

178927

Ordinance No.

Amend Title 33, Planning and Zoning to clarify and improve the regulations for accessory structures including accessory dwelling units, without changing policy or intent of the original regulations. (Ordinance)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. The City Council 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 would periodically be required in order to maintain compliance with existing policy.
3. Code Maintenance 2004 is the fifth annual package of amendments and is part of a continuing effort to improve the clarity and structure of the Portland Zoning Code. As in the past, the amendment 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. The Code Maintenance process has also been used to implement portions of other legislative planning projects when additional time is needed to complete the work needed on Zoning Code amendments.
4. Code Maintenance 2004 is part of the City’s 2003/4 Regulatory Improvement Workplan (R1W), which was adopted by City Council in August 2003. In Resolution 36162, the City Council directed the Bureau of Development Services (BDS) to undertake Code Maintenance 2004 and to seek a recommendation on the amendments from the Planning Commission.
5. The proposed amendments in the Code Maintenance 2004 package were suggested by a range of interested stakeholders, including neighborhood advocates, development services customers, business owners, environmental advocates, land use consultants, and staff from BDS, Bureau of Planning, and other City agencies. In developing the initial Code Maintenance 2004 list, the model of the FY 2002-2003 Regulatory Improvement Workplan was followed. Initial ideas were developed from a database of requested amendments. The list was expanded and modified through outreach efforts that were focused on the City’s neighborhood association network, business associations, and other individuals and groups involved in or affected by the development review process. Meetings with community and business groups, email contacts, and the Regulatory Improvement web site were vehicles for public input into the RJW including the Code Maintenance list of ideas.
6. On January 7, 2004, Notice of Proposed Amendment was mailed to the Department of Land Conservation and Development (DLCD) in compliance with the postacknowledgement 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. Updated notices on the proposed Code Maintenance project were mailed to DLC and Metro on February 5, 2004 and April 26, 2004.

7. Notice of the Planning Commission hearing on Code Maintenance 2004 as required by PCC 33.740, Legislative Procedure, was mailed on January 23, 2004. A Measure 56 Notice, as required by ORS 227.186, was mailed to property owners whose property value may be affected by Code Maintenance 2004 amendments on February 4, 2004.
8. On February 24, 2004, the Planning Commission held a hearing on the Code Maintenance 2004 project. Staff from BDS presented the proposal, and public testimony was received.
9. On March 9, 2004, the Planning Commission held a hearing to take additional public testimony on the Code Maintenance 2004 package. The Commission also had a work session to further discuss the proposed amendments and consider public testimony. At the end of the work session, the Commission separated out the amendments on accessory structures from the bulk of the Code Maintenance amendments to allow for further review. The rest of the amendments were recommended for approval and later passed by City Council under separate documentation.
10. On May 11, 2004, the Planning Commission held an additional work session on the accessory structure amendments. Following discussion, the Planning Commission voted unanimously to forward the amendments for City council consideration with the recommendation that they be adopted.
11. Notice of the City Council hearing on the accessory structure amendments for Code Maintenance 2004 as required by PCC 33.740, Legislative Procedure, was mailed on July 16, 2004.
12. On October 20, 2004, the Portland City Council held a hearing on the accessory structure amendments for the Code Maintenance 2004 project. Staff from BOP presented the Planning Commission's recommendation, and public testimony was received. At the conclusion of the hearing the Council directed staff to prepare revisions to the Planning Commission's recommendations and return for further consideration of those revisions.
13. On November 17, 2004 the Portland City Council held a hearing on the requested revisions. Staff from BOP presented the proposed revised language, and public testimony was received. The revisions requested by the Council limit the use of a detached garage that is located within the required rear or side setback as another accessory structure, such as home office, artist studio or accessory dwelling unit, to the conversion of a garage that was legally constructed before January 1, 2005. The garage would also have to meet the current size limitations for a garage in the setbacks. At the conclusion of the hearing the Council voted to adopt the revisions.

Statewide Planning Goals Findings

State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with the state land use goals. Because the Accessory Structure amendments for Code Maintenance 2004 has a limited scope the amendments adopted by this

ordinance address only some of the topics in the Statewide Planning Goals. Only the state goals addressed below apply.

14. 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:

- The initial Code Maintenance 2004 list was developed and modified through outreach efforts that were focused on the City's neighborhood association network, business associations, and other individuals and groups involved in or affected by the development review process. Meetings with community and business groups, email contacts and the Regulatory Improvement web site were vehicles for public input into the RIW including the Code Maintenance list of ideas.
- On January 23, 2004, BDS sent notice to all neighborhood associations and coalitions in the City of Portland, as well as other interested persons, to inform them of Open House events on February 4, 2004 and February 12, 2004. The purpose of the Open House events was to allow the public the opportunity to review the proposed recommendations, and ask questions of staff. Four people attended the Open House held on February 4th and zero people attended on February 12th.
- In the notice mailed on January 23, 2004, BDS also informed all neighborhood association and coalitions, and business associations in the City of Portland, as well as other interested persons, of a Planning Commission public hearing on the Code Maintenance 2004 project. The hearing was also publicized in *The Oregonian* newspaper.
- On February 2, 2004, BDS published a document entitled, *Code Maintenance 2004: Proposed Report and Recommendation*. The report was made available to the public and mailed to all those requesting a copy. A copy of the document was also delivered to all neighborhood coalition offices.
- Beginning on January 26, 2004 information about Code Maintenance 2004 was available on the Bureau of Development Services web site. On January 26, 2004 the list of proposed amendments was posted on the web site and since then, all materials associated with Code Maintenance 2004 were added to the web site at the same time they were published.
- On February 13, 2004, BDS published a document entitled *Code Maintenance 2004: Addendum to Proposed Report and Recommendation* as well as a draft of this ordinance and a draft Impact Analysis Report.
- On February 24, 2004 BDS published a document entitled *Code Maintenance 2004: Second Addendum to Proposed Report and Recommendation* and on March 9, 2004 BDS published a document entitled *Code Maintenance 2004: Third Addendum to Proposed Report and Recommendation*
- **On** February 24, 2004, the Planning Commission held a public hearing during which citizens discussed and commented on the *Proposed Report and Recommendation*.

On March 9, 2004, the Planning Commission held a second hearing and public work session to further discuss the amendments.

- During their deliberations on the Code Maintenance 2004 package, the Planning Commission decided to remove two proposed amendments for further consideration. These amendments relate to accessory structures and accessory dwelling units. The remainder of the amendments were forwarded by Planning Commission with slight modifications and eventually adopted by City Council under separate documentation.
 - On May 11, 2004, the Planning Commission held an additional work session on the accessory structure amendments. Following discussion, the Planning Commission voted unanimously to forward the recommendation that they be adopted.
 - On July 16, 2004, BDS sent notice to all neighborhood associations and coalitions and business associations in the City of Portland, as well as other interested persons, to inform them of a City Council public hearing on the accessory structure amendments for the Code Maintenance 2004 project.
 - On July 19, 2004 BDS published the document *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Accessory Structures Amendments*. This document provided the Planning Commission's recommendation on the final element of the Code Maintenance 2004 group of amendments. The required Impact Analysis Report was included in these documents.
 - On October 20, 2004 the Portland City Council held a hearing on the accessory structure amendments for the Code Maintenance 2004 project. Staff from BOP presented the Planning Commission's recommendation, and public testimony was received. At the conclusion of the hearing the Council directed staff to prepare revisions to the Planning Commission's recommendations and return for further consideration of those revisions.
 - On November 17, 2004 the Portland City Council held a hearing on the requested revisions. A letter notifying interested parties about the hearing date was mailed to 21 individuals on October 29, 2004
15. **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.
16. 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. The accessory structure amendments are supportive of this goal because they reduce land use reviews for the conversion of a garage that was legally constructed before January 1, 2005 and the cost associated with them. Portland *Comprehensive Plan* findings on Goal 5, Economic Development, and its related policies and objectives also support this goal.

17. **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. Specifically, the amendments are consistent with the purposes for regulating the setbacks of accessory structures in that they continue to apply the limitation on the size of the structure allowed within the setback. This size limitation assures that the allowed conversion of a garage that was legally constructed before January 1, 2005 to another type of accessory structure remains incidental to the primary building and maintains air, light and fire fighting access. By limiting the placement of dormers, the amendment maintains privacy for abutting lots. In conjunction with the regulations of the Uniform Building Code, the regulations also continue to maintain adequate fire protection. The amendments to the application of design standards to accessory dwelling units are supportive of this goal because they provide additional flexibility for the conversion of a garage that was legally constructed before January 1, 2005 to an accessory dwelling unit, which is an alternative housing type that is called for in the Housing goals.
18. **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. Specifically, the amendments support this goal because they allow the conversion of a garage that was legally constructed before January 1, 2005 to another type of accessory structure which provides for more efficient use of land and existing resources. The amendments also remove impediments related to the application of design standards to accessory dwelling units, allowing for the more efficient use of existing resources. Portland Comprehensive Plan findings on Goal 7, Energy, and its related policies and objectives also support this goal.

Metro Urban Growth Management Functional Plan Findings

Metro has adopted an Urban Growth Management Functional Plan (IJGMFP) that requires local jurisdictions to adopt and amend comprehensive plans and land use regulations that are not inconsistent with its provisions. Due to the limited scope of the accessory structures amendments for Code Maintenance 2004, only the Titles applicable to this proposal are included.

19. **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 has been implemented through citywide analysis based on calculated capacities from land use designations. These 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. The amendments are supportive of this goal because they provide additional flexibility for the conversion of a garage that was legally constructed before January 1, 2005 to an accessory dwelling unit, allowing for additional housing on existing sites.
20. **Title 2, Regional Parking Policy, regulates the amount of parking permitted** by use for jurisdictions in the region. Generally, the amendments do not affect the City's ability to meet Title 2 because they do not change policy or intent of any of the existing regulations pertaining to regional parking policy. The amendments are supportive of this goal

because they provide additional flexibility for the conversion of a garage that was legally constructed before January 1, 2005 to an accessory dwelling unit, which allows the creation of additional units without needing additional parking.

21. Title 7, Affordable Housing, recommends that local jurisdictions implement tools to facilitate development of affordable housing. Generally, the amendments do not affect the City's ability to meet this title because they do not change policy or intent of existing regulations relating to the development of affordable housing. The amendments are supportive of this goal because they provide additional flexibility for the conversion of a garage that was legally constructed before January 1, 2005 to an accessory dwelling unit, which allows the creation smaller affordable housing units within existing neighborhoods.
22. Title 8, Compliance Procedures, outlines compliance procedures for amendments to comprehensive plans and implementing ordinances. The amendments are consistent with this Title because the required notices and findings have been provided to Metro in a timely manner.

Portland Comprehensive Plan Goals Findings

23. 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.
24. This ordinance amends Title 33, Planning and Zoning, of the Portland City Code. The Council finds that following *Comprehensive Plan* goals, policies and objectives apply to the amendments and the amendments satisfy the applicable goals, policies and objectives for the reasons stated below.
25. During the course of public hearings, the Bureau of Development Services, 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.
26. 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.
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 do not change policy or intent of existing regulations relating to urban development. These amendments clarify regulations or reduce the need for land use reviews for the conversion of a garage

that was legally constructed before January 1, 2005 to another type of accessory structures, including accessory dwelling units, making the development process more predictable and less expensive. They also help foster alternative housing opportunities through removing impediments to the creation of accessory dwelling units.

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 do not change policy or intent of existing regulations relating to the stability and diversity of neighborhoods. The amendment to the applicability of design standards to the conversion of a garage that was legally constructed before January 1, 2005 into an accessory dwelling units specifically supports this goal by removing some impediments to the creation of accessory dwelling units. This also allows the creation of additional housing while preserving the existing house. The amendment also assures design compatibility for new detached accessory dwelling units, for the expansion of existing primary structures and in the conversion of an existing garage that already has design features that match the primary structure. The amendments that allow the conversion of a garage that was legally constructed before January 1, 2005 to another type of accessory structures are consistent with the purposes for regulating the setbacks of accessory structures. Specifically, the amendments are consistent with the purposes for regulating the setbacks of accessory structures by limiting the application to garages that were legally constructed before January 1, 2005 and that meet the existing size limitations. This size limitation assures that the structure remains incidental to the primary building and maintains air, light and fire fighting access. By limiting the placement of dormers, the amendment maintains privacy for abutting lots. In conjunction with the regulations of the Uniform Building Code, the regulations also maintain adequate fire protection. Also because the amendment applies only to garages legally constructed before January 1, 2005 and maintains the size limitation, the regulations still reflect the general building scale and placement of houses in the city's neighborhoods. The conversion of garages legally constructed before January 1, 2005 to another accessory use will not negatively affect the overall scale and relationship of residential buildings to each other and to the neighborhood.
29. 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 include word and structural changes that improve the clarity and implementation of existing regulations. The amendments that allow the conversion, of a garage that was legally constructed before January 1, 2005 to another type of accessory structures provides flexibility by allowing the creation of more usable living space within an existing garage structure. The amendment for accessory dwelling units specifically supports this goal by removing some impediments to the creation of accessory dwelling units, which allows the provision of additional density while preserving the existing house. This encourages an alternate form of housing within single dwelling development.
30. 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. The amendments are supportive of this goal because they reduce land use

reviews for the conversion of a garage that was legally constructed before January 1, 2005 and the cost associated with them.

31. **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 include word and structure changes that improve the clarity and implementation of existing regulations relating to energy. The amendments are specifically supportive of this goal because they allow the conversion of a garage that was legally constructed before January 1, 2005 to another type of accessory structure which provides for more efficient use of land and existing resources. The amendments also remove impediments related to the application of design standards to accessory dwelling units, allowing for the more efficient use of existing resources.
32. **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. Findings on the Statewide Planning Goal 1, Citizen Involvement, also support this goal.
33. **Goal 10, Plan Review and Administration**, requires that Portland's Comprehensive Plan and its implementing ordinances undergo a periodic review. These amendments are supportive of this goal because, beginning in 2000, the city has undertaken Code Maintenance projects as part of that periodic review process with the specific goals of clarifying the Zoning Code, eliminating conflicts, and reducing need for land use reviews.
34. **Policy 10.10 Amendments to the Zoning and Subdivision Regulations** calls for 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 area. **Objective 10.10.C seeks to improve the Zoning Code by:** using clear language, maintaining a clear, logical organization; using a format and page layout that eases use of the document by lay-people as well as professional; and using tables and drawings to add clarity and to shorten the text. The primary purpose of the Code Maintenance 2004 amendments supports this policy and objective because the package as a whole improves clarity, enhances readability, reduces conflicts, and supports the structure and format of the Zoning Code.
35. **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 make word and structural changes that improve the clarity and implementation of existing regulations. The amendments that allow the conversion of a garage that was legally constructed before January 1, 2005 to another type of accessory structures are consistent with the purposes for regulating the setbacks of accessory structures. Specifically, the amendments are limited in application to garages that were legally constructed before January 1, 2005 and that meet the existing size limitations. This size limitation assures that the structure remains incidental to the primary building and maintains air, light and fire fighting access. By limiting the placement of dormers, the amendment maintains privacy for abutting lots. In conjunction

with the regulations of the Uniform Building Code, the regulations also maintain adequate fire protection. The amendment to the accessory dwelling unit design standards specifically supports Goal 12 because it is consistent with the design compatibility principle and clarifies the application of the standards. The amendment assures design compatibility for new detached accessory dwelling units, for the expansion of existing primary structures and in the conversion of existing detached garages that already has design features that match the primary structure. Also, because the amendment that allows conversion of a garage legally constructed before January 1, 2005 includes a size limitation, the regulations still reflect the general building scale and placement of houses in the city's neighborhoods and the conversion of an existing detached garage to a variety of accessory uses will not negatively affect the overall scale and relationship of residential buildings to each other and to the neighborhood.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Accessory Structures Amendment As Revised by City Councils*, dated November 18, 2004;
- b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Accessory Structures Amendments As Revised by City Council*, dated November 18, 2004; and
- c. Adopt as legislative intent and as further findings the commentary in Exhibit A, *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Accessory Structures Amendments As Revised by City Council*, dated November 18, 2004.

PASSED BY THE COUNCIL, DEC 0 12004

Mayor Vera Katz
Susan Hartnett, Bureau of Development Services
November 19, 2004

**GARY
BLACKMER**
Auditor of the City of Portland
By: Susan Parsons
Deputy