

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**  
**FOR MULTNOMAH COUNTY, OREGON**  
**ORDINANCE NO. 940**

An Ordinance amending the Nonconforming Use Section of the Multnomah County Zoning Ordinance to comply with ORS 215.130.

(Language in ~~striketrough~~ is to be deleted; underlined language is new)

**The Multnomah County Board of Commissioners Finds:**

- (A) Comprehensive Framework Plan Policy No. 1 conflicts with certain standards of ORS 215.130 which regulates nonconforming uses.
- (B) The nonconforming use section of the Zoning Code does not include provisions of ORS 215.130 enacted by the 1997 and 1999 sessions of the State of Oregon Legislatures.
- (C) The Pre-Existing Use section of the Zoning Code and the Exemption from Non-Conforming Use Provisions sections of the CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5, MUA-20, MUF, RR, and RC zoning districts do not comply with ORS 215.130.
- (D) On May 18, 1998 and September 13, 1999 the Planning Commission held work sessions on the nonconforming use issue. At the conclusion of the last session, the Commission directed Planning Staff to draft ordinance language to incorporate all of the mandatory and discretionary standards of ORS 215.130 into the Zoning Code and to update Comprehensive Framework Plan Policy No. 1.
- (E) The Planning Commission considered ordinance language at a public hearing on November 1, 1999. The Commission received public testimony and, after deliberation, continued consideration of the matter to their December 6, 1999 meeting at which they adopted a resolution recommending the Board adopt the following proposed Plan and Code amendments.

1 **Multnomah County Ordains as follows:**

2 **Section I. Amendment of the Multnomah County Comprehensive Framework Plan**

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4 Comprehensive Framework Plan Policy #1(G) is amended to read:

5 G. ~~The new Zoning regulations shall provide, among other things, for the continuance, but not~~  
6 ~~the expansion, of non-conforming uses. They shall also allow restoration or replacement of~~  
7 non-conforming uses in accordance with Oregon Revised Statutes 215.130(6), and their al-  
8 teration, expansion or replacement when such alteration, expansion or replacement would not  
9 create a greater adverse impact on the neighborhood, or are necessary for the use to comply  
10 with State or County health or safety requirements.  
11

12 **Section II. Amendment of the Multnomah County Zoning Code MCC 11.15.0010**

13 The definition of Nonconforming Use is amended to read:

14 **Nonconforming Use** - ~~A use to which a building or land was put at the time this Chapter became~~  
15 ~~effective and which does not conform with the use regulations of the district in which it is lo-~~  
16 ~~cated. A legally established use, structure or physical improvement in existence at the time of~~  
17 enactment or amendment of the Zoning Code but not presently in compliance with the use  
18 regulations of the zoning district in which it is located.  
19

20 **Section III. Replacement of Multnomah County Zoning Code MCC 11.15.8805 – .8810.**

21 MCC sections 11.15.8805 and 11.15.8810 are repealed and replaced with the following:

22  
23 **11.15.8800 Nonconforming Uses**

24 (A) The purpose of this section is to establish standards and procedures regulating the con-  
25 tinuation, alteration, expansion, and replacement nonconforming uses. The intent is to  
26 allow procedures for considering changes to nonconforming uses that do not increase the

1 level of adverse impacts on the neighborhood, or changes required for the use to comply  
2 with State or County health or safety requirements.

3 (B) Nonconforming uses shall be allowed to continue without additional permission, except  
4 that such uses may be replaced, altered or expanded only as provided in MCC .8805 or  
5 .8810.

6 (C) If a nonconforming use is abandoned or discontinued for any reason for more than two  
7 years, it shall not be re-established unless the resumed use conforms with the require-  
8 ments of this Zoning Code at the time of the proposed resumption.

9 (D) Notwithstanding any other provisions of this Code, a surface mining use shall not be  
10 deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

11 (1) The owner or operator was issued and continuously renewed a state or local surface  
12 mining permit, or received and maintained a State of Oregon exemption from surface  
13 mining regulation; and

14 (2) The surface mining use was not inactive for a period of 12 consecutive years or more.

15 (3) For purposes of this subsection, *inactive* means no aggregate materials were exca-  
16 vated, crushed, removed, stockpiled or sold by the owner or operator of the surface  
17 mine.

18 (E) A nonconforming use may be maintained with ordinary care.

19 (F) A change in ownership or occupancy of a nonconforming use is permitted.

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22  
23 **11.15.8805 Restoration or Replacement Due to Fire, other Casualty or Natural Disaster**

24 (A) After verification of the status of a nonconforming use pursuant to the applicable provi-  
25 sions of MCC .8815, the Planning Director may authorize restoration or replacement of  
26 that nonconforming use based on findings that:

1       (1) The restoration or replacement is made necessary by fire, other casualty or natural  
2       disaster, and

3       (2) The restoration or replacement must be commenced within one year from the date of  
4       occurrence of the fire, casualty or natural disaster.

5       (B) Any decision on restoration or replacement of a nonconforming use due to fire, other  
6       casualty or natural disaster shall:

7       (1) Provide notice as required by MCC .8220,

8       (2) Be final at the close of business on the twelfth calendar day following the filing of the  
9       written decision with the Director of the Department of Environmental Services un-  
10       less prior thereto, any party as defined by MCC .8225 files a Notice of Appeal with  
11       the Planning Director pursuant to MCC .8290(B) and (C). Upon receipt of a Notice  
12       of Appeal, the Planning Director shall schedule a public hearing on the appeal for the  
13       next available hearing of the Hearing Officer.

14  
15       **11.15.8810   Alteration, Expansion or Replacement of Nonconforming Uses**

16       (A) Alteration, expansion or replacement of a nonconforming use includes a change in the  
17       use, structure, or physical improvement of no greater adverse impact on the neighbor-  
18       hood, or alterations, expansions or replacements required for the use to comply with  
19       State or County health or safety requirements.

20       (B) After verification of the status of a nonconforming use pursuant to the applicable provi-  
21       sions of MCC .8815, the Planning Director shall authorize alteration of a nonconforming  
22       use when it is demonstrated that:

23       (1) The alteration, expansion or replacement is necessary to Comply with state or local  
24       health or safety requirements, or

25       (2) The alteration is necessary to maintain in good repair the existing structures associ-  
26       ated with the nonconformity.

1 (C) After verification of the status of a nonconforming use pursuant to the applicable provi-  
2 sions of MCC .8815, the Planning Director may authorize alteration, expansion or re-  
3 placement of any nonconforming use when it is found that such alteration, expansion or  
4 replacement will not result in a greater adverse impact on the neighborhood. In making  
5 this finding, the Planning Director shall consider all of the criteria listed below. Adverse  
6 impacts to one of the criterion may, but shall not automatically, constitute greater adverse  
7 impact on the neighborhood.

8 (1) The character and history of the use and of development in the surrounding area;

9 (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detect-  
10 able within the neighborhood;

11 (3) The comparative numbers and kinds of vehicular trips to the site;

12 (4) The comparative amount and nature of outside storage, loading and parking;

13 (5) The comparative visual appearance;

14 (6) The comparative hours of operation;

15 (7) The comparative effect on existing flora;

16 (8) The comparative effect on water drainage or quality; and

17 (9) Other factors which impact the character or needs of the neighborhood.

18 (D) Any decision on alteration, expansion or replacement of a nonconforming use shall:

19 (1) Provide notice as required by MCC .8220,

20 (2) Be final at the close of business on the twelfth calendar day following the filing of the  
21 written decision with the Director of the Department of Environmental Services un-  
22 less prior thereto, any party as defined by MCC .8225 files a Notice of Appeal with  
23 the Planning Director, pursuant to MCC .8290(B) and (C). ). Upon receipt of a No-  
24 tice of Appeal, the Planning Director shall schedule a public hearing on the appeal for  
25 the next available hearing of the Hearing Officer.  
26

1 **11.15.8815 Verification of Nonconforming Use Status**

2 (A) The Planning Director shall verify the status of a nonconforming use upon application for  
3 a determination by an owner on application for any land use or other permit for the site,  
4 or on finding there is a need for a determination (e.g., on learning of a possible Code  
5 violation). The determination shall be based on findings that the use:

6 (1) Was legally established and operating at the time of enactment or amendment of this  
7 Zoning Code, and

8 (2) Has not been abandoned or interrupted for a continuous two year period.

9 (B) The Planning Director shall verify the status of a nonconforming use as being the nature  
10 and extent of the use at the time of adoption or amendment of the Zoning Code provision  
11 disallowing the use. When determining the nature and extent of a nonconforming use, the  
12 Planning Director shall consider:

13 (1) Description of the use;

14 (2) The types and quantities of goods or services provided and activities conducted;

15 (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the  
16 level of activity;

17 (4) The number, location and size of physical improvements associated with the use;

18 (5) The amount of land devoted to the use; and

19 (6) Other factors the Planning Director may determine appropriate to identify the nature  
20 and extent of the particular use.

21 (7) A reduction of scope or intensity of any part of the use as determined under MCC  
22 .8815(B) for a period of two years or more creates a presumption that there is no  
23 right to resume the use above the reduced level. Nonconforming use status is limited  
24 to the greatest level of use that has been consistently maintained since the use became  
25 nonconforming. The presumption may be rebutted by substantial evidentiary proof  
26 that the long-term fluctuations are inherent in the type of use being considered.

1 (C) In determining the status of a nonconforming use, the Planning Director shall determine  
2 that, at the time of enactment or amendment of the Zoning Code provision disallowing  
3 the use, the nature, scope and intensity of the use, as determined above, was established  
4 in compliance with all land use procedures, standards and criteria applicable at that time.  
5 A final and effective County decision allowing the use shall be accepted as a rebuttable  
6 presumption of such compliance.

7 (D) Except for nonconforming uses considered under MCC .8810(B), the Planning Director  
8 may impose conditions to any verification of nonconforming use status to insure compli-  
9 ance with said verification.

10 (E) Any decision on verification of nonconforming use status shall:

11 (1) Provide notice as required by MCC .8220,

12 (2) Be final at the close of business on the twelfth calendar day following the filing of the  
13 written decision with the Director of the Department of Environmental Services un-  
14 less prior thereto, any party as defined by MCC .8225 files a Notice of Appeal with  
15 the Department, pursuant to MCC .8290(B) and (C). Upon receipt of a Notice of  
16 Appeal, the Planning Director shall schedule a public hearing on the appeal for the  
17 next available hearing of the Hearing Officer.

18 (F) An applicant may prove the existence, continuity, nature and extent of the nonconforming  
19 use only for the 10-year period immediately preceding the date of application. Evidence  
20 proving the existence, continuity, nature and extent of the use for the 10-year period pre-  
21 ceding application creates a rebuttable presumption that the use, as proven, lawfully ex-  
22 isted at the time the applicable zoning ordinance or regulation was adopted and has con-  
23 tinued uninterrupted until the date of application.

24 (G) For purposes of verifying a nonconforming use, the Planning Director shall not require an  
25 applicant for verification to prove the existence, continuity, nature and extent of the use  
26 for a period exceeding 20 years immediately proceeding the date of application.

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2 **Section IV. Repeal of the Pre-Existing Uses section of the Zoning Code.**

3 MCC sections 11.15.7605 through 11.15.7640 are repealed.  
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5 **Section V. Repeal of sections allowing exemptions from non-conforming use provisions.**

6 MCC sections 11.15.2070, 11.WH.2110, 11.WH.2070, 11.ES.2110, 11.ES.2070,  
7 11.WR.2070, 11.15.2150, 11.15.2190, 11.15.2230, 11.15.2270, and 11.15.6062 are repealed.  
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9 FIRST READING:

January 27, 2000

10 SECOND READING AND ADOPTION:

February 3, 2000



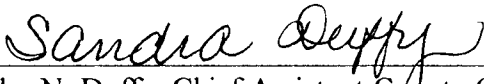
BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

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20 By



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