



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: 10/20/2014
Jurisdiction: City of Keizer
Local file no.: 2014-013
DLCD file no.: 004-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 10/13/2014. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 40 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 004-14 {22300}
Received: 10/13/2014

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Keizer

Local file no.: **2014-13**

Date of adoption: 10-06-14 Date sent: 10/10/2014

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

- Yes: Date (use the date of last revision if a revised Form 1 was submitted): 5-30-14
- No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No
If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Sam Litke, Senior Planner

Phone: 503-856-3442 E-mail: litkes@keizer.org

Street address: 930 Chemawa Road City: Keizer Zip: 97307-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- Change from to . acres. A goal exception was required for this change.
- Change from to . acres. A goal exception was required for this change.
- Change from to . acres. A goal exception was required for this change.
- Change from to . acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): .

- The subject property is entirely within an urban growth boundary
- The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Text amendment to revise Section 2.204 (Nonconforming Uses) to clarify numerous ambiguities within this section of the development code.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: . Acres added: . Acres removed:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

1 BILL NO. 684

A BILL

ORDINANCE NO.

2014- 705

3 FOR

4
5 AN ORDINANCE

6
7
8 AMENDING KEIZER DEVELOPMENT CODE REGARDING
9 SECTION 2.204 (NONCONFORMING USES); AMENDING
10 **ORDINANCE 98-389**

11
12 WHEREAS, the Keizer Planning Commission has recommended to the Keizer
13 City Council amendments to the Keizer Development Code (Ordinance No. 98-389); and

14 WHEREAS, the City Council has held a hearing on this matter and considered the
15 testimony given and the recommendation of the Keizer Planning Commission; and

16 WHEREAS, the Keizer City Council has determined that it is necessary and
17 appropriate to amend the Keizer Development Code as set forth herein; and

18 WHEREAS, the Keizer City Council has determined that such amendments meet
19 the criteria set forth in state law, the Keizer Comprehensive Plan, and the Keizer
20 Development Code;

21 NOW, THEREFORE,

22 The City of Keizer ordains as follows:

23 Section 1. FINDINGS. The City of Keizer adopts the Findings set forth in
24 Exhibit "A" attached hereto and by this reference incorporated herein.

25

1 Section 2. AMENDMENT TO THE KEIZER DEVELOPMENT CODE. The
2 Keizer Development Code (Ordinance No. 98-389) is hereby amended by the adoption
3 of the changes to Section 2.204 (Nonconforming Uses) as set forth in Exhibit "B"
4 attached hereto, and by this reference incorporated herein.

5 Section 3. SEVERABILITY. If any section, subsection, sentence, clause,
6 phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional, or
7 is denied acknowledgment by any court or board of competent jurisdiction, including,
8 but not limited to the Land Use Board of Appeals, the Land Conservation and
9 Development Commission and the Department of Land Conservation and Development,
10 then such portion shall be deemed a separate, distinct, and independent provision and
11 such holding shall not affect the validity of the remaining portions hereof.

12 Section 4. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days
13 after its passage.

14 PASSED this 6th day of October, 2014.

15
16 SIGNED this 6th day of October, 2014.

17
18 
19 _____
Mayor

20
21 
22 _____
City Recorder

EXHIBIT "A"

Findings regarding the adoption of amendments to Section 2.204 (Nonconforming Uses) in the Keizer Development Code.

The review criteria are listed in Section 3.111.04 of the Keizer Development Code.

The City of Keizer finds that:

1. General Findings.
 - a. The particulars of this case are found within planning file Text Amendment 2014-13. Public hearings were held before the Planning Commission on July 23, 2014, and before the City Council on September 15, 2014. The Planning Commission reviewed the proposed revisions and voted to recommend that they be adopted. The City Council voted to direct staff to prepare findings and an ordinance to adopt the proposed text amendments.
 - b. The proposed text amendments relate to the regulations pertaining to nonconforming uses.
2. Amendments to the Comprehensive Plan or Development Code shall be approved if the evidence can substantiate the following. Amendments to the map shall be reviewed for compliance with each of the following, while text amendments shall only be reviewed for compliance with Section 3.111.04 B, C, and D. Given that this is a text amendment Section 3.111.04 A is not applicable.
3. Section 3.111.04.B - A demonstrated need exists for the product of the proposed amendment -

Findings: The proposed revisions to the zone code reflect a demonstrated need. The City Council has recognized that from time to time the Keizer Development Code should be updated to avoid having the code become so out of date that it would require a massive and costly comprehensive update. These revisions are related to conflicts within Section 2.204 (Nonconforming Uses) and seek to eliminate those conflicts and remove any ambiguities within the existing regulations. As such, the proposed code revisions comply with this review criterion.
4. Section 3.111.04.C- The proposed amendment to the Keizer Development Code complies with statewide land use goals and related administrative rules

FINDINGS: The proposed text amendments comply with the statewide land use planning goals as discussed below.

Goal 1 – Citizen Involvement: The adoption of this ordinance followed notice to interested parties, a public process of decision making involving public hearings, deliberation, and ordinance adoption. Public notice was provided in the Keizer Times. Public hearings were held before the Planning Commission and the City Council. Public hearings were held before the Planning Commission on July 23, 2014, and before the City Council on September 15, 2014. Citizens were afforded the opportunity to participate in the public process. Finally, the Planning Commission and City Council meetings are televised further providing an avenue for awareness of the issue. This process is consistent with the provision for providing an opportunity for citizens to be involved in all phases of this proposed planning process as is required by this goal and with implementing administrative rules within Oregon Administrative Rules.

Goal 2 – Land Use Planning: This ordinance amends the Keizer Development Code. The city has an adopted comprehensive plan which has been acknowledged by the state. The adoption proceeding was conducted in a manner consistent with requirements of the Keizer Comprehensive Plan, Keizer Development Code, and applicable state law. Notice was published in the Keizer Times in accordance with public notice requirements within the Keizer Development Code. Public hearings were conducted before the planning commission and city council providing an opportunity for both verbal and written testimony. The planning commission voted to recommend that the City Council adopt the proposed text amendments. Therefore, the proposed revisions to the zone code are consistent with this statewide planning goal and administrative rules.

Goal 3 – Farm Land: The purpose of this goal is to protect lands that are designated for agricultural uses. Within the city limits the Exclusive Farm Use (EFU), Special Agriculture (SA), Urban Transition (UT), and Public (P) allow commercial agricultural uses. However, only the SA zone is a state recognized EFU qualifying zone. The amendment involves regulations within the boundaries of the city limits of Keizer. Since the text amendments will only involve lands that are designated inside the city limits it will not affect lands that are outside the city limits or any lawful uses occurring on those lands. Therefore, the proposed amendments will comply with the Farm Land Goal and with any implementing administrative rules.

Goal 4 – Forest Land: The intent of this goal is to protect lands that are designated for commercial forest uses. There are no zone districts that are specifically designated within the city limits that will allow for commercial forestry. Also, there are no commercial forest lands near, or adjacent to the city

limits of Keizer. The amendments to the KDC do not involve any land which is designated as forest land, nor will it impact the use of any forest lands. The amendments will only involve lands that are designated inside the city limits and will not affect lands which allow for commercial forestry or lawful uses occurring on those lands. Therefore, this Goal and implementing administrative rules are not applicable to the proposed zone code amendments.

Goal 5 – Natural Resources: The intent of the Natural Resources Goal is to protect various natural resources such as wetlands, waterways, big game habitat, etc. The city has a local wetland inventory to identify sites within the city limits where wetland soils may be present. The city has an adopted Willamette River Greenway Overlay zone aimed to protect the resources along the Willamette River. There are no identified big game habitats within the city limits of Keizer. The city established a Resource Conservation overlay zone to maintain, preserve and protect the natural features adjacent to Claggett Creek. In addition, the city has also been developing storm water regulations which will further protect water quality of the local water ways. The proposed amendments to the zone code regulations will not affect or preclude any of the city's natural resources protection regulations nor the lawful use of any properties that are within this overlay zone. Therefore, the proposed text amendments will be consistent with this goal and with administrative rules designed to implement this goal.

Goal 6 – Air, Water and Land Quality: The intent of this goal is to protect the city's air, water and land qualities. The city provides its residents with city water from groundwater sources. The quality of the water is monitored to ensure that it complies with all state and federal water quality standards. New construction is required to be connected to the established sanitary sewer system thereby reducing the likelihood of groundwater contamination from failing on-site septic systems. The city has storm water regulations which are geared to maintain water quality in Willamette River and other local streams. Land quality is preserved through the city's erosion control regulations and through zone code development regulations. Air quality is preserved through the city's development code regulations which limit certain types of uses in certain zones. However, primarily air quality regulations are enforced by the appropriate state agencies which govern air emission standards. All new dwelling units must be constructed consistent with state building codes and must be connected to city water lines and municipal sanitary sewer lines unless the property is greater than 300 feet from any service line. The revisions will not impact this goal and so will comply with this goal and with the administrative rules that implement this goal.

Goal 7 – Natural Hazards: The purpose of this goal is to protect life and property from hazards resulting from flooding, steep slopes or other natural occurrences. The city has floodplain regulations that govern the placement of structures within identified 100-year floodplains within the city limits. A

floodplain is the area that is adjacent to a body of water which may be subject to periodic inundation. In Keizer, these are primarily located along the Willamette River and smaller streams such as Claggett Creek. The floodplains have been mapped by the federal government. With the exception of areas removed from the 100-year floodplain through the Letter of Map Amendment, the 100-year floodplain is the area of greatest concern. While this area is referred to as a 100-year floodplain, it is because it has a statistical probability of having a 1% chance of flooding in any one year. The last major 100 year flood event was the 1964 flood. By contrast, the 1996 flood was not a 100 year flood event for Keizer, although clearly there was a significant amount of water flowing through parts of Keizer during that flood event. The intent of the floodplain regulations is to minimize the loss of life and property damage by preventing development, elevating structures above the flood elevation, or flood proofing structures in the floodplain. Only in the area identified as a floodway will most forms of development be prohibited. The floodway is that area that is generally the channels of rivers and streams which during a flood event will experience very significant water depth and velocity flows. While there are some steep slopes in the northwest quadrant of the city, there are no mapped areas of steep slopes in Keizer that might warrant any special engineering. The proposed text amendments will neither impact this goal nor any administrative rules.

Goal 8 – Recreation: This goal requires the city to identify and plan for the current and future recreation needs of the residents of the city. The city has an adopted Parks and Recreation Master Plan that inventories the parks, playgrounds, and other recreational opportunities within the city limits and also plans for the city's future park and recreation needs. This plan inventoried 92 acres of parks within the city and another 120 acres under the city's jurisdiction but which includes land that is both within and also outside the city's UGB. This is comprised of one large incorporated park (Keizer Rapids Park); one large 10.6 acre city park; 10 small city parks ranging in size from 1.3 acres to 5.9 acres; three water front parks ranging in size from 1.5 acres to 11.2 acres; one 15.4 acre special use park; two natural area parks ranging from 3.7 acres to 9.5 acres; and one 6.1 acre undeveloped park. The needs assessment determined that there are gaps in park level of service coverage and that the general west Keizer area is under served and that additional park land is needed. The adopted master plan contains a level of service of 5 acres per 1,000 residents. The recently adopted Housing Needs Analysis further refined this and determined that the city will need to provide additional acres to meet future park needs. The proposed amendments will not have any impact on the recreational activities or uses that occur on any park land within the city. The proposed text amendments will not impact either this goal or any administrative rules that implement it.

Goal 9 – Economic Development: The intent of this goal is to ensure that the city plans for its overall economic vitality. The proposed amendment does not impact the ability of either the City of Keizer to seek any additional types of

commercial development nor will it affect any established economic development strategies to encourage economic growth. The City of Keizer and Marion County, along with the cities of Salem and Turner, and Polk County developed a regional economic opportunities analysis which identified the economic potentials and constraints within the Salem – Keizer regional area.

The EOA documenting the composition of employment by industry in Keizer exhibits several large deviations from the statewide composition. The deviations represent Keizer's competitive advantages in the economy, which fall largely in population-driven services. Industry classifications such as Retail Trade, Education & Health, and Food Service & Drinking Places have a high representation locally. The City Council determined that medical facilities, including research, development and support; information technology/back office; educational services, including educational research and job training; professional services, including corporate headquarters; and, sporting events are target industries that are appropriate for Keizer to target.

Current employment levels by industry were projected forward based on regional job growth estimates and the above target industry goals. The growth forecast calls for a total of 3,774 new jobs over the next 20 years, representing growth of 55% over current levels. The EOA estimated the need for 160 gross acres of land to accommodate the projected employment growth. An inventory of remaining buildable lands finds 123 acres of buildable land remaining within the city boundary, in the commercial and industrial categories. However, there is no land available that is well-suited for the institutional category, which includes hospitals, higher education facilities, and other uses that figure heavily into the City's economic development strategy. Finally, the EOA shows there is a net need for commercial and institutional lands amounting to 63.3 gross acres above and beyond what the City's remaining buildable employment lands can accommodate. The proposed text amendments will not have any adverse impact on the economic development activities or uses within the city. Therefore, the proposal is consistent with this goal.

Goal 10 – Housing: This goal requires the county to plan and provide for the housing needs of its residents. The City of Keizer with Marion County, Polk County, and the City of Salem has developed a regional housing needs analysis for the upcoming 20 year planning period. In a follow up to the regional study, the city adopted its own local housing needs analysis as part of the city's Periodic Review that was geared specifically to Keizer and identified the projected 20 year housing needs for the city. The HNA indicated that over the upcoming 20-year period, that there will be a growth in the number of non-group households by 4,366 households which will represent a population growth of 11,833 new residents. This is consistent with Keizer's adopted 2032 forecast. When the housing needs of the projected 2033 population is

compared to the current housing supply, the analysis projects the need for 4,513 new units to house the future population.

The HNA documented that the largest share (50%) of one housing type is projected to be single-family detached homes, due to the stronger need for new ownership housing. The remainder of units is projected to be some form of attached housing (46%), or mobile homes (4%). 54% are projected to be ownership units, while 46% are projected to be rental units. The inventory of buildable residential lands finds a current supply of 315.2 acres which are vacant, partially vacant or re-developable. These acres can hold an estimated 2,422 units. The total 20-year unit need (4,513 units) minus this remaining buildable capacity (2,422 units), leaves a remainder of 2,090 units which must be accommodated beyond the City's remaining capacity within its current boundary. When this remaining land need is apportioned to Keizer's residential zones, the HNA estimates a 20-year need for 267 gross acres of residential land, to be accompanied by 43.5 acres of new land for parks to serve this new population, and 10 acres of land for new school facilities. This is a total of 385 gross acres. The proposed amendments will have no impact on this goal.

Goal 11- Public Facilities and Services: The intent of this goal is to develop a timely, orderly and efficient arrangement of public facilities and services necessary to serve the residents of Keizer. The city provides its residents with water, sanitary sewer, an established street system, administrative services, police services, and public safety services. Sanitary sewer service is provided by the city of Salem through an intergovernmental agreement. Fire protection services are provided by the Keizer Fire District or Marion County Fire District #1. There is sufficient capacity in the municipal water delivery system and also within the sanitary sewer treatment system to accommodate planned growth within the upcoming 20 year planning period. Education services are provided by the Salem – Keizer School District and Chemeketa Community College. Private utilities provide trash, electrical, television, telephone services. The proposed text amendments will not impact any of the city's public facilities and services. Therefore, the proposal is consistent with this goal.

Goal 12 – Transportation: The city has an adopted Transportation System Plan that describes the city's transportation systems. This system includes streets, transit, bike, and pedestrian systems. It inventories the existing systems and contains plans for improving these systems. The proposed text amendments will have no adverse impact on the city's transportation systems and so will not affect this goal nor any implementing rules.

Goal 13 – Energy Conservation: This goal seeks to maximize the conservation of energy. All new construction requires compliance for review to applicable energy conservation standards. The proposed zone code text amendment will not impact this goal nor any of the implementing administrative rules.

Goal 14 – Urbanization: The intent of this goal to provide for an orderly and efficient transition from rural to urban land use. The city has an adopted Comprehensive Plan and zone code that complies with the goal. The proposed text amendment will have no impact on the intent of this goal as it only will involve land that is within the city limits and not the use of land being transitioned from rural to urbanized uses.

Goal 15 – Willamette River: This goal seeks to protect, conserve, maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River. While the Willamette River is located along the western flanks of Keizer the proposed text amendments will not impact the Willamette River. The revisions to the city’s development code will have no impact on the ability of the city to regulate uses along the river or the Willamette River overlay zone regulations and so this goal is not applicable.

Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes), and Goal 19 Ocean Resources) govern areas along the ocean. Since Keizer is not located along the coast, these goals are not applicable

In consideration of the above findings, the proposed zone code revisions complies with all applicable statewide land use goals and with all applicable administrative rules which implement the relevant goal.

5. **Section 3.111.04.D - The amendment is appropriate as measured by at least one of the following criteria:**

- a. It corrects identified error(s) in the previous plan.
- b. It represents a logical implementation of the plan.
- c. It is mandated by changes in federal, state, or local law.
- d. It is otherwise deemed by the council to be desirable, appropriate, and proper.

FINDINGS: The proposed revisions are related to the regulations governing nonconforming uses. Section 1.200 defines a non-conforming structure or use as: “A lawfully existing structure or use at the time this Ordinance, or any amendments, becomes effective, which does not conform to the requirements of the zone in which it is located”. In common terms they are referred as being “grandfathered in” which is accepted to mean that while the development does not meet today’s codes, it is allowed to remain. Section 2.204 contains several sub-sections that are in conflict with other sections. In an effort to eliminate these conflicts and remove ambiguities, this section has been revised. The intent is to develop a set of regulations that are relatively straight forward and understandable while being fair to property owners.

While there are no Comprehensive Plan goals or policies that offer guidance it is determined that the proposed amendment to the zone code represents a logical implementation of the Keizer Comprehensive Plan. The proposed amendments are not

mandated by federal, state, or local law. The City Council has, by this adoption, determined that the text revisions are desirable, appropriate, and proper. As such, the proposal complies with this criterion.

2.204 NONCONFORMING USES

2.204.01 Purpose

This chapter provides standards and procedures for nonconforming uses, developments and improvements. While the intent is to bring nonconforming uses, developments, and structures into compliance with the KDC, thereby minimizing the impacts of such nonconforming status, this chapter makes allowance for these nonconformities to continue in certain situations.

2.204.04 2 Effect on Other Regulations

The provisions of this chapter relate exclusively to the use and development conditions and regulations imposed directly in this Ordinance. Nothing in this Section shall be deemed a waiver, relaxation or abrogation of any provision of any other applicable law, ordinance, or regulation controlling the use or development of buildings, structures or land.
(5/98)

2.204.03 Nonconforming Uses.

- A. **Generally.** A nonconforming use is any use on real property that was lawfully established under the applicable City or county land use regulations at the time the use was established, but which is no longer allowed due to the adoption of, or amendment to, the City's land use regulations, a change in the zone, or annexation of the property into the City. A nonconforming use is a lawful use, and may be continued on the real property until terminated as provided in subsection (E) of this section.
- B. **Ordinary Repairs and Maintenance.** Except as otherwise provided in this section, buildings and structures occupied by nonconforming uses may be repaired and maintained.
- C. **Extension, Alteration, and Expansion of Nonconforming Uses.** If approved pursuant to subsection (D) of this section:
- (1) A nonconforming use in a portion of a building may be extended into other portions of that building.
 - (2) A building or structure occupied by a nonconforming use may be structurally altered or enlarged for the benefit of such use as provided below.
- D. **Application for Extension, Alteration, and Expansion of a Nonconforming Use.**
- (1) **Applicability.** Except as provided in subsection 2.204.03.F of this section, a nonconforming use shall not be extended, altered, expanded, or substituted for another nonconforming use without receiving approval as provided in this section.

- (2) **Conditional Use Required.** The nonconforming uses specified in Section 2.204.03 are considered conditional uses in the applicable zone. However, unlike conditional uses generally, they are not permitted uses. ~~Nonconforming uses may be expanded or changed to a use of the same or more restricted nature where such use is granted a conditional use permit.~~ (5/98)
- (3) **Application Procedures.** The procedures and criteria set forth in Section 3.103 shall apply for a nonconforming conditional use application. Granting of a conditional use allowing the alteration does not remove the nonconforming status of the use or structure. (5/98) In addition to the criteria in Section 3.103, the following criteria must be met: ~~the findings must address the following:~~
- (a) The proposed extension, alteration, enlargement of use is consistent with the general development character of the surrounding area;
 - (b) The degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable at the property line will not be increased by the proposed extension, alteration, enlargement of use;
 - (c) The number and kinds of vehicular trips will not exceed the maximums typical for the zoning district within which the nonconforming use is located;
 - (d) The amount and nature of outside storage, loading, and parking will not be increased or altered by the proposed extension, alteration, enlargement of use so as to cause further impacts;
 - (e) The hours of operation for the proposed extension, alteration, enlargement of use will not be altered or increased beyond those of the existing nonconforming use; and
 - (f) If the proposal includes the alteration or enlargement of a building or structure, the alteration or enlargement must comply with the applicable development standards of the KDC and all other applicable ordinances and regulations.

E. Termination of Nonconforming Use.

- (1) A nonconforming use shall terminate if the building, structure, or land ceases to be occupied for the nonconforming use, for any reason for a continuous period of one year.
- (2) A nonconforming use dependent upon a building or structure that is declared a "dangerous building" shall be deemed terminated upon the date the order declaring the building or structure a dangerous building becomes final.

- (3) A nonconforming use dependent upon a building or structure that is substantially damaged or destroyed by any cause, to the extent that the cost of repair or restoration would exceed sixty-seven percent of the building or structure replacement cost using new materials and conforming to current building codes, shall be deemed terminated upon the date of such damage or destruction. Cost of repair or restoration, and replacement cost, shall be determined by the Community Development Director based on information provided by the applicant, the valuation information used in the International Building Code, and other relevant evidence.
 - (4) A nonconforming use dependent upon a building or structure that is redeveloped or renovated to the extent that the cost of redevelopment or renovation exceeds sixty-seven percent of the building or structure replacement cost using new materials and conforming to current building codes shall be deemed terminated upon the date such redevelopment or renovation commences. Cost of redevelopment or renovation shall be determined by the Community Development Director based on information provided by the applicant and the valuation information used in the International Building Code, and other relevant evidence.
 - (5) A nonconforming use which has terminated shall not be re-established.
- F. Residential Exception. Non-conforming single family residences and associated accessory uses may be replaced within one year of the date of destruction without the need for a conditional use if the replacement is of closely similar scale and height. (5/98)

2.204.04. Nonconforming Development (Improvements and Structures).

- A. **Generally.** Nonconforming development is any development which met the applicable City or county development standards imposed at the time the development was constructed, but which no longer complies with development standards due to the adoption of, or amendment to, the City's land use regulations, a change in the zone, or annexation of the property into the City. A nonconforming development may be continued until the development's nonconforming status is terminated as provided in subsection (D) of this section.
- B. **Ordinary Repairs and Maintenance.** Nonconforming development may be repaired and maintained.
- C. **Alteration and Enlargement.** Unless the alteration or enlargement is undertaken in connection with a nonconforming use, a nonconforming development may be altered or enlarged provided such new development complies with all applicable development standards of the KDC and all other applicable laws, ordinances, and regulations.

D. Termination of Nonconforming Development.

- (1) Nonconforming development that is determined to be a "dangerous building" pursuant to city ordinances and state building codes shall be deemed terminated upon the date the order declaring the building or structure a dangerous building becomes final.
- (2) Nonconforming development that is redeveloped or renovated to the extent that the cost of redevelopment or renovation exceeds sixty-seven percent of its replacement cost using new materials and conforming to current building codes shall be deemed terminated upon the date that such redevelopment or renovation commences. Cost of redevelopment or renovation shall be determined by the Community Development Director based on information provided by the applicant, the valuation information used in the International Building Code, and other relevant evidence.
- (3) Nonconforming development that is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the development would exceed sixty-seven percent of its replacement cost using new materials and conforming to current building codes shall be deemed terminated upon the date of such damage or destruction. Cost of repair or restoration, and replacement cost, shall be determined by the Community Development Director based on information provided by the applicant, the valuation information used in the International Building Code, and other relevant evidence.
- (4) Nonconforming development which has terminated shall be brought into conformity with the applicable development standards or removed.

2.204.02 Termination of Nonconformity

- A. ~~Nonconforming Use. The nonconforming use of a building, structure, or land shall be considered terminated if the Director determines that the use of the building, structure, or land ceased, for any reason, for a continuous period of one year. (5/98)~~
- B. ~~Nonconforming Building, Structure, Land. A nonconforming building, structure, or land shall be considered terminated if the Director determines that the building, structure, or land ceased to be occupied, for any reason, for a continuous period of one year. (5/98)~~
- C. ~~Dangerous Building. Any nonconforming use dependent upon a building or structure which is substantially damaged or becomes deteriorated to the extent that it has been declared a "dangerous building" and ordered demolished pursuant to the Uniform Building Code or other federal, state or local regulations, shall be considered terminated upon such destruction or declaration and order. (5/98)~~

- ~~D. — Damaged Structure. A nonconforming building or structure which is substantially damaged or deteriorated to the extent that the cost of repairing the building or structure exceeds 60 percent of its replacement cost (using new materials and conforming to current building codes) shall be deemed terminated upon the date of such damage or deterioration. Replacement or repair of the building or structure shall require a conditional use permit. (5/98)~~
- ~~E. — Re-establishment Prohibited. No terminated nonconforming use or development shall be re-established. (5/98)~~
- ~~F. — Residential Exception. Non-conforming single family residences may be replaced within one year of the date of destruction without the need for a conditional use. (5/98)~~

2.204.03 Continuation and Expansion of a Nonconforming Use

~~Except as provided in Section 2.204.04 and 2.204.05, any lawfully established nonconforming use, structure or development may be continued unless and until it is terminated. Nonconforming uses, structures or development are subject to the following restrictions as to expansion, alteration, change, and replacement of the use, structures, or development: (5/98)~~

- ~~A. — Expansion Within a Building. A legal nonconforming use of a portion of a conforming or nonconforming building may be expanded into other portions of that building existing prior to this ordinance. (5/98)~~
- ~~B. — Alteration. A conforming or nonconforming building, structure, or development occupied by a legal nonconforming use may be altered, enlarged or replaced for the benefit of such use, provided that the alteration, enlargement or replacement is otherwise lawful under the development standards of this Ordinance. (5/98)~~

~~In the case of a rear setback for a single family residential or duplex structure, the rear wall of the structure, if it was erected in accordance with the applicable setback standards at the time of construction and now is not in compliance with applicable setback standards, shall proscribe the required rear setback for all future additions providing the additions do not exceed the height of the original wall. (5/98)~~

- ~~C. — Conditional Use Required. The nonconforming uses specified in Section 2.204.03 are considered conditional uses in the applicable zone. However, unlike conditional uses generally, they are not permitted uses. Nonconforming uses may be expanded or changed to a use of the same or more restricted nature where such use is granted a conditional use permit. (5/98)~~
- ~~D. — Application Procedures. The procedures and criteria set forth in Section 3.103 shall apply for a nonconforming conditional use application. In addition, findings must indicate the alteration of the use or structure is necessary to comply with a lawful~~

~~requirement, or, will not result in a greater adverse impact on the neighborhood.
Granting of a conditional use allowing the alteration does not remove the
nonconforming status of the use or structure. (5/98)~~

2.204.04 Nonconforming Residential uses in Commercial or Industrial Zones

- A. ~~Continuation Permitted. Any legally established nonconforming residential use in any commercial or industrial zone may be continued unless and until terminated. Such uses may be expanded and their buildings structurally altered provided the expansion or alteration complies with the setback and height provisions of the RM zone and all applicable development standards in this Ordinance. (5/98)~~
- B. ~~Change in Residential Use. Changes of use from a nonconforming residential use to another nonconforming residential use may be made without review provided that the change of use complies with the setback and height provisions of the RM zone and all applicable development standards in this Ordinance. (5/98)~~
- C. ~~Replacement Permitted. Replacement of a legally established nonconforming residential use in any commercial or industrial zone shall be permitted. (5/98)~~

2.204.05 Nonconforming Special Uses

Any lawfully established use that is listed as a special use in the applicable zone shall be considered a conforming use even though it may not conform to the Ordinance requirements. The alteration, enlargement or replacement of a use, or, the structure or building occupied by the use shall require compliance with all of the requirements of this Ordinance. (5/98)

2.204.06 Nonconforming Permitted and Conditional Uses

~~Any legally established use existing prior to this ordinance which is listed in this Ordinance as a permitted or conditional use in the applicable zone, shall be a conforming use even though it may not conform to the requirements for such uses in this ordinance, provided:~~

- A. ~~Expansion. A conditional use permit shall be required for the expansion of any use or if primary structures or buildings occupied by the use are expanded. This provision does not apply to single family dwellings. (5/98)~~
- B. ~~Conformance to Conditions. Pre-existing uses, structures and buildings conform to any condition imposed at the time of approval unless modified as part of a conditional use permit approved pursuant to the requirements of this Ordinance. (5/98)~~

~~2.204.07~~ **Repairs and Maintenance**

~~Except as otherwise provided in this chapter, nonconforming structures and developments, and premises occupied by nonconforming uses may be repaired and maintained without restriction. (5/98)~~

~~2.204.07~~ **Effect of Zone Changes**

~~Wherever the zoning on any lot or portion thereof is changed, the provisions in this chapter shall apply to any use, structure or development made nonconforming by the zone change. (5/98)~~