



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

11/15/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Coos Bay Plan Amendment
DLCD File Number 004-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, November 26, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the 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). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

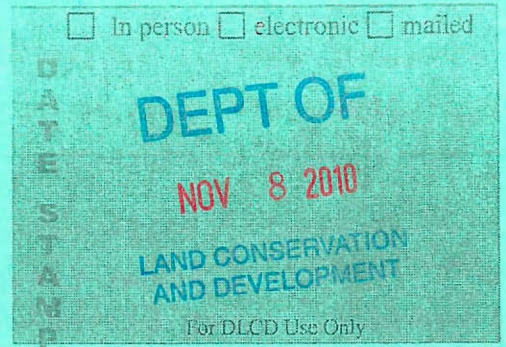
*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Laura Barron, City of Coos Bay
Gloria Gardiner, DLCD Urban Planning Specialist
Dave Perry, DLCD Regional Representative

<paa> YA

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: *City of Coos Bay*

Local file number: *ZON 2010-00043*

Date of Adoption: *NOVEMBER 2, 2010*

Date Mailed: *November 5, 2010*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: *July 30, 2010*

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The time period before a nonconforming use "expires" was extended from 12 to 24 months. And, legally establish nonconforming single-family dwellings/duplexes will be permitted & allowed 24 months rather than 12 to be replaced if destroyed/interrupted.

Does the Adoption differ from proposal? Please select one

The change in language was expanded from just the R-4P zone to also the R-3 and C-1 to maintain consistency.

Plan Map Changed from:

to:

Zone Map Changed from: *N/A*

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 004-10 (18439) [16399]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

NA

Local Contact: LAURA BARRON
Address: 500 Central Ave
City: Coos Bay Zip: 97420

Phone: (541) 269-8929 Extension:
Fax Number: 541-269-8916
E-mail Address: lbarron@coosbay.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 440

AN ORDINANCE AMENDING COOS BAY MUNICIPAL CODE, TITLE 17, ESTABLISHING LAND DEVELOPMENT STANDARDS FOR THE CITY OF COOS BAY FOR SECTION 17.25.030, DISCONTINUATION OF A NONCONFORMING USE, AND SECTIONS 17.45.020, 17.50.020, 17.70.020, 17.75.020, PERMITTED USES, IN THE MULTIPLE RESIDENTIAL / RESIDENTIAL-PROFESSIONAL / CENTRAL COMMERCIAL / GENERAL COMMERCIAL, ZONING DISTRICTS, RESPECTIVELY.

WHEREAS, the City of Coos Bay has filed an application, hereinafter referred to as the Application, to legislatively amend the following sections of the Coos Bay Municipal Code: Chapter 17.25, Nonconformance, Section 17.25.030, Discontinuation of a nonconforming use; Chapter 17.45, Multiple Residential (R-3), Section 17.45.020, Permitted uses; Chapter 17.50, Residential-Professional (R-4P), Section 17.50.020, Permitted uses; Chapter 17.70, Central Commercial (C-1), Section 17.70.020, Permitted uses; and, Chapter 17.75, General Commercial (C-2), Section 17.75.020, Permitted uses;

WHEREAS, notice that public hearing would be held before the City of Coos Bay Planning Commission (the Commission) on September 14, 2010 and public hearing would be held before the Coos Bay City Council on November 2, 2010 was published in "The World," a newspaper of general circulation within Coos County, Oregon, on September 2, 2010 and October 1, 2010.

WHEREAS, provisions in the Coos Bay Municipal Code relating to notice have been complied with; and,

WHEREAS, public hearing was held on the Application on September 14, 2010 and October 12, 2010 and after receiving evidence and hearing testimony, the Commission recommended approval of the Application.

NOW THEREFORE, the City Council of City of Coos Bay ordains as follows:

Section 1. The Commission's Findings and Conclusions supporting its recommended approval are attached hereto as "Exhibit B" and incorporated herein by reference.

Section 2. The City Council of the City of Coos Bay, after considering the Commission's Findings and Conclusions, hereby adopts the Findings and Conclusions, and finds the change should be approved.

Section 3. The City of Coos Bay does hereby amend Title 17 with the language attached hereto as "Exhibit A."


Section 4. The sections and subsections of this Ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay the 2nd day of November 2010.


Yes: Mayor Jeff McKeown and Councilors Jon Eck, Mark Daily, Joanie Johnson, Stephanie Kramer, Gene Melton, and John Pundt.

No: None

Absent: None



Jeff McKeown
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST: 

Rae Lea Cousens
City Recorder of the City of Coos Bay
Coos County, Oregon

EXHIBIT A

The following changes will:

1. Extend the time period before a nonconforming use “expires” from 12 to 24 months; and,
 2. Allow structures, housing legally established residential use types, single-family dwelling and duplex, preexisting the code to be used for other uses permitted in the zoning district for up to 24 months without relinquishing the residential use type.
- A. Amend Chapter 17.25, Nonconformance, Section 17.25.030, Discontinuation of a nonconforming use, to read as follows:
- Whenever a nonconforming use has been discontinued for a continuous period of 24 months, or whenever there is a clear intent on the part of the owner to abandon a nonconforming use, this use shall not be re-established and further use of the premises shall be in conformity with the regulations of the district [Ord. 93, 1.5.3, 1987].
- B. Amend Chapter 17.45, Multiple Residential (R-3), Section 17.45.020, Subsection 17.45.020(1)(f), to read as follows:
- (f) Legally established single-family and duplex residential use types, pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.
- C. Amend Chapter 17.50, Residential-Professional (R-4P), Section 17.50.020, Permitted uses, Subsection 17.50.020(1), Residential Use Types, to add the following:
- (h) Legally established single-family and duplex residential use types, pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.
- D. Amend Chapter 17.70, Central Commercial (C-1), Section 17.70.020, Permitted uses, Subsection 17.70.020(1)(b), Residential Use Types, by adding the following:
- (1) Residential Use Types.
- (b) Legally established residential use types pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.
- E. Amend Chapter 17.75, General Commercial (C-2), Section 17.75.020, Permitted Uses, Subsection 17.70.020(2), Residential Use Types, by deleting the following:

(2) Residential Use Types.

- (c) A legally established single-family dwelling or duplex pre-existing the adoption of the ordinance codified in this title:
 - (i) In the event of damage to or destruction of such single-family dwelling or duplex, the structure must be rebuilt within 12 months of such event in order to continue the residential use.
 - (ii) An extension of time beyond the 12-month period referenced in the preceding subsection may be granted by the Planning Commission for good cause shown; and, once a structure is converted to another use permitted within the zone, said structure shall not revert to residential use without approval of a conditional use.

Note: New language is not proposed to be added since uses permitted in the C-1 zone are also permitted in the C-2 zone and the new language will be added to the C-1 zone as shown in D, above. Likewise for the Industrial-Commercial (I-C) zoning district whereby the uses permitted in the C-1 or C-2 zones are permitted.

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EXHIBIT B

DECISION CRITERIA

The Planning Commission will make a recommendation to the City Council based on the findings and conclusions which address the following criteria from Chapter 17.380, Section 17.380.040(1), of the Coos Bay Municipal Code (CBMC).

A. Amend Section 17.25.030, Discontinuation of a nonconforming use, to read as follows:

Whenever a nonconforming use has been discontinued for a continuous period of ~~12~~ 24 months, or whenever there is a clear intent on the part of the owner to abandon a nonconforming use, this use shall not be re-established and further use of the premises shall be in conformity with the regulations of the district [Ord. 93, 1.5.3, 1987].

DECISION CRITERIA #1: An acceptable rationale which supports the need for the amendment.

STATEMENT OF FACT AND FINDINGS:

- 1a. Current code language states that whenever a nonconforming use has been discontinued for a continuous period of 12 months the use shall not be reestablished and further use of the premises shall be in conformity with the regulations of the district.
- 1b. The amendment will create greater flexibility for a landowner with property containing a nonconforming use. The proposed increase in the amount of time allowed for a nonconforming use to be discontinued, from 12 to 24 months, will enable a landowner, for example, the option to lease their property for a use permitted or conditionally permitted in the zone for up to 24 months without relinquishing their right to reestablish the nonconforming use.

CONCLUSION: The proposed amendment will allow greater flexibility for a landowner with property containing a nonconforming use. The decision criterion has been addressed and approval of the proposal can be supported.

DECISION CRITERIA #2: The amendment complies with the applicable provisions of the comprehensive plan.

STATEMENT OF FACT AND FINDINGS:

- 2a. Volume I, Part 1, Chapter 7.5, Economic Development, Goal #1, states:
"Encourage and support economic growth." Policy 1.1 encourages Coos Bay's role as a hub for support service for the south coast, commercial, financial real estate, professional services, housing, etc.

The proposed change from 12 to 24 months for the discontinuation of a nonconforming use is meant to accommodate the landowner of the nonconforming use. It enables the landowner to use/lease/sell the property for a use that meets the zoning requirements. Rather than take a chance at relinquishing the nonconforming status after 12 months, the landowner is given 24 months before relinquishing the nonconforming status of the use. This gives the new owner/lessee of the conforming use 24 months to "test their survival" at that location. If the conforming use is unsuccessful, the nonconforming use is still an option.

For example, a warehouse in the C-2 zone has historically been used by the owner for storage of personal items/vehicles which is a nonconforming use in the zoning district. If the warehouse were to be leased out commercially, then after 24 months the landowner would not be able to use the warehouse for personal storage. That is, after 24 months the nonconforming use would no longer exist.

- 2b. Goal #4 states, "Work to retain, expand and strengthen existing local businesses." Policy 4.3 states to facilitate business investment and development by offering programs to fit their needs.

Although the proposed amendment is not related to a specific program, it is meant to facilitate zone-appropriate uses to "try" a location for up to 24 months while delaying relinquishment of the nonconforming use status by the landowner.

CONCLUSION: Increasing the length of time from 12 to 24 months before a nonconforming use is relinquished and the use of the property is required to conform to the zoning district, will provide greater flexibility for both the landowner and prospective purchaser/lessee. This will allow a zone-appropriate use on the property for a 24-month period without jeopardizing the ability to reinstate the nonconforming use.

The decision criterion has been addressed and approval of the proposal can be supported.

B. Amend the following subsections to allow legally established residential use Types, single-family and duplex, pre-existing the adoption of the ordinance codified under the Coos Bay Municipal Code.

1. Amend Chapter 17.45, Multiple Residential (R-3), Section 17.45.020, Subsection 17.45.020(1)(f), to read as follows:

- ~~(f) A legally established single-family dwelling or duplex preexisting the adoption of the ordinance codified in this title:~~
- ~~(i) In the event of damage to or destruction of such single-family dwelling or duplex, the structure must be rebuilt within 12 months of such event in order to continue the residential use.~~
 - ~~(ii) An extension of time beyond the 12-month period referenced in the preceding subsection may be granted by the Planning Commission for good cause shown.~~

Legally established single-family and duplex residential use types, preexisting the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.

2. Amend Chapter 17.50, Residential-Professional (**R-4P**), Section 17.50.020, Permitted uses, Subsection 17.50.020(1), Residential Use Types, to add the following:
 - (h) *Legally established single-family and duplex residential use types, not otherwise permitted, preexisting the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.*

3. Amend Chapter 17.70, Central Commercial (**C-1**), Section 17.70.020, Permitted uses, Subsection 17.70.020(1), Residential Use Types, by adding the following:
 - (1) Residential Use Types.
 - (a) Family and group residential above the first floor or story.
 - (b) *Legally established residential use types, pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.*

4. Amend Chapter 17.75, General Commercial (**C-2**), Section 17.75.020, Permitted Uses, Subsection 17.70.020(2), Residential Use Types, by deleting the following:
 - (2) Residential Use Types.
 - (c) ~~A legally established single family dwelling or duplex pre-existing the adoption of the ordinance codified in this title:~~
 - (i) ~~In the event of damage to or destruction of such single family dwelling or duplex, the structure must be rebuilt within 12 months of such event in order to continue the residential use.~~
 - (ii) ~~An extension of time beyond the 12 month period referenced in the preceding subsection may be granted by the Planning Commission for good cause shown; and, once a structure is converted to another use permitted within the zone, said structure shall not revert to residential use without approval of a conditional use.~~

DECISION CRITERIA #1: An acceptable rationale which supports the need for the amendment.

STATEMENT OF FACT AND FINDINGS:

- 1a. It is evident there are numerous residential use types existing in the city that were legally established prior to the adoption of the ordinance (Ordinance 93) which was codified by the Coos Bay Municipal Code (CBMC). Many of these are considered, by definition, nonconforming uses.

- 1b. CBMC Section 17.25.040, Restoration of a nonconforming use, currently states the following:

A structure housing a nonconforming use which is damaged by any cause to an extent of not more than 50% of the replacement value at that time may be restored and the same use or occupancy resumed, provided that this restoration is started within a period of one-hundred twenty (120) days. This time limitation may be waived by the Zoning Officer should practical difficulties be evident.

- 1c. The existing Code language infers that if an existing, legally established structure housing a nonconforming use, including a residential use type, is damaged more than 50%, it cannot be restored.
- 1d. Under the current language, the landowner of a nonconforming residence that is destroyed or demolished may be required to gain approval of a conditional use application prior to replacing the residence, or the residential use type may not be conditionally permitted in the zoning district.
- 1e. The proposed language under the C-1 zone will also serve the need under the "General Commercial (C-2)" and "Industrial Commercial (I-C)" zoning districts since uses permitted and conditional in C-1 are permitted in C-2. Likewise, uses permitted in the C-1 and C-2 zone are permitted in the I-C zone.
- 1g. City regulations require a replacement structure to be built to current building codes and land development standards.
- 1h. A legally established residential use type, not otherwise permitted in the zone, will become an allowed use under the proposed language. It will also have the option of being inhabited by a zone-appropriate use for up to 24 months without jeopardizing the residential-type use.

The proposed language states if the use is "discontinued" or interrupted for up to 24 months it may be reestablished. As with the proposed change in A, above, this change will allow greater flexibility for landowners to sell/lease the residential type structure for a use permitted in the zone for 24 months without jeopardizing the residential use. The residential use type would not be required to be relinquished before the 24 months expires. This would allow a landowner to convert back to the residential use type should the other use fail.

CONCLUSION: The proposed amendment to the CBMC will assure landowners with legally established residential uses preexisting the ordinance, that if the structure is destroyed, it may be replaced within 24 months in accordance with the current building codes and the requirements set forth in the CBMC. The proposed amendment also allows the residential use type to be discontinued for up to 24 months without jeopardizing the residential use type. The decision criterion has been addressed and approval of the proposal can be supported.

DECISION CRITERIA #2: The amendment complies with the applicable provisions of the comprehensive plan.

STATEMENT OF FACT AND FINDINGS:

- 2a. Volume I of the Comprehensive Plan, Plan Policies, Chapter 9.1, Coos Bay Land Use Plan 2000, Objective 3, states the following:

The city shall protect the integrity of established land use patterns.

The objective further states the residential designations of the 1974 plan were based on the premise that proper urban development occurs in a specified progression outward from the urban business core. This broad theory contends that certain definable zones emanate from the core in the matter of concentric rings. Although the historical development of Coos Bay and Empire exhibits some characteristics of this land use pattern, it has deviated in several substantial respects.

Objective 4 stresses the importance of maintaining the natural character of the community when planning for residential growth.

It appears the legally established residential structures, not permitted in the zoning district, that are likely to be replaced fit into the existing neighborhood, or else when the structure was destroyed, the landowner would be willing to convert the land to a use that was more compatible with the area.

For example, a legally established single-family residential structure in the C-2 may be used, for example, for retail purposes, or for a personal services business for up to 24 months before the residential use cannot be reestablished.

2b. Chapter 7.6, Housing, Goal #1, Policy 1.1, states the following:

Coos Bay will continue to update its zoning provisions to allow for construction to provide a wide range of housing available at varied prices and rent ranges, and allow for flexible site and architectural design.

CONCLUSION: The landowner has the option of converting the residential use type to a use that is permitted or conditionally permitted by the zoning district for up to 24 months without jeopardizing the reestablishment of the residential use. Or if the residential use type is destroyed, it must be reestablished within 24 months. The decision criterion has been addressed and approval of the proposal can be supported.



City of Coos Bay

Public Works and Development Department

500 Central Avenue, Coos Bay, Oregon 97420 • Phone 541-269-8918

Fax 541-269-8916 • <http://www.coosbay.org>

November 5, 2010

CITY COUNCIL FINAL DECISION AND ORDER

TEXT AMENDMENTS TO COOS BAY MUNICIPAL CODE

APPLICATION: ZON2010-00043
APPLICANT: City of Coos Bay, 500 Central Avenue, Coos Bay, OR 97420

PROPOSAL: Amend the following provisions of the Coos Bay Municipal Code:
A. Chapter 17.25, Nonconformance, Section 17.25.030, Discontinuation of a nonconforming use;
B. Chapter 17.45, Multiple Residential (R-3), Section 17.45.020, Permitted uses;
C. Chapter 17.50, Residential-Professional (R-4P), Section 17.50.020, Permitted uses;
D. Chapter 17.70, Central Commercial (C-1), Section 17.70.020, Permitted uses; and,
E. Chapter 17.75, General Commercial (C-2), Section 17.75.020, Permitted uses.

ORDER: Tuesday, November 2, 2010 City Council approved the amendment and enacted Ordinance No. 440.

City Council Final Vote:
Yea: Mayor Jeff McKeown, Councilors John Eck, Mark Daily, Stephanie Kramer, John Pundt, Gene Melton and Joanie Johnson
Abstain: None **Nay:** None

APPEAL PROVISIONS: See page 2
DECISION CRITERIA AND THE ADOPTED FINDINGS OF FACT AND CONCLUSIONS: See Exhibit A

FINAL ACTION

Adopt the amendments as set forth in Exhibit A, based on the adopted findings and conclusions in Exhibit B, attached hereto and incorporated herein, the City Council enacted Ordinance No. 440 approving the text amendment to the Coos Bay Municipal Code as follows:

- A. Chapter 17.25, Nonconformance, Section 17.25.030, Discontinuation of a nonconforming use;
- B. Chapter 17.45, Multiple Residential (R-3), Section 17.45.020, Permitted uses;
- C. Chapter 17.50, Residential-Professional (R-4P), Section 17.50.020, Permitted uses;
- D. Chapter 17.70, Central Commercial (C-1), Section 17.70.020, Permitted uses; and,
- E. Chapter 17.75, General Commercial (C-2), Section 17.75.020, Permitted uses.

The changes extend the time period before a nonconforming use "expires" from 12 to 24 months; and, allows structures, housing legally established residential use types, single-family dwelling and duplex, preexisting the code, to be used for other uses permitted in the zoning district for up to 24 months without relinquishing the residential use type.


APPEAL PROVISION

Any person with standing has the right to request review of this land use decision by filing a Notice of Intent to Appeal with:

Oregon Land Use Board of Appeals
Public Utility Commission Bldg.
550 Capitol St.
Salem, OR 97310

Notice of Intent to Appeal must be filed no later than 21 days from the date of mailing of this decision. Therefore, **appeals must be filed no later than November 29, 2010**. Notice of Intent to Appeal must be filed and served in accordance with the Oregon Land Use Board of Appeals Rules of Procedure.

Sincerely,
CITY OF COOS BAY


Laura Barron
Planning Administrator

Attachments: Exhibits A and B
Ordinance 440

c: Dave Perry, DLCD
Finalord\2010\FO10-043cbmcam

EXHIBIT A

The following changes will:

1. Extend the time period before a nonconforming use “expires” from 12 to 24 months; and,
 2. Allow structures, housing legally established residential use types, single-family dwelling and duplex, preexisting the code to be used for other uses permitted in the zoning district for up to 24 months without relinquishing the residential use type.
- A. Amend Chapter 17.25, Nonconformance, Section 17.25.030, Discontinuation of a nonconforming use, to read as follows:
- Whenever a nonconforming use has been discontinued for a continuous period of 24 months, or whenever there is a clear intent on the part of the owner to abandon a nonconforming use, this use shall not be re-established and further use of the premises shall be in conformity with the regulations of the district [Ord. 93, 1.5.3, 1987].
- B. Amend Chapter 17.45, Multiple Residential (R-3), Section 17.45.020, Subsection 17.45.020(1)(f), to read as follows:
- (f) Legally established single-family and duplex residential use types, pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.
- C. Amend Chapter 17.50, Residential-Professional (R-4P), Section 17.50.020, Permitted uses, Subsection 17.50.020(1), Residential Use Types, to add the following:
- (h) Legally established single-family and duplex residential use types, pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.
- D. Amend Chapter 17.70, Central Commercial (C-1), Section 17.70.020, Permitted uses, Subsection 17.70.020(1)(b), Residential Use Types, by adding the following:
- (1) Residential Use Types.
 - (b) Legally established residential use types pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.
- E. Amend Chapter 17.75, General Commercial (C-2), Section 17.75.020, Permitted Uses, Subsection 17.70.020(2), Residential Use Types, by deleting the following:

(2) Residential Use Types.

- (c) A legally established single-family dwelling or duplex pre-existing the adoption of the ordinance codified in this title:
 - (i) In the event of damage to or destruction of such single-family dwelling or duplex, the structure must be rebuilt within 12 months of such event in order to continue the residential use.
 - (ii) An extension of time beyond the 12-month period referenced in the preceding subsection may be granted by the Planning Commission for good cause shown; and, once a structure is converted to another use permitted within the zone, said structure shall not revert to residential use without approval of a conditional use.

Note: New language is not proposed to be added since uses permitted in the C-1 zone are also permitted in the C-2 zone and the new language will be added to the C-1 zone as shown in D, above. Likewise for the Industrial-Commercial (I-C) zoning district whereby the uses permitted in the C-1 or C-2 zones are permitted.

///

EXHIBIT B

DECISION CRITERIA

The Planning Commission will make a recommendation to the City Council based on the findings and conclusions which address the following criteria from Chapter 17.380, Section 17.380.040(1), of the Coos Bay Municipal Code (CBMC).

A. Amend Section 17.25.030, Discontinuation of a nonconforming use, to read as follows:

Whenever a nonconforming use has been discontinued for a continuous period of ~~12~~ 24 months, or whenever there is a clear intent on the part of the owner to abandon a nonconforming use, this use shall not be re-established and further use of the premises shall be in conformity with the regulations of the district [Ord. 93, 1.5.3, 1987].

DECISION CRITERIA #1: An acceptable rationale which supports the need for the amendment.

STATEMENT OF FACT AND FINDINGS:

- 1a. Current code language states that whenever a nonconforming use has been discontinued for a continuous period of 12 months the use shall not be reestablished and further use of the premises shall be in conformity with the regulations of the district.
- 1b. The amendment will create greater flexibility for a landowner with property containing a nonconforming use. The proposed increase in the amount of time allowed for a nonconforming use to be discontinued, from 12 to 24 months, will enable a landowner, for example, the option to lease their property for a use permitted or conditionally permitted in the zone for up to 24 months without relinquishing their right to reestablish the nonconforming use.

CONCLUSION: The proposed amendment will allow greater flexibility for a landowner with property containing a nonconforming use. The decision criterion has been addressed and approval of the proposal can be supported.

DECISION CRITERIA #2: The amendment complies with the applicable provisions of the comprehensive plan.

STATEMENT OF FACT AND FINDINGS:

- 2a. Volume I, Part 1, Chapter 7.5, Economic Development, Goal #1, states:
"Encourage and support economic growth." Policy 1.1 encourages Coos Bay's role as a hub for support service for the south coast, commercial, financial real estate, professional services, housing, etc.

The proposed change from 12 to 24 months for the discontinuation of a nonconforming use is meant to accommodate the landowner of the nonconforming use. It enables the landowner to use/lease/sell the property for a use that meets the zoning requirements. Rather than take a chance at relinquishing the nonconforming status after 12 months, the landowner is given 24 months before relinquishing the nonconforming status of the use. This gives the new owner/lessee of the conforming use 24 months to "test their survival" at that location. If the conforming use is unsuccessful, the nonconforming use is still an option.

For example, a warehouse in the C-2 zone has historically been used by the owner for storage of personal items/vehicles which is a nonconforming use in the zoning district. If the warehouse were to be leased out commercially, then after 24 months the landowner would not be able to use the warehouse for personal storage. That is, after 24 months the nonconforming use would no longer exist.

- 2b. Goal #4 states, "Work to retain, expand and strengthen existing local businesses." Policy 4.3 states to facilitate business investment and development by offering programs to fit their needs.

Although the proposed amendment is not related to a specific program, it is meant to facilitate zone-appropriate uses to "try" a location for up to 24 months while delaying relinquishment of the nonconforming use status by the landowner.

CONCLUSION: Increasing the length of time from 12 to 24 months before a nonconforming use is relinquished and the use of the property is required to conform to the zoning district, will provide greater flexibility for both the landowner and prospective purchaser/lessee. This will allow a zone-appropriate use on the property for a 24-month period without jeopardizing the ability to reinstate the nonconforming use.

The decision criterion has been addressed and approval of the proposal can be supported.

B. Amend the following subsections to allow legally established residential use Types, single-family and duplex, pre-existing the adoption of the ordinance codified under the Coos Bay Municipal Code.

1. Amend Chapter 17.45, Multiple Residential (**R-3**), Section 17.45.020, Subsection 17.45.020(1)(f), to read as follows:
 - (f) ~~A legally established single family dwelling or duplex preexisting the adoption of the ordinance codified in this title:~~
 - ~~(i) In the event of damage to or destruction of such single family dwelling or duplex, the structure must be rebuilt within 12 months of such event in order to continue the residential use.~~
 - ~~(ii) An extension of time beyond the 12-month period referenced in the preceding subsection may be granted by the Planning Commission for good cause shown.~~

Legally established single-family and duplex residential use types, preexisting the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.

2. Amend Chapter 17.50, Residential-Professional **(R-4P)**, Section 17.50.020, Permitted uses, Subsection 17.50.020(1), Residential Use Types, to add the following:
 - (h) *Legally established single-family and duplex residential use types, not otherwise permitted, preexisting the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.*

3. Amend Chapter 17.70, Central Commercial **(C-1)**, Section 17.70.020, Permitted uses, Subsection 17.70.020(1), Residential Use Types, by adding the following:
 - (1) Residential Use Types.
 - (a) Family and group residential above the first floor or story.
 - (b) *Legally established residential use types, pre-existing the adoption of the ordinance codified in this title; however, if the use is destroyed or discontinued, reestablishment must occur within 24 months in order to continue the residential use.*

4. Amend Chapter 17.75, General Commercial **(C-2)**, Section 17.75.020, Permitted Uses, Subsection 17.70.020(2), Residential Use Types, by deleting the following:
 - (2) Residential Use Types.
 - (c) ~~A legally established single family dwelling or duplex pre-existing the adoption of the ordinance codified in this title:~~
 - (i) ~~In the event of damage to or destruction of such single family dwelling or duplex, the structure must be rebuilt within 12 months of such event in order to continue the residential use.~~
 - (ii) ~~An extension of time beyond the 12-month period referenced in the preceding subsection may be granted by the Planning Commission for good cause shown; and, once a structure is converted to another use permitted within the zone, said structure shall not revert to residential use without approval of a conditional use.~~

DECISION CRITERIA #1: An acceptable rationale which supports the need for the amendment.

STATEMENT OF FACT AND FINDINGS:

- 1a. It is evident there are numerous residential use types existing in the city that were legally established prior to the adoption of the ordinance (Ordinance 93) which was codified by the Coos Bay Municipal Code (CBMC). Many of these are considered, by definition, nonconforming uses.

- 1b. CBMC Section 17.25.040, Restoration of a nonconforming use, currently states the following:

A structure housing a nonconforming use which is damaged by any cause to an extent of not more than 50% of the replacement value at that time may be restored and the same use or occupancy resumed, provided that this restoration is started within a period of one-hundred twenty (120) days. This time limitation may be waived by the Zoning Officer should practical difficulties be evident.

- 1c. The existing Code language infers that if an existing, legally established structure housing a nonconforming use, including a residential use type, is damaged more than 50%, it cannot be restored.
- 1d. Under the current language, the landowner of a nonconforming residence that is destroyed or demolished may be required to gain approval of a conditional use application prior to replacing the residence, or the residential use type may not be conditionally permitted in the zoning district.
- 1e. The proposed language under the C-1 zone will also serve the need under the “General Commercial (C-2)” and “Industrial Commercial (I-C)” zoning districts since uses permitted and conditional in C-1 are permitted in C-2. Likewise, uses permitted in the C-1 and C-2 zone are permitted in the I-C zone.
- 1g. City regulations require a replacement structure to be built to current building codes and land development standards.
- 1h. A legally established residential use type, not otherwise permitted in the zone, will become an allowed use under the proposed language. It will also have the option of being inhabited by a zone-appropriate use for up to 24 months without jeopardizing the residential-type use.

The proposed language states if the use is “discontinued” or interrupted for up to 24 months it may be reestablished. As with the proposed change in A, above, this change will allow greater flexibility for landowners to sell/lease the residential type structure for a use permitted in the zone for 24 months without jeopardizing the residential use. The residential use type would not be required to be relinquished before the 24 months expires. This would allow a landowner to convert back to the residential use type should the other use fail.

CONCLUSION: The proposed amendment to the CBMC will assure landowners with legally established residential uses preexisting the ordinance, that if the structure is destroyed, it may be replaced within 24 months in accordance with the current building codes and the requirements set forth in the CBMC. The proposed amendment also allows the residential use type to be discontinued for up to 24 months without jeopardizing the residential use type. The decision criterion has been addressed and approval of the proposal can be supported.

DECISION CRITERIA #2: The amendment complies with the applicable provisions of the comprehensive plan.

STATEMENT OF FACT AND FINDINGS:

- 2a. Volume I of the Comprehensive Plan, Plan Policies, Chapter 9.1, Coos Bay Land Use Plan 2000, Objective 3, states the following:

The city shall protect the integrity of established land use patterns.

The objective further states the residential designations of the 1974 plan were based on the premise that proper urban development occurs in a specified progression outward from the urban business core. This broad theory contends that certain definable zones emanate from the core in the matter of concentric rings. Although the historical development of Coos Bay and Empire exhibits some characteristics of this land use pattern, it has deviated in several substantial respects.

Objective 4 stresses the importance of maintaining the natural character of the community when planning for residential growth.

It appears the legally established residential structures, not permitted in the zoning district, that are likely to be replaced fit into the existing neighborhood, or else when the structure was destroyed, the landowner would be willing to convert the land to a use that was more compatible with the area.

For example, a legally established single-family residential structure in the C-2 may be used, for example, for retail purposes, or for a personal services business for up to 24 months before the residential use cannot be reestablished.

2b. Chapter 7.6, Housing, Goal #1, Policy 1.1, states the following:

Coos Bay will continue to update its zoning provisions to allow for construction to provide a wide range of housing available at varied prices and rent ranges, and allow for flexible site and architectural design.

CONCLUSION: The landowner has the option of converting the residential use type to a use that is permitted or conditionally permitted by the zoning district for up to 24 months without jeopardizing the reestablishment of the residential use. Or if the residential use type is destroyed, it must be reestablished within 24 months. The decision criterion has been addressed and approval of the proposal can be supported.

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