



ZONING CODE

INFORMATION GUIDE

Nonconforming Upgrades • Option 1

Nonconforming upgrades are triggered when a building or other development permit is submitted and the value of proposed alterations on a site exceed a specified dollar valuation in the Zoning Code that is updated yearly. That valuation can be found in Zoning Code section 33.258.070.D.2.a. The Portland Zoning Code provides two options for the timing and cost of bringing a site into compliance with the required development standards.

Timing and Cost of Required Improvements

Option 1 requires the property owner to spend 10 percent of the overall project valuation on upgrades to nonconforming development. Required improvements must be made as part of the project that triggers the required improvements. However, the cost of required improvements is limited to 10 percent of the value of the permit. The applicant must provide itemized estimates to document the cost of each improvement. When all required improvements are not being made, the applicant may choose which improvements to make; however, improvements required by a plan district or overlay zone must be made first.

Development That Must Be Brought into Conformance

Sites with nonconforming development must come into compliance with certain development standards, as required by Portland Zoning Code ([33.258.070.D.2.b](#)), or receive approval to waive or modify the requirement through a land use review:

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 (where land is not used for structures, parking or exterior improvements); 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 Central City Parking Sectors 2 or 4, as shown on Map 510-10, 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.

Area of Required Improvement

Required improvements must be made for the entire site. Site is generally defined as ownership; however, some exceptions are outlined in 33.910 Definitions. Required improvements may be limited to a smaller area if there is a ground lease for the portion of the site where the alterations are proposed. Please refer to Section 33.258.070.D.2.C.(2) for information on the terms and documentation that must be provided for this exception.

Exceptions 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 nonconforming upgrade 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. 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 ADA upgrades that the Life Safety reviewer confirms are required by 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 24.84
4. Improvements to on-site stormwater management facilities in conformance with Chapter 17.38, Drainage and Water Quality, and the Stormwater Management Manual;
The Bureau of Environmental Services reviewer must confirm the improvement to the on-site stormwater management facility is in conformance with Chapter 17.38
5. Improvements made to sites in order to comply with Chapter 21.35, Wellfield Protection Program, requirements; and
The Wellfield Protection Program is part of the BES Stormwater Management 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.
A letter from Energy Trust of Oregon provided by the applicant verifies that the identified improvements meet the criteria to receive energy efficiency incentives

Frequently Asked Questions

Who determines the value of the proposed alterations?

The life safety reviewer assigned to the permit determines the "Final Permit Valuation".

How is the value of proposed improvements to nonconforming development determined?

Applicants must provide cost estimates of the improvements. The cost estimate should be confined to labor and materials, which includes costs typically included in labor costs such as profit, insurance and overhead.

Plan preparation is not considered part of the improvements and should not be included in the cost estimate.

Can improvements to nonconforming development from previous permits be applied to the permit that has triggered nonconforming upgrade requirements?

No, previously approved upgrades cannot count toward the current upgrade obligation. Previous permits will be examined to determine if proposed upgrades had been previously proposed and either not installed or maintained. For instance, required landscaping that has died is a code compliance issue and replacing the landscaping cannot count toward upgrade requirements.

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/bps/zoningcode