

Chapter 17.58 LAWFUL NONCONFORMING USES, STRUCTURES AND LOTS

17.58.010 Purpose.

Nonconforming situations are created when the application of zoning district to a site changes or the zoning regulations change. As part of the change, existing uses, density, or development might no longer be allowed or are further restricted. Nonconforming uses, structures and lots are those uses, structures and lots that were lawfully established but do not conform to the provisions of this title or the provisions of the zoning district in which the use, structure or lot is located. The intent of these provisions is not to force all nonconforming situations immediately to be brought into conformance. Instead, the intent is to guide nonconforming situations in a new direction consistent with city policy, and, eventually, bring them into conformance.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 18-1009, § 1(Exh. A), 7-3-2019)

17.58.015 Applicability.

The regulations of this chapter apply only to those nonconforming situations that were lawfully established or that were approved through a land use decision. All nonconforming structures, uses or lots shall have been maintained over time. These situations have lawful nonconforming status. Nonconforming situations that were not allowed when established or have not been maintained over time have no lawful right to continue.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 18-1009, § 1(Exh. A), 7-3-2019)

17.58.020 Lawful nonconforming lots of record.

Lots or parcels lawfully created but which do not now conform to the legal lot standards in this land use code may be occupied by uses otherwise permitted if those uses comply with all other provisions of this land use code.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 18-1009, § 1(Exh. A), 7-3-2019)

17.58.030 Lawful nonconforming use.

A use that was lawfully established on a particular development site but that no longer complies with the allowed uses or the standards for those uses in this title may be considered a lawful nonconforming use. Change of ownership, tenancy, or management of a lawfully established nonconforming use shall not affect its lawful nonconforming status. The continuation of a lawful nonconforming use is subject to the following:

- A. Discontinuance. If a lawful nonconforming use is discontinued for a period of one year, it shall lose its lawful nonconforming status and the use of the property thereafter shall conform with the existing provisions of this title. If a nonconforming use ceases operations, even if the structure or materials related to the use remain, the use shall be deemed to have been discontinued.
- B. Conformance. If a lawful nonconforming use is converted to a conforming use, no nonconforming use may be resumed.
- C. Destruction of a Nonresidential Use. When a structure containing a lawful nonconforming nonresidential use is damaged by fire or other causes, the re-establishment of the nonconforming use shall be prohibited if the repair cost of the structure is more than sixty percent of its assessed value.
- D. Destruction of a Residential Use. When a structure containing a lawful nonconforming residential use is damaged by fire or other causes, the re-establishment of the nonconforming use shall be permitted.
- E. Intentional Destruction. When a structure containing a nonconforming use is removed or intentionally damaged by fire or other causes within the control of the owner, the re-establishment of the nonconforming use shall be prohibited.

- F. Expansion. No lawful nonconforming use may be replaced by a different type of nonconforming use, nor may any legal nonconforming use be expanded or intensified.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 18-1009, § 1(Exh. A), 7-3-2019)

17.58.040 Lawful nonconforming structure or site.

A structure or site that was lawfully established but no longer conforms to all development standards of this land use code (such as setbacks) shall be considered lawfully nonconforming. Notwithstanding development standard requirements in this code, minor repairs and routine maintenance of a lawful nonconforming structure are permitted. The continuation of a lawful nonconforming structure or site is subject to the following:

- A. Accidental Destruction. When a nonconforming structure is damaged by fire or other causes, the structure may be rebuilt using the same structure footprint.
- B. Intentional Destruction. When a nonconforming structure is removed or intentionally damaged by fire or other causes within the control of the owner, the replacement structure shall comply with the development standards of this title.
- C. Expansion. An expansion of a lawful nonconforming structure or site may be approved, conditionally approved or denied in accordance with the standards and procedures of this section.
 - 1. In making a determination on such applications, the decision maker shall weigh the proposal's positive and negative features and the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed, and, to approve such expansion, it shall be found that the criteria identified in OCMC 17.58.060 have either been met, can be met by observance of conditions, or are not applicable.
 - 2. Increases in the square footage of a building and/or site improvements which include installation of any additional off-street parking stalls that exceed the threshold of subparagraph C.2.a below shall comply with the development standards listed in subparagraph C.2.b. The value of the alterations and improvements is based on the entire project and not individual building permits.
 - a. Thresholds triggering compliance. The standards of subparagraph C.2.b below shall be met when the value of the increase in square footage of a building and/or increase in off-street parking stalls, as determined by the community development director, is more than seventy-five thousand dollars. The following alterations and improvements shall not be included in the threshold calculation:
 - i. Proposed alterations to meet approved fire and life safety agreements;
 - ii. Alterations related to the removal of existing architectural barriers, as required by the Americans with Disabilities Act, or as specified in Section 1113 of the Oregon Structural Specialty Code;
 - iii. Alterations required to meet seismic design requirements; and
 - iv. Improvements to on-site stormwater management facilities in conformance with Oregon City Stormwater Design Standards.
 - b. Standards that shall be met. Developments not complying with the development standards listed below shall be brought into conformance:
 - i. Pedestrian circulation systems, as set out in the pedestrian standards that apply to the sites;
 - ii. Minimum perimeter parking lot landscaping;
 - iii. Minimum interior parking lot landscaping;

- iv. Minimum site landscaping requirements;
 - v. Bicycle parking by upgrading existing racks and providing additional spaces in order to comply with OCMC 17.52, Off-Street Parking and Loading;
 - vi. Screening; and
 - vii. Paving of surface parking and exterior storage and display areas.
- c. Area of Required Improvements.
- i. Generally. Except as provided in subparagraph C.2.c.ii below, required improvements shall be made for the entire site.
 - ii. Exception for Sites with Ground Leases. Required improvements may be limited to a smaller area if there is a ground lease for the portion of the site where the alterations are proposed. If all of the following are met, the area of the ground lease will be considered as a separate site for purposes of required improvements. The applicant shall meet the following:
 - A. The signed ground lease, or excerpts from the lease document satisfactory to the city attorney, shall be submitted to the community development director. The portions of the lease shall include the following:
 - 1. The term of the lease. In all cases, there shall be at least one year remaining on the ground lease; and
 - 2. A legal description of the boundaries of the lease.
 - B. The boundaries of the ground lease shall be shown on the site plan submitted with the application. The area of the lease shall include all existing and any proposed development that is required for, or is used exclusively by, those uses within the area of the lease; and
 - C. Screening shall not be required along the boundaries of ground leases that are interior to the site.
- d. Timing and cost of required improvements. The applicant may choose one of the two following options for making the required improvements:
- i. Option 1. Required improvements may be made as part of the alteration that triggers the required improvements. The cost of the standards that shall be met, identified in subparagraph C.2.b above, is limited to ten percent of the value of the proposed alterations. It is the responsibility of the applicant to document to the Community Development Director the value of the required improvements. Additional costs may be required to comply with other applicable requirements associated with the proposal. When all required improvements are not being made, the priority for the improvements shall be as listed in subparagraph C.2.b above.
 - ii. Option 2. Required improvements may be made over several years, based on the compliance period identified in Table 17.58-1. However, by the end of the compliance period, the site shall be brought fully into compliance with the standards listed in subparagraph C.2.b. Where this option is chosen, the following shall be met:
 - A. Before a building permit is issued, the applicant shall submit the following to the community development director:

1. A nonconforming development assessment, which identifies in writing and on a site plan, all development that does not meet the standards listed in subparagraph C.2.b.
 2. A covenant, in a form approved by the city attorney, executed by the property owner that meets the requirements of OCMC 17.50.150. The covenant shall identify development on the site that does not meet the standards listed in subparagraph C.2.b, and require the owner to bring that development fully into compliance with this title. The covenant shall also specify the date by which the owner will be in conformance. The date shall be within the compliance periods set out in Table 17.58-1.
- B. The nonconforming development identified in the nonconforming development assessment shall be brought into full compliance with the requirements of this title within the following compliance periods. The compliance period begins when a building permit is issued for alterations to the site of more than seventy-five thousand dollars. The compliance periods are based on the size of the site (see Table 17.58-1).
 - C. By the end of the compliance period, the applicant or owner shall request that the site be certified by the community development director as in compliance. If the request is not received within that time, or if the site is not fully in conformance, no additional building permits will be issued.
 - D. If the regulations referred to by subparagraph C.2.b are amended after the nonconforming development assessment is received by the community development director, and those amendments result in development on the site that was not addressed by the assessment becoming nonconforming, the applicant shall address the new nonconforming development using Option 1 or 2. If the applicant chooses Option 2, a separate nonconforming development assessment, covenant and compliance period will be required for the new nonconforming development.

Table 17.58-1
Compliance Periods for Option 2

Square Footage of Site	Compliance Period
Less than 150,000 square feet	2 years
150,000 square feet or more, up to 300,000 square feet	3 years
300,000 square feet or more, up to 500,000 square feet	4 years
More than 500,000 square feet	5 years

- D. Conversion. Conversion of an existing single-family detached residential unit in a residential zone to a middle housing unit with no expansion of the building is permitted. The standards of subsection C shall apply to any expansion of the structure associated with the conversion.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 18-1005, § 1(Exh. A), 5-2-2018; Ord. No. 18-1009, § 1(Exh. A), 7-3-2019)

17.58.060 Process to confirm the legality of a nonconforming use, lot or structure.

Any person may request a Type I or a Type II review to confirm the legality of a nonconforming use, lot, structure or site. In order to confirm that the nonconforming use, lot, structure or site is legal, sufficient evidence shall be submitted to the city determining the following:

- A. The nonconforming use, lot, structure or site was established lawfully; and
- B. The nonconforming use, lot, structure or site has not become more nonconforming within the past twenty years from the date of application.

The applicant shall provide sufficient evidence to allow the community development director to review and confirm the legality of a nonconforming use, lot, structure or site. An applicant may request a Type I procedure, provided the applicant can provide sufficient evidence to confirm OCMC 17.58.060.A and B without discretion. If the applicant cannot provide sufficient evidence to determine OCMC 17.58.060.A and B without discretion, the applicant may apply for a Type II procedure. Applications for a Type II procedures shall be noticed to the public in a public comment period to gather additional information. If the applicant cannot show that the nonconforming use, lot, structure or site was lawfully established or has not been expanded pursuant to OCMC 17.58.060.A and B above, the use, lot, structure or site shall be determined to be illegal.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 18-1009, § 1(Exh. A), 7-3-2019)