

# Regulatory Improvement Workplan



## Regulatory Improvement Code Amendment Package 7 (RICAP 7)

### Proposed Workplan

August 2014



Bureau of Planning and Sustainability

Innovation. Collaboration. Practical Solutions.

City of Portland, Oregon  
Charlie Hales, Mayor • Susan Anderson, Director



**The Portland Planning and Sustainability Commission  
will hold a public hearing for the workplan on:**

Tuesday, August 26, 2014

6:00 PM\*

1900 SW Fourth Avenue, Second Floor, Room 2500A

\*Please call 503-823-7700 one week before the hearing for the scheduled time of this agenda item

The City of Portland is committed to providing equal access to  
information and hearings.

If you need special accommodation, please call  
**503-823-7700 (TTY 503-823-6868)**

For more information about this project, please contact:

Morgan Tracy, City Planner II  
Portland Bureau of Planning and Sustainability  
1900 SW 4<sup>th</sup> Avenue, Suite 7100  
Portland, Oregon 97201  
**Phone:** 503-823-6879  
**Fax:** 503-823-7800  
**TDD:** 503-823-6868  
**Email:** [morgan.tracy@portlandoregon.gov](mailto:morgan.tracy@portlandoregon.gov)  
**Internet:** [www.portlandoregon.gov/bps/RICAP](http://www.portlandoregon.gov/bps/RICAP)

## Table of Contents

I. Background .....	1
II. Workplan Selection Process .....	1
III. Staff Recommendation .....	3
IV. RICAP 7 Workplan Items .....	4
<b>Appendix .....</b>	<b>Under separate cover</b>
Complete List of RICAP Eligible Items from Regulatory Improvement Request Database	



## I. Background

Portland’s current Zoning Code was originally adopted in 1990. Changing needs, new laws and court rulings, new technology and innovations, and shifting perceptions necessitate that the City’s regulations be updated and improved on an ongoing basis. This document contains the proposed workplan to address several requests received by the Bureau of Planning and Sustainability in the seventh Regulatory Improvement Code Amendment Package (RICAP 7).

The Regulatory Improvement program was initiated in 2002 as a way to “update and improve City building and land use regulations that hinder desirable development”. One component of the program - RICAP - was designed to provide an ongoing and rapid vehicle for technical and minor policy amendments to the City’s regulations. From 2005 to 2010 City Council adopted five packages of amendments (RICAP 1 through 5), which resulted in many amendments to city regulations. Most of the changes were to Zoning Code regulations. Due to budgetary constraints, the program was suspended in 2010 but was reinitialized in 2013, with RICAP 6. RICAP 7 continues this ongoing regulatory improvement and code maintenance work.

## II. Workplan Selection Process

RICAP 7 focuses on technical items, and items that improve the clarity and consistency of the code, for better implementation. Fewer items have been selected that affect or modify our current planning or zoning policies. This technical focus will enable the staff to work on, and contribute to other regulatory projects that the Bureau is pursuing.

In general, requests for both process and regulatory improvements are submitted by members of the public and staff through an online database - called the Regulatory Improvement Request (RIR) database. Staff with the Bureaus of Planning and Sustainability (BPS) and Development Services (BDS) categorize the requests according to complexity and the resources needed to address the issue. Issues that will result in more significant policy changes, or will require significant resources, are directed to other legislative projects. The remainder of issues are considered for inclusion into a RICAP. Figure 1 provides an illustration of this sorting process.

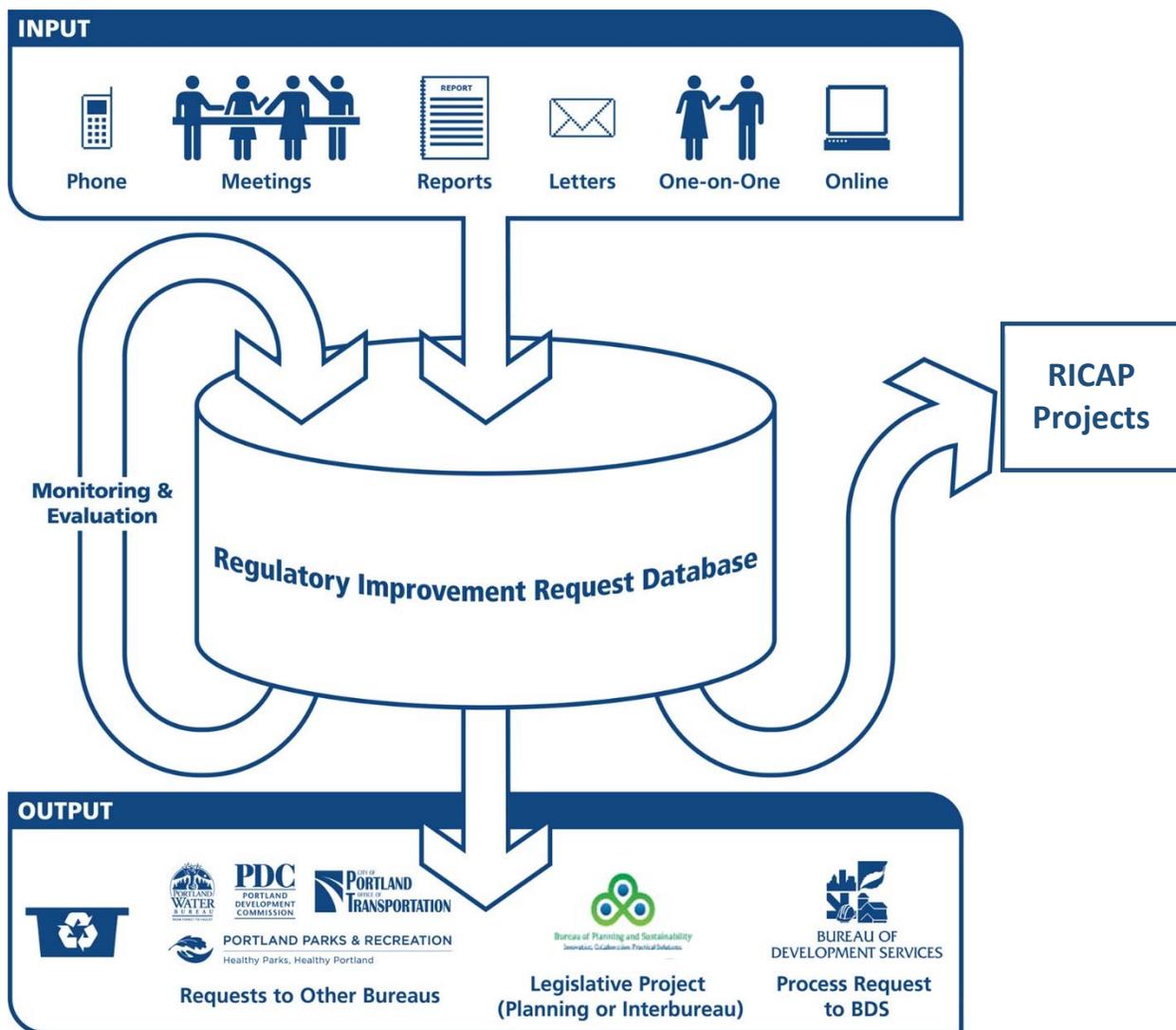
Items that involve a higher level of complexity, are ranked using the following evaluation criteria:

- a. The variety of stakeholders an issue affects (Few people or many? One group of stakeholders or several?);
- b. The geographic applicability of an issue (Is it a citywide regulation or one that affects one particular area?);
- c. The degree of impact (in terms of severity or frequency) that an issue may have; and
- d. A “regulatory improvement” component, which is an estimate of the degree that the regulation can be improved due to its current complexity or rigidity.

Each of the four criteria are ranked between (-3) and (+3), so that the summation of the four items may range between (-12) and (+12). An item that ranks as a zero would fall in the average range for these criteria.

To develop the RICAP workplan, staff considers the complexity, rank, and resources needed to address the issue. Generally, items that are the most important to address and that fit within the scope of a RICAP, rise to the top of the ranking process. Not all top ranking items may get selected, based on staff resource limitations, other constraints such as the relationship of the item to other city projects, or the need to consider the item as part of a more holistic planning process.

Figure 1: Regulatory Improvement Process Diagram



### III. Staff Recommendation

The Planning and Sustainability Commission will hold a hearing on the proposed workplan for RICAP 7 on August 26, 2014, where the public is invited to comment on the Bureau’s proposal. The issues selected by the Planning and Sustainability Commission for the workplan will be addressed by staff in the coming year.

The proposed workplan consists of 44 issues related to Zoning Code regulations. These are listed in the table in Section IV. The issues are selected from the requested technical corrections and minor policy items catalogued in an online database. Most of the issues relate to regulations that are applied citywide. The issue related to height measurement will result in the generation of a white paper of the height measurement issues, to enable this issue to be discussed as part of a larger Comprehensive Plan Implementation project.

The table summarizes the items proposed for selection in the RICAP 7 workplan. The appendix to this report (under separate cover) includes the full list of regulatory improvement requests made by City staff, community members, and others that was considered for RICAP 7. Items not selected will remain on the eligible list for consideration in future projects.

#### RECOMMENDATION:

The Bureau of Planning and Sustainability recommends that the Planning and Sustainability Commission (PSC) approve the items for the RICAP 7 Workplan identified in Section IV of this report. Approval of the workplan by the PSC will allow staff to evaluate these issues in greater detail. Where applicable, BPS staff will draft a set of specific code amendments for further public review through the legislative process in early 2015.

## IV. RICAP 7 Workplan Items

This section includes the items from the Regulatory Improvement Requests (RIR) database that are proposed for inclusion in the RICAP 7 workplan. The list contains two sections; “Minor Policy Items” and “Technical Corrections, Clarifications, and Consistency Items”. The items contained in each section are sorted by Zoning Code section.

Minor Policy items include issues that may affect existing policy, for example by expanding or restricting allowed uses, changing the review type or procedure for land use applications, or revising development standards.

Technical Corrections, Clarifications, and Consistency Items include issues where for instance the desired outcome of a particular requirement is unclear, or the regulations are in conflict with other sections of the code.

The table on the following pages contains several columns:

- **Item #** - This number is provided for reference.
- **RIR #** - This is the identification number for the item from the Regulatory Improvement Requests (RIR) database.
- **Issue** -Provides a general description of the regulatory problem.
- **Potential Action** - Represents an initial concept for addressing the issue. As further research is done on these issues, the proposed resolution of each issue may differ from the potential action in this list.
- **Code Section** - Cites the reference to the section of city code that contains the regulation to be addressed.

<b>Minor Policy Items</b>				
<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
1	32396 & 787544	<u>Design Review Alterations</u> /minor changes made to buildings previously approved through a Type III design review often have to go through another Type III review, affecting cost and timing during construction.	Evaluate thresholds for determining whether a Type II or Type III review is required for alterations of previously approved buildings, especially Central City thresholds.	33.420 and 33.825
2	760562	<u>Concurrent pre-application &amp; land use submittals.</u> Current code allows an applicant to concurrently submit for a pre-application conference and for a land use review (except land divisions). However, pre-apps provide valuable information on application requirements, and applications requiring pre-apps are incomplete without the results of the pre-app. This can create scheduling and completeness review deadline issues.	Preclude the ability to submit concurrent pre-application and land use applications. Require conference to be held prior to submitting for a land use review that requires the pre-app to ensure that applicant is aware of submittal requirements prior to submitting application.	33.730.050
3	17642	<u>Floor Area Definition</u> “Floor area” is used in different contexts; to regulate size of particular uses and the mass of buildings. The current definition of floor area may not be appropriate when applied to use regulations.	Review code for instances of the terms “floor area” and “floor area ratio”, and clarify the intent in these situations.	33.910.030 definition & throughout code
4	756338	<u>Household Living Definition</u> Current definition allows a large number of disabled individuals to be classified as a household, such as an assisted living facility. This can create situations where a larger facility is allowed by right than what was intended in the regulations	Review the intent of this definition and evaluate a potential maximum condition for number of disabled individuals or similar mechanism to distinguish household living from group living.	33.910.030
5	726578	<u>Shed Roof Height Measurement</u> The code doesn't clearly address how to measure height for more modern roof designs such as a sloped shed roof	Codify a height standard for pitched, not gable-ended roofs such as “shed style” roofs	33.930.050
6	635336, 346566, 34634 & 31397	<u>Height Measurement issues</u> There are several issues regarding how the code regulates building height, including where to take the measurement, how existing and proposed grades affect the measurement etc. This has resulted in several requests in the RIR database for changes	Research and create a short white-paper reviewing best practices for how to measure height and how to factor grade into the measurement	33.930.050 and various zones

<b>Minor Policy Items</b>				
7	99689 & 784967	<u>Ladd's Addition Tree Planting Guidelines.</u> The current historic district street tree guidelines refer to a map that includes nuisance species trees which does not conform with other city titles. The map should be updated to reduce confusion/conflict.	Update the street tree planting plan and map to refer to tree characteristics instead of specific species which may conflict with the nuisance plants list.	Ladd's Addition Guidelines

<b>Technical Corrections, Clarifications, and Consistency Items</b>				
<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
1	369203	<u>OS Zone standards.</u> Changes made affecting transit street setbacks for institutions in C, E, or I zones were not made for the single-dwelling and Open Space (OS) Zones	Clarify the applicable transit street standards for institutions in the single-dwelling and Open Space (OS) zones.	33.100.200 33.110.245
2	341598	<u>OS Zone standards.</u> Within OS zones, conditional uses are intended to meet development standards contained in a table in the single-dwelling zones. However, this table works in conjunction with other standards in those regulations. It is not clear how those apply in the OS zone	Clarify whether the standards in 33.110.245 should also apply to Conditional Uses in OS zones	33.100.200 33.110.245
3	777889	<u>Transitional Sites.</u> Lot dimension standards for these sites are not clear whether they apply before or after land divisions. Also, the standard for the lot coverage is not consistent with recent changes to lot coverage	Update these standards for greater clarity and consistency.	33.110.240
4	773588	<u>Retaining Walls.</u> Current code contains an exception to retaining wall height on sites sloping down from the street but not for sites that slope up from the street	Consider allowing taller retaining walls on sites that steeply slope up from the street	33.110.255
5	386309	<u>Recycling Areas for Institutions.</u> Single-dwelling and OS zones do not reference the requirement for recycling areas	Include a provision to clarify that institutions follow Title 17 codes for recycling in these zones	33.100.200 33.110.245

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
6	341660	<u>Setbacks in multi-dwelling zones.</u> There is a discrepancy in the garage setbacks between the multi-dwelling base zones and the parking chapter.	Review the garage setbacks for multi-dwelling zones/development and clarify for consistency	33.120.220 33.266.130
7	744391	<u>Amenity Bonus for Play Equipment.</u> This bonus references parks bureau approval. Parks bureau does not have standards or process for review	Remove reference to parks bureau approval for playground equipment	33.120.265
8	744398	<u>Height Exceptions.</u> It is not clear how the height exceptions and setback requirements apply to elevator shafts	Clarify the exception for elevator shafts	33.120.215 33.130.215 33.140.215
9	260066	<u>Projections into Residential Landscape Setback.</u> Changes to code references have created confusion in when projections such as decks, etc can extend into the required setback vs required L3 landscape area	Clarify that projections are not allowed in the 5-foot deep landscape area	33.130.215
10	744407	<u>Residential Landscape Setback.</u> Questions have arisen about how large the landscape setback should be from residential zones in EG2, IG2, and IH zones. The table indicates 10-feet while the code indicates 5-feet	Clarify the intended depth of the residential landscape buffer in the E & I zones and review the language in commercial zones.	33.140.215 33.130.215
11	511839	<u>Family Daycare.</u> City code includes regulations related to state certified child-care facilities. However, code terminology is not consistent with the state rules.	Revise the language so that local references are consistent with state regulations in ORS	33.203.020 33.910 33.920
12	773623	<u>Drive-through Facilities.</u> Current code measures stacking lane from curb-cut, but regulations don't apply in the right-of-way.	Clarify that drive-through stacking lane distances are measured from the street lot line.	33.224.050
13	603171	<u>Elderly Housing Requirement.</u> Standards refer to a disability project coordinator position that does not exist	Remove reference to the position in the standard. Verify whether there is a review position elsewhere.	33.229.050
14	729584	<u>Landscaping Standards.</u> Generally, standards are in hierarchical order, but it is not clear if the hierarchy applies to the fence, tree and parking lot standards.	Clarify whether the hierarchical order applies to fence, tree and parking lot standards	33.248.020

<b>Technical Corrections, Clarifications, and Consistency Items</b>				
<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
15	341682	<u>Non-conforming Situations.</u> The text regulating expansion of non-conforming situations does not match the figures provided to illustrate the standard	Make the text and figures consistent in applying standards regulating the expansion of non-conforming situations.	33.258.050
16	426944	<u>Non-conforming Upgrades.</u> Energy-efficiency upgrades used to meet Energy Trust guidelines are intended to be exempt from calculating the value of the project, regardless of whether the grant is provided	Clarify the original intent that these upgrades are exempt and not subject to receipt of the incentive.	33.258.070
17	377363	<u>Parking for Institutions Uses.</u> Some institutional uses have their parking requirements based upon a table, while others provide the option of using the table, or having the parking regulated through the Conditional Use Review. It is not clear why the parking review isn't consistent	Consider making parking review consistent for institutional uses, either through the Conditional Use review or through the table of requirements.	33.266.110
18	753378	<u>Mass Shelters.</u> There is a reference to an ONI certification process that no longer exists.	Remove the reference to ONI. They are no longer involved in this review.	33.285.050
19	267396	<u>Buffer Setback.</u> Generally structures are not allowed in the landscaped buffer setback. However, for residential development the landscape requirement does not apply. It is not clear whether fences can be in the setback in these cases.	Clarify whether a fence can be provided in the buffer setback, if the development is residential	33.410.040
20	751388	<u>Design Review Exemptions.</u> Generally re-painting a building is not subject to permits/review, unless specifically called out in a previous review. However, code is not clear.	Clarify whether painting is exempt when the paint color isn't specified in a previous review	33.420.045
21	750585	<u>Design Review Exemptions.</u> The exemption for rooftop radio frequency equipment includes a requirement for the accessory equipment that is not clear	Clarify how to apply the exception for accessory equipment using the exemption for DZ review.	33.420.045

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
22	744425	<u>Design Review Exemptions.</u> It is not clear how the exemption for solar panels applies in the case of flat roofs.	Clarify the language on how solar panel exemption applies when mounting on a flat roof.	33.420.045
23	736179	<u>Limits for Community Design Standards.</u> The table that limits the use of Community Design Standards (CDS) for alterations includes confusing language that makes it unclear whether one or both conditions need to be met to use standards.	Research the original intent of these thresholds and clarify the language in the table	33.420.055
24	305565	<u>Environmental Regulations.</u> The term <i>modifications</i> in this chapter can be confused between modifications to site-related standards and environmental standards.	Clarify that <i>modifying</i> environmental standards requires environmental review, and that <i>modifications</i> are limited to site-related standards through environmental review.	33.430.280
25	420657	<u>Historic Design Review Exemptions.</u> A Hearings Officer decision affirmed that alterations allowed through the state structural minor label program are not the same as approval through a building permit. City's interpretation had not been consistent with this decision.	Clarify the exemption to Historic Review so that alterations that are part of the State's structural minor label program may be subject to review.	33.445.320
26	784082	<u>Main Street Corridor/Node Overlay Standards.</u> The intent of these standards is to apply to all sites in the "m" overlay in the street corridor, but the chapter intro states they only apply on sites <i>fronting</i> particular streets.	Clarify where the standards in the corridor and node overlays apply on each Main Street corridor (Sandy/Lombard/Division).	33.460.030 33.455.030
27	744415	<u>Scenic Resource Overlay.</u> The tree preservation standards apply for trees over 12" diameter and an exemption for trees under 12" diameter. It is not clear how a tree that is exactly 12" diameter is regulated.	Clarify whether a 12" diameter tree is subject to standards or exempt.	33.480.040
28	744413	<u>Scenic Resource Overlay.</u> This overlay includes regulations that are intended to apply in the right-of-way. However, many standards are measured from the front property line, meaning that features in the right-of-way aren't addressed.	Clarify how the overlay zone requirements and setbacks apply to features in the right-of-way.	33.480.040

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
29	767378	<u>Marquam Hill plan district open area.</u> There is a conflict between the purpose statement and the standard that requires a set-aside of open area.	Clarify that only expansion of institutionally developed portions of the plan district are subject to the open area requirement.	33.555.260
30	416794	<u>Northwest Hills plan district – Linnton.</u> Changes in the regulations that define adjusted lots and lot remnants are not reflected in the Linnton lot standards. This creates confusion in the plan district.	Clarify the existing policy for development on adjusted lots and lot remnants to be consistent with the terminology developed in RICAP 5	33.563.220
31	416793	<u>Northwest Hills plan district – Linnton.</u> The standard for measuring lot width has changed, but is not reflected in the Linnton lot standards	Remove the reference for measuring lot width at the front setback line, as the measurement standards are now part of the measurement chapter.	33.563.220
32	778013	<u>Woodland Conversion in Airport plan district.</u> There are two similar standards, but one includes an exception while the other does not. This makes it impossible to utilize the exception since <i>all</i> of the standards must be met.	Remove the conflicting standard to enable use of the exception for woodland conversion standards.	33.565.550
33	299821	<u>Administration – When a Building Permit is Reqd.</u> The language stating when a building permit is required is too broad.	Clarify this section to acknowledge that some development (fence, etc) doesn't require a building permit.	33.700.005
34	773590	<u>Neighborhood Contact.</u> There is no maximum limit to the length of time between when a neighborhood contact is engaged and when an applicant files the permit.	Stipulate a maximum time limit during which an application can be filed before a new neighborhood contact process is required.	33.700.025
35	754049	<u>Design Review Triggers.</u> Triggers are often based on the value of a project. However, the value of the interior work doesn't affect the exterior design.	Clarify what values are included in the thresholds used to determine the type of review.	33.825.025
36	341528	<u>Historic Review guidelines.</u> In Central City historic districts, it is not clear what criteria apply when there are no historic district guidelines and no Central City subdistrict guidelines	Clarify which criteria apply for sites in the Central City subdistrict historic districts that have no specific historic district guidelines.	33.846.060

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<b>Item #</b>	<b>RIR #</b>	<b>Issue</b>	<b>Potential Action</b>	<b>Code Sections</b>
37	434527	<u>Energy Related Definitions.</u> The energy related definitions are spread throughout the chapter. Consider combining them into a specific area, similar to the environmental-related definitions.	Organize energy related definitions under one heading, similar to the environmental terms.	33.910





