

# **Code Maintenance 2004**

## **Portland Planning Commission Report and Recommendation on Accessory Structures Amendments As Revised by City Council**



**City of Portland  
Bureau of Development Services  
Bureau of Planning**

**November 18, 2004**

For more information on Code Maintenance 2004,  
please contact:

Susan Hartnett, Project Manager  
Bureau of Planning  
1900 SW Fourth Avenue, Suite 4100  
Portland, Oregon 97201

Phone: (503) 823-7984

Fax: (503) 823-7800

E-mail: [shartnett@ci.portland.or.us](mailto:shartnett@ci.portland.or.us)



The City of Portland is committed to providing equal access to information and hearings. If you need special accommodations, please call Susan Hartnett at (503) 823-7984 (TTY (503) 823-6868).

# **Acknowledgements**

## **Portland City Council**

Vera Katz, Mayor  
Jim Francesconi, Commissioner  
Randy Leonard, Commissioner  
Dan Saltzman, Commissioner  
Erik Sten, Commissioner

## **Portland Planning Commission**

Ethan Seltzer, President  
Rick Michaelson, Vice President  
Ingrid Stevens, Vice President  
Christine Caruso  
Don Hanson  
Larry Hilderbrand  
Paul R. Schlesinger  
Gail Shibley  
Timothy Smith

## **Bureau of Development Services**

Randy Leonard, Commissioner-In-Charge  
Ray Kerridge, Director  
Susan Feldman, Principal Planner

## **Bureau of Planning**

Vera Katz, Mayor, Commissioner-In-Charge  
Gil Kelley, Director  
Cary Pinard, Principal Planner

## **Project Staff**

Susan Hartnett, Project Manager

## **Project Contributors**

Jeanne Harrison, Portland Office of Transportation	
Maggie Skenderian, Bureau of Environmental Services	
Bureau of Planning	Bureau of Development Services
Mark Bello	Marisol Caron
Shannon Buono	Tom Carter
Troy Doss	Sylvia Cate
Marie Johnson	Debbie Cleek
Phil Nameny	Kristin Cooper
Gary Odenthal	Eric Engstrom
Cary Pinard	Kara Fioravanti
Jessica Richman	Douglas Hardy
Ralph Sanders	Jeff Joslin
Chris Scarzello	Michael Liefeld
Sandra Wood	Susan McKinney
	Mark Walhood



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# Section I

## Project Summary

### **A note about the Code Maintenance 2004 documents**

The Planning Commission originally heard testimony on the Code Maintenance 2004 package in February and March of 2004. During this hearing the proposed amendments on accessory structures were pulled from the rest of the package to be discussed independently of the other amendments. At the conclusion of a work session on May 11, 2004, the Planning Commission voted to recommend to the City Council the adoption of the two accessory structure amendments including accessory dwelling units contained in this document.

The remainder of the Code Maintenance 2004 package is contained in three additional documents. These other documents, *Part 1A*, *Part 1B* and *Part 2* contain over 70 amendments to Title 33, Planning & Zoning that have already been adopted by City Council.

### **Summary**

For the fifth year in a row, the City of Portland is undertaking the Code Maintenance process in a continuing effort to improve the clarity and structure of the Portland Zoning Code. Code Maintenance 2004 consists primarily of technical amendments intended to correct and clarify the Zoning Code in order to improve its administration, without changing basic policy or intent. Code Maintenance is one of several elements that make up the Regulatory Improvement Workplan (RIW).

The amendments in the Code Maintenance package were suggested by a range of interested stakeholders, including neighborhood advocates, development services customers, business owners, environmental advocates, land use consultants, and City staff. The amendments can be placed into three general categories: technical, clarification, and minor policy. Section III of this report summarizes the amendments included in the minor policy category. Appendix A provides a full list of the amendments considered or adopted through the Code Maintenance 2004 project. Appendix B provides the Impact Analysis Report required for City Code amendments.

The Planning Commission considered the Bureau of Development Services proposal and received testimony at public hearings on February 24, 2004 and March 9, 2004. At that point the Planning Commission requested the Bureau of Development Services to separate out these amendments from the others and bring back additional information. This information was presented at the May 11, 2004 Planning Commission work session. Following their deliberations, the Planning Commission unanimously approved forwarding the amendments contained in this report to the City Council.

The City Council considered the Planning Commission's recommendation and received testimony at a public hearing on October 20, 2004. At a subsequent hearing and based on public testimony, the City Council revised the Zoning Code amendments and accompanying commentary. Section IV contains the Zoning Code language as amended by the City Council.

## **City Council Action**

The Portland City Council takes the following actions:

- ☐ Adopt this report as revised;
- ☐ Amend Title 33, Planning and Zoning, as identified in this report; and
- ☐ Adopt the commentary in this report as additional legislative intent and further findings.



## **Section II**

# **Project Overview and Background**

### **Why undertake Code Maintenance 2004?**

The Code Maintenance 2004 process is a continuing effort to improve the clarity and structure of the Portland Zoning Code. Since 2000, Code Maintenance projects have resulted in hundreds of amendments to the Zoning Code; the 2004 project includes approximately 75 recommended changes.

Code Maintenance 2004 consists primarily of technical amendments intended to correct and clarify the Zoning Code in order to improve its administration, without changing the basic policy or intent. Code Maintenance is one of several regulatory actions that make up the fiscal year 2003/04 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 to undertake Code Maintenance 2004. The two amendments that make up this package were separated from the rest of the Code Maintenance amendments by the Planning Commission for further discussion.

### **Where do the amendments contained in Code Maintenance 2004 come from?**

The 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 the Bureau of Development Services, Bureau of Planning and other City agencies. Following the model of the fiscal year 2002/03 Regulatory Improvement Workplan, an initial list of ideas to include in Code Maintenance 2004 was 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 to the RIW including the Code Maintenance list of ideas.

### **How were the amendments contained in Code Maintenance 2004 selected?**

An Advisory Team of neighborhood representatives, business representatives and city staff reviewed the initial list of Code Maintenance items (along with other RIW elements) before it was considered at public hearings by the Planning Commission and City Council.

The City Council did not adopt a specific list of amendments for inclusion in Code Maintenance 2004. Instead, the Council directed the Bureau of Development Services to refine the list based on the goals of the ongoing Code Maintenance efforts.

The Code Maintenance 2004 amendments were selected for inclusion in the package because they:

- Reduce conflict between regulations within the Zoning Code, and/or with regulations in other City and State codes;
- Clarify language that makes understanding and implementing the regulation difficult;
- Simplify overly complex regulations while still achieving the intended purpose of the regulation; and
- Eliminate regulations in the Zoning Code that duplicate those in other codes or regulations, or reduce the need for land use reviews that are typically approved.

Additionally, the amendments were required to meet at least one of the following objectives:

- The amendment clarifies wording that may be open to interpretation without changing the intent behind the specific regulation in question.
- The amendment addresses ongoing problems with administration of the existing Code language.
- The amendment may result in a minor policy change with low significance if it also helps implement the City's Comprehensive Plan, and is consistent with existing Policies and Objectives of that plan.

The amendments contained in Code Maintenance 2004 can be placed into three general categories: technical, clarification, and minor policy. Section III of this report summarizes the amendments included in the minor policy category. Appendix A provides a full list of the amendments considered or adopted through Code Maintenance 2004.

## **What has taken place already with the Code Maintenance 2004 package?**

Code Maintenance 2004 is required to follow the legislative procedure described in the Zoning Code (PCC 33.740, Legislative Procedure). The Bureau of Development Services began the process by issuing a report, which describes the proposed amendments, and mailing a notice of the hearings before the Portland Planning Commission, which were held on February 24, 2004 and March 9, 2004. The Portland Planning Commission considered the bureau's proposal and took testimony at those public hearings.

During their March 9<sup>th</sup> discussion of the CM 2004 package and the public testimony, the Planning Commission decided to separate out the proposed amendments related to accessory structures, including accessory dwelling units so that staff could provide additional information. At a meeting on May 11, 2004 the Planning Commission reviewed additional staff findings on the

number and types of accessory structures that have been built over the past few years, and how they relate to the City's setback standards. At the conclusion of staff's presentation, the Planning Commission discussed the amendments in more detail and voted unanimously to forward them to the City Council with a recommendation to adopt them. This document consists of the recommendation from that work session. These amendments are listed as items #9 and #26 in Appendix A. The City Council will consider these recommended amendments at a hearing on August 18, 2004. When the City Council finishes its review process and takes a final vote on these recommendations, the Code Maintenance process for 2004 will be complete.

The bulk of the Code Maintenance 2004 amendments were forwarded to Council with the Planning Commission's recommendation for adoption on March 9<sup>th</sup>. For the City Council's initial hearing, those amendments were separated into two documents. *Part 1 of 2* contained the majority of the amendments and *Part 2 of 2* contained the amendments to the South Waterfront Subdistrict of the Central City Plan.

The City Council considered the Planning Commission's recommendation on *Parts 1* and *2*, and heard testimony at public hearings on May 20, 2004 and June 9, 2004. At the conclusion of the May 20<sup>th</sup> hearing the Council voted to adopt *Part 2 of 2*. The City Council also directed staff to separate *Part 1* into two documents. *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1A* contained approximately 65 amendments to Title 33, Planning and Zoning and was considered for adoption through a regular ordinance. *Code Maintenance 2004 Portland Planning Commission Report and Recommendation Part 1B* included four amendments specific to Radio Frequency Transmission Facilities and was adopted through an emergency ordinance. *Part 1B*, the Radio Frequency Facilities amendments were adopted on June 9<sup>th</sup>, and *Part 1A* was adopted on June 16<sup>th</sup>. The Accessory Structures amendments contained in this document are the only amendments remaining to be considered by City Council from Code Maintenance 2004.

The City Council considered the Planning Commission's recommendation on the accessory structures amendments and received testimony at a public hearing on October 20, 2004. At a subsequent hearing and based on public testimony, the City Council revised the Zoning Code amendments and accompanying commentary. Section IV contains the Zoning Code language as amended by the City Council.



## Section III

# Summary of Minor Policy Amendments

Note: The shaded items are those minor policy amendments included in this document. All other amendments have been reviewed and adopted by City Council through previous hearing processes.

Item # Page #	Code Section	Amendment Summary
Item 9	33.110.250 33.120.280	<b>Minimum Setbacks for Accessory Structures in Single/Multi-dwelling zones:</b> These amendments allow, with limitations, all covered detached accessory structures, not just garages, to be in side and rear setbacks. Existing regulations allow only detached garages, no greater than 24 by 24 feet with walls no higher than 10 feet, to be located in side or rear setbacks. This amendment extends the allowance to all covered accessory structures such as artist's studios, home offices, storage buildings and accessory dwelling units. It allows for the conversion of existing garages as well as construction of new buildings and reduces the need for Adjustments that are typically approved.
Item 15	33.120.255.B.1.a 33.130.240.B.1.a 33.140.240.B.1.a	<b>Pedestrian Standards:</b> These amendments modify the standards for sites with multiple street frontages to require only one on-site pedestrian connection if the main entrance is close to the street lot line and accessible from other streets by a public sidewalk. Several Adjustments have been approved for similar circumstances.
Item 16	33.120.270.D.2	<b>Alternative Development Options:</b> This amendment eliminates the required double side setback for attached duplexes in the Multi-Dwelling zones. This will apply the same development standards to a 4-plex on one lot and an attached duplex on two lots, both of which have 4 units.
Item 26	33.205.030.E.5 33.205.030.E.6 33.205.030.E.7 33.205.030.E.8 33.205.030.E.9	<b>Accessory Dwelling Units:</b> These amendments clarify the application of design standards and provide some flexibility for conversion of existing detached structures to ADUs where there is no expansion of floor area. The amendments also make modifications to the window and eaves design requirements.
Item 33	33.266.120.C.3	<b>Parking and Loading:</b> This amendment allows flag lots in all residential zones to have a 12-foot wide driveway or up to 40% of the area between the front lot line and the front building line to be paved. The current regulations are extremely difficult to implement on flag lots because of the narrowness of the flagpole and the length of the driveway.

<b>Item # Page #</b>	<b>Code Section</b>	<b>Amendment Summary</b>
Item 35	33.266.150	<b>Vehicle Associated with Home Occupations/Parking and Loading:</b> Currently, vehicles in the medium truck category, except for motor homes, are not allowed to park in residential zones. This amendment allows “pickup trucks with dual rear wheels” to park in residential zones. Pick up trucks like this are used by households for such things as towing fifth wheel recreational vehicles. An amendment is also recommended in 33.203, Accessory Home Occupations, to allow these vehicles to be used in conjunction with a Home Occupation.
Item 37	33.266.310	<b>Parking and Loading:</b> This amendment adds to the purpose statement and clarifies the intent of the requirement that vehicles enter and exit a loading facility in a forward motion. This makes it easier to evaluate requests for an Adjustment to this standard.
Item 38	33.274.030 33.274.035 33.274.040	<b>RF Transmission Facilities:</b> These amendments conform Title 33 to the City Council's adopted Cable Office right-of-way franchise policy for wireless facilities and Federal Communications Commission (FCC) regulations. Specifically, the amendments increase current limits of 100 watts effective radiated power (ERP) to 1,000 watts ERP. This change will make the same regulations apply to all cellular phone providers and ensure that required land use reviews are applied in all circumstances intended when the regulations were first adopted.
Item 39	33.274.050	<b>RF Transmission Facilities:</b> These amendments conform Title 33 to the City Council's adopted Cable Office right-of-way franchise policy for wireless facilities and Federal Communications Commission (FCC) regulations. Specifically, the amendments to this section create a review procedure for electronic equipment on private property that supports antennae in the public right-of-way and reassigns some reviews to a higher procedure type.
Item 42a	33.420.045.N	<b>Design Review:</b> Consistent with the other recommended amendments to the Radio Frequency Transmission Facilities regulations, this amendment changes the ERP from 100 watts to 1,000 watts.
Item 58	33.537.140.C 33.537.150.D 33.537.160	<b>Johnson Creek Basin Plan District:</b> These amendments allow tree removal within utility easements outside Environmental zones in the South Subdistrict and Flood Plain Subdistrict. The amendments will also clarify how the prohibition on land divisions and PDs applies in the Flood Risk Area.

<b>Item #</b>	<b>Code Section</b>	<b>Amendment Summary</b>
Item 70	33.815.040.B.1 33.815.040.B.2	<b>Conditional Use Review Procedures:</b> These amendments allow a limited reduction in parking without triggering a subsequent Conditional Use review. Parking sometimes needs to be reduced by a small amount in order to make other allowed alterations to a site such as adding handicap ramps or adding landscaped areas. The amendments also allow a moderate expansion to the exterior improvements that are allowed without Conditional Use review. Currently, a 1500 sq. ft. building expansion is allowed without a Conditional Use review while most expansions of the exterior improvement area require a review.
Item 71	33.815.040.B.3	<b>Conditional Use Review Procedures:</b> This amendment assigns a minor reduction in site area to a Type II Conditional Use procedure. Currently any reduction in site area requires a Type III review. This amendment allows a site reduction that does not violate a condition of approval, or make the site nonconforming or move farther out of conformance with a development standard, to be reviewed using a Type II procedure.
Item 74	33.815.225.B.1 33.815.225.C.1	<b>RF Transmission Facilities:</b> These amendments conform Title 33 to the City Council's adopted Cable Office right-of-way franchise policy for wireless facilities and Federal Communications Commission (FCC) regulations. Specifically, these changes increase current limits of 100 watts effective radiated power (ERP) to 1,000 watts ERP and add to the approval criteria for several reviews a requirement that the applicant document why the facility cannot be placed in the right-of-way.
Item 75	33.820.080.B	<b>Conditional Use Master Plans:</b> This amendment modifies the list of development allowed without a plan amendment to be the same as those recommended for Conditional Uses in 33.815.





# **Section IV**

## **Recommended Code Amendments**

### **How to read this section**

This section is organized numerically by Code chapter. It includes the recommended amendments to Accessory Structures including Accessory Dwelling Units in Title 33, Planning and Zoning.

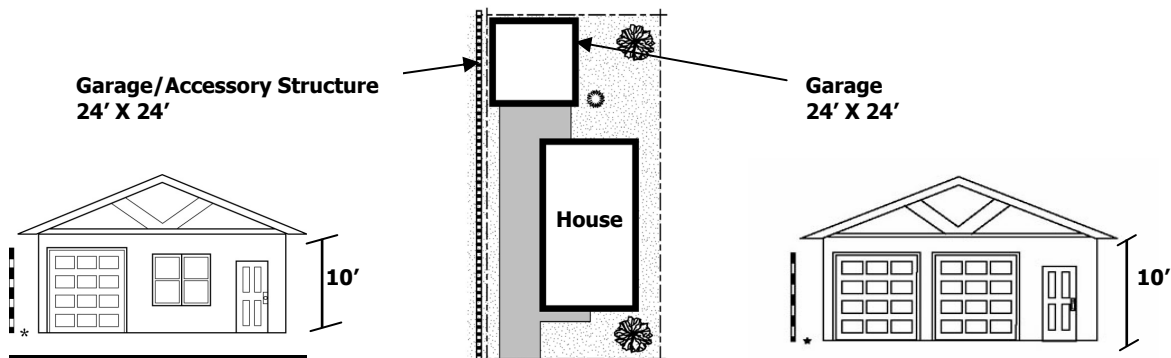
Even-numbered pages contain commentary on the amendments. Odd-numbered pages contain Code language with the recommended changes. Language that is recommended to be added to the Code is shown in underlined text. Language that is recommended to be deleted from the Code is shown in ~~strike-through text~~.

### 33.110.250 Accessory Structures

In the R7, R5 and R2.5 zones, only detached garages, no greater than 24 by 24 feet with walls no higher than 10 feet, are allowed to be located in side or rear setbacks.. The definition of a garage is a covered structure designed to shelter a vehicle. Requests to convert existing detached garages that are in side and rear setbacks for other non-living activities such as storage and garden sheds are common. Requests to convert them to living activities such as workshops, studios, offices, and accessory dwelling units are also very common. Inquiries about constructing new buildings that are in side and rear setbacks for both living and non-living activities are also frequent.

Changes to these regulations were recommended by the Planning Commission due to issues encountered by applicants and development review staff when an existing garage was proposed to be converted to another accessory structure (workshop, artist studio etc.), or if a new garage was proposed that also included a separate area not used for the parking of a vehicle. If the original garage was legally built within the setback, the conversion would need an adjustment, since only a building functioning as a garage could be in the setback. Often the structures had similar features, yet one could be in the setback while the other would require an adjustment (see figure below). Adjustments in these situations were often approved without any conditions.

*Figure: Note that often an accessory structure can have similar characteristics to a standard garage that is proposed in the setback.*



Continuing to allow only garages in the side and rear setbacks has a number of potential negative implications. The demand for increased living and storage space is clear from national and local housing trends. Portland's housing stock must remain competitive and the desire to use existing buildings, or to build new spaces for activities other than vehicle storage, has been demonstrated through inquiries in the Development Services Center. Not allowing the conversion of existing structures and construction of new buildings with the limitations described above is resulting in construction without building permits and therefore without adequate attention to fire, life, and safety considerations. In addition, the 2003 Accessory Dwelling Unit Monitoring Report indicates that allowing accessory dwelling units to meet similar setback requirements as detached garages would remove a regulatory impediment to the development of this desired housing option.



**Code language provided on following pages.**

**33.110.250 Accessory Structures Con't**

At the Planning Commission's request, additional research using the City's TRACs database, which is the database used by the Bureau of Development Services to record building and land use permits, provided an overview of the recent history of building activities for accessory structures. (While TRACs is not intended to be used for this type of research, it did provide enough information to review permits for accessory structures, accessory dwelling units and whether adjustments to the zoning code were needed in certain cases.) The research revealed that during the last two years (2002 and 2003) the majority of garages (55%) are built within either the side or rear setbacks as is currently allowed in the Zoning Code. During the last three years, other accessory structures which required an Adjustment to be placed in the side or rear setback accounted for 27% of the 41 Adjustments that were granted for all accessory structures that were not accessory dwelling units. Adjustments for garages that exceeded the 24' x24' maximum size or 10' high walls limitation accounted for 56% of the requested Adjustments.

The initial amendment request, as included in the RIW list, was to expand the existing regulations to allow any accessory structures with non-living space to be in side and rear setbacks. However, Bureau of Planning and Bureau of Development Services staff concluded that expansion of the allowance to include living space was consistent with the City's Comprehensive Plan goals and improves their implementation. The Planning Commission concurred and forwarded a recommendation to allow any detached structure that met the size limitations to be placed in the side or rear setback.

During the initial City Council hearing, the public testimony focused on the potential for livability impacts to occur on adjoining properties if the Planning Commission's recommendation were adopted. Most testifiers expressed the opinion that conversion of an existing garage structure was less likely to create a negative impact since it was already present on the site. As a result, the City Council amended the Planning Commission's recommendation so that an existing garage that is within the side or rear setback can be converted for other uses only if the garage exists as of the effective date of these amendments.

The following pages include amendments to the regulations on covered accessory structures that will:

- change the description of covered accessory structures to include living space such as accessory dwelling units;
- allow an existing detached garage that is in the side and rear setbacks, meets the existing size and height limits and exists as of the effective date of these amendments to be used for other activities; and
- add an additional standard for dormers when an existing garage is converted.

The current exception to allow a garage that meets the size limits to be placed within the side or rear setback is maintained.

**Similar amendments are made in the Multi-Dwelling zones.**

**Code language provided on following pages.**

### 33.110.250 Accessory Structures

#### B. General Standards

This amendment is necessary for consistency with the amendments to C.4. below.

#### C. Setbacks.

##### 4. Covered accessory structures.

###### a. Description.

This amendment adds examples that include living space to the description of covered accessory structures.

###### b. This amendment is necessary for consistency with subparagraph C.4.c. proposed below.

###### c. Side and rear setbacks. (New subparagraph)

This amendment will allow a detached garage that is in the side and rear setbacks and that exists as of the effective date of these amendments to be used for other activities. The language maintains the size limits that are currently applied to garages and adds an additional standard for dormers to address privacy concerns. While this change has minor policy implications it is still consistent with the overall legislative intent of the Council's 1997 adoption of the provisions that allow accessory dwelling units in all residential zones. It is important to note that the building code places additional restrictions on a structure placed within 3 feet of the lot line, such as prohibiting openings and requiring firewalls. The zoning code will allow these structures to be fully within the setback (i.e. at zero feet from the lot line) if they meet the size limitations.



### 33.110.250 Accessory Structures

**A. Purpose.** This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front setbacks.

**B. General standards.**

1. The regulations of this section apply to all accessory structures ~~except detached accessory dwelling units~~. The Additional regulations for detached accessory dwelling units are stated in Chapter 33.205.
2. through 4. [No change]

**C. Setbacks.**

1. through 3. [No change]
4. Covered accessory structures.
  - a. Description. Covered accessory structures are items such as garages, greenhouses, artist's studios, guest houses, accessory dwelling units, storage buildings, wood sheds, covered decks, covered porches, and covered recreational structures.
  - b. Setback standard. Covered accessory structures if 6 feet or less in height are allowed in side and rear setbacks, but are not allowed in a front setback. Except as allowed in Subparagraph C.4.c. below, Covered structures over 6 feet in height are not allowed in required building setbacks. See the exceptions and additional regulations for garages in Subsection E., below.
  - c. Side and rear setbacks. In the R7, R5 and R2.5 zones, a detached garage that is in the side or rear setback may be converted to another type of detached covered accessory structure if all of the following are met:
    - (1) The garage was legally constructed before January 1, 2005;
    - (2) The structure is at least 40 feet from a front lot line, and if on a corner lot, at least 25 feet from a side street lot line;
    - (3) The structure has dimensions that do not exceed 24 feet by 24 feet, excluding eaves;
    - (4) The structure walls are no more than 10 feet high, excluding the portion of the wall within a gable; and
    - (5) Dormers are set back at least 5 feet from the side and rear lot lines.

**33.110.250 Accessory Structures**

**E. Special standards for garages.**

**2. Existing detached garages.**

This amendment adds language to the section on existing garages to cross reference the ability to convert a garage to another detached accessory structures (i.e. the language added to Paragraph C above).

**3. Side and rear setbacks.**

No changes are made to this subparagraph. The language is included for clarity.

**D. Building coverage for detached covered accessory structures.** (No change)

**E. Special standards for garages.**

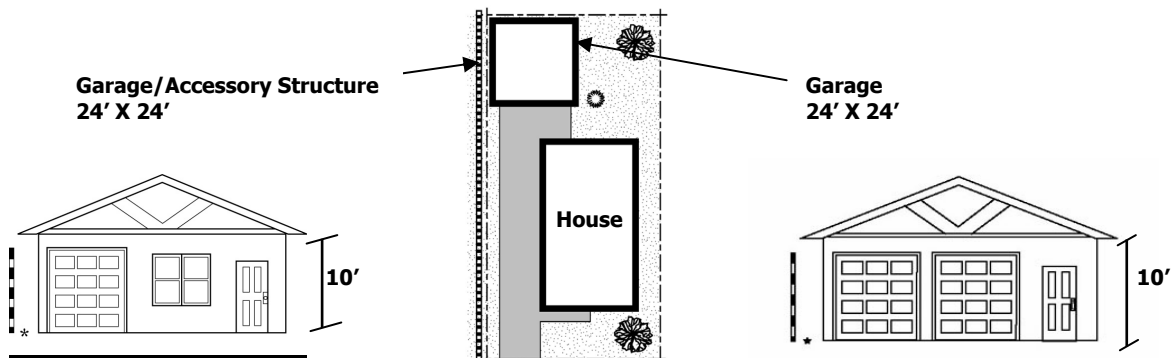
1. Purpose. [No change]
2. Existing detached garages.
  - a. Change of use. In the R7, R5 and R2.5 zones, a detached garage that is in the side or rear setback may be converted to another type of detached covered accessory structure as specified in Paragraph C.4., above.
  - ~~ba.~~ Rebuilding. A detached garage that is nonconforming due to its location in a setback, may be rebuilt on the footprint of the existing foundation, if the garage was originally constructed legally. The garage walls may be up to 10 feet high, excluding the portion of the wall within a gable. The rebuilt garage is not required to comply with other standards of this chapter except for building height.
  - ~~cb.~~ Additions. An addition may be made to a detached garage that is nonconforming due to its location in a setback as follows:
    - (1) The expanded garage complies with all other standards of this chapter; or
    - (2) The combined size of the existing foundation and the addition is no larger than 12 feet wide by 18 feet deep. The walls of the addition may be up to 10 feet high, excluding the portion of the wall within a gable. The expanded garage is not required to comply with other standards of this chapter except for building height.
3. Side and rear setbacks. In the R7, R5 and R2.5 zones, detached garages are allowed in the side and rear building setbacks if all of the following are met.
  - a. The garage entrance is 40 feet from a front lot line, and if on a corner lot, 25 feet from a side street lot line;
  - b. The garage has dimensions that do not exceed 24 feet by 24 feet;
  - c. The garage walls are no more than 10 feet high, excluding the portion of the wall within a gable; and
  - d. The structure in which the garage is located contains no space for living, sleeping, eating, cooking or sanitation.
4. Length of street-facing garage wall. [No change]
5. Street lot line setbacks. [No change]

### 33.220.280 Accessory Structures

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The following pages include amendments to the regulations on covered accessory structures that will:

- change the description of covered accessory structures to include living space such as accessory dwelling units;
- allow an existing detached garage that is in the side and rear setbacks, meets the existing size and height limits and exists as of the effective date of these amendments to be used for other activities; and
- add an additional standard for dormers when an existing garage is converted.

The current exception to allow a garage that meets the size limits to be placed within the side or rear setback is maintained.

**Similar amendments are recommended in the Single-Dwelling zones.**



**Code language provided on following pages.**

### 33.120.280 Accessory Structures

#### B. General Standards

This amendment is necessary for consistency with the amendments to C.4. below.

#### C. Setbacks.

##### 4. Covered accessory structures.

###### a. Description.

This amendment adds examples that include living space to the description of covered accessory structures.

###### b. This amendment is necessary for consistency with subparagraph C.4.c. proposed below.

###### c. Side and rear setbacks. (New subparagraph)

This amendment will allow a detached garage that is in the side and rear setbacks and that exists as of the effective date of these amendments to be used for other activities. The language maintains the size limits that are currently applied to garages and adds an additional standard for dormers to address privacy concerns. While this change has minor policy implications it is still consistent with the overall legislative intent of the Council's 1997 adoption of the provisions that allow accessory dwelling units in all residential zones. It is important to note that the building code places additional restrictions on a structure placed within 3 feet of the lot line, such as prohibiting openings and requiring firewalls. The zoning code will allow these structures to be fully within the setback (i.e. at zero feet from the lot line) if they meet the size limitations.

**33.120.280 Accessory Structures**

- A. Purpose.** This section regulates structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary access around structures, help maintain privacy to abutting lots, and maintain open front yard areas.
- B. General standards.**
1. The regulations of this section apply to all accessory structures ~~except detached accessory dwelling units~~. The Additional regulations for detached accessory dwelling units are stated in Chapter 33.205.
  2. through 4. [No change]
- C. Setbacks.**
1. through 3. [No change]
  4. Covered accessory structures.
    - a. Description. Covered accessory structures are items such as garages, greenhouses, artist's studios, guest houses, accessory dwelling units, storage buildings, wood sheds, covered decks, covered porches, and covered recreational structures.
    - b. Setback regulations. Covered accessory structures if 6 feet or less in height are allowed in side and rear setbacks, but are not allowed in a front setback. Except as allowed in Subparagraph C.4.c. below, Covered structures over 6 feet in height are not allowed in required building setbacks. See the exceptions and additional regulations for garages in Subsection E. below.
    - c. Side and rear setbacks. In the R3 through RX zones, a detached garage that is in the side or rear setback may be converted to another type of detached covered accessory structure if all of the following are met:
      - (1) The garage was legally constructed before January 1, 2005;
      - (2) The structure is at least 40 feet from a front lot line, and if on a corner lot, at least 25 feet from a side street lot line;
      - (3) The structure has dimensions that do not exceed 24 feet by 24 feet, excluding eaves;
      - (4) The structure walls are no more than 10 feet high, excluding the portion of the wall within a gable; and
      - (5) Dormers are set back at least 5 feet from the side and rear lot lines.

**33.120.280 Accessory Structures**

**E. Special standards for garages.**

**2. Existing detached garages.**

This amendment adds language to the section on existing garages to cross reference the ability to convert a garage to another detached accessory structures (i.e. the language added to Paragraph C above).

**3. Side and rear setbacks.**

No changes are made to this subparagraph. The language is included for clarity.

**D. Building coverage for detached covered accessory structures.** [No change]

**E. Special standards for garages.**

1. Purpose. [No change]
2. Existing detached garages.
  - a. Change of use. In the R3 through RX zones, a detached garage that is in the side or rear setback may be converted to another type of detached covered accessory structure as specified in Paragraph C.4., above.
  - ~~ba.~~ Rebuilding. A detached garage that is nonconforming due to its location in a setback may be rebuilt on the footprint of the existing foundation, if the garage was originally constructed legally. The garage walls may be up to 10 feet high, excluding the portion of the wall within a gable. Except for building height, other standards of this chapter do not apply.
  - ~~cb.~~ Additions. An addition may be made to a detached garage that is nonconforming due to its location in a setback as follows:
    - (1) The expanded garage meets all other standards of this chapter; or
    - (2) The combined size of the existing foundation and the addition is no larger than 12 feet wide by 18 feet deep. The walls of the addition may be up to 10 feet high, excluding the portion of the wall within a gable. Except for building height, other standards of this chapter do not apply.
3. Side and rear setbacks. In the R3 through RX zones, detached garages are allowed in the side and rear building setbacks if all of the following are met:
  - a. The garage entrance is 40 feet from a front lot line, and if on a corner lot, 25 feet from a side street lot line;
  - b. The garage has dimensions that do not exceed 24 feet by 24 feet;
  - c. The garage walls are no more than 10 feet high, excluding the portion of the wall within a gable; and
  - d. The structure in which the garage is located contains no space for living, sleeping, eating, cooking or sanitation.
4. Length of street-facing garage wall. [No change]
5. Street lot line setbacks. [No change]

CHAPTER 33.205  
ACCESORY DWELLING UNITS

One of the findings of the Accessory Dwelling Unit Monitoring Project showed that current code provisions created a disincentive for converting existing structures into ADUs because the code provisions require detached ADUs to match the house in architectural features, and many existing accessory structures could not meet these design standards. They would thus require an Adjustment for each standard that they didn't meet, even though the buildings exterior did not significantly change. Staff wanted to explore a way to provide some leeway for the existing conversion of structures into ADUs while still requiring new ADUs to meet the design standards.

A number of changes are recommended to this chapter that will:

- clarify how the design standards apply;
- exempt existing detached accessory structures that do not meet the design standards from the design standards but require existing accessory structures that do meet the design standards to continue to meet the design standards; and
- modify the design standard for eaves and windows.

**33.205.030 Design Standards**

Clarify application of design standards.

Removing Paragraph D. clarifies that the four standards for design compatibility of the accessory dwelling units (ADU) with the primary structure apply to all ADUs.

Windows.

The Building Code requires egress windows in bedrooms to be of a certain size. These dimensions can conflict with the design compatibility requirement, particularly for a basement conversion. The recommended amendment will not apply the standard when it conflicts with Building Code requirements.

**CHAPTER 33.205  
ACCESORY DWELLING UNITS**

**33.205.030 Design Standards**

**A. through B.** [No change]

**C. Requirements for all accessory dwelling units.** All accessory dwelling units must meet the following:

1. Creation. [No change]
2. Number of residents. [No change]
3. Other uses. [No change]
4. Location of entrances. [No change]
5. Parking. [No change]
6. Maximum size. [No change]

~~**D. Additional requirements for accessory dwelling units created through the addition of floor area.**~~ Accessory dwelling units created through the addition of floor area must meet the following:

- ~~17.~~ Exterior finish materials. The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the house, attached house, or manufactured home.
- ~~28.~~ Roof pitch. The roof pitch must be the same as the predominant roof pitch of the house, attached house, or manufactured home.
- ~~39.~~ Trim. Trim ~~on edges of elements on the addition~~ must be the same in type, size, and location as the trim used on ~~the rest of~~ the house, attached house, or manufactured home.
- ~~410.~~ Windows. Windows must match those in the house, attached house, or manufactured home in proportion (relationship of width to height) and orientation (horizontal or vertical). This standard does not apply when it conflicts with building code regulations.

33.205.030 Design Standards (continued)

Eaves.

An amendment to the eaves requirement will eliminate an unintended outcome of the regulation for detached ADUs. Eaves on a detached accessory dwelling unit are required to project the same distance as those on the house, which means there can be very large eaves on a small building. The original intent was to make sure that eaves were proportional to the house eaves, but that would be a very complex regulation to implement. The amendment modifies the eave requirement so the eaves can either match the house or project at least 1 foot unless the primary building doesn't have eaves, in which case no eave is required. The 1 foot eave projection is used in the Community Design Standards.



~~511~~. Eaves. Eaves must meet one of the following:

- a. The eaves must project from the building walls the same distance as the eaves on the rest of the house, attached house, or manufactured home;
- b. The eaves must project from the building walls at least 1 foot on all elevations; or
- c. If the house, attached house, or manufactured home has no eaves, no eaves are required on the accessory dwelling unit.

**ED. Additional requirements for detached accessory dwelling units.** Detached accessory dwelling units must meet the following.

1. Setbacks. The accessory dwelling unit must be at least:
  - a. 60 feet from the front lot line; or
  - b. 6 feet behind the house, attached house, or manufactured home.
- ~~32~~. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.

### 33.205.030 Design Standards (continued)

#### Detached accessory dwelling units.

The amendments for detached ADU's will improve implementation of the policies that were most prominent when the Accessory Dwelling Unit (ADU) chapter was adopted. One goal of this chapter is to encourage and facilitate the conversion of garages to ADUs in order to encourage appropriate infill development, encourage home ownership, allow aging in place and to support other affordable housing goals. The standards for design compatibility apply to the conversion of all existing garages and are difficult to meet if the existing features don't match the primary structure. In many cases these regulations require costly design changes to an existing garage or require multiple Adjustments. These choices deter conversion of existing garages into ADUs.

The recommended amendments will 1) change the reference from garages to include all detached accessory structures; 2) retain the design standards for an existing detached accessory structure where the standard is already met, and 3) exempt detached accessory structures from the design standards that are not already met. For example, if the roof pitch of an existing garage matches the roof pitch of the primary structure it must be retained. If the trim does not match the primary structure, it does not have to be replaced nor is an Adjustment required. Finally, the amendment does not allow this exemption if any additional floor area is proposed. This amendment will encourage the conversion of existing detached structures to ADUs and at the same time maintain any existing congruity of building design with the primary structure.

43. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site.
24. Conversion of existing detached ~~garages~~ accessory structures.
- a. In RF through R2.5 zones, conversion of an existing detached ~~garage accessory structure~~ that is in a front, ~~rear, or side~~ building setback required by Table 110-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback ~~This restriction also applies to garages that are~~ is allowed to be in side or rear setbacks as provided by Subsection 33.110.250.C, Setbacks 33.110.250.E, Special Standards for Garages.
  - b. In R3 through IR zones, conversion of an existing detached ~~garage accessory structure~~ that is in a front, ~~rear, or side~~ building setback required by Table ~~110-3~~ 120-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback ~~This restriction also applies to garages that are~~ is allowed to be in side or rear setbacks as provided by Subsection 33.120.280.C, Setbacks 33.120.280.E, Special Standards for Garages.
  - c. If the accessory dwelling unit is proposed for an existing detached accessory structure that meets any of the standards of Paragraphs C. 7 through C.11 and Paragraphs D.2 and D.3, alterations that will move the structure out of conformance with the standards that are met are not allowed;
  - d. If the accessory dwelling unit is proposed for an existing detached accessory structure that does not meet one or more of the standards of Paragraphs C. 7 through C.11, the structure is exempt from the standard it does not meet. If any floor area is added to the detached accessory structure, the entire structure must meet the standards of Paragraphs C.7 through C.11.

**33.205.030 Design Standards (continued)**

This change removes the design standards that are now applied in Paragraph C.

- ~~5. Exterior finish materials. The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the house, attached house, or manufactured home.~~
- ~~6. Roof pitch. The roof pitch must be the same as the predominant roof pitch of the house, attached house, or manufactured home.~~
- ~~7. Trim. Trim must be the same in type, size, and location as the trim used on the house, attached house, or manufactured home.~~
- ~~8. Windows. Windows must match those in the house, attached house, or manufactured home in proportion (relationship of width to height) and orientation (horizontal or vertical).~~
- ~~9. Eaves. Eaves must project from the building walls the same distance as the eaves on the house, attached house, or manufactured home.~~

**33.205.040 Density**

Accessory dwelling units are not included in the minimum or maximum density calculations for a site.



## Appendix A

### Table of Amendments Considered in Code Maintenance 2004

Note: The amendments included in this final package of Code Maintenance 2004 (this document) have gray shading . The remaining items have been approved through previous hearings on Code Maintenance 2004, unless otherwise noted.

No.	Code Section	Item Description
1	32.34.020.C.1.b Moved to another package of non-title 33 City code amendments.	<del><b>Title 32 – Sign Code:</b></del> Update outdated reference to Section 33.445.24, <del>Exempt from Historic Design Review.</del>
2	33.10	<b>Format of Title 33:</b> Clarify that underlined text refers to a specific document outside of the Portland City Code.
3	33.100.200.A.2 33.110.245.C.4	<b>Open Space and Single-dwelling Zones:</b> Exempt outdoor activity facilities from the required setback when the abutting residentially zoned property is a School use.
4	33.100.200.B.1	<b>Open Space Zone:</b> For consistency with Transportation System Plan changes, delete reference to measuring setbacks from the curb.
5	33.110.220.D.3 33.120.220.B.1	<b>Exceptions to Minimum Setbacks:</b> Modify language for setback exceptions when site has Environmental overlay so base zones and overlay zone are consistent.
6	33.110.225 Table 110-4	<b>Building Coverage:</b> Modify regulations so Group Living uses in single dwelling zones, which are also conditional uses, are subject to building coverage standards for institutional uses.
7	33.110.245 Table 110-5	<b>Minimum Landscaping for Institutional Uses:</b> Clarify the minimum landscape requirement for institutional uses in Single-Dwelling zones.
8	33.110.245.C 33.120.250.C 33.130.235.C 33.140.235.C	<b>Screening of Mechanical Equipment:</b> In all base zones, clarify the minimum screening standard for mechanical equipment located at ground level and clarify what is meant by ground level.
9	33.110.250 33.120.280	Minimum Setbacks for Accessory Structures: Allow, with limitations, all covered, detached accessory structures, not just garages, in side and rear setbacks. The change includes allowing detached accessory dwelling units in the side and rear setbacks. Minor policy issue.
10	33.110.255.C.2 33.120.285.C.2 33.130.270.C.2 33.140.275.C.2	<b>Pedestrian Connections and Fences:</b> In all base zones, clarify the allowed fence height in side and rear setbacks abutting a pedestrian connection.

## Appendix A

No.	Code Section	Item Description
11	33.120.215 Table 120-3	<b>Maximum Building Height:</b> Replace the term "light rail station or stop" in Table 120-3 with the defined term "transit station" for consistency with Transportation System Plan.
12	33.120.220 Table 120-4	<b>Minimum Setbacks for Institutional Uses:</b> Clarify that the setbacks of Table 120-3 apply to development in the IR zone by deleting IR from the title of Table 120-4.
13	33.120.220.B.2.d 33.130.215.B.1.d 33.140.215.B.2.d	<b>Maximum Building Setbacks:</b> In the Multi-dwelling, Commercial, and Employment and Industrial Zones, add a standard for the required building setbacks in pedestrian districts when there is one transit street and an intersecting non-transit street. This was inadvertently left out of the Transportation System Plan.
14	33.120.220 Table 120-3	<b>Minimum Garage Entrance Setback:</b> For consistency with Single-Dwelling zones, eliminate setbacks requirements for lot lines abutting alleys in the Multi-Dwelling zones.
15	33.120.255.B.1.a 33.130.240.B.1.a 33.140.240.B.1.a	<b>Pedestrian Standards:</b> Modify these standards to require only one on-site pedestrian connection if the main entrance is close to the street lot line and accessible from other streets by a public sidewalk. Minor policy issue.
16	33.120.270.D.2	<b>Alternative Development Options:</b> Eliminate the required double side setback for attached duplexes. Minor policy issue.
17	33.130.215.B.1.d.(2)	<b>Building Setbacks:</b> Change title from "One transit street and one non-intersection non-transit street" to "Through lot with one transit street" for consistency with other chapters and Transportation System Plan.
18	33.130.215.B.3	<b>Building Setbacks:</b> Clarify that the required five foot deep landscaped area along lot lines that abut a residentially zoned lot only applies when there is a required building setback.
19	33.130.220 Table 130-3	<b>Maximum Building Coverage:</b> Clarify that the maximum building coverage is calculated for the entire site of an attached housing development in Commercial zones.
20	33.130.220 Table 130-3	<b>Minimum Building Coverage and Environmental Zones:</b> Exempt CS and CM sites with Environmental overlay from minimum building coverage requirement. This situation usually requires either an Adjustment to minimum building coverage so development can stay out of environmental area or an Environmental Review to meet building coverage requirement.
21	33.130.230.B.1	<b>Ground Floor Windows:</b> Clarify that the ground floor window standards apply only to ground level street-facing facades within 20 feet of a street lot line.



No.	Code Section	Item Description
22	<del>33.130.253</del> Item deleted from Code Maintenance 2004 and may be considered in a future policy package.	<del><b>Additional Requirements in the CM zone:</b> Clarify this section and modify requirements for existing limited uses (Retail Sales And Service, Office, Manufacturing And Production and Wholesale Sales) to allow expansions up to 10,000 sq. ft. without triggering the housing ratio requirement. Minor policy issue.</del>
24	33.203.050.B	<b>Accessory Home Occupations:</b> Modify reference to hazardous substances. The regulations on hazardous substances were removed from the Zoning Code in the 2003 Code Maintenance project.
24a	33.203.050.D	<b>Accessory Home Occupations:</b> Allow pickup trucks with dual rear wheels to be used in conjunction with a Home Occupation provided the vehicle is not parked between the front lot line and the front building line. This item is for consistency with #35, which is a minor policy issue.
25	33.205.030.E.4	<b>Accessory Dwelling Units:</b> Modify the way in which the "bulk" of detached covered accessory structures is measured to be consistent with how bulk for accessory structures is measured in the base zones. Change "footprint" to "building coverage."
26	33.205.030.E.5 33.205.030.E.6 33.205.030.E.7 33.205.030.E.8 33.205.030.E.9	Accessory Dwelling Units: Clarify application of design standards and provide some flexibility for conversion of existing detached structures to ADUs. Also, modify window and eaves requirements. Minor policy issue.
27	33.258.070.C	<b>Nonconforming Uses:</b> Clarify that "changes in conformance with development standards" includes plan district, overlay zones as well as base zone regulations.
28	33.258.070.D.2.b.(1)	<b>Nonconforming Upgrades:</b> Change "exterior development" to "exterior improvement" - a defined term in the code.
29	33.258.070.D.2.d	<b>Nonconforming Upgrades:</b> Add language to better define what is required when an applicant selects Option 2 and delays implementation of required nonconforming development upgrades. This amendment will make the language for this alternative - called Option 2 - conform to the current Development Services Center procedures and forms.
30	33.266.100.G 33.266.130.F	<b>Parking and Loading:</b> Add a reference in 33.266.100 to Title 17 section that regulates minimum driveway width and remove similar text from 33.266.130.
30a	33.266.110 33.266.115 33.900 33.910	<b>Parking and Loading:</b> Move language from minimum and maximum parking regulations to new definition for Peak Hour Service. Add new term to list of terms.

## Appendix A

No.	Code Section	Item Description
31	Table 266-2	<b>Parking and Loading:</b> Modify table to allow parking for schools to be calculated as part of a conditional use review.
32	<del>33.266.120.C.</del> Item deleted from Code Maintenance 2004 and may be considered in a future policy package.	<del><b>Parking and Loading:</b> Modify regulations to allow parking associated with a house, attached house or duplex to be located within the front setback. Minor policy issue.</del>
33	33.266.120.C.3	<b>Parking and Loading:</b> Allow flag lots in all residential zones to have a 12 foot wide driveway or up to 40% of the area between the front lot line and the front building line to be paved. Minor policy issue.
34	33.266.120.D	<b>Parking and Loading:</b> Specify the length of a nonrequired parking space as 18 feet.
35	33.266.150	<b>Parking and Loading:</b> Modify restriction on parking medium trucks to allow pickup trucks with dual rear wheels to park in residential zones. Minor policy issue.
36	33.266.300	<b>Parking and Loading:</b> Clarify that loading standards apply to required and nonrequired loading areas
37	33.266.310	<b>Parking and Loading:</b> Create a purpose statement that clarifies the intent of the requirement that vehicles enter and exit a loading facility in a forward motion. Minor policy issue.
38	33.274.030 33.274.035 33.274.040	<b>RF Transmission Facilities:</b> Conform Title 33 with City Council's adopted Cable Office right-of-way franchise policy for wireless facilities and FCC regulations. Change 100 watts ERP to 1,000 watts ERP. Minor policy issue.
39	33.274.050	<b>RF Transmission Facilities:</b> To conform to the Cable Office right-of-way franchise policy for wireless facilities, change review procedure for electronic equipment on private property that supports antennae in the public right-of-way. Minor policy issue.
40	33.405.070.C	<b>Alternative Design Density Overlay:</b> Clarify the minimum required landscape buffer for development on flag lots that were created through the "a" overlay provisions.
41	33.420.045.K	<b>Design Review:</b> In the IRd zone, exempt from Design Review development that complies with an approved Conditional Use. Currently only development that complies with an approved Conditional Use Master Plan is exempt from Design Review.
42	33.420.045.K	<b>Design Review:</b> In the IRd zone, exempt from Design Review an expansion or alteration that does not trigger Conditional Use Review under 33.815.040.
42a	33.420.045.N	<b>Design Review:</b> Conform Title 33 with City Council's adopted Cable Office right-of-way franchise policy for wireless facilities and FCC regulations. Change 100 watts ERP to 1,000 watts ERP.

No.	Code Section	Item Description
43	33.420.045.Q.3	<b>Design Review:</b> Clarify that all four situations listed for the Marquam Hill Design District are exempt from Design Review by changing "and" to "or."
44	33.430.090	<b>Environmental Zones:</b> Delete references to hazardous substances. The regulations on hazardous substances were removed from the Zoning Code in the 2003 Code Maintenance project.
45	33.430.140.K	<b>Environmental Zones:</b> Clarify the setback references to be consistent with the base zone language.
46	33.440.310 New section	<b>Greenway Zones:</b> Add a section that lists the triggers that <u>may</u> require Greenway Review. These situations are related to the nature of the proposed use and scattered throughout the chapter.
47	33.440.345	<b>Greenway Zones:</b> Clarify the application requirements for Greenway Reviews.
48	33.470.040.A	<b>Airport Noise Impact Zone:</b> Exempt non-living space in accessory structures from the noise insulation requirements of this overlay zone.
49	33.470.050.A	<b>Airport Noise Impact Zone:</b> Allow the replacement of a manufactured home in a mobile home park within this overlay zone.
50	33.480.040.B.2.b	<b>Scenic Overlay Zone:</b> Clarify that paved pedestrian areas that are in the required Scenic Overlay landscaped street setback are allowed and subject to the 25% limit on "vehicle" areas.
51	33.510.110.B	<b>Central City Plan District: Mixed-Use Waterfront Development:</b> Clarify that the reduced minimum residential density provided by this section only applies if there are also nonresidential uses on the site.
52	33.510 Map 510-4	<b>Central City Plan District:</b> Correct Map 510-4, Residential Bonus Target Area , to delete RX zoned area.
53	33.510.210 33.51.253 33.510.267 Adopted by Council on May 20, 2004	<b>Central City Plan; South Waterfront Subdistrict:</b> Change references to "top of bank" in South Waterfront subdistrict to refer to new map.
54	33.510.253.D.4.b.(2) Adopted by Council on May 20, 2004	<b>Central City Plan; South Waterfront Subdistrict:</b> Clarify that greenway improvements that are consistent with the Greenway Development Plan can take longer than 4 years to complete by deleting "whichever is earlier."
55	33.510 33.851.300 Adopted by Council on May 20, 2004	<b>Central City Plan; South Waterfront Subdistrict:</b> Modify and make consistent references to the Greenway Development Plan.
56	33.510, List of Maps New Map 510-17 Adopted by Council on May 20, 2004	<b>Central City Plan; South Waterfront Subdistrict:</b> Create a new map for South Waterfront District that shows the top of bank line at the time of the South Waterfront Plan's adoption.

## Appendix A

No.	Code Section	Item Description
57	33.515.120.A 33.515.120.B	<b>Columbia South Shore Plan District:</b> Clarify that exterior display is prohibited in the Columbia South Shore Plan District by adding "nonconforming" to the references to exterior display.
58	33.537.140.C 33.537.150.D 33.537.160	<b>Johnson Creek Basin Plan District:</b> Allow tree removal within utility easements outside Environmental zones in the South Subdistrict and Flood Plain Subdistrict. Also, clarify how the prohibition on land divisions and PDS applies in the Flood Risk Area. Minor policy issue.
59	33.537 Map 33.537 Maps 2, 3, 5, 6 and 8	<b>Flood Risk Area:</b> Update maps to make boundaries consistent with recent flood data.
60	33.570.030.C	<b>Rocky Butte Plan District:</b> Clarify that the development standards apply to front and side lot lines that abut Rocky Butte Road. Current text says "street" setbacks, which are not defined in the Open Space and Single-Dwelling zones.
61	33.631.020 Map 631-1 33.910	<b>Potential Flood Hazard Area Map:</b> Delete map and rely on reference to flood hazard area. The map is based on FEMA 100-year floodplain and becomes outdated when FEMA maps are updated. Also, modify the definition of flood hazard area to refer tot the 100-year floodplain as currently defined by FEMA.
62	33.660.220 33.662.220 33.664.220	<b>Final Plat Approval Standards:</b> Clarify that the approval standards only apply to Final Plat review when the Preliminary Plan review was under the regulations of 33.600.
63	33.700.075	<b>Automatic Changes to Specific Dollar Thresholds:</b> Add Design Review and Historic Review thresholds to those that will automatically increase each year based on the Construction Cost Index.
64	33.730.015 33.730.020 33.730.025 33.730.030	<b>Land Use Notices Filed with City Auditor:</b> Because land use decisions are not filed with the County, the City Auditor requests that the requirement that notices and decisions be sent to the City Auditor be eliminated.
65	33.730.015 33.730.025 33.730.030	<b>Filing Notice of Decision:</b> Update the references to the "filing" of land use decisions to say "mail." Also, change "lot" to site."
66	33.730.025	<b>Appeals of Type IIx Review:</b> Make the time period for notification of appeal consistent with Type II and Type III by adding "working" to the number of days.
67	33.730.020 33.730.025 33.730.030	<b>Hearings Officer Decision:</b> Clarify that the Hearings Officer must make a written decision and mail a notice of the decision with 17 days of the "close of the record" rather than the "close of the hearing."
68	33.730.060.D.1.e	<b>Application Requirements:</b> Conform this section to Chapter 630 to clarify in the application requirements that an arborist's report is required.

No.	Code Section	Item Description
69	33.730.130.B.1.a.(1)	<b>Expiration of an Approval:</b> Change reference from "building permit" to "city permit" so that situations that don't require a building permit, such as some Environmental Reviews, have a clear expiration date.
70	33.815.040.B.1 33.815.040.B.2	<b>Conditional Use Review Procedures:</b> Modify to allow limited reductions in parking without triggering a subsequent Conditional Use review. Also, modify and moderately expand the exterior improvements that are allowed without Conditional Use review. Minor policy issue.
71	33.815.040.B.3	<b>Conditional Use Review Procedures:</b> Assign some reductions in site area to a Type II Conditional Use procedure. Minor policy issue.
72	33.815.120.G	<b>Conditional Use for Commercial Parking:</b> Because recreational vehicle parking was previously added to the definition of exterior storage, this approval criterion, which refers to parking, needs to be deleted.
73	33.815.128.A 33.815.128.B	<b>Retail Sales And Service in the EG Zone:</b> Correct a minor text error by changing "recommended" use to "proposed" use.
74	33.815.225.B.1 33.815.225.C.1	<b>RF Transmission Facilities:</b> Conform the review approval criteria to be consistent to City Council adopted Cable Office right-of-way franchise policy for wireless facilities and changes proposed in Chapter 274. Minor policy issue.
75	33.820.080.B	<b>Conditional Use Master Plans:</b> Modify the list of development allowed without a plan amendment the same as proposed for Conditional Uses. Minor policy issue.
76	33.825.025.A	<b>Design Review Procedures:</b> The recent amendments to the nonconforming development threshold included language that annually adjusts the dollar thresholds using the annual national average of the Construction Cost Index, as determined by Engineering News-Record. For consistency and ease of use a current dollar amount is established for Design Review thresholds that are based on 1990 dollars which would then be adjusted annually using the Construction Cost Index.
77	33.846.060	<b>Historic Review Procedures:</b> The recent amendments to the nonconforming development threshold included language that annually adjusts the dollar thresholds using the annual national average of the Construction Cost Index, as determined by Engineering News-Record. For consistency and ease of use a current dollar amount is established for Historic Review thresholds that are based on 1990 dollars which would then be adjusted annually using the Construction Cost Index.
77a	33.851.300 Adopted by Council on May 20, 2004	<b>South Waterfront Greenway Review:</b> Modify and make consistent references to the Greenway Development Plan.

## Appendix A

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No.	Code Section	Item Description
78	33.910.030	<b>Definitions: Exterior Storage:</b> Clarify that operable vehicles impounded in a tow yard or lot are considered exterior storage and not parking.
79	<del>33.910.030</del> Removed by Planning Commission action based on staff request.	<del><b>Definitions – Garage:</b> Due to an unintended consequence, delete the portion of this definition that reads "Floor area adjacent to the space designed to provide shelter for vehicles, if not entirely separated from the garage area by floor to ceiling walls, is considered part of the garage."</del>
80	33.920.520.D	<b>Description of Detention Facilities Use Category:</b> In the Exceptions, replace "sworn officer" with "peace officer" for consistency with change made to Characteristics in Code Maintenance 2003.

## Appendix B

# Impact Analysis Report

<b>Proposing Agency:</b>	Bureau of Development Services, with assistance from: <ul style="list-style-type: none"><li>• Bureau of Environmental Services</li><li>• Bureau of Planning</li><li>• Office of Transportation</li><li>• Portland Development Commission</li></ul>
<b>Implementing Agency:</b>	Bureau of Development Services – application of Title 33 regulations
<b>OMF Contact:</b>	Doug Le
<b>Scope/elements of proposal:</b>	The Code Maintenance 2004 package was over 75 technical, clarifying amendments to the Portland Zoning Code (Title 33).
<b>Proposed regulation:</b>	<p>The amendments included in the Code Maintenance 2004 package are intended to further certain objectives of the Regulatory Improvement Workplan, as well as the Blueprint 2000 process, which seeks consistency and correctness of land use regulations implemented by the City bureaus. Specifically, these amendments are intended to improve clarity and implementation of the City’s Zoning Code without changing basic policy or intent of the regulations.</p> <p>The Planning Commission’s recommendation on the Code Maintenance 2004 package has been split into several documents. These included <i>Part 1A</i>, <i>Part 1B</i>, <i>Part 2</i> and <i>Accessory Structures Amendments</i>.</p> <p>Amendments in the whole CM 2004 package affect the following Zoning Code (Title 33) chapters:</p> <p><b>Base Zones</b></p> <ul style="list-style-type: none"><li>33.100 Open Space Zone</li><li>33.110 Single-Dwelling Zones</li><li>33.120 Multi-Dwelling Zones</li><li>33.130 Commercial Zones</li><li>33.140 Employment and Industrial Zones</li></ul> <p><b>Additional Use and Development Regulations</b></p> <ul style="list-style-type: none"><li>33.203 Accessory Home Occupations</li><li>33.205 Accessory Dwelling Units</li><li>33.258 Nonconforming Situations</li><li>33.266 Parking and Loading</li><li>33.274 Radio Frequency Transmission Facilities</li></ul>

**Overlay Zones**

- 33.405 Alternative Design Density Overlay Zone
- 33.420 Design Overlay Zone
- 33.430 Environmental Zones
- 33.440 Greenway Overlay zones
- 33.470 Portland International Airport Noise Impact Overlay Zone
- 33.480 Scenic Resource Zone

**Plan Districts**

- 33.510 Central City Plan District
- 33.515 Columbia South Shore Plan District
- 33.537 Johnson Creek Basin Plan District
- 33.570 Rocky Butte Plan District

**Land Divisions and Planned Developments**

- 33.631 Sites in Flood Hazard Areas
- 33.660 Review in OS & R Zones
- 33.662 Review in C, E & I Zones
- 33.664 Review on Large Sites in I zones

**Administration and Procedures**

- 33.700 Administration and Enforcement
- 33.730 Quasi-Judicial Procedures

**Land Use Reviews**

- 33.815 Conditional Uses
- 33.820 Conditional Use Master Plans
- 33.825 Design Review
- 33.846 Historic Reviews

**General Terms**

- 33.900 List of Terms
- 33.910 Definitions
- 33.920 Descriptions of the Use Categories

**Decision-making/  
Review bodies**

- Planning Commission – Makes recommendations on Zoning Code text amendments.
- City Council – Considers Planning Commission recommendations on Zoning Code text amendments.



<b>Related projects:</b>	Policy packages described in the Regulatory Improvement Workplan (RIW).
<b>Project follow up:</b>	Code monitoring, followed by proposed technical amendments in subsequent annual Code Maintenance legislative projects, if necessary.
<b>Purpose/Intent:</b>	The amendments included in the Code Maintenance 2004 package are intended to further certain objectives of the City's annual Regulatory Improvement Work Plan, as well as the Blueprint 2000 process, which seeks consistency and correctness of land use regulations implemented by the City bureaus. Specifically, these amendments are intended to improve clarity and implementation of the City's Zoning Code without changing basic policy or intent of the regulations. Several amendments referred to as "minor policy" are included, which may change the way that existing land use policies are implemented but do not create new policy or change existing policy. It was determined in these cases the significance of the policy implication would be low, while the benefit of the change in the daily administration of the Code would be high.

### **1. Purpose/Intent**

Code Maintenance 2004 is part of a continuing effort to improve the clarity and structure of the Portland Zoning Code. It consists primarily of technical amendments intended to correct and clarify the Zoning Code in order to improve its administration, without changing basic policy or intent. It is one of several amendment packages that make up the City's annual Regulatory Improvement Workplan (RIW), which was adopted by City Council in August 2003. The RIW seeks to build an effective process of continuous improvement to Portland's land use and building regulations, regulatory-related procedures, costs, and customer service. In adopting the RIW, City Council directed the Bureau of Development Services to bring to the Planning Commission proposed Code improvements that address issues identified on the Code Maintenance list.

The amendments in this package have been suggested by a range of interested stakeholders, including neighborhood advocates, development services customers, business owners, environmental advocates, land use consultants, and staff from the Bureau of Development Services, Bureau of Planning and other City agencies. Following the model of the FY2002-2003 Regulatory Improvement Workplan, an initial list of ideas to include in Code Maintenance 2004 was 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 to the RIW including the

Code Maintenance list of ideas.

An Advisory Team of neighborhood representatives, business representatives and city staff reviewed the initial list of Code Maintenance items (along with other RIW elements) before it was considered at public hearings by the Planning Commission and City Council. The City Council did not adopt a specific list of amendments for inclusion in Code Maintenance 2004. Instead, the Council directed the Bureau of Development Services to refine the list based on the goals of the ongoing Code Maintenance efforts.

The amendments were selected for inclusion in this proposal because they:

- Reduce conflict between regulations within the Zoning Code, and/or with regulations in other City and State codes;
- Clarify language that makes understanding and implementing the regulation difficult;
- Simplify overly complex regulations while still achieving the intended purpose of the regulation; and
- Eliminate regulations in the Zoning Code that duplicate those in other codes or regulations, or reduce the need for land use reviews that are typically approved.

Additionally, the amendments were required to meet at least one of the following objectives:

- The amendment clarifies wording that may be open to interpretation without changing the intent behind the specific regulation in question.
- The amendment addresses ongoing problems with administration of existing Code language.
- The amendment may result in a minor policy change with low significance if it also helps implement the City's Comprehensive Plan, and is consistent with existing Policies and Objectives of that plan.

## **2. Applicability**

The Code Maintenance project 2004 includes over 75 amendments to Title 33, Planning and Zoning. The amendments do not create new land use regulations, nor change existing land use policies. Instead, the technical amendments are intended to facilitate the daily use of the Zoning Code by clarifying ambiguous or unclear language, and ensure that regulations in the Zoning Code do not duplicate or conflict with regulations found in other City regulations, the Oregon Revised Statutes or Federal laws. The amended regulations apply to a variety of situations, with amendments to all the base zones, several overlay zones and plan districts, as well as land use reviews and the administration of regulations.

These amendments most benefit those who use the Zoning Code on a regular basis. This includes developers of new projects, existing businesses and their representatives who may be expanding existing development, neighborhood activists, and environmental advocates who use the Code to review and monitor new and existing development, and City staff that implements the Zoning Code.

By clarifying, and in some cases simplifying often complex land use regulations, the amendments also benefit those who may not use the Zoning Code on a regular basis, but who need to apply for a one time permit to expand their home or business. Also included in this category are people who may be concerned about development in their neighborhood and want to know what the land use regulations allow.

### **3. Alternatives and Regulatory Coordination**

This section of the Impact Analysis Report responds to the questions *“Is there a simpler regulation, or non-regulatory method, which would accomplish the same goals?”* *“Would a lesser level of review be appropriate?”* The process of examining these questions is intended to ensure that regulations are kept simple, and that when new regulations are proposed, they address a unique situation that is not addressed by existing regulations. Since these are the overall goals of the annual Code Maintenance process, many of the amendments seek to simplify, reduce and clarify regulations.

Code Maintenance 2004 contains several amendments that modify existing development standards to reflect what is frequently approved through Adjustment reviews. These Adjustments are routinely approved as the proposal is found to be consistent with the policy intent of the regulation. Other proposed amendments clarify the intent of existing regulations, and how they are applied in different situations. These amendments may reduce the number of Adjustments and other land use reviews that are required but also clarify the application of the standard to a particular situation when it is not clear. Other proposed amendments modify regulations or triggers for land use reviews so as to simplify the development review process yet ensure the intent of the regulation is still met. Together, these amendments simplify the Zoning Code and the development review process.

### **4. Stakeholder Involvement**

The amendments considered in the CM 2004 project were suggested by a range of interested stakeholders, including neighborhood advocates, development services customers, business owners, environmental advocates, land use consultants, and staff from the Bureau of Development Services, Bureau of Planning and other City agencies. Following the model of the FY2002-2003 Regulatory Improvement Workplan, an initial list of ideas to include in Code Maintenance 2004 was 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 to the RIW including the Code Maintenance list of ideas.

An Advisory Team of neighborhood representatives, business representatives and city staff reviewed the initial list of Code Maintenance items (along with

other RIW elements) before it was considered at public hearings by the Planning Commission and City Council. The City Council did not adopt a specific list of amendments for inclusion in Code Maintenance 2004. Instead, the Council directed the Bureau of Development Services to refine the list based on the goals of the ongoing Code Maintenance efforts.

In developing proposed Code language for the amendments, the Bureau of Development Services Code Services Division worked with other City bureaus that may be affected by the proposed amendments. This included the Bureau of Planning, Bureau of Environmental Services, Office of Transportation, Portland Development Commission, and the City Attorney's office. In addition, advice was sought from a number of BDS divisions that are directly involved in the development review and enforcement processes including the Building Division, Site Development Division, Land Use Services Division, and Code Enforcement Services Division. Because the amendments focus on clarifying and simplifying existing land use regulations in the Zoning Code (and not establishing new policies or procedures), the proposal will not result in increased costs for these involved bureaus. Instead, several of the amendments reduce conflicts within the Zoning Code and reduce the number of land use reviews needed. These amendments will directly benefit the service agencies and the public by simplifying the development review process.

Code Maintenance 2004 information and materials have been available on the Bureau of Development Services web site since January 26, 2004.

The following dates identify additional opportunities for stakeholder involvement:

- **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 and Planning Commission public hearings on February 24, 2004 and March 9, 2004.
- **February 2, 2004:** The *Proposed Report and Recommendation*, which contains commentary and proposed language for the amendments, was made available to the public. Copies of the report were available at the Bureau of Development Services' office, and the report was available on the Bureau's web site. Copies of the report were also mailed to each neighborhood coalition office and persons who requested it.
- **February 4, 2004:** An open house was held at the Development Services Building to allow interested stakeholders the opportunity to review the amendments and ask questions of Bureau of Development Services staff. Notices announcing the open house were mailed to approximately 536 interested stakeholders.
- **February 12, 2004:** An open house was held at the Development Services Building to allow interested stakeholders the opportunity to review the amendments and ask questions of Bureau of Development Services staff.

Notices announcing the open house were mailed to approximately 536 interested stakeholders.

- **February 4, 2004:** A Measure 56 Notice, as required by ORS 215.503, was mailed to approximately 25 property owners whose property value may be affected by Code Maintenance 2004 amendments.
- **February 24, 2004:** The Planning Commission heard public testimony on the amendments in Code Maintenance 2004. Interested stakeholders could testify at the hearing, or send written comments to the Planning Commission.
- **March 9, 2004:** The Planning Commission heard public testimony on Code Maintenance 2004. Interested stakeholders could testify at the hearing, or send written comments to the Planning Commission.
- **April 23, 2004:** BDS sent notice to individuals and who requested to be placed on the project mailing list to inform them of public hearings before the Portland City Council on the Planning Commission's recommendation on May 20, 2004.
- **May 11, 2004:** The Planning Commission held a work session on the Accessory Structure and Accessory Dwelling Unit provision of Code Maintenance 2004.
- **May 20, 2004:** The City Council held a hearing and received testimony on Code Maintenance 2004. At this hearing the Council voted to adopt the South Waterfront provisions through an emergency ordinance.
- **June 9, 2004:** The City Council continued their hearing from May 20 on the remainder of Code Maintenance 2004. At the conclusion of this hearing, the Council voted to adopt the Radio Frequency Provisions through an emergency ordinance. The remaining items were adopted through a second reading on June 16, 2004.
- **August 18, 2004:** The scheduled City Council hearing on the Planning Commissions recommendation on Accessory Structures Amendments including Accessory Dwelling Units was cancelled and rescheduled to October 20, 2004.
- **October 20, 2004:** The City Council held a hearing and received testimony on the Planning Commissions recommendation on Accessory Structures Amendments including Accessory Dwelling Units.

## **5. Implementation and Evaluation**

Generally, the amendments in the CM 2004 package do not establish new policy or review procedures and they have little or no effect on compliance, enforcement, inspections, on-going reporting, or maintenance requirements.

### **6. Financial Impacts and Benefits**

Given the limited scope of Code Maintenance, the amendments in this package will not result in increased costs for either Development Services applicants, or for the City. Instead, the amendments will directly reduce development review fees for applicants by deleting, or changing, the review procedure for several land use reviews. In addition, the Code Maintenance package contains amendments to other standards and review procedures that will save applicants additional time and application fees. Reducing the number of land use reviews, and the review procedure, allows the Bureau of Development Service/Land Use Review Division to reallocate limited staff resources to other responsibilities.

### **7. Comprehensive Plan Policy 10.10: Amendments to the Zoning and Subdivision Regulations**

Policy 10.10 of the Portland Comprehensive Plan states that zoning and subdivision regulations should be clear, concise and applicable to the broad range of development situations faced by a growing urban city. Code Maintenance is specifically intended to further this comprehensive policy by addressing land use regulations that are unclear ambiguous, or which are redundant or conflict with other City titles. Consistent with Objective B of Policy 10.10, the principal objectives of Code Maintenance are to:

- Keep regulations simple and readable;
- Ensure that standards are written in a clear and objective manner;
- Maintain consistency among procedures in Title 33 and among other City titles, when possible;
- Clarify administrative procedures for land use reviews;
- Establish objective standards in lieu of discretionary reviews, when possible; and
- Use tables and figures when necessary to clarify regulations.





Bureau of Development Services  
Bureau of Planning  
1900 SW 4<sup>th</sup> Avenue, Suite 5000/4100  
Portland, Oregon 97201  
Phone: 503-823-7700  
Fax: 503-823-7800  
TDD: 503-823-6868