

Ordinance No. 177971

Amend Title 33, Planning and Zoning, to update and improve City building and land use regulations and procedures regarding size of trees, building coverage, and nonconforming situation reviews. (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 14, 2002, Council adopted the FY 2002-2003 Initial Regulatory Improvement Work Plan.
4. The workplan has been divided into several projects. The first of the projects addressed the dollar thresholds for upgrades to nonconforming development and was adopted by City Council on April 2, 2003.
5. The bulk of the 2002-2003 Regulatory Improvement Workplan has been divided into two packages—Policy Package 1 (A and B) and Policy Package 2.
6. This proposal is Policy Package 1 (A and B).
7. On February 27, 2003, 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.
8. On April 22, 2003, the Planning Commission held a hearing on the proposal. Staff from the Bureau of Planning presented the proposal, and public testimony was received.
9. On May 13, 2003 and May 27, 2003 the Planning Commission held work sessions to further discuss the proposal and consider public testimony. The Commission made several changes to the Proposed Draft, and voted to forward Policy Package 1 to City Council.
10. On June 18, 2003, City Council held a hearing on the Planning Commission recommendation, and heard testimony from the public.
11. On June 18, 2003, City Council voted to separate the Planning Commission recommendation to apply design standards to development on substandard lots from the other Policy Package 1 recommendations and to proceed with an emergency ordinance to adopt the design standards.

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12. On June 25, 2003 City Council heard additional testimony on the design standards and voted to amend the Zoning Code to add design standards for development on substandard lots in the R5 and R2.5 zones.
13. On July 9, 2003 City Council heard additional testimony on the remainder of Policy Package 1, made some changes to the Planning Commission recommendation and voted to adopt Policy Package 1 and to amend the Zoning Code.
14. On August 30, 2003 the Policy Package 1 amendments to the Zoning Code went into effect.
15. On September 10, 2003 City Council heard testimony on a resolution to withdraw for reconsideration the ordinance adopting Policy Package 1 (Ordinance 177701) and voted to adopt the resolution.
16. On September 24, 2003 City Council heard testimony on a revised Policy Package 1 (A and B) ordinance and recommended Zoning Code language and voted to adopt the revised Policy Package 1 (A and B) and to amend the Zoning Code.

Statewide Planning Goals Findings

17. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals.
18. **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. The amendments are supportive of this goal in the following ways:
 - On March 21, 2003, the Bureau of Planning sent 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 an open house on April 9, 2003. The purpose of the open house was to allow the public the opportunity to review the proposed recommendations, and ask questions of staff.
 - Also on March 21, 2003, the Bureau of Planning sent notice to all neighborhood association and coalitions, and business associations in the City of Portland, as well as other interested persons, to inform them of a Planning Commission public hearing on Policy Package 1. This event was also advertised in the Oregonian.
 - On March 24, 2003, the Bureau of Planning published a document titled, *2002-2003 Regulatory Improvement Workplan: Policy Package 1 Proposed Draft*. The report was made available to the public and mailed to all those requesting a copy.
 - On April 4, 2003, the Bureau of Planning sent a letter to specific persons interested in the amendments to PCC 33.110.212, Validation of Lots and Lots of Record, to inform them of the April 9, 2003 open house.

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- On April 22, 2003, the Planning Commission held a public hearing during which citizens commented on Policy Package 1. On May 13 and May 27, 2003, the Planning Commission held work sessions to further discuss the proposal.
 - On June 2, 2003, The Bureau of Planning sent notice to all persons who testified, orally or in writing, at the Planning Commission hearing, informing them of a City Council public hearing to consider Policy Package 1. This notice was also sent to those persons requesting such notification.
 - On June 18, 2003, the City Council held a public hearing on Policy Package 1, during which citizens commented on the proposal.
 - On June 25, 2003, the City Council held a continuation of the June 18, 2003 hearing on Policy Package 1 in order to hear testimony on the recommendation to adopt design standards for development on substandard lots in the R5 and R2.5 zones. This recommendation was separated from the other Policy Package 1 recommendations and adopted as an emergency ordinance. Citizens were provided the opportunity to attend this continued hearing and present testimony.
 - On July 9, 2003, the City Council held a continuation of the June 18, 2003 hearing on the remainder of the Policy Package 1 recommendations. Citizens were provided the opportunity to attend this hearing and present testimony.
 - On September 9, 2003 notice of a City Council public hearing on a resolution to withdraw for reconsideration the Policy Package 1 ordinance (Ordinance 177701) was published in the Oregonian newspaper.
 - On September 10, 2003 City Council held a public hearing on the resolution to withdraw for reconsideration the Policy Package 1 ordinance. Citizens were given the opportunity to attend this hearing and provide testimony.
 - On September, 10, 2003 the Bureau of Planning sent 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 City Council hearing on a revised Policy Package 1 (A and B) ordinance and zoning Code language.
 - On September 24, 2003 City Council held a public hearing on a revised Policy Package 1 (A and B) ordinance and zoning code language. Citizens were given the opportunity to attend the hearing and provide testimony.
19. **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.
20. **Goal 3, Agricultural Lands**, requires the preservation and maintenance of the State's agricultural land, generally located outside of urban areas. The amendments do not affect the use of agricultural land so they are not applicable to this goal.

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21. **Goal 4, Forest Lands**, requires the preservation and maintenance of the State's forest lands, generally located outside of urban areas. The amendments do not affect the use of forest lands, so they are not applicable to this goal.
22. **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. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to open space, scenic and historic areas, and natural resources.

While not changing policy, two amendments affect Nonconforming Situation Review in the Open Space zone. Nonconforming situations occur when a use or development does not meet current zoning regulations, but was legal at the time it was established. One of the amendments in Policy Package 1 (A and B) changes the review procedure for a Nonconforming Situation Review in the Residential and Open Space zones from a Type III to a Type II. This change will have no impact on the open space resources being conserved in the Open Space zone.

A second amendment will revise one of the approval criteria that applies to a Nonconforming Situation Review. The criterion currently requires that the proposed change will result in a net decrease of detrimental impacts. As currently written the criterion is inconsistent with the purpose of the nonconforming regulations which in part are intended to allow nonconforming situations to continue and to ensure that zoning code regulations do not cause unnecessary burdens. The revised criterion will require that applicants demonstrate that, with mitigation measures, the proposed change will not result in a net increase in any detrimental impacts on the surrounding area. The change to the review criterion could result in fewer reductions in detrimental impacts, but will not result in increases in detrimental impacts on surrounding areas when changes are proposed for nonconforming uses.

23. **Goal 6, Air, Water and Land Resource Quality**, requires the maintenance and improvement of the quality of air, water and land resources, including the handling of solid wastes. The amendments in Policy Package 1 (A and B) are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to air, water and land resource quality.

One of the amendments in Policy Package 1 (A and B) is supportive of Goal 6. Currently, trees that are required to be planted in non-residential zones must be a minimum of 3 caliper inches in size for broadleaf trees and a minimum of 6 feet tall for conifer trees. Policy Package 1 (A and B) contains an amendment that will reduce the requirement to 2 caliper inches for broadleaf trees and 5 feet for conifer trees. There is evidence that smaller trees experience less transplant shock and stress and have a higher survival rate than larger trees. A smaller tree is ultimately more cost effective and will more often survive the transplant process than a larger tree. Trees provide benefits to air and water quality and therefore this amendment is supportive of Goal 6.

24. **Goal 7, Areas Subject to Natural Disasters and Hazards**, requires the protection of life and property from natural disasters and hazards. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to areas subject to natural disasters and hazards.
25. **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.

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26. **Goal 9, Economic Development**, requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare, and prosperity. The amendments are consistent with this goal because they do not substantially change policy or intent of any of the existing regulations pertaining to economic development.

In general, all of the amendments support Goal 9 because they are aimed at updating and improving City building and land use regulations and procedures that hinder desirable development. Improving land use regulations to make them clear and easily implemented will generally have positive effects on economic development.

Specifically, the following amendments are directly supportive of Goal 9:

- Reduce the minimum required tree caliper for broadleaf trees from 3 inches to 2 inches, and reduce the minimum required height for conifer trees from 6 feet to 5 feet. The cost associated with furnishing a larger tree (3 inch caliper or 6 feet tall) is substantially more than the cost of a smaller tree (2 inch caliper or 5 feet tall). In addition, smaller trees experience less transplant shock and stress and have a higher survival rate than larger trees. A smaller tree is ultimately more cost effective and will more often survive the transplant process than a larger tree.
- Eliminate eaves from the definition of building coverage. Including eaves in the definition of building coverage makes the calculation of building coverage difficult and often results in eaves being reduced in size or eliminated altogether. Eliminating eaves from the definition of building coverage will simplify calculations for applicants and encourage the use of eaves in building design and will simplify review and enforcement of the code.
- Reduce the review procedure for Nonconforming Situation Review from a Type III to a Type II in Residential and Open Space zones. This amendment will reduce the time and expense—to applicants and the city—of this review, and recognizes the less discretionary nature of this review versus the typical Type III review.
- Require no net increase in detrimental impacts of nonconforming situations rather than a net decrease in detrimental impacts. One of the approval criteria for a Nonconforming Situation Review requires the applicant to demonstrate that, with mitigation measures, the proposed change will result in a net decrease in any detrimental impacts the existing development has on the surrounding area. Even if the proposal results in the nonconforming development continuing to operate in the same manner as it has in the past, with no increased impacts on the surrounding neighborhood, the proposal cannot be approved as there is not a demonstrated decrease in impacts.

This approval criterion is inconsistent with the purpose of the nonconforming regulations, which in part are intended to allow nonconforming situations to continue and to ensure that zoning regulations do not cause unnecessary burdens. The burden of meeting this approval criterion is great, particularly given that the change in regulations that made the situation nonconforming is beyond the control of the applicant:

The amendment will require the applicant to demonstrate that, with mitigation measures, the proposed change will not result in a net increase in any detrimental impacts on the surrounding area.

The amendment will reduce the disincentive for maintaining and/or improving existing

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nonconforming situations while still limiting detrimental impacts on the surrounding area. The amendment will encourage necessary investment in existing nonconforming situations.

- Revise the maximum building coverage regulations. The existing building coverage regulations are complex and not easily understood or applied. In addition there are several problems with the existing building coverage ranges that can result in requests for Adjustment Reviews. The amendment to revise the building coverage regulations increases flexibility and ease of use of the code for both the City and applicants.
- Create a process for removing lot lines. Currently there is no process, other than a land division, for removing lot lines. Requiring a land division in order to consolidate lots is onerous and expensive. Creating a process to facilitate lot consolidation will reduce time and expense for the applicant and the City.
- Exempt property line adjustments and lot consolidations from the maximum lot area standard if any of the properties involved in the property line adjustment or lot consolidation are already out of conformance with the maximum lot area standard. The maximum lot area standard was intended to apply in conjunction with maximum density standards at the time of a land division. The purpose of the maximum lot area standard is to prevent the perception that a large lot is further dividable when the lot is part of a land division site that has already reached its maximum density limitation. The standard was never intended to apply to existing, oversized lots. However, because the language in the zoning code is unclear regarding when the maximum lot area standard applies, an adjustment review is currently required in cases where one or more oversized lots are part of a property line adjustment. In these cases, the adjustment review is routinely approved because it is clear from the lot dimension purpose statement that the maximum lot area standard was intended to be applied during a land division when maximum density is considered. This amendment will reduce time and expense to the applicant and the City.
- Replace dwelling units with lots as one of the factors considered when determining level of review for land divisions in Multi-Dwelling zones. The use of the term "dwelling unit" leads to more Type III reviews than is warranted given the relative simplicity of the regulatory issues facing a land division in a Multi-Dwelling zone. A Type III review is more time-consuming and expensive than is warranted for these reviews. This amendment will reduce time and expense for applicants and the City.

27. **Goal 10, Housing**, requires provision for the housing needs of citizens of 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 housing.

One amendment will delete a provision that allows attached residential infill development on long-vacant lots in the R20 through R7 zones. The provision is allowed in areas with the Alternative Design Density Overlay zone ("a" overlay). The provision will remain for areas in the R5 zone with the "a" overlay. The amendment will have little or no effect on housing in the R20 through R7 zones because the provision is rarely used. In the years since the provision was adopted, only two proposals have taken advantage of it. Concerns have been raised that the existing code provision can result in infill development that is not compatible with surrounding development in the R20 through R7 zones.

The following amendments foster the provision of housing in the City of Portland and therefore support Goal 10 and its relevant policies:

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- Replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. As part of this change, minimum lot size requirements will be added for development on existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan. The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing. This incentive has resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. The change will prevent many other R5 areas from redeveloping to densities higher than the R5 zone intends.
 - Eliminate eaves from the definition of building coverage. Including eaves in the definition of building coverage makes the calculation of building coverage difficult and often results in eaves being reduced in size or eliminated altogether. Eliminating eaves from the definition of building coverage will simplify the measurement of building coverage and save applicants and the City time and money. Eliminating eaves from the definition will remove a disincentive to build eaves; this will encourage sound building design. Eave overhangs prevent the entry of bulk rainwater into claddings and window and door openings thereby helping to prevent moisture and mold problems. Removing the disincentive will also encourage increased design compatibility in neighborhoods where existing houses have eaves.
28. **Goal 11, Public Facilities and Services**, requires planning and development of timely, orderly, and efficient public service facilities that serve as a framework for urban and rural development. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to public facilities and services.
29. **Goal 12, Transportation**, requires provision of a safe, convenient and economic transportation system. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to transportation.
30. **Goal 13, Energy Conservation**, requires development of a land use pattern that maximizes the conservation of energy based on sound economic principles. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to energy conservation.
- Policy Package 1 (A and B) contains one amendment related to energy. The definition of building coverage is being amended to exclude eaves. The intent of this amendment is to encourage the use of eaves in building design and construction. There are several reasons for this amendment including the argument that eave overhangs prevent the entry of bulk rainwater into claddings and window and door openings thereby helping to prevent mold problems. The City's Office of Sustainable Development advocates for the addition of eave overhangs as an effective component in controlling moisture in building walls.
31. **Goal 14, Urbanization**, requires provision of an orderly and efficient transition of rural lands to urban use. Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. The amendments are consistent with this goal in that they do not affect the placement of the urban growth boundary, and they do not change policy or intent of any of the existing regulations pertaining to urbanization.

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32. **Goal 15, Willamette River Greenway**, requires the protection, conservation, enhancement, and maintenance of the natural, scenic, historic, agricultural, economic, and recreational qualities of land along the Willamette River. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to the Willamette River Greenway.
33. **Goals 16, 17, 18, and 19 deal with Estuarine Resources, Coastal Shorelines, Beaches and Dunes, and Ocean Resources, respectively**, and are not applicable to Portland as none of these resources is present within the City limits.

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Metro Urban Growth Management Functional Plan Findings

34. **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. The amendments do not change policy or intent of existing regulations relating to the regional requirements for housing and employment accommodation, and therefore, do not affect the City's ability to meet Title 1. As detailed above in addressing compliance with Statewide Goal 9 (Economic Development) and Goal 10 (Housing), several of the amendments in Policy Package 1 (A and B) foster economic growth, and facilitate the development of housing within the City.
35. **Title 2, Regional Parking Policy**, regulates the amount of parking permitted by use for jurisdictions in the region. Generally, the amendments are not inconsistent with this title because they do not change policy or intent of existing regulations relating to the amount of parking allowed. Specifically, one amendment is supportive of this title because it eliminates the requirement for on-site parking for some substandard lots in the R5 and R2.5 zones.
36. **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 not inconsistent with this title because they do not change policy or intent of existing regulations relating to water quality and flood management conservation.
- One amendment relates to Title 3. Currently, trees that are required to be planted in non-residential zones must be a minimum of 3 caliper inches in size for broadleaf trees and a minimum of 6-feet tall for conifer trees. Policy Package 1 (A and B) contains an amendment to reduce that caliper requirement to 2 inches for broadleaf trees and 5 feet for conifer trees. There is evidence that smaller trees (2 caliper inches or 5 feet) experience less transplant shock and stress and have a higher survival rate than larger trees (3 caliper inch or 6 feet). A smaller tree is ultimately more cost effective and will more often survive the transplant process than a larger tree. Trees provide benefits to air and water quality and therefore this amendment is supportive of Title 3.
37. **Title 4, Retail in Employment and Industrial Areas**, calls for retail development that supports Employment and Industrial areas, and that does not serve a larger market area. The amendments are not inconsistent with this title because they do not change policy or intent of existing regulations relating to retail in employment and industrial areas.
38. **Title 5, Neighbor Cities and Rural Reserves**, defines Metro's policy regarding areas outside of the Urban Growth Boundary. The amendments are not inconsistent with this title because they do not change policy or intent of existing regulations relating to neighbor cities and rural reserves.
39. **Title 6, Regional Accessibility**, recommends street design and connectivity standards that better serve pedestrian, bicycle and transit travel and that support the 2040 Growth Concept. The amendments are not inconsistent with this title because they do not change policy or intent of existing regulations relating to regional accessibility.
40. **Title 7, Affordable Housing**, recommends that local jurisdictions implement tools to facilitate development of affordable housing. The amendments are not inconsistent with this title because they do not change policy or intent of existing regulations relating to the development of

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affordable housing.

The following amendments are related to this title:

- One amendment will delete a provision that allows attached residential infill development on long-vacant lots in the R20 through R7 zones. The provision is allowed in areas with the Alternative Design Density Overlay zone ("a"). The provision will remain for areas in the R5 zone with the "a" overlay. The amendment will have little or no effect on affordable housing in the R20 through R7 zones because the provision is rarely used. In the years since the provision was adopted, only two proposals have taken advantage of it. Concerns have been raised that the existing code provision can result in infill development that is not compatible with surrounding development in the R20 through R7 zones.
- Replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. As part of this change, minimum lot size requirements will be added for development on existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan. The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing.

Some testimony has argued in favor of allowing this higher-density housing in the R5 zone on the grounds that it is affordable housing. However, the existing regulations for lot dimensions—including those regulations that allow construction at higher densities—were never intended to be a tool for affordable housing. In fact, testimony indicates that the housing being built as a result of the incentive are being sold for prices that are not considered affordable.

The existing regulations have recently resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. These regulations have the potential to allow redevelopment of many R5 areas at densities higher than the R5 zone intends.

As part of the amendments related to 33.110.212, design standards will apply to development on substandard lots that have been segregated prior to the implementation of lot size standards in the R5 and R2.5 zones. The design standards currently apply in other parts of the City and will not add substantially to the cost of construction on substandard lots. One of the standards eliminates a requirement for on-site parking; this could reduce the cost of construction and thus the sales price.

41. **Title 8, Compliance Procedures**, outlines compliance procedures for amendments to comprehensive plans and implementing ordinances. The amendments are not inconsistent with this title because they do not change policy or intent of existing regulations relating to compliance.

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Portland Comprehensive Plan Goals Findings

42. 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.
43. **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.
44. **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 are consistent with this goal because they do not change policy or intent of existing regulations relating to urban development.

In general, 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 that hinder desirable development, the City's land use regulations 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:

- Delete a provision that allows attached residential infill development on long-vacant lots in the R20 through R7 zones. The provision is allowed in areas with the Alternative Design Density Overlay zone ("a"). The provision will remain for areas in the R5 zone with the "a" overlay zone. The amendment will have little or no effect on the development of housing in the R20 through R7 zones because the provision is rarely used. In the years since the provision was adopted, only two applications have taken advantage of it. Concerns have been raised that this code provision can result in infill development that is not compatible with surrounding development in the R20 through R7 zones.
- Replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. The revised Section will include minimum lot size requirements for development on existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan.

The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing. This incentive has resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. The change will prevent many other R5 areas from redeveloping to densities higher than the R5 zone intends.

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As part of the amendments related to 33.110.212, design standards will apply to substandard lots that have been segregated prior to the implementation of lot size standards in the R5 and R2.5 zones. The design standards currently apply in other parts of the City and are intended to protect neighborhood character.

- Current regulations require new lots in Commercial zones to have a front lot line that is at least 25 feet long. This limits the opportunities for live/work situations in Commercial zones; attached residential that includes commercial space must meet the 25-foot standard, which, in many cases, isn't workable for attached houses. In order to foster live/work situations in Commercial zones, this standard is being amended to require a 10 foot front lot line for all development in the Commercial zones. This will ensure that all lots in Commercial zones have some street frontage, will increase flexibility in the code, and allow more creative development, including live/work situations.

45. **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.

One amendment included in the 2002-2003 Regulatory Improvement Workplan: Policy Package 1 (A and B) will replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. The revised Section will include minimum lot size requirements for development existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan.

The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing and redevelopment at densities higher than the R5 zone intends. This incentive has resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. The change will prevent many other R5 areas from redeveloping in a way that is incompatible with the character of existing R5 neighborhoods.

As part of the amendments related to 33.110.212, design standards will apply to substandard lots that have been segregated prior to the implementation of lot size standards in the R5 and R2.5 zones. The design standards currently apply in other parts of the City and are intended to protect neighborhood character.

46. **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. In general, the amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to housing.

The following amendments support Goal 4 and its relevant policies:

- Delete a provision that allows attached residential infill development on long-vacant lots in the R20 through R7 zones. The provision is allowed in areas with the Alternative Design Density Overlay zone ("a"). The provision will remain for areas in the R5 zone with the "a"

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overlay zone. The amendment will have little or no effect on housing in the R20 through R7 zones because the provision is rarely used. In the years since the provision was adopted, only two applications have taken advantage of it. Concerns have been raised that the existing code provision can result in infill development that is not compatible with surrounding development in the R20 through R7 zones.

- Replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. The revised Section will include minimum lot size requirements for development on existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan.

The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing. This incentive has resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. The change will prevent many other R5 areas from redeveloping to densities higher than the R5 zone intends.

As part of the amendments related to 33.110.212, design standards will apply to substandard lots that have been segregated prior to the implementation of lot size standards in the R5 and R2.5 zones. The design standards currently apply in other parts of the City and are intended to protect neighborhood character.

- Eliminate eaves from the definition of building coverage. Including eaves in the definition of building coverage makes the calculation of building coverage difficult and often results in eaves being reduced in size or eliminated altogether. Eliminating eaves from the definition of building coverage will simplify the measurement of building coverage and save applicants and the City time and money. Eliminating eaves from the definition will remove a disincentive to build eaves; this will encourage sound building design. Eave overhangs prevent the entry of bulk rainwater into claddings and window and door openings thereby helping to prevent moisture and mold problems. Removing the disincentive will also encourage increased design compatibility in neighborhoods where existing houses have eaves.

47. **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 are aimed at updating and improving City building and land use regulations and procedures that hinder desirable development. Improving land use regulations to make them clear and easily implemented will generally have positive effects on economic development.

Specifically, the following amendments support of Goal 5:

- Reduce the minimum required tree caliper for broadleaf trees from 3 inches to 2 inches, and reduce the minimum required height for conifer trees from 6 feet to 5 feet. The cost associated with furnishing a larger tree (3 inch caliper or 6 feet tall) is substantially more than

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the cost of a smaller tree (2 inch caliper or 5 feet tall). In addition, smaller trees experience less transplant shock and stress and have a higher survival rate than larger trees. A smaller tree is ultimately more cost effective and will more often survive the transplant process than a larger tree.

- Eliminate eaves from the definition of building coverage. Including eaves in the definition of building coverage makes the calculation of building coverage difficult and often results in eaves being reduced in size or eliminated altogether. Eliminating eaves from the definition of building coverage will simplify the measurement of building coverage and will save applicants and the City time and money. Eliminating eaves from the definition will encourage the use of eaves in building design and will simplify review and enforcement of the code.
- Reduce the review procedure for Nonconforming Situation Review from a Type III to a Type II in Residential and Open Space zones. This amendment will reduce the time and expense—to applicants and the city—of this review, and recognizes the less discretionary nature of this review versus the typical Type III review.
- Require no net increase in detrimental impacts of nonconforming situations rather than a net decrease in detrimental impacts. One of the approval criteria for a Nonconforming Situation Review requires the applicant to demonstrate that, with mitigation measures, the proposed change will result in a net decrease in any detrimental impacts the existing development has on the surrounding area. Even if the proposal results in the nonconforming development continuing to operate in the same manner as it has in the past, with no increased impacts on the surrounding neighborhood, the proposal cannot be approved as there is not a demonstrated decrease in impacts.

This approval criterion is inconsistent with the purpose of the nonconforming regulations, which in part are intended to allow nonconforming situations to continue and to ensure that zoning regulations do not cause unnecessary burdens. The burden of meeting this approval criterion is great, particularly given that the change in regulations that made the situation nonconforming is beyond the control of the applicant.

The amendment will require that applicants demonstrate that, with mitigation measures, the proposed change will not result in a net increase in any detrimental impacts on the surrounding area.

The amendment will reduce the disincentive for maintaining and/or improving existing nonconforming situations while still limiting detrimental impacts on the surrounding area. The amendment will encourage necessary investment in existing nonconforming situations.

- Revise the maximum building coverage regulations. The existing building coverage regulations are complex and not easily understood or applied. In addition there are several problems with the building coverage ranges that can result in requests for Adjustment Review. The amendment to revise the building coverage regulations will increase flexibility and ease of use of the code for both the City and applicants.
- Create a process for removing lot lines. Currently there is not process, other than a land division, for removing lot lines. Requiring these lots consolidations to go through a land division is onerous and expensive. Creating a process to facilitate lot consolidation will reduce time and expense for the applicant and the City.

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- Exempt property line adjustments and lot consolidations from the maximum lot area standard if any of the properties involved in the property line adjustment or lot consolidation are already out of conformance with the maximum lot area standard. The maximum lot area standard was intended to apply in conjunction with maximum density standards at the time of a land division. The purpose of the maximum lot area standard is to prevent the perception that a large lot is further dividable when the lot is part of a land division site that has already reached its maximum density limitation. The standard was never intended to apply to existing, oversized lots. However, because the language in the zoning code is unclear regarding when the maximum lot area standard applies, an adjustment review is currently required in cases where one or more oversized lots are part of a property line adjustment. In these cases, the adjustment review is routinely approved because it is clear from the lot dimension purpose statement that the maximum lot area standard was intended to be applied during a land division when maximum density is considered. This amendment will reduce time and expense to the applicant and the City.
- Replace dwelling units with lots as one of the factors considered when determining level of review for land division in Multi-Dwelling zones. The use of the term "dwelling unit" leads to more Type III reviews than is warranted given the relative simplicity of the regulatory issues facing a land division in a Multi-Dwelling zone. A Type III review is more time-consuming and expensive than is warranted for the review. This amendment will reduce time and expense for applicants and the City.
- Replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. The revised Section will include minimum lot size requirements for development on existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan.

The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing. This incentive has resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. The change will prevent many other R5 areas from redeveloping to densities higher than the R5 zone intends.

48. **Goal 6, Transportation, calls for protection of the public interest and investment in the public right-of-way and transportation system by**
- encouraging development of a balanced, affordable and efficient transportation system consistent with the Arterial Streets Classifications and Policies; providing adequate accessibility to all planned land uses;
 - providing safe and efficient movement of people and goods while preserving, enhancing, or reclaiming neighborhood livability;
 - minimizing the impact of inter-regional trips on City neighborhoods, commercial areas, and the City street system;
 - reducing reliance on the automobile and per capita vehicle miles traveled;

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- building the use of the City street system to control air pollution, traffic, and livability problems; and maintaining the infrastructure in good condition.

The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to transportation. While not changing policy, Policy Package 1 (A and B) contains one amendment that is related to transportation. The amendment exempts substandard lots in the R5 and R2.5 zones from the requirement for on-site parking. The exemption is part of a package of standards aimed at increasing the design compatibility of narrow houses on substandard lots. This particular exemption will result in fewer of these narrow houses being built with a garage as the primary focal point on the ground floor.

49. **Goal 7, Energy**, calls for promotion of a sustainable energy future by increasing energy efficiency in all sectors of the City by ten percent by the year 2000. The amendments are consistent with this goal because they do not change policy or intent of existing regulations. Policy Package 1 (A and B) contains one amendment related to energy. The definition of building coverage is being amended to exclude eaves. The intent of this amendment is to encourage the use of eaves in building design and construction. There are several reasons for this amendment including the argument that eave overhangs prevent the entry of bulk rainwater into claddings and window and door openings thereby helping to prevent mold problems. The City's Office of Sustainable Development advocates for the addition of eave overhangs as an effective component in controlling moisture in building walls.

50. **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. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to environment.

The amendment to reduce the minimum required tree caliper supports Goal 8. Currently, trees that are required to be planted in non-residential zones must be a minimum of 3 caliper inches in size for broadleaf trees and a minimum of 6 feet tall for conifer trees. Policy Package 1 (A and B) contains an amendment that will reduce the requirement to 2 caliper inches for broadleaf trees and 5 feet for conifer trees. There is evidence that smaller trees experience less transplant shock and stress and have a higher survival rate than larger trees. A smaller tree is ultimately more cost effective and will more often survive the transplant process than a larger tree. Trees provide benefits to air and water quality and therefore this amendment is supportive of this goal.

51. **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.

52. **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. 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.

- Replace Section 33.110.212, Validation of Lots and Lots of Record, with a new Section 33.110.212, Where Primary Structures are Allowed. The changes to this Section will provide

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greater consistency in the code by establishing the same minimum lot sizes for both existing lots and those being created through a land division process. The revised Section will include minimum lot size requirements for development on existing lots in the R5 and R2.5 zones. This specific change is needed to bring the Zoning Code into conformance with the City's Comprehensive Plan.

The change to the minimum lot sizes in the R5 and R2.5 zones will encourage the retention of existing housing by removing an incentive that currently results in the demolition of existing sound housing. This incentive has resulted in the transformation of many lots in the R5 zone to densities that are not in conformance with the Comprehensive Plan. The change will prevent many other R5 areas from redeveloping to densities higher than the R5 zone intends.

As part of the amendments related to 33.110.212, design standards will apply to substandard lots that have been segregated prior to the implementation of lot size standards in the R5 and R2.5 zones. The design standards that will apply to substandard lots currently apply in other parts of the City and are intended to protect neighborhood character.

- Eliminate eaves from the definition of building coverage. Including eaves in the definition of building coverage makes the calculation of building coverage difficult and often results in eaves being reduced in size or eliminated all together. Eliminating eaves from the definition of building coverage will simplify the measurement of building coverage and save applicants and the City time and money. Eliminating eaves from the definition will remove a disincentive to build eaves, which will encourage sound building design. Eave overhangs prevent the entry of bulk rainwater into claddings and window and door openings thereby helping to prevent moisture and mold problems. Removing the disincentive will also encourage increased design compatibility in neighborhoods where existing houses have eaves.

53. The following goals do not apply because of the limited scope of these amendments: Goals 10 and 11.

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NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, *2002-2003 Regulatory Improvement Workplan: Policy Package 1-A Report to City Council*, dated September 17, 2003;
- b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *2002-2003 Regulatory Improvement Workplan: Policy Package 1-A Report to City Council*, dated September 17, 2003; and
- c. Adopt as legislative intent and as further findings the commentary and discussion in Exhibit A, *2002-2003 Regulatory Improvement Workplan: Policy Package 1-A Report to City Council*, dated September 17, 2003.

Passed by the Council, **OCT 15 2003**

Mayor Vera Katz

Shannon Buono, Bureau of Planning
September 16, 2003

By

GARY BLACKMER
Auditor of the City of Portland



Deputy