



ZONING CODE

INFORMATION GUIDE

Nonconforming Upgrades

Nonconforming upgrades (NCUs) are focused on upgrading nonconforming development elements that affect the appearance and impacts of a site.

NCUs are triggered when a building permit is submitted, and the value of proposed alterations on a site is more than **\$163,650.00**.

EXCLUSIONS TO NONCONFORMING UPGRADE VALUE THRESHOLD

The following alterations and improvements do not count towards the threshold. It is the applicant's responsibility to provide documentation of the dollar amount to be deducted from the NCU threshold. Please note: The costs required to design, or install these excluded improvements do not count toward the 10% spending requirement for nonconforming upgrades. Rather, they reduce the permit valuation by which the nonconforming upgrade requirement is based. For example, if the permit valuation is \$1,000,000 and \$200,000 worth of excludable alterations are documented from the list below, the nonconforming upgrade requirement will be based on an adjusted valuation of \$800,000 (e.g. 10% of 800,000 = \$80,000).

1. Alterations required by approved fire/life safety agreements;
 - These are buildings in the UnReinforced Masonry program (URM). An agreement must be in place with the City for required upgrades
2. Alterations related to the removal of existing architectural barriers, as required by the Americans with Disabilities Act, or as specified in Section 3411 of the Oregon Structural Specialty Code
 - These are only ADA upgrades that the Life Safety reviewer confirms are required by these specific requirements. Not all ADA upgrades are applicable in this situation.
3. Alterations required by Chapter 24.85, Interim Seismic Design Requirements for Existing Buildings;
 - The structural reviewer for the permit must confirm that the seismic upgrades proposed in the scope of work are required under Chapter 24.85.
4. Improvements to on-site stormwater management facilities in conformance with Chapter 17.38, Drainage and Water Quality, and the Stormwater Management Manual
 - The BES reviewer for the permit must confirm that the stormwater improvement identified as an exclusion are in conformance with Chapter 17.38.
5. Improvements made to sites in order to comply with Chapter 21.35, Wellfield Protection Program, requirements
 - The Wellfield Protection Program is part of the BES stormwater manual.
6. Energy efficiency or renewable energy improvements that meet the Public Purpose Administrator incentive criteria whether or not the project applies for and receives the incentive
 - Please obtain a letter from the Energy Trust of Oregon verifying the identified improvements meet their criteria to receive energy efficiency incentives.

DEVELOPMENT THAT MUST BE BROUGHT INTO CONFORMANCE

Sites with nonconforming development must come into compliance with certain development standards, as required by Paragraph 33.258.070.D.2.b. (below):

1. Landscaping and trees required for the following areas:
 - Exterior display, storage, and work activity areas;
 - Setbacks for surface parking and exterior development areas;
 - Interior parking lot landscaping;
 - Existing building setbacks;
 - Minimum landscaped areas other than described above; and
 - On-site tree density standards of Subsection 11.50.050.C.
2. Pedestrian circulation systems, as set out in the pedestrian standards that apply to the site;
3. Bicycle parking by upgrading existing racks and providing additional spaces in order to comply with 33.266.220, Bicycle Parking. Sites that do not have accessory surface parking or are inside the Central City Core Area or Lloyd District, as shown on Map 510-8, are not required to meet this standard for long-term bicycle parking, but are required to meet this standard for short-term bicycle parking;
4. Screening; and
5. Required paving of surface parking and exterior storage and display areas.

TIMING AND COST OF REQUIRED IMPROVEMENTS

The Zoning Code provides two options for the timing and cost of bringing a site into compliance with the required development standards.

Option 1 – Permit(s) under review spend 10% of their valuation. Required improvements must be made as part of the alteration that triggers the required improvements. However, the cost of required improvements is limited to 10 percent of the value of the permit. It is the responsibility of the applicant to document the value of the required improvements. Land Use Services requires itemized contractors’ estimates to document the cost of each improvement. When all required improvements are not being made, the applicant may choose which of the improvements listed in Subparagraph D.2.b to make. If improvements to nonconforming development are also required by regulations in a plan district or overlay zone, those improvements must be made before those listed in Subparagraph D.2.b. (above).

Option 2 – All upgrades to the site are deferred through a covenant with the city, and individual permits are released from upgrade obligations. The required improvements are made over several years, based on the compliance period identified in Table 258-1. **By the end of the compliance period, the site must be brought fully into conformance with the list of required nonconforming upgrades or must obtain approved land use review(s) to waive or modify upgrades.** During the compliance period individual permits are not required to address nonconforming upgrades.

Table 258-1 Compliance Periods for Option 2	
Square footage of site	
Less than 200,000 sq. ft.	2 years
200,000 sq. ft. or more, up to 500,000 sq. ft.	3 years
More than 500,000 sq. ft., up to 850,000 sq. ft.	4 years
More than 850,000 sq. ft.	5 years

NONCONFORMING UPGRADES

PROCEDURES

Option 1 – Permits under review must include the upgrade work, and contractor’s estimates showing that the 10% obligation has been met.

Option 2 –

A. Site Assessment: Detailed site and landscape plans of existing conditions are required to assess nonconforming development on site. Additionally, a written Nonconforming Development Assessment is required to identify all areas in which the site is not in conformance with the development standards of 33.258.070.D.2.

B. Application: To initialize the Option 2 process, an applicant is required to submit a completed “Nonconforming Development Option 2 Request” application. This submittal will include:

1. Application form: <https://www.portlandoregon.gov/bds/article/92187>, and Processing fee which is Tier B Zoning Confirmation amount.
2. Nonconforming Development Assessment which identifies in writing all development that does not meet the standards listed in section 33.258.070.D.2.b of the Zoning Code and any additional standards from an overlay or plan district if applicable.
3. Site Plan to scale, identifying all development that does not meet the standards listed in section 33.258.070.D.2.b of the Zoning Code and any additional standards from an overlay or plan district, if applicable. A complete site plan should show the following:
 - North arrow and drawing scale
 - All property lines with dimensions and total site area
 - Location of adjacent streets, alleys, driveways
 - Dimensions of all existing buildings and development
 - Existing motor vehicle parking and truck loading (including number of spaces, layout and dimensions)
 - Location of all existing landscaping (size, number and placement) identified with scientific and common names
 - Existing exterior display, storage and work areas (including screening and surface materials)
 - Pedestrian access and existing circulation systems
 - Existing bicycle parking (including number of spaces, layout and rack details)

Land Use Services staff will review the submitted application and Nonconforming Development Assessment and provide written comments regarding the content of the assessment and the extent of required upgrades. The application includes a Selection Form that provides three alternatives for the timing of receiving written comments from Land Use Services. The three alternatives are:

1. An applicant may submit the Nonconforming Development Assessment and receive written comments from Land Use Services prior to entering into the Option 2 agreement. This option offers the assurance of City analysis and review to determine whether the submitted Nonconforming Development Assessment adequately addresses all required upgrades
2. An applicant may receive written comments on the Nonconforming Development Assessment from Land Use Services **after** entering into the Option 2 agreement. This option expedites the Option 2 process and will result in quicker issuance of the initial building permit. However, this alternative does not provide certainty regarding the specific upgrades that will be required at the end of the compliance period prior to making the decision to enter into the covenant. The information is provided after the fact.

NONCONFORMING UPGRADES

3. An applicant may choose to **not** receive written comments on the Nonconforming Development Assessment from Land Use Services. This option expedites the Option 2 process and will result in quicker issuance of the initial building permit. However, this alternative does not provide the certainty regarding the specific upgrades that will be required at the end of the compliance period. Instead, the specific upgrades will be identified at the end of the compliance period when the applicant requests that the site be certified.

A. Covenant

The covenant is a legally binding document that contains the terms of agreement to bring all development on the site that does not comply with the development standards listed in Section 33.258.070.D.2.b into full conformance with the standards within the compliance periods set out in Table 258-1. The Bureau of Development Services (BDS) will provide a covenant that meets the requirements of Section 33.700.060. The property owner must execute the covenant, after it is signed by the property owner, and the Director of BDS.

B. Confirmation of Request

Depending upon the timing preference chosen on the Option 2 Selection Form, a confirmation letter will be provided either before the covenant has been executed, or after. This letter will provide written comments regarding the content of the submitted Nonconforming Development Assessment. The comments in the confirmation letter will be based on the level of information provided with the application. The letter will specify the date at which the compliance period will end.

C. Compliance Periods

All nonconforming development identified in Section 33.258.070.D.2.b must be brought into **full conformance** with the requirements of the Zoning Code within the specified compliance period.

D. Certification

By the end of the compliance period, the applicant or owner must request that the site be certified by BDS as in compliance with the development standards of 33.258.070.D.2. A permit documenting full conformance with these standards is required to be obtained and receive final inspection approval prior to BDS certification. **If the applicant or owner does not request the site to be certified, or if the site is not fully in conformance by the end of the compliance period, no additional building permits will be issued until the site is certified.**

FREQUENTLY ASKED QUESTIONS:

Who determines the value of the proposed alterations?

The life safety reviewer assigned to the permit determines the "Final Permit Valuation." We cannot know what the 10% obligation will be until the Life Safety Reviewer has assigned a final permit valuation.

How do I document the value of the required improvements?

Applicants must submit a bid from a contractor, on their company letterhead. The bid must be limited to the cost of installing the improvements. Plan preparation, profit, overhead, and "general conditions" are line items that cannot be counted toward the 10% NCU obligation.

When a permit has triggered nonconforming upgrades can those upgrades be applied to standards that were shown to be met on a previous permit? For instance, can replacement landscaping count toward nonconforming upgrades when the landscaping was approved through a previous permit and was not maintained?

The most recent permit(s) will be examined to determine if proposed upgrades were previously approved. 33.248.040.B states that landscaping is required to be maintained and therefore, dead landscaping is a code compliance issue and cannot count toward nonconforming upgrades.

NONCONFORMING UPGRADES

Which Option is best for me?

It is important to analyze the site to determine the extent of nonconforming upgrades required before deciding which option to use. The amount of required nonconforming upgrades, combined with the designated compliance period, should factor into your decision.

Option 1 allows more assurance regarding the cost of required upgrades. If improvements the site are infrequent, it may be more cost effective to use this option. The extent of required upgrades is based entirely on the value of the proposed project and expenses are capped at 10% of the of the value of the permit.

Option 2 is useful for sites that frequently require permits. Option 2 expedites the permit process for the applicant by not requiring nonconforming upgrades as part of each building permit application. It also allows applicants to plan and budget for the required nonconforming upgrades over a limited timeframe. Finally, Option 2 provides time for a property owner to request Adjustments or Modifications of required upgrades through a land use process. A solid analysis regarding the extent of required improvements on a site is highly recommended prior to entering into the Option 2 agreement. Full upgrades are required, regardless of the cost of improvements, by the end of the compliance period.

Also important is an understanding of the timelines involved with the Option 2 agreement. Before the end of the compliance period, the site must be certified by BDS as in conformance. You must allow time to develop the plans, submit a building permit for review and issuance, install all elements of the required upgrades and receive final inspection approval of the permit. If all steps are not entirely completed before the compliance period ends, no further permits will be issued until the site is certified.

What level of detail must I provide to enter into the agreement?

The Nonconforming Upgrade Option 2 application requires that a written nonconforming assessment and a site plan be submitted. To fully evaluate the site and identify the areas where upgrades are needed, a detailed site plan and landscape plan of existing conditions is required. A detailed site plan and landscape plan submittal will allow BDS to provide detailed comments in the Confirmation letter and provide certainty as to the expectations for upgrading the site. However, if an applicant chooses to enter into the agreement without detailed plans and assessment, BDS will accept a generalized site assessment and a site plan that includes the entire site. The comments in the confirmation letter will be based on the level of information provided with the application. The detailed site plan and landscape plan will need to be submitted during the compliance period as part of the building permit application for full review and analysis.

For more information visit or call the Planning and Zoning staff in the
Development Services Center at 1900 SW 4th Avenue, Suite 1500, 503-823-7526
Current Zoning Code is available at www.portlandoregon.gov/zoningcode

NONCONFORMING UPGRADES