

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDINANCE NO. 1169**

Amending County Land Use Code, Plans and Maps to Adopt Portland's Recent Code Revision related to the Regulatory Improvement Code Package 5b and Declaring an Emergency

The Multnomah County Board of Commissioners Finds:

- a. The Board of County Commissioners (Board) adopted Resolution A in 1983 which directed the County services towards rural services rather than urban.
- b. In 1996, Metro adopted the Functional Plan for the region, mandating that jurisdictions comply with the goals and policies adopted by the Metro Council.
- c. In 1998, the County and the City of Portland (City) amended the Urban Planning Area Agreement to include an agreement that the City would provide planning services to achieve compliance with the Functional Plan for those areas outside the City limits, but within the Urban Growth Boundary and Portland's Urban Services Boundary.
- d. It is impracticable to have the County Planning Commission conduct hearings and make recommendations on land use legislative actions pursuant to MCC 37.0710, within unincorporated areas inside the Urban Growth Boundary for which the City provides urban planning and permitting services. The Board intends to exempt these areas from the requirements of MCC 37.0710, and will instead consider the recommendations of the Portland Planning Commission and City Council when legislative matters for these areas are brought before the Board for action as required by intergovernmental agreement (County Contract #4600002792) (IGA).
- e. On July 15, 2010, the Board amended County land use codes, plans and maps to adopt the City's land use codes, plans and map amendments in compliance with Metro's Functional Plan by Ordinance 1167.
- f. Since the adoption of Ordinance 1167, the City's Planning Commission recommended land use code, plan and map amendments to the City Council through duly noticed public hearings.
- g. The City notified affected County property owners as required by the IGA.
- h. The City Council adopted the land use code, plan and map amendments set out in Section 1 below and attached as Exhibits 1 and 2. The IGA requires that the County adopt these amendments for the City planning and zoning administration within the affected areas.

**Multnomah County Ordains as follows:**

**Section 1.** The County Comprehensive Framework Plan, community plans, rural area plans, sectional zoning maps and land use code chapters are amended to include the City land use code, plan and map amendments, attached as Exhibits 1 and 2, effective on the same date as the respective Portland ordinance:

Exhibit No.	Description	Date
1	Ordinance to improve land use regulations through the Regulatory Improvement Code Package 5b ( <b>PDX Ord. #184016</b> )	7/21/10
2	Regulatory Improvement Code Amendment Package 5b Excerpt	7/21/10

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

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

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

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

FIRST READING AND ADOPTION: August 19, 2010



BOARD OF COUNTY COMMISSIONERS,  
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy  
Sandra N. Duffy, Assistant County Attorney

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

## **EXHIBIT LIST FOR ORDINANCE**

1. Ordinance to improve land use regulations through the Regulatory Improvement Code Package 5b (**PDX Ord. #184016**).
2. Regulatory Improvement Code Amendment Package 5b Excerpt

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

# ORDINANCE No. 184016 As Amended

Improve land use regulations through the Regulatory Improvement Code Amendment Package 5b (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. On March 10, 2010 City Council voted to adopt the previous package of amendments RICAP 5. They amended the Portland Zoning Code and Official Zoning Maps.
3. City Council also directed staff to take two items back to the Planning Commission. One of the items relates to development on Lot Remnants (Item #1), and the other involves standards for retaining walls (Item #2).
4. Between March 10, 2010 and the time work began on this project, five other issues arose which warranted immediate attention and so were added to this project. These items include two that follow up on items in RICAP 5b (Item #3, Green Energy and Use, and Item #4, Historic Design Review for Solar Panels). Also included is an item directed by Council in a separate action (Item #6, Design Review in the Northwest Plan District) and two additional items (Item #5, Historic Design Review for Vents, and Item #7, Pending Designation of Irvington Historic District).
5. On April 21, 2010 notice of the proposed action was mailed to the Department of Land Conservation and Development (DLCD) in compliance with the post-acknowledgement review process required by OAR 660-18-020. DLCD received the notice later that day.
6. On April 25, 2010, the *RICAP 5b Discussion Draft* was published.
7. On April 30, 2010, *Excerpts from RICAP 5b Discussion Draft—Report for Historic Landmarks Commission* was published. It included only Item #5 (Historic Design Review for Vents) and Item #7 (Pending Designation of Irvington Historic District), and was somewhat revised from the April 25 *RICAP 5b Discussion Draft*.
8. On May 10, 2010, staff from the Bureau of Planning and Sustainability briefed the Portland Historic Landmarks Commission on RICAP 5b, with the focus on Items #5 and #7. The Landmarks Commission supported the changes proposed in the *Discussion Draft*.
9. On May 28, 2010, the *RICAP 5b Proposed Draft* was published. It was also posted on the Bureau website.
10. On May 21, notice of the Planning Commission hearing on RICAP 5b was mailed to 804 people, including all neighborhood and business associations, and all those who had requested notice. The notice also announced the availability of the *RICAP 5b Proposed Draft*.
11. On June 22, 2010, the Planning Commission held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the proposal, and public testimony was received. The Planning Commission voted to forward RICAP 5b to City Council.

12. On June 24, 2010, the *RICAP 5b Recommended Draft* was published. It was also posted on the Bureau website.
13. On June 25, 2010, notice of the City Council hearing on RICAP 5b was mailed to 738 people. The notice also announced the availability of the *RICAP 5b Recommended Draft*.
14. On July 15, 2010, City Council held a hearing on the Planning Commission recommendation for RICAP 5b. Staff from the Bureau of Planning and Sustainability presented the proposal, and public testimony was received.
15. On July 21, 2010, City Council voted to adopt the changes in RICAP 5b.

## Findings on Statewide Planning Goals

16. 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.
17. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement, including:
  18. The Bureau of Planning maintained and updated as needed a project web site that included basic project information, announcements of public events, project documents and staff contact information.
  19. On May 10, 2010, staff from the Bureau of Planning and Sustainability briefed the Portland Historic Landmarks Commission on RICAP 5b, with the focus on Items #5 [(Historic Design Review for Vents) and Item #7 (Pending Designation of Irvington Historic District).
  20. On May 28, 2010, the RICAP 5b Proposed Draft was published. It was also posted on the Bureau website.
  21. On May 21, 2010, notice of the Planning Commission hearing on RICAP 5b was mailed to 804 people, including all neighborhood and business associations, and all those who had requested notice. The notice also announced the availability of the RICAP 5b Proposed Draft.
  22. On June 22, 2010, the Planning Commission held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the proposal, and public testimony was received.
  23. On June 24, 2010, the *RICAP 5b Recommended Draft* was published. It was also posted on the Bureau website.
  24. On June 25, 2010, notice of the City Council hearing on RICAP 5b was mailed to 738, people. The notice also announced the availability of the RICAP 5b Recommended Draft.
  25. On July 15, 2010, City Council held a hearing on the Planning Commission recommendation for RICAP 5b. Staff from the Bureau of Planning and Sustainability presented the proposal, and public testimony was received.
26. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments support this goal because the proposal provides area-specific implementing actions for the potential Irvington Historic District to guide land use activity there within the framework of the City's adopted Comprehensive Plan. The amendments also support this goal because development of the recommendations followed established city procedures for legislative actions, while also improving the clarity and comprehensibility of the City's codes. See

also findings for Portland Comprehensive Plan Goal 1, Metropolitan Coordination, and its related policies and objectives.

27. **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 support this goal because the amendments in anticipation of Irvington's designation as a Historic District will provide greater protection to structures in the district than are currently available. In addition, the amendments pertaining to solar panels and mechanical vents in Historic Districts create an avenue for the implementation of desired energy technology, but with limits that maintain the integrity of the historic resources.
28. **Goal 10, Housing**, requires provision for the housing needs of citizens of the state. The amendments support this goal because allowing lot remnants of sufficient size to be developed increases the supply of land available for housing. See also findings for Portland Comprehensive Plan Goal 4, Housing and Metro Title 1.
29. **Goal 12, Transportation**. The Oregon Transportation Planning Rule (TPR) was adopted in 1991 and amended in 1996 and 2005 to implement State Goal 12. The TPR requires certain findings if the proposed regulations will significantly affect an existing or planned transportation facility. This proposal will not have a significant effect on existing or planned transportation facilities because the proposed amendments are minor changes and clarifications to the Zoning Code, and will not increase development intensity in a manner that will be inconsistent with the function or classification of existing transportation facilities or increase automobile traffic. There are no changes proposed to what uses are allowed, to the types or density of land uses, or to building heights or FARs.

## Findings on Metro Urban Growth Management Functional Plan

30. **Title 1, Requirements for Housing and Employment Accommodation**, requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through citywide analysis based on calculated capacities from land use designations. The amendments are consistent with this title because they slightly increase the development capacity of the city by allowing development on Lot Remnants of sufficient size. See also findings under Comprehensive Plan Goal 4 (Housing).

## Findings on Portland's Comprehensive Plan Goals

31. Only the Comprehensive Plan goals addressed below apply.
32. **Policy 1.4, Intergovernmental Coordination**, requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The amendments support this policy because a number of other government agencies were notified of this proposal and given the opportunity to comment. These agencies include Metro and Multnomah County.
33. **Goal 2, Urban Development**, calls for maintaining Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendments support this goal because allowing development on Lot Remnants of sufficient size will increase the opportunities for housing.

34. **Policy 3.4, Historic Preservation**, calls for the preservation and retention of historic structures and areas throughout the city. The amendments proposed because of the potential Irvington Historic District support this policy.
35. **Goal 4, Housing**, calls for enhancing Portland's vitality as a community at the center of the region's housing market by providing housing of different types, density, sizes, costs and locations that accommodates the needs, preferences, and financial capabilities of current and future households. The amendments are consistent with this goal because by allowing development on Lot Remnants of sufficient size, they increase the opportunities for housing development. This will enhance Portland's role as the center of the region's housing market. See also the findings for Statewide Planning Goal, Goal 10, Housing and for Metro Title 1.
36. **Goal 7, Energy**, calls for promotion of a sustainable energy future by increasing energy efficiency in all sectors of the city. The amendments support this goal because the amendments clarify that Small Scale Energy Production is accessory regardless of where the power is used, which will make installing such facilities more attractive to individuals and businesses. These amendments also allow Small Scale Energy Production in the OS zone, removing a barrier to green energy in the OS zone. By making Utility-Scale Energy Production a conditional use in the OS and RF zones, it allows such facilities to be considered at such locations; currently, they are prohibited. This will make it easier and more attractive to individuals and businesses to install such facilities. The amendments exempting vents from Historic Design Review is designed specifically to encourage homeowners to replace furnaces and hot water heaters with more energy-efficient models by removing the barrier of Historic Design Review.
37. **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.
38. **Policy 10.10, Amendments to the Zoning and Subdivision Regulations**, requires amendments to the zoning and subdivision regulations to be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. The amendments support this policy by being written clearly and concisely. The amendments related to Lot Remnants apply to many situations citywide, as do the Green Energy and Use amendments. The amendments related to Historic Design Review of solar panels and vents apply to all Historic Districts and Historic Landmarks, while the two area-specific amendments—one for the Design Review in Northwest and one for the pending Irvington Historic District—apply to very large areas.
39. **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. The amendments support this goal because the amendments in anticipation of Irvington's designation as a Historic District will provide greater protection to structures in the district than are currently available. In addition, the change of most design reviews in the Northwest plan district from Type II reviews to Type III will increase the notification area and the amount of time citizens have to review development proposals, resulting in better design in the area.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, *Regulatory Improvement Code Amendment Package 5b, Recommended Draft*, dated June 2010;
- b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Regulatory Improvement Code Amendment Package 5b, Recommended Draft*, dated June 2010;
- c. Adopt the commentary in Exhibit A, *Regulatory Improvement Code Amendment Package 5b, Recommended Draft*, dated June 2010 as legislative intent and as further findings;
- d. If any section, subsection, sentence, clause, phrase, diagram or drawing contained in this ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

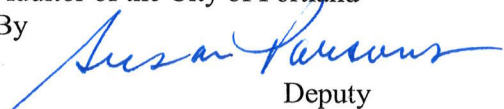
Section 2. The amendments to the Zoning Code included as Item 7, Pending Designation of Irvington Historic District, in Exhibit A, *Regulatory Improvement Code Amendment Package 5b, Recommended Draft*, will be effective on January 2, 2011, in anticipation of listing of the Irvington Historic District on the National Register of Historic Places by the National Park Service, U.S. Department of the Interior, by December 1, 2010. All other Zoning Code amendments will be effective 30 days after adoption by City Council.

Section 3. In the event that the National Park Service does not list the Irvington Historic District by December 1, 2010, the Bureau of Planning and Sustainability is directed to return to City Council before January 2, 2011 with an ordinance to extend the effective date of the amendments to the Zoning Code included as Item 7, Pending Designation of Irvington Historic District, in Exhibit A, *Regulatory Improvement Code Amendment Package 5b, Recommended Draft*.

Passed by the Council: JUL 21 2010

Mayor Adams  
Prepared by: J. Richman  
Date Prepared: June 9, 2010

LaVonne Griffin-Valade  
Auditor of the City of Portland  
By

  
Deputy



1037-1071

Agenda No.  
ORDINANCE NO. 184016 As Amended  
Title

Improve land use regulations through the Regulatory Improvement Code Amendment Package 5b (RICAP 5b) (Ordinance; Amend Title 33)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Sam Adams</b>	CLERK USE: DATE FILED <u>JUL 09 2010</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland  By: <u>[Signature]</u> Deputy  <b>ACTION TAKEN:</b>  JUL 15 2010 <b>As Amended</b> PASSED TO SECOND READING JUL 21 2010 9:30 A.M.
<b>BUREAU APPROVAL</b> Bureau: Planning and Sustainability Bureau Head: Susan Anderson Prepared by: Jessica Richman Date Prepared: July 7, 2010  Financial Impact Statement Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input checked="" type="checkbox"/>  Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>  Council Meeting Date July 15, 2010; 2:00 pm	
City Attorney Approval <u>[Signature]</u>	

<b>AGENDA</b> <b>TIME CERTAIN</b> <input checked="" type="checkbox"/> Start time: <u>2:00</u>  Total amount of time needed: <u>1 hr</u> (for presentation, testimony and discussion)  <b>CONSENT</b> <input type="checkbox"/>  <b>REGULAR</b> <input checked="" type="checkbox"/> Total amount of time needed: <u>10 mn.</u> (for presentation, testimony and discussion)
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FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Leonard	—	
Adams	✓	

# Regulatory Improvement Workplan



## **Regulatory Improvement Code Amendment Package 5b**

**(RICAP 5b)**



City of Portland  
Bureau of  
**Planning and  
Sustainability**

Sam Adams, Mayor  
Susan Anderson, Director

**Excerpt of What Was Adopted by City Council On  
July 21, 2010  
CODE ONLY  
Ordinance No. 184016**

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Regulatory Improvement  
Code Amendment Package 5b

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

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

Jessica Richman, Senior Planner  
Portland Bureau of Planning  
1900 SW 4<sup>th</sup> Avenue, Suite 7100  
Portland, Oregon 97201-5380  
**Phone:** 503-823-7847  
**Email:** [jessica.richman@portlandoregon.gov](mailto:jessica.richman@portlandoregon.gov)

## **Amendments to the Zoning Code**

The amendments to the Zoning Code are on the following pages.

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### 33.110.212 When Primary Structures are Allowed

- A. Purpose.** The regulations of this section allow for development of primary structures on lots and lots of record, but do not legitimize plots that were divided after subdivision and partitioning regulations were established. The regulations also allow development of primary structures on lots that were large enough in the past, but were reduced by condemnation or required dedications for right-of-way.
- B. Adjustments.** Adjustments to this section are prohibited.
- C. Primary structures allowed.** In all areas outside the West Portland Park Subdivision, primary structures are allowed as follows:
1. On lots created on or after July 26, 1979;
  2. On lots created through the Planned Development or Planned Unit Development process;
  3. On ~~sites of any size lots~~, lots of record, lot remnants, or combinations thereof that have not abutted a lot, lot of record, or lot remnant under the same ownership on July 26, 1979 or any time since that date; or
  4. On lots, lots of record, lot remnants, or combinations thereof created before July 26, 1979 that meet the requirements of Table 110-6.

Table 110-6 Minimum Lot Dimension Standards for Lots, Adjusted Lots, Lots of Record, and Lot Remnants Created Prior to July 26, 1979		
RF through R7 Zones		
Lots, including Adjusted Lots [1]	36 feet wide and meets the minimum lot area requirement of Table 610-2.	
Lot Remnants		
Lots of Record		
R5 Zone		
Lots, including Adjusted Lots [1, 3]	If the <u>lot site</u> has had a dwelling unit on it in the last five years or is in an environmental zone [2]	3000 sq. ft. and 36 ft. wide
	If the <u>lot site</u> has not had a dwelling unit on it within the last five years and is not in an environmental zone	2400 sq. ft. and 25 ft. wide
	If the <u>lot site</u> was approved through a property line adjustment under 33.667.300.A.1.d.	1600 sq. ft. and 36 ft. wide
Lot Remnants [3]		3000 sq. ft. and 36 ft. wide
Lots of Record [1, 3]		3000 sq. ft. and 36 ft. wide
R2.5 Zone		
Lots, including Adjusted Lots [1]	1600 sq. ft.	
Lot Remnants		
Lots of Record		

Notes:

- [1] If the property site is both an adjusted lot and a lot of record, the site may meet the standards for adjusted lots.
- [2] Primary structures are allowed if the site has had a dwelling unit on it within the last five years that has been demolished as a public nuisance under the provisions of Chapter 29.40.030 or 29.60.080. The site is exempt from minimum lot dimension standards.
- [3] Primary structures are allowed on a site if it has been under a separate tax account number from abutting lots or lots of record on April 24, 2010 or an application was filed with the City before April 24, 2010 authorizing a separate tax account and the site has been under separate tax account from abutting lots or lots of record by April 24, 2011. The site is exempt from minimum lot dimension standards.

### 33.110.212 When Primary Structures are Allowed (cont'd)

5. Primary structures are allowed on lots, lots of record, and lot remnants, and combinations thereof that did meet the requirements of Table 110-6, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

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

1. On lots created on or after July 26, 1979;
2. On lots, lots of record, lot remnants, or combinations thereof that have not abutted a lot, lot of record, or lot remnant under the same ownership on July 26, 1979 or any time since that date;
- ~~2.3.~~ On lots, lots of record, lot remnants, or combinations thereof of lots created before July 26, 1979, that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:
  - a. R7 zone. In the R7 zone, the lot, lot of record, lot remnant or combinations thereof ~~of lots or lots of record~~ must be at least 7,000 square feet in area;
  - b. R5 zone. In the R5 zone, the lot, lot of record, lot remnant or combinations thereof ~~of lots or lots of record~~ must be at least 5,000 square feet in area; or
  - c. R2.5 zone. In the R2.5 zone, the lot, lot of record, lot remnant or combinations thereof ~~of lots or lots of record~~ must meet the requirements of Table 110-6; ~~or~~
  - ~~d. On July 26, 1979, or any time since that date, the lot, lot of record, or combination of lots or lots of record did not abut any lot or lot of record owned by the same family or business;~~
- ~~3.4.~~ Primary structures are allowed on lots, lots of record, lot remnants and combinations thereof ~~of lots or lots of record~~ that did meet the requirements of D.2, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

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

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

### 33.110.257 Retaining Walls

**A. Purpose.** The standards of this section help mitigate the potential negative effects of large retaining walls. Without mitigation, such walls can create a fortress-like appearance and be unattractive. By requiring large walls to step back from the street and Provide landscaping, the wall is both articulated and visually softened.

**B. Where these regulations apply.**

1. Generally. These regulations apply to the portions of street-facing retaining walls that are in required setbacks along street lot lines. Where there is no required setback, or the setback is less than 10 feet, the regulations apply to the first 10 feet from the lot line.
2. Exceptions.
  - a. Retaining walls in the areas described in B.1 that are less than four feet high, as measured from the ground level on the lower side of the retaining wall bottom of the footing, are not subject to the regulations of this section.
  - b. Retaining walls on sites with an average slope of 20 percent or more, where the site slopes downward from a street, are not subject to the regulations of this section.
  - c. Replacing an existing retaining wall, where the replacement will not be taller or wider than the existing wall, is not subject to the regulations of this section.
  - d. Retaining walls on sites where any portion of the site is in an environmental overlay zone are not subject to the regulations of this section.

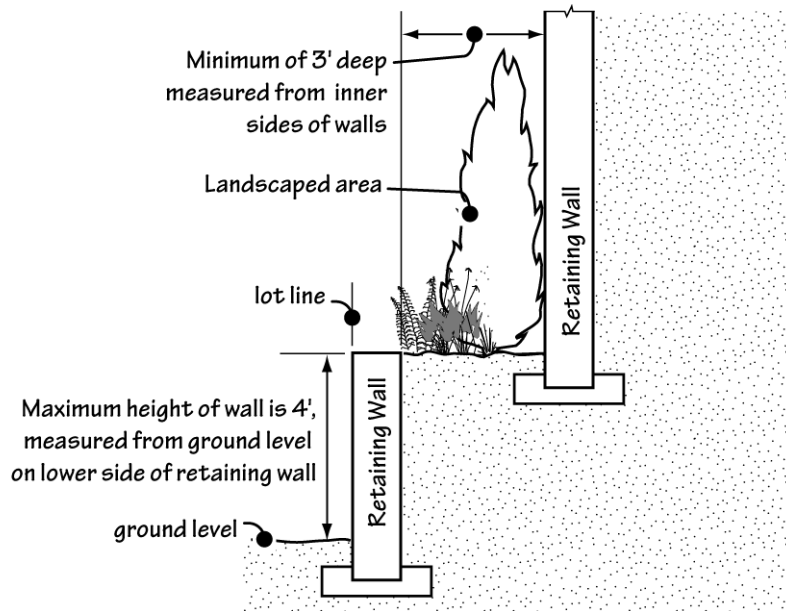
**C. Standards.**

1. Retaining walls ~~must include a step back~~ are limited to 4 feet in height, measured from the bottom of the footing, as shown in Figure 110-156.
2. ~~The landscaped area shown in Figure 100-15~~ Retaining walls must be set back at least 3 feet from other street-facing retaining walls, as shown in Figure 110-16. The 3 foot setback area must be landscaped to at least the L2 standard, except that trees are not required. A wall or berm may not be substituted for the shrubs.

**D. ~~Sunset.~~** ~~This section will be removed from the Zoning Code on October 24, 2010.~~

**33.110.257 Retaining Walls (cont'd)**

**Figure 110-15-16  
Retaining Walls**



**Note: Figure 110-16 is being modified to show all retaining walls within the front setback (or 10' from street lot lines) at 4' high and stepped back.**



### 33.100.100 Primary Uses

#### A. [No change]

#### B. Limited uses.

1. -5. [No change] uses.
6. Basic Utilities. This regulation applies to all parts of Table 100-1 that have note [6]. ~~Basic Utilities that serve a development site are accessory uses to the primary use being served. All other Basic Utilities are conditional uses.~~
  - a. Basic Utilities that serve a development site are accessory uses to the primary use being served.
  - b. Small Scale Energy Production that provides energy for on-site or off-site use are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. The requirements of Chapter 33.262, Off Site Impacts, must be met;
  - c. All other Basic Utilities are conditional uses.
7. Manufacturing and Production. This regulation applies to all parts of Table 100-1 that have note [7]. Utility Scale Energy Production from Large Wind Turbines is a conditional use. All other Manufacturing And Production uses are prohibited.

Excerpt from Table 100-1 Open Space Zone Primary Uses	
Use Categories	OS Zone
<b>Industrial Categories</b>	
Manufacturing And Production	<u>CU</u> [7] <del>N</del>
<b>Institutional Categories</b>	
Basic Utilities	L/CU [6]

Y = Yes, Allowed

CU = Conditional Use Review Required

L = Allowed, But Special Limitations

N = No, Prohibited

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

**AMEND CHAPTER 33.110  
SINGLE-DWELLING ZONES**

**33.110.100 Primary Uses**

**A. [No Change]**

**B. Limited Uses.**

1.-4 [No Change]

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

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

b. Small Scale Energy Production that provides energy for on-site or off-site use ~~both on and off site~~ are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. The requirements of Chapter 33.262, Off Site Impacts must be met;

c. All other Basic Utilities are conditional uses.

6. Manufacturing and Production. This regulation applies to all parts of Table 110-1 that have note [6]. Utility Scale Energy Production from large wind turbines is a conditional use in the RF zone. All other Manufacturing And Production uses are prohibited.

<p align="center"><b>Excerpt from Table 110-1 Single-Dwelling Zone Primary Uses</b></p>						
<b>Use Categories</b>	<b>RF</b>	<b>R20</b>	<b>R10</b>	<b>R7</b>	<b>R5</b>	<b>R2.5</b>
<b>Industrial Categories</b>						
Manufacturing And Production	<u>CU</u> [6] <del>N</del>	N	N	N	N	N
<b>Institutional Categories</b>						
Basic Utilities	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]

Y = Yes, Allowed

CU = Conditional Use Review Required

L = Allowed, But Special Limitations

N = No, Prohibited

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

### AMEND CHAPTER 33.120, MULTI-DWELLING ZONES

#### 33.120.100 Primary Uses

##### A. [No Change]

##### B. Limited Uses.

1.-12 [No Change]

13 Basic Utilities. These regulations apply to all parts of Table 120-1 that have note [13].

a. [No change]

b. Small Scale Energy Production that provides energy for on-site or off-site use ~~both on and off site~~ are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. In RX and IR zones, up to 10 tons per week of biological materials or byproducts from other sites maybe used to generate energy. The requirements of Chapter 33.262, Off Site Impacts, must be met;

c. [No change]

### AMEND CHAPTER 33.130, COMMERCIAL ZONES

#### 33.130.100

##### A. [No change]

##### B. Limited Uses.

1-9. [No change]

10. Basic Utilities in C zones. This regulation applies to all parts of Table 130-1 that have note [10].

a. [No change]

b. Small Scale Energy Production that provides energy for on-site or off-site use ~~both on and off site~~ are considered accessory to the primary use on the site. However, it is only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; plus not more then 10 tons per week of biological material or byproducts from other sites. Installations that sell power they generate—at retail (net metered) or wholesale—are included.

c. [No change].

11.-12. [No change]

### AMEND CHAPTER 33.910 DEFINITIONS

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

**Small Scale Energy Production.** Energy production where the energy is derived from the following:

- Solar;
- Small wind energy turbines;
- Geothermal;
- Hydroelectric systems that produce up to 100 kW;
- Waste heat capture, heat exchange or co-generation of energy as a byproduct of another manufacturing process;
- Biogas or Biomass systems that use only biological material or byproducts produced, harvested or collected on-site. Up to 10 tons a week of biological material or byproducts from other sites may be used where the base zone regulations specifically allow it; and
- Any of the methods listed here or natural gas used to produce steam, heat or cooling, with an output up to 1 megawatt.

See also Biogas, Biomass, Utility Scale Energy Production, and Wind Energy Turbine.

**Utility Scale Energy Production.** Energy production that does not meet the definition of Small Scale Energy Production.

**Wind Turbine or Wind Energy Turbine.** A wind turbine or wind energy turbine converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a mast or mounting frame and structural supports, electrical generator, transformer, energy storage equipment, and a rotor with one or more blades. Some turbines use a vertical axis/helix instead of rotor blades.

- Small Wind Turbines or Small Wind Energy Turbines are turbines with an American Wind Energy Association (AWEA) rated power output of 10 kW or less. They also are certified by the Small Wind Certification Council to meet the American Wind Energy Associations (AWEA) Small Wind Turbine Performance and Safety Standards. These turbines may or may not be connected to the power grid.
- Large Wind Turbines or Large Wind Energy Turbines are turbines with a rated power output of more than 10kW ~~and up to 300 kW~~. These turbines may or may not be connected to the power grid.
- ~~Utility Scale Wind Turbines or Utility Scale Wind Energy Turbines are turbines with a rated power output of more than 300 kW. These turbines are always connected to the power grid.~~

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

### AMEND CHAPTER 33.445, HISTORIC RESOURCES

**33.445.320 Development and Alterations in a Historic District** Building a new structure or altering an existing structure in a Historic District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

**A. [No Change.]**

**B. Exempt from historic design review.**

1-7. [No Change.]

8. Solar panels ~~that are located~~ that meet the following requirements. When solar panels are proposed as part of a project that includes elements subject to historic design review, the solar panels are not exempt:

- a. On a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, Solar panels must also be screened from the street by:
  - (1) An existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or
  - (2) Setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.
- b. On a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5. In addition, solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6.

9. Eco-roofs installed on existing buildings when the roof is flat or surrounded by a parapet that is at least 12 inches higher than the highest part of the eco-roof surface. When eco-roofs are proposed as part of a project that includes elements subject to historic design review, the eco-roofs are not exempt. ~~no other nonexempt exterior improvements subject to historic design review are proposed.~~ Plants must be species that do not characteristically exceed 12-inches in height at mature growth.

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

### 33.445.320 Development and Alterations in a Historic District

#### B. Exempt from historic design review.

1-5. [No Change.]

6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet. For vents, the applicant may choose to meet either the standards of this paragraph or those of paragraph B.11, Vents;

7-10. [No Change.]

11. Vents. On residential structures in the RF through R1 zones, vents that meet all of the following:

a. Wall vents. Proposed vents installed on walls must meet the following. The regulations and measurements include elements associated with the vent, such as pipes and covers. The vent must:

- (1) Be on a non-street facing façade;
- (2) Project no more than 6 inches from the wall;
- (3) Be no more than 1 square foot in area, where the area is width times height. The cumulative area of all proposed vents may be up to 2 square feet;
- (4) Be at least 1 foot away from architectural features such as windows, doors, window and door trim, cornices and other ornamental features, except when located at or below finish first floor framing; and
- (5) Be painted to match the adjacent surface.

b. Rooftop vents. Proposed vents installed on roofs must meet the following. The regulations and measurements include elements associated with the vent, such as pipes and covers. The vent must:

- (1) Be on a flat roof;
- (2) Not be more than 30 inches high and no larger than 18 inches in width, depth, or diameter;
- (3) Set back from the perimeters of the building at least 4 feet for every 1 foot of height; and
- (4) Painted to match the adjacent surface.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**AMEND CHAPTER 33.825, DESIGN REVIEW**

**33.825.025 Review Procedures**

**A. Procedures for design review.** Procedures for design review vary with the type of proposal being reviewed and the design district in which the site is located. Design review in some design districts requires an additional procedural step, the Neighborhood Contact requirement, as set out in Section 33.700.025, Neighborhood Contact. Some proposals in the Central City plan district must provide a model of the approved proposal, as set out in Paragraph A.5, below.

1. Type III. The following proposals are processed through a Type III procedure:

[a. through d. – no change]

e. Proposals in the following design districts with a value over \$1,865,600:

[(1) through (8) – no change]

(9) Design overlay zones not included in a design district that has its own design guidelines, except for proposals listed in Paragraph A.2, below.

[f. – no change]

2. Type II. The following proposals are processed through a Type II procedure:

[a. and b. – no change]

c. Proposals in the design districts identified in Subparagraph 1.e that have a value of \$1,865.600 or less;

[d. through q. – no change]

~~r. Proposals within the Northwest plan district that are outside the Alphabet Historic District;~~

[Reletter s through u to r through t]

[3. through 5. – no change]

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

**AMEND CHAPTER 33.218, COMMUNITY DESIGN STANDARDS**

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

**A-E. [No Change]**

**F. Vehicle areas.**

1-3 [No Changes]

4. Attached garages. When parking is provided in a garage attached to the primary structure, and garage doors face a street, the following standards must be met:
  - a. The garage must not be more than 40 percent of the length of the street-facing façade or 12 feet long, whichever is greater. ~~Proposals in the Irvington Conservation District are exempt from this standard;~~

**G-M. [No Change]**

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

1-3. [No Change].

4. ~~Irvington. The standards of this paragraph apply in the Irvington Conservation District:~~
  - a. ~~Finished grade in Irvington. A building site may be excavated to allow a story below grade, if the finished grade of the site along the street facing elevation is no more than 1 foot different from the grade that existed prior to development.~~
  - b. ~~Attached garages in Irvington. When parking is provided in a garage attached to the primary structure and garage doors face a street, the garage must have the entire area above it developed as at least 1 story of interior living space. Single story attached garages are not allowed.~~
54. Vertical building proportions in Eliot ~~and Irvington~~. In the ~~Irvington and~~ Eliot Conservation Districts, the front facade of each primary structure must have vertical proportions. New development must meet one of the following standards:
  - a. It must be higher than it is wide; or
  - b. Where the size of the building requires horizontal proportions, the street-facing elevations must be divided into visually distinct areas with vertical proportions. This is accomplished through setbacks, use of vertical elements such as columns or multi-story bay windows, changes in materials or other architectural devices.



Language **added** is underlined. Language **deleted** is shown in ~~strikethrough~~.

**33.218.100.N Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones, Additional standards for historic resources (cont'd)**

- 65. Historic setback pattern in ~~Irvington and~~ Piedmont. In the ~~Irvington and~~ Piedmont Conservation Districts, the front facades of primary structures must be set back exactly 25 feet from the front property line. On corner lots, this standard can be met on either frontage.
- 76. Woodlawn street pattern. Buildings may not be in the vacated portions of the angled street pattern in the Woodlawn Conservation District.

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

**A-G. [No Change]**

**H. Vehicle areas**

1-3 [No Change]

- 4. Attached garages. When parking is provided in a garage attached to the primary structure and garage doors face a street the following standards must be met:
  - a. The garage must not be more than 40 percent of the length of the building frontage or 12 feet long, whichever is greater. ~~Proposals in the Irvington Conservation District are exempt from this standard;~~
  - b-d. [No Change]

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

1-4. [No Change]

- 5. ~~Irvington. The standards of this paragraph apply in the Irvington Conservation District:~~
  - a. ~~Finished grade in Irvington. A building site may be excavated to allow a story below grade, if the finished grade of the site is no more than 1 foot different from the grade that existed prior to development.~~
  - b. ~~Attached garages in Irvington. When parking is provided in a garage attached to the primary structure and garage doors face a street, the garage must have the entire area above it developed as at least 1 story of interior living space. Single story attached garages are not allowed.~~
- 65. Stone or cast stone foundations in Kenton and Mississippi. In the Kenton and Mississippi Avenue Conservation Districts, stone or cast stone must be used as a foundation material on street-facing elevations. The stone, cast stone, or cast in place stone must be the material used between the finished building grade and the ground floor.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**33.218.110.P Standards for Primary and Attached Accessory Structures in R3, R2, and R1 Zones. Additional standards for historic resources (cont'd).**

- ~~76.~~ Vertical building proportions in ~~Eliot and Irvington~~. In the Eliot ~~and Irvington~~ Conservation Districts, the front facade of each primary structure must have vertical proportions. New development must meet one of the following standards:

a-b. [No Change]

- ~~87.~~ Woodlawn street pattern. Buildings may not be in the vacated portions of the angled street pattern in the Woodlawn Conservation District.

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

The standards of this section apply to exterior alterations of primary structures and both attached and detached accessory structures in residential zones. These standards apply to proposals where there will be only residential uses on the site.

**A-E. [No Change]**

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

1-3. [No Change]

4. Historic setback pattern in ~~Irvington and Piedmont~~. In the ~~Irvington and Piedmont~~ Conservation Districts, the front facades of primary structures in single-dwelling zones must be set back exactly 25 feet from the front property line.
5. [No Change].

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**AMEND CHAPTER 33.445, HISTORIC RESOURCES**

**33.445.020 Where These Regulations Apply**

- Sections 33.445.010 through .810 apply to all historic resources.
- Sections 33.445.100 through .150 apply to Historic Landmarks, including those within Historic Districts and Conservation Districts.
- Sections 33.445.200 through .240 apply to Conservation Landmarks, including those within Historic Districts and Conservation Districts.
- Sections 33.445.300 through .330 apply to ~~historic resources in~~ Historic Districts and to the portions of Conservation Districts that are within a Historic District.
- Sections 33.445.400 through .430 apply to ~~historic resources in~~ Conservation Districts that are not within a Historic District.
- Sections 33.445.500 through .520 apply to historic resources listed in the City's Historic Resource Inventory.

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

## AMEND CHAPTER 33.846, HISTORIC REVIEWS

### 33.846.060. Historic Design Review

**F. Approval criteria in the Central City plan district.** In the Central City plan district, requests for historic design review will be approved if the review body finds that the applicant has shown that all of the approval criteria have been met. Conflicts among guidelines and criteria are resolved as specified in Paragraph F.5, below. The approval criteria for historic design review in the Central City plan district are as follows:

1. Historic Districts. When historic design review is required for any resource in a Historic District, including Historic Landmarks and Conservation Landmarks, the approval criteria are:
  - a. Historic Districts with district-specific guidelines. Historic Districts may have guidelines that are specific to the district, such as the *NW 13th Avenue Historic District Design Guidelines*. When historic design review is required in such districts, the approval criteria are the *Central City Fundamental Design Guidelines* and the guidelines specific to the Historic District. If the resource is a Historic Landmark or Conservation Landmark, the criteria in Section 33.846.060.G must also be met;
  - b. Historic Districts without district-specific guidelines.
    - (1) Where there are no guidelines that are specific to the Historic District and the site is also in a subdistrict of the Central City plan district that has subdistrict design guidelines, the approval criteria are the *Central City Fundamental Design Guidelines* and the subdistrict design guidelines. If the resource is a Historic Landmark or Conservation Landmark, the criteria in Section 33.846.060.G must also be met;
    - (2) Where there are no guidelines that are specific to the Historic District and the site is not in a subdistrict of the Central City plan district that does not have subdistrict design guidelines, the approval criteria are the *Central City Fundamental Design Guidelines* and the criteria in Section 33.846.060.G;
  - c. Alphabet Historic District. In the portion of the Alphabet Historic District within the Central City plan district, when historic design review is required for any resource, including Historic Landmarks and Conservation Landmarks, the approval criteria are the *Central City Fundamental Design Guidelines* and the *Historic Alphabet District Community Design Guidelines Addendum*. If the resource is a Historic Landmark or Conservation Landmark, the criteria in Section 33.846.060.G must also be met;
  - d. Irvington Historic District. In the portion of the Irvington Historic District within the Central City plan district, when historic design review is required for any resource, including Historic Landmarks and Conservation Landmarks, the approval criteria are the Central City Fundamental Design Guidelines, the design guidelines for the Lloyd District subdistrict of the Central City plan district, and the criteria in Subsection 33.846.060.G