ARTICLE 6. NONCONFORMING USES

SECTION 6.010 – APPLICABILITY:

This Section addresses the following types of situations:

A. NONCONFORMING USE

   A use that was lawfully established, but is no longer allowed in the zone in which it is located.

B. NONCONFORMING STRUCTURE

   A dwelling, other building or structure that was lawfully established, but does not comply with the current density, height, location or other standards of the zone in which it is located.

C. NONCONFORMING LOTS AND PARCELS

   Lots or parcels that were lawfully created, but do not meet the current minimum lot size for the zone in which they are located or that do not have frontage on a public road.
SECTION 6.020 – CONTINUATION OF NONCONFORMING USE OR STRUCTURE

Subject to the provisions of ORS 215.130 and the provisions of Sections 6.010 through 6.050 of this ordinance, a nonconforming use or structure may be continue but may not be altered or extended. The extension of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of passage of this ordinance is not an enlargement or expansion of a nonconforming use. A nonconforming structure which conforms with respect to use may be altered or extended if the alteration or extension does not cause the structure to deviate further from the standards of this ordinance. Changes in ownership, tenancy, or management of a nonconforming use, building or structure are permitted.
SECTION 6.030 – DAMAGE OR DESTRUCTION OF A NONCONFORMING STRUCTURE

If a nonconforming structure is damaged by fire, other casualty, or natural disaster, it may be repaired, restored or replaced with a structure of the same size without compliance with other provisions of this Ordinance when such work commences under an approved permit within one year of the damage. A proposal to increase the size of the structure is considered an alteration, and must comply with the requirements of Subsection 6.080.
SECTION 6.040 – DISCONTINUATION OF A NONCONFORMING USE

If a nonconforming use is discontinued for a period of one year, further use of the property shall conform to this ordinance.
SECTION 6.050 – INTERRUPTION OR ABANDONMENT OF A NONCONFORMING USE

A. If a nonconforming use, other than a mining operation, is interrupted or abandoned for a period of more than one year, the use shall not be resumed unless it conforms to all regulations and provisions of this Ordinance.

B. A nonconforming surface mining use will not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

1. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulations; and

2. The surface mining use was not inactive for a period of 12 consecutive years or more. For purposes of this subsection, “inactive” means no aggregate materials were excavated, crushed, removed, stockpiled, or sold by the owner or operator of the surface mine.
SECTION 6.060 – CHANGE OF NONCONFORMING USE

If a nonconforming use is replaced by another use, the new use shall conform to this ordinance.

Alterations to Nonconforming Uses:

Alteration of a nonconforming use includes, but is not limited to, a change in the type or operating characteristics of the use, an increase in the size of the building in which the use is located, an increase in the amount of property being used, or the relocation of the use to another portion of the parcel. A nonconforming use may not be relocated to another lot or parcel, unless the use will be in conformance with the regulations of the zone to which it is moved. An application for the alteration of a nonconforming use will be reviewed by the Planning Director under the Administrative Review procedures in Section 11.090. The application must show the following:

A. The nonconforming status of the use has been verified, as provided in Section 6.120. Such verification may occur either prior to or concurrently with the application to alter the use;

B. The use has not been interrupted or abandoned for a period of more than one year, as provided in Section 6.050; and

C. The altered use will have no greater adverse impact on the surrounding neighborhood.
SECTION 6.070 – DESTRUCTION OF NONCONFORMING USE OR STRUCTURE

If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause to an extent exceeding 80 percent of its fair market value as indicated by the records of the County Assessor and is not returned to use and in actual operating condition within one year from the date of destruction, a future structure or use on the site shall conform to this ordinance.
SECTION 6.080 – ALTERATIONS TO NONCONFORMING STRUCTURES

An application to replace, remodel or enlarge a nonconforming structure will be reviewed by the Planning Director under the Administrative Review procedures in Section 11.090. Applications will be approved if it complies with the following:

A. The nonconforming status of the structure has been verified, as provided in Section 6.120. Such verification may occur either prior to or concurrently with the application to enlarge or modify the structure;

B. The new structure will be no more nonconforming than the existing structure;

C. The alteration of a nonconforming structure located in a riparian protection area shall not result in any additional riparian area being permanently disturbed, and

D. There will be no greater adverse impact to the surrounding neighborhood.
SECTION 6.090 – COMPLETION OF STRUCTURE

Nothing contained in this ordinance shall require any change in the plans, construction, alteration, or designated use of a structure for which construction has commenced prior to the adoption of this ordinance, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the effective date of this ordinance.
SECTION 6.100 – EXCEPTION FOR MINOR REPAIR AND REHABILITATION

Excepting nonconforming uses, activities involving rehabilitation, replacement, minor betterment repair, normal repair and maintenance, improvements and other similar construction activities involving a use permitted within a specified zone are exempt from the zoning permit requirements of this ordinance provided such activities do not change the use or expand the use capacity or level.
SECTION 6.110 – NONCONFORMING LOTS AND PARCELS

A lawfully created lot or parcel that does not meet the minimum lot size for the zone in which it is located is entitled to the same development rights that such a lot or parcel would otherwise have if it met the minimum area dimension requirements. A lawfully created lot or parcel that does not have frontage on a public road is entitled to the same development rights as other lots or parcels in the same zone once legal access meeting the standards of Section 8.020 is obtained.
SECTION 6.120 – VERIFICATION OF NONCONFORMING STATUS

A. An application to verify whether a use or structure is nonconforming will be reviewed by the Planning Director under the Administrative Review procedure in Section 11.090. The application must be accompanied by the following:

1. Documentation that establishes the approximate date that the use or structure was established;

2. Proof that the use or structure was lawfully established in compliance with all zoning and permitting requirements in effect at the time it was established;

3. Evidence detailing the nature and extent of the use or structure at the time it became nonconforming; and

4. Proof that the use has not been discontinued or abandoned for a period of more than one year, as provided in Section 6.050.

B. Documentation and proof of the existence, continuity, nature and extent of the use or structure is only required for the 10 year period immediately preceding the date of application for verification of nonconforming status. Documentation showing the use existed and was continued during this time period creates a rebuttable presumption that the use has continued uninterrupted until the date of application. Such documentation is necessary to show compliance with A.4, but is separate from and does not provide evidence that the use was lawfully established as required by A.2.
SECTION 6.130 – VERIFICATION OF NONCONFORMING LOT OR PARCEL

An application to verify whether a lot or parcel was lawfully created and is thus nonconforming may be submitted in accordance with Section 5.030.
SECTION 6.140 – GENERAL EXCEPTIONS TO LOT SIZE REQUIREMENTS

A. Lawfully created lots and parcels may be developed in accordance with the requirements of the zone in which they are located even if they do not comply with the minimum lot size requirement for the zone.

B. Lots and parcels that will be dedicated to the public for use as a park, utility site or similar public purpose are exempt from the minimum lot size requirements of the zone, except in the Exclusive Farm Use zone.
SECTION 6.150 – GENERAL EXCEPTIONS TO SETBACK REQUIREMENTS

The following exceptions to setback requirements are authorized for a lot or parcel in any zone:

A. **Front Setback Exceptions:** If there are buildings on both abutting lots which are within 100 feet of the subject property, and the buildings have front setbacks of less than the required depth for the zone, the depth of the front setback for the subject property need not exceed the average depth of the front setbacks of the abutting lots.

B. **Projection from Buildings:**

1. Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys and flues may project up to three (3) feet into a required setback.

2. Uncovered terraces, decks or platforms may project or extend into a required setback not more than five (5) feet provided they are no more than thirty (30) inches above grade or ground level.
SECTION 6.160 – GENERAL EXCEPTIONS TO HEIGHT REQUIREMENTS

The following structures or structural parts, unless otherwise specified in the ordinance, are not subject to the height limitations of this ordinance unless the structure will penetrate the airport imaginary surfaces as specified in Section 4.010: chimneys, church spires, belfries, monuments, fire and hose towers, fire observation towers, transmission towers, smokestacks, flagpoles, windmills, water reservoirs and other similar structures.
SECTION 6.170 – GOAL EXCEPTIONS

A Goal exception is a decision to exclude certain land from the requirements of one or more applicable statewide planning goals. An exception is required to rezone land from a Resource zone to a different zone; to change the existing types of uses, densities, or services allowed in a zone or on a parcel; to amend the Transportation System Plan to change the functional classification, capacity or performance standard of a transportation facility; and similar changes. An application for a goal exception shall be processed under the procedures for an amendment in the Comprehensive Plan, and must comply with the requirements for exceptions in OAR 660-004.
SECTION 6.180 – EXCEPTIONS FOR PUBLIC PROJECTS

Nothing in this Ordinance shall be deemed to apply to the maintenance, rehabilitation, repair, and minor betterment activities not considered to have land use impacts, when conducted by a governmental agency or public utility on public property or public facilities. Public works projects authorized or approved by the Board of Commissioners and determined by the Planning Director to be consistent with the long-term objectives of the Comprehensive Plan shall be exempt from the current provisions of this Ordinance. For the purposes of this section, such uses may include water, gas, telephone, and power distribution lines, valve and meter houses, reservoirs, and similar minor facilities allowed in any zone.
SECTION 6.190 – AUTHORIZATION OF SIMILAR USES IN NON-RESOURCE ZONES

The permitted, administrative and conditional uses listed in non-resource zone Sections of the Ordinance identify specific uses that may be conducted in a specific zone. An application may be submitted to allow a land use or activity that is not specifically listed in a Non-resource zone. Such additional uses are not permitted in the Exclusive Farm Use zone. The application will be reviewed by the Planning Commission at a public hearing in accordance with the procedures in Section 11.100. The application may be approved if the proposed use has similar types of impact(s) as the existing list of permitted, administrative or conditional uses. The following criteria shall be used to determine whether the proposed use is similar to other uses listed in the zone:

A. The proposed use will create no greater impacts on adjacent properties than those uses listed in the zone.

B. The proposed use is of the same general character as uses listed in the zone, taking into consideration the type, size and nature of buildings and structures, number of employees and customers, hours and days of operation, transportation requirements, parking requirements, and the amount and nature of any emissions that will be generated, such as noise, smoke, odor, glare, vibration, radiation and fumes.