

# Memorandum

July 15, 2015

**To:** Community Advisory Committee  
**Cc:** Project Team  
**From:** Rich Faith, Senior Land Use Planner  
**Re:** Nonconforming Use Policy

## POLICY DEVELOPMENT HISTORY

This memo presents policies pertaining to nonconforming uses that are being recommended by the Land Use Subcommittee. The subcommittee discussed this policy topic at its June 17, 2015 meeting. In general, the subcommittee did not feel that the county's current code provisions for nonconforming uses needs to be strengthened or revised in any major way. The recommended policies basically confirm and support the status quo.

Jed Tomkins, Assistant County Attorney, has reviewed the policy language being recommended by the subcommittee and is proposing some revisions to that language. Both the subcommittee version and Jed's version of the policy are given below, with Jed's version shown in **shaded highlights**.

## WHAT IS A NONCONFORMING USE?

The County Zoning Code defines nonconforming use as:

A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zoning district in which it is located. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

It's important to point out that nonconforming use refers to a use, a structure or other physical improvement. In some cases, the activity or use being conducted on the property is permitted, and therefore conforming, but the structure or other improvement to the site might not comply with current zoning regulations and standards, and is thus a nonconforming development. An example of a nonconforming use would be commercial business in a rural residential zone where the business is not a permitted use. Examples of nonconforming developments would be an unpaved parking lot when current standards require hard surface or a structure that doesn't meet current building setback standards. There are many cases of nonconforming developments in the rural county by virtue of the site development not meeting current zoning standards.

## RECOMMENDED NONCONFORMING USE POLICY

### POLICIES

1. Legal nonconforming uses, structures, or physical improvements will be allowed to continue until they are terminated.

JT: The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued, altered, restored or replaced in accordance with Oregon Revised Statutes 215.130 and 215.135.

2. Zoning regulations shall provide for the continuance of nonconforming uses. ~~They shall also allow restoration or replacement of non-conforming uses in accordance with Oregon Revised Statutes 215.130(6), and their alteration, expansion or replacement when such alteration, expansion or replacement would not create a greater adverse impact on the neighborhood, or are necessary for the use to comply with State or County health or safety requirements. (MCCP , Policy 1)~~

JT: Delete policy #2 because it is captured in his version of policy #1.

3. An addition, expansion, alteration or replacement of a nonconforming use will be allowed when the addition, expansion, alteration or replacement would not create a greater adverse impact on the neighborhood, including but not limited to, noise, dust, lighting, traffic, odor, water use and sewage disposal.

JT: An alteration or replacement of a nonconforming use shall not create a greater adverse impact on the neighborhood, including but not limited to, noise, dust, lighting, traffic, odor, water use and sewage disposal impacts.