



CITY OF PORTLAND, OREGON

BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue, Portland, Oregon 97201, www.portlandoregon.gov/bds



Nonconforming Upgrades Option 2

Sites with nonconforming development must come into compliance with certain development standards, as required by Section 33.258.070.D.2 and additional standards from an overlay or plan district, if applicable. The Zoning Code provides two options for the timing and cost of bringing a site into compliance with the required development standards.

- **Option 1.** A site is brought into conformance with the development standards incrementally. Each building permit application that involves alterations valued over the dollar threshold identified in Section 33.258.070.D.2.a, requires that up to 10 percent of the project value be spent toward bringing the site closer to conformance with the standards. This option requires detailed site and landscape plans and an itemized list of upgrades with each building permit submittal.
- **Option 2.** 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 that were in effect when compliance period began. The permitting process is streamlined during the compliance period because individual permits are not required to address nonconforming upgrades.

Table 258-1
Compliance Periods for Option 2

Square footage of site	Compliance period
Less than 200,000 sq. ft.	2 years
200,000 sq. ft. 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 building permit submittal that triggers nonconforming upgrades, or prior to submitting a building permit.

Procedures

Before deciding which Option to choose, a detailed analysis of the site conditions should be performed. It is important to have a thorough understanding of the extent of nonconforming upgrades that will be required prior to entering into the agreement to use Option 2. The following steps are required to utilize Nonconforming Upgrades 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 and additional standards from an overlay or plan district, if applicable.

B. Application

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

- The completed application form.
- A site plan that includes the boundaries of the entire site.
- A Nonconforming Development Assessment, which identifies in writing and on a site plan all areas of development that do not or may not meet the standards listed in Section 33.258.070.D.2.b and additional standards from an overlay or plan district, if applicable.
- Processing fee.

Planning and Zoning staff will review the submitted application and Nonconforming Development Assessment and may, if the applicant chooses, 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 Planning and Zoning. The three alternatives are:

1. An applicant may receive written comments on the Nonconforming Development Assessment from Planning and Zoning **prior** to entering into the Option 2 agreement. This option offers the assurance of City analysis and review to determine specific upgrades that will be required at the end of the compliance period.
2. An applicant may receive written comments on the Nonconforming Development Assessment from Planning and Zoning **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 the 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.
3. An applicant may choose to **not** receive written comments on the Nonconforming Development Assessment from Planning and Zoning. 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.

Note: The Zoning Code changes over time. The Option 2 covenant binds an applicant to meet the standards in effect at the time of the initial building permit application. If one or more of the standards change over the compliance period and the site is certified compliant with standards in effect at the time of the initial building permit application, the site will still be out of conformance with the new standards. However, if certification is requested by the end of the compliance period, a two-year grace period is allowed during which no additional upgrades to nonconforming development are required. After the two-year grace period, building permits with a project value higher than the dollar threshold identified in Section 33.258.070.D.2.a, will trigger review for remaining nonconforming upgrades. In order to avoid additional review in the future, applicants may choose to comply with the standards in effect at the end of the compliance period.

C. 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 (and additional standards from an overlay or plan district, if applicable) 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.

D. Confirmation of Request

A letter confirming enrollment in the Option 2 Process will be provided after the covenant has been executed. The letter will specify the date at which the compliance period will end.

E. Compliance Periods

All nonconforming development identified in Section 33.258.070.D.2.b and additional standards from an overlay or plan district, if applicable, must be brought into full conformance with the requirements of the Zoning Code within the specified compliance period. The compliance period begins when a building permit is issued for alterations to the site of more than \$163,650.

F. Certification

- **Requesting Certification:** At the end of the compliance period, the applicant or owner must request certification from the Bureau of Development Services (BDS) that the site is in compliance with the development standards of Section 33.258.070.D.2, and any additional plan district or overlay zone standards.
- **Required Permit:** Prior to BDS certification, a permit documenting full conformance with these standards must be obtained and receive final inspection approval.
- **Grace Period:** If certification is granted by BDS prior to the end of the compliance period, a two-year grace period is given at the end of the compliance period. During this grace period, additional nonconforming upgrades are not required.
- **Failure to Certify:** If the applicant or owner does not request the site to be certified or if the site is not fully conformance at

the end of the compliance period, additional building permits will not be issued until the site is certified.

Frequently Asked Questions:

Q Which Option is best for me?

A 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. This option requires detailed information and upgrades for each permit valued over the dollar threshold identified in Section 33.258.070.D.2.a. If improvements to 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 project cost.

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. A solid analysis regarding the extent of required improvements on a site is imperative 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 being 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.

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

A The Nonconforming Upgrades 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 expectations about requirements 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, including all properties in 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 building permit application.

For more information visit or call the Planning and Zoning staff at the
Development Services Center at 1900 SW 4th Avenue, Suite 1500, 503-823-7526

For current Portland Zoning Code visit www.portlandoregon.gov/zoningcode

Information is subject to change.