

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 20-07

In the Matter of Amending Lane Code 16.251
(Nonconforming Uses, Rural Comprehensive Plan)
to Extend the Time Period Before Nonconforming
Uses Are Considered Discontinued, and to Update
Chapter 14 References (File No. 509-PA20-05239).

WHEREAS, the Board of Commissioners initiated amendments to Lane Code 16.251 (Nonconforming Uses, Rural Comprehensive Plan) on April 7, 2020 to extend the time limitations applicable to lawful nonconforming uses whose status may be put at risk by the cancellation of events due to the COVID-19 Pandemic; and

WHEREAS, amendments to Lane Code 16.251 are necessary to update references to Lane Code Chapter 14, as amended by Ordinance 20-05; and

WHEREAS, the Lane County Planning Commission conducted a noticed public hearing on this matter and made a recommendation to the Board of Commissioners on June 9, 2020; and

WHEREAS, the Board of County Commissioners conducted a noticed public hearing on June 16, 2020, and is now ready to take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDAINS** as follows:

1. Lane Code 16.251 is hereby amended by making the deletions and additions as depicted in **Exhibit A** of this Ordinance, which is attached and incorporated by this reference.
2. The Findings of Fact attached as **Exhibit B** and incorporated by this reference are adopted in support of the above amendments.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion constitutes a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions hereof.

Nothing herein is intended to, nor acts to amend, replace, or otherwise conflict with any other ordinances of Lane County or any other Code or statutory provisions unless expressly so stated.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in exercise of its policy power for the purpose of meeting such emergency and for the immediate preservation of public speech, health, and safety, takes effect upon execution by the Chair of the Board of Commissioners

ENACTED this 16th day of June, 2020.



Heather Buch, Chair
Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

At left margin indicates changes
Bold indicates material being added
~~Strikethrough~~ indicates material being deleted
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**LEGISLATIVE
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and the ornamental fence, wall or hedge between the “R” Zone and the parking lot shall be six feet in height.

(5) Height.

(a) Height limits established for the various zones refer to the height of the building proper. Roof structures, such as housing for elevators, tanks, ventilating fans, towers, steeples, flagpoles, chimneys, smokestacks, wireless masts or similar structures, may exceed the height limit herein prescribed.

(b) On lots sloping downhill from the street, buildings may have an additional story; provided the ceiling of the lowest story is not more than two feet above the average curb level along the front of the lot.

(6) General Building Setback Requirements.

(a) Side Yard.

(i) No building or structure shall be hereafter erected or altered so that any portion thereof shall be nearer to the side lot line than the distance indicated under the Zone classification, except that eaves or cornices may extend over the required side yard for a distance of not more than two feet.

(ii) Fences, walls or hedges which tend to serve as a wall or yard enclosure may be maintained in a side yard, provided they do not exceed six feet in height.

(7) General Lot Area and Width Requirements.

(a) The site area requirements of Chapter 16 shall not apply to prohibit the erection of a single-family dwelling on a lot separately owned on or before January 8, 1969, or on any numbered lot in an approved and filed major or minor subdivision plat of record on or before January 8, 1969, except for the E-RCP, F-1, RCP and F-2, RCP Zones, where use of preexisting parcels is provided for in a different manner.

(b) The minimum area requirements of Chapter 16 shall not be construed to govern in situations where greater minimum area requirements are imposed or required by State law, State rules and regulations, the provisions of this Code, or other County rules and ordinances.

(c) Refer also to LC 13.050 to 13.105 Design and Development Standards for other lot area, width and depth requirements which may be applicable. .
(Revised by Ordinance 7-87, Effective 6.17.87; 6-10, 9.17.10)

NONCONFORMING USES RURAL COMPREHENSIVE PLAN

16.251 Nonconforming Uses.

Except as is hereinafter provided in this Chapter, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Chapter or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this Chapter.

(1) Verification of Nonconforming Use. The verification of a nonconforming use may be obtained subject to **Type II procedures of LC Chapter 14**~~Director approval pursuant to LC 14.100.~~ Verification of a nonconforming use is required prior to requesting approval to increase, restore, alter or repair a nonconforming use. When evaluating a request for verification, the following criteria shall apply:

(a) To be valid, a nonconforming use must have been lawfully established prior to the enactment of an ordinance restricting or prohibiting the use.

(b) The use must have been in actual existence prior to the enactment of an ordinance restricting or prohibiting the use or have proceeded so far toward

completion that a right to complete and maintain the use is deemed to have vested in the landowner.

(c) The nonuse of a nonconforming use of a structure or property for a period in excess of ~~one~~**two** years will prohibit the resumption of the nonconforming use. The burden of proof for the verification of a nonconforming use is upon the applicant.

(2) Change in Nonconforming Use. A nonconforming use may be changed only insofar as it applies to the zone in which it is located. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

(3) Increase of Nonconforming Use. A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot which portion was arranged or designed for such nonconforming use at the time of the passage of this Chapter may be granted subject to **prior submittal and approval of an application pursuant to Type II procedures of LC Chapter 14**~~Director approval pursuant to LC 14.100.~~

(4) Vested Right. Nothing contained in this Chapter shall require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Chapter, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time construction was commenced.

(5) Discontinuance of Nonconforming Use. When a non-conforming use of a structure or property is discontinued for a period in excess of ~~two~~**one** years, the structure or property shall not thereafter be used, except in conformance with the zone in which it is located. (Revised by Ordinance 7-87, 6.17.87; 4-91, 5.17.91)

(6) Unlawful Use of a Nonconforming Use. No unlawful use of property existing at the time of passage of this Chapter shall be deemed a nonconforming use.

(7) Restoration of Nonconforming Building or Structure.

(a) A nonconforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction may be resumed; provided that the restoration is commenced within a period of one year and is diligently prosecuted to completion and verification of the nonconforming use has been obtained.

(b) The restoration or reconstruction of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction.

(8) Conveyance of Nonconforming Use. Nothing in this Chapter shall be construed to limit the sale, transfer, other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Chapter.

(9) Restoration of Conforming Use on Nonconforming Lot. Nothing in this Chapter shall be construed to prevent the reconstruction or replacement of a preexisting building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this Chapter.

(10) Repairs of a Nonconforming Use. Repairs of a nonconforming use may be permitted to continue the use in a reasonable manner subject to **prior submittal and approval of an application pursuant to Type II procedures of LC Chapter 14**~~Director approval pursuant to LC 14.100~~ and consistent with the intent of ORS 215.130(5-8) and shall be evaluated pursuant to criteria expressed in LC 16.251(12) below.

(11) Alterations of a Nonconforming Use. Alterations of a nonconforming use may be permitted to continue the use in a reasonable manner subject to **prior submittal and approval of an application pursuant to Type II procedures of LC Chapter 14** ~~Director approval pursuant to LC 14.100~~ and consistent with the intent of ORS 215.130(9), and be evaluated pursuant to criteria expressed in LC 16.251(12) below. Alteration of any such use must be permitted when necessary to comply with any lawful requirement for alteration in the use.

(12) Criteria for Decision. When evaluating a proposal for increase, restoration, alteration or repair, the following criteria shall apply:

(a) The change in the use will be of no greater adverse impact to the neighborhood.

(b) The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood.

(c) Other provisions of this Chapter, such as property development standards, are met.

(13) Conditions of Approval. In order to assure compatibility of the proposed development with the surrounding area, any of the following conditions may be imposed as conditions of approval:

(a) Special yards and spaces.
(b) Fences and walls.
(c) Special parking and/or loading provisions.
(d) Street dedication and improvements or bonds in lieu of improvements.

(e) Control of points of vehicular ingress and egress.

(f) Special provisions for signs.

(g) Landscaping and the maintenance of grounds.

(h) Control of noise, vibration, odors or other similar nuisances.

(i) Limitation of time for certain activities.

(j) A time period in which a proposed use shall be developed.

(k) A limit of total duration of use. *(Revised by Ordinance 7-87, Effective 6.17.87; 4-91, 5.17.91; 14-08, 11.5.14)*

PROCEDURES FOR ZONING, REZONING AND AMENDMENTS TO REQUIREMENTS RURAL COMPREHENSIVE PLAN

16.252 Procedures for Zoning, Rezoning and Amendments to Requirements.

(1) Purpose. As the Rural Comprehensive Plan for Lane County is implemented, changes in zone and other requirements of this chapter will be required. Such Amendments shall be made in accordance with the procedures of this section.

(2) Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners or the Hearings Official in accordance with the procedures in this section.

(3) Initiation/Application.

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(b) On lots sloping downhill from the street, buildings may have an additional story; provided the ceiling of the lowest story is not more than two feet above the average curb level along the front of the lot.

(6) General Building Setback Requirements.

(a) Side Yard.

(i) No building or structure shall be hereafter erected or altered so that any portion thereof shall be nearer to the side lot line than the distance indicated under the Zone classification, except that eaves or cornices may extend over the required side yard for a distance of not more than two feet.

(ii) Fences, walls or hedges which tend to serve as a wall or yard enclosure may be maintained in a side yard, provided they do not exceed six feet in height.

(7) General Lot Area and Width Requirements.

(a) The site area requirements of Chapter 16 shall not apply to prohibit the erection of a single-family dwelling on a lot separately owned on or before January 8, 1969, or on any numbered lot in an approved and filed major or minor subdivision plat of record on or before January 8, 1969, except for the E-RCP, F-1, RCP and F-2, RCP Zones, where use of preexisting parcels is provided for in a different manner.

(b) The minimum area requirements of Chapter 16 shall not be construed to govern in situations where greater minimum area requirements are imposed or required by State law, State rules and regulations, the provisions of this Code, or other County rules and ordinances.

(c) Refer also to LC 13.050 to 13.105 Design and Development Standards for other lot area, width and depth requirements which may be applicable. .
(Revised by Ordinance 7-87, Effective 6.17.87; 6-10, 9.17.10)

NONCONFORMING USES RURAL COMPREHENSIVE PLAN

16.251 Nonconforming Uses.

Except as is hereinafter provided in this Chapter, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Chapter or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this Chapter.

(1) Verification of Nonconforming Use. The verification of a nonconforming use may be obtained subject to Type II procedures of LC Chapter 14. Verification of a nonconforming use is required prior to requesting approval to increase, restore, alter or repair a nonconforming use. When evaluating a request for verification, the following criteria shall apply:

(a) To be valid, a nonconforming use must have been lawfully established prior to the enactment of an ordinance restricting or prohibiting the use.

(b) The use must have been in actual existence prior to the enactment of an ordinance restricting or prohibiting the use or have proceeded so far toward completion that a right to complete and maintain the use is deemed to have vested in the landowner.

(c) The nonuse of a nonconforming use of a structure or property for a period in excess of two years will prohibit the resumption of the nonconforming use. The burden of proof for the verification of a nonconforming use is upon the applicant.

(2) Change in Nonconforming Use. A nonconforming use may be changed only insofar as it applies to the zone in which it is located. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

(3) Increase of Nonconforming Use. A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot

which portion was arranged or designed for such nonconforming use at the time of the passage of this Chapter may be granted subject to prior submittal and approval of an application pursuant to Type II procedures of LC Chapter 14.

(4) Vested Right. Nothing contained in this Chapter shall require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Chapter, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time construction was commenced.

(5) Discontinuance of Nonconforming Use. When a non-conforming use of a structure or property is discontinued for a period in excess of two years, the structure or property shall not thereafter be used, except in conformance with the zone in which it is located. (Revised by Ordinance 7-87, 6.17.87; 4-91, 5.17.91)

(6) Unlawful Use of a Nonconforming Use. No unlawful use of property existing at the time of passage of this Chapter shall be deemed a nonconforming use.

(7) Restoration of Nonconforming Building or Structure.

(a) A nonconforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction may be resumed; provided that the restoration is commenced within a period of one year and is diligently prosecuted to completion and verification of the nonconforming use has been obtained.

(b) The restoration or reconstruction of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction.

(8) Conveyance of Nonconforming Use. Nothing in this Chapter shall be construed to limit the sale, transfer, other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Chapter.

(9) Restoration of Conforming Use on Nonconforming Lot. Nothing in this Chapter shall be construed to prevent the reconstruction or replacement of a preexisting building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this Chapter.

(10) Repairs of a Nonconforming Use. Repairs of a nonconforming use may be permitted to continue the use in a reasonable manner subject to prior submittal and approval of an application pursuant to Type II procedures of LC Chapter 14 and consistent with the intent of ORS 215.130(5-8) and shall be evaluated pursuant to criteria expressed in LC 16.251(12) below.

(11) Alterations of a Nonconforming Use. Alterations of a nonconforming use may be permitted to continue the use in a reasonable manner subject to prior submittal and approval of an application pursuant to Type II procedures of LC Chapter 14 and consistent with the intent of ORS 215.130(9), and be evaluated pursuant to criteria expressed in LC 16.251(12) below. Alteration of any such use must be permitted when necessary to comply with any lawful requirement for alteration in the use.

(12) Criteria for Decision. When evaluating a proposal for increase, restoration, alteration or repair, the following criteria shall apply:

(a) The change in the use will be of no greater adverse impact to the neighborhood.

(b) The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood.

(c) Other provisions of this Chapter, such as property development standards, are met.

(13) Conditions of Approval. In order to assure compatibility of the proposed development with the surrounding area, any of the following conditions may be imposed as conditions of approval:

- (a) Special yards and spaces.
- (b) Fences and walls.
- (c) Special parking and/or loading provisions.
- (d) Street dedication and improvements or bonds in lieu of improvements.
- (e) Control of points of vehicular ingress and egress.
- (f) Special provisions for signs.
- (g) Landscaping and the maintenance of grounds.
- (h) Control of noise, vibration, odors or other similar nuisances.
- (i) Limitation of time for certain activities.
- (j) A time period in which a proposed use shall be developed.
- (k) A limit of total duration of use. *(Revised by Ordinance 7-87, Effective 6.17.87; 4-91, 5.17.91; 14-08, 11.5.14)*

PROCEDURES FOR ZONING, REZONING AND AMENDMENTS TO REQUIREMENTS RURAL COMPREHENSIVE PLAN

16.252 Procedures for Zoning, Rezoning and Amendments to Requirements.

(1) Purpose. As the Rural Comprehensive Plan for Lane County is implemented, changes in zone and other requirements of this chapter will be required. Such Amendments shall be made in accordance with the procedures of this section.

(2) Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners or the Hearings Official in accordance with the procedures in this section.

(3) Initiation/Application.

(a) By Planning Commission. The zoning of unzoned properties, the rezoning of properties and amendment of this chapter may be initiated by the Planning Commission upon its own motion or upon petition by the Planning Commission upon request of the Board as provided in LC 16.252(3)(b) below.

(b) By Board. The zoning of unzoned properties, the rezoning of properties and the amendment of this chapter may be initiated by the Board in the form of a request to the Planning Commission that it consider the proposed zoning, rezoning or amendment.

(c) By Applicant. Application for the zoning or rezoning of properties may be made by any person as provided in LC 14.050.

(4) Moratorium on Permits and Applications -- Legislative Matters.

(a) After any matter for zoning, rezoning or amendment to this chapter affecting particular property has received tentative action by the Board, but has not yet become final and effective, no Zoning, Land Division or Building Code Application or request shall be accepted, granted, issued or approved, except as herein provided.

(b) After such final action, granting of subsequent Applications or requests shall be in accordance with the requirements of the zoning classification or requirements as amended by the final action.

Exhibit B

Findings of Fact In Support of Ordinance No. 20-07

The Lane County Board of Commissioners initiated revisions to Lane Code 16.251 (Nonconforming Uses, Rural Comprehensive Plan) to extend the time limitations applicable to nonconforming uses whose status is potentially affected by the cancelation of events due to the COVID-19 Pandemic.

Lane Code 12.005 Purpose.

- (1) The board shall adopt a comprehensive plan. The general purpose of the comprehensive plan is the guiding of the social, economic, and physical development of the County to best promote public health, safety, order, convenience, prosperity and general welfare.**

The proposed amendments do not impair the purpose of the Rural Comprehensive Plan as the guiding document for Lane County. The proposed amendments revise Rural Comprehensive Plan implementing regulations in the manner that best promotes and protects the public health, safety, convenience, and welfare in accordance with State Law.

LC 12.050 Method of Adoption and Amendment

- (1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.**

This provision is not applicable. No comprehensive plan amendment is proposed or necessary.

- (2) The Board may amend or supplement the comprehensive plan upon a finding of:**
- (a) an error in the plan; or**
 - (b) changed circumstances affecting or pertaining to the plan; or**
 - (c) a change in public policy; or**
 - (d) a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above.**

This provision is not applicable. No comprehensive plan amendment is proposed or necessary.

LC 16.252 Procedures for Zoning, Re-zoning, and Amendments to Requirements.

(2) Criteria. [Amendments] shall comply with this section and shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest.

The purpose of Chapter 16 is to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive plan. To these ends, the purpose, in part, is to: “protect and diversify the economy of the County”; “conserve all forms of energy through sound economical use of the land and land uses developed on the land”; and “to protect the public health, safety, convenience, and welfare.”

On March 23, after declaring a state of emergency due public health threat posed by COVID-19, the Governor issued Executive Order 20-02 directing Oregonians to stay at home except for essential needs. As Lane County embarks on a phased reopening of sectors closed due to the Order with the Governor’s approval, some restrictions will remain in place, including the prohibition on large gathering until September 2020 or later.

These COVID-19 mandates significantly affect the daily lives of residents, the ability of business and institutions to operate, and the use of buildings and land for such purposes. Some of these uses of buildings and lands are nonconforming uses, which may be at risk of losing their nonconforming use rights under current Lane Code provisions. Under the statute (ORS 215.130) and the Lane Code, a nonconforming use is a use that predates current zoning rules that would otherwise prohibit or limit the use. Generally, nonconforming uses are allowed to continue within certain limits, but may not be resumed after a period of discontinuance.

Ordinance No. 20-07 extends the discontinuance period from one year to two years for nonconforming uses provided in Lane Code Chapter 16, section 16.251 (Nonconforming Uses, Rural Comprehensive Plan). Extending the one-year time limit to two years better enables all nonconforming uses to adapt events and activities in response to public health and safety emergencies or other purposes of the Rural Comprehensive Plan. Whereas extending the one-year limit to two years does not hinder the purposes of the plan, retaining the one-year limitation imposes restrictions that may inhibit nonconforming uses and development from continuing in the manner that complies with public health mandates and priorities or that is most convenient and appropriate for the nature of the use. Enabling nonconforming uses and development to continue and to adapt to health and safety priorities protects the local economy and continued utility of existing development and infrastructure for their intended purpose.

The proposed amendments best implement the comprehensive plan in accordance with the purposes of Lane Code Chapter 16 and State law.