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CHAPTER 11. NONCONFORMITIES

**JACKSON COUNTY LAND DEVELOPMENT CODE (LDC)
STANDARDS & CRITERIA**

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Jackson County Land Development Code (LDC)

JACKSON COUNTY LDC CHAPTER 11. NONCONFORMITIES

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166) Nonconforming

**JACKSON COUNTY LAND DEVELOPMENT CODE:
CHAPTER.11 NONCONFORMITIES**

JA CO LDC 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.

JA CO LDC 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.**

JA CO LDC 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]*

**JACKSON COUNTY LAND DEVELOPMENT CODE:
CHAPTER.13 DEFINITIONS**

13.1 GENERAL PROVISIONS

13.1.1 Rules of Interpretation

- A) Multiple Definitions
- B) Conflicting Definitions
- C) Interpreting Words, Terms, and Phrases
- D) Approval Criteria and Impacts

13.3 Terms Defined

166) Nonconforming

D) Approval Criteria and Impacts (LDC 13.1.1D))

Unless otherwise stated in the Jackson County Comprehensive Plan, or State or Federal law, the terms *“no adverse impact or effect,” “no greater adverse impact,” “compatible,” “will not interfere,”* and other similar terms contained in the **approval criteria** of this Ordinance **are not intended to be construed to establish an absolute test of noninterference or adverse effects of any type whatsoever with adjacent uses resulting from a proposed land development or division action, nor are they construed to shift the burden of proof to the County.** Such terms and phrases are intended to allow the County to consider and require mitigating measures that will minimize any potential incompatibility or adverse consequences of development in light of the purpose of the zoning district and the reasonable expectations of other people who own or use property for permitted uses in the area.

13.3 TERMS DEFINED

The definitions contained in this Section apply to terms used throughout this Ordinance. In some cases, more than one (1) definition may appear because a specific meaning is to be used in the context of a particular situation or implementation of a land use regulation. When a term is defined within a subset of a numbered term (e.g., “expansion” under AGGREGATE AND MINERAL RESOURCES) the subset definition is the one used in determinations relating to that numbered term.

166) NONCONFORMING: Something that was established (lawfully or otherwise) prior to adoption of a zoning regulation that would now prevent it. A building, structure, lot, parcel or use may be rendered nonconforming by subsequent adoption of zoning regulations. See CHAPTER 11 “NONCONFORMITIES”