

# **ORDINANCE No. 179540 As Amended**

Amend Zoning Code to clarify, simplify and streamline Environmental Zones and authorize the transfer of in-lieu fees for site enhancement to a watershed revegetation fund (Ordinance: amend Code Chapter 33.430)

The City of Portland Ordains:

Section 1. The Council finds:

## **General Findings**

1. In April of 1995, the City amended Chapter 33.430 as part of the Environmental Zone Streamline Project to improve the operating efficiency of the environmental zone regulations and to meet periodic review requirements of the LCDC. The improvements included creation of clear and objective environmental development standards and a simplified, non-discretionary review track for project proposals that meet those standards.
2. In July of 1997, the City amended Chapter 33.430 as part of a continuing effort to streamline the environmental zone regulations. The proposed amendments included clear and objective standards for utility connections and stormwater outfalls. The Planning Commission approved only the standards for utility connections to existing utility lines at that time. Stormwater outfall proposals remained subject to the environmental review process, including an analysis to determine which project alternative would have the least significant detrimental impacts on significant resources.
3. In July of 1999, the City adopted the Stormwater Management Manual (SWMM) which includes a “Destination/Disposal Hierarchy” for use in determining what type of stormwater disposal facilities are most appropriate for a specific site and project. Application of the hierarchy requires consideration of different stormwater facility alternatives depending on soil type, slope, and other factors relating to the safety, water quantity, and water quality of individual sites and proposals. As such, the SWMIM hierarchy generally duplicates and supersedes the alternatives analysis of the environmental review.
4. In June of 2002, the City Council initiated the Regulatory Improvement Initiative which was the beginning of the Council’s charge to establish a process for continuous improvements to the City’s regulations, procedures, costs, and customer service. The Mayor’s office launched an extensive public outreach program to identify problematic regulations and developed a prioritized list from which to work. Some of the regulations identified as top priority are found in the environmental zoning chapter of the Portland Zoning Code and are included in this project.
5. The Environmental Code Improvement (ECI) project began in November of 2002 and supports and forwards the purposes of the environmental zones to conserve and protect natural resource values and functions, while making the program more efficient, equitable, and

cost-effective. The project addresses some of the issues raised during the former Healthy Portland Streams project, as well as a number of additional items.

6. On March 29, 2005 the Planning Commission held a public hearing and received testimony about the project. On April 26, May 10, and June 14, the Planning Commission held work sessions to discuss and resolve issues concerning amendments to the environmental violation procedure changes, the stormwater outfall development standards, changes to the environmental plan check notification process, and several proposed clarifications/additions to the exemption section and development standards section. At the end of the June 14<sup>th</sup> work session the Planning Commission voted to recommend the Environmental Code Improvement Project, with revisions, to the City Council for adoption.
7. The project amendments to code and procedures will clarify, simplify and streamline Portland's environmental zone regulations primarily by modifying and/or creating new exemptions and development standards. The amendments also include a fee-in-lieu of option in the development standards that apply to development projects for additions to existing development. When additions are proposed the usual process includes environmental review; the proposed modification would allow a streamlined review instead of environmental review in exchange for some site improvements such as nuisance plant removal, or payment of a fee-in-lieu-of site improvements. The fees collected would be directed to the Bureau of Environmental Services Watershed Revegetation group to be used for planting projects within the same watershed. The goals of the revision are to encourage site enhancements 'such as native plantings, removal of impervious surfaces, or planting stormwater bioswales in exchange for a faster and cheaper review process for building additions that stay within existing disturbance areas.
9. The establishment of a Watershed Revegetation fund must be authorized by the Council in order to collect and administer the fee-in-lieu-of option. The fee will be spent on revegetation projects on public property in the same watershed as the development that pays the fee.
10. The amendments also clarify allowances for various maintenance activities and broaden allowances for outdoor uses such as vegetable gardens and pruning of vegetation near structures to reduce risks associated with wildfire. New standards also would provide a streamlined review process for certain public recreational trail projects, small right-of-way projects, and small stormwater outfalls. The proposal also revises the City's process to review and remedy environmental violations. The revised process is more proportional to the violation situation, will remedy the violation more quickly, and will be more cost-effective than the current process. New administrative rules are being developed to guide the assessment of additional fines to discourage repeat violation situations. New public notification procedures for environmental plan checks will be clearer and will eliminate unnecessary permitting delays.

## Statewide Planning Goals Findings

- 11 State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals.
12. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. Portland Comprehensive Plan findings on Goal 9, Citizen Involvement, and its related policies and objectives also support this goal. The Environmental Code Improvement process has provided numerous opportunities for public involvement:
  - a) In January 2004 Planning Bureau project staff convened the first stakeholder group for the Environmental Code Improvement project. Stakeholders included representatives from neighborhood associations, small business and home builder organizations, special districts, friends groups and watershed councils, planning consultants, and other city bureaus. Stakeholder groups were formed for three of the topics addressed by the project: environmental violations review, resource enhancement project review, and public recreational trail project review processes. The stakeholder groups met an average of once every three weeks, and continued through October 2004. Staff also consulted with city and community stakeholders on an ad hoc basis for the other project topics
  - b) On September 9, 2004 the Development Review Advisory Committee (DRAC) received a briefing and discussed the project.
  - c) On September 27, 2004 the Citywide Land Use Subcommittee received a briefing and discussed the project.
  - d) On November 30, 2004 the “in-house” draft was mailed to all stakeholder committee representatives and other participants for review and comment.
  - e) On January 24, 2005, the Citywide Land Use Group was briefed for a second time and provided up-to-date information and additional detail about the project.
  - f) On March 1, 2005, Bureau of Planning staff presented an “Environmental Planning 101” overview and participated in a work session with Citywide Land Use Group members. Portland City Council members and their staff were invited and the session was open to the public.
  - g) On March 2, 2005, a public review draft of the Environmental Code Improvement Project was made available and was distributed to stakeholders, participating or interested City Bureau representatives, and interested individuals.
  - h) On March 29, 2005, the Portland Planning Commission held a public hearing and accepted testimony on the proposed draft report for the Environmental Code Improvement Project. The Planning Commission held three subsequent work sessions

to discuss specific topics and resolve issues and included members of the stakeholder groups in the discussions. At the last work session on June 14, 2005, the Planning Commission unanimously approved the revised report and recommended adoption by the City Council.

- i) On August 10, 2005, the City Council held a hearing on the Environmental Code Improvement ordinance.

13. **Goal 2, Land Use Planning**, requires the development of a process and policy framework which 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 proposed amendments to the Zoning Code support this goal. Development of the amendments followed established city procedures for legislative actions. Portland Comprehensive Plan findings on Goal 1, Metropolitan Coordination, and its related policies and objectives also support 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 they continue existing City policy to conserve and protect significant natural resources as identified in City-adopted natural resource inventories, protection plans, and the environmental zone regulations. The amendments will further foster this goal by simplifying review requirements for resource enhancement projects and providing incentives to enhance disturbed sites through a streamlined permit process instead of a costly review process. The amendments also establish a new process that will allow environmental violations to be remediated more quickly than the current process. The amendments do not modify adopted ESEE analyses, zoning maps, or the comprehensive plan. Portland Comprehensive Plan findings on Goal 8, Environment, and related policies and objectives also support this goal.
15. **Goal 6, Air, Water and Land Resource Quality**, requires the maintenance and improvement of the quality of air, water and land resources. The amendments are consistent with this goal because they will make the regulations clearer and easier to implement. The amendments also simplify review requirements for resource enhancement projects and provide incentives to enhance disturbed sites through a streamlined permit process. The amendments further support this goal by clarifying the exemption for removal of nuisance plants to reduce risk of erosion. Portland Comprehensive Plan findings on Goal 8, Environment, and related policies and objectives also support this goal.
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 continue to guide development away from steep slopes and floodplains, reduce risk of erosion, and broaden allowances for pruning of vegetation to protect structures that are located in wildfire hazard areas.
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. Public

trails have been specifically recognized by the project participants for the recreational, transportation, and public health amenities they provide. The amendments include clearer and broader exemptions for certain trail projects and maintenance activities. Revised development standards will allow additional trail projects to be reviewed through the streamlined environmental plan check process which reduces the time and cost of the review.

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 will reduce the time and cost for review of certain types of project proposals and protecting natural resources. Portland Comprehensive Plan findings on Goal 5, Economic Development, and related policies and objectives also support this goal.
19. **Goal 10, Housing**, requires provision for the housing needs of citizens of the state. The amendments are consistent with this goal as they include new provisions that will reduce the time and cost of permitting for alterations to existing development such as adding on to an existing home.
20. **Goal 12, Transportation**, requires provision of a safe, convenient and economic transportation system. The amendments are consistent with this goal as they include new standards that will allow a streamlined review process for certain right-of-way projects. These amendments are expected to enhance the economic viability of some projects. Portland Comprehensive Plan findings on Goal 6, Transportation, and related policies and objectives also support this goal.

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

21. State land use planning statutes require cities and counties within the Metropolitan Service District boundary to amend comprehensive plans and land use regulations in compliance with the provisions of the Urban Growth Management Functional Plan (UGMFP). Because of the limited scope of the amendments in this ordinance, only the UGMFP Titles addressed below apply.
22. **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 Resource Areas and Flood Management Areas by avoiding, limiting or mitigating the impact of development in these areas. Metro has deemed Portland's environmental zoning to be in substantial compliance with Title 3 of the UGMFP. The amendments are consistent with this title in that they maintain the ability of the City's existing environmental zoning program to conserve and protect significant natural resources and to ensure that impacts on significant resources continue to be avoided, minimized and mitigated.

23. **Title 8, Compliance Procedures**, outlines compliance procedures for amendments to comprehensive plans and implementing ordinances. On November 23, 2004 the 45-thy notice and 2 copies of the draft report were mailed to DLCD for consideration of the amendments. A copy of the DLCD 45-thy notice and one copy of the draft report were mailed to Metro and the Multnomah County Commission on the same date. On February 3, 2005, an update of the first evidentiary hearing date was mailed to DLCD, Metro, and the Multnomah County Commission. A copy of the final report with the ordinance and findings that are consistent with state goals and Metro's Functional Plan will be mailed to DLCD, Metro, and the Multnomah County Commission 5 days after the final hearing.

## Portland Comprehensive Plan Goals Findings

24. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission (LCDC) on May 1, 1981. On May 26, 1995, and again on January 25, 2000, 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 the statewide planning goals.
25. This ordinance amends the certain portions of the Portland Zoning Code pertaining to environmental zones. The amendments do not change the Comprehensive Plan, official zoning maps, or any property regulated under the Columbia South Shore Plan District environmental regulations or natural resource management plan.
26. During the course of public hearings, the Bureau of Planning, the Planning Commission, and the City Council provided all interested parties opportunities to identify, either orally or in writing, any other Comprehensive Plan goal, policy or objective that might apply to the amendments. No additional provisions were identified. Therefore, the amendments satisfy the applicable existing Comprehensive Plan goals, policies and objectives for the reasons stated below.
27. **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 add new environmental development standards that expand the use of the streamline process, simplify the review process, and reduce the cost of development review.
28. **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 continue to support the adopted City Economic, Social, Environmental, and Energy (ESEE) analyses. These ESEE analyses evaluated the consequences of allowing, limiting or prohibiting uses that would conflict with identified natural resources, many of which are located within existing neighborhoods. Based on these analyses the City determined the appropriate level of

resource protection to apply. Significant natural resources were given limited protection where impacts on development opportunities outweighed the impacts on resources.

29. **Policy 4.3, Sustainable Housing**, calls for encouraging housing that supports sustainable development patterns by promoting the efficient use of land, conservation of natural resources, easy access to public transit and other efficient modes of transportation, easy access to services and parks, resource efficient design and construction, and the use of renewable energy resources. The amendments continue the city's policy to foster efficient use of land and conservation of the natural resources that have been identified in the city's resource inventory.
30. **Objective D**, calls for fostering flexibility in the division of land and the siting of buildings, and other improvements to reduce new development's impacts on environmentally sensitive areas. The amendments support this objective by maintaining flexible standards for setbacks and lot sizes to allow placement or clustering of development away from the natural resources on a site. The amendments further support this objective by establishing a new standard to set construction back from resource areas at the rear of a site.
31. **Goal 5, Economic Development**, calls for promotion of a strong and diverse economy which 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 continue to implement the ESEE decisions that reflect consideration of the economic impacts of protecting natural resources, and that provide a balance between protection of significant resources and allowing development in key employment areas.
32. **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 by:
  - 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 by maximizing the use of regional trafficways and transitways for such trips;
  - Reducing reliance on the automobile and per capita vehicle miles traveled;
  - Guiding 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 in that they establish new standards and an associated streamlined review option for minor street improvements that limit disturbance in areas with significant environmental value.

33. **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 support continued implementation of the City's ESEE decisions which reflect an analysis of the energy savings provided by conserving and protecting significant natural resources such as tree canopy and vegetation.
34. **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 clarify portions of the environmental regulations that directly affect land and water quality. They also provide additional streamlined review options for a broader array of projects as long as they are consistent with environmental standards. For example, the amendments will simplify the permitting process for resource enhancement projects and will encourage enhancement of site conditions by offering a streamlined review process for alterations to existing development. The amendments will establish a faster process for remediation of environmental violations.
35. **Policy 8.5, Interagency Cooperation - Water Quality**, calls for continuing cooperation with federal, state and regional agencies involved with the management and quality of Portland's water resources. The amendments support this policy because they are consistent with Title 3 of the Metro's Urban Growth Management Functional Plan, and because federal and state agencies were appraised of the project goals and outcomes and expressed no concerns.
36. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process. The project and the amendments are consistent with this goal because there was early public involvement for all aspects of the project, including collaborative problem definition, goal setting and desired outcomes, development of solution concepts, and early review of documents.
37. **Goal 11 C, Sanitary and Stormwater Facilities**, calls for an efficient, adequate, and self-supporting wastewater collection treatment and disposal system which will meet the needs of the public and comply with federal, state and local clean water requirements. The amendments support this goal because they provide a streamlined review process for certain stormwater outfall proposals that meet clear and objective standards and are consistent with the stormwater management regulations of Title 17 of City Code.
38. **Goal 11 F, Parks and Recreation**, calls for maximizing the quality, safety and usability of park lands 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 support this goal because they clarify regulatory exemptions for public trail projects and trail maintenance. The amendments further provide clear and objective standards and a streamlined review option for a broader set of public recreational trail projects. This will reduce the cost and time involved with reviewing certain trail projects while encourage environmentally sensitive trail design.



39. **Goal 11 G, Fire**, calls for the development and maintenance of facilities that adequately respond to the fire protection needs of Portland. The amendments support this goal because they provide additional allowances for the pruning of vegetation that grows close to a structure for those areas of the city that are on the wildfire hazard map.
40. **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 ensure the continued protection and conservation of Portland's significant natural resources while allowing development that minimizes disturbance and destruction of the resources.

NOW, THEREFORE, the Council directs:

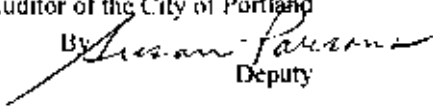
- a. Adopt the Planning Commission Report and Recommendation on the Environmental Code Improvement Project dated August 17, 2005;
- b. Amend Title 33, Planning and Zoning as shown in Exhibit A, the Planning Commission Report and Recommendation on the Environmental Code Improvement Project, dated August 17, 2005,
- c. Adopt the commentary in the Planning Commission Report and Recommendation on the Environmental Code Improvement Project, dated August 17, 2005, as legislative intent and as further findings;
- d. Authorize the transfer of in-lieu fees for site enhancement to a watershed revegetation fund; and
- e. This ordinance shall be in force and effect September 26, 2005.

Passed by the Council,

**AUG 24 2005**

Mayor Tom Potter  
Christine Scarzello  
August 17, 2005

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

By  Deputy