

5.8-100 Non-Conforming Uses—Determination, Continuance, Expansion or Modification

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5.8-105	Purpose
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- A.** This Section:
1. Provides for the regulation of legally created: non-conforming uses; buildings and/or structures; and lots of record; and
 2. Specifies those circumstances and conditions under which a non-conforming situation may be permitted to continue and/or expand.
- B.** Approval of a Variance as specified in SDC 5.21-100 shall not be considered to make a use, building or structure, or lot of record non-conforming.

5.8-110	Review
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- A.** A request for non-conforming use status is reviewed under Type 1 procedure.
- B.** A request for an expansion or modification of a non-conforming use and/or the expansion of a non-conforming building or structure is reviewed under Type 2 procedure, unless the Director determines that the application should be reviewed as a Type 3 decision by the Planning Commission or Hearings Officer due to the complexity of the application or the need for discretionary review.

5.8-115	Determination of Non-Conforming Use Status
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A non-conforming use is an activity involving land, buildings, and/or structures for purposes which were legally established prior to the May 5, 1986, but which do not fully comply with the current development regulations, or subsequent amendments to this Code. These activities would not be permitted by this Code as a new use in the zone in which it is currently located. The Director shall

make a determination regarding the legal status of a non-conforming use using the following approval criteria. The burden of proof is upon the property owner.

- A.** The applicant shall submit any of the following items as proof that the use was permitted by this Code at the time it was adopted or amended:
1. Copies of building and/or land use permits issued at the time the use was established; and/or
 2. Copies of zoning code provisions and/or zoning maps.
- B.** The applicant shall submit any of the following as proof that the use has been in operation over time and has not been abandoned as specified in SDC 5.8-130:
1. Utility bills;
 2. Income/property tax records;
 3. Business licenses;
 4. Listings in telephone, business directories;
 5. Advertisements in dated publications, e.g., trade magazines;
 6. Building, land use or development permits; and/or
 7. Any other information which the applicant believes is relevant.

5.8-120	Continuance
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A non-conforming building, structure or use may continue so long as it remains otherwise lawful as specified below:

- A.** A non-conforming building or structure, which:
1. Requires routine maintenance and repairs may be repaired in compliance with the Building Safety Codes;
 2. Is determined to be substandard by the Building Official may be restored to a safe condition in compliance with the Building Safety Codes; or
 3. Suffers any damage may be restored to its original condition, provided development approval is obtained, where applicable, and a Building Permit is issued within the time line specified in SDC 5.8-130.
- B.** A non-conforming use within a building or structure discussed in Subsection A., above may continue until abandoned as specified in SDC 5.8-130.

- C. Existing single-wide manufactured dwellings on individual lots/parcels in Glenwood and in the Adams Plat area may be replaced with a single-wide manufactured dwelling of approximately the same size within the time line specified in SDC 5.8-130.
- D. Agriculture and agricultural uses and structures on land in Glenwood permitted under Section 9.384 of the Eugene Code prior to the adoption of the Glenwood Refinement Plan by the City on November 8, 1999, may continue until the land is annexed to the City at the request of the property owner.

5.8-125	Expansion or Modification
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An expansion or modification of a non-conforming use and/or the expansion of a non-conforming building or structure resulting in an increased impact upon adjacent properties is considered an expansion of a non-conforming use. Approval may be granted only when the Director determines that there will be no significant impact of the expansion upon adjacent properties. The Director may require approval conditions to mitigate a significant impact. The applicant shall demonstrate all of the following applicable approval criteria have been met:

- A. For residential zones, the expansion shall not lessen the residential character of the residential zone taking into account factors, including but not limited to:
 1. Building scale, placement, and façade;
 2. On-site parking placement;
 3. Vehicle trips to the site and impact on surrounding on-street parking;
 4. Buffering and the potential loss of privacy to abutting residential uses; and
 5. On-site lighting.
- B. For zones other than residential, there shall be no significant impact compared to the current use or building or structure on the surrounding area taking into account factors, including but not limited to:
 1. The hours of operation;
 2. An increase in building size or height;
 3. On-site parking placement;
 4. Vehicle trips to the site and impact on surrounding on-street parking;
 5. Noise, vibration, dust, odor, fumes, glare, smoke and on-site lighting; and

- 6. The amount, location, and nature of any outside displays, storage, or activities.
- C. The following situations shall not be considered to be an expansion or modification of a non-conforming use:
 - 1. An existing building or structure conforming to use, but non-conforming as to height, setback and other dimensional standards, may be expanded or modified, provided the expansion or modification does not result in an increased violation of this Code.
 - 2. The replacement of a single-wide manufactured dwelling as may be permitted in SDC 5.8-120C.

5.8-130	Abandonment
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- A. Any non-conforming use which is discontinued for 6 months or more, or any non-conforming building or structure which is not occupied or used for 6 months or more, shall be deemed abandoned and lose its status as a non-conforming use, building or structure on:
 - 1. The date the building or structure is vacated; and/or
 - 2. The date the use ceases.
- B. Any subsequent use or development shall be in compliance with the provisions of this Code.

5.8-135	Lots of Record
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A lot of record is any legally approved lot/parcel which, at the time it was created, fully complied with all applicable laws and Ordinances of the City, or Lane County for those lots/parcels within the City's urbanizable area, but which is now non-conforming because the lot/parcel does not fully comply with the current provisions of this Code or any amendment to this Code.

- A. Any lot of record that is non-conforming due to area, width and/or depth is a buildable lot/parcel, provided that the development standards of this Code can be met. For example, if a setback standard cannot be met due to lot/parcel area, a Variance to the setback standards of the applicable zoning district as specified in SDC 5.21-100 is required prior to the issuance of a Building Permit.
- B. Any lot of record that is non-conforming due to a public facility deficiency, including but not limited to, unimproved streets, lack of sidewalks, sanitary sewers or storm water facilities may be further developed as specified in this Code. However, the public facility deficiency shall be addressed at the time of development.

- C. The dedication of right-of-way during the development review process shall not be considered to create a non-conforming lot/parcel due to lot/parcel size or dimension.

5.8-140	Exemptions
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- A. Residential buildings and uses existing and legally permitted, or permitted under Discretionary Use approval in the LMI land use district or LMI plan designation in Glenwood as of January 27, 1982 shall be exempt from SDC 5.8-115, SDC 5.8-120 and SDC 5.8-125. Commercial and industrial buildings and uses existing and legally permitted or permitted under Discretionary Use approval in the LMI zoning district or LMI plan designation in Glenwood as of December 7, 1998 shall be exempt from SDC 5.8-115, SDC 5.8-120 and SDC 5.8-125.
- B. Any proposed expansion on property zoned or designated LMI that has a use listed under HI, as specified in SDC 3.2-410, and abuts any residential use shall require Site Plan Review approval. The exemption shall apply applies as follows: to expansions, regardless of the direction, of buildings or land or both; and expansions onto contiguous properties under the same ownership.

5.8-145	Vested Rights—Completion of a Non-Conforming Building or Structure
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- A. A building or structure that has received a valid Building Permit prior to the adoption of this Code or subsequent amendments to it may be completed in accordance with the terms of that Building Permit and used for the purpose for which it was permitted. The structure and its use shall then be considered non-conforming. The burden of proof is on the applicant to demonstrate that the structure has received a valid Building Permit.
- B. If a Building Permit is revoked by the Building Official or for any reason becomes void, all rights granted by this Section are terminated and the project shall then be required to conform to all the provisions of this Code.

5.8-150	Ballot Measure 37 Demands
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Notwithstanding the foregoing provisions and regulations of this Section, any waivers to the provisions of this Code granted by the City Council in response to a Demand for compensation, as may be permitted as specified in the Springfield Municipal Code, 1997, shall supersede the provisions and regulations of this Section and is transferable to a future purchaser of the property to the extent required by ORS 197.352.