BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1160

Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Code Revision to adopt the Regulatory Improvement Code Amendment Package 5 in Compliance with Metro's Functional Plan and Declaring an Emergency

The Multnomah County Board of Commissioners Finds:

a. The Board of County Commissioners (Board) adopted Resolution A in 1983 which directed the County services towards rural services rather than urban.

b. In 1996, Metro adopted the Functional Plan for the region, mandating that jurisdictions comply with the goals and policies adopted by the Metro Council.

c. In 1998, the County and the City of Portland (City) amended the Urban Planning Area Agreement to include an agreement that the City would provide planning services to achieve compliance with the Functional Plan for those areas outside the City limits, but within the Urban Growth Boundary and Portland's Urban Services Boundary.

d. It is impracticable to have the County Planning Commission conduct hearings and make recommendations on land use legislative actions pursuant to MCC 37.0710, within unincorporated areas inside the Urban Growth Boundary for which the City provides urban planning and permitting services. The Board intends to exempt these areas from the requirements of MCC 37.0710, and will instead consider the recommendations of the Portland Planning Commission and City Council when legislative matters for these areas are brought before the Board for action as required by intergovernmental agreement (County Contract #4600002792) (IGA).

e. On April 8, 2010, the Board amended County land use codes, plans and maps to adopt the City's land use codes, plans and map amendments in compliance with Metro's Functional Plan by Ordinance 1159.

f. Since the adoption of Ordinance 1159, the City's Planning Commission recommended land use code, plan and map amendments to the City Council through duly noticed public hearings.

g. The City notified affected County property owners as required by the IGA.

h. The City Council adopted the land use code, plan and map amendments set out in Section 1 below and attached as Exhibits 1 through 12. The IGA requires that the County adopt these amendments for the City planning and zoning administration within the affected areas.

Multnomah County Ordains as follows:

Section 1. The County Comprehensive Framework Plan, community plans, rural area plans, sectional zoning maps and land use code chapters are amended to include the City land use code, plan and map amendments, attached as Exhibits 1 through 12, effective on the same date as the respective Portland ordinance:

Exhibit No.	Description	Date
1	Ordinance to improve land use regulations through the Reulatory Improvement Code Amendment Package 5 (**PDX Ord. #183598**)	3/04/10
2	Regulatory Improvement Code Amendment Package 5 Proposed Draft Report	8/04/09
3	Attachment A Zone Change Criteria 33.855.050	3/04/10
4	Attachment B Development on Existing Lots 33.110.212	3/04/10
5	Attachment C Property Line Adjustment on Corner Lots 33.667.300	3/04/10
6	Attachment D Nonconforming Status for Existing Lots 33.258.065	3/04/10
7	Attachment E Definitions of Adjusted Lots and Lot Remnants 33.910	3/04/10
8	Attachment F Wind Turbines Chapter 33.299	3/04/10
9	Attachment G Green Energy and Use 33.110.100	3/04/10
10	Attachment H Bike Parking Ratios 33.266	3/04/10
11	Attachment I Retaining Walls 33.110.257	3/04/10
12	Revisions since Notice of Proposed Amendment	3/10/10

Section 2. In accordance with ORS 215.427(3), the changes resulting from Section 1 of this ordinance shall not apply to any decision on an application that is submitted before the applicable effective date of this ordinance and that is made complete prior to the applicable effective date of this ordinance or within 180 days of the initial submission of the application.

Section 3. In accordance with ORS 92.040(2), for any subdivisions for which the initial application is submitted before the applicable effective date of this ordinance, the subdivision application and any subsequent application for construction shall be governed by the County's land use regulations in effect as of the date the subdivision application is first submitted.

Section 4. Any future amendments to the legislative matters listed in Section 1 above, are exempt from the requirements of MCC 37.0710. The Board acknowledges, authorizes and agrees that the Portland Planning Commission will act instead of the Multnomah Planning Commission in the subject unincorporated areas using the City's own procedures, to include notice to and participation by County citizens. The Board will consider the recommendations of the Portland Planning Commission when legislative matters for County unincorporated areas are before the Board for action.

Section 5. An emergency is declared in that it is necessary for the health, safety and general welfare of the people of Multnomah County for this ordinance to take effect concurrent with the City code, plan and map amendments. Under section 5.50 of the Charter of Multnomah County, this ordinance will take effect in accordance with Section 1.

FIRST READING AND ADOPTION: April 22, 2010

BOARD OF COUNTY COMMISSIONERS,
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Sandra Duffy
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:
M. Cecilia Johnson, Director, Department of Community Services

EXHIBIT LIST FOR ORDINANCE

1. Ordinance to improve land use regulations through the Regulatory Improvement Code Amendment Package 5 (**PDX Ord. #183598**).
2. Regulatory Improvement Code Amendment Package 5 Proposed Draft Report
3. Attachment A Zone Change Criteria 33.855.050
4. Attachment B Development on Existing Lots 33.110.212
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12. Revisions since Notice of Proposed Amendment

Prior to adoption, this information is available electronically or for viewing at the Multnomah County Board of Commissioners and Agenda website (www.co.multnomah.or.us/cc/WeeklyAgendaPacket/). To obtain the adopted ordinance and exhibits electronically, please contact the Board Clerk at 503-988-3277. These documents may also be purchased on CD-Rom from the Land Use and Transportation Program. Contact the Planning Program at 503-988-3043 for further information.

ORDINANCE No. 183598 As Amended

Improve land use regulations through the Regulatory Improvement Code Amendment Package 5 (Ordinance; amend Title 33 and Official Zoning Map)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. This project is part of the Regulatory Improvement Workplan, an ongoing program to improve City building and land use regulations and procedures. Each package of amendments is referred to as a Regulatory Improvement Code Amendment Package (RICAP), followed by a number.

2. During the Spring and Summer of 2008, staff from the Bureau of Planning and Sustainability (BPS) and the Bureau of Development Services (BDS) worked with the Regulatory Improvement Stakeholder Advisory Team (RISAT) to develop a workplan for the fifth Regulatory Code Amendment Package (RICAP 5). The RISAT includes participants from city bureaus and the community and advises staff.

3. On July 31, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as other interested parties, to notify them of the Planning Commission hearing for the RICAP 5 Workplan.

4. The *RICAP 5 Proposed Workplan* was published on August 6, 2008.

5. On August 26, 2008 the Planning Commission held a hearing and adopted the workplan for RICAP 5. The original workplan included 55 items. One item was added by the Planning Commission at the hearing. Six items were added after the adoption of the workplan, five at the request of BDS and one at the request of Mayor Adams. The total number of items was 62.

6. After preliminary work on all of the items, staff determined that five items did not warrant an amendment to the code, bringing the number of items recommended for amendment to 57.

7. During the Fall, Winter and Spring of 2008 and 2009, Planning staff worked with RISAT, BDS and other pertinent City agencies to address the issues in the workplan.

8. On June 19, 2009, the *RICAP 5 Discussion Draft Report* was published.

9. On July 8, 2009, notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.

10. On July 14, 2009 staff held an open house at the Bureau offices. Seven people attended the open house.

11. On July 24, 2009 notice of the proposal as required by ORS 227.186 and PCC 33.740 was sent to all neighborhood associations and coalitions and business associations in the city of Portland, as well as other interested persons to notify them of the Planning Commission hearing on the proposed code changes for RICAP 5.

12. On August 4, 2009, the *RICAP 5 Proposed Draft Report* was published.

13. On August 25, 2009, the Planning Commission held a hearing on the *RICAP 5 Proposed Draft Report.* Staff presented the proposal and public testimony was received. Planning Commission directed staff to follow up on two new items and ten existing items 1, 28, 29, 32, 34, 37, 40, 55, 60, and 61.

14. On September 22, 2009, notice was sent to all previously notified parties and property management companies regarding the two new items initiated at the August 25, 2009 Planning Commission hearing.

15. On September 30, 2009, staff responded to Planning Commission's request and issued a follow-up memo on RICAP 5. The memo, directed to the Planning Commission, included responses to several issues and several amended recommendations.

16. On October 13, 2009, the Planning Commission held another hearing, continued consideration of the issues in the follow-up memo, and heard additional testimony.

17. At the conclusion of the hearing on October 13, the Planning Commission made several amendments to the Proposed Draft. They then voted to recommend that City Council adopt the amended version of the Proposed Draft.

18. On November 16 and 20, 2009 notice was sent to all those who testified, wrote, or asked for notice, as well as other interested persons to notify them of the City Council hearing on the Planning Commission's recommendations for RICAP 5.

19. City Council held a public hearing on RICAP 5 on January 6, 2010 and passed it to Second Reading.

20. On January 13, 2010 City Council voted to adopt this ordinance and amend the Portland Zoning Code and Official Zoning Maps.

Findings on Statewide Planning Goals

21. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.

22. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement, including:

    - During the Spring and Summer of 2008, staff from the former Bureau of Planning (now the Bureau of Planning and Sustainability) and the Bureau of Development Services (BDS) met monthly with the Regulatory Improvement Stakeholder Advisory Team (RISAT) to review the items under consideration for RICAP 5. The RISAT includes participants from city bureaus and the community and advises staff.

- Concurrently, during the Spring and Summer of 2008, staff from the staff from the former Bureau of Planning (now the Bureau of Planning and Sustainability) and the Bureau of Development Services (BDS) convened the Lot Confirmation Task Force made up of various community stakeholders. The Task Force convened over the course of 6 meeting to discuss issued related to development of existing lots and lots of record. At the conclusion of its meetings, the Task put forth several recommendations , which were added to the proposed workplan for RICAP 5.
- On July 31, 2008, notice was sent to all neighborhood associations and coalitions, business associations in the City of Portland, and other interested parties, to notify them of the Planning Commission hearing for the RICAP 5 workplan.
- On August 6, 2008, the *Regulatory Improvement Code Amendment Package 5 (RICAP 5): Proposed Workplan* was published. The report was available to City bureaus and the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
- On August 26, 2008, the Planning Commission held a public hearing on the RICAP 5 Proposed Workplan and heard testimony from citizens on the proposed issues. The Planning Commission voted to adopt the workplan, directing staff to work on code amendments for the 55 original amendments and added one amendment.
- Following adoption of the workplan, five additional items were added at the request of the Bureau of Development Services and one additional item was added at the request of the Mayor's office.
- During the Fall, Winter and Spring of 2008 and 2009, staff worked monthly with RISAT as well as BDS and other pertinent city bureaus toward solutions to the workplan items.
- On June 19, 2009, the *Regulatory Improvement Code Amendment Package 5 (RICAP 5): Discussion Draft* was published. The report was available to City bureaus and the public and mailed to all those requesting a copy.
- On July 14, 2009 staff held an open house at the Bureau offices. Seven people attended the open house.
- On July 24, 2009 notice of the proposal was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, and other interested parties, to notify them of the Planning Commission hearing on the staff proposal for RICAP 5.
- On August 4, 2009, the *Regulatory Improvement Code Amendment Package 5 (RICAP 5): Proposed Draft* was published. The report explained the proposed amendments to the Zoning Code. The report was available to City bureaus and the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
- On August 25 and October 13, 2009, the Planning Commission held public hearings to discuss and take testimony on the report.
- At the August 25 2009 hearing, the Planning Commission directed staff to convene a stakeholder group to explore alternatives to parts of one of the items, Item 55. The group met on two occasions, September 16th and October 7th, 2009. No alternatives were proposed.

- On September 22, 2009, notice was sent to all those previously notified and property management companies regarding the two new items initiated by the Planning Commission at the August 25, 2009 hearing.
- On November 24, 2009, notice of the proposed City Council hearing on the Planning Commission recommendation for RICAP 5 was sent to those who testified at the Planning Commission hearings and to people interested in RICAP5,.
- On December 21, 2009, the *Regulatory Improvement Code Amendment Package 5 (RICAP 5): Planning Commission Recommended Draft* was published. The report was available to City bureaus and the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
- On January 6, 2010, the City Council held a public hearing to discuss and take testimony on the recommendations from the Planning Commission.
- On January 13, 2010, the City Council voted to adopt the RICAP 5 ordinance and amend the Portland Zoning Code and Official Zoning Maps

23. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments support this goal because development of the recommendations followed established city procedures for legislative actions, while also improving the clarity and comprehensibility of the City's codes. See also findings for Portland Comprehensive Plan Goal 1, Metropolitan Coordination, and its related policies and objectives.

24. **Goals 3 and 4, Agricultural Lands and Forest Lands**, requires the preservation and maintenance of the state's agricultural and forest lands, generally located outside of urban areas. The amendments regarding accessory dwelling units and FAR and Amenity Bonuses are supportive of this goal because they support additional housing opportunities and the efficient use of land within an urbanized area, thereby reducing development pressure on agricultural and forest lands.

25. **Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural, historic and scenic resources. The amendments regarding procedures for local historic designation and incentives support this goal because they clarify procedures to ease administration of local historic resource protection. See also findings under Portland Comprehensive Plan Goal 12, Urban Design.

26. **Goal 6, Air, Water, and Land Resource Quality,** requires the maintenance and improvement of the quality of air, water, and land resources. The amendments regarding design standards as an alternative to discretionary review for eco-roofs and water collection cisterns support this goal because they increase the ease of local approval for these water resource quality improvement mechanisms.

27. **Goal 10, Housing,** requires provision for the housing needs of citizens of the state. The amendments support this goal by making it easier to create Accessory Dwelling Units and by modifying regulations that were barriers to quality courtyard housing. See findings for Portland Comprehensive Plan Goal 4, Housing and Metro Title 1.

28. **Goal 12, Transportation,** requires provision of a safe, convenient, and economic transportation system. The amendments support this goal because they align the approval criteria for amendments to the Zoning and Comprehensive Plan maps with the State Transportation Planning Rule and increases bicycle parking requirements for multi-dwelling development. See also findings for Portland Comprehensive Plan Goal 6, Transportation, and its related policies and objectives.

The Oregon Transportation Planning Rule (TPR) was adopted in 1991 and amended in 1996 and 2005 to implement State Goal 12. The TPR requires certain findings if a proposed Comprehensive Plan Map amendment, Zone Change, or regulation will significantly affect an existing or planned transportation facility.

This proposal will not have a significant effect on existing or planned transportation facilities because the amendments will not result in increases in housing units or additional jobs, or change allowed land use types or densities.

Findings on Metro Urban Growth Management Functional Plan

29. The following elements of the Metro Urban Growth Management Functional Plan are relevant and applicable to the RICAP 5 amendments.

30. **Title 1, Requirements for Housing and Employment Accommodation**, requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through citywide analysis based on calculated capacities from land use designations. The amendments are consistent with this title because they do not significantly alter the development capacity of the city, though they do provide additional flexibility for housing infill development through accessory dwelling units, development on corner lots, and courtyard housing. See also findings under Comprehensive Plan Goal 4 (Housing).

31. **Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation,** protects the public's health and safety by reducing flood and landslide hazards, controlling soil erosion and reducing water pollution by avoiding, limiting, or mitigating the impact of development on streams, rivers, wetlands, and floodplains. Title 3 specifically implements Statewide Land Use Goal 6. The findings for those statewide goals are incorporated here to show that the amendments are consistent with this Title. See also findings for Comprehensive Plan Goal 8, Environment.

32. **Title 7, Affordable Housing,** ensures opportunities for affordable housing at all income levels, and calls for a choice of housing types. The amendments are consistent with this title because they remove barriers to designs of alternative housing types such as courtyard housing, clarify when existing lots of record may be developed, and providing expanded opportunities for infill development on corner lots.

Findings on Portland's Comprehensive Plan Goals

33. The following goals, policies, and objectives of the Portland Comprehensive Plan are relevant and applicable to RICAP 5.

34. **Goal 1, Metropolitan Coordination,** calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. The amendments are consistent with this goal because they do not change the policy or intent of existing regulations relating to metropolitan coordination and regional goals. One amendment aligns the approval criteria for amendments to the Zoning and Comprehensive Plan maps specifically with the State Transportation Planning Rule. **Policy 1.4, Intergovernmental Coordination,** requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The amendments support this policy because a number of other government agencies were notified of this proposal and given the opportunity to comment. Notified agencies were US Department of Fish and Wildlife, Oregon

Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Transportation, University of Oregon, Portland State University, Multnomah County, Multnomah County Drainage District #1, Port of Portland, Metro, Tri-met, Portland Public Schools, Centennial School District, David Douglas School District, Parkrose School District, Reynolds School District, Riverdale School District, City of Gresham, and City of Salem.

35. **Goal 2, Urban Development,** calls for maintaining Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendments support this goal because they update and improve the City's land use regulations and procedures that hinder desirable development. By improving regulations, the City will better facilitate the development of housing and employment uses.

36. **Goal 3, Neighborhoods,** calls for the preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density. The amendments are consistent with this goal because they provide clarity on when residential infill development is allowed and provide more flexibility for residential infill through accessory dwelling units. on corner lots, and in courtyard housing development, but do not change the policy or intent of existing regulations relating to the stability and diversity of neighborhoods.

37. **Goal 4, Housing,** calls for enhancing Portland's vitality as a community at the center of the region's housing market by providing housing of different types, density, sizes, costs and locations that accommodates the needs, preferences, and financial capabilities of current and future households. The amendments are consistent with this goal because they remove barriers to designs of alternative housing types such as courtyard housing and Accessory Dwelling Units, clarify when existing lots of record may be developed, and provide expanded opportunities for infill development on corner lots. See also the findings for Statewide Planning Goal 10, Housing and for Metro Title 1.

38. **Goal 6, Transportation,** calls for developing a balanced, equitable, and efficient transportation system that provides a range of transportation choices; reinforces the livability of neighborhoods; supports a strong and diverse economy; reduces air, noise, and water pollution; and lessens reliance on the automobile while maintaining accessibility. The amendments support this goal because they align the approval criteria for amendments to the Zoning and Comprehensive Plan maps with the State Transportation Planning Rule and support a balanced transportation system by increasing bicycle parking requirements for multi-dwelling development and clarifying standards for its provision. See also findings for Statewide Planning Goal 12, Transportation.

39. **Goal 7, Energy,** calls for promotion of a sustainable energy future by increasing energy efficiency in all sectors of the city. Policy 7.3, Energy Efficiency in Residential Buildings and 7.4, Energy Efficiency through Land Use regulations are relevant to this proposal. The amendments support this goal because they remove barriers to implementation and clarify policies for solar panels, water collection cisterns, eco-roofs, wind turbines and other green technologies that increase energy efficiency and decrease energy consumption.

40. **Goal 8, Environment**, calls for maintaining and improving the quality of Portland's air, water, and land resources, as well as protecting neighborhoods and business centers from noise pollution. The amendments support this goal because they remove barriers to implementation and clarify policies for water collection cisterns, eco-roofs, and other technologies that decrease stormwater runoff and thereby maintain and improve water quality.

41. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and

amendment of the Comprehensive Plan. This project supports the goal because it followed the process and requirements specified in Chapter 33.740, Legislative Procedure. See Statewide Planning Goal 1, Citizen Involvement for detail and further findings.

42. **Goal 10, Plan Review and Administration,** calls for periodic review of the Comprehensive Plan, for implementation of the Plan, and addresses amendments to the Plan, to the Plan Map, and to the Zoning Code and Zoning Map. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, requires amendments to the zoning and subdivision regulations to be clear, concise, and applicable to the broad range of development situations faced by a growing urban city. The amendments support this policy because they clarify and streamline many of the regulations in the zoning code. They also respond to identified current and anticipated problems, including barriers to desirable development, and will help ensure that Portland remains competitive with other jurisdictions as a location in which to live, invest, and do business.

43. **Goal 12, Urban Design,** calls for enhancing Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. Policy 12.3, Historic Preservation, calls for protection of historic resources. Policy 12.7, Design Quality, calls for encouraging the built environment to meet standards of excellence while fostering creativity and Policy 12.6, Preserve Neighborhoods aims to preserve and support qualities of neighborhoods that make them attractive places.

    There are several amendments that allow developers the option of an exception or standards as an alternative to discretionary design review or historic design review for "green" improvements to buildings in Historic or Conservation Districts. These amendments encourage "green" improvements while ensuring that historic resources and areas in design zones will not be degraded by the improvements. These amendments support Goal 12 and the listed policies.

    Several amendments drawn from the Courtyard Housing Competition remove barriers to creativity while encouraging design that is in line with community character, including allowing additional architectural features in setbacks such as trellises and eaves. These amendments also support Goal 12 and the listed policies.

NOW, THEREFORE, the Council directs:

a. Adopt Exhibit A, *Regulatory Improvement Code Amendment package 5 (RICAP 5): Planning Commission Recommended Draft*, dated December 21, 2009 as amended.

b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Regulatory Improvement Code Amendment package 5 (RICAP 5): Planning Commission Recommended Draft*, dated December 21, 2009 as amended.

c. Amend the Official Zoning Maps, as shown in Exhibit A, *Regulatory Improvement Code Amendment package 5 (RICAP 5): Planning Commission Recommended Draft*, dated December 21, 2009.

d. Adopt the commentary and discussion in Exhibit A, *Regulatory Improvement Code Amendment Package 5 (RICAP 5): Planning Commission Recommended Draft*, dated December 21, 2009; as further findings and legislative intent as amended.

e. Direct the Bureau of Planning and Sustainability to continue working with the Bureau of Environmental Services and other community partners to refine a study framework to evaluate the effect of small wind turbines on birds.

f. Direct the Bureau of Planning and Sustainability to monitor the effect of the other amendments as part of their overall monitoring program.

g. Direct the Bureau of Planning and Sustainability to prepare a work plan that improves the City's implementation of accessory dwelling unit program and expands upon the current compatibility standards.

Section 2. If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Section 3. This ordinance will be effective 45 days after adoption. The time between adoption and the effective date will be used by the Bureau of Planning and Sustainability and other City bureaus to print and distribute the new regulations, train city staff on the content of the new regulations and how to use them, and prepare other informational material for the Development Services Center and Development Review staff.

Passed by the Council: MAR 10 2010

Mayor Sam Adams
Prepared by: Emily Sandy
Date Prepared: December 21, 2009

LaVonne Griffin-Valade
Auditor of the City of Portland
By Susan Parsons
Deputy

~~54 187 223 306~~ 337

Agenda No.

ORDINANCE NO. 183598 As Amended

Title

Improve land use regulations through the Regulatory Improvement Code Amendment Package 5 ~~(RICAP 5)~~ (Ordinance; ~~A~~mend Title 33 and Official Zoning Map)

INTRODUCED BY Commissioner/Auditor: **Mayor Sam Adams**	CLERK USE: DATE FILED DEC 31 2009
COMMISSIONER APPROVAL	LaVonne Griffin-Valade Auditor of the City of Portland
Mayor—Finance and Administration - Adams	By: _____ Deputy
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	**ACTION TAKEN:**
BUREAU APPROVAL	JAN 06 2010 **CONTINUED TO** FEB 03 2010 3:30 PM TIME CERTAIN
Bureau: Planning and Sustainability Bureau Head: Susan Anderson Susan Anderson/SPW	FEB 03 2010 **CONTINUED TO** FEB 11 2010 **2 P.M.** TIME CERTAIN
Prepared by: E. Sandy Date Prepared: December 21, 2009	FEB 11 2010 **PASSED TO SECOND READING** As Amended MAR 04 2010 **2 P.M.** TIME CERTAIN
Financial Impact Statement Completed ☒ Amends Budget ☐ Not Required ☐	MAR 04 2010 **PASSED TO SECOND READING** MAR 10 2010 **9:30 A.M.** As Amended
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes ☐ No ☒	
Council Meeting Date **January 6, 2010**	
City Attorney Approval KS Beaumont	

AGENDA
TIME CERTAIN ☒ **Start time: 2:00 PM** **Total amount of time needed: 1.5 hours** **(for presentation, testimony and discussion)**
CONSENT ☐
REGULAR ☐ **Total amount of time needed:** ____ **(for presentation, testimony and discussion)**

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	—	
Adams	Adams	✓	

Regulatory Improvement Workplan

Regulatory Improvement Code Amendment Package 5

(RICAP 5)

City of Portland
Bureau of
Planning and Sustainability
Sam Adams, Mayor
Susan Anderson, Director

Proposed Draft Report
August 4, 2009

Regulatory Improvement

Code Amendment Package 5

The Bureau of Planning and Sustainability is committed to providing equal access to information and hearings. If you need special accommodation, please call 503-823-7700, the City's TTY at 503-823-6868, or the Oregon Relay Service at 1-800-735-2900.

For more information about **Regulatory Improvement Code Amendment Package 5** please contact:

Rodney Jennings, City Planner
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1900 SW 4th Avenue, Suite 7100
Portland, Oregon 97201-5380
Phone: 503-823-6042
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A digital copy of this report can be found at:
http://www.portlandonline.com/bps/?c=48212

Acknowledgements

Portland City Council
Sam Adams, *Mayor*
Nick Fish, *Commissioner*
Amanda Fritz, *Commissioner*
Randy Leonard, *Commissioner*
Dan Saltzman, *Commissioner*

Portland Planning Commission
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Amy Cortese, *Vice President*
Michelle Rudd, *Vice President*
André Baugh
Lai-Lani Ovalles
Howard Shapiro
Jill Sherman
Irma Valdez

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City of Portland Bureau of
Planning and Sustainability
Sam Adams, Mayor | Susan Anderson, Director

Regulatory Improvement Stakeholder Advisory Team (RISAT)

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Leah Hyman
Dana Krawczuk
Julie Livingston
Paul Loney
Bonny McKnight
Scott Shumaker
Tom Skaar

City Bureaus / Agencies
Bureau of Development Services – Kristin Cooper
Bureau of Development Services – Douglas Hardy
Bureau of Environmental Services – Dawn Hottenroth
Bureau of Environmental Services – Jocelyn Tunnard
Bureau of Planning – Eric Engstrom
Bureau of Planning – Rodney Jennings
Bureau of Planning – Phil Nameny
Bureau of Planning – Jessica Richman
Office of Transportation – Courtney Duke
Office of Transportation – Kurt Krueger
Portland Development Commission – Todd Juhasz

Table of Contents

I. Introduction

Project Summary

This report is part of the Regulatory Improvement Workplan, an ongoing program to improve City building and land use regulations and procedures. Each package of amendments is referred to as a Regulatory Improvement Code Amendment Package (RICAP), followed by a number. More information on the Regulatory Improvement Workplan is in Appendix A.

The workplan for RICAP 5 was adopted by the Planning Commission at a public hearing in August 2008. The workplan initially included 55 items; one item, Nonconforming Upgrades – Green Technologies Exemption, was added by the Planning Commission at the August hearing; and 5 more were added after the adoption of the workplan at the request of the Bureau of Development Services. Mayor Adams requested that the solar panel items be expanded to include small urban wind energy systems resulting in the addition of a sixth item. All 62 items are listed in the table below.

The 62 items include a number of items that are organized into bundles. Bundles are groups of related items that focus on specific policy issues of importance to BDS and the Planning Bureau. The bundles may mix items that scored high in the ranking process along with related but lower-scoring items. Bundling can help to realize economies of scale in the research for and development of code amendments. The four bundles in RICAP 5 are:

Courtyard Housing Bundle
The Planning Bureau's Courtyard Housing Competition resulted in development of designs for family-oriented housing built around courtyards in multi-dwelling zones. Following the competition, the winning designs were analyzed against Zoning regulations. This resulted in a list of changes that would allow these designs to be built.

Green Bundle
BDS, in conjunction with the former Office of Sustainable Development (now part of the Bureau of Planning and Sustainability), assessed the effects of the zoning code on development with green features. This resulted in a list of proposed amendments to the zoning code intended to ease or provide incentives for the development of green buildings. Several items were added to the green bundle during the research and analysis phase of RICAP 5. These include Item 59 - Eaves in Setback, Item 60 - Wind Turbine Standards and Exemption to Reviews, and Item 61 - Green Energy and Use.

Fence Height Bundle
Regulations that limit fence height are based on required setbacks. In a number of commercial and employment zones there are no required setbacks, so no fence height restrictions apply. In residential zones, different limitations on fence height may apply along front lot lines and side lot lines, which can lead to unwanted fence

configurations on corner lots. For example, the house may face what the code considers to be the side lot line, rather than the front lot line, so a taller fence is allowed in front of the house, while a shorter fence in required along the side. The fence height issues raised in this package are intended to provide a more consistent approach to fence regulation in the City.

Loading Space Bundle
The code regulates the size, location, and number of loading spaces required in commercial and multi-dwelling development. Adjustments are frequently sought and approved to some of the loading space requirements. The issues raised in this bundle are intended to reduce the number of adjustments by developing better regulations for loading spaces. Better regulations would more accurately reflect the demand for access to loading spaces and the appropriate sizes for delivery vehicles that visit smaller commercial and multi-dwelling residential sites.

Narrow Lots and Lots of Record
While technically not a bundle, several amendments are being made in conjunction with Item 55 addressing Lots of Record. These amendments are based upon discussions held with a stakeholder group on issues regarding development on narrow lots and lots of record. Amendments include creating new minimum lot size standards in R5 zones, limiting garage frontages on existing lots, and creating new standards for property line adjustments.

After research and analysis, staff recommends amendments to the Zoning Code for 56 of the items. The table includes brief descriptions of each item, and more detail on each is in Section III of this report. Section IV of this report provides more detail about the six items where no amendment is proposed.

Staff Recommendation

The Bureau of Planning is seeking the Planning Commission's recommendation of approval of these amendments. This recommendation should include the following actions:

- Adopt this report and recommend that Council adopt it;
- Recommend that Council amend the Zoning Code as shown in this report;
- Recommend that Council adopt the ordinance; and
- Direct staff to continure to refine the recommended code language as necessary.

Next Steps

If the Planning Commission recommends approval of the code amendments, this recommendation will be forwarded to the City Council. Publication of the Recommended Draft and Notice of Hearing will be in October, with a City Council hearing date expected in November or early December. People who testify at the Planning Commission hearing, send written comments, or request to be notified will receive notice of the City Council hearing.

RICAP 5 Workplan Items

Item #	Item Name	Proposed Amendment	Zoning Code Section	Pages
1	Water Collection Cisterns	Create standards for water collection cisterns.	33.110.220; 33.110.250; 33.120.220; 33.120.280; 33.130.215; 33.130.265; 33.140.215; 33.140.270; 33.218.100; 33.218.110; 33.218.120; 33.218.130; 33.218.140; 33.218.150	26, 38, 56, 74, 84, 88, 98, 102, 108, 116, 120, 122, 128, 132
2	Adjustments and Modifications	No amendment proposed		
3	Solar Panels & Height	Create exemptions to maximum height limit for solar panels.	33.110.215; 33.120.215; 33.130.210; 33.140.210	24, 52, 82, 96
4	Established Building Line	Allow eaves to extend along established building line	33.110.220	28
5	Garage Entrance Setbacks in E-zones	Clarify that reduction in garage setback does not affect street facing development standards	33.110.220; 33.120.220	28, 56
6	Duplex Lot Size and Street Dedications	Clarify that duplexes are allowed on corner lots that are greater than 5000 square feet prior to a street dedication.	33.110.240	36
7	Fence Height and Corner Lots	Provide an alternative set of height limits for fences on residential corner lots	33.110.255; 33.120.285	42, 76
8	Density Gap between R1 and R2 (see also Item 42)	Allow a greater flexibility in density range for courtyard housing projects	33.120.270; 33.612.100	64, 188
9	Density for SRO Housing	Clarify how density is calculated for Single Room Occupancy housing.	33.910.030	222
10	Transfer of Density between Sites	Clarify that density transfer allowance is between sites	33.120.205	48
11	Development on Lots and Lots of Record	Technical correction to clarify that either condition can be met to develop on lot or lot of record.	33.120.210	50
12	Pedestrian Connections	Remove requirement for internal pedestrian connections on small sites (less than 10,000 sq ft)	33.120.255	60
13	Amenity Bonus for Sound Insulation	Clarify that amenity bonus for sound insulation is available for all residential uses, not just multi-family.	33.120.265	62
14	Architectural Features in the Setback	Allow an entry trellis in the front setback. Allow other architectural projections within courtyard housing projects	33.110.250; 33.120.270; 33.120.280	38, 64, 74
15	Encroachment into Shared Street	Allow minor encroachments into common greens or shared streets on the corner lot	33.120.270	64
16	Institutional Development Standards	Clarify that standards for Institutional Master Plans in IR zones also apply to Conditional Use Master Plans.	33.120.275; 33.120.277	70,72
17	Fences in EXd	Limit fence height immediately adjacent to streets	33.120.285; 33.130.270; 33.140.275	76, 90, 104

Item #	Item Name	Proposed Amendment	Zoning Code Section	Pages
18	Accessory Dwelling Units (ADUs) and Density Calculation	Remove reference to ADUS in density definition due to conflict with the ADU chapter	33.910.030	222
19	Community Design Standards – Vehicle Access through Buffer	Allow vehicle area through the landscape buffer if the only vehicle access is from the local street	33.218.110; 33.218.140	114, 126
20	Nonconforming Upgrades List Order	No amendment proposed		
21	Nonconforming Upgrades – Option 2	Provide a grace period for nonconforming upgrades made under option 2.	33.258.070	142
22	Nonconforming Development and Allowed Uses	No amendment proposed		
23	Separate Parking Tract	Clarify that a parking or shared court tract may be used to provide required parking.	33.266.100; 33.266.120	148
24	Parking and Loading in Front Setback	No amendment proposed (allowance for parking in front setback proposed for small lots)	(See 33.110.213 for related item)	
25	Alternative Driveway Paving	No amendment proposed		
26	Shared Driveway Across Lot Lines	Clarify that driveways shared by two properties are allowed to cross property lines.	33.266.120	150
27	Long Term Bike Parking in Multi-Dwelling Development	Strengthen regulations that require bike parking in multi-dwelling development.	33.266.220	152
28	Loading Space Dimensions	Allow smaller loading spaces in smaller multi-dwelling developments.	33.266.310	158
29	Loading Space Triggers	Reduce loading requirements for uses with less demand for loading.	33.266.310	158
30	Alternative Design Density Overlay	Remove 'a' overlay from commercially zoned properties	Official Zoning Maps	
31	Louvers in Design Overlay Zones	Provide an exemption to design review for small mechanical louvers on ground floors	33.420.045	166
32	Solar Panel Design Review Exemption	Exempt solar panels from design review.	33.218.100; 33.218.110; 33.218.120; 33.218.130; 33.218.140; 33.218.150; 33.420.045;	108, 116, 120, 122, 128, 132, 166
33	Eco-Roof Design Review Exemption	Exempt eco-roofs from design review.	33.420.045	166
34	Environmental Zone Exemptions	Clarify exemption allowed for maintenance work by Multnomah County Drainage District	33.430.080	168
35	Environmental Zone Development Standards for Land Divisions	Clarify that utility standards do not apply when land is approved for disturbance in a land division.	33.430.150; 33.430.160	170
36	Greenway Overlay Zones	No Amendment Proposed		

Item #	Item Name	Proposed Amendment	Zoning Code Section	Pages
37	Solar Panel Historic Design Review Exemption	Exempt solar panels from some historic and conservation reviews.	33.218.100; 33.218.110; 33.218.120; 33.218.130; 33.218.140; 33.218.150; 33.445.320; 33.445.720	108, 116, 120, 122, 128, 132, 174, 178
38	Eco-Roof Historic Design Review Exemption	Exempt eco-roofs from some historic and conservations reviews.	33.445.320; 33.445.420	174, 176
39	Eco-Roof FAR Bonus	Allow FAR bonus credit for eco-roofs and roof gardens when they are located on different parts of the same roof.	33.510.210	180
40	Northwest Plan District FAR	Clarify that both residential and non-residential floor area count toward the FAR minimum in the Northwest Plan District.	33.562.220	186
41	Orientation to Public Street	For lots fronting both public and private streets, require house to orient to the public streets	33.110.230, 33.120.231, 33.130.250, 33.140.265	34, 58, 86, 100
42	Courtyard Tracts and Density Calculations	Allow area used for common greens or shared courts to be included for maximum density calculation.	33.612.100	188
43	Planned Development Density Transfers to I Zones	Clarify that a Planned Development cannot be used to transfer residential uses into I zones, nor to transfer floor area from EG or I zones for residential uses.	33.638.100, 33.638.110	190, 192
44	Type II Notice Procedures	Clarify target date for when a notice of decision must be mailed.	33.730.020	200
45	Hearings Officers Decisions on Comprehensive Plan Amendments	Extend the amount of time for publication of Hearing's Officer Decision on Comprehensive Plan Amendments from 17 to 30 days for	33.730.010, 33.730.030	200, 202
46	Land Use Fees	Remove reference to fee receipts for determining complete applications	33.730.060	206
47	Right-of-way Dedications and Setback Adjustments	Allow reduced setback when City requires a right-of-way dedication along an existing street frontage.	33.110.220; 33.120.220	32, 54
48	Solar Panels and Condition Use Review	Allow solar panel installations at conditional use sites without a review.	33.281.050; 33.815.040; 33.820.080	160, 210, 214
49	Parking and Conditional Use Review Type	Allow small additions or removal of parking spaces without a conditional use review	33.281.080; 33.815.040; 33.820.080	160, 210, 214
50	Historic Designation Procedure	Clarify that the Zoning Code's historic designation process is a local process.	33.445.100, 33.445.300, 33.846.030, 33.846.040	172, 216
51	Historic Resource Covenants	Clarify the covenant requirement for properties utilizing historic incentives	33.120.205, 33.130.205, 33.140.205, 33.846.050	48, 80, 94, 218
52	State Transportation Planning Rule	Amend zone change criteria to conform with State transportation requirements	33.855.050	220

Item #	Item Name	Proposed Amendment	Zoning Code Section	Pages
53	Solar Panel Exemption from Standards	Exempt solar panels from maximum height under certain conditions.	33.110.215; 33.120.215; 33.130.210; 33.140.210; 33.515.235	24, 52, 82, 96, 184
54	Accessory Dwelling Unit vs. Second Sink	Clarify the elements that define an accessory dwelling unit	33.910.030	226
55	Legal Lot of Record	• Create minimum size standards for existing lots and lots of record in R5 zone; • Allow flexibility for corner lot development; • Allow parking in the front setback on existing small lots; • Remove 50% garage exception for existing lots • Clarify nonconforming status for development on small lots; • Create additional standards for property line adjustments (PLAs) • Create definitions for 'Adjusted Lot' and 'Lot Remnant'.	33.110.212, 33.110.213, 33.110.253, 33.258.060, 33.667.300, 33.700.130, 33.910.030	14, 22, 40, 136, 194, 198, 222
Add #56	Nonconforming Upgrades – Green Technologies Exemption	Exempt some green technologies from threshold for nonconforming upgrades.	33.258.070	144
Add #57	Adjustment Purpose Statement	Clarify wording in adjustment purpose statement.	33.805.010	208
Add #58	Dimensions in Bike Parking Figure	Correct typographical error on bike parking figure.	Figure 266-9	156
Add #59	Eaves in Setback	Allow eaves to extend farther into setback to protect and shade buildings.	33.110.220; 33.120.220; 33.130.215; 33.140.215	26, 56, 84, 98
Add #60	Wind Turbine Standards and Exemption to Reviews	Develop standards for locating small wind turbines.	33.110.215; 33.120.215; 33.130.210; 33.140.210; 33.287 (new chapter); 33.515.235; 33.910.030	24, 52, 82, 96, 162 184, 230
Add #61	Green Energy and Use	Clarify that alternative energy producing systems located on buildings are not a primary manufacturing use.	33.110.100; 33.120.100; 33.130.100; 33.140.100; 33.920.310; 33.920.340; 33.920.400	12, 44, 78, 92, 232, 234, 236
Add #62	Retaining Wall Definition	Add a definition of "retaining wall" to the code.	33.910.030	228

II. Impact Assessment

During each RICAP review process, an impact assessment is conducted in order to identify and evaluate positive and negative impacts of regulations that may be proposed. The process also identifies situations where a nonregulatory approach is a better solution. The process chart for impact assessment in Appendix B of this report (p. 255) illustrates the flow and stages of a model assessment process.

Staff's consideration of each item is described in detail in Sections III, IV and V of this report. Additional information is also available in the *RICAP 5 – Proposed Workplan* report, dated August 6, 2008.

Issues and Desired Outcomes

The goal of the Regulatory Improvement Workplan, is to "update and improve City building and land use regulations that hinder desirable development." In keeping with this goal, the desired outcomes of the RICAPs are to explore nonregulatory solutions to identified problems and, where a regulatory approach is determined to be best, to keep the regulations simple, clear, and easy to implement and enforce. The desired outcome for each issue addressed through a RICAP is to improve the regulation or process as much as possible, and to simplify, streamline, or increase the effectiveness of the regulation or process, while reducing burdens for applicants, neighbors, and staff.

The issues suggested as candidates for regulatory improvement range from the correction of small technical items to the reconsideration and updating of major policy approaches. RICAPs are intended to accommodate the consideration of items that are at the technical and minor policy end of that continuum. Within that intent, items are selected for consideration, and then discussed by staff, citizens, and the Planning Commission, as detailed below.

For more information on the initial selection of items for the workplan, the reader should consult the *RICAP 5 Proposed Workplan* dated August 6, 2008.

Stakeholder Outreach and Feedback

During the analysis phase of this process, several of the more complex issues were presented to the Regulatory Improvement Stakeholders Advisory Team (RISAT) at their monthly meetings, starting in early 2009. In February they discussed green technologies (including solar, panels, eco-roofs, water collection cisterns, exemption for green technologies from nonconforming upgrade requirements, and an allowance for wider eaves in setbacks to shade and protect buildings). In March they discussed fence height requirements in C zones and EX zones, and fence height requirements on corner lots. In April, they discussed requirements for street dedications in land divisions that can trigger an Adjustment Review. They also discussed a number of items related to the City's efforts to encourage family friendly courtyard housing infill development, including discussions around

pedestrian connections, setbacks, and the orientation of dwelling units on corners. In May, they discussed issues related to how to define lots of record and regulate development on small lots. In June, they again discussed green technologies and the issues related to lots of record and small lots. In March, April May, and June, they also revisited a number of items that had been discussed at earlier meetings to consider staff analysis of the items and alternatives for addressing the issues. During each of these sessions the impact assessment questions were discussed: What is the underlying problem? What are the alternative approaches? How will regulations be enforced? What are the implementation costs? Is it worth it?

Staff also engaged in discussions with several other interest groups as well as appointed commissions during the formulation of the code amendments. In March 2009, staff held briefings with the Historic Landmarks Commission and the Design Commission to get their ideas on what would be appropriate standards to allow some green technologies like solar panels, eco-roofs, and water collection cisterns to be located in historic and design overlay zones without a requirement for design review.

During the spring and summer of 2008, Planning and BDS staff established the Lot Confirmation stakeholder group to go over the issues related to item 55. This stakeholder group included representatives of neighborhood associations in all quadrants of the city, as well as homebuilders and infill developers. Over several meetings, the group discussed continuing issues for building on lots and lots of record that may not conform to current standards, and whether different standards and/or neighborhood overview should apply in different situations. While the group did not achieve consensus on many of the issues, the discussions did help inform the staff proposal.

Staff met several times with the local chapter of the Northwest Ecobuilding Guild, an association of builders, designers, homeowners, tradespeople, manufacturers, suppliers and others interested in ecologically sustainable building. Staff contacted and met with a local small wind turbine manufacturer (Oregon Wind Inc.). Members of staff also met with several neighborhood groups including the Citywide Land Use Group, Southeast Uplift and the Portland Main Street Coalition.

On June 19, 2009, the *RICAP 5 Discussion Draft Report* was published. Copies of this draft were made available to RISAT and other stakeholders. Staff also held an open house on July 14, 2009 to answer questions and receive feedback on the *Discussion Draft*. Notice of the Open House was sent to over 600 people, including representatives of the stakeholder groups identified above, parties who have expressed an interest in RICAP projects and the Bureaus Legislative Projects list, which includes all recognized neighborhoods and neighborhood coalitions as well as members of the general public who have requested that they be notified of Planning Bureau projects.

Outreach in June also included meeting again with the Historic Landmarks Commission and the Design Commission to get their feedback on the standards developed by staff in the *Discussion Draft* to allow some green technologies like solar panels, eco-roofs, and water collection cisterns to be located in historic and design overlay zones without a requirement for design review. At their invitation, staff also met with the Historic Resources Committee of the Portland chapter of the

American Institute of Architects to brief them on the standards in the *Discussion Draft* for exemptions in historic overlay zones.

To address concerns from the Building Community, staff met with members of the Home Builders Association to discuss the proposed changes to the narrow lot standards. However, the Association does not agree with the staff proposal to remove the provision that exempts garages from the frontage standards for existing narrow lots. They take issue that this provision harms most of the houseplans available, while providing an allowance for the Living Smart designs to provide wider garages. It is expected that this issue will generate testimony to the staff's proposal.

Approaches Considered

The decisions to recommend amendments to the Zoning Code (covered in Section III), the Official Zoning Maps (covered in Section IV) or to recommend no amendment (covered in Section V) are the result of the impact assessment that has been applied to the items. The conclusions can be attributed to the art—more than the science—of a type of cost/benefit analysis implicit in the impact assessment process. Where the expected benefits outweigh the various costs, staff is recommending an amendment to the Zoning Code.

The reasons for recommending that no amendment be made fall into three general categories:

1. The assessment indicates that the solution is not worth the costs;
2. The assessment shows that the issue is important, but the solution should be decided as part of a larger review; and
3. More research is needed before a solid recommendation can be made.

Monitoring Effectiveness

Ongoing assessment is an essential component of the City's impact assessment process. The success of the proposed amendments will be monitored through the Planning Bureau's continuing monitoring and evaluation program. Overall success of any amendments will also be monitored through public feedback on the regulations.

III. Amendments to the Zoning Code

The proposed amendments to the Zoning Code are included in this section of the report. The amendments are on the odd-numbered pages. The facing (even-numbered) pages contain commentary about the proposed amendment. The commentary includes a description of the problem being addressed, the legislative intent of the proposed amendment, and an assessment of the impact of the proposed change.

Item 61 – Green Energy and Use

33.110.100 Primary Uses

B. Limited uses.

5. Basic Utilities

This amendment allows energy production on residential sites if the system generates energy from the environmental conditions of the site (from the sun, the wind, water, the ground). Such systems are currently allowed only if the energy is used on the site. Sales of extra energy back to the grid is becoming common (either wholesale, or via net-metering). Although not enforced, a strict reading of the zoning code might preclude this practice. The amendments serve to facilitate further development of these local distributed energy sources by removing any zoning-related uncertainty.

The amendments also allow production of energy from the byproducts of an allowed use. In the Farm/Forest zone, this would allow use of agricultural compost to supply a biogas generator. In residential zones, this would allow systems that generate heat or energy from sewage. These systems would not typically be feasible in conjunction with a single home, but might be viable serving a larger residential development.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Excerpt from Table 110-1
Single-Dwelling Zone Primary Uses

	RF	R20	R10	R7	R5	R2.5
Basic Utilities	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]

33.110.100 Primary Uses

A. Allowed uses. Uses allowed in the single-dwelling zones are listed in Table 110-1 with a "Y". These uses are allowed if they comply with the development standards and other regulations of this Title. Being listed as an allowed use does not mean that a proposed use will be granted an adjustment or other exception to the regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters.

B. Limited uses. Uses allowed that are subject to limitations are listed in Table 110-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 110-1.

1 -4. [no change]

5. Basic Utilities. This regulation applies to all parts of Table 110-1 that have note [5].

   a. Basic Utilities that serve a development site are accessory uses to the primary use being served.

   b. Energy production systems that serve other sites will be considered accessory to the allowed primary use on the site if the system generates energy from the environmental conditions of the site, or from the byproduct(s) of an allowed use on the site or within the same development site. This applies only to energy production systems classified as Basic Utilities. Examples include solar energy systems, photovoltaic panels, wind turbines, geothermal heating and cooling, hydroelectric systems, biogas systems that produce gas or heat from the anerobic breakdown of organic matter (for example, compost), biomass systems that produce heat, steam, or electricity through the combustion of biological materials (for example, wood chips from an agricultural use). Both net metered installations and installations that generate power to sell at wholesale to the grid are included.

   c. All other Basic Utilities are conditional uses.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

Background

This item was initially entered into the regulatory database after the city received a decision from the State Land Use Board of Appeals that went against our interpretation of the development potential on lots of record. The initial request was to review our current definition of lot of record and amend it to better address our policy on building for these specific pieces of property.

However, it became evident that a larger review of the continuing issues involving development on small infill properties would be needed, and that the definition of lot of record was not the source of many of the problems. Instead, the problem involved wiggle room in our minimum lot size standards in the R5 zones that enabled various slivers of land and lot remnants to be developed or expanded and then developed. Many of these slivers were never intended to be developable lots.

In 2008, BDS, in conjunction with BPS created a lot confirmation task force that included neighborhood representatives, developers, consultants and city staff. The group was tasked with reviewing some of the code details that allowed development on lot fragments, and reviewing some of the design issues still affecting neighborhoods. These were continuing issues that had not been fully resolved from the code amendments for narrow lots that were implemented in 2003.

This task force met several times, and while they were not able to achieve consensus on many of the issues, they did identify the following issues with the current regulations where there was partial agreement. These included development on non-platted slivers or remnant areas of land, issues with the 5-year vacancy rule, garage and driveway design, inflexibility on corner lots, setbacks and provisions for attached houses.

The provisions here may not address all of the issues. Some items such as the allowance of certain building types, and setback requirements may be better addressed citywide in the Portland Plan. However, many of the issues, including distinguishing between legal platted lots and other 'land fragments', garage design, and corner lot provisions are addressed here. Staff is also proposing a Design Review option that would allow development of two attached houses through a discretionary land use review as an option to leaving half of the site vacant for five years.

33.110.212 When Primary Structures are Allowed.

C. Primary Structures allowed. The ownership clause is simplified to restrict the separation of lots under the same ownership as defined in 33.910. The current restriction is too broad and could affect lots passed down through wills, etc. Although the remainder of this section does not change, it should be noted that these standards will also apply to "adjusted lots". Adjusted lots, defined in 33.910, are lots that were originally platted but have been altered through a property line adjustment. However, they still retain the majority of the original lot size.

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CHAPTER 33.110
SINGLE-DWELLING ZONES

33.110.212 When Primary Structures are Allowed

A. Purpose. The regulations of this section allow for development of primary structures on lots and lots of record, but do not legitimize plots that were divided after subdivision and partitioning regulations were established. The regulations also allow development of primary structures on lots that were large enough in the past, but were reduced by condemnation or required dedications for right-of-way.

B. Adjustments. Adjustments to this section are prohibited.

C. Primary structures allowed. In all areas outside the West Portland Park Subdivision, primary structures are allowed as follows:

1. On lots created on or after July 26, 1979;

2. On lots created through the Planned Development or Planned Unit Development process;

3. On lots or combinations of lots created before July 26, 1979 that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:

   a. In the RF through R7 zones the lot, lot of record, or combination of lots or lots of record must:

      (1) Be at least 36 feet wide, and meet the minimum lot area requirement of Table 610-2; or

      (2) Not have abutted any lot or lot of record under the same ownership~~d by the same family or business~~ on July 26, 1979 or any time since that date;

C. Primary Structures allowed. (contd)

3.b. In the R5 zones. These regulations have been in place since 2003 and waive lot size requirements for lots and lots of record that have been vacant for at least five years. This provision was intended to remove the pressure to tear down viable structures for the purpose of developing multiple houses on the underlying lots, which was an issue of the Regulatory Improvement Workplans, Policy Packages 1 and 2. For the most part it has been successful. However, it has also placed pressure on manipulating property lines for the purpose of creating 'vacant' sites and also has resulted in property line adjustments to turn unbuildable property remnants into minimally buildable sites. The intent of the original amendment was to allow building on vacant legal lots, but not to create a buildable situation from an unbuildable lot remnant through lot line manipulation.

Some minimal size requirement may be necessary for lots. These amendments provide a minimum threshold. These changes work in conjunction with the new definitions of Adjusted Lot and Lot Remnant to clarify when a parcel can be built upon. The threshold will still allow most of the current development proposals, including the prototype Living Smart houses to be built. In addition, staff proposes to create some flexibility for situations, especially on corner sites, so that some adjusted lots could be smaller than mid block lots. Corner lots have greater street frontage which can incorporate a smaller lot size while maintaining the existing development pattern.

A lot size table for existing lots has been created for the R5 zone. Minimum size for lots that have not been vacant for five years, or if it is in an environmental zone will continue to be 3,000 square feet of area and 36 feet wide, identified as Standard A. However, if the lot or adjusted lot has been vacant for five years, it can meet one of two other standards: Standard B, which requires 2,400 square feet of area and 25 feet of width or Standard C, which requires 1,600 square feet of area and 36 feet of width. The two standards are designed to create more flexibility for various lot configurations. The small lots will continue to have a lower maximum building coverage standard of 40%, ensuring the smaller lot size does not eliminate the provision of outdoor space, light, and air.

To address the issue of lots staying vacant after a demolition, two new standards provide options for rebuilding on the lots without the five year wait. First, if a house on the site has been tagged as a dangerous building subject to demolition, the lot will not have to wait five years in order to be allowed to be developed to the lower thresholds of Standards B or C. Second, if a site containing a house consists of two lots, the applicant can choose to go through a discretionary design review to remove the existing house and propose two attached houses. The Design Review process enables staff to require design elements and scale consideration to better fit in the neighborhood context as part of their approval.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

b. In the R5 zone, if the site is a ~~the~~ lot, ~~lot of record~~, or combination of lots ~~or lots of record~~, it must meet one of the following:

(1) Meet Standard A in Table 110-X if it meets one of the following: ~~Be at least 36 feet wide, and be at least 3000 square feet~~;

- It has had a dwelling unit on it within the last five years and does not meet b.(2) below; or
- It has any portion within an environmental zone.

(2) Meet either Standard B or C in Table 110-X if it does not have any portion within an environmental zone and meets one of the following:

- It has not had a dwelling unit on it for at least five years. ~~Have been under a separate tax account from abutting lots or lots of record on November 15, 2003;~~:
- It has had a dwelling unit on it within the last five years that has been demolished as a public nuisance under the provisions of Sections 29.40.030 or 29.60.080 of Title 29; or
- The site contains two lots with an existing dwelling unit, and a proposal to replace the existing dwelling unit with two attached houses has been approved through a Type II Design Review. Each lot must meet Standard B or C under this provision;

(3) Have been under a separate tax account from abutting lots or lots of record on November 15, 2003, or had an application filed with the city before November 15, 2003 to authorize a separate tax account and have been under a separate tax account from abutting lots or lots of record by November 15, 2004.~~Have had an application filed with the City before November 15, 2003 to authorize a separate tax account and have been under a separate tax account from abutting lots by November 15, 2004; or~~

~~(4) Have not had a dwelling unit on it since September 10, 2003, or for at least five years, and not have any portion in an environmental overlay zone.~~

NEW TABLE

Table 110-X
Minimum Lot Size and Dimension for existing lots in R5 zone

	Standard A	Standard B	Standard C
Minimum Lot Area	3,000 sq. ft.	2,400 sq. ft.	1,600 sq. ft.
Minimum Width	36 ft	25 ft..	36 ft

33.110.212 (contd.)

3.c Unplatted property created through the exchange of deeds are called "lots of record" if they were created prior to our subdivision requirements of 1979. They are not created from a land division, and are not legally identified as a lot per state rule. There has been difficulty determining when certain deeds were created for the purpose of selling a unit of land as a separate entity, and when deeds were created to transfer a unit of land from one property to another (what we call a property line adjustment today). This is especially a problem in the R5 zone. Since it is difficult to determine this historic intent, the code is amended to require that any lot of record in the R5 zone have size and dimensional standards similar to the minimum lot size standards for new lots in order to be buildable. An exception is provided if the 'lot of record' has been under separate ownership since 1979. This amendment should help to distinguish between a historically buildable lot of record and a sliver of land that was transferred through a historic property line adjustment.

In conjunction with this minimum, an amendment made to the Property Line Adjustment process will not allow an applicant to enlarge an existing unbuildable property remnant to make it a size that is buildable. The creation of buildable parcels should be done through the land division process.

3.d. This is a format change from 3.c to 3.d. The code is not changing. However, it should be noted that these standards will also be applicable to adjusted lots as defined in 33.910.

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c. In the R5 zone, if the site is a lot of record, or combination of lots of record, it must meet one of the following:

(1) Be at least 36 feet wide, and be at least 3,000 square feet; or

(2) Not have abutted any lot or lot of record under the same ownership on July 26, 1979 or any time since that date;

d. In the R2.5 zone the lot, lot of record or combination of lots or lots of record must meet one of the following:

(1) Be at least 1600 square feet in area;

(2) Have been under a separate tax account from abutting lots or lots of record on November 15, 2003; or

(3) Have had an application filed with the City before November 15, 2003 to authorize a separate tax account and have been under a separate tax account from abutting lots by November 15, 2004;

4. Primary structures are allowed on lots, lots of record, and combinations of lots or lots of record that did meet the requirements of C.3, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

33.110.212 (contd.)

D. Regulations for West Portland Park.
A new regulation is added to address existing lots in the R2.5 zone. This provision was not initially needed in this area, because there were no areas zoned R2.5 in West Portland Park. However, as part of the Southwest Community Plan, some areas adjacent to SW 49th were zoned to R2.5. These areas have existing platted lots that are 2,500 square feet. Because there are no provisions for minimum lot size for existing lots in this zone, proposals for development on these lots have still required a new land division.

To be consistent with other zones in the West Portland Park area, a provision is added to set up a minimum lot size of 2,500 square feet to develop on an existing lot in the R2.5 zone.

It should be noted that these standards will also be applicable to adjusted lots as defined in 33.910.

E. Plots and Property Remnants. This amendment adds 'property remnants' to the types of pieces of property where development is not allowed, unless the remnant can also meet the definition of lot (including adjusted lot), or lot of record. The intent is to clarify what types of property can be developed on. Property remnants is used in 33.700.130, Legal Status of Lots, and Plots is defined in 33.910.030.

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D. Regulations for West Portland Park. In the West Portland Park subdivision, primary structures are allowed as follows:

1. On lots created on or after July 26, 1979;

2. On lots, or combinations of lots created before July 26, 1979 that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:

   a. R7 zone. In the R7 zone, the lot, lot of record, or combination of lots or lots of record must be at least 7,000 square feet in area;

   b. R5 zone. In the R5 zone, the lot, lot of record, or combination of lots or lots of record must be at least 5,000 square feet in area; ~~or~~

   c. R2.5 zone. In the R2.5 zone, the lot, lot of record, or combination of lots or lots of record must be at least 2,500 square feet in area; or

   d. On July 26, 1979, or any time since that date, the lot, lot of record, or combination of lots or lots of record did not abut any lot or lot of record owned by the same family or business;

3. Primary structures are allowed on lots, lots of record, and combinations of lots or lots of record that did meet the requirements of D.2, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

E. Plots and property remnants. Primary structures are prohibited on plots or property remnants that are not lots, lots of record, or tracts.

F. Nonconforming situations. Existing development and residential densities that do not conform to the requirements of this chapter may be subject to the regulations of Chapter 33.258, Nonconforming Situations. Chapter 33.258 also includes regulations regarding damage to or destruction of nonconforming situations.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

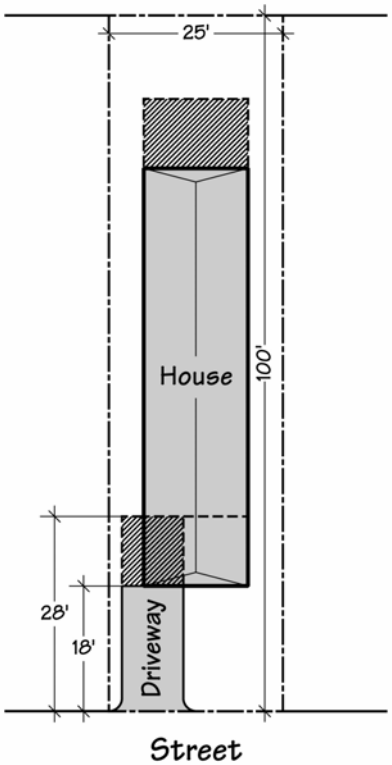
33.110.213 Additional Development Standards for Lots and Lots of Record Created Before July 26, 1979

B. Where These Regulations Apply

There are no amendments made to this section. However, it should be noted that these regulations will also apply to 'Adjusted Lots' which are defined under 33.910 as a subset of the Lot definition.

C. Standards.

The standard for required parking is amended to work in conjunction with the amendment provided in 33.110.253, which eliminated the garage exception for existing lots. Although parking is not required for these developments, if the parking space is provided, this amendment allows the parking space to be placed in the front setback. This will allow houses that provide a parking pad instead of a garage to be located 18 feet back from the street, instead of the current requirement of at least 28 feet (10 foot setback and 18 foot parking space). By placing the houses closer to the street, it provides an opportunity to have a larger backyard for these houses, which also is more consistent with existing development.



Under current regulations, a driveway pad in R5 must have a dimension of 28 feet from the street which pushes the house back into the rear of the lot.

With the amendment, driveways on existing narrow lots do not need to have a setback, so homes without garages will better fit into the neighborhood.

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33.110.213 Additional Development Standards for Lots and Lots of Record Created Before July 26, 1979

A. Purpose. These standards increase the compatibility of new houses on small and narrow lots.

B. Where these regulations apply.

1. RF through R7 zones. These regulations apply in the RF through R7 zones, if the lot, lot of record, or combination of lots or lots of record is less than 36 feet wide and has not abutted any lot or lot of record owned by the same family or business on July 26, 1979, or any time since that date.

2. R5 zone. In the R5 zone, these regulations apply to lots, lots of record, or combinations of lots or lots of record that were created before July 26, 1979 and are:

   a. Less than 3,000 square feet in area; or

   b. Less than 36 feet wide.

3. R2.5 zone. In the R2.5 zone, these regulations apply to lots, lots of record, or combinations of lots or lots of record that were created before July 26, 1979 and are less than 1,600 square feet in area.

4. Planned unit developments. Lots in planned unit developments are exempt from the requirements of this section.

C. Standards. Modifications to the standards of this subsection may be requested through Design Review. Adjustments are prohibited. The standards are:

1-4. [No change.]

5. ~~No p~~Parking require<u>ments</u>~~d~~. No off-street parking is required<u>. If an off-street parking space is provided, it may be located within the front or side street setback. A parking space in a garage must meet applicable garage standards</u>;

6-9. [No change.]

33.110.215 Height

A-B. [No Change.]

C. Exceptions to the maximum height.

Item 3 – Solar Panels and Height
Item 60 - Wind Turbine Standards and Exemption to Reviews
Item 53 – Solar Panels Exemption from Standards
This item was a request to clarify that rooftop solar panels and wind turbines are not classified as rooftop mechanical equipment. This is accomplished by adding separate exception for solar and wind systems.

Image courtesy of Oregon Wind Inc.

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33.110.215 Height

A-B. [No Change.]

C. Exceptions to the maximum height.

1. ~~Projections allowed.~~ Chimneys, flag poles, satellite receiving dishes, and other similar items with a width, depth, or diameter of 3 feet or less may extend above the height limit, as long as they do not exceed 5 feet above the top of the highest point of the roof. If they are greater than 3 feet in width, depth, or diameter, they are subject to the height limit.

2. ~~Farm buildings.~~ Farm buildings such as silos and barns are exempt from the height limit as long as they are set back from all lot lines, at least one foot for every foot in height.

3. Radio and television antennas, utility power poles, and public safety facilities are exempt from the height limit.

4. Small urban wind energy systems are subject to the standards of Chapter 33.287.

5. Roof mounted solar panels are not included in height calculations, and may exceed the maximum height limit as long as they meet the following:

   a. For flat roofs or the horizontal portion of mansard roofs, if they do not extend more than 5 feet above the top of the highest point of the roof.

   b. For pitched, hipped, or gambrel roofs, if they are mounted no more than 18 inches from the surface of the roof at any point, and do not extend above the ridgeline of the roof section on which the solar panel is located. The 18 inches is measured from the upper side of the solar panel.

D. [No Change.]

Item 1 – Water Collection Cisterns
Item 59 – Eaves in Setback

33.110.220 Setbacks

C. Extensions into required building setbacks.
Cisterns. This amendment responds to a request that water collection cisterns and other similar building features be allowed within setbacks, within reason. This section of code already governs building features like balconies and fire escapes, and could be expanded to facilitate water collection systems.

Eaves. The zoning code allows some minor building features to extend into required building setbacks. Building eaves are one of these minor features. The code currently limits the allowed extension to 20 percent of the depth of the setback that is required. For example, if the required setback is 5 feet, the minor building feature would be allowed to extend no more then 1 foot into the setback, whereas if the required setback were 10 feet, the feature could extend 2 feet into the setback.

In a zone with a required setback of 5 feet or less, a building built up to the setback line is essentially limited to an eave that extends no more than one foot into the setback. A precept of green building is that wider eaves are beneficial and should be encouraged. Wider eaves provide several benefits. These include:

- protection of doors and windows from harsh weather, prolonging their useful life;
- protection of foundation and home walls from excess water and moisture damage by redirecting water away from the structure;
- improving energy efficiency by providing shading in the summer heat.

Several nationally recognized standards for green buildings award points in their certification programs for buildings with wider eaves. These include the LEED H, Earth Advantage, and GBI. Generally, these points are granted for eaves that are 24 inches wide or greater in width. (Eaves continued on next commentary page.)

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33.110.220 Setbacks

A-B. [No Change.]

C. Extensions into required building setbacks.

1. Minor features of a building such as ~~eaves,~~ chimneys, fire escapes, water collection cisterns and planters, bay windows, and uncovered balconies, may extend into a required building setback up to 20 percent of the depth of the setback. However, in no case may they be less than three feet from a lot line, except as allowed in Section 33.110.250, Accessory Structures. Eaves, rain gutters and downspouts may extend into a required setback up to 40 percent of the depth of the setback. However, in no case may they extend more than 3 feet into the setback or closer than three feet from a lot line. Bays and bay windows extending into the setback also must meet the following requirements:

   a. Each bay and bay window may be up to 12 feet long, but the total area of all bays and bay windows on a building façade cannot be more than 30 percent of the area of the façade;

   b. At least 30 percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block;

   c. Bays and bay windows must cantilever beyond the foundation of the building; and

   d. The bay may not include any doors.

2. Accessory structures. The setback standards for accessory structures are stated in 33.110.250, below. Fences are addressed in 33.110.255, below. Detached accessory dwelling units are addressed in Chapter 33.205. Signs are addressed in Chapter 33.286.

Item 59 – Eaves in Setback (cont.)

This amendment will allow eaves to extend up to 40 percent of the depth of the setback or three feet, whichever is less, but in no case to extend closer than three feet from a lot line. With a setback of 5 feet, this will allow eaves to extend two feet into the setback. If the setback is 10 feet, an eave could extend no more than 3 feet. There is concern that allowing wider eaves in the setback on one property will have a detrimental effect on the light and sense of openness on a neighboring property. The restriction that keeps eaves at least 3 feet from a property line will assure that some light and air is retained on adjacent properties. It is also in keeping with the building code, which has similar restrictions.

33.110.220 Setbacks

D. Exceptions to required setbacks

Item 5— Garage Entrance Setbacks in E-zones

3. Environmental zone. The current regulation allows front building and garage setbacks to be reduced in environmental zones. Although the setback may be reduced, the requirements that limit the projection of the garage from the front of the house, as well as other regulations are still in place. This amendment clarifies that the reduction in setbacks does not eliminate any other requirements.

Item 4—Eave Projection Along Established Building Lines

5. Established building lines. The intent of this regulation is to allow an addition to a house whose existing building walls may not meet current setbacks. The regulation ensures that the new wall not cause the property to go further out of conformance, and in no case may the wall be closer than three feet to ensure fire separation. Although it makes sense to allow an eave associated with the wall to continue at the reduced setback, the code does not provide a similar allowance for eaves. This amendment clarifies that the eave line may be extended as well as the building line, as long as the eave is no closer than two feet from the property line. This will allow a new eave to be consistent with an existing eave on a non-conforming building wall in most cases. It should be noted that placing new eaves closer than 3 feet from the property line may trigger additional fire separation requirements through the building code.

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33.110.220 Setbacks

D. Exceptions to the required setbacks.

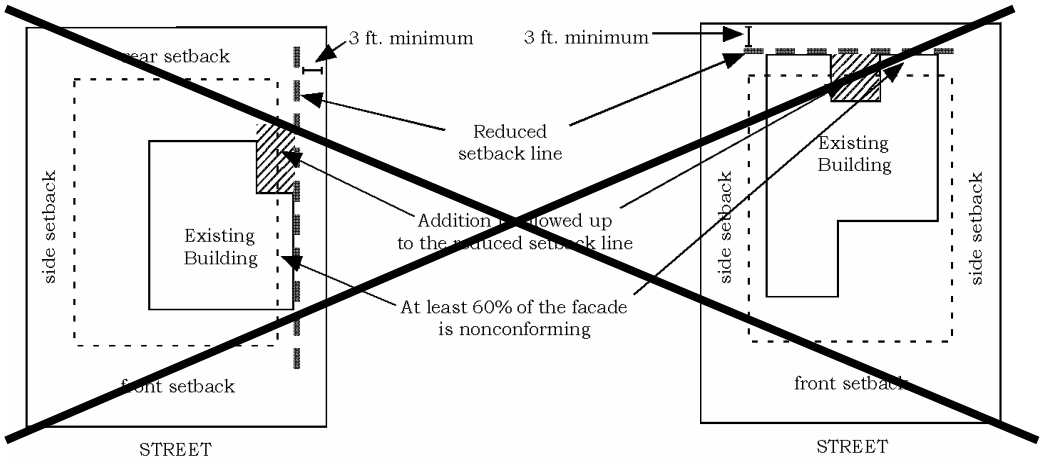
1-2. [No Change.]

3. Environmental zone. The front building and garage entrance setback may be reduced to zero where any portion of the site is in an environmental overlay zone. Where a side lot line is also a street lot line the side building and garage entrance setback may be reduced to zero. All other provisions of this Title apply to the building and garage entrance.

4. [No Change.]

5. Established building lines. The front, side, or rear building setback may be reduced for sites with existing nonconforming development in a required setback. The reduction is allowed if the width of the portion of the existing wall within the required setback is at least 60 percent of the width of the respective facade of the existing structure. The building line created by the nonconforming wall serves as the reduced setback line. Eaves associated with the nonconforming wall may extend the same distance into the reduced setback as the existing eave. However, side or rear setbacks may not be reduced to less than 3 feet in depth and eaves may not project closer than 2 feet to the side or rear property line. See Figure 110-4. This reduced setback applies to new development that is no higher than the existing nonconforming wall. For example, a second story could not be placed up to the reduced setback line if the existing nonconforming wall is only one story high.

Figure 110-4
Established Building Lines
(Replace This Image)



6. [No Change.]

Item 4—Eave Projection Along Established Building Lines (contd)

A new figure is added to illustrate the eave projection on established building lines.

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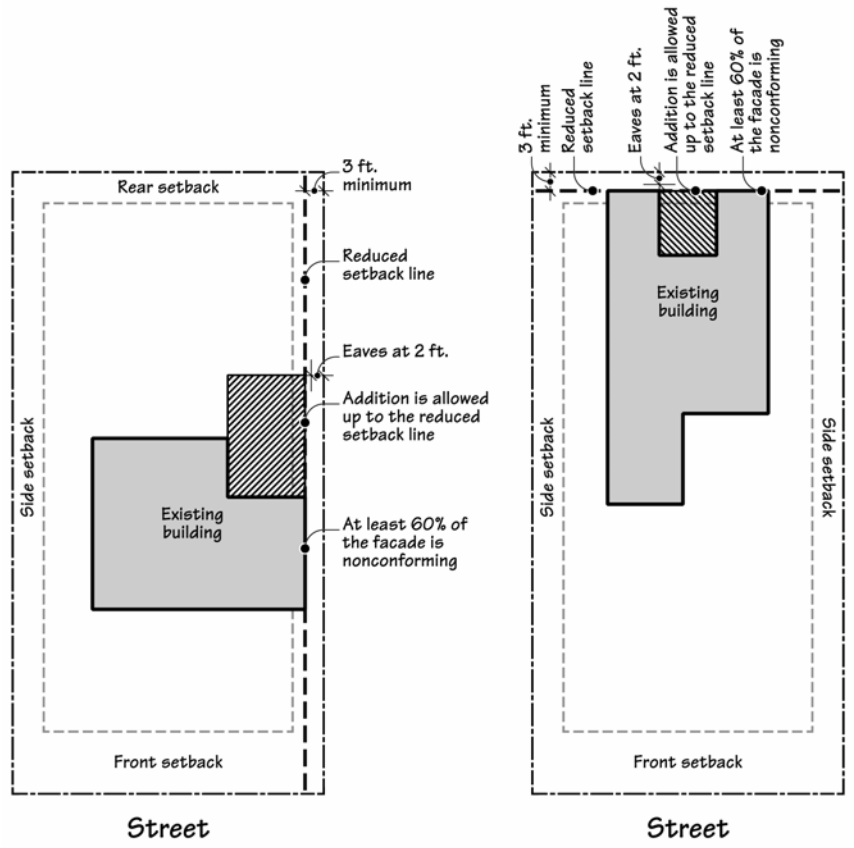
Figure 110-4
Established Building Lines
(New Image)



Item 47 – Right-of-way Dedications and Setback Adjustments

33.110.220 Setbacks

D. Exceptions to the required setbacks.

7. There are often existing houses, garages, and other structures on land division sites that are in good condition and that will remain on new lots when the land division is completed. Many existing streets in the City are not improved to their planned width. When the property is divided, additional right-of-way needs to be dedicated to widen the street and to provide beneficial amenities like sidewalks and planting strips for street trees. This can result in existing houses and garages being located closer to the street than allowed by setback regulations. As a result, an adjustment to the setback requirements also must be requested and reviewed. These adjustments are almost always approved. In many cases this has the unintended effect of changing the level of review required for the land division from a Type I to a Type IIx because the need for an adjustment is not discovered until later in the process when the required street width in relation to existing structures becomes apparent. This amendment allows the setback for existing structures to be reduced in a land division to give flexibility to widen streets in relation to existing structures without triggering an adjustment review.

7. Land divisions with existing development. In the R7, R5, and R2.5 zones, the following setback reductions are allowed when proposed as part of a land division:

   a. ~~t~~The minimum setback between an existing building and a side lot line along a proposed right-of-way dedication or street tract may be reduced to three feet~~.~~;

   b. When a dedication of public right-of-way along the frontage of an existing street is required as part of a land division, the minimum front or side setback between an existing building lot line that abuts the right-of-way may be reduced to zero. Future additions or development must meet required minimum setbacks.

   c. Eaves on an existing building may extend one foot into the reduced setback allowed by a. or b. above. ~~This setback reduction is allowed when proposed as part of a land division~~.

8. [No Change.]

Item 41 – Courtyard Housing: Orientation to Public Street

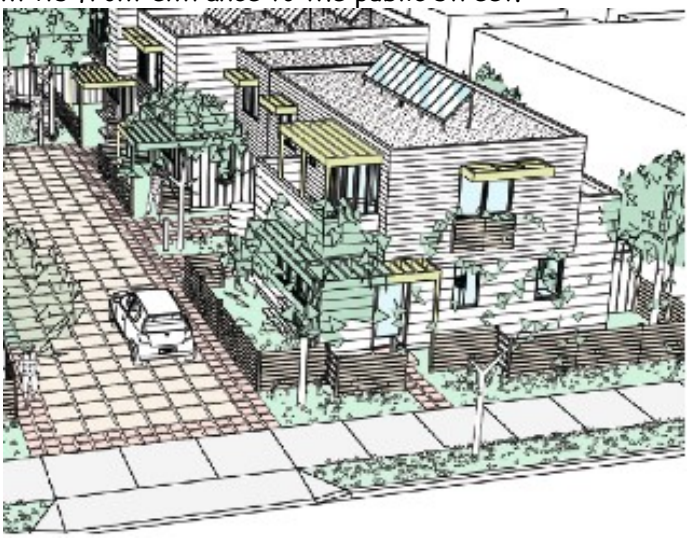
33.110.230 Main Entrances in R10 through R2.5 Zones

A. Purpose.
An additional item is added to the purpose statement to complement the new regulation discussed below, and to provide the reasoning behind requiring pedestrian orientation to favor the public street.

B. Where These Standards Apply.
One of the issues with many of the courtyard designs was that the units with frontage along the public street often did not orient their front entrance to the public street, instead providing the entrance along the common green. This would not be consistent with the development pattern historically placed on the public street. In order to create more consistency between the new development and existing development, a suggestion was made to have the units with frontage on both the common green or shared court and the public street orient their front door to the public street.

During a review of this issue, Planning & Sustainability staff noted that this is an issue that applies equally to any infill land division that proposes a private street into the site. These new developments often turn their side to the public street, while the rest of the dwellings on the public street orient their entrances to the public street.

In order to make new development connect with the existing neighborhood infrastructure, this amendment requires a house that fronts both a public and a private street to orient its front entrance to the public street.



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33.110.230 Main Entrances in R10 through R2.5 Zones

A. Purpose. These standards:

- Together with the street-facing façade and garage standards, ensure that there is a physical and visual connection between the living area of the residence and the street;
- Enhance public safety for residents and visitors and provide opportunities for community interaction;
- Ensure that the pedestrian entrance is visible or clearly identifiable from the street by its orientation or articulation; and
- Ensure that pedestrians can easily find the main entrance, and so establish how to enter the residence.
- On lots fronting both private and public streets, ensure a connection to the existing public realm by making the pedestrian entrance visible or clearly identifiable from the public street.

B. Where these standards apply.

1. The standards of Subsection C apply to houses, attached houses, manufactured homes, and duplexes in the R10 through R2.5 zones;

2. The standard of Subsection D applies to attached houses on new narrow lots.

3. Where a proposal is for an alteration or addition to existing development, the standards of this section apply only to the portion being altered or added;

4. On sites with frontage on both a private street and a public street, the standards apply to the site frontage on the public street. On all other sites with more than one street frontage, the applicant may choose on which frontage to meet the standards. ***(SEE Definition for Site Frontage)***

5. Development on flag lots or on lots that slope up or down from the street with an average slope of 20 percent or more is exempt from these standards; and

6. Subdivisions and PUDs that received preliminary plan approval between September 9, 1990, and September 9, 1995, are exempt from these standards.

C. Location. [No change.]

Item 6 – Duplex Lot Size and Street Dedications

33.110.240 Alternative Development Options

D. Duplex in R2.5 zone To provide beneficial public improvements like sidewalks and stormwater drainage swales, it is often necessary to dedicate strips of land along the frontage of development sites to the City as public right-of-way. Duplexes are allowed on lots in the R2.5 zone that are close to or equal to 5000 square feet in area. When dedications are needed to make the required public improvements when developing a duplex, it can result in reducing the area of the lot to less than 5000 square feet. This makes it impossible to continue to meet the density requirements for duplexes. This amendment clarifies that duplexes are allowed on lots that are 5000 square feet or greater in area even if they are reduced to an area that is less than 5000 square feet following right-of-way dedications that are necessary to provide sidewalks and other beneficial public street amenities.

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33.110.240 Alternative Development Options

A-C. [No Change.]

D. Duplex in R2.5 zone. Duplexes are allowed in the R2.5 zone if the following are met:

1. Density. A maximum density of 1 unit per 2,500 square feet of site area is allowed. Density for this standard is calculated prior to required public right-of-way dedications;

2-3. [No Change.]

E. (No Change.)

33.110.250 Accessory Structures

C. Setbacks.

Item 14 – Courtyard Housing: Architectural Features in Setback

2. Vertical Structures. Several winning designs in the courtyard housing competition used architectural elements such as trellises, arbors, eaves, and other features that projected into the front setback. As part of the courtyard amendments, the multi-dwelling code for development on common greens and shared courts is being amended to allow architectural features into the common green and shared court setbacks.

During the research into this issue, staff also noted that in many neighborhoods with single family detached houses, yards will often contain small arbors in the front that are usually placed over the walkway leading from the public sidewalk to the front entrance. These structures are often within the front setback in violation of the zoning code, but have rarely generated complaints. These garden structures are available at many retail establishments and are small enough that a permit is not required to install them. These entry arbors generally measure less than 6 feet in width and less than 8 feet in height. However, current code only allows vertical structures in the code if they measure no larger than 3 feet in width, depth or diameter. Arbors placed over a walkway are usually wider than this dimension.

Since they are relatively small in size, allow views into the front yard, do not require permits, and have not generated neighbor's complaints, it was felt that they should be allowed by right as a vertical structure within the front yard setback, subject to size limitations. This amendment adds a provision to allow arbors in the front setback, provided they are no wider than 6 feet and no taller than 8 feet. The existing limitations for other vertical structures will still apply in the front setback as will the setback requirements for arbors in the side and rear setback. The code is also amended so that the exceptions to the vertical structure setbacks are provided in list form for clarity.

Example of an arbor at an entry

Item 1 – Water Collection Cisterns

4.

a.

Required setbacks are intended to help preserve a sense of light and air between adjacent properties. Some structures have dimensions that are considered unobtrusive enough that they can be located in a setback without a significant impact on the property next door. This code amendment clarifies that cisterns for storing harvested water are included in these structures if they conform to the required dimensions. This would apply to water cisterns that are not directly attached to (or part of) the primary building.

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33.110.250 Accessory Structures

A-B. [No change.]

C. Setbacks.

1. Mechanical equipment. Mechanical equipment includes items such as heat pumps, air conditioners, emergency generators, and water pumps. Mechanical equipment is not allowed in required front, side, or rear building setbacks.

2. Vertical structures.

   a. Description. Vertical structures are items such as flag poles, trellises, arbors and other garden structures, play structures, radio antennas, satellite receiving dishes, and lamp posts. Fences are addressed in 33.110.255 below. Sign regulations are in Title 32, Signs and Related Regulations.

   b. Setback standard. Vertical structures are allowed in required building setbacks if they are no larger than 3 feet in width, depth, or diameter and no taller than 8 feet. If they are larger or taller, they are not allowed in required building setbacks~~,~~.

   c. Exceptions.

      (1) A single arbor structure that is no more than 6 feet in width, 3 feet in depth and no taller than 8 feet may be placed in a front setback. The arbor must allow for pedestrian access under its span.

      (2) ~~except that f~~Flag poles are allowed in any building setback.

3 [no change]

4. Covered accessory structures.

   a. Description. Covered accessory structures are items such as garages, greenhouses, artist's studios, guest houses, accessory dwelling units, storage buildings, wood sheds, water collection cisterns, covered decks, covered porches, and covered recreational structures.

   b. Setback standard. Covered accessory structures if 6 feet or less in height are allowed in side and rear setbacks, but are not allowed in a front setback. Except as allowed in Subparagraph C.4.c, below, covered structures over 6 feet in height are not allowed in required building setbacks. See the exceptions and additional regulations for garages in Section 33.110.253, below.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

33.110.253 Garages

E. Length of Street Facing Wall

Current code contains two different sets of standards for a street facing wall with a garage. The two sets depend on whether the lot is a newly created lot or an older, existing lot. Newly created lots can have up to 50% of their street frontage as garage space, and houses less than 22 feet wide cannot have a garage as part of that street frontage (garages generally need to be at least 11 feet wide). Although older lots are subject to the 50% garage maximum, they can use an exemption which allows a garage 12 feet wide regardless of the width of the house. As a result, infill development that has occurred on previously platted lots has often consisted of 15 foot wide houses with an 11 or 12-foot wide garage.

During discussions with the Lot Consolidation Task Force in the summer of 2008, many neighborhood representatives stated that the garage emphasis of these houses was one of the most disruptive aspects of the development in the neighborhood, especially when most existing houses did not have attached garages or had their garage in the back of the lot. Although there was not consensus among the group, it was felt that having a house without a garage, while allowing parking in front of the house would be a preferred design alternative.

This amendment removes the exemption that allows a 12 foot wide garage regardless of the house frontage on historically platted, existing lots. This will force development on existing lots to follow the same development requirements as new lots in the same zone. The change is intended to work with the amendments within 33.110.213, which will allow required parking to be placed in the front setback of existing narrow lots, whereas newly created lots will not have this exception. The provisions in 33.110.213 also allow an applicant to eliminate parking in these types of infill situations as well. It should be noted that only new narrow lots are required to go through a Planned Development Review to adjust the garage standard. Proposed houses on existing lots may ask for an adjustment to the standard.

The Oregon Home Builders Association (HBA) strongly opposes eliminating this exemption for garages because it removes flexibility in providing attached garages on new narrow houses. According to their research, most home buyers prefer having an attached garage with a new house. They feel other alternatives including architectural embellishments and porch extensions can help improve the frontage without removing the flexibility. It is expected that this item will generate a considerable amount of testimony at the hearings. As a result, the Bureau of Planning and Sustainability has committed to setting up a new stakeholder committee to explore this specific design issue in more detail. This committee will be set up in August 2009 and asked to report back by late October.

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33.110.253 Garages

A-D. [No Change.]

E. Length of street-facing garage wall.

1. Where these regulations apply. Unless exempted by Paragraph E.2, below, the regulations of this subsection apply to garages accessory to houses, attached houses, manufactured homes, and duplexes in the R10 through R2.5 zones.

2. Exemptions.

   a. Garages that are accessory to development on flag lots, or development on lots which slope up or down from the street with an average slope of 20 percent or more are exempt from the standards of this subsection.

   b. Garages in subdivisions and PUDs that received Preliminary Plan approval between September 9, 1990, and September 9, 1995, are exempt from the standards of this subsection.

   c. On corner lots, only one street-facing garage wall must meet the standards of this subsection.

3. Standards.

   a. The length of the garage wall facing the street may be up to 50 percent of the length of the street-facing building façade. See Figure 110-11. For attached houses ~~on new narrow lots~~, this standard applies to the combined length of the street-facing façades of each unit. For all other ~~lots and~~ structures, the standards apply to the street-facing façade of each unit.

   b. Where the street-facing façade of a unit is less than 22 feet long, an attached garage is not allowed as part of that façade.

~~4. Exception. Where the building is not being built on a new narrow lot, the garage wall facing the street may exceed the standards listed in Paragraph E.3 above if E.4.a and either E.4.b or c. are met. See Figure 110-12.~~

   ~~a. The garage wall facing the street is no more than 12 feet long; and~~

   ~~b. There is interior living area above the garage. The living area must be set back no more than 4 feet from the street-facing garage wall; or~~

   ~~c. There is a covered balcony above the garage that is at least the same length as the street facing garage wall, at least 6 feet deep, and accessible from the interior living area of the dwelling unit.~~

4~~5~~. For new narrow lots, modifications to the standards of this subsection are allowed through Planned Development Review. See Chapter 33.638, Planned Development. Adjustments are prohibited on new narrow lots.

Item 7 – Fences on Corner Lots in Residential Zones

33.110.255 Fences

C. Location and Height.

Within single-dwelling zones fences are limited to 3 ½ feet within the front setback. The front setback is measured from the street lot line. On corner lots, this measurement is taken from the lot line with the least amount of street frontage. Often on corner lots, houses are built so that their front door faces the side street (the one with longer frontage), while their main yard space may face the street along their 'front' lot line. In these situations, even though the visual orientation of the front of the house is to the side street, and the side yard is oriented to the front lot line, a resident must request an adjustment to construct a fence taller than 3 ½ feet in their side yard. Since the area facing the front lot is often the only option for a semi-private yard space, these adjustments are granted, provided there is enough clearance for visibility at the corner.

This amendment provides additional flexibility for these corner lots. If a home is oriented to the side street lot line by having its main entrance face that street, the resident can elect to limit the fence height within the first 10 feet of the side street lot line instead of the front, and consequently build a taller fence within the front setback. The reader should note that the resident would have to choose one option or the other so that one of the street setbacks is still subject to the lower fence height. The amendment still promotes the purpose statement for fences by allowing a corner lot to have some privacy while having an attractive public appearance on the side with the main entrance.

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33.110.255 Fences

A. Purpose. The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

B. Types of fences. The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location and height.

1. Front building setbacks. Fences up to 3-1/2 feet high are allowed in required front building setbacks.

2. Side and rear building setbacks.

   a. Fences up to 8 feet high are allowed in required side or rear building setbacks that do not abut a pedestrian connection.

   b. Fences abutting a pedestrian connection. [no change.]

3. Exceptions for Corner Lots. On corner lots, if the main entrance is on the facade facing the side street lot line, the applicant may elect to meet the following instead of C.1 and C.2:

   a. Fences up to 3-1/2 feet high are allowed within the first 10 feet of the side street lot line.

   b. Fences up to 3-1/2 feet high are allowed in required setbacks that abut a pedestrian connection if the pedestrian connection is part of a right-of-way that is less than 30 feet wide;

   c. Fences up to 8 feet high are allowed in the required front building setback, outside of the area subject to 3a.

   d. Fences up to 8 feet high are allowed in all other side or rear building setbacks.

4~~3~~. Not in building setbacks. The height for fences that are not in required building setbacks is the same as the regular height limits of the zone.

D. Reference To Other Regulations. [No change.]

Item 61 – Green Energy and Use

33.120.100 Primary Uses

B. Limited Uses.

13. Public Safety Facilities.

This note is re-labeled to avoid confusion with the proposed additional new notes for Basic Utilities.

14. Basic Utilities.

This amendment allows energy production on residential sites if the system generates energy from the environmental conditions of the site (from the sun, the wind, water, the ground). Such systems are currently allowed only if the energy is used on the site. Sales of extra energy back to the grid is becoming common (either wholesale, or via net-metering). Although not enforced, a strict reading of the zoning code might preclude this practice. The amendments serve to facilitate further development of these local distributed energy sources by removing any zoning-related uncertainty.

The amendments also allow production of energy from the byproducts of an allowed use. In residential zones, this would allow systems that generate heat or energy from sewage. These systems would not typically be feasible in conjunction with a single home, but might be viable serving a larger residential development.

15. Basic Utilities.

A new Note 15 is proposed, for the RX and IR zones. The RX zone is a high density multi-dwelling zone which allows the highest density of dwelling units of the residential zones. The major types of new housing development will be medium and high rise apartments and condominiums, often with allowed retail, institutional, or other service oriented uses. The IR zone is a multi-use zone that provides for the establishment and growth of large institutional campuses as well as higher density residential development. Some commercial and light industrial uses are allowed, along with major event entertainment facilities and other uses associated with institutions. Mixed use projects including both residential development and institutions are allowed as well as single use projects that are entirely residential or institutional.

In these zones, the proposed amendment would allow a broader list of Basic Utility uses by right, if they are contained within a building. This could include: water and sewer pump stations; sewage disposal and conveyance systems and energy production systems. While the amendment to Note 14 is focused on systems that generate energy from the environmental conditions of the site, or byproducts of the site, this provision in the RX and IR zones would allow larger district-based energy systems, such as a biogas generator producing energy from sewage or food waste piped from other surrounding sites.

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Excerpt from Table 120-1
Multi-Dwelling Zone Primary Uses

	R3	R2	R1	RH	RX	IR
Basic Utilities	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [13] ~~[14]~~ [15]	L/CU ~~[14]~~ [15]

33.120.100 Primary Uses

A. Allowed uses. Uses allowed in the multi-dwelling zones are listed in Table 120-1 with a "Y". These uses are allowed if they comply with the development standards and other regulations of this Title. Being listed as an allowed use does not mean that a proposed use will be granted an adjustment or other exception to the regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters.

B. Limited uses. Uses allowed in these zones subject to limitations are listed in Table 120-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 120-1.

1-12. [no change]

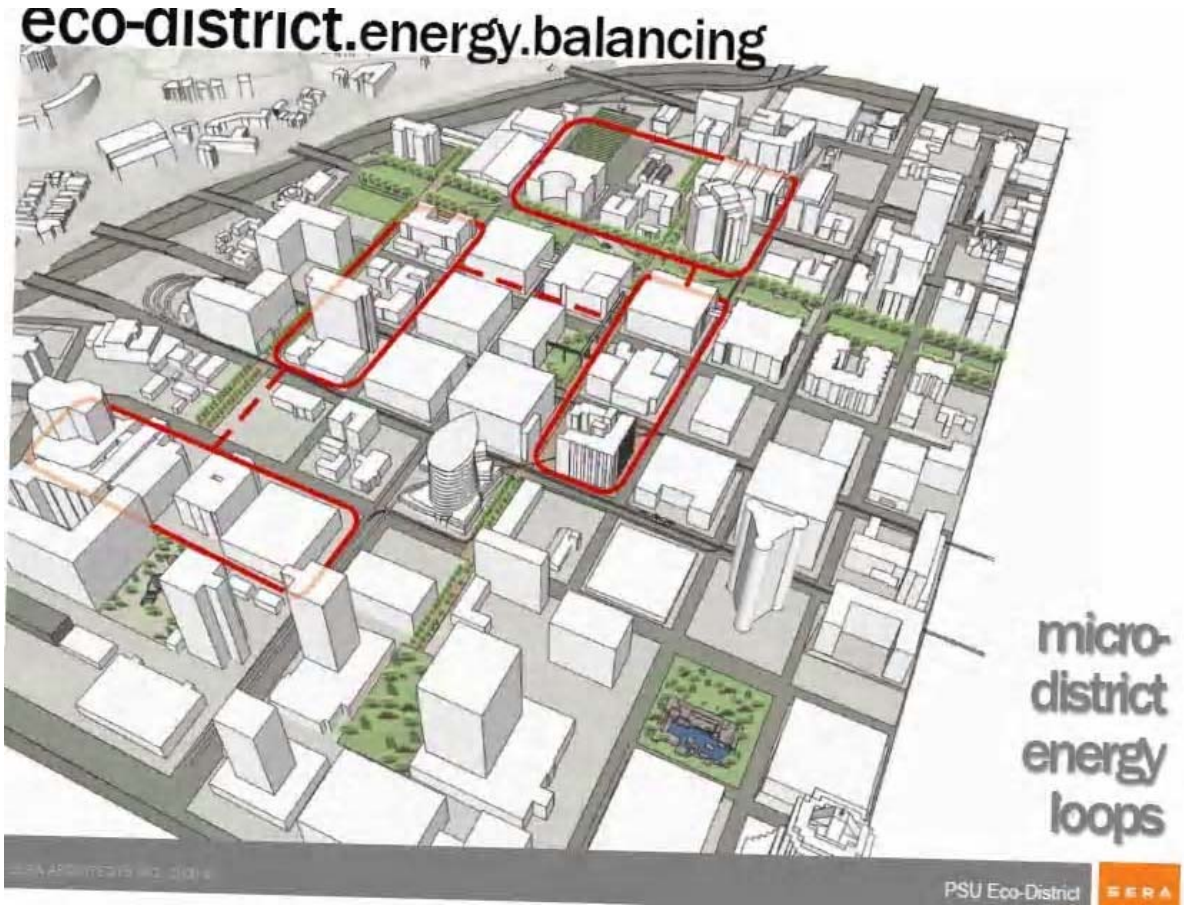
13. ~~Basic Utilities~~ Public Safety Facilities in RX. This regulation applies to all parts of Table 120-1 that have note [13]. Public safety facilities are allowed by right up to 20 percent of the floor area exclusive of parking area or the ground floor of a multi-dwelling development, whichever is greater. If they are over 20 percent of the ground floor, a conditional use review is required; the approval criteria for public safety facilities are in Section 33.815.223.

14. Basic Utilities. This regulation applies to all parts of Table 120-1 that have note [14].

a. Basic Utilities that serve a development site are accessory uses to the primary use being served.

b. Energy production systems that serve other sites will be considered accessory to the primary use on the site if the system generates energy from the environmental conditions of the site, or from the byproduct(s) of an allowed use on the site or within the same development site. This applies only to energy production systems classified as Basic Utilities. Examples include solar energy systems, photovoltaic panels, wind turbines, geothermal heating and cooling, hydroelectric systems, biogas systems that produce gas or heat from the anerobic breakdown of organic matter (for example, compost), biomass systems that produce heat, steam, or electricity through the combustion of biological materials (for example, wood chips from an agricultural use). Both net metered installations and installations that generate power to sell at wholesale to the grid are included.

c. All other Basic Utilities are conditional uses.



An example of a possible district-based energy system at Portland State University

d. Except as described in note [13] above, in the RX and IR zones, all other Basic Utilities are allowed by right up to 20 percent of the floor area within the interior of residential, institutional, or mixed use buildings. If they are over 20 percent of the floor area, a conditional use review is required. The requirements of Chapter 33.262, Off Site Impacts must be met.

Item 10 – Transfer of Density between Sites
Item 51 – Historic Resource Covenants

33.120.205 Density

E. Transfer of density or FAR.

Item 10

4. General standards for transfers of density or FAR.
The original intent of this regulation was to allow one owner to transfer density or FAR to another owner within the same block or across the street. Since the time that the regulation was first written the definitions for "lot" and "site" have been clarified. Site is defined as an ownership, so that several lots could be considered one site. An owner is already free to maneuver density within their site. However, the amendment clarifies that the transfer can occur from one site (i.e. ownership) to another site under these standards.

Item 51

6. Covenants. The Historic Code Rewrite project created some additional incentives to encourage the preservation of historic structures. However, the project also created a new set of covenant requirements that were intended to apply to both existing and new incentives. These covenant requirements are located in 33.445, but are not referenced in other parts of the code and so their requirements have been missed in practice. This amendment adds a provision to this paragraph to ensure that a covenant is created and recorded as required in 33.445, when a landmark elects to use this incentive.

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33.120.205 Density

A-D. [No Change]

E. Transfer of density or FAR. Density or FAR may be transferred from one site to another subject to the following:

1-3. [No change.]

4. General standards for transfers of density or FAR.

   a. Except for transfers from the sites of Landmarks, the transfers may be only between sites~~lots~~ within a block or between sites~~lots~~ that would be abutting except for a right-of-way.

   b. Density or FAR from the site of a Landmark may be transferred to any site allowed by Paragraph 5 below, within the recognized neighborhood where the Landmark is located, or to any site within two miles of the Landmark.

5. [No change.]

6. Covenants. The property owner must execute a covenant with the City that is attached to and recorded with the deed of both the site transferring and the site receiving the density reflecting the respective increase and decrease of potential density. The covenant for the receiving site must meet the requirements of Section 33.700.060. The covenant for the Landmark transferring the density must meet the requirements of 33.445.610.D., Covenant.

Item 11 – Development on Lots and Lots of Record in Multi-Dwelling Zones

33.120.210 Development on Lots and Lots of Record

C. Ownership of multiple lots and lots of record. This subsection is intended to provide two options for the separation of multiple lots under one ownership. This is reflected by the Purpose Statement of .210.A. However, the code language is not clear that either C.1 or C.2 can be used to separate the ownership. This amendment adds this clarification.

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33.120.210 Development on Lots and Lots of Record

A. Purpose. The regulations of this section require lots and lots of record to be an adequate size so that development on a site will in most cases be able to comply with all site development standards, including density. Where more than one lot is in the same ownership, these standards prevent breaking up large vacant ownerships into small lots, which are difficult to develop in conformance with the development standards. However, where more than one lot is in the same ownership, and there is existing development, allowing the ownership to be separated may increase opportunities for residential infill while preserving existing housing.

B. Where these regulations apply. These regulations apply to existing lots and lots of record in the multi-dwelling zones. The creation of new lots is subject to the lot size standards listed in Chapter 33.612, Lots in Multi-Dwelling Zones.

C. Ownership of multiple lots and lots of record. Where more than one abutting lot or lot of record is in the same ownership, the ownership may be separated as follows:

1. If all requirements of this Title will be met after the separation, including lot size, density, and parking, the ownership may be separated; or

2. If one or more of the lots or lots of record does not meet the lot size standards in Chapter 33.612, Lots in Multi-Dwelling Zones, the ownership may be separated if all requirements of this paragraph are met. Such lots and lots of record are legal.

   a. There is a primary use on at least one of the lots or lots of record, and the use has existed since December 31, 1980. If none of the lots or lots of record have a primary use, they may not be separated; and

   b. Lots or lots of record with a primary use on at least one of them may be separated as follows:

      (1) The separation must occur along the original lot lines;

      (2) Lots or lots of record with primary uses on them may be separated from lots or lots of record with other primary uses; and

      (3) Lots or lots of record with primary uses on them may be separated from lots or lots of record without primary uses.

D-E.[No change.]

Commentary

Item 3 – Solar Panels and Height
Item 60 - Wind Turbine Standards and Exemption to Reviews
Item 53 – Solar Panels and Height

33.120.215 Height

A-B. [No Change.]

C. Exceptions to the maximum height.

(See commentary for 33.110.215.C)

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33.120.215 Height

A-B. [No Change.]

C. Exceptions to the maximum height.

1. ~~Projections allowed~~. Chimneys, flag poles, satellite receiving dishes, and other similar items with a width, depth, or diameter of 3 feet or less may extend above the height limit, as long as they do not exceed 5 feet above the top of the highest point of the roof. If they are greater than 3 feet in width, depth, or diameter, they are subject to the height limit.

2. ~~Rooftop access and mechanical equipment~~. All rooftop mechanical equipment and enclosures of stairwells that provide rooftop access must be set back at least 15 feet from all roof edges that are parallel to street lot lines. Rooftop elevator mechanical equipment may extend up to 16 feet above the height limit. Stairwell enclosures, and other rooftop mechanical equipment which cumulatively covers no more than 10 percent of the roof area may extend 10 feet above the height limit.

3. Radio and television antennas, utility power poles, and public safety facilities are exempt from the height limit.

4. Small urban wind energy systems are subject to the standards of Chapter 33.287.

5. Roof mounted solar panels are not included in height calculations, and may exceed the maximum height limit as long as they meet the following:

   a. For flat roofs or the horizontal portion of mansard roofs, if they do not extend more than 5 feet above the top of the highest point of the roof.

   b. For pitched, hipped, or gambrel roofs, if they are mounted no more than 18 inches from the surface of the roof at any point, and do not extend above the ridgeline of the roof. The 18 inches in measured from the upper side of the solar panel.

Item 5— Garage Entrance Setbacks in E-zones

33.120.220 Setbacks

B. Minimum building setbacks.

2. Exceptions to the required building setbacks.

a. Environmental zone. The current regulation allows front building and garage setbacks to be reduced in environmental zones. Although the setback may be reduced, the requirements that limit the projection of the garage from the front of the house, as well as other regulations are still in place. This amendment clarifies that the reduction in setbacks does not eliminate any other requirements.

Item 47 – Right-of-way Dedications and Setback Adjustments

33.120.220 Setbacks

B. Minimum Building Setbacks.

2. Land divisions with existing development.

e. (See commentary for 33.110.220.D.7)

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33.120.220 Setbacks

A. [No Change.]

B. Minimum building setbacks. The required minimum building setbacks apply to all buildings and structures on the site except as specified in this section. Where no street setback is indicated in Table 120-3, the front, side, and rear setbacks apply. Where a street setback is indicated in Table 120-3 it supersedes front, side, and rear setbacks if the front, side, or rear lot line is also a street lot line. Setbacks for parking areas are in Chapter 33.266.

1. Generally. The required minimum building setbacks, if any, are stated in Tables 120-3 and 120-4.

2. Exceptions to the required building setbacks.

   a. Setback averaging. [No change.]

   b. Environmental zone. The required minimum front and street building setback and garage entrance setback may be reduced to zero where any portion of the site is in an environmental overlay zone. Where a side lot line is also a street lot line the side building and garage entrance setback may be reduced to zero. All other provisions of this Title apply to the building and garage entrance.

   c-d. [No change.]

   e. Land divisions with existing development. When a dedication of public right-of-way along the frontage of an existing street is required as part of a land division, the minimum front or side setback between an existing building lot line that abuts the right-of-way may be reduced to zero. Future additions or development must meet required minimum setbacks.

C. [No Change.]

Item 59 – Eaves in Setback
Item 1 – Water Collection Cisterns

33.120.220 Setbacks

D. Extensions into required building setbacks.

(See commentary for 33.110.220.C)

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33.120.220 Setbacks

D. Extensions into required building setbacks.

1. Minor features of a building, such as eaves, chimneys, fire escapes, water collection cisterns and planters, bay windows, and uncovered balconies may extend into a required building setback up to 20 percent of the depth of the setback. However, in no case may they be less than 3 feet from a lot line, except as allowed in Section 33.120.280, Accessory Structures. Eaves, rain gutters and downspouts may extend up to 40 percent of the depth of the setback. However, in no case may they be less than three feet from a lot line. Bays and bay windows extending into the setback also must meet the following requirements:

   a. Each bay and bay window may be up to 12 feet long, but the total area of all bays and bay windows on a building façade cannot be more than 30 percent of the area of the façade;

   b. At least 30 percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block;

   c. Bays and bay windows must cantilever beyond the foundation of the building; and

   d. The bay may not include any doors.

2. Accessory structures. The setback standards for accessory structures are stated in 33.120.280 below. Fences are addressed in 33.120.285, below. Detached accessory dwelling units are addressed in Chapter 33.205. Signs are addressed in Chapter 33.286.

Item 41 – Courtyard Housing: Orientation to Public Street

33.120.231 Main Entrances

A. Purpose.

B. Where These Standards Apply.
See the commentary for 33.110.230.

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33.120.231 Main Entrances

A. Purpose. The main entrance standards:

- Together with the window and garage standards, ensure that there is a physical and visual connection between the living area of the residence and the street;
- Enhance public safety for residents and visitors and provide opportunities for community interaction;
- Ensure that the pedestrian entrance is visible or clearly identifiable from the street by its orientation or articulation; and
- Ensure that pedestrians can easily find the main entrance, and so establish how to enter the residence.
- On lots fronting both private and public streets, ensure a connection to the existing public realm by making the pedestrian entrance visible or clearly identifiable from the public street.

B. Where these standards apply.

1. The standards of this section apply to houses, attached houses, manufactured homes, and duplexes in the multi-dwelling zones.

2. Where a proposal is for an alteration or addition to existing development, the standards apply only to the portion being altered or added.

3. One sites with frontage on both a private street and a public street, the standards apply to the site frontage on the public street. On all other sites with more than one street frontage, the applicant may choose on which frontage to meet the standards.

4. Development on flag lots or on lots which slope up or down from the street with an average slope of 20 percent or more are exempt from these standards.

5. Subdivisions and PUDs that received preliminary plan approval between September 9, 1990, and September 9, 1995, are exempt from this standard.

C. Location. [No change.]

Item 12 – Courtyard Housing: Pedestrian Connections

33.120.255 Pedestrian Standards

A. Purpose. The purpose paragraph is clarified to match the change in internal pedestrian requirements discussed below. Internal connections are more important on larger sites.

B. The Standards. The Infill Design Competition for courtyard housing generally applied to smaller sites. Many of the entries had some difficulty meeting the pedestrian standards, especially the requirements to internally connect features on a site. The intent of the internal connections is to ensure that residents and guests have access to amenities on the site, such as garbage and recycling areas, shared laundry areas, parking, recreational areas, other units, etc. These types of common facilities are most often provided in conjunction with larger developments. Multi-family development on sites of 10,000 square feet or less typically consists of one or two buildings and fewer than 10 units. Vehicle traffic is minimal on these sites, and pedestrians can generally access the shared features by walking on the driveway. The requirement for a paved walkway increases the overall impervious area of the site and reduces opportunities for locations for stormwater. Along with the courtyard housing competition winners, other multi-dwelling developments on small sites have problems including our walkway and vehicle access requirements within the site.

This amendment recognizes the limitations of these smaller sites to be able to provide an internal pedestrian walkway system, and creates a threshold site size of 10,000 square feet for these to apply. It also amends the code so that only main entrances further than 20 feet from a street lot line need to be internally linked. Providing internal links to entrances closer than 20 feet to the street often results in a parallel sidewalk system, one that is public and one that is private.

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33.120.255 Pedestrian Standards

A. Purpose. The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between abutting streets and buildings on the site, and between buildings and other activities within a large~~the~~ site. In addition, they provide for connections between adjacent sites, where feasible. The standards promote configurations that minimize conflicts between pedestrians and vehicles. In order to facilitate additional pedestrian oriented space and less impervious surface, the standards also provide opportunities for accessways with low traffic volumes, serving a limited number of residential units, to be designed to accommodate pedestrians and vehicles within the same space when special paving treatments are used to signify their intended use by pedestrians as well as vehicles.

B. The standards. The standards of this section apply to all development except houses, attached houses, and duplexes. An on-site pedestrian circulation system must be provided. The system must meet all standards of this subsection.

1. Connections. Pedestrian connections are required as specified below:

   a. Connection between streets and entrances. [No change.]

   b. Internal connections. On sites larger than 10,000 square feet, an internal pedestrian connection system must be provided. The system must connect all main entrances on the site that are set back more than 20 feet from the street, and provide connections to other areas of the site, such as parking areas, bicycle parking, recreational areas, common outdoor areas, and any pedestrian amenities.

2-3. [No change.]

Item 13 - Amenity Bonus for Sound Insulation

33.120.265 Amenity Bonuses

C. The amenity bonus options.

5. Sound insulation.

As an incentive, the amenity bonuses provide additional density for housing projects in multi-dwelling zones when beneficial features such as children's play areas or additional storage areas are provided. Section 33.120.265.B.1 makes it clear that the amenity bonuses apply to all housing types that are allowed in the R3, R2, and R1 zones. These zones allow a wide variety of housing that include multi-dwelling structures, houses, attached houses, and duplexes. One of the amenities for which a bonus is available is sound insulation that reduces noise from adjacent units and from outside. The section that provides the sound insulation amenity bonus, 33.120.265.C.5, makes a specific reference to multi-dwelling structures. This makes it unclear that the bonus can also be used in other housing types, like attached houses. For clarity, the specific reference to multi-dwelling structures is replaced with a more general reference to residential structures since a variety of housing types are allowed in the R3, R2 and R1 zones.

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33.120.265 Amenity Bonuses

A. [No Change.]

B. Regulations.

1. Qualifying types of development. The amenity bonus provisions are applicable to all housing types in the R3, R2, and R1 zones.

2-6. [No Change.]

C. The amenity bonus options.

1-4. [No Change.].

5. Sound insulation. The density bonus for this amenity is 10 percent. To qualify for this bonus, the interior noise levels of ~~multi-dwelling~~ residential structures must be reduced in 3 ways. The reductions address noise from adjacent dwellings and from outdoors, especially from busy streets.

a-c. [No Change.]

6-8. [No Change.]

Item 8 – Courtyard Housing: Density Gap between R1 and R2 zones
Item 14 – Courtyard Housing: Architectural Features in Setback
Item 15 – Courtyard Housing: Encroachments into Shared Streets or Common Greens

33.120.270 Alternative Development Options

E. Additional standards for attached houses, detached houses, and duplexes accessed by common greens, shared courts, or alleys.
As part of the land division code rewrite, and the infill design project, several amendments to the zoning code were implemented to allow the provision of ownership housing around common greens or other shared tracts that could provide the dual purpose of providing access and providing outdoor common areas for residents. This type of housing can provide more kid friendly options to standard multi-dwelling housing. To try and encourage this form of development, a competition was held to find well designed development plans that could be used in various infill sites to promote common greens and shared courts. In reviewing the results, it became apparent that additional flexibility would need to be provided in the zoning code to allow many of the award winning proposals. The amendments below address some of these issues, including the need to increase flexibility in the density ranges of these zones, to include provisions to allow some common structures in the shared tracts, and to allow greater setback flexibility for certain building elements that face the shared area.

1. Density. Many of the award winning infill examples were developed at a density that exceeded the R2 maximums and did not meet the R1 minimums. This provision provides greater flexibility for the minimum density in these zones, and is intended to work with the amendments in 33.612 so that a greater range of densities are allowed in the R2 and the R1 zones.

2. Accessory structures in common greens, shared courts and other tracts. The current code is not clear whether accessory structures can be placed in common greens and other tracts. This provision clarifies that certain accessory structures are allowed in these tracts, and clarifies what type of structures would be expected in the different types of tracts affiliated with these developments.

Accessory structures in common greens should be allowed with limitations.

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33.120.270 Alternative Development Options

A. Purpose. The alternative development options provide increased variety in development while maintaining the residential neighborhood character. The options are intended to:

- Encourage development which is more sensitive to the environment, especially in hilly areas;
- Encourage the preservation of open and natural areas;
- Promote better site layout and opportunities for private recreational areas;
- Allow for greater flexibility within a development site while limiting impacts to the surrounding neighborhood;
- Promote more opportunities for affordable housing; and
- Allow more energy-efficient development.
- Reduce the impact that new development may have on surrounding residential development.
- Allow a greater sense of enclosure within common greens and shared courts.
- Ensure adequate open area within common greens

B-D. [No Change.]

E. Additional standards for attached houses, detached houses, and duplexes accessed by common greens, shared courts, or alleys. These standards promote courtyard-oriented housing by facilitating the use of common greens and shared courts as part of housing projects on small sites. Standards within this section also promote pedestrian-oriented street frontages by facilitating the creation of rear alleys and allowing more efficient use of space above rear vehicle areas.

1. Minimum density in R2 and R1 zones. The minimum density in the R2 zone is 1 unit per 3,000 square feet. The minimum density in the R1 zone is 1 unit per 2,000 square feet.

2. Accessory structures located within tracts for projects accessed by common greens and shared courts.

   a. Covered accessory structures intended for the common use of residents may be placed within common greens and shared courts. Covered accessory structures include gazebos, garden structures, greenhouses, picnic areas, play structures and bike parking areas, but does not include structures listed in b., or c. below.

   b. Structures for recycling or waste disposal may be placed within common greens, shared courts, private alleys or parking tracts.

   c. Shared garages or carports may be placed within private alleys, or parking tracts associated with the development.

3. Setbacks. Many common green or shared court designs have architectural features such as trellises, eave overhangs, etc that would project into the setback along the private tracts. This amendment allows for these types of features to project into the setbacks fronting these private streets to provide visual interest to the development.

   In many of the winning courtyard designs, the corner units in the development had portions of their building project into the private street setback in order to achieve a sense of enclosure for the project and create more of a building wall along the public street interface. To encourage this type of feature, the amendment in subsubparagraph (2) allows up to 30% of the façade facing the common green or shared court on the corner unit to project into this setback. These projections could take the form of bay windows, first floor projections, porches or other elements. The intent is for this corner unit to provide a sense of enclosure to the common green or shared court tract within the development.

   Lastly, in conjunction with the clarification to allow accessory structures in the private tracts, this amendment creates setback requirements for any structures placed within the shared tracts. These setbacks ensure that the structures are set back from other streets and that they provide adequate separation from other buildings internal to the project as well as to the perimeter of the project.

4. Maximum Height. This amendment sets up a maximum height of 15 feet for accessory structures that may be placed within common greens, shared courts or other tracts that are for the mutual use of its residents. Since these buildings are not intended to be a dominant feature, they are held to a height limit that is roughly one story.

The new code will establish setbacks, height and building coverage for common structures in tracts.

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3. Setbacks.

a. The front and side minimum building setbacks from common greens and shared courts are reduced to 3 feet. The following features of a building may extend into this setback:

(1) Minor architectural features such as eaves, awnings and trellises are allowed in this setback; and

(2) On corner lots where there is one street lot line on a public street and one street lot line on the common green or shared court, up to 30% of the area of the building façade facing the common green or shared court may extend into this setback. At least 30% of the area extending into this setback must include windows or glass block. Porch projections are exempt from the window standard.

b. The setbacks of garage entrances accessed from a shared court must be either 5 feet or closer to the shared court property line, or 18 feet or further from the shared court property line. If the garage entrance is located within 5 feet of the shared court property line, it may not be closer to the property line than the residential portion of the building.

c. The following minimum setbacks apply to accessory structures located within common greens, shared courts, private alleys or parking tracts:

(1) Adjacent to a public street. The minimum setback from a public street is 10 feet.

(2) Perimeter setback. If the common green, shared court, private alley, or parking tract abuts the perimeter property line of the project, the minimum setback for the accessory structure is 5 feet.

(3) Interior setback. The minimum setback from all other property lines is 3 feet.

4~~2~~. Maximum height.

a. In the R1 and RH zones, where the front lot line abuts a shared court:

(1)~~a.~~ In the R1 zone, the maximum building height within 10 feet of a front property line on a shared court is 45 feet.

(2)~~b.~~ In the RH zone, the maximum building height within 10 feet of a front property line on a shared court is 65 feet.

b. Accessory structures located within common greens, shared courts, private alleys or parking tracts have a maximum height of 15 feet.

5. Building Coverage. In land divisions that include common greens, shared courts or private alleys, our current regulations allow the area for these private tracts to be used as part of the calculation of building coverage for the project. The additional building coverage afforded by this calculation is allocated to the individual lots. However, if these tracts also include accessory structures (allowed as clarified above), these must be factored into the calculation for maximum building coverage. If there is any excess building coverage left after this calculation, it can be allocated to the individual lots. These amendments clarify this policy.

   The code is also amended to create a maximum building coverage of 15 percent for accessory structures in Common Greens and Shared Courts. Common Greens and Shared Courts are intended to be mostly open area for the use of the adjacent residents and to provide opportunities for stormwater retention. For this reason, building coverage is limited within these tracts.

Building coverage from accessory buildings in a common green or shared court should be factored into overall building coverage, as well as limited so that the common green or shared court still contains open area.

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5~~3~~. Building coverage.

a. When a land division proposal includes common greens, shared courts, or private alleys, maximum building coverage is calculated based on the entire land division site, rather than for each lot.

(1) Buildings or structures located within common greens, shared courts, private alleys, or parking tracts must be included in the calculation for building coverage for the land division site.

(2) The combined building coverage of all buildings or structures located within common greens or shared courts may not exceed 15 percent of the total area of the common greens or shared courts.

(3) ~~The~~ Any amount of building coverage remaining from the calculation~~ed~~ for the area of the common green, shared court, ~~or~~ alley, or parking tract will be allocated evenly to all of the lots within the land division, unless a different allocation of the building coverage is approved through the land division decision. The building coverage allocated to the lots will be in addition to the maximum allowed for each lot.

b. For attached houses, uncovered rear balconies that extend over an alley or vehicle maneuvering area between the house and rear lot line do not count toward maximum building coverage calculations.

Item 16 - Institutional Development Standards

33.120.275 Development Standards for Institutions

C. The standards. There are separate standards for institutions and institutional campuses in the IR zone, depending on whether they have an approved Impact Mitigation Plan (IMP). The heading in Table 120-5 and the purpose statement in 33.120.277.A indicate that the development standards for institutional campuses in the IR zone are intended to apply only to institutional campuses with an approved IMP. 33.120.277.B includes two standards related to accessory retail that are intended to apply to IMPs and to Conditional Use Master Plans (CUMPs). These amendments clarify in 33.120.275 that these two standards apply to institutions in an IR zone with a CUMP. This amendment also deletes from 33.120.277 the incorrect reference to CUMPs.

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33.120.275 Development Standards for Institutions

A-B. [No Change.]

C. The standards.

1-6 [No Change.]

7. Access for accessory retail. Space occupied by an accessory retail sales or service use may have no direct access to the outside of the building. Access to the activity must be from an interior space or from an exterior space that is at least 150 feet from a public right-of-way.

8. Exterior signage for accessory retail. Accessory retail and sales uses must not have exterior signage. Exceptions are prohibited.

Table 120-5
Institutional Development Standards [1]
Development standards for Institutional Campuses with Impact Mitigation Plans located in the IR zone are given on Table 120-3.

Minimum Site Area for New Uses	10,000 sq. ft.
Maximum Floor Area Ratio [2]	2 to 1
Maximum Height [3]	75 ft.
Minimum Building Setbacks [2]	1 ft. back for every 2 ft. of bldg. height, but in no case less than 10 ft.
Maximum Building Coverage [2]	70% of site area
Minimum Landscaped Area [2,4]	20% of site area
Buffering from Abutting Residential Zone [5]	10 ft. to L3 standard
Buffering Across a Street from a Residential Zone [5]	10 ft. to L1 standard
Setbacks for All Detached Accessory Structures Except Fences	10 ft.
Parking and Loading	See Chapter 33.266, Parking And Loading
Signs	See Title 32, Signs and Related Regulations

Notes:
[1] The standards of this table are minimums or maximums as indicated. Compliance with the conditional use approval criteria might preclude development to the maximum intensity permitted by these standards.
[2] For campus-type developments, the entire campus is treated as one site. Setbacks are only measured from the perimeter of the site. The setbacks in this table only supersede the setbacks required in Table 120-3. The normal regulations for projections into setbacks and for detached accessory structures still apply.
[3] Towers and spires with a footprint of 200 square feet or less may exceed the height limit, but still must comply with the setback standard.
[4] Any required landscaping, such as for required setbacks or parking lots, applies towards the landscaped area standard.
[5] Surface parking lots are subject to the parking lot setback and landscaping standards stated in Chapter 33.266, Parking And Loading.

Commentary

Item 16 - Institutional Development Standards

33.120.277 Development Standards for Institutional Campuses in the IR Zone

B. Where these standards apply. See commentary on previous commentary page.

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33.120.277 Development Standards for Institutional Campuses in the IR Zone

A. Purpose. The general base zone development standards in the IR zone are designed for institutional campuses with approved impact mitigation plans. The intent is to maintain compatibility with and limit negative impacts on surrounding areas.

B. Where these standards apply. The standards of this section apply to all development that is part of an institutional campus with an approved impact mitigation plan ~~or an approved conditional use master plan~~ in the IR zone, whether allowed by right, allowed with limitations, or subject to a conditional use review. The standards apply to new development, exterior alterations, and conversions from one use category to another.

C. The standards.

1. The development standards are stated in Table 120-3. If not addressed in this section, the regular base zone development standards apply. The standards of this subsection, and Table 120-3, may be superseded by development standards in an approved impact mitigation plan.

2. Space occupied by an accessory retail sales or service use ~~has~~ may have no direct access to the outside of the building. Access to the activity must be from an interior space or from an exterior space that is at least 150 feet from a public right-of-way.

3. Accessory retail and sales uses must not have exterior signage. Exceptions are prohibited.

33.120.280 Accessory Structures

C. Setbacks.

Item 14 – Courtyard Housing: Architectural Features in Setback
2. Vertical Structures. See commentary for 33.110.250

Item 1 – Water Collection Cisterns
4.

a. (See commentary for 33.110.250.C.4.A)

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33.120.280 Accessory Structures

A-B. [No Change.]

C. Setbacks.

1. Mechanical equipment. Mechanical equipment includes items such as heat pumps, air conditioners, emergency generators, and water pumps. Mechanical equipment is not allowed in required front, side, or rear setbacks.

2. Vertical structures.

   a. Description. Vertical structures are items such as flag poles, trellises and other garden structures, play structures, radio antennas, satellite receiving dishes, and lamp posts. Fences are addressed in Section 33.120.285 below. Sign regulations are in Title 32, Signs and Related Regulations.

   b. Setback standard. Vertical structures are allowed in required building setbacks if they are no larger than 3 feet in width, depth, or diameter and no taller than 8 feet. If they are larger or taller, they are not allowed in required building setbacks~~,~~.

   c. Exceptions.

      (1) A single trellis structure that is no more than 6 feet in width, 3 feet in depth and no taller than 8 feet may be placed in a front setback. The trellis must allow for pedestrian access under its span.

      (2) ~~except that f~~Flag poles are allowed in any building setback.

3. [no change]

4. Covered accessory structures.

   a. Description. Covered accessory structures are items such as garages, greenhouses, artist's studios, guest houses, accessory dwelling units, storage buildings, wood sheds, water collection cisterns, covered decks, covered porches, and covered recreational structures.

   b. Setback regulations. Covered accessory structures if 6 feet or less in height are allowed in side and rear setbacks, but are not allowed in a front setback. Except as allowed in Subparagraph C.4.c, below, covered structures over 6 feet in height are not allowed in required building setbacks. See the exceptions and additional regulations for garages in Section 33.120.283, below.

Item 7 – Fences on Corner Lots in Residential Zones
Item 17 – Fences close to street lot lines (originally requested in EX zones)

33.120.285 Fences

C. Location and Height.

Item 17: Fence height regulations are mostly limited to within building setbacks along the street. Over the years, many zones have reduced or eliminated their building setbacks in order to foster a more pedestrian environment. In addition, more areas of the city have been zoned for higher densities and reduced setbacks. However, placing 6-foot or higher fences close or adjacent to a street creates a greater negative effect than the placement of a building, especially since buildings are required to have windows and entrances facing the street. These negative effects include a degradation of the pedestrian experience along the sidewalk, a reduction to visual access between the property and the public realm, and potential increases in graffiti on the fence surfaces.

In order to reduce these negative effects, in multi-dwelling zones where the street setback is less than five feet, this provision amends the code so that fences greater than 3 ½ feet high be required to be setback at least 5 feet from the front street lot line.

Item 7: See the commentary in 33.110.255 for more background. Similar situations have occurred to development on corner lots within multi-dwelling zones, especially in lower density multi-dwelling zones that have a 10-foot front setback. The exception is limited to the R3 and R2 zones since they are the zones that have the larger setbacks.

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33.120.285 Fences

A. Purpose. The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

B. Types of fences. The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location and height.

1. Street building setbacks.

   a. Measured from front lot line. Fences up to 3-1/2 feet high are allowed in a required street building setback, or within the first 5 feet, whichever is greater, ~~that is~~ measured from a front lot line.

   b. Measured from a side lot line. Fences up to 8 feet high are allowed in a required street building setback that is measured from a side lot line.

2. Side and rear building setbacks.

   a. Fences up to 8 feet high are allowed in required side or rear building setbacks that do not abut a pedestrian connection.

   b. Fences abutting a pedestrian connection. [No change.]

3. Exceptions for Corner Lots in R3 and R2 zones. On corner lots in the R3 or R2 zone, if the main entrance is on the facade facing the side street lot line, the applicant may elect to meet the following instead of C.1 and C.2:

   a. Fences up to 3-1/2 feet high are allowed within the first 10 feet of the side street lot line.

   b. Fences up to 3-1/2 feet high are allowed in required setbacks that abut a pedestrian connection if the pedestrian connection is part of a right-of-way that is less than 30 feet wide;

   c. Fences up to 8 feet high are allowed in the required front building setback, outside of the area subject to 3a.

   d. Fences up to 8 feet high are allowed in all other side or rear building setbacks.

4~~3~~. Not in building setbacks. The height for fences that are not in required building setbacks is the same as the regular height limits of the zone.

Item 61 – Green Energy and Use

33.130.100 Primary Uses

B. Limited uses.
Item 48 was a request to clarify that solar panels should not trigger Conditional Use Review when installed on a site with a conditional use. As this "use" issue was investigated, it also became clear that the use categories of the Zoning Code could also become a barrier to small scale distributed renewable energy systems. In recent years Portlanders have become increasingly aware of the importance of diversifying our energy sources, reducing dependence on foreign sources of energy, and decreasing the emissions of climate-changing greenhouse gases. No changes to the commercial zone allowances for Basic Utilities have been proposed because they are already allowed without Conditional Use.

Changes to the description of Basic Utilities (another amendment later in this document, see commentary for Section 33.920.400 Basic Utilities) will have the effect of allowing additional kinds of energy production systems in commercial zones. This includes solar and wind energy systems that supply power to other sites (for example, any net-metered solar panel); and biogas, waste heat or geothermal systems for non-electrical generation that supply any number of customers (for example, a system that uses a gas generator to heat water for a district radiant heat system).

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Excerpt from Table 130-1
Commercial Zone Primary Uses

	CN1	**CN2**	**CO1**	**CO2**	**CM**	**CS**	**CG**	**CX**
Basic Utilities	Y/CU [10]	Y/CU [10]	Y/CU [10]	Y/CU [10]	Y/CU [10]	Y/CU [10]	Y/CU [10]	Y/CU [10]

33.130.100 Primary Uses

A. Allowed uses. Uses allowed in the commercial zones are listed in Table 130-1 with a "Y". These uses are allowed if they comply with the development standards and other regulations of this Title. Being listed as an allowed use does not mean that a proposed development will be granted an adjustment or other exception to the regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters.

B. Limited uses. Uses allowed that are subject to limitations are listed in Table 130-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 130-1.

1-9. [no change]

10. Basic Utilities in C zones. This regulation applies to all parts of Table 130-1 that have note [10]. Public safety facilities that include Radio Frequency Transmission Facilities are a conditional use. The approval criteria are in Section 33.815.223. All other Basic Utilities are allowed.

Item 51 – Historic Resource Covenants

33.130.205 Floor Area Ratio

C. Transfer of FAR from Landmarks.

4. Covenants. See Commentary for 33.120.205.E.6.

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CHAPTER 33.130
COMMERCIAL ZONES

33.130.205 Floor Area Ratio

A. Purpose. Floor area ratios (FARs) regulate the amount of use (the intensity) allowed on a site. FARs provide a means to match the potential amount of uses with the desired character of the area and the provision of public services. FARs also work with the height, setback, and building coverage standards to control the overall bulk of development.

B. FAR standard. The floor area ratios are stated in Table 130-3 and apply to all nonresidential development. Floor area for residential uses is not calculated as part of the FAR for the site and is allowed in addition to the FAR limits.

C. Transfer of FAR from Landmarks. Floor area ratios may be transferred from a site which contains a Landmark, as follows:

1. Maximum increase in FAR. An increase in FAR on the receiving site of more than 3 to 1 is prohibited. The total increased FAR includes FAR transferred from Landmarks, and additional FAR allowed at the receiving site from bonus provisions, or from other transfers;

2. Development standards. The building on the receiving site must meet the development standards of the base zone, overlay zone, and plan district except floor area ratio, which is regulated by paragraph C.1 above;

3. Receiving site. The transfer must be to a site that is:

   a. Zoned C or EX; and

   b. Within the recognized neighborhood where the Landmark is located, or to any site within two miles of the Landmark;

4. The property owner executes a covenant with the City that is attached to and recorded with the deed of both the site transferring and the site receiving the density reflecting the respective increase and decrease of potential density. The covenant for the receiving site must meet the requirements of Section 33.700.060, Covenants with the City. The covenant for the Landmark transferring the density must meet the requirements of 33.445.610.D., Covenant.

Item 3 – Solar Panels and Height
Item 60 - Wind Turbine Standards and Exemption to Reviews
Item 53 – Solar Panels Exemption From Standards

33.130.210 Height

B. Height standard.

(See commentary for 33.110.215.C)

image courtesy of Oregon State University

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33.130.210 Height

A. [No Change.]

B. Height standard. The height standards for all structures are stated in Table 130-3. Exceptions to the maximum height standard are stated below.

1. Projections allowed. Chimneys, flag poles, satellite receiving dishes, and other items similar with a width, depth, or diameter of 5 feet or less may rise 10 feet above the height limit, or 5 feet above the highest point of the roof, whichever is greater. If they are greater than 5 feet in width, depth, or diameter, they are subject to the height limit.

2. Roof top access and mechanical equipment. All rooftop mechanical equipment and enclosures of stairwells that provide rooftop access must be set back at least 15 feet from all roof edges that are parallel to street lot lines. Rooftop elevator mechanical equipment may extend up to 16 feet above the height limit. Stairwell enclosures, and other rooftop mechanical equipment which cumulatively covers no more than 10 percent of the roof area may extend 10 feet above the height limit.

3. Radio and television antennas, utility power poles, and public safety facilities are exempt from the height limit.

4. Small urban wind energy systems are subject to the standards of Chapter 33.287.

5. Roof mounted solar panels are not included in height calculations, and may exceed the maximum height limit as long as they meet the following:

   a. For flat roofs or the horizontal portion of mansard roofs, if they do not extend more than 5 feet above the top of the highest point of the roof. For a mansard roof, this allowance applies only when the solar panels are mounted on the horizontal portion of the mansard roof.

   b. For pitched, hipped, or gambrel roofs, if they are mounted no more than 18 inches from the surface of the roof at any point, and do not extend above the ridgeline of the roof. The 18 inches is measured from the upper side of the solar panel.

Item 59 – Eaves in Setback
Item 1 – Water Collection Cisterns

33.130.215 Setbacks

B. Minimum building setbacks.

(See commentary for 33.110.220.C)

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33.130.215 Setbacks

A. [No Change.]

B. Minimum building setbacks. The minimum building setback standards apply to all buildings and structures on the site except as specified in this section. Setbacks for exterior development are stated in 33.130.245 below, and for parking areas in Chapter 33.266.

1-2. [No Change.]

3. Minor projections of features attached to buildings.

a. Minor projections allowed. Minor features of a building, such as eaves, chimneys, fire escapes,, water collection cisterns and planters, bay windows, uncovered stairways, wheelchair ramps, and uncovered decks or balconies, may extend into a required building setback up to 20 percent of the depth of the setback. Eaves, rain gutters and downspouts may extend up to 40 percent of the depth of the setback. Bays and bay windows extending into the setback also must meet the following requirements:

(1) Each bay and bay window may be up to 12 feet long, but the total area of all bays and bay windows on a building façade cannot be more than 30 percent of the area of the façade;

(2) At least 30 percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block;

(3) Bays and bay windows must cantilever beyond the foundation of the building; and

(4) The bay may not include any doors.

b-c. [No Change.]

4. ~~Detached~~ Accessory structures. For sites entirely in residential use, accessory structures are subject to the multi-dwelling zone standards of Section 33.120.280. The setback standards for detached accessory structures are stated in 33.130.265 below. Fences are addressed in 33.130.270 below. Sign regulations are in Title 32, Signs and Related Regulations.

C. [No Change.]

Item 41 – Courtyard Housing: Orientation to Public Street

33.130.250 General Requirements for Residential and Mixed Use Developments

C. Residential Main Entrance
See the commentary for 33.110.230.

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33.130.250 General Requirements for Residential and Mixed-Use Developments

A-B. [No changes.]

C. Residential main entrance.

1. Purpose. These standards:
   - Together with the window and garage standards, ensure that there is a physical and visual connection between the living area of the residence and the street;
   - Enhance public safety for residents and visitors and provide opportunities for community interaction;
   - Ensure that the pedestrian entrance is visible or clearly identifiable from the street by its orientation or articulation; and
   - Ensure that pedestrians can easily find the main entrance, and so establish how to enter the residence.
   - On lots fronting both private and public streets, ensure a connection to the existing public realm by making the pedestrian entrance visible or clearly identifiable from the public street.

2. Where these standards apply.

   a. The standards of this subsection apply to houses, attached houses, manufactured homes, and duplexes in the commercial zones.

   b. Where a proposal is for an alteration or addition to existing development, the standards of this section apply only to the portion being altered or added.

   c. On sites with frontage on both a private street and a public street, the standards apply to the site frontage on the public street. On all other sites with more than one street lot line~~frontage~~, the applicant may choose on which frontage to meet the standards.

   d. Development on flag lots or on lots which slope up or down from the street with an average slope of 20 percent or more are exempt from these standards.

3. Location. [No change.]

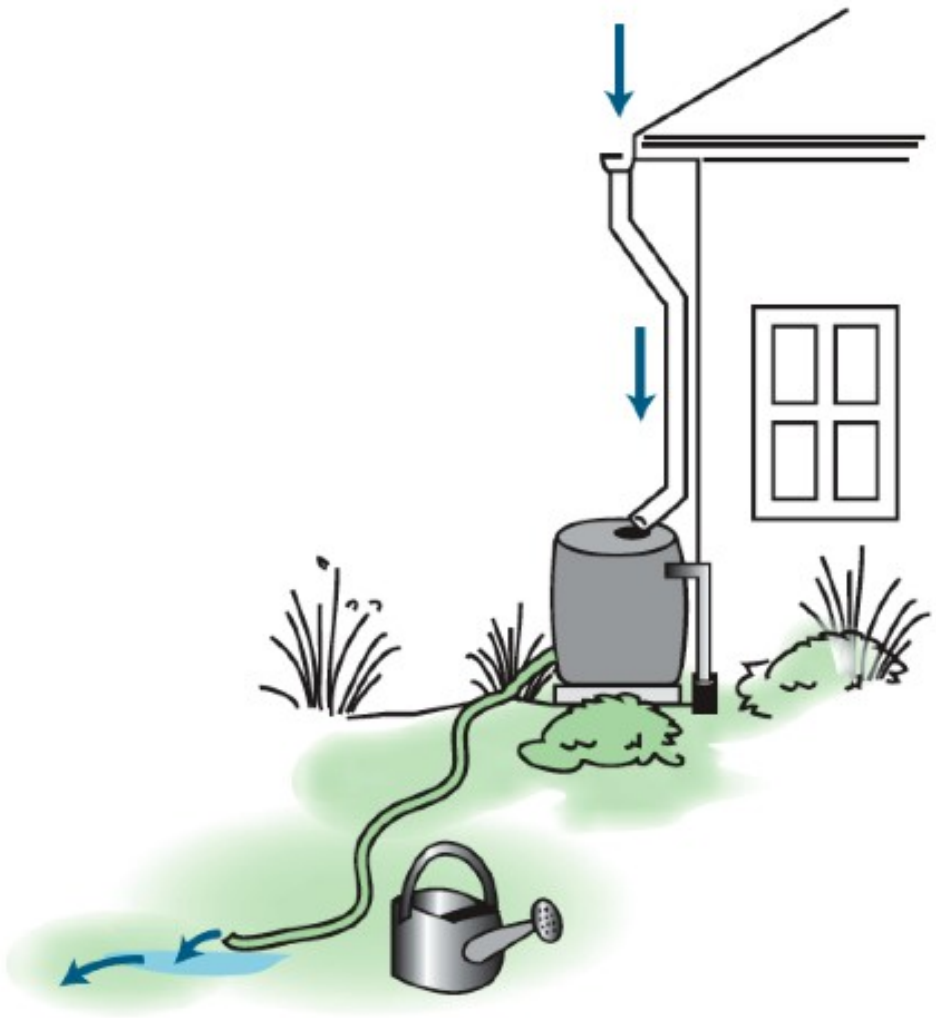
4. Duplexes on corner lots. Where a duplex is on a corner lot, the requirements of Paragraph C.3, above, must be met for both dwelling units. Both main entrances may face the same street.

Item 1 – Water Collection Cisterns

33.130.265 Detached Accessory Structures

C. Setbacks.

2. (See commentary for 33.110.250.C.4.A)



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33.130.265 Detached Accessory Structures

A. Purpose. These standards are intended to maintain separation and privacy to abutting residential lots from nonresidential development.

B. General standards.

1. The regulations of this section apply only to detached accessory structures on sites with non-residential uses. For sites entirely in residential use, detached accessory structures are subject to the multi-dwelling zone standards of Section 33.120.280.

2. The height and building coverage standards of the base zone apply to detached accessory structures.

C. Setbacks.

1. Uncovered accessory structures. Uncovered accessory structures such as flag poles, lamp posts, signs, radio antennas and dishes, mechanical equipment, uncovered decks, play structures, and tennis courts are allowed in a street setback, but not in a required setback from an abutting residential zone.

2. Covered structures. Covered structures such as storage buildings, greenhouses, work shed, covered decks, and covered recreational structures are subject to the setbacks for buildings. If they are 6 feet or less in height, water collection cisterns are allowed in side and rear setbacks, including those setbacks abutting a residential zone. See Section 33.130.250, General Requirements for Residential and Mixed-Use Developments, for additional requirements for garages accessory to residential development.

Item 17 – Fences close to street lot lines (originally requested in EX zones)

33.130.270 Fences

C. Location and Height.

Fence height regulations are mostly limited to within building setbacks along the street. However, recent changes to the commercial zones have removed most required setbacks along the street While placing buildings close to the street and sidewalk offer positive benefits by enhancing the public realm, and maintain visual access between private and public spaces, the same cannot be said for placing a tall fence along the street, especially one that does not allow views between the property and the street. These negative effects include a degradation of the pedestrian experience along the sidewalk, a reduction on visual access between the property and the public realm, and potential increases in graffiti on the fence surfaces. The city has received several complaints for fences built right up to the street in many different zones.

In order to strike a balance between the public realm and the private realm, this amendment changes the code so that fences that are solid or seriously impede views into the property are limited to a height of 3 ½ feet if placed within the first 10 feet of the street lot line. If a greater height is required, a fence up to a height of 8 feet is allowed if it includes significant openings (50% or less site obscuring) that allow views between the property and the street.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.130.270 Fences

A. Purpose. The fence regulations promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists. Fences in any required side or rear setback are limited in height so as to not conflict with the purpose for the setback.

B. Types of fences. The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location and heights.

1. Fences abutting street lot lines, including pedestrian connections. Within 10 feet of a street lot line or lot line that abuts a pedestrian connection, fences that meet the following standards are allowed:~~Street building setbacks.~~

   a. Fences that are more than 50 percent sight-obscuring are allowed up to 3-1/2 feet high.~~Measured from front lot line. Fences up to 3-1/2 feet high are allowed in a required street building setback that is measured from a front lot line.~~

   b. Fences that are 50 percent or less sight-obscuring are allowed up to 8 feet high. ~~Measured from a side lot line. Fences up to 8 feet high are allowed in a required street building setback that is measured from a side lot line.~~

2. Fences abutting other lot lines.~~Side and rear building setbacks.~~ Fences up to 8 feet high are allowed in required building setbacks along all other lot lines.

   ~~a. Fences up to 8 feet high are allowed in required side or rear building setbacks that do not abut a pedestrian connection.~~

   ~~b. Fences abutting a pedestrian connection.~~

      ~~(1) Fences up to 8 feet high are allowed in required side or rear building setbacks that abut a pedestrian connection if the pedestrian connection is part of a right-of-way that is at least 30 feet wide.~~

      ~~(2) Fences up to 3-1/2 feet high are allowed in required side or rear building setbacks that abut a pedestrian connection if the pedestrian connection is part of a right-of-way that is less than 30 feet wide.~~

3. Fences in all other locations.~~Not in building setbacks.~~ The height for fences in locations other than described in Paragraphs 1. and 2. is the same as the regular height limits of the zone.~~The height for fences that are not in required building setbacks is the same as the regular height limits of the zone.~~

Commentary

Item 61 – Green Energy and Use

33.140.100 Primary Uses

B. Limited uses.

(See commentary for 33.130.100)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Excerpt from Table 140-1
Employment and Industrial Zone Primary Uses

	EG1	EG2	EX	IG1	IG2	IH
Basic Utilities	Y/CU [12]	Y/CU [12]	Y/CU [12]	Y/CU [13]	Y/CU [12]	Y/CU [12]

33.140.100 Primary Uses

A. Allowed uses. Uses allowed in the employment and industrial zones are listed in Table 140-1 with a "Y". These uses are allowed if they comply with the development standards and other regulations of this Title. Being listed as an allowed use does not mean that a proposed development will be granted an adjustment or other exception to the regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters.

B. Limited uses. Uses allowed that are subject to limitations are listed in Table 140-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 140-1.

1-11. [no change]

12. Basic Utilities in E zones. This regulation applies to all parts of Table 140-1 that have note [12]. Public safety facilities that include Radio Frequency Transmission Facilities are subject to the regulations of Chapter 33.274. All other Basic Utilities are allowed.

13. Basic Utilities in I zones. This regulation applies to all parts of Table 140-1 that have note [13]. Public safety facilities that include Radio Frequency Transmission Facilities are subject to the regulations of Chapter 33.274. Public safety facilities which have more than 3,000 square feet of floor area are a conditional use. The approval criteria are in Section 33.815.223. All other Basic Utilities are allowed.

Item 51 – Historic Resource Covenants

33.140.205 Floor Area Ratio

C. Transfer of FAR from Landmarks in the EX zone.

4. See the commentary for 33.120.205.E.6.

D. Transfer of FAR from Landmarks in the EGzone.

4. See the commentary for 33.120.205.E.6.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.140
EMPLOYMENT AND INDUSTRIAL ZONES

33.140.205 Floor Area Ratio

A. Purpose. Floor area ratios (FARs) regulate the amount of use (the intensity) allowed on a site. FARs provide a means to match the potential amount of uses with the desired character of the area and the provision of public services. FARs also work with the height, setback, and building coverage standards to control the overall bulk of development.

B. The floor area standards. The FARs are stated in Table 140-3. The FARs apply to all nonresidential development in all of the zones and to residential uses in the EX zone. The FAR standards of plan districts supersede the FAR standards of this chapter.

C. Transfer of FAR from Landmarks in the EX Zone. Floor area ratios may be transferred from a site zoned EX that contains a Landmark as follows:

1-3. [No change.]

4. The property owner executes a covenant with the City that is attached to and recorded with the deed of both the site transferring and the site receiving the density reflecting the respective increase and decrease of potential density. The covenant for the receiving site must meet the requirements of Section 33.700.060, Covenants with the City. The covenant for the Landmark transferring the density must meet the requirements of 33.445.610.D., Covenant.

D. Transfer of FAR from Landmarks in the EG Zones. Floor area ratios may be transferred from a site zoned EG1 or EG2 that contains a Landmark as follows:

1-3. [No change.]

4. The property owner executes a covenant with the City that is attached to and recorded with the deed of both the site transferring and the site receiving the density reflecting the respective increase and decrease of potential density. The covenant for the receiving site must meet the requirements of Section 33.700.060, Covenants with the City. The covenant for the Landmark transferring the density must meet the requirements of 33.445.610.D., Covenant.

Item 3 – Solar Panels and Height
Item 60 - Wind Turbine Standards and Exemption to Reviews
Item 53 – Solar Panels Exemption from Standards

33.140.210 Height

B. The Height Standard

(See commentary for 33.110.215.C)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.140.210 Height

A. [No Change.]

B. The height standard. The height limits for all structures are stated in Table 140-3. Exceptions to the maximum height standard are stated below.

1. Projections allowed. Chimneys, flag poles, satellite receiving dishes, and other items similar with a width, depth, or diameter of 5 feet or less may rise 10 feet above the height limit, or 5 feet above the highest point of the roof, whichever is greater. If they are greater than 5 feet in width, depth, or diameter, they are subject to the height limit.

2. Rooftop access and mechanical equipment. All rooftop mechanical equipment and enclosures of stairwells that provide rooftop access must be set back at least 15 feet from all roof edges that are parallel to street lot lines. Rooftop elevator mechanical equipment may extend up to 16 feet above the height limit. Stairwell enclosures, and other rooftop mechanical equipment which cumulatively covers no more than 10 percent of the roof area may extend 10 feet above the height limit.

3. Radio and television antennas, utility power poles, and public safety facilities are exempt from the height limit.

4. Small urban wind energy systems are subject to the standards of Chapter 33.287.

5. Roof mounted solar panels are not included in height calculations, and may exceed the maximum height limit as long as they meet the following:

   a. For flat roofs or the horizontal portion of mansard roofs, if they do not extend more than 5 feet above the top of the highest point of the roof. For a mansard roof, this allowance applies only when the solar panels are mounted on the horizontal portion of the mansard roof.

   b. For pitched, hipped, or gambrel roofs, if they are mounted no more than 18 inches from the surface of the roof at any point, and do not extend above the ridgeline of the roof. The 18 inches is measured from the upper side of the solar panel.

Commentary

Item 59 – Eaves in Setback
Item 1 – Water Collection Cisterns

33.140.215 Setbacks

B. Minimum building setbacks.

(See commentary for 33.110.220.C)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.140.215 Setbacks

A. [No Change.]

B. Minimum building setbacks. The setback standards apply to all buildings and structures on the site except as specified in this section. Setbacks for exterior development are stated in 33.140.245 below, and for parking areas in Chapter 33.266.

1-3. [No Change.]

4. Minor projections of features attached to buildings.

a. Minor projections allowed. Minor features of a building, such as eaves, chimneys, fire escapes, water collection cisterns and planters, bay windows, uncovered stairways, wheelchair ramps, and uncovered decks or balconies, may extend into a required building setback up to 20 percent of the depth of the setback. Eaves, rain gutters and downspouts may extend up to 40 percent of the depth of the setback. Bays and bay windows extending into the setback also must meet the following requirements:

(1) Each bay and bay window may be up to 12 feet long, but the total area of all bays and bay windows on a building façade cannot be more than 30 percent of the area of the façade;

(2) At least 30 percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block;

(3) Bays and bay windows must cantilever beyond the foundation of the building; and

(4) The bay may not include any doors.

b-c. [No Change.]

5. [No Change.]

Item 41 – Courtyard Housing: Orientation to Public Street

33.140.265 Residential Development

E. Residential Main Entrance

See the commentary for 33.110.230. In addition, paragraph 2 under this subsection is further amended to be consistent with similar sections under the other base zones.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.140.265 Residential Development

When allowed, residential development is subject to the following development standards:

A-D.[No Change.]

E. Residential main entrance.

1. Purpose. The main entrance standards serve several purposes:
   - The main entrance standards, together with the window and garage standards ensure that there is a physical and visual connection between the living area of the residence and the street;
   - They enhance public safety for residents and visitors and provide opportunities for community interaction;
   - They ensure that the pedestrian entrance is visible or clearly identifiable from the street by its orientation or articulation; and
   - They ensure that pedestrians can easily find the main entrance, and so establish how to enter the residence.
   - On lots fronting both private and public streets, ensure a connection to the existing public realm by making the pedestrian entrance visible or clearly identifiable from the public street.

2. Where these standards apply.

   a. The standards of this subsection apply to houses, attached houses, manufactured homes, and duplexes in the employment and industrial zones.

   b. Where a proposal is for an alteration or addition to existing development, the standards of this section apply only to the portion being altered or added.

   c. On sites with frontage on both a private street and a public street, the standards apply to the site frontage on the public street. On all other sites with more than one street frontage, the applicant may choose on which frontage to meet the standards.

   d. Development on flag lots or on lots which slope up or down from the street with an average slope of 20 percent or more are exempt from these standards.

3-4. [No change.]

Commentary

Item 1 – Water Collection Cisterns

33.140.270 Detached Accessory Structures

C. Setbacks.

2. Covered accessory structures.

(See commentary for 33.110.250.C.4.a)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.140.270 Detached Accessory Structures

A. Purpose. These standards are intended to maintain separation and privacy to abutting residential lots from nonresidential development.

B. General standards.

1. The regulations of this section apply to detached accessory structures only.

2. Unless stated in this section, the height and building coverage standards of the base zone apply to detached accessory structures.

C. Setbacks.

1. Uncovered accessory structures. Uncovered accessory structures, such as flag poles, lamp posts, signs, radio antennas and dishes, mechanical equipment, uncovered decks, play structures, and tennis courts, are allowed in a street setback, but not in a required setback from an abutting residential zone.

2. Covered structures. Covered structures, such as storage buildings, greenhouses, work shed, covered decks, and covered recreational structures, are subject to the setbacks for buildings. If they are 6 feet or less in height, water collection cisterns are allowed in side and rear setbacks, including those setbacks abutting a residential zone. See Section 33.140.265, Residential Development, for additional requirements for garages that are accessory to residential development.

Item 17 – Fences close to street lot lines (originally requested in EX zones)

33.140.275 Fences

C. Location and Height.

Fence height regulations are mostly limited to within building setbacks along the street. Several Industrial and Employment zones have little or no setback requirements along the street. While placing buildings close to the street and sidewalk may offer positive benefits by enhancing the public realm, and maintain visual access between private and public spaces, the same cannot be said for placing a tall fence along the street, especially one that does not allow views between the property and the street. These negative effects include a degradation of the pedestrian experience along the sidewalk, a reduction on visual access between the property and the public realm, and potential increases in graffiti on the fence surfaces. The city has received several complaints for fences built right up to the street in many different zones.

In order to strike a balance between the public realm and the private realm, this amendment makes the following changes to the code.

In the older, built-up industrial and employment areas which have more constraints on space, and where setbacks are less, the code standard remains unchanged, except that the distinction between front and side lot lines is removed, since the development standards only refer to a street lot line setback. As a result, within EG1 and IH zones, fences will be limited to 3 ½ feet within the first five feet back from any street, not just the one along the front lot line. IG1 zones have no street setback and as a result do not have specific fence height limits.

The EG2, IG2 and EX zones will have different fence regulations, because they either have generally greater setbacks (as is the case in EG2 and IG2) or they are zones intended to foster pedestrian activity and environments between the building and the street (as in EX). In these zones the code is amended so that fences that are solid or seriously impede views into the property are limited to a height of 3 ½ feet if placed within the first 10 feet of the street lot line. If a greater height is required, a fence up to a height of 8 feet is allowed if it contains openings (50% or less site obscuring) that allow views between the property and the street.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.140.275 Fences

A. Purpose. The fence regulations promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences near streets are kept low in order to allow visibility into and out of the site and to ensure visibility for motorists. Fences in any required side or rear setback are limited in height so as to not conflict with the purpose for the setback.

B. Types of fences. The standards apply to walls, fences, and screens of all types whether open, solid, wood, metal, wire, masonry, or other material.

C. Location and heights.

1. Fences along street lot lines, including pedestrian connections.~~Street building setbacks.~~

   a. EG1, IG1 and IH zones. In EG1, IG1, and IH zones, fences up to 3-1/2 feet high are allowed in a required street building setback. ~~Measured from front lot line. Fences up to 3-1/2 feet high are allowed in a required street building setback that is measured from a front lot line, except in the EG2 and IG2 zones. In a required street building setback in the EG2 and IG2 zones:~~

      ~~(1) Fences up to 3-1/2 feet high are allowed within 10 feet of the front lot line;~~

      ~~(2) Fences up to 8 feet high are allowed on the portion of a site that is more than 10 feet from the front lot line. See Figure 140-13.~~

   b. EG2, EX and IG2 zones. In EG2, EX and IG2 zones, within 10 feet of a street lot line, fences that meet the following standards are allowed: ~~Measured from a side lot line. Fences up to 8 feet high are allowed in a required street building setback that is measured from a side lot line.~~

      (1) Fences that are more than 50 percent sight-obscuring are allowed up to 3-1/2 feet high;

      (2) Fences that are 50 percent or less sight-obscuring are allowed up to 8 feet high.

   c. EG2 and IG2 zones. In EG2 and IG2 zones, fences that are more than 50 percent sight-obscuring are allowed up to 8 feet high within the street building setback if they are more than 10 feet from the lot line

2. Fences along other lot lines.~~Side and rear building setbacks.~~ Fences up to 8 feet high are allowed in required building setbacks along all other lot lines.

   ~~a. Fences up to 8 feet high are allowed in required side or rear building setbacks that do not abut a pedestrian connection.~~

   ~~b. Fences abutting a pedestrian connection.~~

Figure 140-13. This figure was created in order to illustrate the various fence setback requirements within the EG2 and IG2 zones. Since the fence requirements are changing and there is no longer a distinction between a 'front' and a 'side' street lot line, this figure is no longer needed and is deleted from the code.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

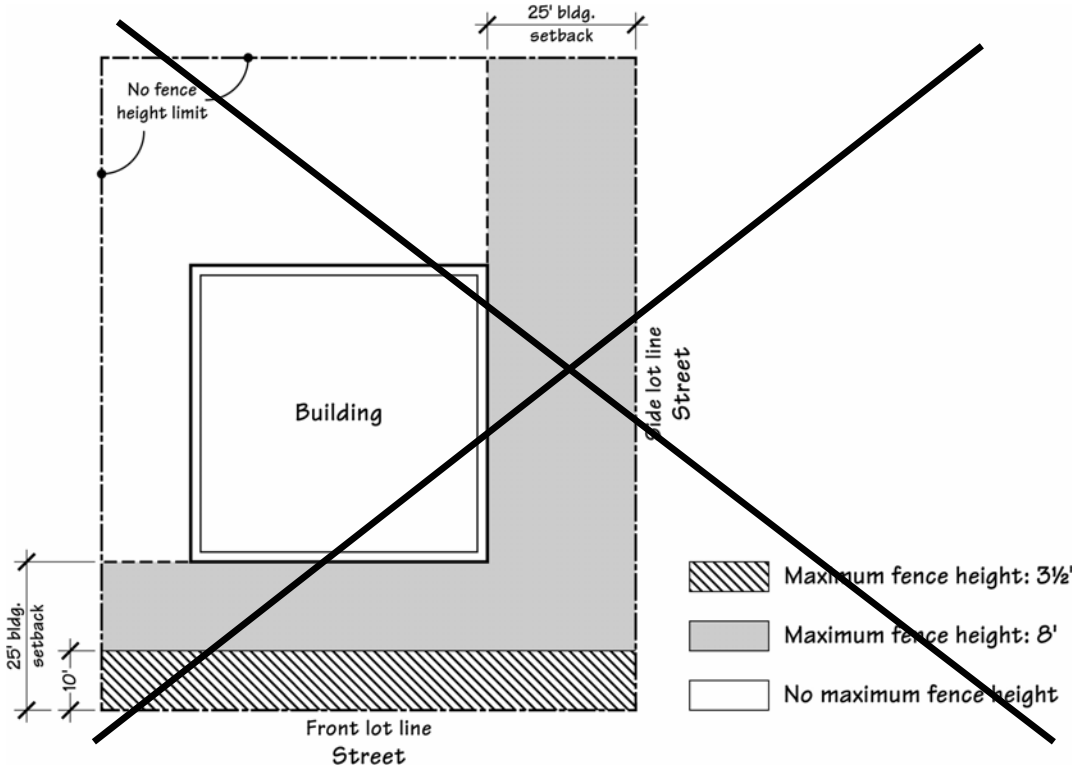
~~(1) Fences up to 8 feet high are allowed in required side or rear building setbacks that abut a pedestrian connection if the pedestrian connection is part of a right-of-way that is at least 30 feet wide.~~

~~(2) Fences up to 3-1/2 feet high are allowed in required side or rear building setbacks that abut a pedestrian connection if the pedestrian connection is part of a right-of-way that is less than 30 feet wide.~~

3. Fences in all other locations~~Not in building setbacks~~. The height for fences in locations other than described in Paragraphs 1 and 2 ~~The height for fences that are not in required building setbacks~~ is the same as the regular height limits of the zone.

D. Reference to other regulations. [No change.]

REMOVE THIS FIGURE
Figure 140-13
Maximum Fence Heights
In EG2 and IG2 Zones



Item 1 – Water Collection Cisterns
Item 32 – Solar Panel Design Review Exemption
Item 37 – Solar Panel Historic Design Review Exemption

CHAPTER 33.218
COMMUNITY DESIGN STANDARDS

33.218.100 Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones

N. Solar energy systems.

O. Water cisterns.

P. Additional standards for historic resources.

The Community Design Standards are an alternative that can be used instead of a design review for many projects that are located in design overlay zones and conservation districts. These amendments will allow solar panels and water collection cisterns to be installed on sites and when standards that limit their visibility can be met. More stringent standards are proposed for historic resources that are located in conservation districts, recognizing the important role that conservation districts play in preserving the City's heritage.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.218
COMMUNITY DESIGN STANDARDS

33.218.100 Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones

The standards of this section apply to development of new primary and attached accessory structures in single-dwelling zones.

A-M [no change]

N. Solar energy systems. Solar energy systems must meet one of the following installation standards:

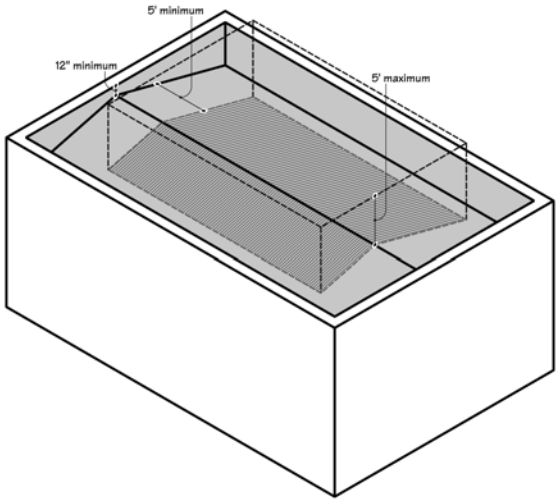
1. Panels on a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, not including the parapet. The panels must be set back 5 feet from the edge of the roof. See Figure 218-4; or

2. Panels on a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5.

3. Photovoltaic roofing shingles or tiles may be directly applied to the roof surface.

4. Photovoltaic glazing may be integrated into windows or skylights.

Figure 218-4
Solar Panels on Flat Roof, Mansard Roof or Roof with Parapet
(New Image)

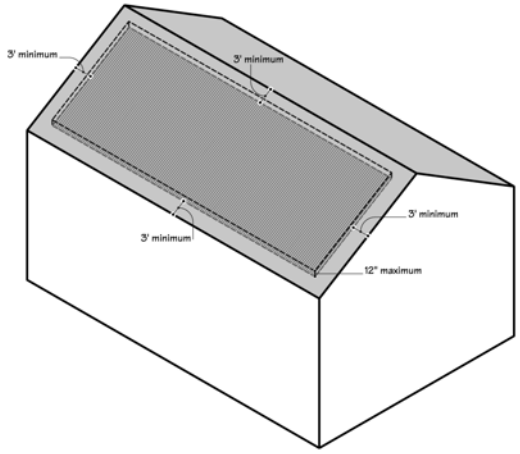


Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Figure 218-5
Solar Panels on a Pitched Roof
(New Image)



O. Water cisterns. Above-ground tanks or barrels for rainwater or greywater collection with a capacity of more than 80 gallons, or racks of cisterns with a total capacity of more than 80 gallons, may not be attached to the front façade of the primary structure and must be painted or colored to match the color of the adjacent building wall, the color of the trim, or the color of the rain gutter.

~~N~~ **P. Additional standards for historic resources.** The following standards are additional requirements for conservation districts and conservation landmarks.

1-7 [no change]

8. Solar panels. Solar panels in conservation districts are subject to the following additional standards:

   a. On a flat roof or horizontal portion of a mansard roof. Solar panels must be screened from the street by:

      (1) an existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or

      (2) setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.

   b. On a pitched roof. Solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6 .

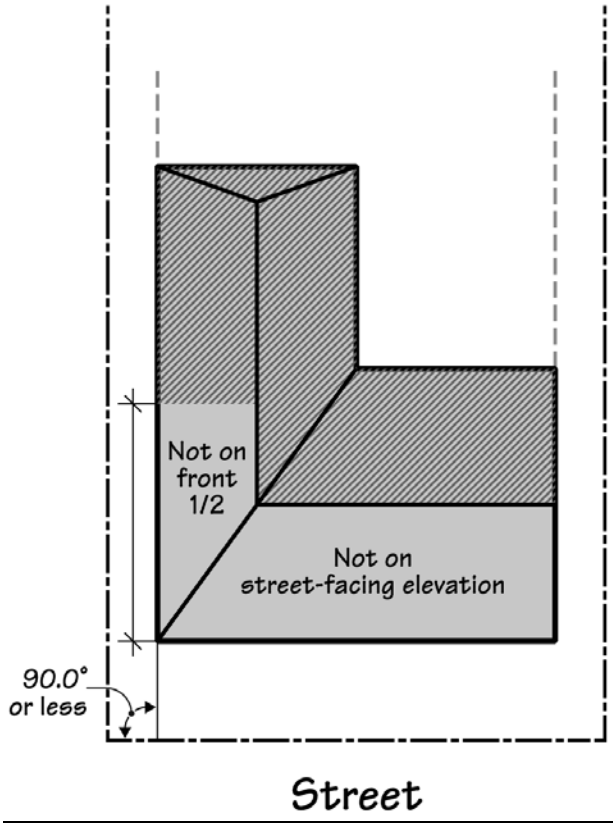
   c. Solar panels may not be installed on a conservation landmark.

Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Figure 218-6
Solar Panel Location on Rooftop
(New Image)



Item 19 - Community. Design Stds: Vehicle Access Through Buffer

33.218.110 Standards for Primary and Attached Accessory Structures in R3, R2, and R1 Zones

C. Residential Buffer.

2.

b. On sites across a street from a lower density zone, the Community Design Standards require a lower height and additional landscaping to help step down and screen the more intense development from less intense development. Included in these standards is a prohibition on vehicle access off of a local service street through the landscape buffer. These standards were created when most design overlay zones were located along busier arterial streets, and the site had its primary access off of these arterial streets. Over time, the design overlay has been expanded beyond these corridors, affecting sites that only have access from local service streets. It was not the intent of the Community Design Standards to force a project to go through design review in order to provide a driveway if the only available vehicle access is through the buffer.

This code change amends the vehicle access limitation so that a driveway can be placed through the landscape buffer if that is the only location where vehicle access is available to the site. Other provisions in the Community Design Standards and the Parking Regulations limit the amount of vehicle area along this street frontage.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.218.110 Standards for Primary and Attached Accessory Structures in R3, R2, and R1 Zones

The standards of this section apply to development of new primary and attached accessory structures in the R3, R2, and R1 zones. The addition of an attached accessory structure to a primary structure, where all the uses on the site are residential, is subject to Section 33.218.130, Standards for Exterior Alteration of Residential Structures in Residential Zones.

A-B. [No Change.]

C. Residential buffer. Where a site zoned RX, RH, or R1 abuts or is across a street from an RF through R2 zone, the following is required. Proposals in the Kenton plan district are exempt from this standard:

1. On sites that abut an RF through R2 zone the following must be met:

   a. In the portion of the site within 25 feet of the lower density residential zone, the building height limits are those of the adjacent residential zone; and

   b. A 10 foot deep area landscaped to at least the L3 standard must be provided along any lot line that abuts the lower density residential zone.

2. On sites across the street from an RF through R2 zone the following must be met:

   a. On the portion of the site within 15 feet of the intervening street, the height limits are those of the lower density residential zone across the street; and

   b. If the site is across a local service street from an RF through R2 zone, a 5-foot deep area landscaped to at least the L2 standard must be provided along the property line across the local service street from the lower density residential zone. Vehicle access is not allowed through the landscaped area unless the site has frontage only on that local service street. Pedestrian and bicycle access is allowed, but may not be more than 6 feet wide.

D-L. [No Change.]

Commentary

Item 1 – Water Collection Cisterns
Item 32 – Solar Panel Design Review Exemption
Item 37 – Solar Panel Historic Design Review Exemption

33.218.110 Standards for Primary and Attached Accessory Structures in R3, R2, and R1 Zones

M. Roof-mounted equipment.

N. Solar energy systems.

Q. Water cisterns.

(see commentary for Section 33.218.100)

M. Roof-mounted equipment. All roof-mounted equipment, including satellite dishes and other communication equipment, must be screened in one of the following ways~~. Solar heating panels are exempt from this standard~~. Solar energy systems are subject to paragraph N below, and exempt from this standard:

1. A parapet as tall as the tallest part of the equipment;
2. A screen around the equipment that is as tall as the tallest part of the equipment; 3. The equipment is set back from the street-facing perimeters of the building 4 feet for each foot of height of the equipment; or
4. If the equipment is a satellite dish or other communication equipment, it is added to the façade of a penthouse that contains mechanical equipment, is no higher than the top of the penthouse, is flush mounted, and is painted to match the façade of the penthouse.

N. Solar energy systems. Solar energy systems must meet one of the following installation standards:

1. Panels on a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, not including the parapet. The panels must be set back 5 feet from the edge of the roof. See Figure 218-4; or

2. Panels on a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5.

3. Photovoltaic roofing shingles or tiles may be directly applied to the roof surface.

4. Photovoltaic glazing may be integrated into windows or skylights.

O-P [no change, except renumbering]

Q. Water cisterns. Above-ground tanks or barrels for rainwater or greywater collection with a capacity of more than 80 gallons, or racks of cisterns with a total capacity of more than 80 gallons, may not be attached to the front façade of the primary structure and must be painted or colored to match the color of the adjacent building wall, the color of the trim, or the color of the rain gutter.

Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

~~P~~ R. Additional standards for historic resources. The following standards are additional requirements for conservation districts and conservation landmarks.

1-8. [no change]

9. Solar panels. Solar panels in conservation districts are subject to the following additional standards:

   a. On a flat roof or horizontal portion of a mansard roof. Solar panels must be screened from the street by:

      (1) an existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or

      (2) setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.

   b. On a pitched roof. Solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6 .

   c. Solar panels may not be installed on a conservation landmark.

Item 1 – Water Collection Cisterns
Item 32 – Solar Panel Design Review Exemption
Item 37 – Solar Panel Historic Design Review Exemption

33.218.120 Standards for Detached Accessory Structures in Single-Dwelling, R3, R2, and R1 Zones.

H. Solar energy systems.

I. Water cisterns.

J. Additional standards for historic resources.

(see commentary for Section 33.218.100)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.218.120 Standards for Detached Accessory Structures in Single-Dwelling, R3, R2, and R1 Zones.
The standards of this section are applicable to development of new detached accessory structures in single dwelling, R3, R2, and R1 zones.

A-G. [no change]

H. Solar energy systems.

1. Solar energy systems on detached accessory buildings are subject to the same standards as would apply to new primary and attached accessory structures. See applicable solar standards in Sections 33.218.100 and .110.

2. Ground or pole mounted solar panels my not be located closer to the street than any street-facing building façade.

I. Water cisterns. Above-ground tanks or barrels for rainwater or greywater collection with a capacity of more than 80 gallons, or racks of cisterns with a total capacity of more than 80 gallons, my not be located closer to the street than the primary street-facing building façade and must be painted or colored to match the color of the adjacent building wall, the color of the trim, or the color of the rain gutter.

J. Additional standards for historic resources. The following standards are additional requirements for conservation districts and conservation landmarks.

1-3 [no change]

4. Cisterns. Cisterns for rainwater or greywater collection must be screened by existing development or plantings so they are not visible from the street.

Commentary

Item 1 – Water Collection Cisterns
Item 32 – Solar Panel Design Review Exemption
Item 37 – Solar Panel Historic Design Review Exemption

33.218.130 Standards for Exterior Alteration of Residential Structures in Single-Dwelling, R3, R2, and R1 Zones

F. Solar energy systems.

G. Water cisterns.

H. Additional standards for historic resources.

(see commentary for Section 33.218.100)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.218.130 Standards for Exterior Alteration of Residential Structures in Single-Dwelling, R3, R2, and R1 Zones
The standards of this section apply to exterior alterations of primary structures and both attached and detached accessory structures in residential zones. These standards apply to proposals where there will be only residential uses on the site.

A-E. [no change]

F. Solar energy systems. Solar energy systems must meet one of the following installation standards:

1. Panels on a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, not including the parapet. The panels must be set back 5 feet from the edge of the roof. See Figure 218-4; or

2. Panels on a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5.

3. Photovoltaic roofing shingles or tiles may be directly applied to the roof surface.

4. Photovoltaic glazing may be integrated into windows or skylights.

G. Water cisterns. Above-ground tanks or barrels for rainwater or greywater collection with a capacity of more than 80 gallons, or racks of cisterns with a total capacity of more than 80 gallons, may not be attached to the front façade of the primary structure and must be painted or colored to match the color of the adjacent building wall, the color of the trim, or the color of the rain gutter.

H. Additional standards for historic resources. The following standards are additional requirements for conservation districts and conservation landmarks.

1-5. [no change]

6. Cisterns. Cisterns for rainwater or greywater collection must be screened by existing development or plantings so they are not visible from the street.

7. Solar panels. Solar panels in conservation districts are subject to the following additional standards:

   a. On a flat roof or horizontal portion of a mansard roof. Solar panels must be screened from the street by:

      (1) an existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or

      (2) setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.

Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

b. On a pitched roof. Solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6 .

c. Solar panels may not be installed on a conservation landmark.

Commentary

Item 19 - Community. Design Stds. - Vehicle Access Through Buffer

33.218.140 Standards for All Structures in the RH, RX, C and E Zones

D. Residential Buffer.

2.

b. (See commentary for 33.218.110.C.2.b,)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.218.140 Standards for All Structures in the RH, RX, C and E Zones
The standards of this section apply to development of all structures in RH, RX, C, and E zones. These standards also apply to exterior alterations in these zones.

For proposals where all uses on the site are residential, the standards for the R3, R2, and R1 zones may be met instead of the standards of this section. Where new structures are proposed, the standards of Section 33.218.110, Standards for R3, R2, and R1 Zones, may be met instead of the standards of this section. Where exterior alterations are proposed, the standards of Section 33.218.130, Standards for Exterior Alteration of Residential Structures in Residential Zones, may be met instead of the standards of this section.

A-C. [No Change.]

D. Residential Buffer. Where a site zoned E, C, RX, or RH abuts or is across a street from an RF through R2 zone, the following is required. Proposals in the Hollywood and Kenton plan districts, the Main Street Corridor Overlay Zone, and the Main Street Node Overlay Zone are exempt from this standard:

1. On sites that abut an RF through R2 zone the following must be met:

   a. In the portion of the site within 25 feet of the lower density residential zone, the building height limits are those of the adjacent residential zone; and

   b. A 10-foot deep area landscaped to at least the L3 standard must be provided along any lot line that abuts the lower density residential zone.

2. On sites across the street from an RF through R2 zone the following must be met:

   a. On the portion of the site within 15 feet of the intervening street, the height limits are those of the lower density residential zone across the street; and

   b. If the site is across a local service street from an RF through R2 zone, a 5-foot deep area landscaped to at least the L2 standard must be provided along the property line across the local service street from the lower density residential zone. Vehicle access is not allowed through the landscaped area unless the site has frontage only on that local service street. Pedestrian and bicycle access is allowed, but may not be more than 6 feet wide.

E-I. [No Change.]

Commentary

Item 1 – Water Collection Cisterns
Item 32 – Solar Panel Design Review Exemption
Item 37 – Solar Panel Historic Design Review Exemption

33.218.140 Standards for All Structures in the RH, RX, C and E Zones

J. Roof-mounted equipment.

K. Solar energy systems.

L. Water cisterns.

Q. Additional standards for historic resources.

(See commentary for Section 33.218.100.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

J. Roof-mounted equipment. All roof-mounted equipment, including satellite dishes and other communication equipment, must be screened in one of the following ways. ~~Solar heating panels are exempt from this standard~~ Solar energy systems are subject to paragraph K below, and exempt from this standard:

1. A parapet as tall as the tallest part of the equipment;
2. A screen around the equipment that is as tall as the tallest part of the equipment;
3. The equipment is set back from the street-facing perimeters of the building 4 feet for each foot of height of the equipment; or
4. If the equipment is a satellite dish or other communication equipment, it is added to the façade of a penthouse that contains mechanical equipment, is no higher than the top of the penthouse, is flush mounted, and is painted to match the façade of the penthouse.

K. Solar energy systems. Solar energy systems must meet one of the following installation standards:

1. Panels on a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, not including the parapet. The panels must be set back 5 feet from the edge of the roof. See Figure 218-4; or

2. Panels on a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5.

3. Photovoltaic roofing shingles or tiles may be directly applied to the roof surface.

4. Photovoltaic glazing may be integrated into windows or skylights.

5. Ground or pole mounted solar panels my not be located closer to the street than any street-facing building façade.

L. Water cisterns. Above-ground tanks or barrels for rainwater or greywater collection with a capacity of more than 80 gallons, or racks of cisterns with a total capacity of more than 80 gallons, may not be attached to the front façade of the primary structure and must be painted or colored to match the color of the adjacent building wall, the color of the trim, or the color of the rain gutter.

M-P. [no change, except renumbering]

~~O~~Q. Additional standards for historic resources. The following standards are additional requirements for conservation districts and conservation landmarks.

1-12. [no change]

Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

13. Solar panels. Solar panels in conservation districts are subject to the following additional standards:

    a. On a flat roof or horizontal portion of a mansard roof. Solar panels must be screened from the street by:

        (1) an existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or

        (2) setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.

    b. On a pitched roof. Solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6 .

    c. Solar panels may not be installed on a conservation landmark.

Commentary

Item 1 – Water Collection Cisterns
Item 32 – Solar Panel Design Review Exemption
Item 37 – Solar Panel Historic Design Review Exemption

33.218.150 Standards for I Zones

H. Roof-mounted equipment.

I. Solar energy systems.

L. Additional standards for historic resources.

(see commentary for Section 33.218.100)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.218.150 Standards for I Zones
The standards of this section apply to development of all structures in the I zones. These standards also apply to exterior alterations in these zones.

A-G. [no change]

H. Roof-mounted equipment. All roof-mounted equipment, including satellite dishes and other communication equipment, must be screened in one of the following ways. ~~Solar heating panels are exempt from this standard:~~ Solar energy systems are subject to paragraph K below, and exempt from this standard:

1. A parapet as tall as the tallest part of the equipment;

2. A screen around the equipment that is as tall as the tallest part of the equipment;

3. The equipment is set back from the street-facing perimeters of the building 4 feet for each foot of height of the equipment; or

4. If the equipment is a satellite dish or other communication equipment, it is added to the façade of a penthouse that contains mechanical equipment, is no higher than the top of the penthouse, is flush mount ed, and is painted to match the façade of the penthouse.

I. Solar energy systems. Solar energy systems must meet one of the following installation standards:

1. Panels on a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, not including the parapet. The panels must be set back 5 feet from the edge of the roof. See Figure 218-4; or

2. Panels on a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5.

3. Photovoltaic roofing shingles or tiles may be directly applied to the roof surface.

4. Photovoltaic glazing may be integrated into windows or skylights.

5. Ground or pole mounted solar panels my not be located closer to the street than the primary street-facing building façade.

J-K. [no change, except to renumber]

Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

~~K~~ L. Additional standards for historic resources. The following standards are additional requirements for conservation districts and conservation landmarks.

1-8. [no change]

9. Solar panels. Solar panels in conservation districts are subject to the following additional standards:

   a. On a flat roof or horizontal portion of a mansard roof. Solar panels must be screened from the street by:

      (1) an existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or

      (2) setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.

   b. On a pitched roof. Solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6.

   c. Solar panels may not be installed on a conservation landmark.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

CHAPTER 33.258
NONCONFORMING SITUATIONS

33.258.060 Nonconforming Residential Densities and Nonconforming Lots or Lots of Record

A. Changes to Dwellings.
This amendment clarifies the status of an existing single dwelling that is located on a lot or lot of record that does not meet standards for existing lots in the base zones. While the development may continue, it cannot go further out of compliance with any of the development standards, nor can additional units be added to the single-dwelling. These restrictions are similar to other limitations on development expansion for sites with nonconforming residential densities.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.258
NONCONFORMING SITUATIONS

33.258.060 Nonconforming Residential Densities and Nonconforming Lots or Lots of Record

A. Changes to dwellings.

1. Generally. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to site.

   a. Sites that exceed maximum residential density standard. On sites that exceed the maximum residential density standards, there may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards, except as allowed in Paragraph A.2, below.

   b. Sites that contain a single dwelling unit on a nonconforming lot or lot of record in Single-Dwelling Zones. On sites in the RF through R2.5 zones, where a single dwelling unit is located on a lot or lot of record that does not meet the minimum requirements of 33.110.212, there cannot be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.

   c~~b~~. Sites where the minimum residential density standard is not met. On sites where the minimum residential density standard is not met, changes may be made that bring the site closer into conformance with the minimum residential density standard. There may not be a net decrease in the number of dwelling units, and the building may not move further out of compliance with the base zone development standards.

2. In multi-dwelling zones. [No change.]

33.258.060 (contd.)

B. Discontinuance and Damage.

Currently, it is unclear what policy should apply to houses built on nonconforming lots or lots of record, and their rebuilding rights if one of them were to be damaged by fire. Current code is not clear whether the lot would have to remain vacant for five years, or not. This code amendment, along with the provision in 33.110.212 to waive the five year vacancy rule for dangerous buildings should provide clear policy on the rebuilding rights for houses on nonconforming lots. It also is consistent with the rebuilding policy for other structures that exceed the maximum density of the base zone. Under these regulations, a structure with damage less than 75% of the assessed value can rebuild by right. A structure with damage greater than 75% of the assessed value can also rebuild within 5 years, but will be subject to current development standards.

If an owner waits five years to rebuild, although this chapter states the residential density rights are lost, the owner would still be able to rebuild on the lot provided it met the minimum size requirements for vacant sites that are in 33.110.213, which generally allow 2,500 square foot lots.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

B. Discontinuance and damage.

1. Building unoccupied but standing. Nonconforming residential density rights continue even when a building has been unoccupied for any length of time.

2. Damage or destruction.

   a. More than one dwelling unit. [No change.]

   b. One dwelling unit. When there is only one dwelling unit on a site, and when the site is nonconforming for residential density, or is a nonconforming lot or lot of record, the following applies if the structure containing the dwelling unit is damaged or destroyed by fire or other causes beyond the control of the owner:

      (1) If the repair cost is 75 percent or less of the assessed value of the structure, nonconforming residential density rights are maintained and the structure may be rebuilt;

      (2) If the repair cost is more than 75 percent of the assessed value of the structure, the structure may be rebuilt within 5 years if it complies with the development standards (except for density) that would apply to new development on the site;

      (3) If the repair cost is more than 75 percent of the assessed value of the structure, and the structure is not rebuilt within 5 years, the nonconforming residential density rights are lost, and the site is considered vacant.

Item 56 – Nonconforming Upgrades, Green Technologies Exemption

33.258.070 Nonconforming Development

D. Development that must be brought into conformance.

2. a. (6)

Upgrades to bring development into conformance with the city code are required when improvements exceeding a certain threshold of value are made to a property. This threshold is currently about $130,000. This threshold is increased annually. This amendment would add energy efficiency or renewable energy improvements to the list of improvements that are not included in the project improvement value. The amendment refers to the "Public Purpose Administrator", which is currently the Energy Trust of Oregon. An increase in energy efficiency and renewable energy site improvements is expected as a result of rising energy process, and an increase in federal funding for these kind of investments. Energy efficiency and renewable energy improvements include, for example, installation of solar panels, weatherization, window replacement, and upgrades to HVAC systems.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.258.070 Nonconforming Development

A-C. [No Change.]

D. Development that must be brought into conformance. The regulations of this subsection are divided into two types of situations, depending upon whether the use is also nonconforming or not. These regulations apply except where superseded by more specific regulations in the code.

1. [No Change.]

2. Nonconforming development with an existing nonconforming use, allowed use, limited use, or conditional use. Nonconforming development associated with an existing nonconforming use, an allowed use, a limited use, or a conditional use, must meet the requirements stated below. When alterations are made that are over the threshold of Subparagraph D.2.a., below, the site must be brought into conformance with the development standards listed in Subparagraph D.2.b. The value of the alterations is based on the entire project, not individual building permits.

   a. Thresholds triggering compliance. The standards of Subparagraph D.2.b., below, must be met when the value of the proposed alterations on the site, as determined by BDS, is more than $124,100. The following alterations and improvements do not count toward the threshold:

      (1) Alterations required by approved fire/life safety agreements;

      (2) Alterations related to the removal of existing architectural barriers, as required by the Americans with Disabilities Act, or as specified in Section 1113 of the Oregon Structural Specialty Code;

      (3) Alterations required by Chapter 24.85, Interim Seismic Design Requirements for Existing Buildings;

      (4) Improvements to on-site stormwater management facilities in conformance with Chapter 17.38, Drainage and Water Quality, and the Stormwater Management Manual; and

      (5) Improvements made to sites in order to comply with Chapter 21.35, Wellfield Protection Program, requirements.

      (6) Energy efficiency or renewable energy improvements that meet the Public Purpose Administrator incentive criteria.

   b-c. [No Change.]

Item 21 – Nonconforming Upgrades, Option 2

33.258.070 Nonconforming Development

D. Development that must be brought into conformance.

2. d. (2) Option 2 –

The nonconforming upgrades chapter provides two options to bring development into conformance with current zoning code requirements. Option 2 is an alternative that allows an applicant to bring a site into conformance with all of the requirements at a later date. It differs from Option 1, which requires that an applicant spend 10 percent of the total cost of the project on upgrades that will bring the site closer to conformance. A disadvantage of Option 1 is that the 10 percent is rarely enough to bring a site fully into conformance with current regulations. Each time an applicant makes improvements under Option 1 they come closer to conformance, but it may take a long time for a site to be brought fully into conformance. An advantage of Option 2 is that allows an applicant to make the improvements at a later date at which time, all the required improvements must be made. There is a concern that Option 2 is not used frequently because applicants are afraid that regulations will change so quickly that by the time the compliance period is over they may again be out of compliance and will have to make new upgrades. This code amendment is intended to alleviate this fear by providing a 2 year "grace" period after a site is brought into conformance with the regulations that were in place when Option 2 was first used. It is hoped that this grace period will give applicants confidence that the upgrades they make to meet Option 2 will not immediately be out of date at the end of the compliance period and that this in turn will encourage them to use Option 2 more often.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

d. Timing and cost of required improvements. The applicant may choose one of the following options for making the required improvements:

(1) Option 1. Under Option 1, required improvements must be made as part of the alteration that triggers the required improvements. However, the cost of required improvements is limited to 10 percent of the value of the proposed alterations. It is the responsibility of the applicant to document the value of the required improvements. When all required improvements are not being made, the applicant may choose which of the improvements listed in Subparagraph D.2.b to make. If improvements to nonconforming development are also required by regulations in a plan district or overlay zone, those improvements must be made before those listed in Subparagraph D.2.b.

(2) Option 2. Under Option 2, the required improvements may be made over several years, based on the compliance period identified in Table 258-1. However, by the end of the compliance period, the site must be brought fully into compliance with the standards listed in Subparagraph D.2.b. When this option is chosen, the following applies:

- Before a building permit is issued, the applicant must submit the following to BDS:

  - Application. An application, including a Nonconforming Development Assessment, which identifies in writing and on a site plan, all development that does not meet the standards listed in subparagraph D.2.b.

  - Covenant. The City-approved covenant, which is available in the Development Services Center, is required. The covenant identifies development on the site that does not meet the standards listed in subparagraph D.2.b, and requires the owner to bring that development fully into compliance with this Title. The covenant also specifies the date by which the owner will bring the nonconforming development into full compliance. The date must be within the compliance periods set out in Table 258-1. The covenant must be recorded as specified in Subsection 33.700.060.B.

- Within the compliance period, ~~T~~the nonconforming development identified in the Nonconforming Development Assessment must be brought into full conformance with the requirements of this Title that are in effect on the date when the permit application is submitted ~~within the compliance periods~~. The compliance period begins when a building permit is issued for alterations to the site of more than $131,150. The compliance periods are based on the size of the site. The compliance periods are identified in Table 258-1.

Item 56 – Nonconforming Upgrades, Green Technologies Exemption

33.258.070 Nonconforming Development

D. Development that must be brought into conformance.

2. d. (3) Option 3 –

An additional amendment (Option 3) is suggested to allow energy efficiency or renewable energy improvements to occur as a substitute for nonconforming upgrades. This would allow a property owner to defer nonconforming upgrades if they are instead spending the equivalent money on energy efficiency or renewable energy improvements. This suggested policy shift responds to changes in federal policy that will make more funds available for energy-related improvements in the coming years. This policy recognizes the importance of rapidly diversifying our energy sources, reducing dependence on foreign sources of energy, and decreasing the emissions of climate-changing greenhouse gases. That objective may be as important as the other policy goals behind non-conforming upgrades, at least in the short term. The proposal sunsets in 2012.

- By the end of the compliance period, the applicant or owner must request that the site be certified by BDS as in compliance with the standards listed in Subparagraph D.2.b. A permit documenting full conformance with these standards is required and must receive final inspection approval prior to BDS certification.

- If certification is not requested, or if the site is not fully in conformance by the end of the compliance period, no additional building permits will be issued until the site is certified.

- If certification is requested prior to the end of the compliance period and certification is granted by BDS , then there is a 2 year certification period that begins at the end of the compliance period during which time no additional nonconforming upgrades are required.

- If the regulations referred to by Subparagraph D.2.b, or in D.2.b itself, are amended after the Nonconforming Development Assessment is received by BDS, and those amendments result in development on the site that was not addressed by the Assessment becoming nonconforming, the applicant must, at the end of the certification period, address the new nonconforming development using Option 1 or Option 2. If the applicant chooses Option 2, a separate Nonconforming Development Assessment, covenant, ~~and~~ compliance period and certification period will be required for the new nonconforming development.

Table 258-1
Compliance Periods for Option 2

Square footage of site	**Compliance period**
Less than 200,000 sq. ft.	2 years
200,000 sq. ft. or more, up to 500,000 sq. ft.	3 years
More than 500,000 sq. ft., up to 850,000 sq. ft.	4 years
More than 850,000 sq. ft.	5 years

(3) Option 3, Energy Investment Substitution. This option may be used in conjunction with Option 1. Under Option 3, energy efficiency or renewable energy improvements may substitute for required nonconforming development upgrades, if such improvements are made to the site as part of the alteration that triggers the required improvements. To qualify, energy efficiency or renewable energy improvements must meet the Public Purpose Administrator incentive criteria. Each dollar of qualifying energy efficiency or renewable energy improvement may substitute for a dollar of required nonconforming development upgrades. A substitution under this section has the effect of reducing the 10 percent cost limit in Option 1, and postponing that amount of nonconforming development

Commentary

(See commentary on previous commentary page.)

Language to be **added** is underlined
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upgrades until the next alteration that triggers upgrades. This substitution does not adjust or modify the development standard in question, or otherwise exempt the site from future upgrades. This option sunsets on June 30, 2012.

E-G. [No Change.]

CHAPTER 33.266
PARKING AND LOADING

Item 23 – Courtyard Housing: Separate Parking Tract

33.266.100 General Regulations

E. Proximity of parking to use.

This amendment provides a clarification to the current option that residential required parking can be provided in a commonly owned tract. Parking provided off-site in tracts should be limited to specific parking tracts or special shared use situations such as shared courts. The current intention is not to let a development's required parking be provided through on-street parking on a private street tract. In addition, other tracts such as common greens, pedestrian connections, environmental and tree resource tracts are not intended to include parking areas. This amendment states the limited situations when required parking for residential uses can be placed off site.

33.266.120 Development Standards for Houses and Duplexes

B. Structures these regulations apply to.

The provisions of this section apply to houses, duplexes, manufactured homes, and is intended to apply when a parking pad, driveway and/or garage is provided on the site of the house or duplex. However, other sections of the parking chapter (33.266.100.E) allow the required parking for this type of development to be placed within a tract that is owned in common by the owners of the house/duplex lots. If parking is placed in a tract, it is not clear what kind of standards the parking tract should be held to. This amendment clarifies that a parking lot in a parking tract should be held to the same standards as other parking lots.

In addition, the Bureau of Development Services is working on a set of standards with the Private Street rule, that will allow required parking to be located as part of a shared court. Several entries for the Courtyard Housing competition placed the required parking spaces within the right-of-way of the shared court tract. This amendment, in conjunction with the guidelines and standards in the Private Street Rule will allow the flexibility for an applicant to propose the parking within the shared court, subject to approval of the land division.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.266.100 General Regulations

A-D. [No change.]

E. Proximity of parking to use. Required parking spaces for residential uses must be located on the site of the use or within a shared court or special parking tract owned in common by all the owners of the properties that will use the tract. On-street parking within a private street tract other than a shared court does not satisfy this requirement. Required parking spaces for nonresidential uses must be located on the site of the use or in parking areas whose closest point is within 300 feet of the site.

F-G. [No change.]

33.266.120 Development Standards for Houses and Duplexes

A. Purpose. The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.

B. Structures these regulations apply to. The regulations of this section apply to houses, attached houses, duplexes, attached duplexes, manufactured homes, and houseboats. The regulations apply to required and excess parking areas. The following are exceptions to this requirement:

1. Parking that is provided in a separate parking tract must meet the standards of 33.266.130 in lieu of this section. However, perimeter landscaping is not required where the parking tract abuts a lot line internal to the project.

2. Parking that is provided as part of a shared court tract must be approved by the Bureau of Development Services as an element within the configuration of the shared court right-of-way.

3. Parking for manufactured dwelling parks is regulated in Chapter 33.251.

C. Parking area locations. [No change.]

Item 26 – Shared Driveways Across Lot Lines

33.266.120 Development Standards for Houses and Duplexes

D. Parking space sizes.

Shared driveways are beneficial for a number of reasons. They reduce curb-cuts, which allows for more space for on-street parking. They also reduce the number of driveways, which reduces impervious surface and runoff into the stormwater system. Although shared driveways are common, and often required by City policy, the code is not clear that shared driveways are allowed to be located on more than one property. This amendment clarifies that shared driveways can straddle a property line. Shared driveways require an easement that allows owners of both properties access to the driveway. This change also clarifies that an easement is required.

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33.266.120 Development Standards for Houses and Duplexes

D. Parking space sizes. A parking space must be at least 9 feet by 18 feet. The minimum driveway width on private property is 9 feet. Shared driveways are allowed to extend across a property line onto abutting private properties as long as the combined width of the driveway is at least 9 feet and provided there is a recorded easement guaranteeing reciprocal access and maintenance to the respective properties.

E. [No Change.]

Item 27 – Bicycle Parking in Multi-dwelling Development

33.266.220 Bicycle Parking Standards

B. Long-term bicycle parking.

2. Standards.

The same long-term bike parking standards that apply more generally to commercial, industrial, and institutional uses also apply to multi-dwelling development with the exception that in multi-dwelling development the code allows bike parking to be located within separate dwelling units.

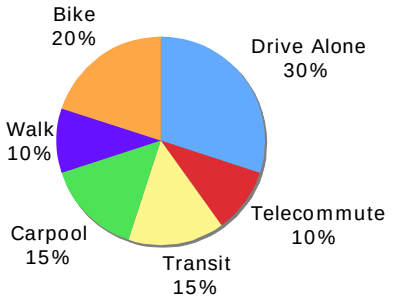
The needs of users of long-term bike parking at multi-dwelling developments differ in character from the needs of users at commercial, industrial, and institutional uses. A primary difference in need is that in multi-dwelling development bikes will be parked overnight and for even longer periods because the bike is owned by a resident of the dwelling unit.

Members of the biking community have identified some problems with allowing long-term bike parking spaces inside dwelling units. One problem is that, although building plans may state that bike parking is being provided within dwelling units, when the building is actually built the building management will prohibit tenants from parking their bikes in their units. Another problem is that although bike parking spaces may be designated within units, the size and location of the space is not specified. This results in dwelling units where the only practical places for storing bikes are located far from an entry, forcing the owner of the bike to carry the bike through other habitable spaces in the unit. Requests have been made to address these problems by requiring that all long-term bike parking in multi-dwelling development be located outside of dwelling units in a secure covered area.

At present, long-term bike parking that is located in a dwelling unit (or a dormitory) is exempt from the requirements that apply to long-term parking for other uses that the parking must be provided in racks or lockers. By removing this exemption it is expected that most developers will find it more convenient to provide groupings of racks or lockers in a secure area rather than providing separate facilities in each unit. This will encourage more bike parking to be located outside of dwelling units and will help overcome the problem of building management prohibiting tenants from keeping their bikes in their units.

The mode share chart at right is from the City's draft Climate Action Plan.

2030 Target Commute Mode Share



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33.266.220 Bicycle Parking Standards

A. [No Change.]

B. Long-term bicycle parking.

1. Purpose. Long-term bicycle parking provides employees, students, residents, commuters and others who generally stay at a site for several hours, a secure and weather-protected place to park bicycles. Although long-term parking does not have to be provided on-site, the intent of these standards is to allow bicycle parking to be within a reasonable distance in order to encourage bicycle use.

2. Standards. Required long-term bicycle parking must meet the following standards:

   a. Long-term bicycle parking must be provided in racks or lockers that meet the standards of Subsection 33.266.220.C;

   b. Location. Long-term bicycle parking must be located on the site or in an area where the closest point is within 300 feet of the site;

   c. Covered Spaces. At least 50 percent of required long-term bicycle parking must be covered and meet the standards of Paragraph 33.266.220.C.5, Covered Bicycle Parking; and

   d. Security. To provide security, long-term bicycle parking must be in at least one of the following locations:

      (1) In a locked room;

      (2) In an area that is enclosed by a fence with a locked gate. The fence must be either 8 feet high, or be floor-to-ceiling;

      (3) Within view of an attendant or security guard;

      (4) Within 100 feet of an attendant or security guard;

      (5) In an area that is monitored by a security camera;

      (6) In an area that is visible from employee work areas; ~~or~~

      ~~(7) In a dwelling unit or dormitory unit. If long-term bicycle parking is provided in a dwelling unit or dormitory unit, neither racks nor lockers are required.~~

C. Standards for all bicycle parking.

1. Purpose. These standards ensure that required bicycle parking is designed so that bicycles may be securely locked without undue inconvenience and will be reasonably safeguarded from intentional or accidental damage.

Commentary

(See commentary on previous commentary page.)

2. Bicycle lockers. Where required bicycle parking is provided in lockers, the lockers must be securely anchored.

3. Bicycle racks. The Office of Transportation maintains a handbook of racks and siting guidelines that meet the standards of this paragraph. Required bicycle parking may be provided in floor, wall, or ceiling racks. Where required bicycle parking is provided in racks, the racks must meet the following standards:

    a. The bicycle frame and one wheel can be locked to the rack with a high security, U-shaped shackle lock if both wheels are left on the bicycle;

    b. A bicycle six feet long can be securely held with its frame supported so that the bicycle cannot be pushed or fall in a manner that will damage the wheels or components; and

    c. The rack must be securely anchored.

4. Parking and maneuvering areas.

    a. Each required bicycle parking space must be accessible without moving another bicycle;

    b. There must be an aisle at least 5 feet wide behind all required bicycle parking to allow room for bicycle maneuvering. Where the bicycle parking is adjacent to a sidewalk, the maneuvering area may extend into the right-of-way; and

    c. The area devoted to bicycle parking must be hard surfaced.

5. Covered bicycle parking. Covered bicycle parking, as required by this section, can be provided inside buildings, under roof overhangs or awnings, in bicycle lockers, or within or under other structures. Where required covered bicycle parking is not within a building or locker, the cover must be:

    a. Permanent;

    b. Designed to protect the bicycle from rainfall; and

    c. At least 7 feet above the floor or ground.

6. Signs.

    a. Light rail stations and transit centers. If required bicycle parking is not visible from the light rail station or transit center, a sign must be posted at the station or center indicating the location of the parking.

    b. Other uses. For uses other than light rail stations and transit centers, if required bicycle parking is not visible from the street or main building entrance, a sign must be posted at the main building entrance indicating the location of the parking.

Item 58 – Dimensions in Bike Parking Figure

Figure 266-9
Short-term bike parking – one building, multiple entrances

This amendment corrects an typographical error. This figure is being changed to more accurately reflect the requirement that there be an aisle at least 5 feet wide behind all required bicycle parking to allow room for bicycle maneuvering.

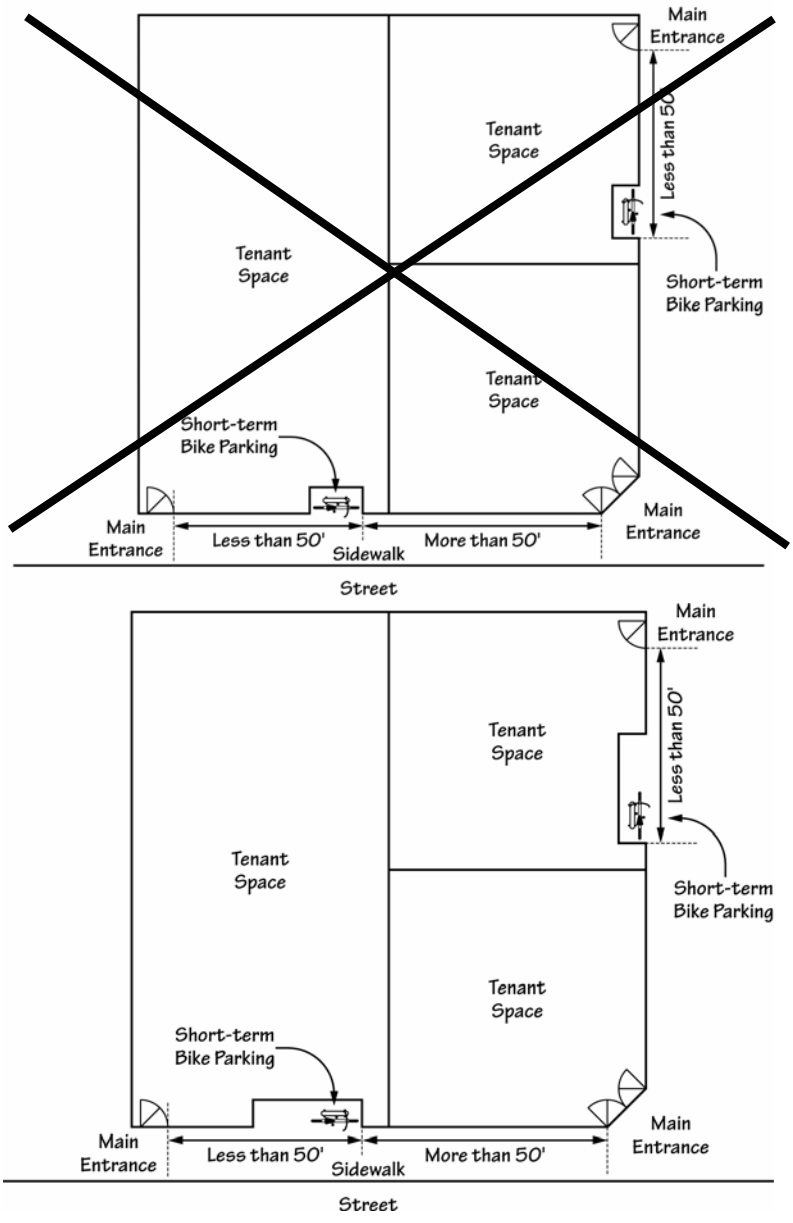
Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

7. Use of required parking spaces.

   a. Required short-term bicycle parking spaces must be available for shoppers, customers, messengers, and other visitors to the site.

   b. Required long-term bicycle parking spaces must be available for employees, students, residents, commuters, and others who stay at the site for several hours.

REPLACE FIGURE
Figure 266-9
Short-term bike parking – one building, multiple entrances



Item 28 – Loading Space Dimensions
Item 29 – Loading Space Triggers

33.266.310 Loading Standards

C. Number of loading spaces.

D. Size of loading spaces.

Loading spaces with dimensions of 35' feet long by 10' feet wide and with a 13 foot clearance are required for all types of development. This is a loading space that is large enough to accommodate trucks making deliveries to larger commercial and industrial uses. Most deliveries to multi-dwelling development are made in smaller delivery vans. This is also true of multi-dwelling development that includes smaller retail uses on the ground floor like cafes and flower shops. These amendments will allow smaller loading spaces that are more tailored to the actual moving and delivery needs in multi-dwelling developments, including multi-dwelling development that includes some small retail uses.

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33.266.310 Loading Standards

A. Purpose. A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.

B. Where these regulations apply. The regulations of this section apply to all required and non required loading areas.

C. Number of loading spaces.

1. Buildings where all of the floor area is in Household Living uses must meet the standards of this Paragraph.

   a. One loading space meeting Standard B is required where there are more than 50 dwelling units in the building and the site abuts a street that is not a streetcar alignment or light rail alignment.

   b. One loading space meeting Standard B is required where there are more than 20 dwelling units in a building located on a site whose only street frontage is on a streetcar alignment or light rail alignment.

   c. One loading spaces meeting Standard A or two loading spaces meeting Standard B are required when there are more than 100 dwelling units in the building.

2. Buildings where any of the floor area is in uses other than Household Living must meet the standards of this Paragraph.

   a. Buildings with less than 20,000 square feet in floor area in uses other than Household Living that also include Household Living are subject to the standards in C.1, above.

   b. One loading space meeting Standard A is required for buildings with 20,000 ~~or more square feet, up~~ to 50,000 square feet of floor area in uses other than Household Living.

   c. Two loading spaces meeting Standard A are required for buildings with more than 50,000 square feet of floor area in uses other than Household Living.

D. Size of loading spaces. Required loading spaces must meet either Standard A or Standard B below, as specified in Subsection C. above.

   a. Standard A: the loading space must be at least 35 feet long, 10 feet wide, and have a clearance of 13 feet.

   b. Standard B: The loading space must be at least 18 feet long, 9 feet wide, and have a clearance of 10 feet.

E-G. [No Change.]

Item 48 – Solar Panels and Conditional Use
Item 49 – Parking and Conditional Use Review Type

CHAPTER 33.281
SCHOOLS AND SCHOOL SITES

33.281.050 Review Thresholds for Development

A.

5. (See Commentary for 33.815.040)

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Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.281
SCHOOLS AND SCHOOL SITES

33.281.050 Review Thresholds for Development

The following thresholds state the type of procedure used in the conditional use review for changes to development at schools and on school sites in the OS and R zones. Changes that are allowed by right are also stated.

A. Allowed by right. Alterations to the site that meet all of the following are allowed without a conditional use review.

1-4. (No Change.)

5. Alterations to parking areas other than Special Event Parking that meet the following:

   a. Will not ~~result in a net gain in the number of parking spaces~~ increase the net number of parking spaces by more than 1 space or 4 percent of the total number of parking spaces, whichever is greater. However, an individual or cumulative addition of more than 5 parking spaces is not allowed without a conditional use review; and

   b. Sites with up to 15 spaces, not including those used for Special Event Parking: will not result in a net loss in the number of parking spaces;

   c. Sites with 16 or more spaces, not including those used for Special Event Parking: will not decrease the number of spaces except as follows:

      (1) No reduction in shared parking spaces is allowed;

      (2) 1 space or 4 percent of the total number of parking spaces may be removed, whichever is greater; and

      (3) An individual or cumulative removal of parking spaces in excess of 5 spaces is ~~prohibited~~ not allowed without a conditional use review. The cumulative loss of parking is measured from the time the use became a conditional use, July 16, 2004, or the last conditional use review of the use, whichever is most recent, to the present.

6-8. (No Change.)

9. The addition of ground mounted solar panels.

B-C. [No Change.]

Item 60 – Wind Turbine Standards and Exemption to Reviews

[NEW] **CHAPTER 33.287**
WIND ENERGY SYSTEMS

Small Scale Urban Wind Energy Systems
Wind turbines have been employed in the production of useful work for hundreds of years in communities around the world. From the windmills of the Netherlands in the to the small water-pumping wind machines that spread west across America, wind power has proved a reliable, clean, energy source. While wind power development in the last decade has primarily occurred in rural areas using utility-scale equipment, a new generation of small grid-connected wind turbines are coming on the market with the potential for successful residential and commercial energy production. Advances in small-scale wind turbine technology in recent years make it possible to incorporate wind power into urban areas, into building design, or add small systems to rooftops.

Small scale distributed renewable energy systems may play a role in helping to diversify our energy sources, help reduce our dependence on foreign sources of energy, and help decrease the emissions of climate-changing greenhouse gases. Although Portland does not have the wind conditions to produce large amount of power from urban turbines, allowing these devices may help stimulate the advancement of the technology, and encourage entrepreneurial efforts in this industry.

The Zoning Code includes a series of chapters (the "200's Series") designed to address special kinds of uses and development that could occur in a variety of zones. This helps avoid the need to repeat the same special regulations in each zone. For example special regulations exist in a 200's chapter for radio transmission towers, recreational trails, parking, temporary activities, and landscaping. By creating a single new chapter for small scale urban wind systems, we can more easily create a simple and uniform set of rules. The proposed rules borrow from concepts used in other cities. The Seattle City Council amended its zoning code earlier this year to permit some small wind energy systems. The noise standard is borrowed from similar zoning code allowances that exist in some Dutch cities. The proposed code also references an emerging standard being developed by the Small Wind Certification Council. A new definition is also proposed, to distinguish small turbines from larger systems that might have larger impacts. For context, there are any different wind turbines, at different scales. For example:

• A single Vestas wind turbine such as those at the PGE Biglow Canyon wind farm in eastern Oregon produces up to 2,000,000 watts, has a rotor diameter of 270 feet, is mounted on a tower 265 feet tall, has an overall height of 400 feet, and a swept rotor area of over 57,000 square feet. The equipment cost is over $1.5 million.
• The Skystream 3.7 , a popular small commercial and residential wind turbine, produces up to 2,400 watts, has a rotor radius of 12 feet, can be mounted on a tower 40 feet tall, and has a swept rotor area of 130 square feet. Installed cost is approximately $14,000.
• The Helyx HE-100 by Oregon Wind is a vertical axis design that produces up to 80 watts, is 42 inches tall by 17 inches wide, can be mounted on the roof of a building, and has an estimated cost of $2,000.

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[NEW] **CHAPTER 33.287**
WIND ENERGY SYSTEMS
(Ord. No. *, effective *.)

Sections:

33.287.010 Purpose.
Small wind energy systems are regulated to:

- Distinguish small, urban scale wind installations from large and utility scale installations.
- Encourage the advancement and development of appropriate urban wind energy systems, where they are feasible.
- Allow small urban scale wind installations to be integrated into the urban fabric.

33.287.100 When the regulations apply
This chapter applies to small wind energy turbines with a rated output of 10 kW or less, and certified by the Small Wind Certification Council to meet the American Wind Energy Associations (AWEA) Small Wind Turbine Performance and Safety Standards. These systems are generally intended to supply electricity to buildings or individual sites, and may or may not be connected to the power grid. Large wind energy turbines and utility-scale wind energy turbines are subject to the regulations of the zone in which they are located. See 33.910.030, Definitions.

33.287.110 Generally
Small wind energy turbines may be either pole mounted, or building mounted, with either vertical or horizontally mounted rotors.

33.287.115 Rotor swept area
The rotor swept area is the projected area as defined by the American Wind Energy Association (AWEA). For Residential zones, the maximum rotor swept area is 20 square feet. For Commercial zones, the maximum rotor swept area is 100 square feet.

33.287.120 Setbacks and height
Small wind energy turbines must meet one of the setback and height standards of this section. The height of a turbine is measured to the tip of the rotor blade at its highest point.

A. Pole mounted. Pole mounted turbine towers shall be set back at least 10 feet from all lot lines and are not allowed in front building setbacks. For every additional foot of setback, the height of the turbine may increase one additional foot above the base zone height limit, up to 50% above the base zone height limit. For example, in a zone with a 30 foot height limit, a pole mounted turbine that is set back 25 feet or more may be 45 feet tall.

Small Scale Urban Wind Energy Systems (cont.)

The proposed regulations would limit the size of turbines and towers in residential areas. Allowing large systems in those areas would likely produce conflict over noise and visual impacts. Higher height limits are proposed in order to ensure turbines are functional. They generally need to be located above the height of surrounding buildings and trees to avid turbulence. Not all properties are well suited for wind energy systems. The best locations may be on tall buildings, at ridgetops, along bluffs, and near rivers. The City may develop maps of promising areas in the future, but incorporation of wind energy viability maps into the Zoning Code is not recommended.

Impacts to bird and bat populations have been raised as a possible concern associated with urban wind turbines. Extensive avian monitoring studies are performed in the development process of utility-scale wind farms. These wind farms often represent a change of land use affecting hundreds of acres, involve significant road construction, require the construction of high-voltage transmission lines, and require investment of hundreds of millions of dollars. In this context, it is appropriate to require thorough wildlife studies. In contrast, the installation of a small wind turbine to meet a building's electrical demand in an urban area involves minimal or no land use changes, towers of a much smaller scale (or none at all), low-voltage interconnection, and a total investment on the order of tens of thousands of dollars. According to estimates from the US Fish and Wildlife Agency, three leading causes of avian mortality in urban areas are collisions with building windows, collisions with cars, and predation by housecats. The window surfaces of buildings are currently not reviewed for their avian impact. The proposed regulations do not exempt wind systems from applicable environmental overlay zone regulations.

The proposed noise standard for urban wind systems is lower than the normal standard for residential neighborhoods. If this technology is to be successful, it will need to have minimal impact to quality of life. For comparison:

Noise Source	Decibels (dBA)
Library whisper	30
Proposed Small Wind Energy System Noise Standard	45
Conversation at 3-5 feet distance	60-70
City traffic inside a car	85
Lawn mower	107

B. Building mounted. Building mounted turbines are subject to the building setbacks applicable to the building they are mounted on. They may be up to 50% above the base zone height limit, or 25 feet above the height of the building they are mounted on, whichever is less. For example, on a 40 foot high building, in a zone with a 45 foot height limit, a building mounted turbine would be subject to a 65 foot height limit.

C. RF zones. In RF zones, in addition to meeting either standard A or B, there is no height limit if the turbine is set back from all lot lines a distance equal to its total height.

D. Industrial zones. In industrial zones, where the base zone contains no height limit, there is also no height limit for small wind energy turbines. For Lot lines that abut residentially-zoned sites, either standard A or B must be met, along that lot line.

33.287.140 Noise.
In residential zones, turbines must have an AWEA-rated sound level of 45dBA or less. The City noise standards also apply, in all zones, as stated in Title 18, Noise Control.

CHAPTER 33.420
DESIGN OVERLAY ZONE

33.420.045 Exempt from Design Review

Item 31 – Louvers in Design Overlay Zones
Louvers and exhaust vents are often required for certain tenants after a building has been approved and constructed. As a result, they are not part of the original design review. This is especially true when ground floor tenants, such as restaurants, move into previously unoccupied space in new buildings. These installations trigger a separate design review, which cause delays in the occupancy of the tenant space. Because the ventilation system has a limited number of installation options, the design reviews focus on a few key points, such as the location of the louvers and their integration into the existing window mullion system. The design team that reviews these cases for the Bureau of Development Services felt that a set of simple standards could achieve the same design integration as the design review process, while preventing delays in occupancy.

This amendment creates an exemption to design review for louvers/exhaust systems, provided they meet a set of standards. These standards include a maximum size limit, the requirement that the louver be placed at the top of the ground floor façade to limit the effect on adjacent pedestrians, and standards to ensure the louver is integrated into the existing window mullion system. Louvers not meeting these standards would still be required to follow the design review process.

Item 32 – Solar Panel Design Review Exemption
Item 33 – Eco-roof Design Review Exemption

33.420.045 Exempt From Design Review
This amendment creates several new Design Review exemptions for solar panels, and eco-roofs. This would allow these improvements to be added to existing buildings without triggering Design Review. The exemption is focused on situations when nothing else is being done to the building. If these improvements are proposed as part of a larger change to the site or building, where design review is already required, then these improvements would still be evaluated as part of that Design Review.

A separate exemption for eco-roofs in Historic and Conservation Districts is found later in this report.

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33.420.045 Exempt From Design Review
The following items are exempt from design review:

A-W. [No Change.]

X. Louvers for mechanical ventilation placed within existing ground floor window mullions, which meet the following requirements:

1. The maximum size of each louver is 8 square feet, and the maximum height of each louver is three feet. However, in no case may each louver have a dimension different from the size of the existing window mullion opening;

2. The window system containing the louver must not be higher than the bottom of the floor structure of the 2nd floor;

3. The bottom of the louvers must be at least 8 feet above adjacent grade;

4. The louvers may not project out further than the face of the window mullion;

5. The louvers are painted to match the existing window mullion color/finish;

Y. Solar panels. Within the Central City and Gateway Plan Districts, solar panels installed on existing buildings where no other exterior improvements subject to design review are proposed.

1. This exemption applies only to panels installed on a flat roof or a roof surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface and must meet the following:

   a. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, not including the parapet.

   b. The panels and racks must be set back 5 feet from the edge of the roof.

Z. Eco-roofs. Eco-roofs installed on existing buildings when the roof is flat or surrounded by a parapet that is at least 12 inches higher than the highest part of the eco-roof surface, and when no other nonexempt exterior improvements subject to design review are proposed. Plants must be species that do not characteristically exceed 12-inches in height at mature growth.

Item 34 – Environmental Zone Exemptions

CHAPTER 33.430
ENVIRONMENTAL ZONES

33.430.080 Items Exempt From These Regulations

C. Existing development, operations, and improvements, including the following activities:

6.

c. There is a memorandum of understanding (MOU) between the City and the Multnomah County Drainage District (MCDD) regarding maintenance of drainage channels. The Environmental Code Improvement Project was completed a few years ago partly with the intent of negating the need for the MOU. City environmental planning staff worked with the MCDD to craft environmental review exemption language that captures the necessary work the MCDD needs to do to maintain drainage channels. Recently, it has become clear that the code language does not encompass the full range of work activities that MCDD needs to do to maintain the channels. The code exempts work below the ordinary high water mark, but MCDD does work both above and below the ordinary high water mark. This change clarifies that drainage channel maintenance work by MCDD above the ordinary high water mark is also exempt from environmental review.

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CHAPTER 33.430
ENVIRONMENTAL ZONES

33.430.080 Items Exempt From These Regulations

The following items, unless prohibited by Section 33.430.090, below, are exempt from the regulations of this chapter. Other City regulations such as Title 10, Erosion Control, must still be met:

A-B. [No Change.}

C. Existing development, operations, and improvements, including the following activities:

1-5. [No Change.}

6. Operation, maintenance, and repair of drainage facilities, flood control structures, and conveyance channels that are managed by Drainage Districts as defined in ORS 547, and where the activity is conducted or authorized by the Drainage District. This exemption does not apply if dredge spoils are placed onto the top of banks of the drainageway, or onto upland portions of the environmental overlay zone. Operation, maintenance, and repair of drainage facilities include:

   a. Dredging and channel cleaning of existing drainage facilities and vegetative maintenance within the minimum floodway cross-section of drainageways;

   b. Operation, maintenance, and repair of drainage district pump stations, water control structures, or levees;

   c. Reconfiguring the cross-section of drainage channels ~~below the ordinary high water mark~~, or changing the location of the low flow channel within a wider drainage channel; and

   d. Stabilizing banks and restoring levees back to original condition and footprint;

7-12. [No Change.]

D-E. [No Change.]

Item 35 – Environmental Zone Development Standards for Land Divisions

33.430.150 Standards for Utility Lines
33.430.160 Standards for Land Divisions and Planned Developments

The environmental zones chapter includes standards for several types of development. Often, utility lines run through an area that can either meet the disturbance area standards of 33.430.140 or has been approved for disturbance as part of an Environmental Review. When the utility lines run through an area allowed per general development standards or approved for disturbance, there is no reason to impose a disturbance area limitation for the construction of the utility or to require replanting. Frequently, these utility lines run through allowed disturbance areas that are used to meet outdoor area requirements or underneath paved areas for driveways or walkways. Therefore, the replanting requirement conflicts with development that is allowed per the general development standards. The disturbance area limitations and replanting requirements should not apply when the utility runs through an area allowed or approved to be disturbed.

Language to be **added** is underlined
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33.430.150 Standards for Utility Lines
The following standards apply to private connections to existing utility lines and the upgrade of existing public utility lines in resource areas. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

A. The disturbance area for private connections to existing utility lines is no greater than 10 feet wide, unless the private connection extends through disturbance area allowed per 33.430.140;

B. The disturbance area for the upgrade of existing public utility lines is no greater than 15 feet wide, unless the private connection extends through disturbance area allowed per 33.430.140;

C. The utility construction does not occur within a stream channel, identified wetland, or water body;

D. Disturbance areas outside of disturbance area allowed by 33.430.140 must be planted with native species listed in the *Portland Plant List* according to the following densities:

1-3. [No Change.]

E. Native trees more than 10 inches in diameter may not be removed; and

F. Each 6 to 10-inch diameter native tree cut must be replaced at a ratio of three trees for each one removed. The replacement trees must be a minimum one-half inch diameter and selected from the *Portland Plant List*. All trees must be planted on the applicant's site but not within 10 feet of a paved surface. Where a utility line is approximately parallel with the stream channel at least half of the replacement trees must be planted between the utility line and the stream channel.

33.430.160 Standards for Land Divisions and Planned Developments
The following standards apply to land divisions and Planned Developments in the environmental overlay zones. All of the standards must be met. Modification of any of these standards requires approval through environmental review described in Sections 33.430.210 to 33.430.280.

A-I. **[No Change.]**

J. Utility construction must meet the applicable standards of Section 33.430.150. Private utility lines located on a lot where the entire area of the lot is approved to be disturbed and where the private utility line provides connecting service directly to the lot from a public system are exempt from this standard.

Commentary

Item 50 Historic Designation and Removal and National Register properties

CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

33.445.100 Designation of a Historic Landmark.
In conjunction with the amendments made to 33.846.030 and 040, this amendment clarifies that the city process for historic landmarks and districts only affects their local standing as landmarks or districts. The language for the removal of a designated landmark or district already contains a reference to the local designation.

33.445.300 Designation of a Historic District.
See above commentary.

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CHAPTER 33.445
HISTORIC RESOURCE PROTECTION OVERLAY ZONE

Historic Landmarks

33.445.100 Designation of a Historic Landmark
Local designation of Historic Landmarks may be established~~designated~~ by the Historic Landmark Commission through a legislative or quasi-judicial procedure.

A. Designation by Historic Landmark Commission. Historic Landmark designation may be established by the Historic Landmark Commission through a legislative procedure, using the approval criteria of Section 33.846.030.C.

B. Quasi-judicial designation. Historic Landmark designation may be established through a quasi-judicial procedure; historic designation review is required.

33.445.110 Removal of a Historic Landmark Designation

A. Requests for removal. Removal of a resource's designation as a local Historic Landmark requires a historic designation removal review, except when the resource is destroyed or relocated as specified in Subsections B and C, below.

B. Removal after destruction. If the resource is destroyed by causes beyond the control of the owner, its Historic Landmark designation is automatically removed.

C. Removal after demolition. If the resource is demolished or relocated, after approval of demolition through demolition review or after demolition delay, its Historic Landmark designation is automatically removed.

Historic Districts

33.445.300 Designation of a Historic District
Local designation of Historic Districts may be established~~designated~~ by the Historic Landmark Commission through a legislative or quasi-judicial procedure.

A. Designation by Historic Landmark Commission. Historic District designation may be established by the Historic Landmark Commission through a legislative procedure, using the approval criteria of Section 33.846.030.C.

B. Quasi-judicial designation. Historic District designation may be established through a quasi-judicial procedure; historic designation review is required.

33.445.310 Removal of a Historic District Designation
Removal of a resource's designation as a local Historic District requires a historic designation removal review.

Item 37 – Solar Panel Historic Design Review Exemption
Item 38 – Eco-roof Historic Design Review Exemption

33.445.320 Development and Alterations in a Historic District

B. Exempt from historic design review.
This amendment creates a new Historic Design Review exemptions, for solar panels and eco-roofs. This would allow solar panels and eco-roofs to be added to existing buildings in appropriate situations without triggering Historic Design Review. The exemption is focused on situations when nothing else is being done to the building. If these improvements are proposed as part of a larger change to the site or building, where design review is already required, then these improvements would still be evaluated as part of that Historic Design Review. These exemptions are more conservative than the exemption proposed for Design Review, recognizing the special role that Historic Districts play in preserving the City's heritage.

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33.445.320 Development and Alterations in a Historic District
Building a new structure or altering an existing structure in a Historic District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. [No Change.]

B. Exempt from historic design review.

1-7. [No Change.]

8. Solar panels that are located:

a. On a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface. The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, Solar panels must also be screened from the street by:

(1) an existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or

(2) setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.

b. On a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5. In addition, solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6.

9. Eco-roofs installed on existing buildings when the roof is flat or surrounded by a parapet that is at least 12 inches higher than the highest part of the eco-roof surface, and when no other nonexempt exterior improvements subject to historic design review are proposed. Plants must be species that do not characteristically exceed 12-inches in height at mature growth.

Item 38 – Eco-roof Historic Design Review Exemption

33.445.420 Development and Alterations in a Conservation District

B. Exempt from historic design review.

This amendment creates a new Historic Design Review exemption in Conservation Districts, for eco-roofs. This would allow eco-roofs to be added in some situations to existing buildings without triggering Historic Design Review. The exemption is focused on situations when nothing else is being done to the building. If these improvements are proposed as part of a larger change to the site or building, where design review is already required, then these improvements would still be evaluated as part of that Historic Design Review. These exemptions are more conservative than the exemption proposed for Design Review, recognizing the special role that Conservation Districts play in preserving the City's heritage.

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33.445.420 Development and Alterations in a Conservation District
Building a new structure or altering an existing structure in a Conservation District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. [No Change.]

B. Exempt from historic design review.

1-7. [No Change.]

9. Eco-roofs installed on existing buildings when the roof is flat or surrounded by a parapet that is at least 12 inches higher than the highest part of the eco-roof surface, and when no other nonexempt exterior improvements subject to historic design review are proposed. Plants must be species that do not characteristically exceed 12-inches in height at mature growth

Item 37 – Solar Panel Historic Design Review Exemption

33.445.720 When Community Design Standards May Not Be Used

F. The community design standards can be used as an alternative to historic design review in conservation districts. Draft amendments to Chapter 33.218 earlier in this document include standards that will allow solar panels to be installed in conservation districts with historic design review. Conservation landmarks have special status in conservation districts. This amendment will require that a review be required before installing solar panels conservation landmarks.

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33.445.720 When Community Design Standards May Not Be Used.
The Community Design Standards may not be used as an alternative to historic design review as follows:

A-E. [No Change.]

F. To install solar panels on a conservation landmark.

Item 39 Eco-Roof FAR Bonus

33.510.210 Floor Area and Height Bonus Options

C. Bonus floor area options

The code provides options for bonus floor area in the Central Plan District. Bonuses are an incentive for providing amenities that may benefit occupants of a building as well as the public at large. This list of amenities includes roof-top gardens and eco-roofs. The code includes a restriction against receiving bonus floor area for both roof-top gardens and eco-roofs at the same time. This restriction was intended to prevent "double-dipping" where two bonuses could be obtained by providing the same feature. The restriction does not allow for situations where part of the roof-top may be used as a roof-top garden and part as an eco-roof. This amendment allows the option to have part of the roof as a roof-top garden and part as an eco-roof and receive the appropriate bonus for each part.

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33.510.210 Floor Area and Height Bonus Options

A-B. [No Change

C. Bonus floor area options. Additional development potential in the form of floor area is earned for a project when the project includes any of the specified features listed below. The bonus floor area amounts are additions to the maximum floor area ratios shown on Map 510-2.

1-3. [No Change.]

4. Rooftop gardens option. In CX, EX, and RX zones outside of the South Waterfront Subdistrict, developments with rooftop gardens receive bonus floor area. For each square foot of rooftop garden area, a bonus of one square foot of additional floor area is earned. To qualify for this bonus option, rooftop gardens must meet all of the following requirements.

   a. The rooftop garden must cover at least 50 percent of the roof area of the building and at least 30 percent of the garden area must contain plants.

   b. The property owner must execute a covenant with the City ensuring continuation and maintenance of the rooftop garden by the property owner. The covenant must comply with the requirements of 33.700.060.

5-9. [No Change.]

10. Eco-roof bonus option. Eco-roofs are encouraged in the Central City because they reduce stormwater run-off, counter the increased heat of urban areas, and provide habitat for birds. An eco-roof is a rooftop stormwater facility that has been certified by the Bureau of Environmental Services (BES). Proposals that include eco-roofs receive bonus floor area. ~~A proposal may not earn bonus floor area for both the eco-roof option and the rooftop gardens option; only one of these options may be used~~. A proposal may earn bonus floor area for both the eco-roof option and the rooftop gardens option. For purposes of the calculating the respective bonuses, the area of the rooftop may be treated as rooftop garden or as eco-roof, but not as both.

   a. Bonus. Proposals that include eco-roofs receive bonus floor area as follows:

      (1) Where the total area of eco-roof is at least 10 percent but less than 30 percent of the building's footprint, each square foot of eco-roof earns one square foot of additional floor area.

      (2) Where the total area of eco-roof is at least 30 percent but less than 60 percent of the building's footprint, each square foot of eco-roof earns two square feet of additional floor area.

      (3) Where the total area of eco-roof is at least 60 percent of the building's footprint, each square foot of eco-roof earns three square feet of additional floor area.

Commentary

(See commentary on previous commentary page.)

b. Before an application for a land use review will be approved, the applicant must submit a letter from BES certifying that BES approves the eco-roof. The letter must also specify the area of the eco-roof. Final plans and specifications are required to be submitted with building permit applications.

c. The property owner must execute a covenant with the City ensuring installation, preservation, maintenance, and replacement, if necessary, of the eco-roof. The covenant must comply with the requirements of 33.700.060.

11-19. [No Change.]

Item 53 - Solar Panels Exemption from Standards
Item 60 - Wind Turbine Standards and Exemption to Reviews

CHAPTER 33.515
COLUMBIA SOUTH SHORE PLAN DISTRICT

33.515.235 Rooftops

C. Rooftop mechanical equipment.

Standards in the Columbia South Shore Plan District require that rooftop mechanical equipment be screened or painted to match the color of the rooftop. Solar panels and wind turbines differ from other rooftop installations in that their purpose is to generate energy. Solar panels need access to the sun to generate energy. Screening or painting the panels would block access. Wind turbines need access to the wind. Screening would block this access. Because wind turbines have large exterior moving parts, painting them is not practical.

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33.515.235 Rooftops

A. Purpose. Rooftops in the plan district are highly visible from Marine Drive, view corridors, and Airport Way. Rooftop standards are intended to reduce the visual impact of rooftop surfaces and rooftop mechanical equipment from those vantage points.

B. Where the regulations apply. The rooftop standards apply to all parts of South Shore except for the Southern Industrial subdistrict.

C. Rooftop mechanical equipment. These standards apply to rooftop mechanical equipment. They do not apply to roof mounted solar panels and wind turbines.

1. Latticework screen wall. Within 200 feet of Marine Drive, Airport Way, or a view corridor vantage point, all rooftop mechanical equipment must be screened from view or not visible from those vantage points. Screen materials will consist of a full screen wall or latticework screen wall. The screen wall need not extend more than one foot above rooftop equipment. The latticework screen may be constructed of a variety of permanent materials, but must be 50 percent sight-obscuring and painted to match the roof or closest wall, whichever is the predominant visible surface from those vantage points.

2. Painting to match rooftop. Each rooftop mechanical equipment unit that interrupts less than 25 square feet of roof surface area may be painted instead of screened, as provided in Paragraph C.1. The paint color must match the rooftop color or closest wall, whichever is the predominant visible surface from Marine Drive, Airport Way, or a view corridor vantage point.

Item 40 – Northwest Plan District FAR

CHAPTER 33.562
NORTHWEST PLAN DISTRICT

33.562.220 Floor Area Ratios

B. Minimum floor area ratio.

2. Regulation.

The Northwest plan district includes minimum floor area ratio requirements (FAR) in the CS and CM zones. These zones are located along commercial street frontages in the Northwest District. The intent of the FAR minimums is to ensure that these frontages are developed with buildings of at least 2 stories to help create a vibrant street front. Although they are commercial zones, the CM and CS zones also allow residential uses. This amendment clarifies that both the residential and non-residential portions of the development count towards the FAR minimum.

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CHAPTER 33.562
NORTHWEST PLAN DISTRICT

33.562.220 Floor Area Ratios

A. Purpose. The regulations of this section encourage a transit-supportive level of development along main streets and the streetcar alignment, prevent buildings that are out of scale with the surrounding neighborhood, encourage vehicle parking to be within buildings, and allow larger buildings as screening along raised freeways.

B. Minimum floor area ratio.

1. Where this regulation applies. The regulation of this subsection applies:

   a. In the CM and CS zones; and

   b. In the EX zone, on the portion of a site within 200 feet of a main street or streetcar alignment. Main streets and the streetcar alignment are shown on Map 562-7.

2. Regulation. The minimum required floor area ratio is 1.5 to 1. This includes both residential and non-residential floor area.

C. Maximum floor area ratios.

1. Maximum floor area ratios are shown on Map 562-5. Map 562-5 also shows areas where nonresidential uses are limited to an FAR of 1:1 within the total FAR allowed on a site. Additional floor area is allowed as specified in Section 33.562.230, Bonus Options.

2. Half the floor area used for accessory parking is not counted toward maximum floor area ratios.

Item 8– Courtyard Housing: Density Gap between R1 and R2 zones
Item 42 – Courtyard Housing: Courtyard Tract and Density Calculations

33.612.100 Density

A. Single-dwelling or duplex development.

An issue that was illustrated during the review of the Courtyard Housing Competition entries was how the provision and size of the common green and/or shared courts could impact the allowed maximum density. Currently, the provision of larger, shared common tracts negatively impacts the number of units that can be placed on a site, since this tract can not be used to count toward the maximum density calculation. Also, developments done without land divisions can propose a higher number of units since their common area isn't taken out of land division calculations.

This amendment removes the disincentive for applicants to propose common greens and shared courts and, if proposed, allows them to be as large as possible without affecting the allowed number of units. The amendment allows applicants to include areas used for common greens and shared courts into the calculation for maximum density.

Under this provision, more flexibility will be provided for projects that propose a separate common green tract.

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CHAPTER 33.612
LOTS IN MULTI-DWELLING ZONES

33.612.100 Density

A. Single-dwelling or duplex development. When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3. Site area devoted to streets is subtracted from the total site area in order to calculate minimum and maximum density, with the exception that area used for common greens and shared courts is not subtracted from the total site area to calculate maximum density.

B. All other development. When development other than single-dwelling or duplex is proposed, minimum and maximum density must be met at the time of development.

Item 43 – Planned Developments and Residential Uses in I zones

CHAPTER 33.638
PLANNED DEVELOPMENTS

Sections:
This list is amended to indicate the new section which creates limitations on residential development in I and E zones.

33.638.100 Additional Allowed Uses and Development

I. Transfer of development within a site.

4. All zones. In conjunction with the addition of the new section which limits residential development in I and E zones, this section is amended to clarify that residential floor area cannot be transferred from any I, EG1 and EG2 zones.

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CHAPTER 33.638
PLANNED DEVELOPMENT

Sections:

33.638.100 Additional Allowed Uses and Development

In addition to the housing types and uses allowed by other chapters of this Title, the following uses and development may be requested through Planned Development Review. More than one of these elements may be requested:

A-H. [No change.]

I. Transfer of development within a site. Transfer of development rights across zoning lines within the site may be proposed as follows:

1. RF through R1 zones. If the site is located in more than one zone, and all the zones are RF through R1, the total number of units allowed on the site is calculated by adding up the number of units allowed by each zone. The dwelling units may be placed without regard to zone boundaries.

2. RH and RX zones. If the site is located in more than one zone, and the zones are RH and RX, the total amount of floor area allowed on the site is calculated by adding up the amount of floor area allowed by each zone. The floor area may be placed without regard to zone boundaries.

3. C, E, and I zones. If the site is located in more than one zone, and all the zones are C, E, and I zones, the total amount of floor area allowed on the site is calculated by adding up the amount of floor area allowed by each zone. The floor area may be placed without regard to zone boundaries.

4. All zones. If the site is located in more than one zone, and at least one of the zones is RF through R1, and at least one of the zones is RH, RX, C, or EX, ~~or I,~~ then the total number of dwelling units allowed on the site is calculated as follows:

   a. The number of units allowed on the RF through R1 portion of the site is calculated in terms of dwelling units;

   b. The number of units allowed on the other portion of the site is calculated in terms of floor area;

   c. The floor area calculation is converted to dwelling units at the rate of 1 dwelling unit per 1,000 square feet of floor area;

   d. The two dwelling unit numbers are added together, and may be placed without regard to zone boundaries.

Item 43 – Planned Developments and Residential Uses in I zones

33.638.110 Limitations on Residential Uses and Development.

This is a new section created to clarify city policy in regards to residential uses in certain zones. In general, under the base zone, residential uses are prohibited in all I (industrial) zones. This prohibition is to ensure current City, Metro and State requirements that protect industrially designated lands. It would be inconsistent with this policy to allow residential uses in industrial zones as part of a planned development. In addition, the I zones do not have a maximum FAR. Under current regulations, they could transfer an infinite amount of floor area to adjacent residential zones. That was not the intent of the original planned development options. This amendment limits the uses in the industrial zones and the transferring of floor area from industrial zones.

A similar amendment is also proposed for the EG1 and EG2 zones. Current Metro and City policy is to limit certain uses in these areas, including residential uses. This change continues the policy that is implicit in our base zones. In addition the amendment limits the ability to draw floor area from the EG zones to load onto adjacent residential zones.

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J. Transfer of development between sites. Sites that are eligible to transfer development rights to another site are designated in other chapters of this Title. Where such transfers occur, both the sending and receiving sites must be part of a Planned Development.

33.638.110 Limitations on Residential Uses and Development

The following limitations apply to Planned Developments that are within EG or I zones

A. Industrial zones. Residential uses and development in industrial zones is prohibited. Floor area from industrial zones cannot be transferred and used for residential uses within other zones.

B. EG1 and EG 2 zones. If a residential use is normally allowed in an EG1 or EG2 zone through a Conditional Use Review, then residential uses proposed for an EG1 or EG2 zone as a Planned Development must also go through a Conditional Use Review. Floor area from EG1 and EG2 zones cannot be transferred and used for residential uses within other zones.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

CHAPTER 33.667
PROPERTY LINE ADJUSTMENTS

33.667.300 Regulations

A. Properties.

1. This amendment adds a new provision for lots, which include adjusted lots as defined in 33.910. Currently, a property line adjustment cannot bring an existing lot out of compliance with the minimum lot standards for new lots. If the existing lots don't currently meet these standards, they are not allowed to go further out of compliance. This means that a property line adjustment involving two – 2,500 square foot lots in an R5 zone cannot reduce the size of either of the lots. This has often created some interesting lot lines, especially when done on a corner lot, where the lot line has been 'swiveled' 90 degrees to create another buildable area. This amendment allows a special provision when a property line adjustment involves a corner site in the R5 zone. This will allow a lot line to be swiveled 90 degrees and the resultant properties will be able to meet the lower size thresholds for existing lots in the new table in 33.110. Specifically, a 2500 square foot lot may be able to get reduced to 1600 square feet as long as it maintains a width of 36 feet.

3. This is a new restriction which will not allow a property line adjustment to be used to turn a non-buildable lot remnant into a buildable property. Lot remnants are small portions of a lot that were often transferred in a property line adjustment and were never intended to be a separately buildable parcel. Instead of using the property line adjustment process, owners should go through current land division processes to create new lots in these situations.

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CHAPTER 33.667
PROPERTY LINE ADJUSTMENTS

33.667.300 Regulations

A request for a Property Line Adjustment will be approved if all of the following are met:

A. Properties. For purposes of this subsection, the site of a Property Line Adjustment is the two properties affected by the relocation of the common property line.

1. The Property Line Adjustment will not cause either property or development on either property to move out of conformance with any of the regulations of this Title, including those in Chapters 33.605 through 33.615 except as follows:

   a. If a property or development is already out of conformance with a regulation in this Title, the Property Line Adjustment will not cause the property or development to move further out of conformance with the regulation;

   b. If both properties are already out of conformance with maximum lot area standards, they are exempt from the maximum lot area standard; ~~and~~

   c. If one property is already out of conformance with maximum lot area standards, it is exempt from the maximum lot area standard~~.~~; and

   d. If the site involves two lots or adjusted lots on a corner in an R5 zone, the lots may meet the minimum requirements listed under Standard C in Table 110-X of 33.110.212.C.3.b as an option to Chapter 33.610. See Figure 667-X.

2. The Property Line Adjustment will not configure either property as a flag lot, unless the property was already a flag lot;

3. The Property Line Adjustment will not result in the creation of a buildable property from an unbuildable lot remnant;

4~~3~~. The Property Line Adjustment will not result in the creation of street frontage for a land-locked property;

5~~4~~. If any portion of either property is within an environmental overlay zone, the provisions of Chapter 33.430 must be met;

6~~5~~. The Property Line Adjustment will not result in a property that is in more than one base zone, unless that property was already in more than one base zone; and

7~~6~~. The Property Line Adjustment will not create a nonconforming use.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone (contd)

Figure 667-1
This is a new figure that illustrates the intent of Standard A.1.d listed on the previous page.

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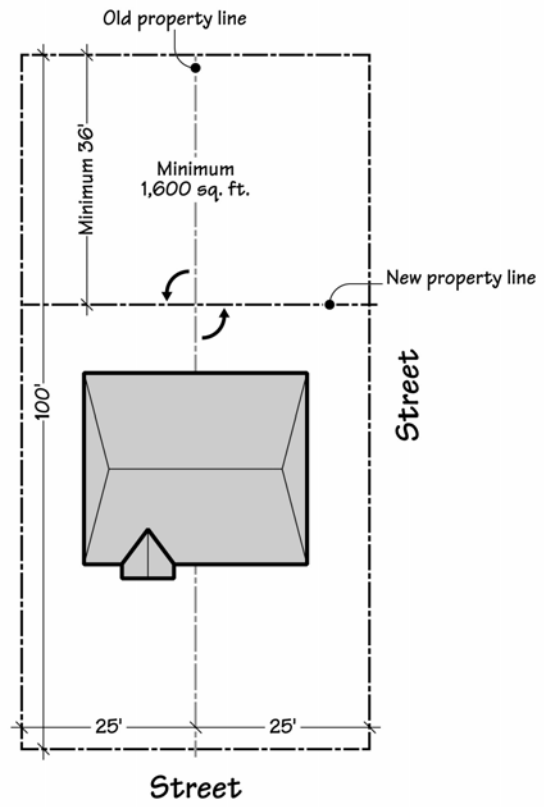
Figure 667-1
Property Line Adjustment on Corner Site in R5 Zone



Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

33.700.130 Legal Status of Lots

This amendment brings our code into consistency with the state regulations regarding the legal status of lots. In addition, we are providing clarification within the definitions and single dwelling zones on how to determine the buildability of lots that have had one or more of their property lines altered. Therefore, the language about property remnants is not needed in this section.

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CHAPTER 33.700
ADMINISTRATION AND ENFORCEMENT

33.700.130 Legal Status of Lots

A. A lot shown on a recorded plat remains a legal lot except as follows:

1. The plat, or the individual lot or parcel lines have~~s~~ been vacated as provided by City Code; or

2. The lot has been further divided, or consolidated, as specified in the 600 series of chapters in this Title, or as allowed by the former Title 34;

~~3. The lot as originally platted is no longer whole and consists of individual property remnants. These remnants are not considered legal lots. However, they may still be considered lots of record. See the definition of "lot of record" in Chapter 33.910, Definitions.~~

B. Where a portion of the lot has been dedicated for public right-of-way, the remaining portion retains its legal status as a lot, unless it has been further altered as specified in Subsection A, above.

C. The determination that a lot has legal status does not mean that the lot may be developed, unless all requirements of this Title are met.

Item 44 – Type II Notice Procedure
Item 45 – Hearings Officer Decisions on Comprehensive Plan Map Amendments

CHAPTER 33.730
QUASI-JUDICIAL PROCEDURES

33.730.010 Purpose

This section is amended to clarify that not all Quasi-Judicial Land Use Reviews are required to be completed within 120 days. See below for more information on the actual amendment to the decision dates for Type III reviews.

33.730.020 Type II Procedure

D. Processing Time. The current regulations for processing a Type II Land Use Review require that the reviewer wait at least 21 days from the mailing of the notice to make a decision. However, the notice of the decision must be sent out 28 days after the application is complete. Due to workload and job duties, it will sometimes take a day or two between when an application is deemed complete and when the notice is mailed out. This can cut into the time that the reviewer has to make a decision after allowing for public comment. To be more consistent, and provide the reviewer with a full week to review comments and make a decision, the code is amended to require that the decision be mailed out 28 days after the notice is mailed, rather than after the application is found complete.

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CHAPTER 33.730
QUASI-JUDICIAL PROCEDURES

33.730.010 Purpose

This chapter states the procedures and requirements for quasi-judicial reviews. It contains the step-by-step processing requirements. The chapter also describes the rules of conduct for all people involved in the quasi-judicial review process. The assignment of procedures to specific reviews is done in the chapter that establishes the review. The assignment of the review body is done in Chapter 33.720, Assignment of Review Bodies.

The regulations provide standardized methods for processing quasi-judicial land use reviews. The requirements provide clear and consistent rules to ensure that the legal rights of individual property owners and the public are protected. The rules implement state law, including the requirement that most quasi-judicial reviews must be completed within 120 days of filing a complete application. The Type II, Type IIx, Type III, and Type IV procedures, with their varying levels of review, provide the City with options when assigning procedures to each quasi-judicial review in this Title. The Type I procedure is an administrative procedure.

The Type I procedure, or limited land use review, allows local decisions to be made administratively for such reviews as minor design cases. The Type II procedure is the shortest and simplest of the other three quasi-judicial reviews. It is intended for reviews which involve lesser amounts of discretion, lower potential impacts, or both. The Type IIx procedure is used primarily for land divisions. It provides more time to make the administrative decision than the Type II procedure. The Type III procedure is a longer and more in-depth review. It is intended for reviews which involve substantial discretion or high impacts. The Type IV procedure is used to review proposals to demolish certain significant historic resources.

33.730.020 Type II Procedure

The Type II procedure is an administrative process, with the opportunity to appeal the Director of BDS's decision to another review body.

A-C. [No change.]

D. Processing time. Upon determining that the application is complete, the Director of BDS will make a decision on the case as follows:

1. The Director of BDS will not make the decision until 21 days after the notice required by Subsection C, above, is mailed.

2. The Director of BDS will make a final decision on the case and mail a notice of decision within 28 days after the notice required by Subsection C. above is mailed ~~application is determined complete~~. The applicant may extend this time limit.

E-I. [No change.]

Item 45 – Hearings Officer Decisions on Comprehensive Plan Map Amendments

33.730.030 Type III Procedure

E. Decision by review body if site is in the City of Portland.

Most land use decisions in the City of Portland are subject to a strict timeline. This is based on the state requirement that requires quasi-judicial land use reviews to be completed within 120 days after filing a complete application. As a result, in situations involving a hearings officer decision, our code requires that the hearings officer mail notice of the decision within 17 days of the close of record.

However, decisions involving amendments to the City's Comprehensive Plan Map are not subject to the state 120 day rule. These decisions can often be more complex, sometimes requiring the Hearings Officer to hold multiple hearings and weighing of various options in order for the recommendation to be made. Assigning the Hearings Officer the same 17 day deadline that applies to other Type III reviews has caused a hardship on the Hearing's Officer in some instances. Since there is no state justification for completing a Comprehensive Plan Map Amendment within a certain time frame, it makes sense to provide additional time for the Hearing's Officer to make, and publish his/her recommendation.

This amendment extends the time that the Hearing's Officer has to publish the recommendation for Comprehensive Plan Map Amendments, from 17 days to 30 days. This should provide enough time for the Hearings Officer to review the record while still allowing for a timely recommendation.

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33.730.030 Type III Procedure
A Type III procedure requires a public hearing before an assigned review body. Subsections A through D apply to all sites. If the site is within the City of Portland, Subsections E through H also apply. If the site is in the portion of unincorporated Multnomah County that is subject to City zoning, Subsection I also applies.

A-D. [No change.]

E. Decision by review body if site is in City of Portland.

1-2. [No change.]

3. Review body decision. The review body may adopt the Director of BDS's report and recommendation, modify it, or reject it based on information presented at the hearing and in the record.

   a. Hearings Officer.

      (1) Generally. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the close of the record~~.~~;

      (2) Comprehensive Plan Map Amendments. For Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer will make a written recommendation in the form of a report and mail notice of the recommendation within 30 days of the close of the record.

   b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.

4. Amended decision report. If the review body modifies or rejects the Director of BDS's report, an amended report with findings supporting the decision will be prepared. For review bodies other than the Hearings Officer, the Director of BDS will prepare the amended decision report and mail notice of the decision within 17 days of the close of the record. The report must comply with 33.730.090, Reports and Record Keeping.

5. Notice of decision (pending appeal). When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director of BDS will mail notice of the decision. Within 17 days of the close of the record, or within 30 days for Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer or Director of BDS will mail notice of the review body's decision (pending appeal) to the applicant, owner, and all recognized organizations or persons who responded in writing to the notice of the request, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice.

F-H. [No change.]

Item 45 – Hearings Officer Decisions on Comprehensive Plan Map Amendments

33.730.030 Type III Procedure

I. Decision by review body if site is not in City of Portland.
This amendment provides the same allowance for a Hearing's Officer recommendation within areas of the County that are in the City's regulatory jurisdiction.

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I. Decision by review body if site is not in City of Portland.

1-2. [No change.]

3. Review body decision. The review body may adopt the Director of BDS's report and recommendation, modify it, or reject it based on information presented at the hearing and in the record.

   a. Hearings Officer.

      (1) Generally. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the close of the record~~.~~;

      (2) Comprehensive Plan Map Amendments. For Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer will make a written recommendation in the form of a report and mail notice of the recommendation within 30 days of the close of the record.

   b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.

4. Amended decision report. If the review body modifies or rejects the Director of BDS's report, an amended report with findings supporting the decision will be prepared. For review bodies other than the Hearings Officer, the Director of BDS will prepare the amended decision report and mail notice of the decision within 17 days of the close of the record. The report must comply with 33.730.090, Reports and Record Keeping.

5. Notice of final decision. When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director of BDS will mail notice of the decision. Within 17 days of the close of the record, or within 30 days for Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer or Director of BDS will mail notice of the review body's final decision to the applicant, owner, and to any recognized organizations or persons who commented in writing, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070.I, Notice of final decision.

6-7. [No change.]

Item 46 – Land Use Fees and Complete Application

CHAPTER 33.730
QUASI-JUDICIAL PROCEDURES

33.730.060 Application Requirements

C. Required information for land use reviews except land divisions.
The application filing fees are listed as one of several items needed to create a complete application for land use review. However, BDS will not even accept an application to determine its completeness unless the fees have been paid. This is re-iterated elsewhere in the chapter under the various procedural sections, where it is stated that the correct fee must be submitted with the application form in order for the request to be reviewed. The listing of the applicable fee as a requirement for a complete application is duplicative and can be removed.

D. Required information for land divisions.
See C. above.

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33.730.060 Application Requirements

A-B. [No change.]

C. Required information for land use reviews except land divisions. Unless stated elsewhere in this Title, a complete application for all land use reviews except land divisions consists of all of the materials listed in this Subsection. The Director of BDS may waive items listed if they are not applicable to the specific review. The applicant is responsible for the accuracy of all information submitted with the request.

1-5. [No change.]

~~6. The applicable filing fees.~~

D. Required information for land divisions. Unless stated elsewhere in this Title, a complete application for a land division consists of the materials listed below. The Director of BDS may waive items listed if they are not applicable to the specific review. The applicant is responsible for the accuracy of all information submitted with the request. At least one copy of each plan/map submitted with the application must be 8 ½ by 11 inches in size, and be suitable for reproduction.

1. Preliminary Plan for all sites except those taking advantage of Chapter 33.664, Review of Large Sites in I Zones. An application for Preliminary Plan for all sites except those taking advantage of Chapter 33.644, Review of Large Sites in I Zones, must include all of the following:

   a-k. [No change.]

   ~~l. Fees. The applicable filing fees.~~

2-4. [No change.]

Item 57 – Adjustment Purpose Statement

CHAPTER 33.805
ADJUSTMENTS

33.805.010 Purpose

The current language in the adjustment purpose statement can be read to mean that alternative ways to meet the purposes of the code should only be allowed in unusual situations. The intent is that adjustments should allow flexibility for unusual situations and also should allow alternative ways to meet the purposes of the code even when there is no unusual situation. The amendment clarifies that adjustments can also be used to allow alternative ways of doing things that equally or better meet the purposes of the code

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CHAPTER 33.805
ADJUSTMENTS

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. ~~Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.~~ Adjustment reviews provide flexibility for unusual situations. They also allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

Item 48 – Solar Panels and Conditional Use
Item 49 – Parking and Conditional Use Review Type

CHAPTER 33.815
CONDITIONAL USES

33.815.040 Review Procedures

B. Proposals that alter the development of an existing conditional use.

Solar Panels. When located on sites where there is a conditional use, such as schools in residential zones, ground mounted solar panels are subject to conditional use review. The approval criteria, however, are designed to evaluate and mitigate for the impacts of the school on the residential area. Solar panels have few impacts on adjacent properties and hardly any impact on public services. The impacts solar panels do have are primarily visual. Other standards in the code that require larger setbacks and landscaping for institutions will alleviate these visual impacts.

A secondary technical amendment addresses situations where parking is removed in order to complete stormwater upgrades in a parking lot. Removal of one space is often necessary in order to incorporate vegetated swales that meet current standards.

Parking Spaces. The review procedures for conditional uses include thresholds that determine the type of review that is required when an existing conditional use changes in size. These include thresholds based on increases in the amount of building floor area and the amount of exterior improved area on a site, and changes in the amount of site area.

Increases or decreases in the number of parking spaces are often required when a conditional use changes in size, but the current thresholds do not allow any increase in number of parking spaces without a review, and do not differentiate between minor changes in parking quantity that can be processed as a Type II procedure, versus major changes in parking quantity that require a Type III review.

These amendments clarify that a nominal increase in number of parking spaces (the addition of 1 space, or 4% of the total number of spaces, whichever is greater) is allowed without a review. These amendments also clarify that the number of parking spaces can be increased or decreased by specific amounts under a Type II review, provided that the other Type II thresholds that apply to the size of structures and amount of non-parking exterior improved areas are not exceeded.

Increased flexibility for removal of spaces from small sites is necessary to accommodate stormwater-related retrofits. Adding stormwater swales to a parking lot often required the removal of one space.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.815.040 Review Procedures
The procedure for reviewing conditional uses depends on how the proposal affects the use of, or the development on, the site. Subsection A, below, outlines the procedures for proposals that affect the use of the site while Subsection B outlines the procedures for proposals that affect the development. Proposals may be subject to Subsection A or B or both. The review procedures of this section apply unless specifically stated otherwise in this Title. Proposals may also be subject to the provisions of 33.700.040, Reconsideration of Land Use Approvals.

A. [No Change].

B. Proposals that alter the development of an existing conditional use. Alterations to the development on a site with an existing conditional use may be allowed, require an adjustment, modification, or require a conditional use review, as follows:

1. Conditional use review not required. A conditional use review is not required for alterations to the site that comply with Subparagraphs a through g. All other alterations are subject to Paragraph 2, below. Alterations to development are allowed by right provided the proposal:

   a. Complies with all conditions of approval;

   b. Meets one of the following:

      (1) Complies with the development standards of this Title, or

      (2) Does not comply with the development standards of this Title, but an adjustment or modification to the development standards has been approved through a land use review;

   c. Does not increase the floor area by more than 1,500 square feet;

   d. Does not increase the exterior improvement area by more than 1,500 square feet. Fences, handicap access ramps, ~~and~~ on-site pedestrian circulation systems, ground mounted solar panels, and parking space increases allowed by Section 33.815.040.B.1.f, below, are exempt from this limitation;

   e. Will not result in a net gain or loss of site area;

   f. Will not ~~result in a net gain in the number of parking spaces~~ increase the net number of parking spaces by more than 1 space or 4 percent of the total number of parking spaces, whichever is greater. However, an individual or cumulative addition of more than 5 parking spaces is not allowed without a conditional review; and

   g. Will not result in a net loss in the number of parking spaces~~. However, sites with 16 or more spaces may decrease the number of spaces~~, except as follows:

      (1) No reduction in shared parking spaces is allowed;

Commentary

(See commentary on previous commentary page.)

(2) 1 space or 4 percent of the total number of parking spaces may be removed, whichever is greater; and

(3) An individual or cumulative removal of parking spaces in excess of 5 spaces is ~~prohibited~~ not allowed without a conditional use review. The cumulative loss of parking is measured from the time the use became a conditional use, July 16, 2004, or the last conditional use review of the use, whichever is most recent, to the present.; and

(4) Removal of parking from sites with 4 or fewer required spaces is not allowed without conditional use review.

2. Conditional use required. Conditional use review is required for the following:

a. Minor alterations. Except as provided in Paragraph B.1 above, conditional use review through a Type II procedure is required for the following:

(1) When proposed alterations to the site will not violate any conditions of approval;

(2) When there will be a net loss in site area that~~:~~

- ~~W~~will not take the site out of conformance, or further out of conformance, with a development standard; ~~and~~

- ~~Will be within the parking reduction limits stated in B.1.g above;~~

(3) When there will be an increase or decrease in the net number of parking spaces by up to 2 spaces or up to 10 percent of the total number of parking spaces, whichever is greater;

(4) When the individual or cumulative alterations will not increase the floor area on the site by more than 10 percent, up to a maximum of 25,000 square feet;

(5) When the individual or cumulative alterations will not increase the exterior improvement area on the site by more than 10 percent, up to a maximum of 25,000 square feet. Parking area increases that are allowed by Section 33.815.040.B.2.a (3) above are exempt from this limitation; or

(6) When the individual or cumulative alterations will not increase the floor area and the exterior improvement area on the site by more than 10 percent, up to a maximum of 25,000 square feet. Parking area increases that are allowed by Section 33.815.040.B.2.a (3) above are exempt from this limitation.

(7) The increases in subparagraphs 3 through 6, above, are measured from the time the use became a conditional use, the effective date of this ordinance, or the last Type III conditional use review of the use, whichever is most recent, to the present.

b. [No Change.]

Item 48 – Solar Panels and Conditional Use
Item 49 – Parking and Conditional Use Review Type

CHAPTER 33.820
CONDITIONAL USE MASTER PLANS

33.820.080 Implementation

B. Not conforming to the plan.

Solar Panels. When located on sites where there is a conditional use, such as schools in residential zones, ground mounted solar panels are subject to conditional use review. The approval criteria, however, are designed to evaluate and mitigate for the impacts of the school on the residential area. Solar panels have few impacts on adjacent properties and hardly any impact on public services. The impacts solar panels do have are primarily visual. Other standards in the code that require larger setbacks and landscaping for institutions will alleviate these visual impacts.

A secondary technical amendment addresses situations where parking is removed in order to complete stormwater upgrades in a parking lot. Removal of one space is often necessary in order to incorporate vegetated swales that meet current standards.

Parking Spaces: This section states that development that is not in conformance with an approved Conditional Use Master Plan, but that meets all of the requirements of this section, is allowed without an amendment to the plan. The current thresholds do not allow any increase in number of parking spaces without an amendment to the plan.

These amendments clarify that a nominal increase in number of parking spaces (the addition of 1 space, or 4% of the total number of spaces, whichever is greater) is allowed without an amendment to the plan.

These amendments make the provisions of this section consistent with the proposed amendments to 33.815.040.B.1 (Conditional Uses – Proposals that alter the development of an existing conditional use).

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.820.080 Implementation

A. [No Change].

B. Not conforming to the plan. Uses that are not in conformance with the master plan require an amendment to the plan. Development that is not in conformance with the plan and does not meet the following requires an amendment to the plan. Development that is not in conformance with the plan and does meet all of the following is allowed:

1. All conditions of approval must be met;

2. One of the following must be met:

   a. Complies with the development standards of this Title, or

   b. Does not comply with the development standards of this Title, but an adjustment or modification to the development standards has been approved through a land use review;

3. Does not increase the floor area by more than 1,500 square feet;

4. Does not increase the exterior improvement area by more than 1,500 square feet, except that fences, handicap access ramps, ~~and~~ on-site pedestrian circulation systems, ground mounted solar panels, and parking space increases allowed by Section 33.820.080.B.6 below, are exempt from this limitation;

5. Will not result in a net gain or loss of site area;

6. Will not ~~result in a~~ increase the net ~~gain in the~~ number of parking spaces by more than 1 space or 4 percent of the total number of parking spaces, whichever is greater. However, the individual or cumulative addition of more than 5 parking spaces is not allowed without an amendment to the plan; and

7. Will not result in a net loss in the number of parking spaces except as follows:

   a. Sites ~~with 16 or more spaces~~ may decrease the number of spaces as follows:

      (1) No reduction in shared parking spaces is allowed;

      (2) 1 space or 4 percent of the total number of parking spaces may be removed, whichever is greater; and

      (3) An individual or cumulative removal of parking spaces in excess of 5 spaces is ~~prohibited~~ not allowed without an amendment to the plan. The cumulative loss of parking is measured from the time the use became a conditional use, July 16, 2004, or the last conditional use review of the use, whichever is most recent, to the present.

      (4) Removal of parking from sites with 4 or fewer required spaces is not allowed without an amendment to the plan.

Item 50 Historic Designation and Removal and National Register properties

33.846.030 Historic Designation Review

A. Purpose. The term historic landmark and historic district can refer to either resources locally designated or resources listed on the National Register of Historic Properties. However, the process in the zoning code for designating a historic structure is a local recognition process. A separate process is followed to achieve a National Register listing. Using this review to designate a historic resource would not affect the resources listing on the National Register maintained by the National Park Service. This amendment clarifies this distinction.

33.846.040 Historic Designation Removal Review

A. Purpose. This process for removal of a historic designation is a local process and doesn't affect the building's listing on the National Register. See above for additional explanation.

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Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.846
HISTORIC REVIEWS

General

33.846.030 Historic Designation Review

A. Purpose. The Historic Designation Review is a process for the City of Portland to designate Historic Landmarks, Conservation Landmarks, Historic Districts, or Conservation Districts. This review does not affect a property or district's listing on the National Register of Historic Properties. These provisions promote the protection of historic resources by:

- Enhancing the city's identity through the protection of the region's significant historic resources;
- Fostering preservation and reuse of historic artifacts as part of the region's fabric; and
- Encouraging new development to sensitively incorporate historic structures and artifacts.

B-C. [No change.]

33.846.040 Historic Designation Removal Review

A. Purpose. These provisions allow for the removal of ~~a~~ the city's historic designation when it is no longer appropriate. This review does not affect a property or district's listing on the National Register of historic properties.

B-C. [No change.]

Item 51 Historic Resource Covenants for Incentives

33.846.050 Historic Preservation Incentive Review

C. Approval Criteria

The Historic Code rewrite project created additional incentives to allow certain types of uses in historic resources that would have not normally been allowed. Many of the incentives were part of a Historic Preservation Incentive Review land use process, which was created at that time. As part of this review, it was intended that the applicant would provide a covenant on the landmark property. This covenant would state that any proposal to demolish the resource that had been subject to the Incentive Review would need to go through a Demolition Review. Although this language appears in the Historic Overlay chapter, 33.445, there is no reference to it in the approval criteria in 33.846 and so the requirement to record the covenant has been missed on several occasions.

This amendment adds a reference to the section on Historic Preservation Incentive Reviews to refer readers to the covenant requirements of 33.445 to ensure that covenants are created for properties that take advantage of these incentives.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.846.050 Historic Preservation Incentive Review

A. Purpose. These provisions increase the potential for Historic Landmarks and Conservation Landmarks, and contributing structures to be used, protected, renovated, and preserved.

B. Review procedure. Historic preservation incentive reviews for sites in the RX zone are processed through a Type II procedure. Historic preservation incentive reviews for sites in all other zones are processed through a Type III procedure.

C. Approval criteria. The use of a historic preservation incentive in a Historic Landmark, Conservation Landmark, or a resource identified as contributing to the historic significance of a Historic District or a Conservation District will be approved if the review body finds that all of the following approval criteria are met:

1. Establishment of the use will not conflict with adopted provisions of neighborhood plans for the site and surrounding area; ~~and~~

2. If the site is in an R zone:

   a. The approval criteria of Section 33.815.105, Institutional and Other Uses in R Zones, are met; and

   b. Proposals on sites larger than one acre will not reduce the amount of new housing opportunity in the City. These criteria may be met by using the methods to mitigate for housing loss in Comprehensive Plan Map amendments in Subparagraph 33.810.050.A.2.c.

3. The regulations of 33.445.610, Historic Preservation Incentives are met

CHAPTER 33.855
ZONING MAP AMENDMENTS

Item 52 – State Transportation Planning Rule

33.855.050. Approval Criteria for Base Zone Changes

B. **Adequate public services** This is a technical amendment needed to bring the City's criteria for approving zone changes into line with recent changes to the State Transportation Planning Rule (TPR). The TPR is the Oregon Administrative Rule that mandates how the State land use goals for transportation are implemented at the local level. The TPR mandates in zone changes that transportation facilities must meet defined performance standards within a defined planning period. These amendments clarify that the TPR requirements apply to requests for zone changes that are made in the City.

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Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.855
ZONING MAP AMENDMENTS

33.855.050. Approval Criteria for Base Zone Changes

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

A. [No Change.]

B. Adequate public services. Public services for water supply~~, transportation system facilities and capacity,~~ and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete~~, and~~. The proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Transportation system facilities and capacity are capable or will be made capable of supporting the uses allowed by the zone, in the planning period defined by the Oregon Transportation Planning Rule.

1. Adequacy of services applies only to the specific zone change site.

2. Adequacy of services is based on the projected service demands of the site, and the ability of the public services to accommodate those demands. Service demands may be determined based on a specific use or development proposal, if submitted. However, analysis of transportation services must include the service demands of both a specific use or proposal and projected service demands of the site over the specified planning period. If a specific proposal is not submitted, determination is based on City service bureau demand projections for that zone or area which are then applied to the size of the site. Except for transportation services, ~~A~~adequacy of services is determined by the service bureaus, who apply the demand numbers to the actual and proposed services to the site and the surrounding area. For transportation services, adequacy of services is determined by the service bureau and is based on performance standards for capacity.

3. [No Change.]

C-D. [No Change.]

Item 9 - Density for SROs
Item 18 – Accessory Dwelling Units and Density Calculation
Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone

CHAPTER 33.910
DEFINITIONS

33.910.030 Definitions

Density. There are two changes to the definition of density.

Item 9 – Density for SROs. This change clarifies the standard to calculate density for Single Room Occupancy (SRO) housing. Under this change, density for SRO housing is calculated based upon the number of units in an SRO structure in relation to a specified amount of land. The definition of SRO housing differs from the dwelling unit definition in that SRO housing may include units that share bath, toilet or kitchen facilities.

Item 18 – Accessory Dwelling Units and Density Calculation. The Infill Design Project, adopted in 2006, amended the policy for calculating density for accessory dwelling units. Due to this change, the information in 33.910 that defines how density is calculated for accessory dwelling units is out of date, and is no longer needed. This amendment removes the irrelevant language. The information on how to calculate density for accessory dwelling units is provided in Chapter 33.205, Accessory Dwelling Units.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone
Lot
During research for this issue, staff concluded that there was no mechanism for identifying or defining legal lots whose dimensions had been altered through a property line adjustment. It was also not clear how the transfer properties from the property line adjustment or other minor or discarded pieces of previously platted lots should be identified. The term 'lot of record' only referred to defined pieces of land that were in existence at least 30 years ago, but there was no mechanism to define land fragments from more recent transactions. This led to the creation of two new terms to describe lots, and/or pieces of lots that were altered through property line adjustments. These definitions, in conjunction with the application of regulations within the base zones should aid in determining whether a piece of property is buildable, and what the minimum standards are in each case.

- **Adjusted Lot.** This is a new term to define a piece of property that was once defined as a legal lot through a land division, but has been altered to be made larger or smaller through a property line adjustment. In order to determine development rights, a lot will only be considered to be an adjusted lot if its size is at least 51% of the original size of the platted lot. If it is smaller than this amount, it will be considered a lot remnant and subject to different standards. This is intended to ensure that a property line adjustment between two properties does not create a third buildable parcel unless there were already three parcels. See drawing.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.910
DEFINITIONS

33.910.030 Definitions

Density. A measurement of the number of people, dwelling units, living units in Single Room Occupancy (SRO) housing or lots in relationship to a specified amount of land. Density is a measurement used generally for residential uses. ~~Accessory Dwelling Units are not counted in calculations of minimum or maximum density~~. See also Intensity.

Lot. A lot is a legally defined piece of land other than a tract that is the result of a land division. This definition includes the State definition of both lot, (result of subdividing), **and** parcel, (result of partitioning). See also, Ownership and Site.

- **Adjusted Lot.** A lot, collection of lots or lots and lot remnants that was originally the result of a land division but has had one or more of its lot lines altered through an approved property line adjustment. An adjusted lot may have a greater or smaller lot dimension than the original lot, but in no case can the lot size be less than 51% of the original lot. Portions of an original lot that are less than 51% of the original size are defined as lot remnants. See Figure 910-XX.

- **Corner Lot.** A lot that has frontage on more than one intersecting street, and where the lot frontages intersect. A street that curves with angles that are 120 degrees or less, measured from the center line of the street, is considered two intersecting streets for the purpose of evaluating whether a lot is a corner lot. See Figure 910-4.

- **Flag Lot.** A lot with two distinct parts (see Figure 910-5):
  - The flag, which is the only building site; and is located behind another lot; and
  - The pole, which connects the flag to the street; provides the only street frontage for the lot; and at any point is less than the minimum lot width for the zone.

- **New Narrow Lot.** A lot that was created by a land division submitted after June 30, 2002, and:
  - Is in the R10 through R5 zone and does not meet the minimum lot width standard of 33.610.200.D.1; or
  - Is in the R2.5 zone and does not meet the minimum lot width standard of 33.611.200.C.1.

- **Through Lot.** A lot that has frontage on two streets, and where the lot frontages do not intersect. See Figure 910-4.

Item 55 – Lots, Lots of Record and Small Lot Development in R5 zone (contd)

33.910.030 Definitions (contd)

Lot of Record. No changes are proposed to this definitions, but it is included for illustrative purposes.

Lot Remnant. This is a new term to define a portion of a lot and where this portion no longer constitutes a majority of the original lot. Lot remnants will not have the same development rights as adjusted lots.

A new illustration is created to work with the definitions to show what is meant by the terms "Adjusted Lot" and "Lot Remnant". In the illustration, there were three originally platted lots, #1, 2, and 3. Of these, only Lot 1 is still a lot. Lot 2 has been altered into an adjusted lot, and the property containing Lot 3 and the lot remnant from 2 is also an adjusted lot.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

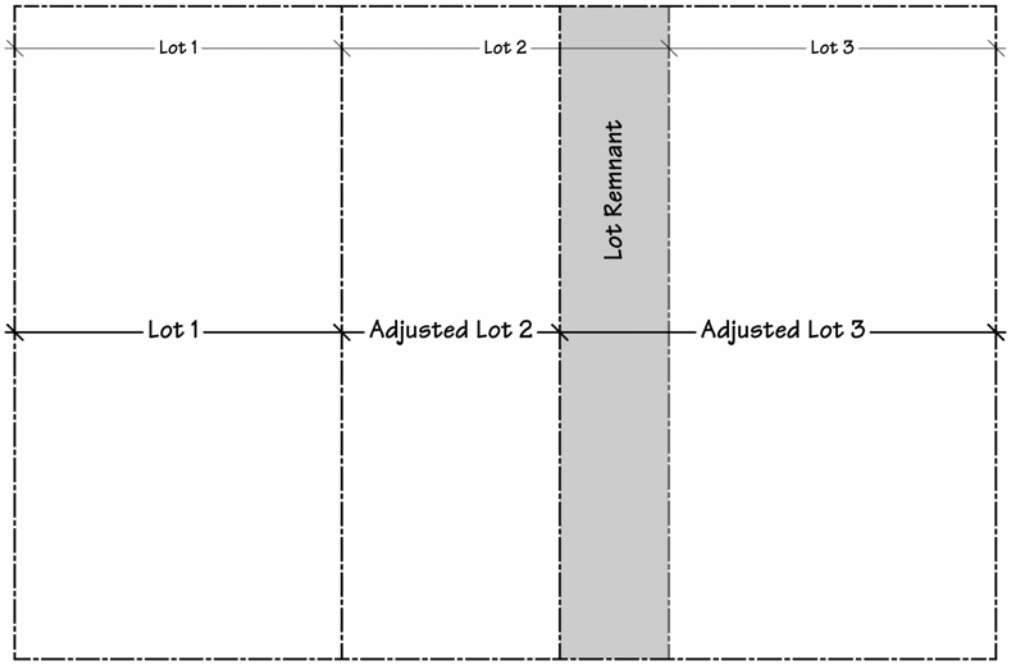
Lot Lines [No change.]

Lot of Record. A lot of record is a plot of land:

- Which was not created through an approved subdivision or partition;
- Which was created and recorded before July 26, 1979; and
- For which the deed, or other instrument dividing the land, is recorded with the appropriate county recorder.

Lot Remnant. A portion of a lot or lots not meeting the definition for a lot of record, that is no longer whole and has a lot size that is less than 51% of the original platted lot.

Figure 910-XX
Adjusted Lot and Lot Remnant



Item 54 – Accessory Dwelling Unit versus Second Sink Agreements

Residential Structure Types

- **Accessory Dwelling Unit.** There have been several instances where the Bureau of Development Services has had their interpretation questioned when determining whether an area of the house qualifies to be a separate accessory dwelling unit. This interpretation can have an impact on the standards that apply and the fees that are charged for the review. This code amendment provides additional clarity to determine the elements that make up an accessory dwelling unit. Code language from the definition of the main dwelling unit is included in the definition of the accessory dwelling unit to provide reference to kitchen facilities. This amendment also includes information on how one would access the accessory dwelling unit.

- **Dwelling Unit.** For consistency, the reference to cooking facilities is amended to kitchen facilities in the dwelling unit definition as well. Title 29 refers to these facilities as 'kitchen facilities'.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.910.030 Defintions (contd)

Residential Structure Types

- **Accessory Dwelling Unit**. A second dwelling unit created on a lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than the house, attached house, or manufactured home. The unit includes its own independent living facilities including provisions for sleeping, cooking, and sanitation, and is designed for residential occupancy by a group of people, independent of the main dwelling unit. Kitchen facilities for cooking in the unit are described in Section 29.30.160 of Title 29, Property and Maintenance Regulations. The unit may have a separate exterior entrance or an entrance to an internal common area directly accessible to the outside.

- **Attached Duplex.** A duplex, **located on its own lot**, that shares one or more common or abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 25 percent of the length of the side of the dwelling.

- **Attached House.** A dwelling unit, **located on its own lot**, that shares one or more common or abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 25 percent of the length of the side of the building. The shared or abutting walls may be any wall of the buildings, including the walls of attached garages. An attached house does not share common floor/ceilings with other dwelling units. An attached house is also called a rowhouse or a common-wall house. See Figure 910-16.

- **Duplex.** A building that contains two primary dwelling units on one lot. The units must share a common wall or common floor/ceiling.

- **Dwelling Unit.** A building, or a portion of a building, that has independent living facilities including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by a group of people. Kitchen facilities for c~~C~~ooking ~~facilities~~ are described in Section 29.30.160 of Title 29, Property and Maintenance Regulations. Buildings with more than one set of cooking facilities are considered to contain multiple dwelling units unless the additional cooking facilities are clearly accessory, such as an outdoor grill.

- **Single Room Occupancy Housing (SRO).** A structure that provides living units that have separate sleeping areas and some combination of shared bath or toilet facilities. The structure may or may not have separate or shared cooking facilities for the residents. SRO includes structures commonly called residential hotels and rooming houses.

Item 62 - Definition of Retaining Wall

CHAPTER 33.910
DEFINITIONS

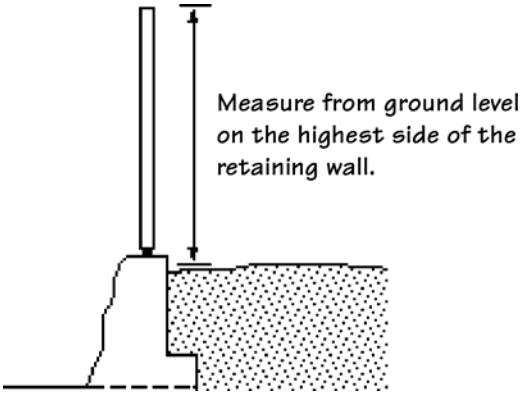
33.910.030 Definitions

Retaining Wall

The Zoning Code currently does not define the term "retaining wall." It is not always clear what constitutes a retaining wall, which had lead to confusion about how to measure the height of retaining walls and fences on top of retaining walls. Zoning Code Section 33.930.050 states that retaining walls and fences on top of retaining walls are measured from the ground level on the higher side of the retaining wall.

Figure 930-8

Measuring Height – Retaining Walls



What is not clear is what the retaining wall has to retain. For example, if an applicant constructs a three foot tall planter that extends only one foot out from a wall, is the wall considered a retaining wall, and is the height of the wall and any fence on top of the wall measured from the grade established by the planter? The amendment is limited to defining a retaining wall.

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CHAPTER 33.910
DEFINITIONS

Retaining Wall. A vertical, or near vertical structure, that holds back soil or rock, and prevents downslope movement or erosion on a sloped site.

Item 60 – Wind Turbine Standards and Exemption to Reviews

33.910.030 Definitions

Wind Turbine. This a new definition for wind turbine. It provides definitions for the terminology used in the new chapter 33.287 regulating small scale urban wind energy systems and defines a "utility scale" wind energy system.

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33.910.030 Definitions

Wind turbine. A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a tower or mounting frame and structural supports, electrical generator, transformer, energy storage equipment, and a rotor with one or more blades.

- Small Wind Energy Turbines are turbines with an American Wind Energy Association (AWEA) rated power output of 10 kW or less. These systems are generally intended to supply electricity to buildings or individual sites, and may or may not be connected to the power grid.
- Large Wind Energy Turbines are systems with a rated power output of more than 10kW but do not exceed 300 KW. These systems are generally intended to supply electricity to several buildings, a facility, campus or several sites, and may or may not be connected to the power grid.
- Utility-Scale Wind Energy Turbines are systems with a rated power output of more than 300 kW and are always connected to the power grid.

Item 61 – Green Energy and Use

CHAPTER 33.920
DESCRIPTION OF THE USE CATEGORIES

Industrial Use Categories

33.920.310 Manufacturing And Production

D. Exceptions.

The following amendments modify several of the land use categories in the Zoning Code to ensure that renewable energy production is allowed in residential and commercial zones, as an accessory to the primary residential use. Current rules may classify these facilities, in some cases, as "manufacturing and production", or "waste-related". Examples are grid-connected solar power systems, small wind energy devices, and small-scale biogas generators.

Item 48 was originally a request to clarify that solar panels should not trigger Conditional Use Review when installed on a site with a conditional use. As this "use" issue was investigated, it also became clear that the use categories of the Zoning Code could also become a barrier to small scale distributed renewable energy systems. In recent years Portlanders have become increasingly aware of the importance of diversifying our energy sources, reducing dependence on foreign sources of energy, and decreasing the emissions of climate-changing greenhouse gases.

Energy producing systems like solar panels and small wind turbines are already considered accessory equipment if the energy they produce is used on the same site on which they are located. If the energy produced by systems is sold back into the electrical grid, then the alternative energy systems could be considered "manufacturing and production". This limits where these systems can be located to those zones that allow manufacturing and production. Manufacturing and production is generally only allowed in industrial zones and in some commercial zones with approval of a conditional use review. There are public benefits to allowing alternative energy producing systems to sell energy back into the grid because it can provide an extra incentive for installing these systems. Solar panels can already be located on rooftops located outside of industrial zones. This code change will clarify that the power generated by these panels can be used on-site and that it can also be sold back into the grid.

The proposed code references the definition of "public utility" as defined in ORS 757.005. With this amendment, energy production facilities that are not regulated as public utilities would be classified as Basic Utilities. See Appendix C—Energy Facilities Classification Charts for a more complete description of the types of facilities that are exempt from regulation as public utilities.

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Industrial Use Categories

33.920.310 Manufacturing And Production

A. Characteristics. Manufacturing And Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.

B. Accessory uses. Accessory uses may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, rail spur or lead lines, docks, repair facilities, or truck fleets. Living quarters for one caretaker per site in the E and I zones are allowed. Other living quarters are subject to the regulations for Residential Uses in the base zones.

C. Examples. Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; slaughter houses, and meat packing; feed lots and animal dipping; weaving or production of textiles or apparel; lumber mills, pulp and paper mills, and other wood products manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; movie production facilities; recording studios; ship and barge building; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; production of artwork and toys; sign making; production of prefabricated structures, including manufactured dwellings; and the production of energy by a "public utility" as defined in ORS 757.005.

D. Exceptions.

1. Manufacturing of goods to be sold primarily on-site and to the general public are classified as Retail Sales And Service.

2. Manufacture and production of goods from composting organic material ~~is~~ are classified as Waste-Related uses.

3. Energy production that is exempt from the definition of "public utility" under ORS 757.005 is a Basic Utility.

4. Solid waste incinerators are classified as Waste Related Uses.

Item 61 – Green Energy and Use

33.920.340 Waste-Related

C. Examples.

D. Exceptions.

This amendment changes the Waste Related use category, to clarify that small scale energy systems are allowed as basic utilities, and treated like local power lines and sewer pipes. Some types of neighborhood-scale or campus-scale renewable energy systems generate energy from the gas produced from compost or sewage waste. This amendment clarifies how biogas, biomass, cogeneration and heat recovery systems are treated. Without this amendment, it is possible that these uses would be prohibited. Solid waste incinerators would continue to be treated as a Waste Related Use, because they have larger off-site impacts. Larger utility-scale systems would be regulated as a Manufacturing and Production use.

Biogas systems generate energy by the gas produced when organic matter breaks down in anaerobic conditions. This process generally occurs inside a closed system (like a tank or container).

Biomass systems generate energy through the combustion of biological materials to produce heat, steam, or electricity.

Thermal power plants and engines do not convert all of their thermal energy into electricity. In most heat engines, a bit more than half is lost as excess heat By capturing the excess heat, cogeneration facilities use heat that would be wasted in a conventional power plant. A car engine acts in this way in the winter, when the reject heat is useful for warming the interior of the vehicle. Similarly, power plants and engines within a manufacturing process can be used to produce heat. Cogeneration plants are commonly found in district heating systems, hospitals, prisons, wastewater treatment plants, and industrial plants with large heating needs. The proposed amendments would classify cogeneration facilities as Basic Utilities if more than 50 percent owned by a person who is not an electric utility (See ORS 757.005).

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33.920.340 Waste-Related

A. Characteristics. Waste-Related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods ~~or energy~~ from the biological decomposition of organic material. Waste-Related uses also include uses that receive hazardous wastes from others and are subject to the regulations of OAR 340.100-110, Hazardous Waste Management.

B. Accessory Uses. Accessory uses may include recycling of materials, offices, and repackaging and transshipment of by-products.

C. Examples. Examples include sanitary landfills, limited use landfills, waste composting, ~~energy recovery plants~~, solid waste incinerators, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous-waste-collection sites.

D. Exceptions.

1. Disposal of clean fill, as defined in OAR 340-093-0030, is considered a fill, not a Waste-Related use.

~~2. Sewer pipes that serve a development are considered a Basic Utility.~~

2. Infrastructure services which need to be located in or near the area where the service is provided in order to function are considered Basic Utilities. Examples include sewer and water re-use pipes and tanks, pump stations, and collection stations that serve a development or institution. See 33.920.400, Basic Utilities.

3. With the exception of waste incinerators, systems that produce energy from the byproduct(s) of other uses allowed by right in that zone are considered either Basic Utilities, or Manufacturing and Production.

   a. Production of energy by a "public utility" as defined in ORS 757.005 is considered a Manufacturing and Production Use. See 33.920.310, Manufacturing and Production.

   b. Energy production that is exempt from the definition of "public utility" under ORS 757.005 is a Basic Utility. See 33.920.400, Basic Utilities. Examples include co-generation of energy in an Industrial zone as a byproduct of a manufacturing process, systems that produce energy in a Farm/Forest zone from the compost material generated by a farm, or systems that produce energy in a Commercial zone from the food waste generated by a restaurant.

Item 61 - Green Energy and Use

33.920.400 Basic Utilities

C. Examples.

D. Exceptions.
This amendment changes the Basic Utility use category, to clarify that most distributed renewable energy systems (such as solar or wind) are allowed as basic utilities, and treated like local power lines and sewer pipes.

The amendment references energy production that is exempt from the definition of "public utility" under ORS 757.005. With this amendment, these exempt facilities would be classified as Basic Utilities. Basic Utilities are allowed by right in Industrial, Employment, and Commercial zones. In Residential zones they are allowed in more limited situations, or allowed through Conditional Use Review. Currently many of these facilities would be considered Manufacturing and Production, and only allowed in Industrial Zones.

The following types of energy production facilities are exempt from being considered a public utility under ORS 757.005:

- plants operated by a municipality
- railroads that sell power to people otherwise without it (not typically an urban issue)
- plants that provide energy to fewer then 20 residential customers (for example, a collection of homes that share a common boiler for heat)
- solar and wind energy systems that supply any number of customers (for example, any net-metered solar panel)
- biogas, waste heat or geothermal systems for non-electrical generation that supply any number of customers (for example, a system that uses a biogas generator to heat water for a district radiant heat system)
- furnishing heat or steam only
- "cogeneration facility" (see explanation in Waste Related amendments on previous commentary page)
- "small power production facility" (produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof; and is more than 50 percent owned by a person who is not an electric utility; has a power production capacity that is not greater than 80 megawatts)
- electrical generation from a facility, plant or equipment that is physically connected with the end user (for example, a gas furnace heating a building)

Other amendments are proposed in 33.110.100 and 33.120.100 to specify which of these facilities would be allowed by right, and which would require Conditional Use.

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33.920.400 Basic Utilities

A. Characteristics. Basic Utilities are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility uses generally do not have regular employees at the site. Services may be public or privately provided. All public safety facilities are Basic Utilities.

B. Accessory uses. Accessory uses may include parking; control, monitoring, data or transmission equipment; and holding cells within a police station.

C. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; energy production that is exempt from the definition of "public utility" under ORS 757.005; water quality and flow control facilities; water conveyance systems; water harvesting and re-use conveyance systems and pump stations; stormwater facilities and conveyance systems; telephone exchanges; mass transit stops or turn arounds, light rail stations, suspended cable transportation systems, transit centers; and public safety facilities, including fire and police stations, and emergency communication broadcast facilities.

D. Exceptions.

1. Services where people are generally present, other than mass transit stops or turn arounds, light rail stations, transit centers, and public safety facilities, are classified as Community Services or Offices.

2. Utility offices where employees or customers are generally present are classified as Offices.

3. Bus and light rail barns are classified as Warehouse And Freight Movement.

4. Public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Rail Lines And Utility Corridors.

5. Production of energy by a "public utility" as defined in ORS 757.005 is classified as Manufacturing and Production.

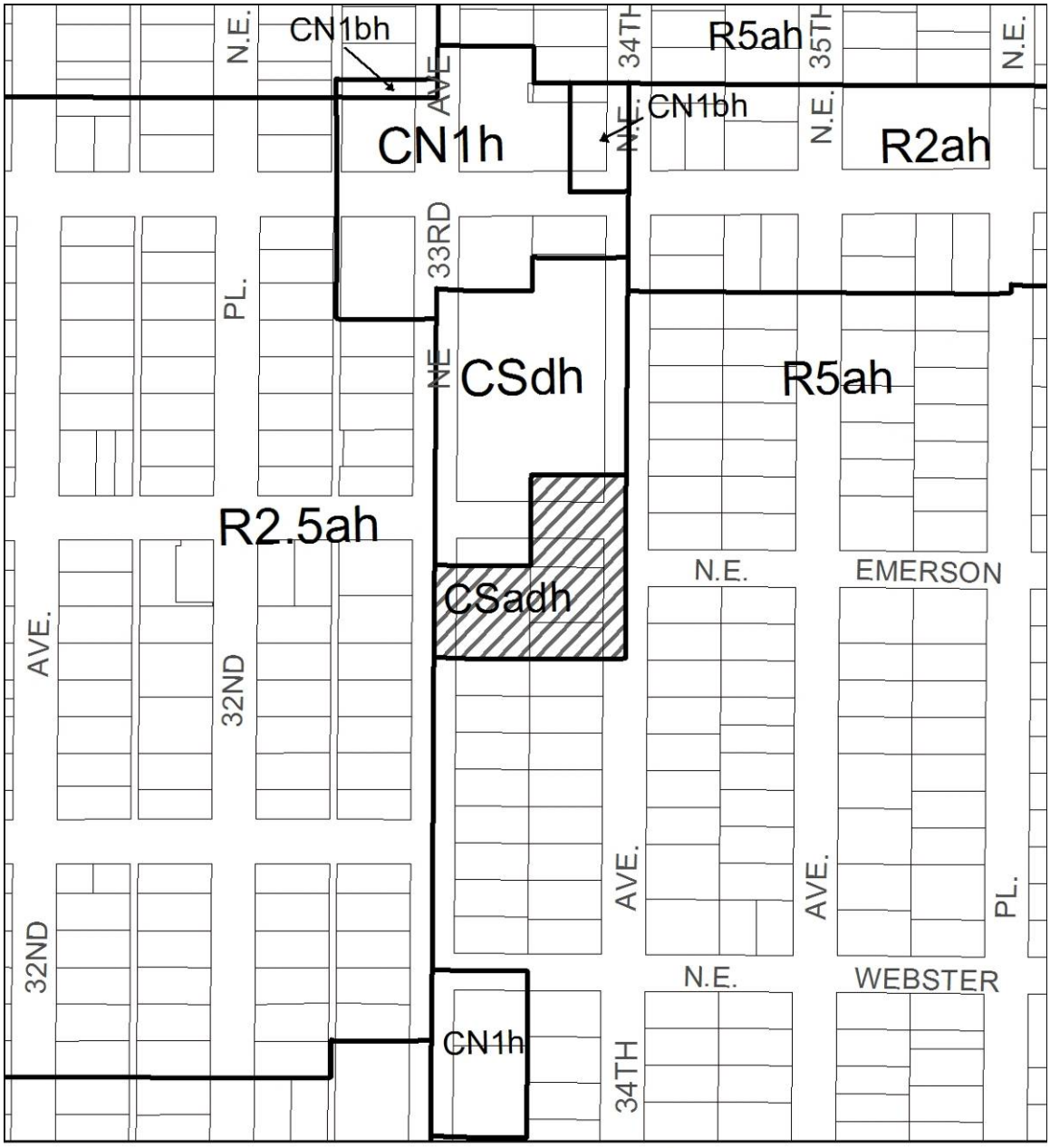
6. Solid waste incinerators are classified as Waste Related Uses.

IV. Amendments to the Official Zoning Maps

Item 30 – Alternative Design Density Overlay Zone Mapping

Portland Zoning Maps
The Alternative Design Density Overlay Zone, or a-overlay, for short is an overlay zone that provides options for development alternatives within the various residential base zones. It does not provide any options for lands within other base zones such as commercial, employment or industrial zones. Staff found several properties that are currently commercially zoned which contain the a-overlay. These properties were all part of quasi-judicial land use reviews over the past several years which amended their zoning but did not remove the a-overlay designation.

Since the a-overlay has no relevance in the commercial zones, this amendment removes it from the subject properties. This map change does not affect what uses or developments are allowed on the properties. The affected areas include an area at NE 33rd Avenue and NE Emerson Street, SE 13th Avenue and SE Clatsop Street, SE Division Street and SE 115th Avenue, and a piece of property north of SE Division Street near SE 162nd Avenue.



RICAP 5: Remove a overlay from Commercial Zoned properties

May 11, 2009

Existing Zoning Designations

Change from CSadh to CSdh
(R307426, R307448, R307447, R307444, R307443)

0 100 200
Feet

City of Portland Bureau of
Planning & Sustainability

All data compiled from source materials at different scales.
For more detail, please refer to the source materials or
City of Portland, Bureau of Planning & Sustainability.

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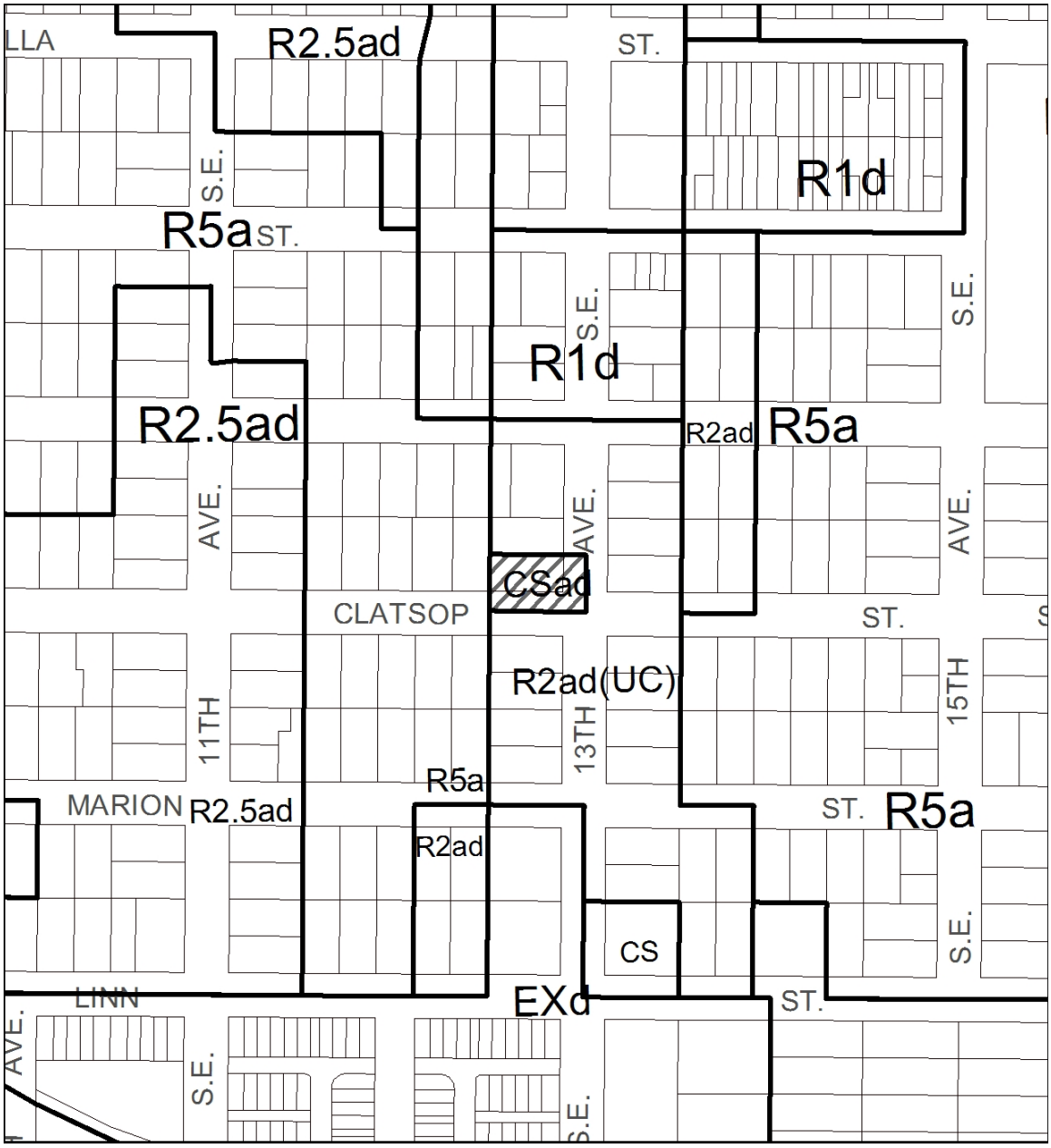
PROPOSED ZONING



RICAP 5: Remove a overlay from Commercial Zoned properties

May 11, 2009

Existing Zoning Designations

Change from CSad to CSd (R267122)

0 100 200

Feet

N

City of Portland Bureau of Planning & Sustainability

Sam Adams, Mayor | Susan Anderson, Director

All data compiled from source materials at different scales. For more detail, please refer to the source materials or City of Portland, Bureau of Planning & Sustainability.

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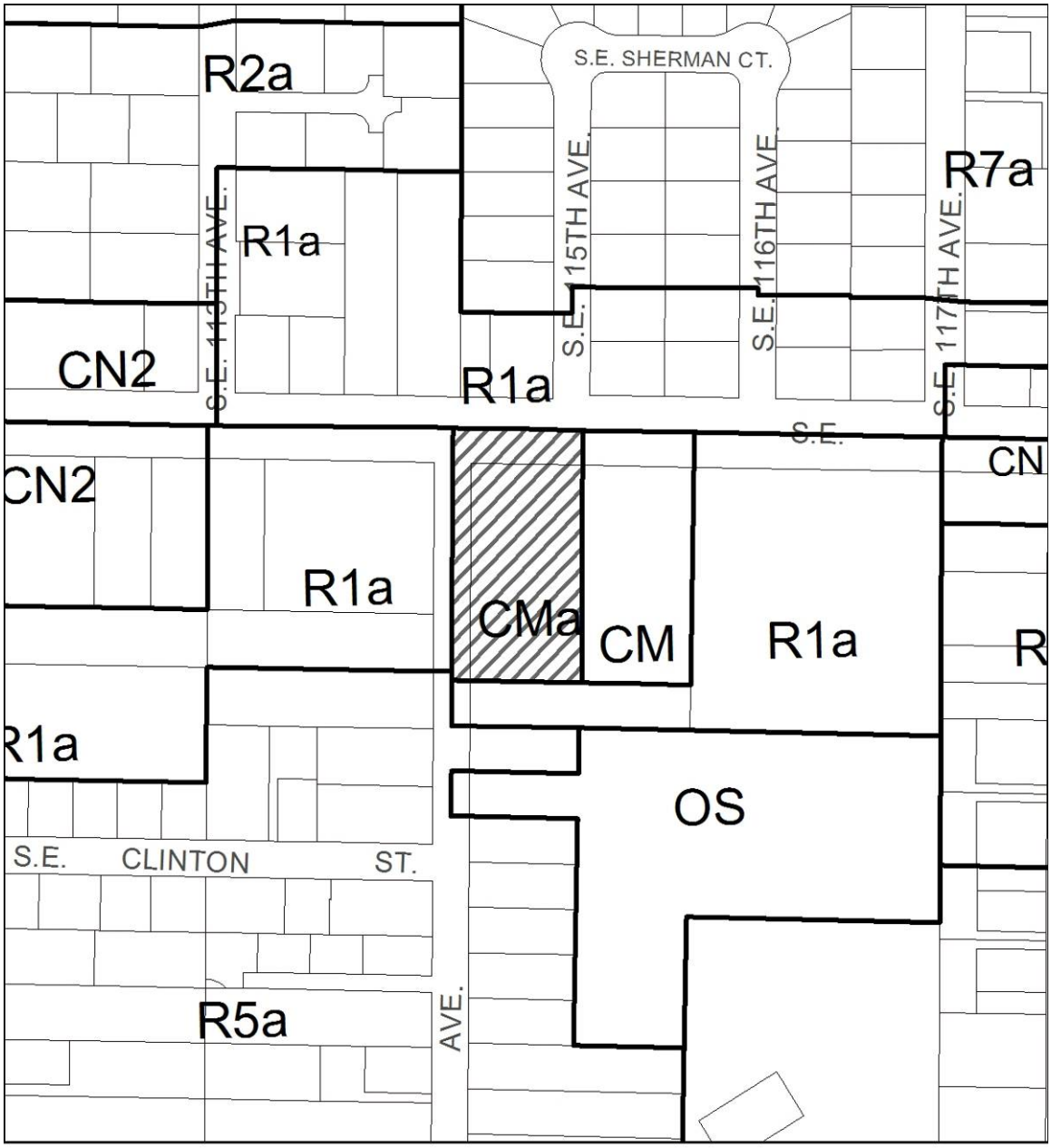


RICAP 5: Remove a overlay from Commercial Zoned properties

May 11, 2009

Existing Zoning Designations

Change from CMa to CM (R333886)

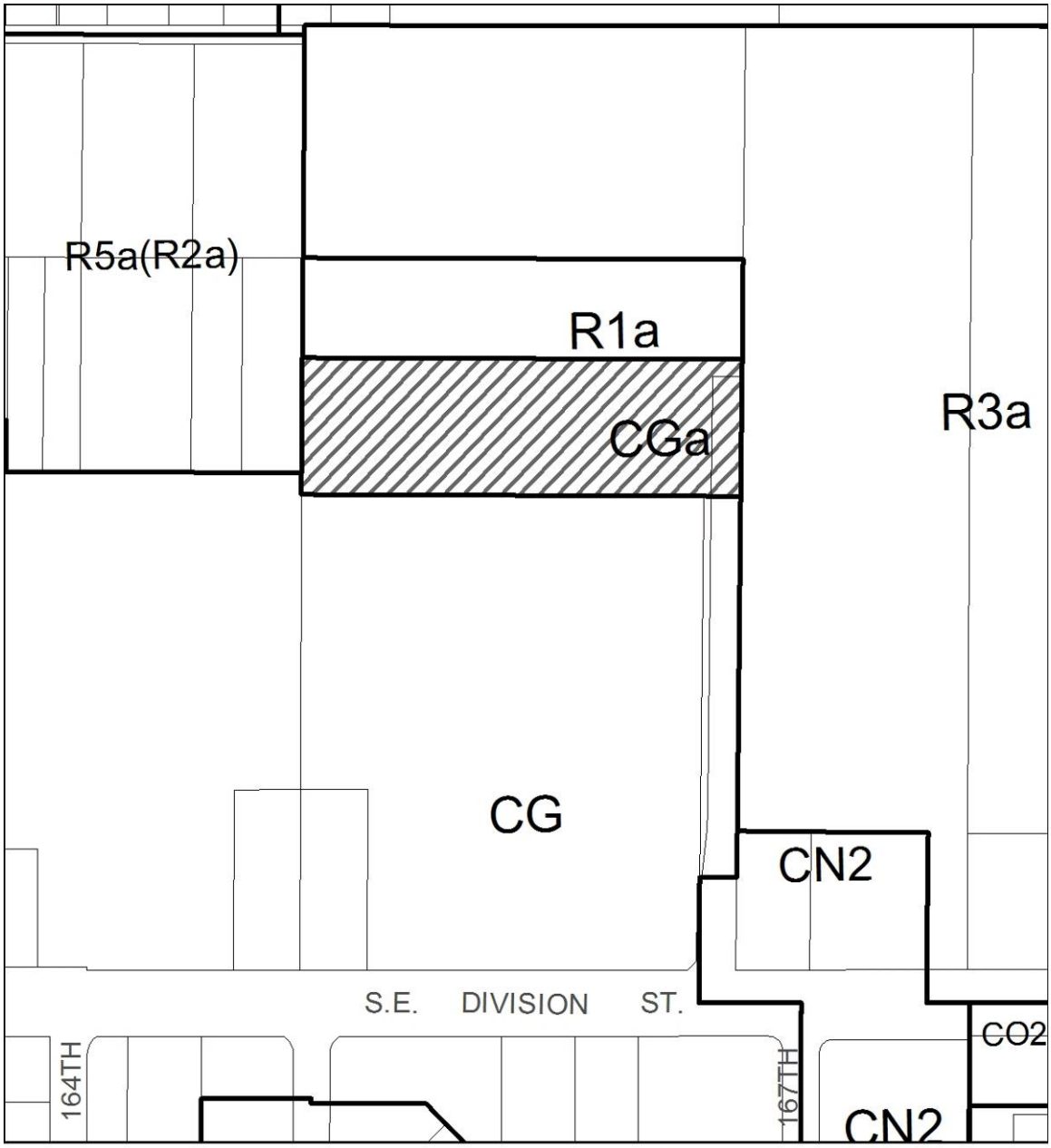
0 100 200
Feet

G:\CodeDevelop\A_overlay_PN\site_map\Rxxxxxx.mxd

City of Portland Bureau of
Planning & Sustainability
Sam Adams, Mayor | Susan Anderson, Director

All data compiled from source materials at different scales.
For more detail, please refer to the source materials or
City of Portland, Bureau of Planning & Sustainability.

PROPOSED ZONING



RICAP 5: Remove a overlay from Commercial Zoned properties

May 11, 2009

Existing Zoning Designations

Change from CGa to CG (R337766)

0 100 200

Feet

N

City of Portland Bureau of Planning & Sustainability

Sam Adams, Mayor | Susan Anderson, Director

All data compiled from source materials at different scales. For more detail, please refer to the source materials or City of Portland, Bureau of Planning & Sustainability.

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V. RICAP 5 Items without Amendments

This section of the report contains information about issues that were researched and analyzed through this project, but for various reasons amendments to the Zoning Code are not being proposed. All issues contain a problem statement, analysis, and recommended action. The recommended action in all cases is to not amend the Zoning Code. See the Section II, Impact Assessment, for more information.

Item 2 – Adjustments and Modifications

Problem Statement

There is a review process in the zoning code that allows development to vary from required standards. This review is called an adjustment. There are other types of reviews, like design review and environment review, that also allow variation to zoning code standards through a process called a modification. The modification is reviewed in conjunction with the main design or environmental review. The code contains many references to adjustments and modifications and when they are allowed or prohibited. It also has a section that defines what standards can be adjusted and what standards cannot. It is not always clear if and when a standard that can be adjusted can also be modified, or what standards can be adjusted.

Analysis

As part of RICAP 5, a table was developed identifying references to when code sections can be adjusted or modified or when adjustments and modifications are prohibited. Over 100 of these references have been identified. After reviewing these references it became clear that it would take a substantial amount of analysis and research to determine in each case whether the intent was to allow or prohibit adjustments, or modifications, or both, or neither. It also became clear that, in many cases, it would be difficult to determine what the original intent may have been and that it would be necessary for a team of staff to go through each code section individually to be able to make a recommendation on where adjustments and modifications should be allowed or prohibited.

Recommendation

No amendment is recommended. The amount of work that will be necessary to go through and make a recommendation on the over 100 code sections was not anticipated when the RICAP 5 Workplan was developed. This is a good candidate for a future code improvement project where adequate time and staffing resources are dedicated. The work that has been completed on this item in RICAP 5 should provide a good basis for initiating work on this item in the future should the resources become available.

Item 20 – Nonconforming List Order

Problem Statement

The list of development standards that are subject to nonconforming upgrades may be confusing. The list jumps back and forth between development standards that are located in the base zones, in the parking chapter, the landscaping chapters, etc. It has been suggested that the list be reordered so that it follow the numerical order of the zoning code and chapters to make it less confusing.

Analysis

The list of required non-conforming upgrades does not include direct reference to code sections. Instead it makes general references to things such as "pedestrian circulation systems, as set out in the pedestrian standards that apply to the site" or "landscaping in existing building setbacks". This is because the standards being referred to often do not fall in one specific section but are spread throughout the code. Listing all the applicable code standards and placing them in numerical order would result in an unwieldy list. It would also potentially separate related standards from each other because they would not fall next to one another in numerical code order. For example, some landscaping requirements are in the base zone chapters while the general landscaping standards are in the landscaping chapter. There are other standards on the nonconforming list between these two, so if the nonconforming list was put into numerical order, similar landscaping requirements would be separated from each other on the list.

Recommendation

No amendment is recommended to address this item. Reordering the list so that the nonconforming upgrades match the numerical order of the code sections would make the list very long because of the many sections that apply. It would also mean that similar standards such as landscaping standards would be separated on the list by other unrelated items.

Item 22 – Nonconforming Development and Allowed Uses

Problem Statement

The code outlines the situations where upgrades are required to nonconforming development when improvements are made at a site. The code describes most situations where nonconforming upgrade requirements may or may not apply. An exception is that it does not say what happens when a new allowed use is proposed on a site with nonconforming development. The code should be clarified to say what happens in this situation.

Analysis

The code states in paragraph 33.258.070.D.2 that nonconforming upgrade requirements apply to "nonconforming development associated with an existing nonconforming use, **an allowed use**, a limited use, or a conditional use". The code does not differentiate between a "new" allowed use, and an "existing" allowed use. The nonconforming upgrades requirements apply to both new and existing allowed uses. For example, a building might be converted from one Retail Sales and Service use (a bank) to another (a restaurant). Both are allowed Retail Sales and Service uses. If the value of the improvements associated with the conversion exceeds the thresholds for nonconforming upgrades, the code requires the upgrades for the "new" allowed use.

Recommendation

No amendment is recommended. The code as written includes situations where there is nonconforming development on sites where new allowed uses are proposed.

Item 24 – Parking in the Front Setback

Problem Statement

Required parking for a house is not allowed in a front setback, but regulations allow non-required parking to be in a setback if it is directly behind a required parking space. This allows people to park in the driveway between a garage and the street. The problem arises when a garage is proposed to be converted to living space. Because part of it is located in the setback, the driveway cannot be used to replace the required parking space that was located in the garage. This forces the applicant wishing to convert the garage to apply for an adjustment to allow parking in the front setback.

Analysis

The zoning code states that the purpose for regulating the placement of parking spaces at houses is to enhance the appearance of neighborhoods. This includes the regulation that does not allow required parking in the setback. It helps assure there is a clear area along the front of a lot that is not filled with view obstructing vehicles. Although it is true that many people will choose to park in the setback area, the regulation assures that space will be available so that they are not forced to do so and many people will choose not to. Along a typical single-dwelling residential street frontage, the regulation will commonly result in a mix of cars parked on the street, in the front setback, and in garages, carports, or parking pads located outside of the setback. Removing the regulation could result in a situation where most of the required parking would be provided in the front setback, which could, as a consequence, result in most vehicles being parked there as well. When the regulation was adopted, it seems likely that the view was that placing parking in the front setback would have a deleterious effect on neighborhood appearance.

The problem statement indicates that the requirement restricting parking in the front setback creates a hurdle to converting a garage into living space because the required parking that was in the garage cannot automatically be replaced by the non-required parking that already exists in the front setback. However, this regulation can be adjusted. The adjustment process also provides a forum to determine if waiving the requirement in the specific instance will meet the purpose of enhancing the appearance of neighborhoods.

Recommendation

No amendment is recommended. The regulation restricting required parking the front setback is consistent with the stated purpose of the standards regulating parking spaces at houses, which is to enhance the appearance of neighborhoods. The adjustment process is an appropriate forum for evaluating whether variations from the standard meet this purpose in situations where applicants wish to convert garage space to living space.

Note: As part of the review of development on small lots and lots of record staff is proposing to allow parking in the front setback in some limited situations as an alternative to allowing narrow garage dominated homes. For more information about these changes, please see commentary in this document related to Item 55, Legal Lot of Record and the commentary for Section 33.110.213.

Item 25 – Alternative Driveway Paving

Problem Statement

The parking and loading chapter of the zoning code requires that driveways and parking areas be paved. It is not clear that alternatives to traditional paving materials, such as grasscrete, porous pavers, and pervious asphalt are allowed by the code.

Analysis

The zoning code requires that driveways and parking areas be paved. The actual construction of driveways and parking areas is governed by Title 24, the City's Building Regulations Title. Title 24 allows alternatives like grasscrete and porous pavers to be used as alternatives to traditional asphalt and concrete paving.

Similar to Title 24, the zoning code includes this definition of "paved area";

> **Paved Area.** An uncovered, hard-surfaced area or an area covered with a perforated hard surface (such as "Grasscrete") that is able to withstand vehicular traffic or other heavy-impact uses. Graveled areas are not paved areas.

Together, both Title 24 and the definition in the zoning code make it clear that a "paved" surface includes a surface that is improved with grasscrete, porous pavers, and other pervious alternatives to traditional asphalt and concrete paving.

Recommendation

No amendment is recommended. It is clear that alternative paving methods such as grasscrete, porous pavers, and pervious asphalt are allowed by Title 33 and by Title 24.

Item 36 – Greenway Water Quality Zone and Greenway Goal Exceptions

Problem Statement

The Greenway River Water Quality or "q" overlay was applied to all land adjacent to the Willamette River (with some exceptions) in 2002, to bring Portland into compliance with Title 3 of Metro's Functional Plan. The q overlay is applied to land that already includes other overlay zones including greenway overlay zones. The greenway overlay zones are intended to implement State Goal 15, Willamette Greenway. However, the q-overlay requires a larger setback from the top of bank than the other greenway zones. In general, greenway setbacks limit development and the types of uses in accordance with State Goal 15. Development that is not river dependent often needs a greenway goal exception. However, since the q-overlay is not part of the state goal requirements, a goal exception should not be required if development that is not river dependent is proposed in the larger q-overlay setback area, but outside of the other greenway setback. The code needs clarification to ensure that a goal exception is not required in those situations.

Analysis

Although the amendment to correct this issue is a fairly simple code fix, the issue has already been included in discussions for the River Plan North Reach. Since this project is taking a more holistic approach to reviewing the regulations along the Willamette River, it makes sense to include this issue within the River Plan amendment rather than review it separately through Regulatory Improvement.

Recommendation

No amendment is recommended through RICAP 5. The issue is being reviewed through the River Plan, North Reach project, and a solution will be included as part of the code amendments related to that project.

Appendix A

What is the Regulatory Improvement Workplan?

On June 26, 2002, the Portland City Council approved Resolution 36080, which sought to "update and improve City building and land use regulations that hinder desirable development." This was the beginning of the Council's charge to build an effective process of continuously improving the City's code regulations, procedures, costs and customer service. The resolution also directed that a procedure be formulated to identify both positive and negative impacts of proposed regulations. This Impact Assessment is now conducted as part of all projects where changes to City regulations are considered.

In August 2003, Council assigned ongoing responsibility for coordination of the implementation of the Regulatory Improvement Workplan (RIW) to the Bureau of Planning and the Bureau of Development Services. To develop the future workplans, the two bureaus established a process for selecting items. The process includes the following:

- An online database of potential amendments and improvements to the Zoning Code. These are items suggested by City staff, citizens, and others;
- The Regulatory Improvement Stakeholder Advisory Team (RISAT); and
- Presenting the Planning Commission with future workplan lists at the same time as proposed code language for the current workplan.

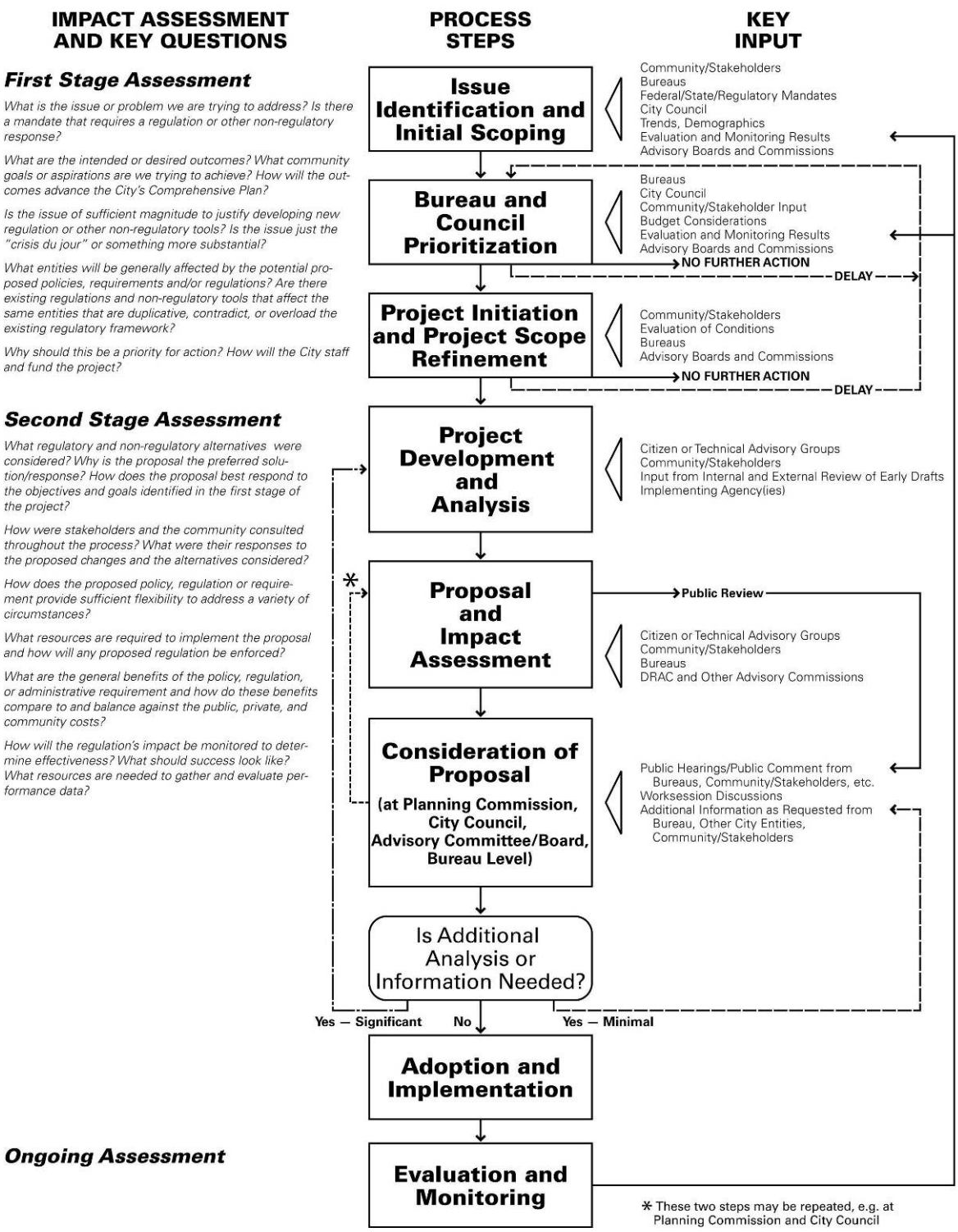
Both bureaus periodically review potential amendments and improvements to the Zoning Code and, with the assistance of the RISAT, rank the amendments and propose a workplan for the next package. The packages are called Regulatory Improvement Code Improvement Package (RICAP) RICAP 1, RICAP 2, and so on. This list of potential amendments is reviewed and adopted by the Planning Commission at a public hearing. The list selected for each package is not a list of amendments, but of issues and areas that will be researched and analyzed; each issue may or may not result in amendments to the code.

After Planning Commission adopts the workplan for the next RICAP package, the Planning Bureau, with assistance from the Bureau of Development Services, develops information and a recommendation on each issue. If an amendment to the Zoning Code is recommended, they also develop code language.

As with all projects that amend the Zoning Code, notice is sent to interested parties and all neighborhood and business associations. Open houses and public meetings are held when warranted. The Planning Commission holds a public hearing on the proposed amendments to the Code, as does City Council.

Appendix B

Model Process for Consideration and Assessment of Land Use and Development Actions



Appendix C

Regulation of Energy Production
(summary of what the proposed reference to ORS 757.005 means)

Type of System	Manufacturing and Production	Waste Related	Basic Utility
Municipality-owned			X
Railroad selling energy to customers when it is not otherwise available			X
Any system supplying energy to fewer then 20 residential customers			X
Systems furnishing heat or steam only, unlimited number of customers			X
Solar and wind systems, unlimited number of customers			X
Waste heat capture, heat exchange, or geothermal for non-electrical uses, unlimited number of customers			X
Bio-diesel: Used to power a generator or for on site heating			X
Cogeneration facility: produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and is more than 50 percent owned by a person who is not an electric utility.			X
Biogas: Anaerobic breakdown of organic matter into gas			X
Biomass: Combustion of biological materials to produce heat, steam or electricity and is more than 50 percent owned by a person who is not an electric utility			X
Small Hydroelectric, and is more than 50 percent owned by a person who is not an electric utility			X
Distribution systems			X
Fuel production: Ethanol, methanol and bio-diesel production	X		
Waste incinerator		X	
Other energy production not listed	X		

Energy production from a facility, plant or equipment that is physically connected with the end user is an accessory to any use, and not any of the above categories (for example, a furnace in a home), or a backup generator in a hospital.

Summary of Use Regulations for Energy Facilities that are Basic Utilities

Type of System	SFR Zones	MFR Zones	C zones	E, I Zones
Municipality-owned	CU	CU (L in RX and IR)	Allowed	Allowed
Railroad facility selling energy to customers when it is not otherwise available	CU	CU (L in RX and IR)	Allowed	Allowed
Any system supplying energy to fewer then 20 residential customers	CU	CU (L in RX and IR)	Allowed	Allowed
Systems furnishing heat or steam only, unlimited number of customers	CU	CU (L in RX and IR)	Allowed	Allowed
Solar and wind systems, unlimited number of customers	Allowed	Allowed	Allowed	Allowed
Waste heat capture, heat exchange, or geothermal for non-electrical uses, unlimited number of customers	Allowed (though not likely)	Allowed	Allowed	Allowed
Cogeneration facility: produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and is more than 50 percent owned by a person who is not an electric utility.	Not Allowed (no assoc. industrial use)	Not Allowed (no assoc. industrial use)	Not Allowed (no assoc. industrial use)	Allowed
Biogas: Anaerobic breakdown of organic matter into gas	Allowed (though not likely except in RF)	Allowed	Allowed	Allowed
Biomass: Combustion of biological materials to produce heat, steam or electricity and is more than 50 percent owned by a person who is not an electric utility	Allowed (though not likely except in RF)	Allowed	Allowed	Allowed
Small Hydroelectric, and is more than 50 percent owned by a person who is not an electric utility	Allowed, (though EN Review typically needed)	Allowed, (though EN Review typically needed)	Allowed, (though EN Review typically needed)	Allowed, (though EN Review typically needed)
All other systems	Not Allowed	Not Allowed	Not Allowed	Allowed (Solid Waste Inc. is CU)

Attachment A: ZONE CHANGE CRITERIA

This replaces all language on page 221 of Proposed Draft

AMEND CHAPTER 33.855, ZONING MAP AMENDMENTS

33.855.050 Approval Criteria for Base Zone Changes

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

A. Compliance with the Comprehensive Plan Map. [No change.]

B. Adequate public services. ~~Public services for water supply, transportation system facilities and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete, and proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services.~~

1. Adequacy of services applies only to the specific zone change site.

2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any. ~~the projected service demands of the site and the ability of the public services to accommodate those demands. Service demands may be determined based on a specific use or development proposal, if submitted. If a specific proposal is not submitted, determination is based on City service bureau demand projections for that zone or area which are then applied to the size of the site. Adequacy of services is determined by the service bureaus, who apply the demand numbers to the actual and proposed services to the site and surrounding area.~~

   a. Public services for water supply, and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete.

   b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate

   c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.

C. and D [No change.]

Attachment B: DEVELOPMENT ON EXISTING LOTS

This replaces all language on page 15-21 of Proposed Draft

33.110.212 When Primary Structures are Allowed

A. Purpose. The regulations of this section allow for development of primary structures on lots and lots of record, but do not legitimize plots that were divided after subdivision and partitioning regulations were established. The regulations also allow development of primary structures on lots that were large enough in the past, but were reduced by condemnation or required dedications for right-of-way.

B. Adjustments. Adjustments to this section are prohibited.

C. Primary structures allowed. In all areas outside the West Portland Park Subdivision, primary structures are allowed as follows:

1. On lots created on or after July 26, 1979;

2. On lots created through the Planned Development or Planned Unit Development process;

3. On sites of any size that have not abutted a lot, lot of record, or lot remnant under the same ownership on July 26, 1979 or any time since that date.

4. On lots, lots of record, lot remnants, or combinations thereof created before July 26, 1979 that meet the requirements of Table 110-6.

Table 110-6
Minimum Lot Dimension Standards for Lots, Adjusted Lots, Lots of Record, and Lot Remnants Created Prior to July 26, 1979

RF through R7 Zones		
Lots, including Adjusted Lots [1]		36 feet wide and meets the minimum lot area requirement of Table 610-2.
Lot Remnants		
Lots of Record		
R5 Zone		
Lots, including Adjusted Lots [1, 3]	If the site has had a dwelling unit on it in the last five years or is in an environmental zone [2]	3000 sq. ft. and 36 ft. wide
	If the site has not had a dwelling unit on it within the last five years and is not in an environmental zone	2400 sq. ft. and 25 ft. wide
	If the site was approved through a property line adjustment under 33.667.300.A.1.d.	1600 sq. ft. and 36 ft. wide
Lot Remnants [3]		3000 sq. ft. and 36 ft. wide
Lots of Record [3]		3000 sq. ft. and 36 ft. wide
R2.5 Zone		
Lots, including Adjusted Lots [1]		1600 sq. ft.
Lot Remnants		
Lots of Record		

Notes:

[1] If the site is both an adjusted lot and a lot of record, the site may meet the standards for adjusted lots.

[2] Primary structures are allowed if the site has had a dwelling unit on it within the last five years that has been demolished as a public nuisance under the provisions of Chapter 29.40.030 or 29.60.080. The site is exempt from minimum lot dimension standards.

[3] Primary structures are allowed on a site if it has been under a separate tax account number from abutting lots or lots of record on [effective date of these regulations] or an application was filed with the City before [effective date of these regulations] authorizing a separate tax account and the site has been under separate tax account from abutting lots or lots of record by [one year after the effective date of these regulations]. The site is exempt from minimum lot dimension standards.

~~3. On lots or combinations of lots created before July 26, 1979 that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:~~

~~a. In the RF through R7 zones the lot, lot of record, or combination of lots or lots of record must:~~

~~(1) Be at least 36 feet wide, and meet the minimum lot area requirement of Table 610-2; or~~

~~(2) Not have abutted any lot or lot of record owned by the same family or business on July 26, 1979 or any time since that date;~~

~~b. In the R5 zone the lot, lot of record, or combination of lots or lots of record must meet one of the following:~~

~~(1) Be at least 36 feet wide, and be at least 3000 square feet;~~

~~(2) Have been under a separate tax account from abutting lots or lots of record on November 15, 2003;~~

~~(3) Have had an application filed with the City before November 15, 2003 to authorize a separate tax account and have been under a separate tax account from abutting lots by November 15, 2004; or~~

~~(4) Have not had a dwelling unit on it since September 10, 2003, or for at least five years, and not have any portion in an environmental overlay zone.~~

~~c. In the R2.5 zone the lot, lot of record or combination of lots or lots of record must meet one of the following:~~

~~(1) Be at least 1600 square feet in area;~~

~~(2) Have been under a separate tax account from abutting lots or lots of record on November 15, 2003; or~~

~~(3) Have had an application filed with the City before November 15, 2003 to authorize a separate tax account and have been under a separate tax account from abutting lots by November 15, 2004;~~

~~4.~~5. Primary structures are allowed on lots, lots of record, lot remnants, and combinations thereof ~~of lots, or lots of record,~~ that did meet the requirements of ~~C.3~~ Table 110-6, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

D. Regulations for West Portland Park. In the West Portland Park subdivision, primary structures are allowed as follows:

1. On lots created on or after July 26, 1979;

2. On lots, or combinations of lots created before July 26, 1979 that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:

   a. R7 zone. In the R7 zone, the lot, lot of record, or combination of lots or lots of record must be at least 7,000 square feet in area;

   b. R5 zone. In the R5 zone, the lot, lot of record, or combination of lots or lots of record must be at least 5,000 square feet in area; ~~or~~

   c. R2.5 zone. In the R2.5 zone, the lot, lot of record, or combination of lots or lots of record must meet the requirements of Table 110-6; or

   d. On July 26, 1979, or any time since that date, the lot, lot of record, or combination of lots or lots of record did not abut any lot or lot of record owned by the same family or business;

3. Primary structures are allowed on lots, lots of record, and combinations of lots or lots of record that did meet the requirements of D.2, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

E. Plots. Primary structures are prohibited on plots that are not lots, lots of record, lot remnants, or tracts.

F. Nonconforming situations. Existing development and residential densities that do not conform to the requirements of this chapter may be subject to the regulations of Chapter 33.258, Nonconforming Situations. Chapter 33.258 also includes regulations regarding damage to or destruction of nonconforming situations.

Attachment C: PROPERTY LINE ADJUSTMENTS ON CORNER LOTS

This replaces all language on page 195 of Proposed Draft

33.667.300 Regulations

A request for a Property Line Adjustment will be approved if all of the following are met:

A. Properties. For purposes of this subsection, the site of a Property Line Adjustment is the two properties affected by the relocation of the common property line.

1. The properties will remain in conformance with ~~Property Line Adjustment will not cause either property or development on either property to move out of conformance with any of~~ the regulations of this Title, including those in Chapters 33.605 through 33.615 except as follows:

   a. If a property or development is already out of conformance with a regulation in this Title, the Property Line Adjustment will not cause the property or development to move further out of conformance with the regulation;

   b. If both properties are already out of conformance with maximum lot area standards, they are exempt from the maximum lot area standard; ~~and~~

   c. If one property is already out of conformance with maximum lot area standards, it is exempt from the maximum lot area standard~~.~~; and

   d. If at least one lot is already out of conformance with the minimum lot area standards and the site is in the R5 zone, the minimum lot area is 1600 square feet and the minimum width is 36 feet, if:

      (1) At least one lot is a corner lot;

      (2) The adjusted property line must be perpendicular to the street lot line for it's entire length; and

      (3) New houses must meet the standards of 33.110.213. Existing houses are exempt from the standards of 33.110.213.

      See Figure 667-1.

2. The Property Line Adjustment will not configure either property as a flag lot, unless the property was already a flag lot;

3. The Property Line Adjustment will not result in the creation of a buildable property from an unbuildable lot remnant;

4~~3~~. The Property Line Adjustment will not result in the creation of street frontage for a land-locked property;

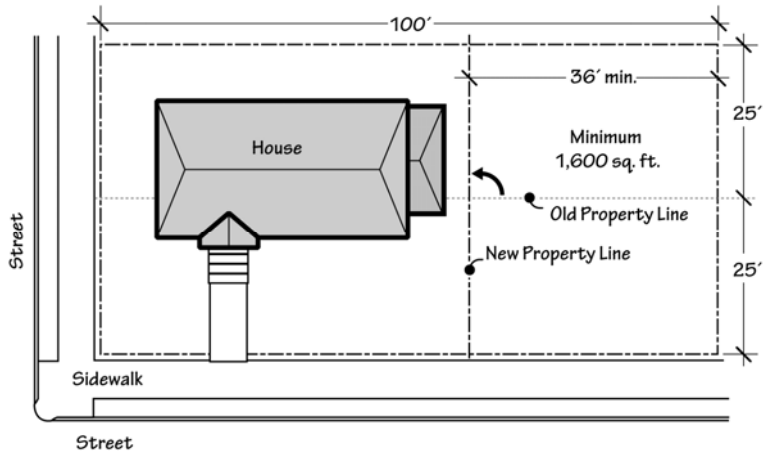
5~~4~~. If any portion of either property is within an environmental overlay zone, the provisions of Chapter 33.430 must be met;

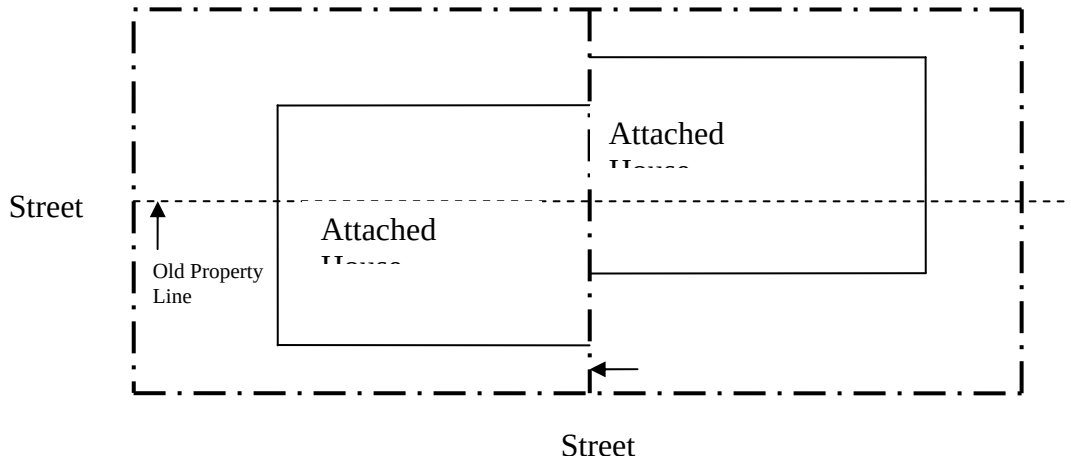
6~~5~~. The Property Line Adjustment will not result in a property that is in more than one base zone, unless that property was already in more than one base zone; and

7~~6~~.The Property Line Adjustment will not create a nonconforming use.

B.-C. [No Change]

Figure 667-1
Property Line Adjustment on Corner Site in R5 Zone





Attachment D: NONCONFORMING STATUS FOR EXISTING LOTS

This deletes all proposed changes page 139 of Proposed Draft and adds substitute changes

33.258.065 Nonconforming Lots, Lots of Record, and Lot Remnants in Single-Dwelling Zones

A. Changes to dwellings. Existing dwelling units on nonconforming lots, lots of record, or lot remnants may continue, may be removed or enlarged, and amenities may be added to the site, but the building may not move further out of compliance with the base zone development standards.

B. Damage.

1. When a nonconforming lot, lot of record, or lot remnant contains a dwelling unit that is damaged or destroyed by fire or by other causes beyond the control of the owner, the structure may be rebuilt.

2. When a nonconforming lot, lot of record, or lot remnant contains a dwelling unit that is intentionally damaged or demolished, the structure may be rebuilt if it complies with the development standards that would apply to new development on the site.

Attachment E: DEFINITIONS OF ADJUSTED LOTS AND LOT REMNANTS

This replaces relevant language on page 223-225 of Proposed Draft

33.910, Definitions

Lot. A lot is a legally defined piece of land other than a tract that is the result of a land division. This definition includes the State definition of both lot, (result of subdividing), **and** parcel, (result of partitioning). See also, Ownership and Site.

- **Adjusted Lot.** A lot that has had one or more of its lot lines altered through an approved property line adjustment or through a deed, or other instrument relocating a property line, recorded with the appropriate county recorder prior to July 26, 1979. An adjusted lot may have equal or larger lot area than the original lot. An adjusted lot may have smaller lot area than the original lot, but must have a lot area that is more than 50% of the original lot area. Portions of an original lot that are 50% or less of the original lot area are defined as lot remnants. See Figures 910-17 and 010-18.

Figure 910-17
Adjusted Lot and Lot Remnant

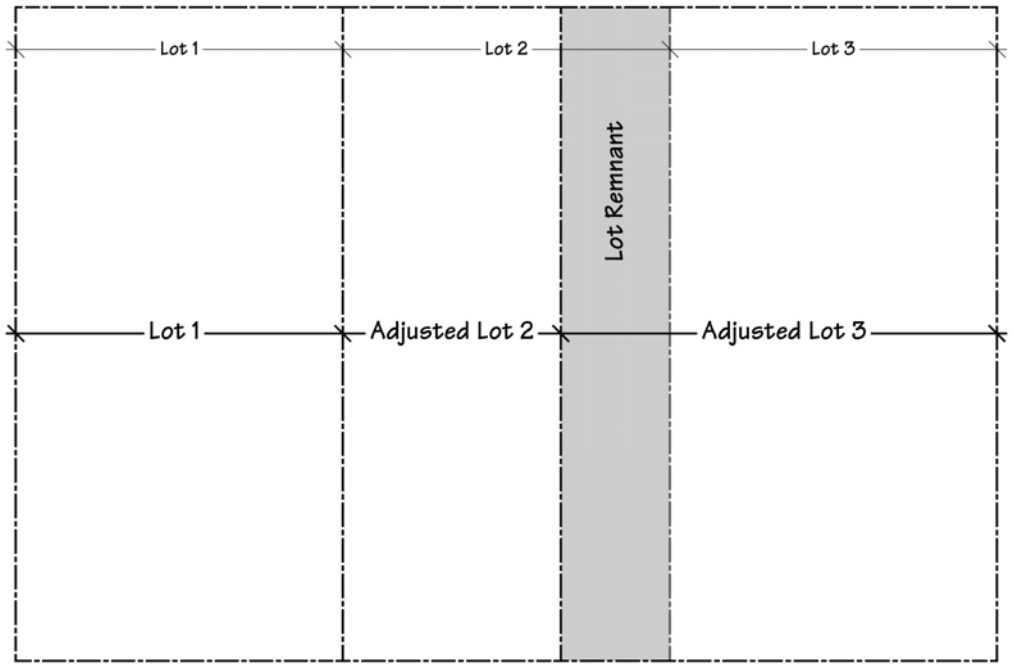
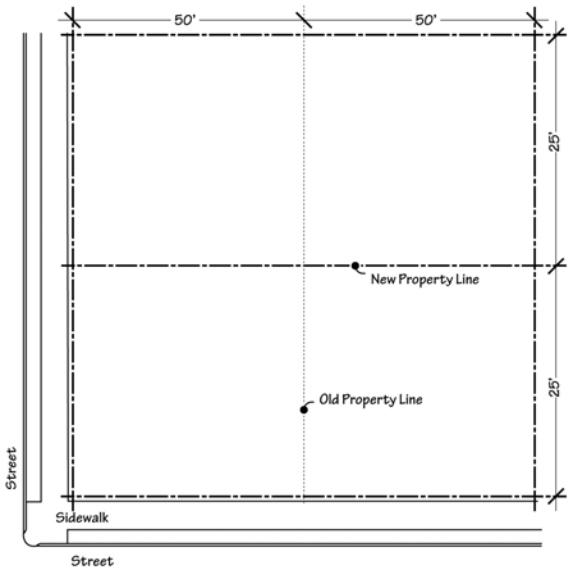
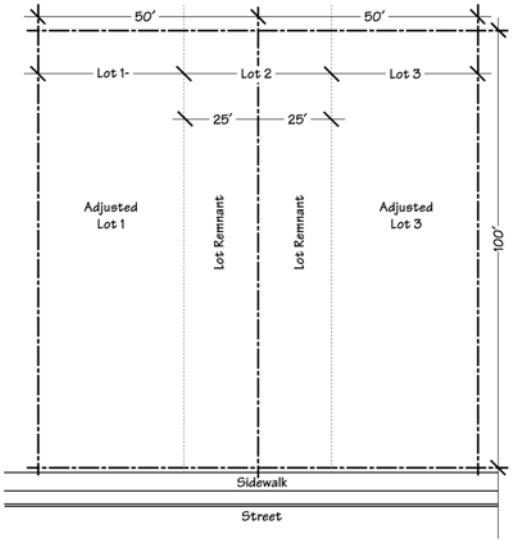


Figure 910-18
Adjusted Lots with Equal Lot Areas as the Original Lots



Lot Remnant. A portion of a lot that has a lot area of 50 percent or less of the original platted lot. See Figure 910-17 and 910-19.

Figure 910-19
Lot Remnants that are 50% of the Original Platted Lot Area



Attachment F: WIND TURBINES CHAPTER

This replaces and adds to affected language on page 163-165 of Proposed Draft

CHAPTER 33.299, WIND TURBINES

Sections:

33.299.010 Purpose.

These regulations allow small, urban-scale wind turbines while limiting potential negative impacts. In concert with a variety of City, State, and Federal programs, allowing the turbines in more locations may encourage further development of wind turbines that are appropriate for urban settings.

33.299.100 When These Regulations Apply

The regulations of this chapter apply to small wind turbines.

Large wind turbines and utility-scale wind turbines are regulated by the base zones, and are not subject to the regulations of this chapter.

33.299.110 Rotor Swept Area

The rotor swept area is the projected area as defined by the American Wind Energy Association (AWEA). In Residential zones, the maximum rotor swept area is 50 square feet. In Commercial zones, the maximum rotor swept area is 150 square feet. There is no maximum in the E and I zones.

33.299.120 Setbacks and Height

The height of a turbine is measured to the tip of the rotor blade at its highest point. For pole mounted turbines, height is measured from grade at the base of the pole. For building mounted turbines, height is measured from the base point of the building.

A. View Corridors. Although the regulations of this section allow wind turbines to exceed the height limits of the base zones, they are not allowed to extend into a view corridor designated by the *Scenic Resources Protection Plan.*

B. Pole mounted. Pole mounted turbines must meet the following. Distances between lot lines and the pole and turbine are measured at the closest points. :

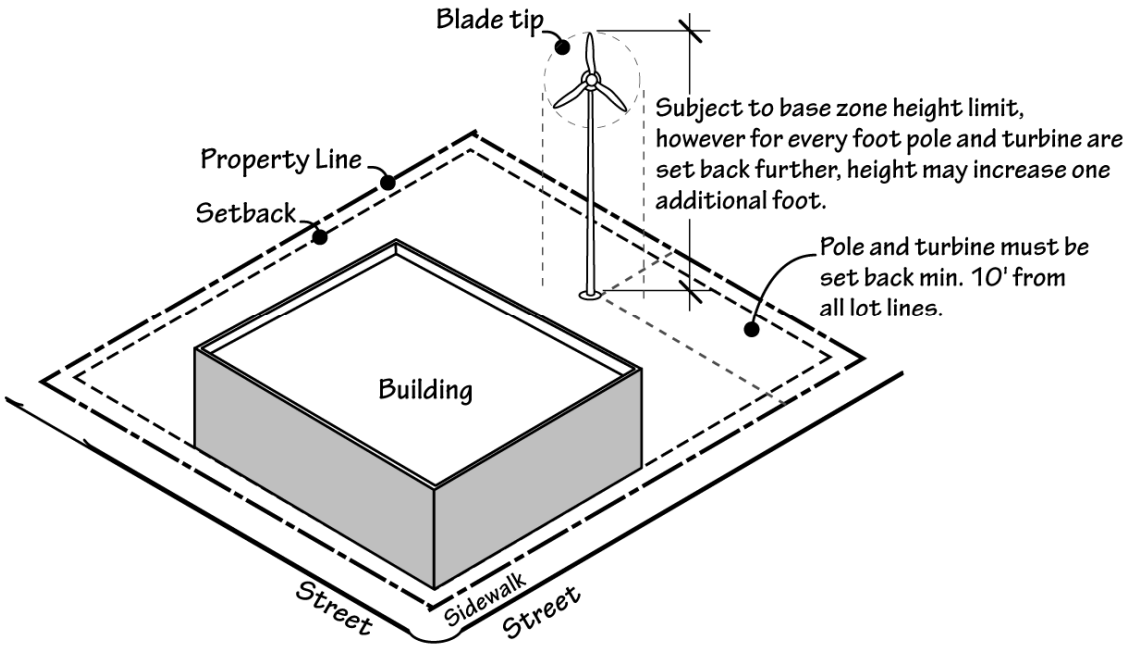
1. Front and street setback. The pole and turbine are not allowed in a required front or street setback;

2. Setback from all lot lines. The pole and turbine must be set back at least 10 feet from all lot lines;

3. Height. The pole and turbine are subject to the base zone height limit. However, for every foot that the pole and turbine are set back farther than specified in A.1 and 2, the height of the turbine may increase one additional foot above the base zone height limit. Each additional foot of height is earned when the pole and turbine are set back from all property lines by an additional

foot. The height may not increase more than 50 percent above the base zone height limit. See Figure 299-1.

Figure 299-1
Pole-Mounted Wind Turbine

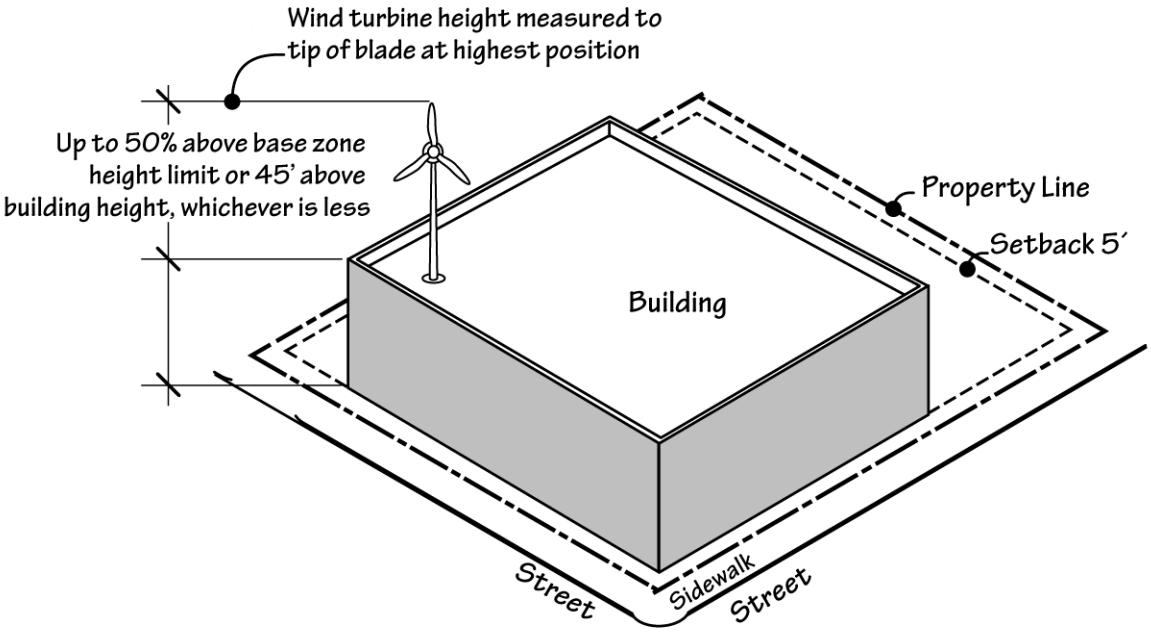


C. Building mounted.

1. Setbacks. Building mounted turbines are subject to the minimum building setbacks of the building they are mounted on.

2. Height. A turbine may be up to 50 percent above the base zone height limit, or 45 feet above the height of the building it is mounted on, whichever is less. See Figure 299-2.

Figure 299-2
Building-Mounted Wind Turbine



D. Exceptions.

1. RF zone. Turbines in the RF zone are subject to Subsections A and B. However, there is no height limit if the turbine is set back from all lot lines a distance equal to its height.

2. EG2, IG, and IH zones. In the EG2, IG, and IH zones, there is no setback or height limit except where lot lines abut R-zoned sites. Where the lot lines abut R-zoned sites:

   a. Pole-mounted turbines are subject to the following:

      (1) Setback. They must be set back at least 10 feet from lot lines that abut R-zoned sites.

      (2) Height. They are subject to the height regulations for pole-mounted turbines that apply to the adjacent R-zone. If the site abuts more than one R-zone, the most restrictive height regulation applies.

      For every foot that the pole and turbine are set back farther than 10 feet from the adjacent R-zone., the height of the turbine may increase one additional foot above the adjacent R-zone base zone height limit. Using this provision, the height may not increase more than 50 percent above the adjacent R-zone base zone height limit.

      However, there is no height limit if the turbine is set back from all lot lines a distance equal to its height.

b. Building-mounted turbines. Building-mounted turbines must meet the setbacks and height regulations that apply to building-mounted turbines in the adjacent R-zone. If the site abuts more than one R-zone, the most restrictive regulations apply.

33.299.130 Noise.

In residential zones, turbines must have an AWEA-rated sound level of 45dBA or less. The City noise standards of Title 18 also apply in all zones.

Attachment G: GREEN ENERGY AND USE

This replaced language shown on page 12, 44, 233, 235, and 237 of the Proposed Draft

Single Dwelling Zones
33.110.100

A. [No Change]

B. 1.-4 [No Change]

5. Basic Utilities. This regulation applies to all parts of Table 110-1 that have note [5].

a. Basic Utilities that serve a development site are accessory uses to the primary use being served.

b. Small Scale Energy Production that provides energy both on- and off-site are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. The requirements of Chapter 33.262, Off Site Impacts must be met;

c. All other Basic Utilities are conditional uses.

Multi-dwelling Zones
33.120.100

A. [No Change]

B. 1.-12 [No Change]

~~13. Basic Utilities in RX. This regulation applies to all parts of Table 120-1 that have note [13]. Public safety facilities are allowed by right up to 20 percent of the floor area exclusive of parking area or the ground floor of a multi-dwelling development, whichever is greater. If they are over 20 percent of the ground floor, a conditional use review is required; the approval criteria for public safety facilities are in Section 33.815.223.~~

~~14. Basic Utilities. This regulation applies to all parts of Table 120-1 that have note [14]. Basic Utilities that serve a development site are accessory uses to the primary use being served. All other Basic Utilities are conditional uses.~~

13 Basic Utilities. These regulations apply to all parts of Table 120-1 that have note [13].

a. Basic Utilities that serve a development site are accessory uses to the primary use being served;

b. Small Scale Energy Production that provides energy both on- and off-site are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or

conditions on the site itself; materials from other sites may not be used to generate energy. In RX and IR zones, up to 10 tons per week of biological materials or byproducts from other sites may be used to generate energy. The requirements of Chapter 33.262, Off Site Impacts must be met;

c. In the RX and IR zones, all other Basic Utilities are limited to 20 percent of the floor area on a site, exclusive of parking area, unless specified above. If they are over 20 percent of the floor area, a conditional use review is required. As an alternative to conditional use review, the applicant may choose to do a Conditional Use Master Plan or an impact Mitigation Plan. The requirements of Chapter 33.262, off Site Impacts must be met.

C-D. [No Change]

Use Categories
33.920.310 Manufacturing And Production

A-B. [No Change]

C. Examples. Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; slaughter houses, and meat packing; feed lots and animal dipping; weaving or production of textiles or apparel; lumber mills, pulp and paper mills, and other wood products manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; movie production facilities; recording studios; ship and barge building; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; production of artwork and toys; sign making; production of prefabricated structures, including manufactured dwellings; and ~~the~~ Utility Scale Energy production ~~of energy~~.

D. Exceptions.

1. Manufacturing of goods to be sold primarily on-site and to the general public are classified as Retail Sales And Service.

2. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

3. Small Scale Energy Production is a Basic Utility.

4. Solid waste incinerators that generate energy but do not meet the definition of Small Scale Energy Production are considered Waste Related Uses.

33.920.340 Waste-Related

A. Characteristics. Waste-Related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods ~~or energy~~ from the biological decomposition of organic material. Waste-Related uses

also include uses that receive hazardous wastes from others and are subject to the regulations of OAR 340.100-110, Hazardous Waste Management.

B. Accessory Uses. Accessory uses may include recycling of materials, offices, and repackaging and transshipment of by-products.

C. Examples. Examples include sanitary landfills, limited use landfills, waste composting, ~~energy recovery plants,~~ solid waste incinerators that generate energy but do not meet the definition of Small Scale Energy Production, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous-waste-collection sites.

D. Exceptions.

1. Disposal of clean fill, as defined in OAR 340-093-0030, is considered a fill, not a Waste-Related use.

2. Infrastructure services that must be located in or near the area where the service is provided in order to function are considered Basic Utilities. Examples include s~~S~~ewer pipes that serve a development ~~are considered a Basic Utility;~~ or water re-use pipes and tanks, pump stations, and collection stations necessary for the water re-use that serve a development or institution.

3. Small Scale Energy Production is considered a Basic Utility.

4. Utility Scale Energy Production, other than solid waste incinerators that generate energy, is considered a Manufacturing and Production Use.

33.920.400 Basic Utilities

A.-B. [No change]

C. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; Small Scale Energy Production, water quality and flow control facilities; water conveyance systems; water harvesting and re-use conveyance systems and pump stations; stormwater facilities and conveyance systems; telephone exchanges; mass transit stops or turn arounds, light rail stations, suspended cable transportation systems, transit centers; and public safety facilities, including fire and police stations, and emergency communication broadcast facilities.

D. Exceptions.

1. Services where people are generally present, other than mass transit stops or turn arounds, light rail stations, transit centers, and public safety facilities, are classified as Community Services or Offices.

2. Utility offices where employees or customers are generally present are classified as Offices.

3. Bus and light rail barns are classified as Warehouse And Freight Movement.

4. Public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication

signals, or other similar services on a regional level are classified as Rail Lines And Utility Corridors.

5. Utility Scale Energy Production is considered Manufacturing and Production.

6. Solid waste incinerators that generate energy but are not Small Scale Energy Production are considered Waste Related Uses

Attachment H: BIKE PARKING RATIOS

This is new language not shown in the Proposed Draft

CHAPTER 33.266, Parking and Loading

Table 266-6
Minimum Required Bicycle Parking Spaces

Use Categories	Specific Uses	Long-term Spaces	Short-term Spaces
Residential Categories			
Household Living	Multi-dwelling	~~1 per 4 units~~ 1.5 per 1 unit in Central City plan district; 1.1 per 1 unit outside Central City plan district	2, or 1 per 20 units
Group Living	[No change]		
Commercial Categories			
Industrial Categories			
Institutional Categories			
Other Categories			

Attachment I: RETAINING WALLS

This is new language not shown in the Proposed Draft

33.110.257 Retaining Walls

A. Purpose. The standards of this section help mitigate the potential negative effects of large retaining walls. Without mitigation, such walls can create a fortress-like appearance and be unattractive. By requiring large walls to step back from the street and provide landscaping, the wall is both articulated and visually softened.

B. Where these regulations apply.

1. Generally. These regulations apply to the portions of retaining walls in required setbacks along street lot lines. Where there is no required setback, or the setback is less than 10 feet, the regulations apply to the first 10 feet from the lot line.

2. Exception. Retaining walls in the areas described in B.1 that are less than four feet high, measured from the ground level on the lower side of the retaining wall, are not subject to the regulations of this section.

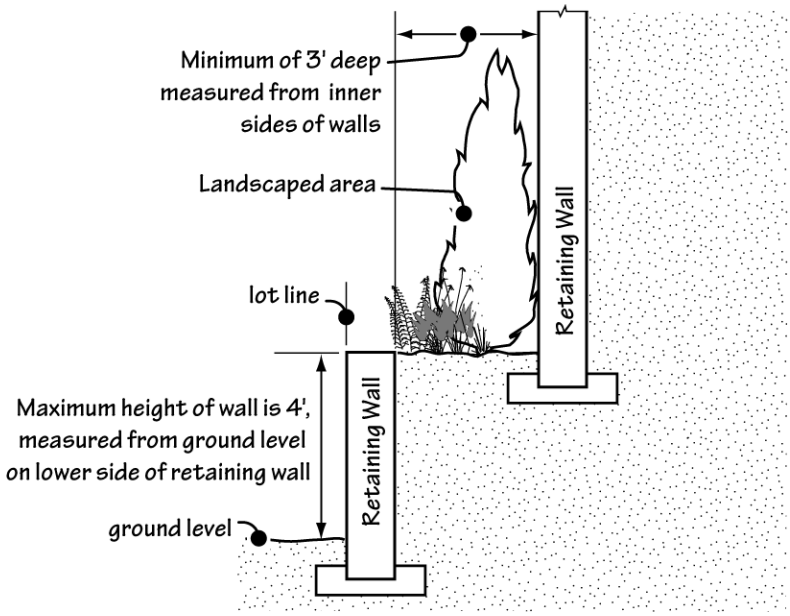
C. Standards.

1. Retaining walls must be include a step-back as shown in Figure 110-15.

2. The landscaped area shown in Figure 110-15 must be landscaped to at least the L2 standard, except that trees are not required. A wall or berm may not be substituted for the shrubs.

D. Sunset. This section will be removed from the Zoning Code on [*six months after effective date of this regulation*].

Figure 110-15
Retaining Walls



Revisions Since Notice of Proposed Amendment (through Planning Commission or City Council hearing actions)
Regulatory Improvement Code Amendment Package 5 (RICAP 5)
Adopted March 10, 2010

Item Number in Proposed Draft (Submitted with Notice of Proposed Amendment)	Description of Proposed Amendment (as shown in Proposed Draft)	Description of Adopted Amendment	Affected Page Number in Recommended Draft	Adopted Language.
8, 14, 15, 41, 42: Courtyard Housing and open space in shared courts or common greens	No proposal	Reiterate current administrative rule policy for shared courts in the zoning code that requires open space in shared court or common greet tracts.	N/A	**33.654.120D.1.b** (3) Common Greens must include at least 400 square feet of grassy area, play area, or dedicated gardening space, which must be at least 15 feet wide at its narrowest dimension. **33.654.120.G.1.c.** (3)Shared courts must include at least 250 square feet of grassy area, play area, or dedicated gardening space, exclusive of vehicle parking areas. This area must be at least 15 feet wide at its narrowest dimension.
35: Environmental Zone Standards for Land Divisions and Utility Lines	Utility lines in Environmental overlay zones: When utility lines have to traverse an area that has already been approved for disturbance through environmental plan check or environmental review, the utility line does not have to be regulated by Section 33.430.130, Standards for Utility Lines. .	Revised language to further clarify that when utility lines have to traverse an area that has already been approved for disturbance through environmental plan check or environmental review, the utility line does not have to be regulated by Section 33.430.130, Standards for Utility Lines.	170-171	**33.430.150** **G. Exemption.** If a proposed utility line or upgrade to a utility line runs through an area that has already been approved as a disturbance area, or allowed by the standards of this chapter, it is exempt from Subsections A, B, and D.
48: Solar Panels and Conditional Use Reviews	Exempt ground mounted solar panels from conditional use review on school sites.	Exempt ground mounted solar panels from conditional use review on school sites, but clarify that development standards of the base zone must still be met.	160-161	**33.281.050.A** 9. The addition of roof-mounted solar panels that meet the requirements of the base zone, and. ground mounted solar panels.
52: Zone Map Amendments and State Transportation Planning Rule	Amend approval criteria for Zone Map Amendments to refer to a 20 year planning period, as required by State administrative rules.	Add clarification that implementing improvements to mitigate and support development can be made by the jurisdiction when deemed necessary, and does not relate to the Transportation Planning Rule planning period.	220-221	**See Attachment A**
55: Legal Lot of Record: When Lots are buildable	Revised code language through text	For clarity, much of revised code language was translated into table format	14-23	**See Attachment B**
55: Legal Lot of Record: Minimum Lot size for existing lots	Minimum lot size in West Portland Park in the R2.5 zone should be 2,500 square feet.	Resolve typo/error that minimum lot size in West Portland Park in the R2.5 zone should be 1,600 square feet, as consistent with the R2.5 zone in the remainder of the city.	20-21	**33.110.212.D.2 (See Attachment B)** c. R2.5 zone. In the R2.5 zone, the lot, lot of record, or combination of lots or lots of record must meet the requirements of Table 110-6; or

Item Number in Proposed Draft (Submitted with Notice of Proposed Amendment)	Description of Proposed Amendment (as shown in Proposed Draft)	Description of Adopted Amendment	Affected Page Number in Recommended Draft	Adopted Language.
55: Legal Lot of Record: Attached Houses for Design Review	Existing Lots in the R5 zone: Allow two attached houses to be built on lots not meeting the minimum lot size for new lots in the zone immediately (do not have to be vacant for 5 years) if reviewed through a Type II Design Review process.	Amendment removed. Not adopted.	16-17	N/A
55: Legal Lot of Record: Parking in front setback	Allow on-site parking on lots less than 3,000 square feet and 36 feet wide to be located in the front setback.	Amendment removed. Not adopted.	22-23	N/A
55: Legal Lot of Record: Garages on existing small lots	Remove exception that allows at least a 12 side garage on a street facing façade that is less than 22 feet wide, to be consistent with current standards for small lots newly created through a land division (New Narrow Lots)	Amendment removed. Not adopted.	40-41	N/A
55: Legal Lot of Record: Development on Lot Remnants	Existing Lots in the R5 zone: All properties defined as Lot Remnants are not buildable.	Properties defined as Lot Remnants are buildable if they are at least 3,000 square feet and 36 feet wide.	14-23 224-225	N/A
55: Legal Lot of Record: Corner lot property line adjustments	Existing Lots in the R5 zone: Allow a property line adjustment involving a corner lot in the R5 zone result in lots that are as small as 2400 sf/25' wide OR 1600 sf/36' wide, even if it takes them further out of conformance.	Allow a property line adjustment involving a corner lot in the R5 zone result in lots that are as small as 2400 sf/25' wide OR 1600 sf/36' wide, even if it takes them further out of conformance, only if at least one of the lots was already non-conforming.	16-17 194-195	**See Attachment C**
55: Legal Lot of Record: Corner lot property line adjustments	No proposal	For property line adjustments on non-conforming corner lots the following the relocated property line must be perpendicular to the street lot line, and clarify that if the resulting vacant property is subject to additional development standards of 33.110.213.	194-195	**See Attachment C**
55: Legal Lot of Record: Setback adjustments	No proposal	For existing "substandard" lots that are subject to the development standards additional development standards of 33.110.213, exceptions to setback standards may only be requested through Design Review, not through an Adjustment.	22-23	**33.110.213 .C.** 10. Setbacks. Adjustments to minimum required setbacks are prohibited. Modifications may be requested through Design Review.

Item Number in Proposed Draft (Submitted with Notice of Proposed Amendment)	Description of Proposed Amendment (as shown in Proposed Draft)	Description of Adopted Amendment	Affected Page Number in Recommended Draft	Adopted Language.
55: Legal Lot of Record: Nonconforming status	Clarify that existing development on a nonconforming lot can be rebuilt in certain circumstances due to accidental destruction	Clarify that existing development on a nonconforming lot can be rebuilt in certain circumstances due to accidental destruction AND if intentionally demolished. Create new Section to address nonconforming lots for clarity.	138-139	**See Attachment D**
55: Legal Lot of Record: Definitions of Adjusted Lots and Lot Remnants	Create definitions for Adjusted Lots and Lot Remnants to help identify when they are buildable.	Create definitions for Adjusted Lots and Lot Remnants to help identify when they are buildable, and clarify that they could have been created by a city-approved property line adjustment OR by deed prior to 1979 (prior to partition regulations). Add clarifying figures	222-225	**See Attachment E**
59: Eaves in Setbacks	Allows eaves to project into setback up to 40 percent of depth of setback, instead of 20 percent per current standards. In R5 zones and, this means instead of 1-foot eaves, 2-foot eaves would be allowed.	Amendment removed. Not adopted.	28-29, 56-57, 84-85, 98-99	N/A
60: Wind Energy Systems	Create new chapter, 33.287, Wind Energy Systems.	Create new chapter, 33.299, Wind Turbines and restructure for clarity. Add figures.	162-165	**See Attachment F**
60: Development Standards for Wind Energy Systems: Wind turbines and View Corridors	No proposal.	Create standard that does not allow wind turbines to project into a view corridor designated by the *Scenic Resources Protection Plan.*	162-165	**See Attachment F**
60: Development Standards for Wind Energy Systems: Maximum height and rotor swept area of wind turbines.	• Maximum turbine rotor swept area in Residential zones of 20 square feet, Maximum rotor swept area in Commercial zones of 100 square feet. • Maximum height of building-mounted turbines of 50 percent of the base zone height or 25 feet above the roof, whichever is less.	• Maximum turbine rotor swept area in Residential zones of 50 square feet, Maximum rotor swept area in Commercial zones of 150 square feet. • Maximum height of building-mounted turbines of 50 percent of the base zone height or 45 feet above the roof, whichever is less.	166-173	**See Attachment F**
60: Wind Energy Systems and Design Review	No proposal	Exempt Wind Energy System turbines and anemometers from Design Review when not located in a Scenic View Corridor designated by the *Scenic Resources Protection Plan*	166-167	**33.420.045, Exempt from Design Review** **AA**.Anemometers, which measure wind speed; and **BB**.Small wind energy turbines that do not extend into a view corridor designated by the *Scenic Resources Protection Plan.* Wind turbines are subject to the standards of Chapter 33.299, Wind Turbines.

Item Number in Proposed Draft (Submitted with Notice of Proposed Amendment)	Description of Proposed Amendment (as shown in Proposed Draft)	Description of Adopted Amendment	Affected Page Number in Recommended Draft	Adopted Language.
61: Green Energy and Use	Clarify that alternative energy producing systems located on buildings are not a primary manufacturing use.	Re-write and structure for clarity and updated terminology	12, 24, 233, 235, 237	**See Attachment G**
N/A: Long-Term Bike Parking Ratios in Multi-dwelling Development	No proposal	Increase for long term bicycle parking in multi-dwelling development from 0.25 spaces to 1.5 spaces per dwelling unit in the Central City Plan district, and 1.1 spaces per unit in the remainder of the city.	N/A	**See Attachment H**
N/A: Retaining Walls	No proposal.	Create development standards for retaining walls on street frontages in single dwelling zones.	N/A	**See Attachment I**
N/A: Accessory Dwelling Units and Density	No proposal	Add a cross reference to the definition of Density that corrects and clarifies when Accessory Dwelling Units are counted or not counted toward Density.	223	**33.910.030** **Density.** A measurement of the number of people, dwelling units, living units in Single Room Occupancy (SRO) housing, or lots in relationship to a specified amount of land. Density is a measurement used generally for residential uses. ~~Accessory Dwelling Units are not counted in calculations of minimum or maximum density~~. See Chapter 33.205, Accessory Dwelling Units for how density is calculated for ADUs. See also Intensity.
N/A: Accessory Dwelling Units and Size	Accessory Dwelling Units (ADUs): No proposal.	Increase the relative allowed size from 33% of size of primary dwelling unit or 800 square feet, whichever is less to 75% of size of main dwelling unit or 800 square feet, whichever is less.	N/A	**33.205.030.C., Design Standards** 6. Maximum size. The size of the accessory dwelling unit may be no more than ~~33%~~75 percent of the living area of the primary dwelling unit ~~house, attached house, or manufactured home~~ or 800 square feet, whichever is less. The measurements are based on what the square footage of the primary dwelling unit and accessory dwelling unit will be after the accessory dwelling unit is created.
Typos/Errors		Add clarification	205	**33.730.030.E.3.a(2):** "For Comprehensive Plan Map Amendments . . . the Hearings Officer will make a written recommendation in the form of a report . ." Request: "For Comprehensive Plan Map Amendments . . . the Hearings Officer will make a written recommendation in the form of a report to City Council . . . ."

Item Number in Proposed Draft (Submitted with Notice of Proposed Amendment)	Description of Proposed Amendment (as shown in Proposed Draft)	Description of Adopted Amendment	Affected Page Number in Recommended Draft	Adopted Language.
Typos/Errors		Correct error	67	**33.120.270.E.3:** 3. Accessory structures; a. Covered accessory structures for the common use of residents are allowed within common greens and shared courts. Covered accessory structures include gazebos, garden structures, greenhouses, picnic areas, play structures, and bike parking areas~~, but do not include structures listed in b., or c. below~~; b. Structures for recycling or waste disposal are allowed within common greens, shared courts, private alleys, or parking tracts; c. Shared garages or carports are allowed within private alleys or parking tracts, but not within common greens or shared courts.
Typos/Errors		Correct typo	33, 55	**33.110.220.D. 7{b) and 33.120.220.B.2.e**: "When a dedication . . . along the frontage of an existing street is required . . . setback between an existing building and the lot line that abuts the right-of-way . . . "
Typos/Errors		Add clarification	55	**33.120.220.B.2.e**: "When a dedication . . . along the frontage of an existing street is required . . . setback . . . may be reduced to zero. Eaves on an existing building may extend one foot into the reduced setback, except that they may not extend into the right-of-way. . . "