11.15.8815 Verification of Nonconforming Use Status

- A. The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:
1. Was legally established and operating at the time of enactment or amendment of this Zoning Code, and
 2. Has not been abandoned or interrupted for a continuous two year period.
- B. The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:
1. Description of the use;
 2. The types and quantities of goods or services provided and activities conducted;
 3. The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
 4. The number, location and size of physical improvements associated with the use;
 5. The amount of land devoted to the use; and
 6. Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.
 7. A reduction of scope or intensity of any part of the use as determined under MCC .8815(B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.
- C. In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.
- D. Except for nonconforming uses considered under MCC .8810(B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.
- E. Any decision on verification of nonconforming use status shall:
1. Provide notice as required by MCC .8220,
 2. Be final at the close of business on the twelfth calendar day following the filing of the written decision with the Director of the Department of Environmental Services unless prior thereto, any party as defined by MCC .8225 files a Notice of Appeal with the Department, pursuant to MCC .8290(B) and (C). Upon receipt of a Notice of Appeal,

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the Planning Director shall schedule a public hearing on the appeal for the next available hearing of the Hearing Officer.

- F. An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application.
- G. For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application.

[Amended 1990, Ord. 643 § 2; Repealed and Replaced 2000, Ord. 940 § III]