

ORDINANCE No. **182474** As Amended

Revise Retail Sales And Service regulations for Division Main Street through the Regulatory Improvement Code Amendment Package 4 (Ordinance; amend Title 33)

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 2007, staff from the Planning Bureau and the Bureau of Development Services (BDS) worked with the Regulatory Improvement Stakeholder Advisory Team (RISAT) to develop a workplan for the fourth Regulatory Improvement Code Amendment Package (RICAP 4). The RISAT includes participants from city bureaus and the community and advises staff.
3. On July 24, 2007, the Planning Commission held a hearing to discuss and take testimony on the RICAP 4 workplan. The workplan consisted of 49 issues proposed for further research in order to find potential solutions. Three additional items were added during the research of the workplan items; two were added by the Bureau of Development Services and one by City Council, bringing the total to 52 items.
4. During the Winter of 2007 and Spring of 2008, Planning staff worked with BDS and RISAT to address the issues in the workplan.
5. During the Spring and Summer of 2008, Planning staff also worked with BDS and RISAT to develop a workplan for the fifth Regulatory Improvement Code Amendment Package (RICAP 5).
6. At the August 26, 2008 Planning Commission hearing on the workplan for RICAP 5, members of the public requested the regulations for Retail Sales And Service Uses for the Division Main Street be amended.
7. At the conclusion of this hearing, the Planning Commission directed staff to prepare a code amendment to modify the Retail Sales And Service Uses limit for Division Main Street. They directed staff to bring the amendment before them as part of RICAP 4. This issue is the item addressed by this ordinance.
8. On August 27, 2008, notice of the proposed RICAP 4 code amendments was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by ORS 197.610.
9. On September 11, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland as well as those involved with the Division Green Street / Main Street Plan (also known as Division Vision). In addition, notice was sent to those who were interested in a 2006 land use adjustment case and appeals involving the former Natures / Wild Oats

building on Division Street. The adjustment and appeals involved the regulations for Retail Sales And Service Uses for the Division Main Street. The notice was for the Planning Commission Hearing on the staff proposal for the Regulatory Improvement Code Amendment Package 4 (RICAP 4), and to announce the availability of the Proposed Draft.

10. On September 16, 2008, the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4) Proposed Draft* was published. It included an amendment to the Division Street retail limits that would remove the floor area restriction from buildings that existed when the regulation was adopted.
11. On October 14, 2008, the Planning Commission held a hearing on the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Proposed Draft*. Staff presented the proposal and public testimony was received. At the end of the meeting, Planning Commission directed staff to prepare amended language on several issues, including a change to the proposed Division Street retail limits. In response to testimony, they asked staff to prepare language that applied the retail limitation to only the ground floor of buildings that existed when the regulation was adopted.
12. On October 28, 2008, the Planning Commission heard additional testimony on the Division Street retail limits, and considered language staff had prepared in response to their October 14 request.
13. At the conclusion of the hearing, the Commission voted to recommend that City Council adopt the staff recommendation for RICAP 4, including the language that applied the Division Street retail limits only to the ground floor of buildings that existed when the regulation was adopted.
14. On December 10, 2008, City Council held a hearing on the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that affects Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone. Staff presented the proposal and public testimony was received.
15. On December 17, 2008, Council decided to defer their vote on the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that amends the regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone.
16. On January 7, 2009, Council made amendments to the Planning Commission's recommended code language, and voted to adopt the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that amends the regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone, as amended.
17. For clarity, the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4)*, affecting Retail Sales And Service Uses on Division Street is now a separate document titled *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009, and attached as Exhibit A.
18. On January 14, 2009, Council voted to adopt *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009.

Findings on Statewide Planning Goals

19. 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.
20. **Goal 1, Citizen Involvement**, requires the provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of this amendment has provided numerous opportunities for public involvement:
 - On July 24, 2007, the Planning Commission held a public hearing on the RICAP 4 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 on the 49 issues listed in the workplan. The RICAP 4 workplan did not contain amendments to the regulations affecting Retail Sales And Service Uses on Division Main Street.
 - During 2007 and 2008, staff worked on proposed code amendments for RICAP 4.
 - During the summer of 2008, Planning received letters and phone calls from the Division/Clinton Business Association, Hosford/Abernathy Neighborhood Development Association and Richmond Neighborhood Association regarding the retail size limitations in the Zoning Code established through the Division Green Street / Main Street Plan.
 - On August 26, 2008, during the Planning Commission hearing on the workplan for RICAP 5, several members of the neighborhood and business associations as well as an owner in the Division Street area, testified to request that staff address the retail size limitations on Division Street. This Ordinance applies to the amendments associated with their request.
 - On September 11, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as persons involved with the Division Green Street / Main Street Plan (also known as Division Vision), as well as all those who were interested in a 2006 land use adjustment case and appeals involving the former Natures/Wild Oats building on Division Street. The adjustment and appeals involved the regulations for Retail Sales And Service Uses for the Division Main Street. The notice was for the Planning Commission Hearing on the staff proposal for the Regulatory Improvement Code Amendment Package 4 (RICAP 4) and to announce the availability of the Proposed Draft.
 - On September 16, 2008, the *Regulatory Improvement Code Amendment Package 4 (RICAP 4) 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 October 14 and 28, 2008, the Planning Commission held a public hearing to discuss and take testimony on the report. The bulk of the testimony was on the proposed amendment to the Division Street retail size limits.
 - On November 21, 2008, notice was sent to those who testified at the Planning Commission hearings, and to people interested in RICAP 4, of the proposed City Council hearing on the Planning Commission recommendation for RICAP 4.
 - On December 10, 2008, the City Council held a public hearing to discuss and take testimony on the recommendations from the Planning Commission.
 - On December 17, 2008, Council voted to defer their decision on the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that amends the regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone.

- On January 7, 2008, Council discussed the amendments affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone, and accepted additional testimony.

21. **Goal 9, Economic Development**, requires the provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. The amendment to the Division Street retail regulations support this goal by providing additional flexibility for the economic re-use of existing buildings, while maintaining a pedestrian scale to the ground floor retail environment.

Findings on Metro Urban Growth Management Functional Plan

22. The following element of the Metro Urban Growth Management Functional Plan is relevant and applicable to the amendment affecting Retail Sales And Service regulations for Division Street in the Main Street Corridor Overlay Zone.
23. **Title 6, Central City Regional Centers, Town Centers and Station Communities**, defines Metro's policy to enhance Centers by encouraging growth within these Centers. This amendment is consistent with this Title by providing additional flexibility for commercial development within existing buildings along Division Street, which is designated a Region 2040 Main Street.

Findings on Portland's Comprehensive Plan Goals

24. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program, and reaffirmed the plan's compliance with statewide planning goals.
25. The following goals, policies, and objectives of the Portland Comprehensive Plan are relevant and applicable to the amendment affecting Retail Sales And Service regulations for Division Street in the Main Street Corridor Overlay Zone.
26. **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 amendment is consistent with this goal because it does not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.
27. **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. This amendment supports this goal by expanding the opportunities for the re-use of existing commercial buildings along Division Street, while retaining the street's character as an established commercial node.
28. **Goal 3, Neighborhoods**, calls for the preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density.

Policy 3.1, Physical Conditions calls for the provision of programs to prevent the deterioration of existing structures and public facilities. This amendment supports the policy by adding flexibility for the re-use of existing buildings that may have exceeded the size limits in place at the implementation of the Division Green Street / Main Street Plan, and that may have remained vacant as a consequence of these limits.

Policy 3.5, Neighborhood Involvement encourages active involvement of neighborhood residents and businesses in decisions affecting their neighborhood, through the promotion of neighborhood and business associations. This amendment supports this policy since the amendment is based upon suggestions from the neighborhood and business associations surrounding Division Street.

Policy 3.6, Neighborhood Plan calls for maintaining and enforcing neighborhood plans that are consistent with the Comprehensive Plan and that have been adopted by City Council. This includes the Division Green Street / Main Street Plan which was adopted by Council in February, 2006. The Division Plan includes goals to focus commercial activity in a series of villages, including building at a pedestrian scale. The Division Plan also calls for supporting a healthy local economy, including businesses that provide a diverse range of goods and services, and to allow a collaborative approach to achieve a connected community. The amendment supports these plan goals by forwarding a code change that was suggested by the neighborhood and business associations. The amendment also supports these goals by adding flexibility to use existing buildings for a wider range of retail uses. At the same time, the provision maintains the pedestrian scale of the ground level of buildings.

29. **Goal 5, Economic Development**, calls for the promotion of a strong and diverse economy that provides a full range of employment and economic choices for individuals and families in all parts of the city. The amendment to the Division Street retail limitation supports this goal by adding flexibility for the economic re-use of existing buildings, while maintaining a pedestrian scale to the ground floor retail environment.
30. **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 followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement
31. **Goal 10, Plan Review and Administration**, includes several policies and objectives. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, directs that amendments to the zoning and subdivision regulations should be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city.

The amendment is supportive of Policy 10.10 because it clarifies and streamlines a regulation in the Zoning Code. It also responds to an identified current and anticipated problem, such as a barrier 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.

32. **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 12.4 recognizes that Portland is experienced most intimately by pedestrians and that development should ensure a pleasant, rich and diverse experience for pedestrians. The amendment is consistent with this policy by maintaining the retail size limit along the ground level of buildings in the Division Green Street / Main Street plan, thus ensuring a variety of uses along the ground level frontage.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009;
- b. Amend Title 33, Planning and Zoning as shown in Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009
- c. Adopt the commentary and discussion in Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009, as legislative intent and further findings;
- d. Direct staff to monitor the effect of the other amendments as part of their overall monitoring program.

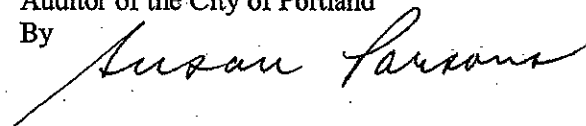
Passed by the Council: JAN 14 2009

GARY BLACKMER

Auditor of the City of Portland

By

MAYOR SAM ADAMS



Prepared by:
Phil Nameny Bureau of Planning and Sustainability
November 21, 2008

Deputy