

**PRELIMINARY DRAFT AMENDMENTS RELATED TO
CHAPTER 39 – MULTNOMAH COUNTY ZONING CODE, PARTS 1.B, 2 and 8.C**

PART 1 – ADMINISTRATION, PROCEDURES, ENFORCEMENT, PERMITS AND FEES

PART 1.B - PROCEDURES

§ 39.1250 CODE COMPLIANCE AND APPLICATIONS.

(A) Except as provided in subsection (AB), the County shall not issue a permit, make a land use decision approving development, including land divisions and property line adjustments, or issue authorize a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all the applicable provisions of the Multnomah County Zoning Code and for any permit approvals previously issued by the County. For the purposes of this section, a property is in compliance with applicable provisions of the Multnomah County Zoning Code if:

- (1) The property is comprised of one or more lots of record which have been established in accordance with Section 39.3005, unless otherwise provided in this chapter or Statute.
- (2) Existing and proposed uses on the property comply with the applicable provisions of the Multnomah County Zoning Code. Uses which require a land use approval (e.g., conditional uses) have obtained the required approval. Properties with an existing non-conforming use are subject to the non-conforming use provisions in Section 39.8300; and
- (3) Existing and proposed improvements on the property comply with the applicable provisions of the Multnomah County Zoning Code. Properties with existing non-conforming improvements are subject to the non-conforming improvement provisions in Section 39.8300.

(AB) A permit or other approval, including building permit applications, may be authorized if without consideration of whether the property is fully in compliance with applicable provisions of the Multnomah County Zoning Code if the proposed development is:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work within a public right of way or related to and within a valid easement over, on or under an affected property; or
- (4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or
- (5) A minor project. The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project and shall qualify under at least one of the following categories:

- (a) Maintenance of existing lawfully established improvements; or

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~~(ab)~~ Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

~~(b)~~ Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or

~~(c)~~ Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

~~(dc)~~ Roof mounted solar renewable (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

~~(e)~~ Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

~~(f)~~ Heating oil, propane and similar tanks; or

~~(gd)~~ Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

~~(be)~~ Outside a Flood Hazard zone or Geologic Hazard overlay, accessory Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or

~~(ef)~~ Outside a Flood Hazard zone or Geologic Hazard overlay, free Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

~~(eg)~~ Outside a Flood Hazard zone or Geologic Hazard overlay, mechanical Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

~~(fh)~~ Outside a Flood Hazard zone or Geologic Hazard overlay, heating Heating oil, propane and similar tanks; or

~~(i)~~ Outside a Flood Hazard zone or Geologic Hazard overlay, driveway or access request, where the proposed location and configuration of the driveway or other access is consistent with all County standards and requirements for such improvements.

(BC) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

(Ord. 1309, Added, 08/18/2022)

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PART 2 – DEFINITIONS

Nonconforming Use

(a) Nonconforming Lot of Record - A lot of record which does not meet the current minimum area, dimension or access requirements of the district in which it is located.

(b) Nonconforming Improvement - A structure, building, or site improvement that was lawfully constructed in compliance with the applicable development and design standards in effect at the time of construction, but which no longer complies with the applicable development and design standards of the district in which it is located. An improvement shall be considered legally conforming if the nonconformance has been authorized by a permit (e.g., a variance or planned development).

(c) Nonconforming Use – A ~~legally established use or activity, structure or physical improvement that was lawfully established in compliance with the zoning regulations in effect in existence at the time it was established of enactment or amendment of the Zoning Code~~ but which is no longer identified as an allowed, permitted (including permitted under prescribed conditions), primary, review, or conditional use within the district in which it is located, not presently in compliance with the use regulations of the base zone. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming. An established use that later requires an approval (e.g., conditional use) within the district in which it is located shall be considered nonconforming until such time as the required permit is obtained.

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PART 8 – SPECIFIC USE STANDARDS

8.C – NONCONFORMING ~~USES~~ SITUATIONS

§ 39.8300- NONCONFORMING SITUATIONS, GENERALLY

(A) Purpose. The purpose of MCC 39.8300 through 39.8335 (Nonconforming Situations) is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming improvements and nonconforming uses. Sites with both nonconforming improvements and nonconforming uses are subject to both MCC 39.8310 and MCC 39.8320 through 39.8335. The regulations for nonconforming billboards are stated in MCC 39.6770; all other nonconforming signs are subject to the nonconforming development provisions of this Section.

(B) The nonconforming situations provisions in MCC 39.8300 through 39.8335 apply to lawfully established uses or improvements and which have been maintained over time. Uses or improvements that were not lawfully established or which have not been maintained over time do not have a legal right to continue as nonconforming situations and must be removed. The property owner or applicant is responsible for documenting that a nonconforming situation was legally established and maintained on its present site.

(C) The provisions MCC 39.8300 shall apply to all nonconforming uses and improvements existing as of the effective date of this ordinance:

(1) Nonconforming situations may continue unchanged without additional land use review and approval. The nonconforming status of a use or improvement shall not be affected by changes in ownership or occupancy provided the change in ownership or occupancy does not result in a change of use.

(2) Normal maintenance and repair of nonconforming situations is allowed.

(3) A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and a nonconforming situation may not be re-established.

(4) Nonconforming uses or nonconforming improvements that have been intentionally removed or destroyed by the owner shall lose their legal nonconforming status.

(5) Except as specified herein, a nonconforming situation shall maintain compliance with any and all previously established conditions of approval.

(5) Any nonconforming use or improvement dependent upon a building or structure that has been declared “unsafe” or a “public nuisance” will be considered terminated upon that notice unless the nuisance is abated in accordance with the applicable requirements.

(D) In addition to the general requirements in MCC 39.8300, properties with nonconforming situations are subject to the standards and procedures for the type (or types) of nonconforming situations applicable to that property.

(1) Nonconforming improvements are subject to MCC 39.8310 through 39.8315.

(2) Nonconforming uses are subject to MCC 39.8320 through 39.8335.

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§ 39.8310 - NONCONFORMING IMPROVEMENTS

(A) A nonconforming improvement may be maintained and continued, provided there is no physical change other than necessary maintenance and repair to the improvement, except as allowed by this chapter. A nonconforming improvement which is on the site of one more nonconforming uses is also subject to the provision in MCC 39.8320 through 39.8335 applicable to nonconforming uses.

(B) Except as specified in Section (C) through (F), below the alteration of any nonconforming improvement is subject to the following:

(1) Changes to the site that do not alter the nonconforming improvement are allowed.

(2) A nonconforming improvement or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this development code or moves in the direction of conformity.

(3) A nonconforming improvement shall not be enlarged or altered in a way that increases its nonconformity (e.g., expansion of a building that is nonconforming with the minimum setback standard shall not cause the building to further encroach into the setback).

(C) For nonconforming residential development, existing lawfully established habitable dwellings may be altered or enlarged, and additional dwelling units and amenities may be added to the site to the extent allowed by the zoning district, provided the building and development site do not move further out of conformance with the applicable standards (unless nonconformance is otherwise allowed by this Code or State statute).

(D) Alterations that will increase parking or loading demand on sites that are, or will be made, nonconforming in terms of the number of parking or loading spaces are subject to the following:

(1) The applicant may propose a parking standard that is different than the standard under MCC 39.6500 through 39.6600, for review and action by the Planning Director through a Type II procedure.

(2) The applicant's proposal shall consist of a written request and a parking analysis prepared by a qualified professional. The parking analysis, at a minimum, shall assess the average parking demand and available supply for existing and proposed uses on the subject site; opportunities for shared parking with other uses in the vicinity; existing public parking in the vicinity; transportation options existing or planned near the site, such as frequent bus service, carpools, or private shuttles; and other relevant factors.

(3) Within the existing parking area, the layout of the parking spaces may be redesigned and the parking area re-striped if all requirements for setbacks, landscaping, and parking space and aisle dimensions are met unless waived by the Planning Director through a Type II procedure.

(E) The owner of a nonconforming driveway approach or access to a public street, upon receiving land use or development approval, may be required as a condition of approval to bring the nonconforming access into conformance with county standards.

(F) When a nonconforming development is damaged or destroyed by fire or other causes beyond the control of the owner, it may be replaced in-kind within the footprint of the destroyed improvement, provided the structure is fully reconstructed within X years from the date the damage or destruction occurred, and further provided doing so is not otherwise precluded by the regulations of the Multnomah

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County Code. The replacement improvements shall not increase the degree of nonconformity beyond that of the previously existing improvements.

§ 39.83~~2000~~- NONCONFORMING USES.

(A) ~~The purpose of~~ MCC 39.83~~020~~ through 39.83~~135~~ (Nonconforming Uses) ~~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) The Planning Director must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of the nonconforming use will have a greater adverse impact on the neighborhood under MCC 39.83~~135~~ (C).

(C) 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 39.83~~130~~ and 39.83~~135~~ after verification under MCC 39.83~~025~~. Improvements on the same site as a nonconforming use that are entirely unrelated to the operation of the nonconforming use are not subject to the nonconforming use provisions.

(D) Except as provided in Sections (E) and (F), below, if ~~if~~ a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this Zoning Code at the time of the proposed resumption.

(E) 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.

~~—(F) A nonconforming use may be maintained with ordinary care.~~

~~—(G) A change in ownership or occupancy of a nonconforming use is permitted.~~

~~—(H) No application under this section is required for the alteration, expansion, or replacement of a lawfully established habitable dwelling when the base zone regulates such alteration, expansion, or replacement and the proposed alteration, expansion, or replacement satisfies the dimensional requirements of the base zone.~~

~~(F)~~ A use continued under this section is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.

(Ord. 1309, Amended, 08/18/2022)

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§ 39.83~~02~~²⁵ 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 the enactment ~~or amendment~~ of this Zoning Code, or its subsequent amendment, made the use nonconforming, 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.

(1) Except as provided in Subsection (3), the applicant must provide evidence of the following:

- (a) That a nonconforming use was legally established on its present site. Evidence that the use was allowed could include building, land use, or development permits. For uses which did not require a permit when lawfully established, the applicant must provide other evidence which clearly shows the date the development or use was established such as dated aerial photographs;
- (b) That the use has been maintained over time and not abandoned or interrupted for a continuous two year period. Evidence that a use has been maintained over time, includes, but is not limited to, building permits, functioning utility hookups, tax records, business licenses, lease agreements, business receipts, and/or similar documentation; and
- (c) The nature and extent of the use necessary to evaluate the considerations in Subsection (2), below.

(2) When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

- (1a) Description of the use;
- (2b) The types and quantities of goods or services provided and activities conducted;
- (3c) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- (4d) The number, location and size of physical improvements associated with the use;
- (5e) The amount of land devoted to the use; and
- (6f) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.
- (7g) A reduction of scope or intensity of any part of the use as determined under this subsection (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.

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(3) An applicant may choose to 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.

(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 39.83~~4~~35 (B), the Planning Director may impose conditions to any verification of nonconforming use status to ensure compliance with said verification.

~~—(E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.~~

~~—(F) 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. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.~~

§ 39.83~~4~~30 RESTORATION OR REPLACEMENT DUE TO FIRE, OTHER CASUALTY OR NATURAL DISASTER.

After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.83~~0~~25, the Planning Director may authorize restoration or replacement of that nonconforming use based on findings that:

(A) The restoration or replacement is made necessary by fire, other casualty or natural disaster,

(B) If the structure is designed for human occupancy and in areas where there is evidence of substantial risk for rapidly moving landslides, the restoration is done in compliance with ORS 195.260 (1)(c), and

(~~B~~C) The application for restoration or replacement must be submitted within one year from the date of occurrence of the fire, casualty or natural disaster.

§ 39.83~~4~~35 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,

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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 39.83~~02~~25, 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 39.83~~02~~25, 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 the factors listed below. Adverse impacts to one of the factors 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 be processed as a Type II permit as described in Part 1 of this Zoning Code.
