Part 1B

Ordinance No. 178480 **As Amended**

*Amend Title 33, Planning and Zoning to clarify the regulations for Radio Frequency Transmission Facilities 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 (RIW), 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 RIW including the Code Maintenance list of ideas.

6. On January 7, 2004, Notice of the Proposed Amendment was mailed to the Department of Land Conservation and Development (DLCD) in compliance with the post-acknowledgement review process required by OAR 660-18-020. 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 DLCD 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 voted unanimously to forward the Code Maintenance 2004 package, as amended, to the City Council with a recommendation that it be adopted.

10. The Planning Commission's recommended amendments on Code Maintenance 2004 were initially presented to the City Council in two documents: *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1 of 2: Amendments to Title 33, Planning and Zoning* and *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 2 of 2: South Waterfront Related Amendments.*

11. Notice of the City Council hearing on Code Maintenance 2004 as required by PCC 33.740, Legislative Procedure, was mailed on April 23, 2004.

12. On May 20, 2004, the Portland City Council held a hearing on the Code Maintenance 2004 project. Staff from BDS presented the Planning Commission's recommendation, and public testimony was received.

13. At the conclusion of the May 20th hearing the Council voted to adopt *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 2 of 2: South Waterfront Related Amendments.* The Council also directed staff to separate Part 1 of 2 into two new documents and present them at an additional hearing on June 2, 2004. As divided, Part 1A contains all of the code amendments previously contained in Part 1, except for the amendments relating to radio frequency transmission facilities. Part 1A is being adopted by a separate ordinance. This ordinance is Part 1B and contains the code amendments and findings pertaining to radio frequency transmission facilities. Dividing Part 1 into two separate parts and ordinances has not changed the

substance of the proposed code amendments, which were considered and recommended to the City Council by the Planning Commission.

14. On June 2, 2004 the Portland City Council held a second hearing on portions of the Code Maintenance 2004 project. Staff from BDS presented *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1B: Amendments Related to Radio Frequency Transmission Facilities* and public testimony was received.

15. The changes being made to the Radio Frequency Transmission Facilities regulations as part of the Code Maintenance project are relatively limited. A more comprehensive review of these regulations would provide the opportunity to a establish a city-wide tower location policy, to develop effective co-location strategies by and between service providers that may reduce the proliferation of monopoles, and to create new development standards for monopoles that address their aesthetics and reduce their visual impacts.

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 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.

16. **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. During their deliberations the Planning Commission also made several very minor changes to the proposed amendments. Upon completing their deliberations, the Planning Commission voted unanimously to forward a recommendation to City Council to adopt the Code Maintenance package as modified. The two documents *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1 of 2: Amendments to Title 33, Planning and Zoning*, and *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 2 of 2: South Waterfront Related Amendments* contained the Commission's full recommendation on Code Maintenance 2004.

- On April 23, 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 Code Maintenance 2004 project.

- On April 26, 2004 BDS published two documents: *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1 of 2: Amendments to Tile 32 and Title 33, Planning and Zoning*, and *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 2 of 2: South Waterfront Related Amendments*. The required Impact Analysis Report was included in these documents.

- On May 20, 2004 the Portland City Council held a hearing on the Code Maintenance 2004 project. Staff from BDS presented the proposal, and public testimony was received.

- At the conclusion of the May 20th hearing the Council voted to adopt *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 2 of 2: South Waterfront Related Amendments*. The Council also directed staff to separate Part 1 of 2 into two new documents and present them at an additional hearing on June 2, 2004.

- On June 2, 2004 the Portland City Council held a second hearing on portions of the Code Maintenance 2004 project. Staff from BDS presented *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1B: Amendments Related to Radio Frequency Transmission Facilities* and public testimony was received.

17. **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.

18. **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.

19. **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 amendments are supportive of this goal because they reduce land use reviews 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.

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. The amendments are supportive of this goal by clarifying the regulations for Radio Frequency Transmission Facilities and making them consistent for all service providers. Portland Comprehensive Plan findings on Goals 11, Public Facilities, and related policies and objectives also support this goal.

21. **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.

22. **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.

23. **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

Metro has adopted an Urban Growth Management Functional Plan (UGMFP) that requires local jurisdictions to adopt and amend comprehensive plans and land use regulations that are not inconsistent with its provisions. Because Code Maintenance 2004 has a limited scope, the amendments adopted by this ordinance address only some of the titles in the UGMFP. Only the titles addressed below apply.

24. **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.

25. **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.

26. 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 City of Portland's responses to the requirements of this title were prepared through the Transportation System Plan and Land Division Code Rewrite Project. The amendments in Code Maintenance 2004 are not inconsistent with this title because they do not change policy or intent of the existing regulations related to regional accessibility.

27. **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

28. 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.

29. 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.

30. 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.

31. **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. The amendments support this goal because they ensure that City land use

regulations are consistent with policies and regulations of other City bureaus and State and Federal law.

32. **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. The amendments clarify regulations related to the siting of Radio Frequency Transmission Facilities and reduce the need for land use reviews. These changes make the development process more predictable and less expensive, which supports new opportunities for jobs creation. The amendments also support the placement of Radio Frequency Transmission Facilities within the public right-of-way, which helps to retain the character of established neighborhoods.

33. **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 amendments also support the placement of Radio Frequency Transmission Facilities within the public right-of-way, which helps to preserve and reinforce the stability of the city's neighborhoods.

34. **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 and support the growth and expansion of the cellular phone industry. The amendments support this goal because they reduce the need for land use reviews, provide equal level of regulations for all cellular phone service providers and make the city's threshold for regulations equivalent to those specified by the Federal Communications Commission.

35. **Goal 6, Transportation,** calls for the development of 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 policy or intent of existing regulations relating to transportation. The amendments further the Goal 6 intent to support a strong and diverse economy in that they remove existing impediments to the placement of Radio Frequency Transmission Facilities within the public right-of way.

36. **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 include word and structural changes that improve the clarity and implementation of existing regulations.

37. **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.

38. **Goal 10, Plan Review and Administration,** requires that Portland' 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.

39. **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.

40. **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. The amendments support this goal because they clarify language or reduce the need for land use reviews that are often affect Radio Frequency Transmission Facilities.

41. **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 policy and regulations. The amendments that support Goal 12 and its relevant policies because they encourage the placement of Radio Frequency Transmission Facilities within the public right-of-way on existing utility poles.

NOW, THEREFORE, the Council directs:

a. Adopt Exhibit A, *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1B: Amendments Related to Radio Frequency Transmission Facilities*, dated May 28, 2004;

b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1B: Amendments Related to Radio Frequency Transmission Facilities*, dated May 28, 2004;

c. Adopt as legislative intent and as further findings the commentary in Exhibit A, *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1B: Amendments Related to Radio Frequency Transmission Facilities*, dated May 28, 2004; and

d. The Bureau of Planning shall initiate a legislative planning process and, in collaboration with the Office of Cable Communications and the Bureau of Development Services, will comprehensively examine the land use policies and Zoning Code regulations related to Radio Frequency Transmission Facilities. The Council also directs the Bureau of Planning to develop proposals for changes to the policies and regulations, to present those proposals to the Portland Planning Commission, and to bring forward their recommendation for consideration by the City Council.

Section 2. The Council declares an emergency exists because numerous required land use reviews will be eliminated by adoption of these amendments. Delay in adopting the amendments will significantly add to the cost of doing business in Portland for cellular phone service providers by requiring unnecessary land use reviews. Therefore, this ordinance shall be in full force and effect June 18, 2004.

PASSED BY THE COUNCIL, JUN 09 2004

Mayor Vera Katz
Commissioner Randy Leonard
Susan Hartnett, Bureau of Development Services
May 26, 2004

GARY BLACKMER
Auditor of the City of Portland
By _____
Deputy