

1206 NONCONFORMING USES AND VESTED RIGHTS

1206.01 PURPOSE AND APPLICABILITY

Section 1206 is adopted to provide standards, criteria, and procedures under which a nonconforming use may be continued, maintained, verified, restored, replaced, and altered and under which a vested right may be determined.

1206.02 STATUS

A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. Nonconforming use status applies to the lot(s) of record on which the nonconforming use is located and may not be expanded onto another lot of record, except as provided under Subsection 1206.07(B)(3)(a) and (b) or, in the case of nonconforming premises for marijuana production, with an alteration approved pursuant to Subsection 1206.07(C). A change in ownership or operator of a nonconforming use is permitted.

1206.03 MAINTENANCE

Normal maintenance of a nonconforming use necessary to maintain a nonconforming use in good repair is permitted provided there are not significant use or structural alterations. Normal maintenance may include painting; roofing; siding; interior remodeling; re-paving of access roads, parking areas, or loading areas; replacement of landscaping elements; and similar actions.

1206.04 DISCONTINUATION

- A. If a nonconforming use is discontinued for a period of more than 24 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption.
- B. Notwithstanding Subsection 1206.04(A) and pursuant to Oregon Revised Statutes (ORS) 215.130(7)(b), a nonconforming surface mining use shall not be deemed to be 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 operating permit, or received and maintained a state or local exemption from surface mining regulation; and
 - 2. The surface mining use was not inactive for a period of 12 consecutive years or more. Inactive means no aggregate materials were excavated, crushed, removed, stockpiled, or sold by the owner or operator of the surface mine.

- C. Notwithstanding Subsection 1206.04(A), marijuana production may not be resumed on a premises for which a marijuana producer holds a production license issued under ORS 475B.070 and which is nonconforming to the regulations for the zoning district in which the production is located if the premises is not used for marijuana production for a period of at least 12 calendar months, unless the marijuana production conforms to any zoning requirements or regulations applicable at the time of the proposed resumption.

1206.05 VERIFICATION

Verification of nonconforming use status requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

- A. The nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use, and the nonconforming use has not been subsequently abandoned or discontinued. Once an applicant has verified that a nonconforming use was lawfully established, an applicant need not prove the existence, continuity, nature, and extent of the nonconforming use for a period exceeding 20 years immediately preceding the date of application for verification; or
- B. The existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.

1206.06 RESTORATION OR REPLACEMENT FOLLOWING DAMAGE OR DESTRUCTION

If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored or replaced consistent with the nature and extent of the use or structure lawfully established at the time of loss, subject to the following conditions:

- A. Alterations or changes to the nature and extent of the nonconforming use as lawfully established prior to the fire, other casualty, or natural disaster shall not be permitted under Subsection 1206.06, but may be permitted pursuant to Subsection 1206.07.

- B. Physical restoration or replacement of the nonconforming use shall be lawfully commenced within one year of the occurrence of the damage or destruction. Lawfully commenced means the lawful resumption of the nonconforming use or the issuance of a land use, building, on-site wastewater treatment system, grading, manufactured dwelling placement, residential trailer placement, plumbing, electrical, or other development permit required by the County or other appropriate permitting agency that is necessary to begin restoration or replacement of the nonconforming use or structures and resumption of the nonconforming use.
- C. The nonconforming use status of the use to be restored or replaced, and the nature and extent of the nonconforming use, shall be verified pursuant to Subsection 1206.05.

1206.07 ALTERATION

A. Alterations Required by Law:

- 1. The alteration of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration of the use or structure, subject to building, plumbing, sanitation, and other specialty code permit requirements in effect at the time the alteration is commenced. Additional conditions shall not be imposed upon the continuation of a nonconforming use when an alteration is required to comply with local or state health or safety requirements, except as provided in Oregon Revised Statutes (ORS) 215.215 pertaining to the re-establishment of nonfarm uses in the EFU District.
- 2. Alterations to a premises for which a marijuana producer holds a production license issued under ORS 475B.070 shall be permitted when necessary to comply with a lawful requirement for alteration in production.

B. Alterations Not Required by Law: Except as provided in Subsection 1206.07(C), an alteration of a nonconforming structure or other physical improvements, or a change in the use, requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

- 1. The alteration or change will, after the imposition of conditions pursuant to Subsection 1206.07(B)(4), have no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use.
- 2. The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05.
- 3. The alteration or change will not expand the nonconforming use from one lot of record to another unless:

- a. The lot of record on which expansion is proposed and the lot of record on which the nonconforming use currently is established have been part of the same tract continuously since the date the nonconforming use became nonconforming; or
 - b. The expansion would allow only for facilities necessary to support the nonconforming use, such as driveways, storm water management facilities, and on-site wastewater treatment systems.
4. Conditions of approval may be imposed on any alteration of a nonconforming structure or other physical improvements, or a change in the use, permitted under Subsection 1206.07(B), when deemed necessary to ensure the mitigation of any adverse impacts.
- C. Alterations to Nonconforming Marijuana Production Premises Not Required by Law: Alterations in production or in a building, structure, or physical improvement associated with a nonconforming premises for which a marijuana producer holds a production license issued under ORS 475B.070 requires review as a Type II application pursuant to Section 1307 and shall be subject to the following standards and criteria:
1. The alterations will have no greater adverse impact to the surrounding area than the premises' existing production or its existing associated buildings, structures, and physical improvements; and
 2. The number of calendar months in which the premises have not been used for marijuana production since the premises became nonconforming does not exceed 12.

1206.08 ALTERATION APPROVAL PERIOD AND TIME EXTENSION

- A. Approval Period: Approval of an alteration of a nonconforming use, pursuant to Subsection 1206.07(B) or (C), is valid for a period of two years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this two-year period, the approval shall be implemented, or the approval will become void.
1. Implemented means all major development permits shall be obtained and maintained for the approved alteration of a nonconforming use, or if no major development permits are required to complete the development contemplated by the approved alteration of a nonconforming use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained.
 - a. A major development permit is:

- i. A building or manufactured dwelling placement permit for a new primary structure that was part of the alteration of a nonconforming use approval; or
 - ii. A permit issued by the County for parking lot or road improvements required by the alteration of a nonconforming use approval.
2. Notwithstanding Subsection 1206.04(A), the allowed discontinuance period for a nonconforming use approved for an alteration pursuant to Subsection 1206.07(B) is extended to 24 consecutive months from the date of implementation of the alteration pursuant to Subsection 1206.08(A)(1). In no event shall the total period of discontinuance exceed 48 consecutive months (i.e., any discontinuance period preceding the filing of an application for an alteration, plus the period during which the alteration application is under review, plus the approval period allowed by Subsection 1206.08(A), plus the 24 consecutive months from the date of implementation).
- B. Time Extension: If the approval of an alteration of a nonconforming use is not implemented within the initial approval period established by Subsection 1206.08(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*. However, in no event may the total period of discontinuance exceed 48 months, inclusive of those discontinuance periods identified in Subsection 1206.08(A)(2).

1206.09 VESTED RIGHT DETERMINATION

A vested right determination shall require review as a Type II application pursuant to Section 1307, *Procedures*, and shall be approved if the requested use was vested under common law.

[Amended by Ord. ZDO-230, 9/26/11; Amended by Ord. ZDO-243, 9/9/13; Amended by Ord. ZDO-249, 10/13/14; Amended by Ord. ZDO-250, 10/13/14; Amended by Ord. ZDO-248, 10/13/14; Amended by Ord. ZDO-253, 6/1/15; Amended by Ord. ZDO-276, 10/1/20; Amended by Ord. ZDO-283, 9/5/23]