



ZONING CODE

INFORMATION GUIDE

Nonconforming Upgrades • Option 2

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 2 requires the property owner submit detailed site and landscape plans to assess nonconforming development on the site. The property owner executes a covenant agreeing to upgrade all nonconforming development on the site during a specified compliance period. This option allows the permit triggering the nonconforming upgrades to be released from upgrade obligations as well as any other permits submitted during the compliance period. By the end of the compliance period, the site must be certified as in compliance with all nonconforming upgrades in order for future permits to be released. The applicant may apply for a land use review to waive or modify the requirement triggering nonconforming upgrades; however, approval must be received before the end of the compliance period.

Square footage of site	Compliance period
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

An applicant may enter into Option 2 concurrent with a development permit submittal that triggers nonconforming upgrades, or prior to applying for a permit.

Procedures

Site Assessment: Detailed site and landscape plans of existing conditions are required to assess nonconforming development on the 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 the Portland Zoning Code Section [33.258.070.D.2](#).

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:

- Application form
- Processing fee (Tier 3 Zoning Confirmation amount)
- Nonconforming Development Assessment which identifies in writing all development that does not meet the standards listed in Section 33.258.070.D.2.b and any additional standards from an overlay zone or plan district, if applicable.
- Site plan to scale, identifying all development that does not meet the standards listed in Section 33.258.070.D.2.b and any additional standards from an overlay or plan district, if applicable. A complete site plan should show the following:

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- 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 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 development 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.
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 development 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.

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 record the covenant with the County Recorder, after it is signed by the property owner, and the Director of BDS.

Confirmation of Request: Depending upon the timing preference chosen on the Nonconforming Development Option 2 Application, 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.

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 Portland Zoning Code within the specified compliance period.

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 Section 33.258.070.D.2. A permit

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documenting full conformance with these standards is required to be obtained and receive final inspection approval prior to BDS certification. If the applicant 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 development permits will be issued until the site is certified.

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, 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. 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). It is the applicant's responsibility to provide documentation of the dollar amount to be deducted from the nonconforming upgrade threshold.

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

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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

What level of detail must be provided to enter into the Option 2 agreement?

The Nonconforming Upgrade Option 2 application requires submittal of a nonconforming development assessment along with a detailed site plan and landscape plan. With these detailed plans, BDS can fully evaluate the site and provide the applicant with written comments and clear requirements for upgrading the site. However, if an applicant chooses to enter into the agreement without a detailed site plan, landscape plan and assessment, BDS will accept a generalized site assessment and a site plan that includes the entire site, including properties under the same ownership. The comments in the confirmation letter will be based on the level of information provided with the application. A detailed site plan and landscape plan will need to be submitted for full review and analysis during the compliance period as part of the development permit application.

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

All Information is Subject to Change.