

# CHAPTER 11. NONCONFORMITIES

<b>11.1</b>	<b>GENERAL</b>	<b>1</b>
11.1.1	Purpose	1
11.1.2	Nonconformities Regulated	1
A)	Nonconforming Uses	1
B)	Nonconforming Structures	1
C)	Nonconforming Dwellings	1
D)	Nonconforming Lots and Parcels	1
E)	Nonconforming Signs	1
11.1.3	Policies	1
A)	General Policy	1
B)	Authority to Continue	2
C)	Verification of Nonconformity Status	2
D)	Repairs and Maintenance	2
E)	Change of Tenancy or Ownership	2
<b>11.2</b>	<b>NONCONFORMING USES</b>	<b>2</b>
11.2.1	Alterations	2
A)	Change in Use	2
B)	Expansion or Enlargement	2
C)	Expansion of Nonconforming Aggregate and Mining Operations	3
D)	Expansion of Nonconforming Rural Industrial Operations	3
E)	Relocation	3
11.2.2	Discontinuance	3
A)	General Rule	3
B)	Exemption for Surface Mining Uses	4
11.2.3	Accessory Uses	4
11.2.4	Signs	4
<b>11.3</b>	<b>NONCONFORMING STRUCTURES</b>	<b>4</b>
11.3.1	Alterations to Structures	4
A)	Enlargement or Modification	4
B)	Relocation	5
11.3.2	Damage or Destruction	5
<b>11.4</b>	<b>NONCONFORMING DWELLINGS</b>	<b>5</b>
11.4.1	Exemption for Single Family Dwellings	5
<b>11.5</b>	<b>NONCONFORMING LOTS AND PARCELS</b>	<b>5</b>
<b>11.6</b>	<b>NONCONFORMING SIGNS</b>	<b>5</b>
11.6.1	Change of Copy; Repairs	5
11.6.2	Discontinuance	6
<b>11.7</b>	<b>NONCONFORMITIES CREATED BY PUBLIC ACTION</b>	<b>6</b>
<b>11.8</b>	<b>VERIFICATION OF NONCONFORMING STATUS</b>	<b>6</b>
11.8.1	Process	6
11.8.2	Exemptions	7

# CHAPTER 11.<sup>1</sup> NONCONFORMITIES

---

## 11.1 GENERAL

### 11.1.1 Purpose

This Chapter governs permanent and temporary uses, structures, and signs that came into being lawfully, but do not conform to one or more requirements of this Ordinance.

### 11.1.2 Nonconformities Regulated

The regulations of this Chapter address the following types of situations, all of which are collectively referred to as “nonconformities” (see Ch.13 “nonconforming” definition):

A) ***Nonconforming Uses***

A use that was lawfully established before the effective date of this Ordinance but which no longer conforms to the uses or dwelling density allowed in the zoning district in which it is located, is considered nonconforming and is regulated either under Chapter 11 of this Ordinance, or Section 6.3.2(A), Manufactured Dwelling Park, where applicable.

B) ***Nonconforming Structures***

Buildings and structures, not including signs, that were lawfully established but do not comply with the dimensional and locational standards of the zoning district in which they are now located (see Table 8.2-1: “Table of Density and Dimensional Standards”) are referred to as “nonconforming structures.”

C) ***Nonconforming Dwellings***

A dwelling is a type of structure that may be nonconforming due to its location or use (e.g., density).

D) ***Nonconforming Lots and Parcels***

Lawfully established lots or parcels may become nonconforming as a result of changes in zoning. Generally, a lot or parcel becomes nonconforming due to size or configuration.

E) ***Nonconforming Signs***

Signs that were lawfully established but do not comply with the sign regulations of Section 9.6 are referred to as “nonconforming signs.”

### 11.1.3 Policies

A) ***General Policy***

The County recognizes the interests of property owners in continuing to use their property. It is the general policy of the County to allow nonconformities to continue to exist and be put to productive use, while bringing as many aspects of the use or structure into conformance with this Ordinance as is reasonably practicable.

---

<sup>1</sup>Ordinance 2006-10, effective 2-18-07

- B) **Authority to Continue**  
Nonconformities will be allowed to continue in accordance with the regulations of this Chapter. Structures designed for a specific use that is not currently allowed in the zoning district may continue to house the use the structure was designed to accommodate (e.g., gas station in a residential zone).
- C) **Verification of Nonconformity Status**  
The burden of establishing that a nonconformity lawfully exists will be on the owner, not the County. (See Section 11.8.)
- D) **Repairs and Maintenance**  
Repairs and normal maintenance required to keep nonconformities in a safe condition will be permitted, provided that no alteration will be allowed unless specifically permitted by this Chapter or required by law. (See ORS 215.130 (5))
- E) **Change of Tenancy or Ownership**  
Changes of ownership, tenancy, or management of an existing nonconformity are permitted, and in such cases the nonconforming situation will continue to be subject to the standards of this Chapter.

## 11.2 NONCONFORMING USES

All nonconforming uses will be subject to the following standards:

### 11.2.1 Alterations

An alteration of a nonconforming use may include a change in the use that may or may not require a change in any structure or physical improvements associated with it. An application for an alteration of a nonconforming use must show either that the use has nonconforming status, as provided in Section 11.8, or that the County previously issued a determination of nonconforming status for the use and the use was not subsequently discontinued as provided in Section 11.2.2. A nonconforming use, once modified to a conforming or less intensive nonconforming use, may not thereafter be changed back to any less conforming use.

- A) **Change in Use**  
Applications to change a nonconforming use to a conforming use are processed in accordance with the applicable provisions of the zoning district. (See Chapter 6.) Applications to change a nonconforming use to another, no more intensive nonconforming use are processed as a Type 2 review. The application must show that the proposed new use will have no greater adverse impact on the surrounding neighborhood.
- B) **Expansion or Enlargement**
  - 1) A nonconforming use, other than a single-family dwelling (see Section 11.4), aggregate, mining, or rural industrial use operation (see subsection (C) below), may not be expanded or enlarged except as provided under (2) below. For purposes of this Section, to “expand” or “enlarge” means:
    - a) To replace a structure, in which a nonconforming use is located, with a larger structure;

- b) To alter the use in a way that results in more traffic, employees, or physical enlargement of an existing structure housing a nonconforming use; or
  - c) An increase in the amount of property being used by the nonconforming use.
- 2) Limited expansion of a nonconforming use may be approved, through a Type 3 review, provided such expansion includes improvements to the existing use to a degree that the existing use, including the proposed expansion, complies with or is more in conformance with the development standards of Chapter 9, and will have no greater adverse impacts on the surrounding neighborhood.
- C) ***Expansion of Nonconforming Aggregate and Mining Operations***  
 In all zoning districts except AR, any expanded use of property for aggregate removal, mining or quarry operations, or the processing of materials is subject to all of the provisions of this Ordinance, including the aggregate mining standards of Sections 4.2.8, 4.4.8, and 6.3.4(A). Aggregate and mining operations in the AR District are subject solely to the standards in Section 4.4. For purposes of this Section, an “expanded use” means:
- 1) Additional facilities or equipment not previously used at the site (except for replacement equipment); or
  - 2) The commencement of methods or procedures of processing such as crushing or blasting not previously performed on-site; or
  - 3) Any extension of the operation to land not owned, leased, or under license on the effective date of this Ordinance; or
  - 4) Expanded or new operations within the 100-year floodplain and/or floodway.
- D) ***Expansion of Nonconforming Rural Industrial Operations***  
 Lawfully established nonconforming industrial operations may only be expanded or enlarged through a minor zoning map amendment to Rural Limited Industrial (RLI). (See Section 3.7.3(C))
- E) ***Relocation***  
 No nonconforming use may be moved in whole or in part to any other portion of the lot or parcel on which it is located unless such reconfiguration will have no greater adverse impact on the surrounding neighborhood. A nonconforming use may not be relocated to another lot or parcel, unless the use will be in conformance with the use regulations of the zoning district into which it is moved.

**11.2.2 Discontinuance**

A) ***General Rule***

If a nonconforming use, other than a use specified in this Section, or a single family dwelling as provided in Section 11.4.1(B), is discontinued for a period of more than two (2) years, the subsequent use of the lot or parcel will conform to the regulations and provisions of this Ordinance applicable to that lot or parcel. An application for a determination that a nonconforming use

that has been temporarily discontinued may continue to operate is subject to a Type 2 review, and a finding that the use has not been discontinued for more than two (2) years. A cessation of use that is the result of government action, court order, or land use code violation not related to the nonconforming use is not considered a discontinuance for purposes of this Section.

**B) *Exemption for Surface Mining Uses***

A nonconforming surface mining use continued under this Chapter will not be deemed to be interrupted or discontinued 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 or local exemption from surface mining regulations; 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. [See ORS 215.130(7)(b)]

**11.2.3 Accessory Uses**

No use that is accessory to a principal nonconforming use will continue after the principal use ceases to exist.

**11.2.4 Signs**

The Director may authorize on-premise signs for a nonconforming use pursuant to Section 9.6.4. Any new signage is limited to the number, location, and size provided for in the zoning district in which the use is located, as set forth in Section 9.6.

**11.3 NONCONFORMING STRUCTURES**

Structures may be nonconforming because they do not comply with the locational or dimensional requirements of this Ordinance, or because their intended use and purpose is not consistent with the zoning district in which they are located. Such structures are considered to be nonconforming by design. Nonconforming structures are subject to the following standards:

**11.3.1 Alterations to Structures**

Nonconforming structures may be altered in conformance with the development standards of this Ordinance. Any alteration to a nonconforming structure that proposes reconstruction not in compliance with the standards of this Ordinance, requires a Type 2 review to ensure no greater adverse impact to the surrounding neighborhood.

**A) *Enlargement or Modification***

A nonconforming structure may be remodeled, replaced, or enlarged, or otherwise altered, provided such work is in compliance with health and safety requirements of this Ordinance and other applicable law. Proposed enlargements or modifications of a nonconforming structure that do not comply with applicable standards of this Ordinance may be allowed under a Type 2 review when the structure would be rendered no more

nonconforming and the applicant demonstrates that there will be no greater adverse impact to the surrounding neighborhood.

B) **Relocation**

Nonconforming structures may be moved when the relocation will cause the structure to be more in compliance with applicable standards.

**11.3.2 Damage or Destruction**

If a nonconforming structure is damaged by fire, other casualty, or natural disaster, the structure may be repaired or reconstructed to its original square footage without compliance with the provisions of this Ordinance when such work commences under an approved permit within one (1) year of the damage. If, for any reason, permitted repair work is not completed and the permit expires, repair or reconstruction of a damaged nonconforming structure thereafter is subject to the requirements of Section 11.3.1.

**11.4 NONCONFORMING DWELLINGS**

**11.4.1 Exemption for Single Family Dwellings**

Notwithstanding any other provisions of this Chapter, a single family dwelling that is nonconforming due to its location or use (e.g., density) may be replaced, remodeled or relocated subject to the following:

- A) A lawfully established single-family dwelling may be re-established after a period of interrupted use for up to four (4) years without further compliance with the requirements of this Ordinance, provided however, that access, floodplain, health, sanitation, and applicable fire safety requirements are met. In cases where a nonconforming dwelling replacement was authorized until a date certain in writing by the County prior to adoption of this Ordinance, the time period specified by the County remains valid.

**11.5 NONCONFORMING LOTS AND PARCELS**

Lots or parcels created in compliance with Sections: 1.7.4 (Lawfully Established [Preexisting] Nonconformities Under Prior Ordinance); 1.7.5 (Preexisting Uses and Lots); 6.3.2 (Manufactured Dwelling Park Conversion); 6.3.5 (Transportation Uses, Transportation Improvements); 8.9 (Parcel Area Reductions); 10.2 (Land Division Applicability and Jurisdiction); or 10.5 (Dedication Requirements) are lawfully created and entitled to the development rights associated with any other lot or parcel created in accordance with this Ordinance, unless otherwise stipulated in the division approval.

Lots or parcels may become nonconforming as a result of changes in zoning, but nonconforming lots and parcels may not be created through approval of a development review, except as allowed under Sections 8.9 or 10.5 of this Ordinance. The configuration of a nonconforming lot or parcel may be altered pursuant to the property line adjustment provisions of Section 3.4, and is not a division of land except as specified by OAR 660-033-0020(4) and 660-006-0005(4). Divisions of nonconforming lots or parcels may occur in certain zoning districts, subject to the provisions of Section 8.9 or 10.5.

**11.6 NONCONFORMING SIGNS**

**11.6.1 Change of Copy; Repairs**

Change of copy or the substitution of panels or faces on nonconforming permanent signs will be permitted. Repairs and maintenance of nonconforming permanent

signs, such as repainting and electrical repairs, is permitted. Nonconforming temporary signs that have fallen into disrepair or become a nuisance must be removed upon notification from the County.

#### **11.6.2 Discontinuance**

Any nonconforming sign that is removed for a period of one (1) year or more may not be replaced except in full compliance with the standards of Section 9.6. Any nonconforming sign that pertains to a business or institution that ceases operation for a period of 180 days or more may not be reused for sign purposes until it is brought into full compliance with the sign regulations of Section 9.6.

### **11.7 NONCONFORMITIES CREATED BY PUBLIC ACTION**

When lot area or setbacks are reduced as a result of conveyance to a federal, state, or local government for a public purpose, the remaining area of the lot or parcel is deemed to be in compliance with the minimum lot size and setback standards of this Ordinance. Parcels which could be divided under the existing zoning district shall not be prohibited from such division if the parcel size falls below the minimum requirements due to dedication of right-of-way for improvement to a public road. See Sections 6.3.5 and 10.5.2

### **11.8 VERIFICATION OF NONCONFORMING STATUS**

#### **11.8.1 Process**

Owners of nonconforming uses, structures, or signs may request a “verification of lawful nonconforming status” by filing an application with the Director in accordance with Type 2 decision-making procedures. In cases of nonconforming lots or parcels, determinations regarding lawful lot creation may be made in accordance with the provisions of Section 10.2.1. *(Amended by Ordinance 2004-12, effective 2-6-2005)*

- A) The application must be accompanied by documentation that establishes the approximate date that the use, structure, or sign was established; proof that the use, structure, or sign was lawfully established at the time it became nonconforming; and proof that the use has not been discontinued or abandoned, except as provided in Section 11.8.2 below. The Director may require or provide additional information if deemed necessary to permit an accurate determination.
  
- B) Notwithstanding subsection (A) above, the applicant will not be required to prove the existence, continuity, nature, and extent of the use for more than a consecutive 10-year period immediately preceding the date of application. Documentation showing the use existed and was continued during this time period 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. *[ORS 215.130]*
  
- C) Once issued, a County provided verification will be recorded in the County deed records by the applicant. Such verifications will run with the land, and their status will not be affected by changes of tenancy, ownership, or management.

#### **11.8.2 Exemptions**

Notwithstanding Section 11.8.1 above, where the contention for nonconforming use is raised in a court in any action brought to enforce this Ordinance before an

application for determination has been filed under this Section, this Section will not be applicable and the court will have jurisdiction to determine the issue.