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SECTION 1200 –

LAND USE APPLICATION REVIEW CRITERIA AND GENERAL REQUIREMENTS

1205. NONCONFORMING USES [Last amended 7/9/98, Ord. 648]

1205.01 Purpose and Scope.

Within the zoning districts established by this ordinance and amendments thereto, uses and structures exist which were lawful before the date of adoption or amendment of this ordinance but which would be prohibited or restricted under the terms of this ordinance. The general purpose of this section is to encourage the conversion of such nonconforming uses to conforming uses. However, this section allows nonconforming uses and structures to be continued, altered, restored or replaced subject to satisfaction of the review criteria specified in subsection 1205.03. Nothing contained in this ordinance shall require any change in the plans, construction, or designated use of any structure for which a building permit was issued and actual construction commenced prior to the date of adoption of this ordinance or any amendments thereto. No alteration of a nonconforming use shall be permitted except in compliance with the provisions of this section.

1205.02 Definitions.

For the purpose of this section, the following words, terms and expressions shall be interpreted in accordance with the following definitions, unless the context requires otherwise:

A. **Alteration** - a change in structure, an increase in the number of structures, or a change of use. Where the term alteration is applied to a change of a structure, it is intended to be applied to any change, addition or modification in the structure, except for cosmetic changes such as painting, cleaning, etc. When the term alteration is applied to a change of use, it is intended to be applied

to changes of use from one (1) business, trade, occupation or use to another, or from one (1) division of trade or use to another.

B. Actual construction - the placement of construction materials in a permanent position and fastened in a permanent manner. Where excavation, or demolition or removal of an existing structure has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

1205.03 Review Criteria.

A. The Director shall authorize alteration, restoration or replacement of a nonconforming use or structure pursuant to subsection 1205.01, and subject to the Type A application procedure set forth in Section 1301, when any of the following circumstances apply:

1. The alteration is necessary to comply with any lawful requirements for alteration of said use or structure.

2. Restoration or replacement is made necessary by fire, casualty, or natural disaster. Any restoration or replacement approved pursuant to this subsection shall be commenced within one (1) year from the occurrence of the fire, casualty or natural disaster, or be subject to the provisions of subsection 1205.06.

B. In any other circumstance, the alteration, restoration or replacement of a nonconforming use or structure pursuant to subsection 1205.01 may be authorized by the Director, subject to the Type A application procedure set forth in Section 1301, and provided that the applicant demonstrates that the proposal satisfies the following criteria:

1. That the alteration of use would result in a reduction in nonconformity of the use, or would have no greater adverse impact on the surrounding area than the existing nonconforming uses or than those uses permitted by this ordinance.

2. That the alterations of structures or physical improvements would result in a reduction in nonconformity of the structures or improvements or would have no greater adverse impact on the surrounding area than existing nonconforming structures or physical improvements or than those permitted by this ordinance.

C. A request to verify that a use or structure is legally nonconforming pursuant to Section 1205.01 may be approved by the Planning Director, subject to the Type A application procedure set forth in Section 1301, and provided that the applicant submits evidence of the following:

1. The nature and extent of the use for at least 10 years prior to the date of application for verification of nonconformity.

2. That the use or structure was in existence at least 10 years prior to the date the application for verification of nonconformity is submitted.

3. That the use has continued uninterrupted, or the structure has been occupied continuously, for at least 10 years prior to the date the application for verification of nonconformity is submitted.
[Last amended 7/9/98, Ord. 648]

1205.04 Conditions of Approval.

In approving the alteration, restoration or replacement of a nonconforming use, the decision-making body may impose such conditions as it deems appropriate to ensure that the intent of this section is carried out. Such conditions shall be reasonably related to the criteria set forth in subsection 1205.03. Except as provided in ORS 215.215, no condition shall be placed on the alteration of a nonconforming use when the alteration was only necessary to comply with state or local health or safety requirements or to maintain the existing structures associated with the use.

[Amended 3/19/98, Ord. 643]

1205.05 General Requirements.

Authorization of any alteration, restoration or replacement of a nonconforming use or structure pursuant to this ordinance shall be subject to the following additional requirements:

A. Any approval issued hereunder is not personal to the applicant and shall be deemed to run with the land.

B. Building permits issued in connection with any part of an approved alteration, replacement or restoration of a nonconforming use shall be issued only on the basis of the approved plan.

C. Any proposed changes in connection with an approved plan shall be processed as a new application subject to the provisions of this section and in accordance with the applicable application procedure set forth in Section 1301.

D. Any alteration, replacement or restoration of a nonconforming use approved hereunder shall be null and void one (1) year from the date it is granted unless completion or substantial construction has taken place. The Director may extend the approval for an additional period not to exceed one (1) year upon receipt of the applicable fee and a written request from the applicant demonstrating good cause for the delay and provided that the request to extend approval is received by the Director prior to expiration of the original approval.

1205.06 Change of Ownership or Occupancy, or Discontinuation of a Nonconforming Use.

A change of ownership or occupancy of a nonconforming use shall be permitted. If any nonconforming use is discontinued for a period of one (1) year, the nonconforming use shall not be resumed and any subsequent use of the property and structure involved shall conform to the requirements of this ordinance. The change of any nonconforming use to a permitted use shall constitute discontinuance of the nonconforming use.

1205.07 Changes in Certain Nonconforming Uses Subject to Conditional Use Permit.

Any nonconforming use or structure which is allowed as a conditional use in the particular zoning district under the terms of this ordinance shall be allowed to continue; however, no alteration, restoration or replacement of such a use or structure shall be permitted unless the appropriate conditional use permit is first obtained. Upon approval of such a conditional use permit, the use shall no longer be considered a nonconforming use, but shall be considered a conforming conditional use subject to any and all conditions of approval. In the event that such a conditional use application is denied, the use shall revert to nonconforming use status, and may be continued as it existed before the application was made.

1205.08 Compliance with Conditions.

Compliance with conditions imposed in granting a permit for alteration, restoration or replacement of a nonconforming use and adherence to the approved plot plan shall be required. Any departure from these conditions of approval and approved plans constitutes a violation of this ordinance. The Commission may revoke any permit issued hereunder for failure to comply with any prescribed condition of approval, or for any other violation of this ordinance.

1205.09 Revocation of a Permit for Alteration, Restoration, or Replacement of a Nonconforming Use.

The procedure for the revocation of a permit for alteration, restoration or replacement of a nonconforming use shall be as follows:

A. If, upon review by the Director, a violation of any condition imposed in granting the permit is found, the Director shall inform the applicant by registered letter and first class mail of the violation and require compliance within sixty (60) days or the Director will take action under subsection (B) of this section to revoke approval of the permit for alteration, restoration or replacement of a nonconforming use. The Director's letter, constituting Notice of Intent to Revoke, may be appealed to the Board within thirty (30) days of its mailing. The Board shall consider the appeal in accordance with Section 1403 and may affirm, reverse or modify the Director's Notice of Intent to Revoke. The applicant must comply with the Board's Order on Appeal of Notice of Intent to Revoke within thirty (30) days of the issuance of the Board's decision. If the applicant does not comply with the Board's Order within thirty (30) days, the Director shall take action under subsection (B) of this section to revoke approval of the permit.

The Director may extend the time for compliance if the applicant provides financial or other assurances suitable to the Director that the conditions of approval will be satisfied and maintained.

B. If the violation is not corrected within the time required by subsection A, the Director shall notify the applicant by registered and first class mail that the permit for alteration, restoration or replacement of the nonconforming use has been revoked, and that any subsequent action on the application will require a new application for alteration, restoration or replacement of a nonconforming use.

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