

# ORDINANCE No. 177404

Clarify and improve readability without changing policy or intent of the original hazardous substance regulations (Ordinance; amend Title 33)

The City of Portland Ordains:

**Section 1.** The Council finds:

## **General Findings**

1. The City adopted a new Zoning Code in November 1990, to be implemented on January 1, 1991.
2. During the adoption of the new Zoning Code, the Council recognized that the new code would occasionally need “fine-tuning” to resolve unanticipated issues. The Council additionally recognized that minor amendments to the Code will periodically be required in order to maintain compliance with existing policy.
3. Code Maintenance 2003 is part of a continuing effort to improve the clarity and structure of the Portland Zoning Code. The amendments package consists primarily of technical amendments intended to correct and clarify the Zoning Code in order to improve its administration, without changing existing land use policy or intent. Code Maintenance 2003 is one of three amendment packages that make up the City’s annual Regulatory Code Improvement List (ReCIL), which was adopted by City Council in October 2002. The ReCIL is the core of the Regulatory Improvement Work Program, which seeks to build an effective process of continuous improvement to Portland’s land use and building regulations, regulatory-related procedures, costs, and customer services. In adopting ReCIL, City Council directed the Bureau of Development Services (BDS) to bring to the Planning Commission proposed Code improvements that address issues identified on the Code Maintenance ReCIL list. The Portland Planning Commission was directed to submit a recommendation report to City Council by April 2003.
4. The origin of the amendments included in the Code Maintenance 2003 package comes from suggestions submitted by a range of interested stakeholders, including neighborhood advocates, development services customers, business owners, environmental advocates, land use consultants, and City staff from BDS, Bureau of Planning, and other service agencies. In developing the annual ReCIL, a series of focus groups were assembled in the Fall of 2002 to request feedback on what amendments to consider for FY 2002-2003. Based on input from more than 120 stakeholders, a list of amendments was drafted. This draft was widely circulated, and available for review on BDS’ website. Following further modifications based on input received, the list of amendments to consider in the Code Maintenance 2003 package was adopted by City Council in October 2002.
5. On January 7, 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. Notice was also mailed to Metro on this date, in compliance with Urban Growth Management Functional Plan requirements.

6. On February 25, 2003, the Planning Commission held a hearing on the Code Maintenance 2003 project. Staff from BDS presented the proposal, and public testimony was received.
7. On March 11, 2002, the Planning Commission held a work session to further discuss the proposed amendments and consider public testimony. The Commission voted to forward to City Council the recommendations contained in *Code Maintenance 2003: Portland Planning Commission Report and Recommendation*, dated March 26, 2003 (Exhibit A).

### **Statewide Planning Goals Findings**

9. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals.
10. **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. Portland Comprehensive Plan findings on Goal 9, Citizen Involvement, and its related policies and objectives also support this goal. The amendments are supportive of this goal in the following ways:
  - On January 21, 2003, BDS sent notice to all neighborhood associations and coalitions in the City of Portland, as well as other interested persons, to inform them of an open house on February 11, 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 January 21, 2003, BDS 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 the Code Maintenance 2003 project. This event was also advertised in the Oregonian.
  - On January 28, 2003, BDS published a document entitled, *Code Maintenance 2003: Proposed Report and Recommendation*. The report was made available to the public and mailed to all those requesting a copy. A copy of the draft was also delivered to all neighborhood association and coalition offices.
  - On February 25, 2003, the Planning Commission held a public hearing during which citizens discussed and commented on the *Proposed Report and Recommendation*. On March 11, 2003, the Planning Commission held a public work session to further discuss the amendments.

- On March 21, 2003, BDS sent notice to all persons who testified, orally or in writing, at the Planning Commission hearing on February 25, 2003, informing them of a City Council public hearing to consider the Code Maintenance 2003 project. This notice was also sent to those persons requesting such notification.
  - On April 9, 2003, the City Council held a public hearing on *Code Maintenance 2003: Portland Planning Commission Report and Recommendation*, dated March 26, 2003. Citizens were provided to the opportunity to attend this hearing and present testimony.
11. **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 are supportive of this goal because they clarify existing language in Title 33, Planning and Zoning, which implements the policies of Portland's *Comprehensive Plan*. Portland *Comprehensive Plan* findings on Goal 1, Metropolitan Coordination, and its related policies and objectives, also support this goal.
  12. **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.
  13. **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.
  14. **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 the amendments do not change policy or intent of any of the existing regulations pertaining to open space, scenic and historic areas, and natural resources.
  15. **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 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. Portland *Comprehensive Plan* findings on Goal 8, Environment, and its related policies and objectives also support this goal. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
  16. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.

17. **Goal 8, Recreational Needs**, requires satisfaction of the recreational needs of both citizens and visitors to the state. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to recreational needs. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
18. **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. Portland Comprehensive Plan findings on Goal 5, Economic Development, and its related policies and objectives also support this goal.

The following amendment to Title 33 is directly supportive of Goal 9:

- Deleting the requirement for a Type II land use review process for the handling, storage, use and transport of hazardous substances (PZC 33.840). The Type II land use review process adds a minimum of six to eight weeks to the development review process, with an application fee of \$1,710. Again, the fees and time this review adds to the development review process are unnecessary as the intent of the Hazardous Substances Review is already heavily regulated through a myriad of other city, state and federal regulations.
19. **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. The amendments are consistent with this goal because they do not change policy or intent of any of the existing regulations pertaining to housing. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
  20. **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. Portland Comprehensive Plan findings on Goals 11 A through I, Public Facilities, and related policies and objectives also support this goal.
  21. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations. Portland Comprehensive Plan findings on Goal 6, Transportation, and its related policies and objectives also support this goal.

22. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations. Portland Comprehensive Plan findings on Goal 7, Energy, and its related policies and objectives also support this goal.
23. **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 as they do not change policy or intent of any of the existing regulations pertaining to urbanization. Portland Comprehensive Plan findings on Goal 2, Urban Development, and its related policies and objectives also support this goal.
24. **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. The amendments are limited to word and structure changes that improve the clarity and implementation of existing regulations.
25. **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.

#### **Metro Urban Growth Management Functional Plan Findings**

26. **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 Code Maintenance 2003's compliance with Statewide Goal 9 (Economic Development), one of the amendments directly fosters economic growth.
27. **Title 2, Regional Parking Policy**, regulates the amount of parking permitted by use for jurisdictions in the region. The amendments are consistent with this title because they do not change policy or intent of any of the existing regulations pertaining to regional parking policy. The amendments are limited

to word and structural changes that improve the clarity and implementation of existing regulations.

28. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations. Code Maintenance 2003 does include an amendment that deletes regulations in PZC 33.508.050, 33.508.110, 33.515.030, and 33.515.100, which were originally intended to regulate the use of hazardous substances in order to protect the water quality of the aquifer system in the Columbia South Shore area. These regulations are being deleted from Title 33 as the Bureau of Water Works, in conjunction with the Fire Bureau, has drafted amendments to Title 21 (Water), which will provide the Bureau of Water Works the authority to designate wellhead protection areas, including those in the Columbia South Shore area (Exhibit B). This authority, included in Chapter 21.35 (Wellhead Protection), will allow the Bureau of Water Works to set standards for the storage, handling, containment, use and transportation of hazardous materials. These new standards for protecting the water quality of the aquifer, which become effective July 1, 2003, are more comprehensive and current than existing regulations identified in Title 33.
29. **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 consistent with this title because they do not change policy or intent of existing regulations relating to retail in employment and industrial areas.
30. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
31. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
32. **Title 7, Affordable Housing**, recommends that local jurisdictions implement tools to facilitate development of affordable housing. The amendments are limited to word and structural changes that improve the clarity and

implementation of existing regulations. As such, the amendments are not inconsistent with this Title because they do not change policy or intent of existing regulations relating to the development of affordable housing.

33. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.

#### **Portland Comprehensive Plan Goals Findings**

34. 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 LCDLDC 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.
35. **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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations. In some cases, the amendments ensure that City land use regulations are consistent with policies of other City bureaus and State law.
36. **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.

By proposing word and structural changes that improve the clarity and implementation of existing regulations, the following amendment furthers Goal 2 and its relevant policies by facilitating the development of employment uses:

- Eliminating the Hazardous Substances Review (PZC 33.840). This discretionary review, which currently is required of commercial and industrial businesses, is duplicative of rules and regulations that are implemented and enforced by the Portland Fire Bureau.
37. **Goal 3, Neighborhoods**, calls for preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to the stability and diversity of neighborhoods.

38. **Goal 4, Housing**, calls for enhancing Portland's vitality as a community at the center of the region's housing market by providing housing of different types, tenures, density, sizes, costs and locations that accommodates the needs, preferences, and financial capabilities of current and future households. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to housing.
39. **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. By proposing word and structural changes that improve the clarity and implementation of existing regulations, the following amendment furthers Goal 5 and its relevant policies:
- Eliminating the Hazardous Substances Review (PZC 33.840). This discretionary review, which currently is required of commercial and industrial businesses, is duplicative of rules and regulations that are implemented and enforced by the Portland Fire Bureau.
40. **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;
  - 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. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.

41. **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. The amendments are limited to word and structure changes that improve the clarity and implementation of existing regulations relating to energy.

42. **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 amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
43. **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.
44. **Goal 11 A, Public Facilities, General**, calls for provision of a timely, orderly and efficient arrangement of public facilities and services that support existing and planned land use patterns and densities. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to public facilities. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
45. **Goal 11 I, Schools**, calls for enhancing educational opportunities of Portland's citizens through assistance in planning educational facilities. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to schools. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
46. **Goal 11 C, Sanitary and Stormwater Facilities**, calls for an efficient, adequate, and self-supporting wastewater collection treatment and disposal system that will meet the needs of the public and comply with federal, state and local clean water requirements. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to sanitary and stormwater facilities. The amendments are limited to word and structure changes that improve the clarity and implementation of existing regulations.
47. **Goal 11 D, Solid Waste**, calls for provision of adequate solid waste disposal. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to solid waste. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.
48. **Goal 11 F, Parks and Recreation**, calls for maximizing the quality, safety and usability of parklands and facilities through the efficient maintenance and operation of park improvements, preservation of parks and open space, and equitable allocation of active and passive recreation opportunities for the citizens of Portland. The amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to parks and

recreation. The amendments are limited to word and structural changes that improve the clarity and implementation of existing regulations.

49. **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.
50. The following goals do not apply because of the limited scope of these amendments: Goal 10, Plan Review and Administration, Goal 11 B, Public Rights-of-Way, Goal 11 E, Water Service, Goal 11 G, Fire, and Goal 11 H, Police.

NOW, THEREFORE, the Council directs:

- a. Adopt amendments to Sections 33.130.120, 33.140.120, 33.508.050, 33.508.110, 33.515.030, 33.515.100, Chapter 33.840, and amendments that delete references to Hazardous Substances Review in the List of Chapters and Table of Contents, as shown in Exhibit A, *Code Maintenance 2003: Planning Commission Report and Recommendation*, dated March 26, 2003;
- b. Amend Title 33, Planning and Zoning, Sections 33.130.120, 33.140.120, 33.508.050, 33.508.110, 33.515.030, 33.515.100, Chapter 33.840, and delete references to Hazardous Substances Review in the List of Chapters and Table of Contents, as shown in Section V of Exhibit A, *Code Maintenance 2003: Planning Commission Report and Recommendation*, dated March 26, 2003; and
- c. Adopt as legislative intent and as further findings the commentary in Section V of Exhibit A, *Code Maintenance 2003: Planning Commission Report and Recommendation*, dated March 26, 2003, for amendments to Sections 33.130.120, 33.140.120, 33.508.050, 33.508.110, 33.515.030, 33.515.100, Chapter 33.840, including the deletion of references to Hazardous Substances Review in the List of Chapters and Table of Contents.

## Section 2.

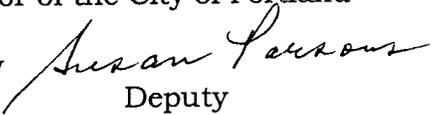
1. This ordinance shall be in full force and effect on July 1, 2003.

Passed by the Council, **APR 16 2003**

Commissioner Randy Leonard

Douglas Hardy, BDS  
March 28, 2003

**GARY BLACKMER**  
Auditor of the City of Portland

By   
Deputy