

ORDINANCE No. 182429

Improve land use regulations through the Regulatory Improvement Code Amendment Package 4 (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. During the Spring and Summer of 2007, staff from the Planning Bureau and the Bureau of Development Services (BDS) worked with the Regulatory Improvement Stakeholder Advisory Team (RISAT) to develop a workplan for the fourth Regulatory Improvement Code Amendment Package (RICAP 4). The RISAT includes participants from city bureaus and the community and advises staff.
3. The Planning Bureau coordinated with BDS to complete the Land Division Monitoring Report, which analyzed the results of the Land Division Rewrite Project, done in 2002. Planning and BDS agreed to incorporate several of the findings and issues illustrated in the Monitoring Report into the RICAP 4 workplan.
4. On July 24, 2007, the Planning Commission held a hearing to discuss and take testimony on the RICAP 4 workplan. The workplan consisted of 49 issues proposed for further research in order to find potential solutions. Three additional items were added during the research of the workplan items; two were added by the Bureau of Development Services and one by City Council, bringing the total to 52 items.
5. During the Winter of 2007 and Spring of 2008, Planning staff worked with BDS and RISAT to address the issues in the workplan.
6. During the Spring and Summer of 2008, Planning staff also worked with BDS and RISAT to develop a workplan for the fifth Regulatory Improvement Code Amendment Package (RICAP 5).
7. At the August 26, 2008 Planning Commission hearing on the workplan for RICAP 5, several members of the public requested that the regulations for Retail Sales and Service Uses for the Division Main Street be amended. This item is under separate ordinance.
8. After preliminary work on all of the issues, staff determined that several items did not warrant an amendment to the code. The amendments in RICAP 4 address 45 of the 52 issues initially included.
9. On August 27, 2008, notice of the proposed RICAP 4 code amendments was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by ORS 197.610.

10. On September 11, 2008, notice was sent to all neighborhood associations and coalitions and business associations in the City of Portland, as well as persons involved in land divisions, industrial interests, manufactured dwellings, radio frequency facilities, and other interested persons to notify them of the Planning Commission hearing on the proposed code changes for RICAP 4.
11. On September 16, 2008, the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4) Proposed Draft* was published.
12. On October 14, 2008, the Planning Commission held a hearing on the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Proposed Draft*. Staff presented the proposal and public testimony was received.
13. On October 28, 2008, the Planning Commission heard additional testimony, and considered the *Staff Amendments to the Proposed Draft* for RICAP 4.
14. At the conclusion of the hearing on October 28, the Commission voted to recommend that City Council adopt the staff recommendation for RICAP 4, including the Staff Amendments presented at the hearing.
15. On December 10, 2008, City Council held a hearing on the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft*. Staff presented the proposal and public testimony was received. As part of this presentation, staff requested that regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone be considered under separate ordinance.
16. On December 17, 2008, Council voted to adopt the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* and amend the Zoning Code as shown in the report.

Findings on Statewide Planning Goals

17. 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.
18. **Goal 1, Citizen Involvement**, requires the 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:
 - During 2007, Planning and BDS met monthly with the RISAT to review the selections proposed for the Regulatory Improvement Code Amendment Package 4 (RICAP 4) workplan.
 - On May 22, 2007, the Bureau of Development Services presented the Planning Commission with the findings of the Land Division Monitoring Report. This briefing was presented at a mobile session held in East Portland, and included stakeholders involved in land divisions who were invited to comment on the report.
 - On June 22, 2007 notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as other interested persons to notify them of the Planning Commission hearing for the RICAP 4 workplan.

- On July 2, 2007, the *Regulatory Improvement Code Amendment Package 4 – Proposed Workplan* was published. The report was available to City bureaus and the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
 - On July 24, 2007, the Planning Commission held a public hearing on the RICAP 4 Proposed Workplan and heard testimony from citizens on the proposed issues. The Planning Commission voted to adopt the workplan, directing staff to work on code amendments on the 49 issues listed in the workplan.
 - On September 12, 2007, during the City Council hearing for RICAP 3, Council members heard testimony from interested parties in the Gateway open area requirements. The Council members advised staff to continue working on the Gateway open area amendments as part of the RICAP 4 workplan.
 - During the fall and winter of 2007 and 2008, staff met monthly with the RISAT to discuss proposed code solutions.
 - On August 8, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as persons involved in land divisions, industrial interests, manufactured dwellings, radio frequency facilities, and other interested persons to notify them of the release of the *RICAP 4 Discussion Draft* and the provision of two open houses.
 - On August 19, and August 21, 2008, staff held two open houses. The first open house was held in the Midland Library in East Portland, and the second was held downtown. 16 people attended the two open houses.
 - On September 11, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as persons involved in land divisions, industrial interests, manufactured dwellings, radio frequency facilities, the Division Green Street / Main Street Plan, and selected persons in the Laurelhurst and Eastmoreland plan districts. The notice was for the Planning Commission Hearing on the staff proposal for the Regulatory Improvement Code Amendment Package 4 (RICAP 4) and to announce the availability of the Proposed Draft.
 - On September 16, 2008, the *Regulatory Improvement Code Amendment Package 4 (RICAP 4) Proposed Draft* was published. The report explained the proposed amendments to the Zoning Code. The report was available to City bureaus and the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
 - On October 14 and 28, 2008, the Planning Commission held public hearings to discuss and take testimony on the report.
 - On November 21, 2008, notice was sent to those who testified at the Planning Commission hearings, and to people interested in RICAP 4, of the proposed City Council hearing on the Planning Commission recommendation for RICAP 4.
 - On December 10, 2008, the City Council held a public hearing to discuss and take testimony on the recommendations from the Planning Commission.
19. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendments 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.

20. **Goals 3 and 4, Architectural Lands and Forest Lands** requires the preservation and maintenance of the state's agricultural and forest lands, generally located outside of urban areas. The amendments to the city's industrial and employment areas are consistent with this goal because they support the more efficient use of industrial and employment lands within the city, thereby reducing development pressure on agricultural and forest lands outside of urban areas.
21. **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 addressing the regulation of historic resources subsequently added to an existing historic or conservation district aid in ensuring the preservation of these resources.
22. **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 clarify under what circumstances the open space requirement is triggered within the Gateway Plan District.
23. **Goal 9, Economic Development**, requires the provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. In general the provisions in RICAP 4 support this goal by improving the clarity of regulations. The following amendments are directly supportive of Goal 9.
 - Regulations affecting industrial and employment lands. These amendments support Goal 9 by ensuring that adequate lands are available for industrial and employment uses within the city of Portland. These amendments bring the city into compliance with recent changes made to Metro's Urban Growth Management Functional Plan, specifically Title 4. See also the findings for Metro's Title 4.
 - Regulations affecting Day Care Uses. This amendment updates the city's definition of a day care use so that family day care facilities, as defined in the state codes, are not included. This removes an inconsistency between state and city regulations for family day care operators working out of their home.
24. **Goal 10, Housing**, requires provision for the housing needs of citizens of the state. In general, the provisions in RICAP 4 support this goal by improving the clarity of regulations. The following amendments are directly supportive of Goal 10. See also findings for Portland Comprehensive Plan Goal 4, Housing and Metro Titles 1 & 7.
 - Regulations affecting land divisions. The amendments, based upon the land division monitoring report, support Goal 10 by clarifying the regulations that apply to the creation of lots through land divisions and ensuring better designed land divisions and development. Amendments include revised regulations addressing flag lots, narrow lots, planned developments, and the placement of alleys within the site. Regulations are also amended to clarify the desired development on corner lots, narrow lots, and within planned developments, as well as how garages are to be included within narrow houses. These amendments better meet the intent of the Land Division Code Rewrite, completed in 2002.
 - Regulations affecting manufactured homes and manufactured dwelling parks. These amendments bring the city's regulations into compliance with state law for manufactured homes and manufactured dwelling parks. This eliminates confusion between state and local requirements. This consistency allows the option for the placement of manufactured homes on a

lot which provides alternatives to stick built homes, in support of state affordable housing objectives.

- Regulations affecting accessory dwelling units. This amendment clarifies how living area is calculated for accessory dwelling units, to be consistent with the uniform building code as stated in the Oregon Structural Specialty Code.
25. **Goal 11, Public Facilities and Services**, requires planning and development of a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for development. The amendments affecting the land divisions support this goal by clarifying the regulations that apply to land divisions and the requirements for public alleys, and the interaction between streets and driveways.
26. **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 the policy or intent of any of the existing regulations pertaining to 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 regulation 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 amendments do not result in increases in jobs, housing units, or density. For the most part, they clarify existing regulations. The following amendments specifically support this goal:

- Regulations affecting industrial and employment lands. Within the city's industrial and employment land designations, additional approval criteria are added to the city's conditional use review to ensure that certain uses will not impact the city's existing truck and freight movement facilities.
- Regulations affecting land divisions. As part of the amendments to the land division code, the current regulations for private and public alleys are being clarified as are the regulations for the interaction of public streets and driveway curb cuts to ensure a more efficient use of land and reduce conflicts between vehicles and pedestrians.

Findings on Metro Urban Growth Management Functional Plan

27. The following elements of the Metro Urban Growth Management Functional Plan are relevant and applicable to the RICAP 4 amendments.
28. **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. In general, the amendments are consistent with this title because they do not significantly alter the development capacity of the city.

The amendments to the city's industrial and employment lands specifically address this Title by ensuring that any legislative amendments or quasi-judicial requests to remove industrial or employment lands from the city's comprehensive plan map address Metro's goals, including the jobs capacity goal for the city.

29. **Title 4, Industrial and Other Employment Areas**, seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas, (RSIAs), Industrial and Employment Areas. Title 4 also seeks to protect the capacity and efficiency of the region's transportation system for the movement of goods and services. In general, the amendments are consistent with this title because they do not significantly alter the city's policy on Industrial and Employment Areas.

One set of amendments specifically supports Title 4. Amendments to regulations in the city's industrial and employment areas ensure that there continues to be adequate land within the city for the siting of industrial and employment uses. This is accomplished by limiting the ability for applicants to divide vacant industrial land, or remove land from industrial and employment designations, unless Metro's objectives are met. The amendments also further limit the total amount of retail sales and service uses that may locate on a site in an industrial zone. Lastly, the amendments ensure that any non-industrial uses that are allowed through a conditional use review do not have an adverse impact on the area's capacity for truck and freight movement.

30. **Title 7, Housing Choice**, ensures opportunities for affordable housing at all income levels and calls for a choice of housing types. In general the amendments are consistent with this title because they do not alter the city's policy on affordable housing

The amendments to the manufactured housing and manufactured dwelling park regulations directly support this title, by bringing the city's regulations into compliance with state law. This eliminates confusion between state and local requirements. This consistency allows the option for the placement of manufactured homes on a lot which provides alternatives to stick built homes, in support of objectives for affordable housing.

Findings on Portland's Comprehensive Plan Goals

31. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program, and reaffirmed the plan's compliance with statewide planning goals.
32. The following goals, policies, and objectives of the Portland Comprehensive Plan are relevant and applicable to RICAP 4.
33. **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. In general, the amendments are consistent with this goal because they do not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.

Two amendments specifically support this goal. The amendments to the city's industrial and employment regulations ensure compliance with Metro's regional goals, specifically, Title 4. The amendments to the city's manufactured home and manufactured dwelling park regulations ensure consistency with current state law as stated in ORS and the State Manufactured Dwelling and Park Specialty Code.

34. **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, Multnomah County Planning, and the Oregon Department of Land Conservation and Development. For the amendments to the city's industrial and employment regulations, staff consulted with Metro during the creation of the amendments.

35. **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 they are aimed at updating and improving the City's land use regulations and procedures that hinder desirable development. By improving regulations, the City will better facilitate the development of housing and employment uses. In addition, bringing the city's regulations into conformance with Metro's Urban Growth Management Functional Plan ensures consistency with Metro's goals for urban development within the city.

36. **Goal 3, Neighborhoods**, calls for the 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 the policy or intent of existing regulations relating to the stability and diversity of neighborhoods.

37. **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. In general the provisions in RICAP 4 support this goal by improving the clarity of the regulations. The following amendments are directly supportive of Goal 4. See also findings for Statewide Planning Goal 10, Housing and Metro Titles 1 & 7.

- Regulations affecting land divisions. The amendments, based upon the land division monitoring report, support Goal 4 by clarifying the regulations that apply to the creation of lots through land divisions and ensuring better designed land divisions and development. Amendments include revised regulations addressing flag lots, narrow lots, planned developments, and the placement of alleys within the site. Regulations are also amended to clarify the desired development on corner lots, narrow lots, and within planned developments, as well as how garages are to be included within narrow houses. These amendments better meet the intent of the Land Division Code Rewrite, completed in 2002.
- Regulations affecting manufactured homes and manufactured dwelling parks. These amendments bring the city's regulations into compliance with state law for manufactured homes and manufactured dwelling parks. This eliminates confusion between state and local requirements. This consistency allows the option for the placement of manufactured homes on a lot which provides alternatives to stick built homes, in support of city goals for creating a range of housing.
- Regulations affecting accessory dwelling units. This amendment clarifies how living area is calculated for accessory dwelling units, to be consistent with the uniform building code as stated in the Oregon Structural Specialty Code.

38. **Goal 5, Economic Development**, calls for the 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. All of the amendments are consistent with Goal 5 because they update and improve City land use regulations and procedures that hinder desirable development. Improving land use

regulations to make them clear and easily implemented has positive effects on economic development. The following amendments are directly supportive of Goal 9.

- Regulations affecting industrial and employment lands. These amendments support Goal 9 by ensuring that adequate lands are available for industrial and employment uses within the city of Portland. These amendments bring the city into compliance with recent changes made to Metro's Urban Growth Management Functional Plan, specifically Title 4. See also the findings for Metro's Title 4.
- Regulations affecting Day Care Uses. This amendment updates the city's definition of a day care use so that family day care facilities as defined in the state codes are not included. This removes the inconsistency between state and city regulations for family day care operators working out of their home.

39. **Goal 6, Transportation**, calls for developing a balanced, equitable, and efficient transportation system that provides a range of transportation choices; reinforces the livability of neighborhoods; supports a strong and diverse economy; reduces air, noise, and water pollution; and lessens reliance on the automobile while maintaining accessibility. The amendments are consistent with this goal because they do not change the policy or intent of existing regulations relating to transportation.

The following amendments are directly supportive of Goal 6. See also findings for Statewide Planning Goal 12, Transportation.

- Regulations affecting industrial and employment lands. As part of the amendments to the industrial and employment land designations, additional approval criteria are added to the city's conditional use review to ensure that certain uses will not impact the city's existing truck and freight movement facilities.
 - Regulations affecting land divisions. As part of the amendments to the land division code, the current regulations for private and public alleys are being clarified as are the regulations for the interaction of public streets and driveway curb cuts to ensure a more efficient use of land and reduce conflicts between vehicles and pedestrians.
40. **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.
41. **Goal 10, Plan Review and Administration**, includes several policies and objectives. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, directs that amendments to the zoning and subdivision regulations should be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city.

All of the amendments are supportive of Policy 10.10 because they clarify and streamline many of the regulations in the Zoning Code. They also respond to identified current and anticipated problems, including barriers to desirable development, and will help ensure that Portland remains competitive with other jurisdictions as a location in which to live, invest, and do business.

42. **Goal 11, Public Facilities**, includes a wide range of goals and policies. **Goal 11-A** 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. **Goal 11-B** calls for improvements to the quality of Portland's transportation system. As part of the amendments to the land division code, the regulations for private and public alleys are clarified as are the regulations for the interaction of

public streets and driveway curb cuts to ensure a more efficient use of land and reduce conflicts between vehicles and pedestrians.

43. **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.

Policy 12.3 calls for enhancing the City's identity through protection of Portland's significant historic resources. The amendments addressing the regulation of historic resources subsequently added to an existing historic or conservation district aid in ensuring the preservation of these resources.

Policy 12.1 calls for enhancing and extending Portland's attractive identity. Policy 12.6 calls for ways for new development projects to respect and strengthen neighborhood values. Several amendments to the land division code allow planners to have more discretion in considering the context of proposed land divisions and planned developments.

NOW, THEREFORE, the Council directs:

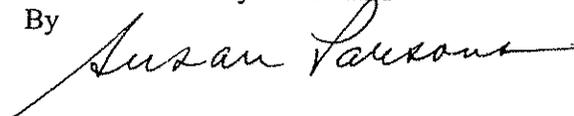
- a. Adopt Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): Planning Commission Recommended Draft*, dated November 17, 2008, with the exception of the amendments to the retail limits on Division Street located on pages 96 and 97, which are subject to a separate ordinance;
- b. Amend Title 33, Planning and Zoning as shown in Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): Planning Commission Recommended Draft*, dated November 17, 2008, with the exception of the amendments to the retail limits on Division Street located on pages 96 and 97, which are subject to a separate ordinance;
- c. Adopt the commentary and discussion in Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): Planning Commission Recommended Draft*, dated November 17, 2008, as legislative intent and further findings, with the exception of the amendments to the retail limits on Division Street located on pages 96 and 97, which are subject to a separate ordinance; and
- d. Direct staff to monitor the effect of the other amendments as part of their overall monitoring program.

Passed by the Council: DEC 17 2008

GARY BLACKMER

Auditor of the City of Portland

By



MAYOR TOM POTTER

Deputy

Prepared by:
Phil Nameny Bureau of Planning
November 21, 2008