

ORDINANCE No. 178657 As Amended

Amend Title 33, Planning and Zoning, and the Cultural Resources Protection Plan for Columbia South Shore to update and improve land use regulations and procedures (Ordinance; amend Title 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. On June 26th, 2002, the City Council adopted Resolution 36080, which authorized the Mayor to develop a process to streamline and update the City's building and land use regulations and to improve regulatory-related procedures and customer services.
2. This process, the Regulatory Improvement Workplan, includes several phases, and a number of projects assigned to several bureaus.
3. On August 13, 2003, Council adopted the FY 2003-2004 Regulatory Improvement Work Plan.
4. This workplan has been divided into several projects. The current proposal is named Policy Package 3 and includes items from the 2003-2004 Regulatory Improvement Workplan. It also includes two small projects not included in the Regulatory Improvement Workplan that the Bureau of Planning has added to allow for combined public involvement. The small projects are the changes to the *Cultural Resources Protection Plan* and Zoning Code for Columbia South Shore Plan District, and the change to clarify the Historic Design Review approval criteria.
5. The changes proposed affect Title 33, Planning and Zoning and the *Cultural Resources Protection Plan for Columbia South Shore*.
6. *The Cultural Resources Protection Plan for Columbia South Shore* was adopted by the City Council on April 3, 1996. The plan's purpose is to protect evidence of Indian use from the pre-contact era in the Columbia South Shore. The plan was implemented as part of a work task for periodic review of the Comprehensive Plan relating to Statewide Planning Goal 5.
7. *The Cultural Resources Protection Plan* and related Zoning Code pages are intended to be updated as new information and/or confirmation testing results of potential archeologically significant sites are completed. From 1996 through the end of 2003, six sites have undergone confirmation testing and two sites have undergone voluntary testing, resulting in updated findings to be added to the plan.
8. On April 2, 2004, 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.
9. On May 25, 2004, the Planning Commission held a hearing on the proposal. Staff from the Bureau of Planning presented the proposal and an addendum, and public testimony was received.

10. On June 8, 2004 the Planning Commission held a work session to discuss the proposal and consider public testimony. The Commission voted to forward Policy Package 3 to City Council.
11. On July 28, 2004, City Council held a hearing on the Planning Commission recommendation for Policy Package 3. Staff from the Bureau of Planning presented the proposal, and public testimony was received.
12. On August 4, 2004 City Council voted to adopt the changes in Policy Package 3.

Statewide Planning Goals Findings

13. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals. The following goals and policies are relevant and applicable to Policy Package 3.
14. **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:
 - On August 13, 2003, the City Council voted to adopt the 2003-2004 Regulatory Improvement Workplan. This workplan included proposals to investigate potential issues related to Land Division Monitoring and to review current Bed and Breakfast regulations. Establishment of the list of items involved public outreach during the spring and summer of 2003.
 - On March 16, 2004, the Bureau of Planning published the *2003-2004 Regulatory Improvement Workplan: Policy Package 3 Discussion Draft*. 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 March 18, 2004, the Bureau of Planning sent notice to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as owners of historic properties, owners and neighbors of bed and breakfast facilities and other interested persons, to inform them of publication of the *Discussion Draft* and a Community Open House.
 - On March 22, 2004, staff from the Bureau of Planning attended the City-Wide Land Use Group meeting to inform them of Policy Package 3, provide them with copies of the *Discussion Draft*, and invite them to the Community Open House.
 - On March 22, 2004, Planning staff presented the proposed changes to the Historic Design Review approval criteria to the Historic Landmarks Commission at their meeting.
 - On March 31, 2004, the Bureau of Planning held a Community Open House at which Planning staff were available to answer questions and copies of the Discussion Draft were available. The purpose of the open house was to allow the public the opportunity to review the proposed recommendations, and ask questions of staff. Ten citizens attended the open house.
 - On April 12, 2004, Planning staff discussed the proposed changes to the Historic Design Review approval criteria with the Historic Landmarks Commission.

- On April 15, 2004, Bureau of Planning staff discussed some of the Land Division-related amendments with the Urban Forestry Commission.
 - On April 20, 2004, the Bureau of Planning published the *2003-2004 Regulatory Improvement Workplan: Policy Package 3 Proposed Draft*. 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 April 22, 2004, the Bureau of Planning sent a notice to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as other interested persons, to inform them of a second Community Open House scheduled for May 5, 2004, and to notify them of the Planning Commission Hearing scheduled for May 25, 2004. The hearing was also advertised in the Oregonian.
 - On May 5, 2004, the Bureau of Planning held the second Community Open House on this project. Bureau of Planning staff were available to answer questions and copies of the Proposed Draft were available. Four citizens attended the open house.
 - On May 5, 2004, notice of the proposal was provided via e-mail to the Bosco-Milligan Foundation and the Historic Preservation League.
 - On May 10, 2004, Planning staff met again with the Historic Landmarks Commission to discuss the proposed changes to the Historic Design Review approval criteria.
 - On May 25, 2004, the Planning Commission held a public hearing during which citizens testified. The public record for written testimony was held open until June 1st.
 - On July 28, 2004, the City Council held a public hearing on this proposal, during which citizens provided oral and written testimony.
15. **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 ensures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments are supportive of this goal because development of the recommendations followed established city procedures for legislative actions, while also improving the clarity and understandability of Title 33, Planning and Zoning.
16. **Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural and scenic resources. In general, the amendments are supportive of this goal because they provide clarification to existing regulations pertaining to open space, scenic and historic areas, and natural resources, without changing policy or intent.

The following amendments are directly supportive of Goal 5:

- **Land division-related amendments in the Environmental Zones.** The amendments within the Environmental Zone section allow applicants to request modifications to lot sizes and dimensions as part of an Environmental Review. This specifically furthers Goal 5 by allowing an applicant to reduce lot sizes for development in order to set aside larger tracts to protect resource areas.

- **Changes to Cultural Plan.** The proposed changes to the Cultural Plan and related Zoning sections specifically furthers this goal by updating the plans and the related Zoning Code provisions to match recent archaeological studies and confirmation testing. The Cultural Plan is an adopted Goal 5 project and the update makes the plan consistent with current plans on file with the State Historic Preservation Office.
- **Historic Design Review Approval Criteria.** The change to the Historic Design Review Approval Criteria specifically furthers this goal by clarifying the intent of historic design review criteria used on projects proposing alterations to historic structures throughout the city. These approval criteria are used to protect sites with local, state, regional or national historical significance.

17. **Goal 8, Recreational Needs,** requires satisfaction of the recreational needs of both citizens and visitors to the state. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to recreational needs.

One amendment specifically supports Goal 8 by clarifying the timing for the installation of required recreational areas for land divisions creating at least 40 dwelling units. The amendment alters the timing so that the recreation area improvements are installed prior to the occupancy of the first dwelling unit on the site.

18. **Goal 9, Economic Development,** requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare, and prosperity.

All of the amendments support Goal 9 because they update and improve City land use regulations and procedures that hinder desirable development. Improving land use regulations to make them clear and easily implemented has positive effects on economic development.

The following amendments are directly supportive of Goal 9:

- **Land Division-Related Amendments.** The amendments clarify and simplify land division provisions. This group of amendments removes unwanted barriers to the effective division of land, while better achieving public goals such as access and connectivity.
- **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the operators the potential to serve more guests, and in certain situations, rent the facility out for special events.
- **Changes to the Cultural Resources Plan.** The archaeological amendments facilitate economic opportunities by recognizing and codifying the archaeological testing made between 1996 and 2003. The results of this testing clarifies the development opportunities on specific sites.

19. **Goal 10, Housing,** requires provision for the housing needs of citizens of the state. The amendments are consistent with this goal as they foster the provision of housing in the City of Portland and therefore support Goal 10 and its policies.

The following amendments are directly supportive of Goal 10:

- **Land Division-Related Amendments.** The amendments to the Land Division-related items directly support Goal 10 by clarifying and simplifying land division provisions. This group

of amendments removes unwanted barriers to the effective division of land, while better achieving public goals such as access and connectivity. The majority of land divisions in the City are for residential development. As a result, these amendments will foster the provision of housing in the City of Portland.

- **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the operators the potential to serve more guests, and in certain situations, rent the facility out for special events. This flexibility helps provide the economic incentive to maintain an alternative housing situation and home occupation in larger, older houses in established neighborhoods.

20. **Goal 12, Transportation,** requires provision of a safe, convenient and economic transportation system. In general the amendments are consistent with this goal, because they do not change policy or intent of any of the existing regulations pertaining to transportation.

The Land Division-related amendments are directly supportive of this goal because they clarify and simplify land division provisions. This group of amendments will clarify the approval criteria for rights-of-way, including the provision of Common Greens and Pedestrian Connections, and the ownership of the rights-of-way.

Metro Urban Growth Management Functional Plan Findings

21. The following elements of the Metro Urban Growth Management Functional Plan are relevant and applicable to Policy Package 3.
22. **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 city-wide analysis based on calculated capacities from land use designations. As detailed above in addressing compliance with Statewide Goal 9 (Economic Development) and Goal 10 (Housing), several of the amendments in Policy Package 3 foster economic growth, and facilitate the development of housing within the City, in compliance with this Title.
23. **Title 3, Water Quality and Flood Management Conservation,** calls for the protection of the beneficial uses and functional values of resources within Metro-defined Water Quality and Flood Management Areas by limiting or mitigating the impact of development in these areas. The amendments are consistent with this Title because they do not change policy or intent of existing regulations relating to water quality and flood management conservation.

One amendment directly supports Title 3. The Land Division-related amendments within the Environmental Zone section allow applicants to request modifications to lot sizes and dimensions as part of an Environmental Review. This specifically supports Title 3 by allowing an applicant to reduce lot sizes for development in order to set aside larger tracts to protect functional resource areas.

24. **Title 7, Affordable Housing,** recommends that local jurisdictions implement tools to facilitate development of affordable housing. Generally the proposed amendments are consistent with this Title because they do not change policy or intent of existing regulations relating to affordable housing. The Land Division-related amendments specifically support this Title by clarifying and simplifying land division provisions. This group of amendments removes unwanted barriers to

the effective division of land, in conformance with the provision 3.07.730.D.6 of Title 7 addressing Local Regulatory Constraints.

Portland Comprehensive Plan Goals Findings

25. 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.
26. The following goals, policies, and objectives of the Portland Comprehensive Plan are relevant and applicable to Policy Package 3.
27. **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 policy or intent of existing regulations relating to metropolitan coordination and regional goals.
28. **Goal 2, Urban Development**, calls for maintenance of 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 are aimed at updating and improving 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. The following amendments specifically support Goal 2 and its relevant policies by facilitating the development of housing and employment uses at appropriate locations and intensities:

- **Land Division-Related Amendments.** The amendments clarify and simplify land division provisions. This group of amendments removes unwanted barriers to the effective division of land, while better achieving public goals such as access and connectivity. The effective division of land aids in the development of housing and employment uses.
 - **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the operators the potential to serve more guests, and in certain situations, rent the facility out for special events.
 - **Changes to the Cultural Resources Plan.** The archaeological amendments facilitate urban development opportunities by recognizing and codifying the archaeological testing made between 1996 and 2003. The results of this testing clarifies the development opportunities on specific sites.
29. **Goal 3, Neighborhoods**, calls for preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density. In general, the amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to the stability and diversity of neighborhoods.

The following items are directly supportive of Goal 3.

- **Land Division-Related Amendments.** The amendments clarify and simplify land division provisions. This group of amendments removes unwanted barriers to the effective division of land, enabling the potential to increase density while still addressing the needs of the neighborhood, including compatibility.
- **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the residents the potential to serve more guests, and in certain situations, rent the facility out for special events. This flexibility helps provide the economic incentive to maintain the bed & breakfast facilities, which are often in larger, older houses in established neighborhoods.
- **Historic Design Review Approval Criteria.** The change to the Historic Design Review Approval Criteria specifically furthers this goal by clarifying the intent of historic design review criteria used on projects proposing alterations to historic structures throughout the city. These approval criteria are used to protect sites with local, state, regional or national historical significance, and are often an integral part of their neighborhood.

30. **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, tenures, density, sizes, costs and locations that accommodates the needs, preferences, and financial capabilities of current and future households. The following amendments are consistent with this goal since they foster the provision of housing in the City of Portland and therefore support Goal 4 and its relevant policies.

The following amendments are directly supportive of Goal 4:

- **Land Division-Related Amendments** The amendments to the Land Division-related items support Goal 4 by clarifying and simplifying land division provisions. This group of amendments removes unwanted barriers to the effective division of land, while better achieving public goals such as access and connectivity. The majority of land divisions in the City are for residential development. As a result, these amendments encourage the provision of housing in the City of Portland, and address the Regulatory Costs of Goal 4.15.
- **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the operators the potential to serve more guests, and in certain situations, rent the facility out for special events. This flexibility helps provide the economic incentive to maintain an alternative housing situation and home occupation in larger, older house in established neighborhoods.

31. **Goal 5, Economic Development,** calls for 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 amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to economic development.

In general, all of the amendments support Goal 5 because they update and improve City land use regulations and procedures that hinder desirable development. Improving land use regulations to make them clear and easily implemented has positive effects on economic development.

Specifically, the following amendments support of Goal 5:

- **Land Division-Related Amendments.** These amendments clarify and simplify land division provisions. This group of amendments removes unwanted barriers to the effective division of land, while better achieving public goals such as access and connectivity..
- **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the operators the potential to serve more guests, and in certain situations, rent the facility out for special events.
- **Changes to the Cultural Resources Plan.** The archaeological amendments facilitate urban development opportunities by recognizing and codifying the archaeological testing made between 1996 and 2003. The results of this testing clarifies the development opportunities on specific sites.

32. **Goal 6, Transportation,** calls for the development of 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 are consistent with this goal because they do not change policy or intent of existing regulations relating to transportation.

The Land Division-related amendments are directly supportive of this goal because they clarify and simplify land division provisions. This group of amendments includes provisions to clarify the approval criteria for rights-of-way, including the provision of Common Greens and Pedestrian Connections, and the ownership of the resulting rights-of-way.

33. **Goal 8, Environment,** calls for maintenance and improvement of the quality of Portland's air, water, and land resources, as well as protection of neighborhoods and business centers from noise pollution. Generally, the amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to environment.

One of the Land Division-related amendments directly furthers Goal 8. The change to the Environment Zone section allows applicants to request modifications to lot size and dimensions as part of an Environmental Review. This specifically furthers Goal 8 by allowing an applicant to reduce lot sizes in order to set aside larger tracts to protect resource areas.

34. **Goal 9, Citizen Involvement,** calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The amendments are consistent with this goal because the process provided opportunities for public input and followed adopted procedures for notification and involvement of citizens in the planning process as described under Statewide Planning Goal 1.

35. **Goal 10, Plan Review and Administration,** is broken down into several policies and objectives. Policy 10.9, Land Use Approval Criteria and Decisions, directs that approval criteria with specific land use reviews reflect the findings that must be made to approve the request. 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. These amendments are supportive of Policies 10.9 and 10.10 because they clarify the application of approval criteria for Historic Design Review and elements of Land Divisions, and 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.

36. **Goal 11, Public Facilities** calls for a timely, orderly and efficient arrangement of public facilities and services to support existing and planned land use patterns and densities.

The Land Division-related amendments are directly supportive of this goal because they clarify and simplify land division provisions that affect the arrangement of public facilities. This group of amendments includes provisions to clarify the approval criteria for rights-of-way, including the provision of Common Greens and Pedestrian Connections, and the ownership of the resulting rights-of-way. These provisions also support Policy 11.10, Street Design and Right-of-Way Improvements.

37. **Goal 12, Urban Design**, calls for the enhancement of 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. Generally, the amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to urban design.

The following amendments support Goal 12.

- **Land Division-related amendments.** The Land Division-related amendments affecting Planned Developments directly support this goal by clarifying the design criteria required for new Planned Developments as they relate to the surrounding area.
- **Bed and Breakfast Regulations.** These amendments provide additional flexibility to the operators of Bed and Breakfast facilities in residential zones. This flexibility gives the operators the potential to serve more guests, and in certain situations, rent the facility out for special events. This flexibility helps provide the economic incentive to maintain the bed & breakfast facilities, which are often in larger, older houses in established neighborhoods, supporting the goals for maintaining Portland's character, variety and the preservation of existing structures.
- **Historic Design Review Approval Criteria.** The change to the Historic Design Review Approval Criteria specifically furthers this goal by clarifying the intent of historic design review criteria used on proposed alterations to historic structures throughout the city. These approval criteria are used to protect sites with local, state, regional or national historical significance, and ensure that the integrity of their design is maintained.

NOW, THEREFORE, the Council directs:

- a. Exhibit A, *2003-2004 Regulatory Improvement Workplan: Policy Package 3 Recommended Draft*, dated July 6, 2004 is hereby adopted, as amended;
- b. Title 33, Planning and Zoning, is hereby amended as shown in Exhibit A, *2003-2004 Regulatory Improvement Workplan: Policy Package 3 Recommended Draft*, dated July 6, 2004, as amended;
- c. The *Cultural Resources Protection Plan for Columbia South Shore* is hereby amended as shown in Exhibit A, *2003-2004 Regulatory Improvement Workplan: Policy Package 3 Recommended Draft*, dated July 6, 2004;
- d. In addition to the changes identified in Exhibit A, the term "cultural" will be replaced with "archaeological" throughout the City's adopted *Cultural (Archaeological) Resources Protection Plan for Columbia South Shore*, including in the report title; and
- e. The commentary and discussion in Exhibit A, *2003-2004 Regulatory Improvement Workplan: Policy Package 3 Recommended Draft*, dated July 6, 2004 are hereby adopted as legislative intent and further findings, as amended.

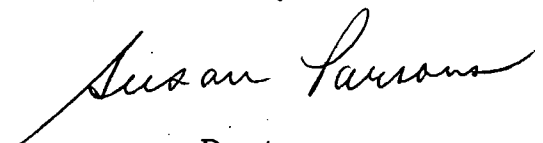
Passed by the Council, AUG 04 2004

Mayor Vera Katz

Phil Nameny, Bureau of Planning
July 14, 2004

By

GARY BLACKMER
Auditor of the City of Portland


Deputy

**POTENTIAL AMENDMENTS TO THE 2003-2004
REGULATORY IMPROVEMENT WORKPLAN:
POLICY PACKAGE 3 – RECOMMENDED DRAFT**

City Council Hearing, Item #900

Amendments:

On Page 109 of the 2003-2004 Regulatory Improvement Workplan: Policy Package 3 – Recommended Draft; Planning Commission Recommendation to City Council:

Please include the following language:

Arborist: A professional listed as a certified arborist or a registered consulting arborist.

And remove the original recommended language:

Arborist. A professional with expertise in the management of trees and woody plants, whose expertise has been accredited through a nationally recognized organization or society of arborists. Examples include a professional listed as a certified arborist or a registered consulting arborist.

On Page 108 of the 2003-2004 Regulatory Improvement Workplan: Policy Package 3 – Recommended Draft; Planning Commission Recommendation to City Council:

Change the Commentary as follows:

Arborist. Throughout the current code the term “certified arborist” is used. This has created confusion, as a “certified arborist” is not the only standard for an arborist to be professionally recognized. ~~A standard definition for arborist is presented here to describe someone who has been accredited through a nationally recognized arborist organization.~~ There are currently only two accreditation programs, one which results in being identified as a “certified” arborist and one which results in a “registered consulting” arborist. ~~These two examples are provided in the definition. However, this definition has been made flexible enough so that if there is a third nationally recognized accreditation process established, the arborist definition does not need to be immediately updated.~~ A standard, centrally located definition is added which clarifies our intent to include all arborists that have a nationally recognized accreditation.

Please note: Commentary language proposed to be eliminated is shown in strikethrough. Commentary language proposed to be added is shown as an underline.