

# TITLE 9

## COMMUNITY DEVELOPMENT

### Subtitle 2 — Land Development Code Division 6 — Miscellaneous Development Code Provisions

#### CHAPTER 936

#### NON-CONFORMING USES AND PRE-EXISTING USES CODE

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#### Statutory References and Other Authorities

#### Legislative History of Chapter 936

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#### I. GENERAL PROVISIONS

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#### 936.005 Title; short title

This Chapter, LCC 936.005 to 936.999, shall be known and cited as the “Linn County Non-conforming Uses and Pre-existing Uses Code.” This Chapter may also be referred to and cited as the “Non-conforming Uses and Pre-existing Uses Code.”

[Adopted 98-002 §3 eff 11/\_\_/97; amd 99-121 §17 eff 6/30/99]

#### 936.010 Statement of purpose

The purpose of this Chapter is to prescribe:

(A) the circumstances under which a legal use of land that has become non-conforming as a result of amendments to the Zoning Map or Development Code may continue;

(B) the distinction between a non-conforming use and a pre-existing use;

(C) the circumstances under which a non-conforming use may be altered, restored or replaced; and

(D) the circumstances under which a pre-existing use may be altered, restored or replaced.

(E) Nothing in this Chapter shall be deemed to require any change in the construction or use of any structure for which a legally-issued building

permit was obtained and the authorized construction was initiated before these Development Code provisions become effective.

[Adopted 98-002 §3 eff 3/4/98]

### 936.070 Definitions

As used in this Chapter, “alter” means to make any change, addition or modification that increases the intensity or capacity or changes use and “alteration” means any such change, addition, or modification.

[Adopted 98-002 §3 eff 3/4/98]

### 936.090 Level of review

An application made under this Chapter is a Type IIA action.

[Adopted 98-002 §3 eff 3/4/98]

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## II. NON-CONFORMING USES

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### 936.100 Non-conforming uses; defined

(A) A non-conforming use is a lawful use which existed, and continues to exist, on the date that the zoning district in which the use is located was established, but which does not conform with the regulations of that district.

(B) A non-conforming use is any use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which because of that adoption, revision or amendment, now fails to conform to the present requirements of the applicable zoning district.

(C) A non-conforming use is a use that has continuously existed for a period of 20 years immediately preceding the date of an application for a non-conforming use review.

[Adopted 98-002 §3 eff 3/4/98; amd 02-313 §7eff 8/21/02]

### 936.110 Review of non-conforming uses

(A) The non-conforming use itself is not subject to review.

(B) Alterations of a non-conforming use may be subject to review and approval under the decision criteria governing non-conforming uses.

[Adopted 98-002 §3 eff 3/4/98]

### 936.120 Non-conforming uses; regulations

(A) Alterations of a non-conforming use shall be subject to review and approval under the decision criteria governing non-conforming uses.

(B) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued as a non-conforming use.

(C) A change of ownership or occupancy shall be permitted.

(D) Alteration of any such use may be permitted in order to reasonably continue the use. Alteration of any non-conforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Other alterations, restoration or replacements of a non-conforming use are regulated by this Chapter.

[Adopted 98-002 §3 eff 3/4/98]

### 936.130 Discontinued non-conforming uses

Any non-conforming use of land that is discontinued for a period exceeding 12 months shall thereafter only be used in ways that conform to the regulations of the applicable zoning district and other applicable Development Code provisions.

[Adopted 98-002 §3 eff 3/4/98]

### 936.140 Decision criteria for the restoration or replacement of non-conforming uses, involuntarily damaged or destroyed

(A) Any non-conforming use involuntarily damaged or destroyed by fire, casualty or other natural disaster may be restored or replaced if all of the criteria set forth in subsection (B) are met.

(B) *Decision criteria.*

(1) The use had not been discontinued or abandoned for a period exceeding 12 months prior to the loss;

(2) Restoration or replacement is proposed and shall commence within 12 months from the occurrence of the fire, casualty or natural disaster; and

(3) The proposed use will not result in an alteration of the non-conforming use.

[Adopted 98-002 §3 eff 3/4/98]

**936.150 Decision criteria for voluntary alteration or restoration of a non-conforming use, not required by law**

(A) An application made under this section is for a voluntary alteration or restoration of non-conforming use not required by law and not governed by LCC 936.140, 936.160, or 936.170.

(B) A voluntary alteration of a non-conforming use, not necessary to comply with a requirement of law, may be permitted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that the decision criteria set forth in subsection (C) are met.

(C) *Decision criteria.*

(1) The alteration does not change the basic use even though the operational characteristics may change. For example, one type of repair shop may be replaced with a different type of repair shop;

(2) The proposed alteration does not result in any greater adverse impact to the neighborhood; and

(3) The property development standards of the applicable zoning district are met or a variance consistent with LCC Chapter 938 (Variance Procedure Code) is granted.

[Adopted 98-002 §3 eff 3/4/98]

**936.155 Decision criteria for voluntary replacement of a non-conforming use, not required by law**

(A) An application made under this section is for a voluntary replacement of non-conforming use not required by law and not governed by LCC 936.140, 936.160, or 936.170.

(B) The voluntary restoration or replacement of a non-conforming use, not necessary to comply with a requirement of law, may be permitted if all of the criteria set forth in subsection (C) are met.

(1) *Decision criteria.*

(a) The use has not been discontinued for a period exceeding 12 months prior to the date of application;

(b) Restoration or replacement is proposed and shall commence within 12 months of approval;

(c) The proposed restoration or replacement will have no greater adverse impact to the neighborhood; and

(d) The property development standards of the applicable zoning district are met or a variance consistent with LCC Chapter 938 (Variance Procedure Code) is granted.

[Adopted 98-002 §3 eff 3/4/98]

**936.160 Decision criteria, change from one non-conforming use to another**

(A) An application made under this section is for a change from one non-conforming use to another not required by law and not governed by LCC 936.140 or 936.150.

(B) A change from one non-conforming use to another may be granted if, on the basis of the application and investigation, findings and conclusions show that all of the criteria set forth in subsection (C) are met.

(C) *Decision criteria.*

(1) The proposed non-conforming use will have no greater adverse impact to the neighborhood especially regarding noise, air or water pollution, dust, odors, vibrations or vehicular traffic; and

(2) The change of use will result in a use more closely conforming to the statement of purpose and the allowed uses within the applicable zoning district.

[Adopted 98-002 §3 eff 3/4/98]

**936.170 Decision criteria, alterations required by law**

(A) An application made under this section is for an alteration, restoration, or replacement of non-conforming use required by law.

(B) An alteration of a non-conforming use, required by law may be permitted if, on the basis of the application and investigation, findings and conclusions show that the requested alteration is the minimum necessary to comply with legal requirements as verified by the agency requiring the alteration.

**936.180 Non-conforming aggregate sites**

(A) Any non-conforming aggregate extraction and processing site in continual operation since July 1972 may continue to operate without obtaining a conditional use permit, or zoning district amendment, or *Plan* amendment, except in the following instances:

(1) When the Oregon Department of Geology and Mineral Industries (DOGAMI) determines that a permit is needed;

(2) A new removal permit for aggregate extraction is required by the Oregon Division of State Lands (DSL); or

(3) The expansion of the site.

(B) A non-conforming aggregate site that fails to meet the requirements of this section is voluntarily discontinued.

[Adopted 98-002 §3 eff 3/4/98; amd 99-156 §11 eff 6/30/99]

**936.190 Non-conforming use status of firearm training facilities and personal-use airports**

(A) A firearms training facility, lawfully existing on September 9, 1995 shall be allowed to continue operating without a conditional use permit until the facility is no longer used as a firearms training facility. (ORS 197.770)

(B) A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Department of Transportation.

[Adopted 98-002 §3 eff 3/4/98]

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**III. PRE-EXISTING USES**

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**936.500 Pre-existing use; defined**

Any lawful use of land which existed on the effective date of this Development Code which is a conditional use under the current zoning district but which has not been reviewed and approved shall be deemed a preexisting use.

[Adopted 98-002 §3 eff 3/4/98]

**936.510 Review of pre-existing uses**

(A) The preexisting use itself is not subject to review.

(B) Alterations of a pre-existing use shall be subject to review pursuant to the applicable procedure in LCC Chapter 921 (Administration of the Development Code) and approval under the applicable decision criteria in the district within which the pre-existing use is located

[Adopted 98-002 §3 eff 3/4/98]

**936.520 Pre-existing use, regulations**

A change of use shall conform to the uses allowed within the applicable zoning district.

[Adopted 98-002 §3 eff 3/4/98]

**936.530 Discontinued pre-existing uses**

(A) Any pre-existing use that is discontinued for a period exceeding 12 months shall thereafter only be used in ways that conform to the regulations of the applicable zoning district and other applicable Development Code provisions.

(B) An aggregate extraction and processing site shall be defined as voluntarily discontinued when the permit issued either by DOGAMI or DSL has lapsed for a period of 12 months or more.

[Adopted 98-002 §3 eff 3/4/98]

**936.540 Decision criteria for the restoration or replacement of pre-existing uses, involuntarily damaged or destroyed**

(A) Any pre-existing use involuntarily damaged or destroyed by fire, casualty or other natural disaster may be restored or replaced if all of the criteria set forth in subsection (B) exist.

(B) *Decision criteria.*

(1) The use had not been discontinued or abandoned for a period exceeding 12 months prior to the loss;

(2) Restoration or replacement is proposed and shall commence within 12 months from the occurrence of the fire, casualty or natural disaster; and

(3) The proposed use will not result in an alteration of the pre-existing use.

[Adopted 98-002 §3 eff 3/4/98]

**936.550 Pre-existing aggregate sites**

(A) Any pre-existing aggregate extraction and processing site in continual operation since July 1972 may continue to operate without obtaining a conditional use permit, or zoning district amendment, or *Plan* amendment, except in the following instances:

(1) When the Oregon Department of Geology and Mineral Industries (DOGAMI) determines that a permit is needed;

(2) A new removal permit for aggregate extraction is required by the Oregon Division of State Lands (DSL); or

(3) The expansion of the site.

(B) A pre-existing aggregate site that fails to meet the requirements of this section is voluntarily discontinued.

[Adopted 98-002 §3 eff 3/4/98; amd 99-156 §11 eff 6/30/99]

**936.560 Pre-existing use status of firearm training facilities and personal-use airports**

(A) A firearms training facility, lawfully existing on September 9, 1995 shall be allowed to continue operating without a conditional use permit until the facility is no longer used as a firearms training facility. (ORS 197.770)

(B) A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Department of Transportation.

[Adopted 98-002 §3 eff 3/4/98]

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**Statutory References and Other Authorities:**  
ORS 197; 203; 215

**Legislative History of Chapter 936:**

Adopted 98-002 eff 3/4/98

Amendments to 98-002

#1 99-121 §17 eff 6/30/99

#2 99-156 §11 eff 6/30/99

#7 02-313 §7 eff 8/21/02

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