

**Agenda No. 465**

**ORDINANCE NO.**

Temporarily modify or waive portions of City Code titles Original Art Murals, Signs and Related Regulations, and Planning and Zoning to assist businesses, organizations, and entrepreneurs to adjust and continue operations during and through the COVID-19 pandemic (Ordinance; modify or waive portions of Titles 4, 32, and 33)

The City of Portland ordains:

**Introduced by**

Commissioner Ryan

Section 1. The Council finds:

**Bureau**

Development Services

1. Mayor Ted Wheeler executed a Declaration of Emergency for the City of Portland on March 12, 2020 due to the continued spread of the COVID-19 virus, which creates an extreme risk to public health, government and business continuity, and the local economy of the City of Portland and across the entire City. The Declaration of Emergency has since been extended every two weeks.
2. The purpose of the Portland Zoning Code is intended to implement Portland's Comprehensive Plan and related land use plans in a manner which protects the health, safety and general welfare of the citizens of Portland (PCC 33.10.010).
3. The COVID-19 pandemic has impacted the health, safety and general welfare of the citizens of Portland, including Retail and Service businesses' operations which have required temporary closings and many operational modifications to address the public health crisis.
4. The State of Oregon and Multnomah County temporarily suspended indoor service for most Retail Sales and Services businesses from

**Prepared by**

Matt Wickstrom

Gabby Bruya

**Date Prepared**

May 27, 2021

**Requested Council Date**

June 16, 2021

**Requested Agenda Type**

Regular 45 minutes

**Date Filed with Clerk**

June 8, 2021

(March 23, 2020 to June 19, 2020) in an effort to control the spread of the pandemic (<https://multco.us/novel-coronavirus-covid-19/news/multnomah-county-approved-reopening-region-freezes-least-3-weeks>), and again suspended some indoor services for Retail Sales and Services businesses on November 3, 2020.

5. The risk factor associated with COVID-19 has fluctuated in Multnomah County since the emergency was first declared, as defined by the Governor's health and safety framework, Multnomah County has been within the Extreme Risk, High Risk, Moderate Risk and Low Risk categories. The risk level has declined, and as of May 28, 2021, Multnomah County has moved to the Low Risk category (<https://www.oregonlive.com/coronavirus/2021/05/multnomah-county-expected-to-move-to-lower-risk-category-thursday-and-continue-reopening.html>).
6. The State of Oregon issued a quarterly Oregon Economic and Revenue Forecast report in March, 2021. It states, "Oregon's economy will return to full employment by early 2023, or 6-9 months sooner than expected in previous reports". The report refers to ongoing vaccination efforts and goes on to say, "As consumers feel more confident in their ability to safely resume previously limited activities, the economic recovery will accelerate in the months ahead" ([forecast0321.pdf \(oregon.gov\)](#))
7. Encouraging Retail Sales and Service operations to continue to occur outside allows business activity and potentially limits negative economic consequences associated with mandatory reductions to indoor capacity. The State of Oregon is reporting a strong need to bring staff back quickly in "large service-providing industries like health care, leisure, and hospitality, and other services – namely barbershops and nail salons". Allowing these operations to occur outside for the time specified can assist with recovery. ([forecast0321.pdf \(oregon.gov\)](#))
8. PCC 33.130.245.E allows certain exterior Retail Sales and Service activities in Commercial/Mixed Use zone parking lots, such as restaurant and bars, but it is not clear whether retail businesses such as hair cutting and gyms are allowed.
9. The COVID-19 emergency resulted in the need for the Bureau of Development Services (BDS) to rapidly change to a primarily electronic plan review, permit issuance and inspection system, while maintaining safe work protocols. Permit issuance and some services were delayed; however, much work is underway to improve timeliness and awareness of timelines

<https://www.portland.gov/bds/permit-review-process/electronic-plan-review>).

10. The COVID-19 emergency and reduction in development activity have also resulted in a decrease in building permits processed through BDS, and therefore future economic growth may be impacted. Portland City Code requires larger projects to submit plans showing that certain amenities such as landscaping and bicycle parking meet current requirements, these requirements are called nonconforming upgrades. The verification of nonconforming upgrade standards increases the time and complexity of staff permit review. These requirements also increase the amount of detail required for drawings and materials applicants must submit which adds cost to the overall project, in addition to the cost of the improvements. Both result in longer timelines to issue building permits and longer timelines to complete a development project and begin operation.

<https://www.opb.org/article/2021/03/23/portland-oregon-audit-flawed-building-permit-system/>).

11. Economic recovery from the COVID-19 pandemic includes examining regulations that add complexity for new businesses, especially when that complexity is not universally applied to businesses with similar impacts, and when the predominate owners of the businesses are people of color. Code Chapter 33.219 imposes additional requirements addressing potential impacts of convenience stores on the surrounding area. These requirements add time and uncertainty for property owners wishing to open a new convenience store. Approximately 60 percent of convenience stores are independently owned with a large percentage owned by immigrants and people of color (<https://www.cnbc.com/2020/03/18/americas-gas-stations-and-convenience-stores-grapple-with-an-uncertain-future.html>).

12. PCC 33.420.041.B requires design review for certain façade ventilation and rooftop mechanical equipment. The Portland City Council will hold a public hearing on the Recommended Draft of the Design Overlay and Zoning Assessment project (DOZA) in May 2021. Some code changes recommended as part of the project, such as allowances for exterior façade ventilation and rooftop mechanical equipment, can assist businesses wishing to improve air flow and ventilation for indoor service and safety

<https://www.portland.gov/bps/doza>). In the interim, until DOZA is presented at Council and potentially adopted, Council wants businesses to be able to make air flow and ventilation improvements expeditiously and economically, thereby furthering public safety and welfare.

13. Currently, PCC 33.203.030 and 33.205.030 restrict Type B home occupations to one non-resident employee or 8 customers per day and prohibit a Type B home occupation on a site with an accessory dwelling unit. Other cities in the United States have expanded home occupation allowances in response to the COVID-19 pandemic and resulting economic consequences, including increases in the number of non-resident employees and customer allowances. The number of businesses owned by women of color increased by 58% between 2007 and 2018. Minority owned small businesses have suffered disproportionately due to the COVID-19 pandemic ([New city council bill would temporarily loosen restrictions on home-based businesses in Seattle \(seattlepi.com\)](#) and (<https://www.businessnewsdaily.com/15749-tips-for-black-female-business-owners.html>) and (<https://www.washingtonpost.com/business/2020/05/25/black-minority-business-owners-coronavirus/>).
14. Title 32 allows a temporary sign to be displayed for up to 180 days. Changes to business operations and new emerging businesses may require temporary signs to alert customers. As businesses emerge from the COVID-19 pandemic and rapid changes occur, time allowances for temporary signs should be expanded to ensure signage that promotes safe and healthy access to Portland businesses. Other cities in the United States have responded by ordering temporary suspension of temporary sign codes (<https://www.kirklandreporter.com/news/temporary-signs-allowed-in-kirkland-during-covid-19-emergency/> and (<https://www.bentonvilliar.com/DocumentCenter/View/5385/Temporary-Signs-During-COVID?bidId=>).
15. The COVID-19 emergency has required businesses to adjust operations, expand distance and separation between customers and those who provide services, as well as to move operations outdoors, when possible. The City of Portland COVID-19 Declaration of Emergency has been in place for greater than one year. Temporary outdoor structures for customer service and dining, such as tented structures, require approval through a Design Review or Historic Resource Review if present for greater than 180 days when the structure is located in some Design Overlay zones or a Historic District. Other tented structures may be required to meet Title 33 building coverage requirements. (33.420.041.A, and 33.130.220.B and 33.445.320.A (<https://www.kgw.com/article/news/health/coronavirus/portland-restaurants-winterizing-outdoor-dining/283-7ee862eb-0d81-412b-9a40-5d16b88c2059>).
16. Window standards exist in Commercial/Mixed Use zones. Ground floor window standards apply in the Central City Plan District (33.130.230.A.3 and

33.510.220.B). PCC 33.130.230.A.2 and PCC 33.510.220.B require ground floor windows on buildings to be transparent. Many Portland businesses have boarded up windows in response to vandalism and other security issues during the COVID-19 pandemic. The Portland Street Art Alliance has issued a call for artists to paint murals on the boards covering windows, while some existing murals are being donated to arts organizations.

([https://www.kptv.com/news/some-nw-portland-businesses-boarded-up-to-prevent-vandalism-during-covid-19-closure/article\\_2c5b9844-6d38-11ea-bd10-e7ecea80a93f.html](https://www.kptv.com/news/some-nw-portland-businesses-boarded-up-to-prevent-vandalism-during-covid-19-closure/article_2c5b9844-6d38-11ea-bd10-e7ecea80a93f.html) and <http://www.pdxstreetart.org/articles-all/covid-19> and <https://www.oregonlive.com/silicon-forest/2020/12/apple-will-preserve-donate-george-floyd-mural-from-downtown-portland-store.html>).

17. Title 4 of the Portland Mural Code requires applicants for public murals to conduct a public meeting, if requested, and to post a sign announcing the proposed mural. Both requirements conflict with current COVID-19 guidelines due to the need to promote social distancing and the need for applicants to pick up an approved sign at the mostly-closed Development Services Center (<https://www.portland.gov/code/4/20>).
18. Modifying and waiving Title 33 requirements to encourage and allow businesses to operate outdoors and improve indoor air quality recognizes public health guidelines and provides necessary assurances for businesses while a more defined path toward economic recovery is charted.
19. To protect public health, safety and welfare and support businesses and organizations in an expedited manner, the City Council must modify and waive provisions of Titles 4, 32 and 33 of the Portland City Code. The City Charter authorizes the Council (2-101), acting on behalf of the City, to take actions necessary or appropriate to secure the protection of persons and property and to provide for the health, peace and good order of the City (2-105(a)(2)), to regulate the use of buildings and structures for the better protection of the lives and health of the public (2-105(a)(35)) and to regulate uses of land and structures within the City (2-105(a)(36)). Further, the Mayor has authority to order such other measures as may be necessary to protect life, safety and health of persons and property. Code Section 15.08.020.B.11. As discussed in these findings, expedited allowance of measures to further public health and safety and support businesses and organizations is necessary and appropriate to protect and secure persons and property and to maintain the health and good order of the City during the COVID emergency.

NOW THEREFORE, the Council directs:

- a. Waive PCC 33.130.245.E to allow all Retail Sales and Services business classified in PCC 33.920.250.C.1, 2 and 3 to operate in parking lots owned or leased by the businesses through March 31, 2023. Such Retail Sales and Service uses must cease on March 31, 2023 unless otherwise approved.
- b. Waive PCC 33.258.070.D.1 and PCC 33.258.070.D.2 through March 31, 2023 to exempt nonconforming development associated with a new nonconforming use or new residential density or associated with existing nonconforming uses, allowed uses, limited uses, or conditional uses from the requirement to make upgrades. Permits submitted after March 31, 2023 will be subject to upgrade requirements.
- c. Waive Code Chapter 33.219 until March 31, 2023. Applications submitted after March 31, 2023 will be subject to Code Chapter 33.219.
- d. Waive requirement for design review in PCC 33.420.041.B for exterior venting and rooftop mechanical equipment for permit applications submitted on or before August 1, 2021, provided:
  1. For venting on facades, the louver or vent opening affects 1 square foot or less of the façade and is the same color as the adjacent façade; or the louver or vent is placed within an existing window mullion, is the same color as the mullion, and is at least 8 feet above the adjacent grade;
  2. For rooftop mechanical equipment, when a roof of a building has a 1/12 pitch or less, one of the following must be met:
    - i. The proposed alteration or equipment is screened by a parapet that is as tall as the tallest part of the equipment or alteration;
    - ii. The proposed alteration or equipment is set back 4 feet from the edge of the roof for every 1 foot of height above the roof surface or top of parapet; or
    - iii. The proposed alteration or equipment is located entirely within 5 feet of the façade of an existing equipment penthouse, does not extend above the penthouse, and is the same color as the penthouse; or when the proposed alteration or equipment does not exceed 3 feet in width, depth, length, diameter or height;
  3. For rooftop mechanical equipment, when a roof of a building has a pitch that is greater than 1/12, one of the following must be met:
    - i. The addition or alteration is parallel with the roof surface and extends no more than 12 inches above the roof surface; or
    - ii. The addition or alteration extends no more than 18 inches from the surface of the roof and is less than 2 feet in diameter.

- e. Waive requirements of PCC 33.203.030.C.2 and 3 that limit Type B home occupations to one non-resident employee or eight customers or clients per day to allow 1 non-resident employee and up to 15 customers and clients per day through March 31, 2023. After March 31, 2023, or the expiration of the Home Occupation permit, whichever is later, Type B home occupations will be subject to the limitations in PCC 33.203.030.C.2 and 3.
- f. Waive PCC 33.203.030.B.3 and 33.205.030.B.1 to allow an accessory dwelling unit on a site with a Type A or Type B home occupation until March 31, 2023, or the expiration of the Home Occupation permit, whichever is later.
- g. Waive provisions of PCC 32.32.030.K and 32.62.010.D.1.a.(2) that limit the duration of temporary signs to allow such signs to remain until March 31, 2023. Temporary sign permit requirements still apply.
- h. Waive the requirement for Design Review in PCC 33.420.041.A and 33.445.320.A for tented structures that are located in parking lots or other exterior areas for more than 180 days until April 1, 2022. After April 1, 2022, tented structures that have remained more than 180 days must be removed if they have not received Design Review approval.
- i. Waive PCC 33.130.230.A.3 and B.3, 33.415.340 and 33.510.220.B to allow boards and other materials covering ground floor windows installed after the COVID-19 Declaration of Emergency was executed to remain until the COVID-19 emergency, or other emergency specifically allowing such coverings, is no longer declared.
- j. Waive PCC 33.130.230.A.3 and B.3, 33.415.340 and 33.510.220.B to allow murals to remain in place without a permit or adjustment until April 1, 2022, if applications for an Original Art Mural permit and an adjustment, if required, have been submitted by April 1, 2022. If no applications for a Mural permit, if required, have been submitted, the mural must be removed within 60 days.
- k. Waive PCC 4.30.010 such that no notice or public meeting is required for Original Art Mural applications submitted on or before March 31, 2023, provided the mural was created on a boarded window after the COVID-19 emergency was declared.

**Exhibits A-Q in support of this ordinance are attached.**

Passed by Council:

**MARY HULL CABALLERO**  
Auditor of the City of Portland

Action Taken:

By

Deputy

Commissioners voted as follows (Yea or Nay)

Rubio -

Ryan -

Hardesty -

Mapps -

Wheeler -





**City of Portland, Oregon**  
**Bureau of Development Services**  
**Office of the Director**  
**FROM CONCEPT TO CONSTRUCTION**

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**MEMORANDUM**

June 7, 2021

To: Mayor Ted Wheeler  
Commissioner Jo Ann Hardesty  
Commissioner Mingus Mapps  
Commissioner Carmen Rubio  
Commissioner Dan Ryan

From: Rebecca Esau, Director *RE*  
Bureau of Development Services

Subject: Business and Entrepreneur Support – Relief and Recovery Ordinance

The Bureau of Development Services has prepared an ordinance to support businesses and entrepreneurs during the COVID-19 emergency and through economic recovery. This is the second of two ordinances and focuses on relief and recovery measures. The first ordinance focused on safety and security measures.

Background:

The past year and more has had profound impacts on Portland and Portlanders. The COVID-19 pandemic has changed the way the city functions. Businesses have been lost and the storefronts remain vacant. Cherished restaurants have closed, while others have struggled to stay afloat. Portlanders have lost jobs, or decided to pursue other lines of work. Vandalism has plagued our city and many businesses and storefronts have plywood covering windows. Many Portlanders have persevered through the pandemic, while others, particularly people of color, have had setbacks and losses.

Multnomah County is currently in the “Low Risk” category for COVID-19 transmission. Stadiums and restaurants have increased capacity. New businesses are moving into previously vacant spaces and others are finally starting to see pedestrian traffic and shoppers increase. Artwork was made out of many of the plywood window coverings. The Bureau of Development Services underwent a rapid conversion to an electronic permitting system as well.

Ordinance Summary:

This ordinance proposes ways the Portland Zoning Code, Sign Code and Mural Code could be temporarily modified so that these City codes better address pandemic-related conditions as well as enable economic recovery. It addresses regulations for: outdoor business operations and tented structures; ventilation and air circulation improvements; nonconforming upgrades; entrepreneurialism; temporary signs; and boarded up windows and murals.

The ordinance will be presented to the Commissioner Assistants on June 7, 2021 and will be a City Council item on June 16, 2021 PM regular agenda. The ordinance is not being filed as an emergency.

## IMPACT STATEMENT

**Legislation title:** Temporarily modify and waive portions of City Code titles Original Art Murals, Signs and Related Regulations, and Planning and Zoning to assist businesses, organizations, and entrepreneurs to adjust and continue operations during and through the COVID-19 pandemic (Ordinance; modify and waive Titles 4, 32, and 33)

**Contact name:** Matt Wickstrom, Senior City Planner

**Contact phone:** 503-865-6513

**Presenter name:** Matt Wickstrom

**Purpose of proposed legislation and background information:**

The proposed ordinance is not a permanent legislative action; it is limited to waiving certain zoning code, sign code and mural code regulations during the COVID-19 emergency and recovery period.

**Financial and budgetary impacts:**

The proposed ordinance does not result in a permanent legislative action; instead it remedies Portland Zoning Code, Sign Code and Mural Code requirements to support businesses and entrepreneurs during the COVID-19 emergency and recovery period.

**Community impacts and community involvement:**

The ordinance includes items related to modified and outdoor operations, ventilation and air circulation, nonconforming upgrades, entrepreneurialism, temporary signs, and boarded up windows and murals. The ordinance will not be filed as an emergency. The ordinance applies to large and small businesses as well as entrepreneurs. Direct community involvement has not occurred; however, the ordinance has been shared in many different venues including the Business Support and Recovery Action Table meeting and BIPOC and vulnerable businesses discussion group during the action table meeting.

**100% Renewable Goal:**

The proposed ordinance should have no impact on the City's total energy use.

### Budgetary Impact Worksheet

**Does this action change appropriations?**

- YES:** Please complete the information below.
- NO:** Skip this section

<b>Fund</b>	<b>Fund Center</b>	<b>Commitment Item</b>	<b>Functional Area</b>	<b>Funded Program</b>	<b>Grant</b>	<b>Sponsored Program</b>	<b>Amount</b>

**City Council Meeting - Wednesday, June 16, 2021 9:30 a.m.**

<b>Agenda No.</b>	<b>First Name</b>	<b>Last Name</b>	<b>Zip</b>
465.1	Michelle	Schulz	97209
465.2	Matt	Shope	92075

**From:** [Cheley Ornong](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Bread & honey Cafe testimony( 465)  
**Date:** Tuesday, June 15, 2021 10:43:04 AM

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Good morning,

I am the Manager of a small cafe in North Portland called Bread & Honey.

We like so many other businesses have been truly effected by this pandemic & the restrictions we've had to keep up with.

Since the pandemic began we lost a total of 8 months of business due to the fact that we are too small of an establishment to survive on take out only orders.

A way to keep our cafe & our team afloat was to purchase an outdoor tent, lights, and a heater which allowed us to continue to operate safely with the restrictions given.

We feel that it would be only fair to allows us and other businesses effected to keep their outdoor dining areas without costing anymore hardship.

We have followed restrictions & adapted during this time & would appreciate keeping our tent the way it is without being penalized or causing anymore costly inconveniences which we've already been so effected by.

Thank you for your time & allowing us to give this testimony.

Cheley Ornong  
Manager of Bread and Honey Cafe

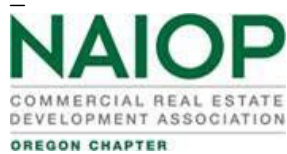
**From:** [kelly@westernadvocates.com](mailto:kelly@westernadvocates.com)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Testimony re Council Agenda No. 465  
**Date:** Tuesday, June 15, 2021 2:04:32 PM  
**Attachments:** [6-15-21 NAIOP Letter to Portland City Council re Ordinance to Waive Certain Permitting Requirements.pdf](#)

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Please find attached our testimony in support of Agenda No. 465 for tomorrow morning's Council meeting.

Thanks,

Kelly



**Kelly Ross, Executive Director**  
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