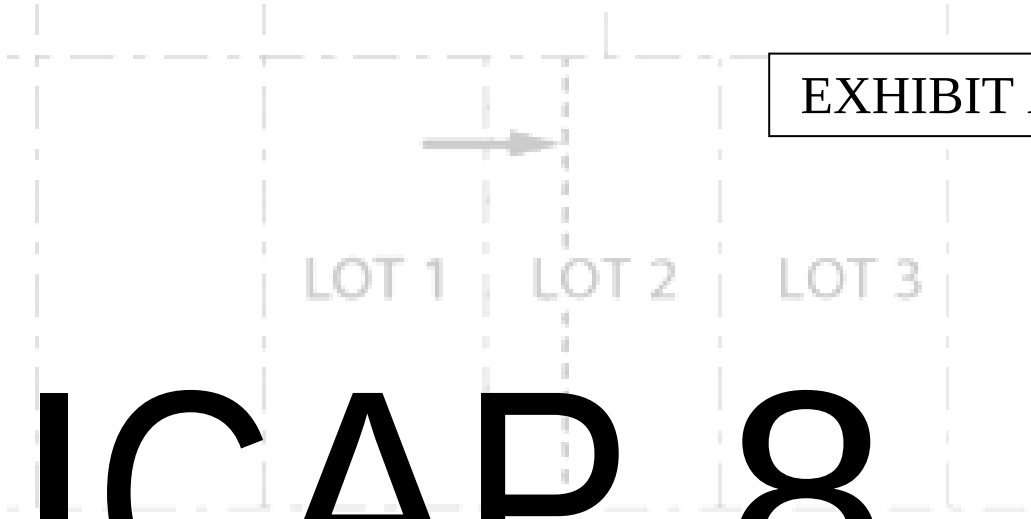
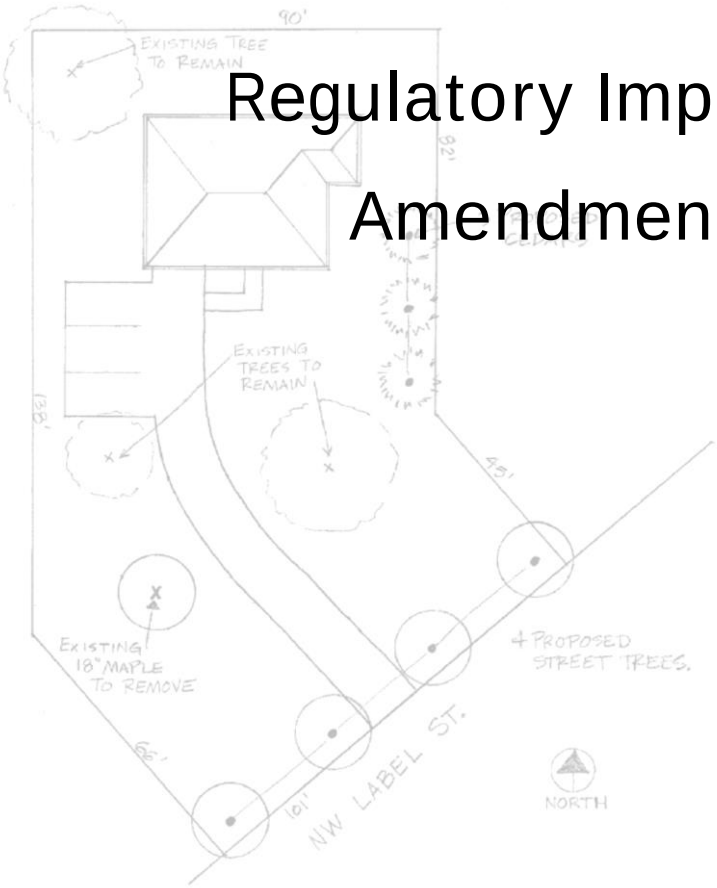
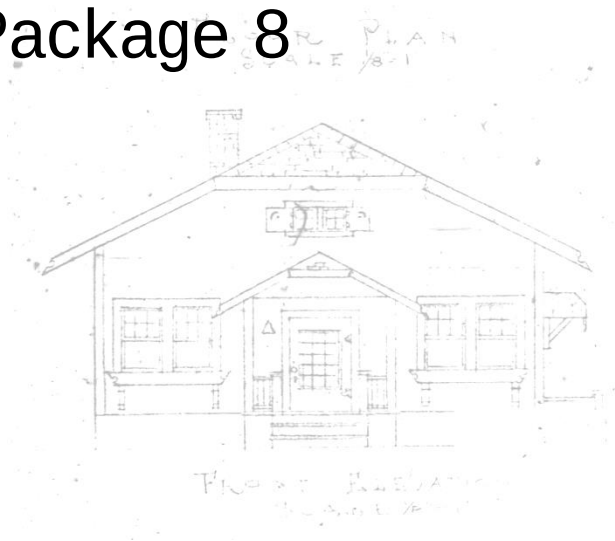
EXHIBIT A



RICAP 8

Regulatory Improvement Code Amendment Package 8





RECOMMENDED DRAFT

January 2017

City Council Hearing February 15

Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.
City of Portland, Oregon
Charlie Hales, Mayor • Susan Anderson, Director

Regulatory Improvement
Code Amendment Package 8

The City of Portland is committed to providing equal access to information and hearings. If you need special accommodation, please call 503-823-7700, the City's TTY at 503-823-6868, or the Oregon Relay Service at 1-800-735-2900.

The Portland City Council will hold a public hearing regarding the recommended changes contained in RICAP 8 on February 15 at 3 p.m. The hearing will be held in the Council Chambers of City Hall, located at 1221 SW 4th Avenue. Check the agenda on the day of the hearing to make sure this item is still scheduled. You may also watch the hearing live online: https://www.portlandoregon.gov/28258.

You may testify in person, email testimony to the Council Clerk at CCTestimony@portlandoregon.gov, or send written testimony to 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204.

Written testimony must be received by the time of the hearing and must include your name and address.

Metered and pay parking is available near City Hall. MAX and many buses serve this building; call Tri-Met at 503-238-7433 or go to their web site at http://www.trimet.org for routes and times.

A digital copy of this report can be found at: www.portlandoregon.gov/bps/ricap

Bureau of Planning and Sustainability
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Portland Planning and Sustainability Commission

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Chris Smith, Vice Chair
Michelle Rudd
Eli Spevak
Teresa St Martin
Maggie Tallmadge

January 4, 2017

Mayor Ted Wheeler and Members of Portland City Council
Portland City Hall
1221 SW Fourth Avenue
Portland, OR 97204

Subject: Regulatory Improvement Code Amendment Package 8 (RICAP 8)

Dear Mayor Wheeler and City Commissioners:

On December 13, 2016, the Planning and Sustainability Commission (PSC) held a public hearing on the Regulatory Improvement Code Amendment Package 8 (RICAP 8). This package addresses a variety of minor policy and technical amendments to Portland's Zoning and Tree Codes. Subjects addressed include refinements to land division approval criteria and property line adjustment standards; a 120-day delay procedure for the removal of ranked resources from the City Historic Resource Inventory; clarification on how tree protection requirements apply in certain situations; and an increase in the allowable fine for unlawful damage or removal of a Heritage Tree on private property.

At the hearing, we heard positive testimony from several stakeholders related to the Tree Code proposals, including representatives from Portland's Urban Forestry Commission. The PSC voted 8-1 to recommend approval of the full package of proposed Code amendments. In general, the PSC expressed strong support for the regulations, with some minor changes to clarify language and further increase flexibility to the Property Line Adjustment standard requiring straight lot lines. The dissenting vote was over equity concerns for east Portland on the lot line adjustment item 33.667.300.B Regular Lot Lines increasing from 10% to 20%.

Recommendations
The Portland Planning and Sustainability Commission recommends that City Council take the following actions:

1. Adopt the *RICAP 8: Recommended Draft*, dated January 2017; and
2. Amend the Zoning Code (Title 33) and Tree Code (Title 11) as shown in *RICAP 8: Recommended Draft*.

Thank you for the opportunity to participate in the review of this project and for considering our recommendations.

Sincerely,

Chris Smith
Vice Chair

PORTLAND PARKS & RECREATION
Healthy Parks. Healthy Portland

City of Portland

Urban Forestry Commission

1120 SW Fifth Avenue, Portland, Oregon 97204

Phone 503-823-5396 Fax 503-823-5570

Amanda Fritz, Commissioner

Mike Abraté, Director

January 4, 2017

Mayor Ted Wheeler and Members of Portland City Council
Portland City Hall
1221 SW Fourth Avenue
Portland, OR 97204

Subject: Regulatory Improvement Code Amendment Package 8 (RICAP 8)

Dear Mayor Wheeler and City Commissioners:

On December 7, 2016, the Urban Forestry Commission (UFC) held a public hearing on the Regulatory Improvement Code Amendment Package 8 (RICAP 8). This package addresses a variety of minor policy and technical amendments to Portland's Tree Code (Title 11, Trees) and Zoning Code (Title 33, Planning and Zoning). Proposed changes to the Tree Code include an increase to the allowable fine for unlawful damage or removal of a Heritage Tree on private property, clarification on how tree protection requirements apply in certain situations, updates to how dead, dying, and dangerous trees are addressed as a part of tree preservation requirements, and others. Tree-related changes in the Zoning Code included updates to the tree preservation amenity bonus in multi-family projects and updates to the non-conforming upgrade threshold.

At the hearing, we heard positive testimony from stakeholders related to the proposed changes. The UFC voted unanimously to recommend approval of the package of RICAP proposed amendments. Generally, the UFC expressed strong support for the regulations, with some minor recommended changes to clarify language in three of the RICAP items that are captured in the *RICAP 8 Recommended Draft*.

Recommendations
The UFC recommends that City Council take the following actions:

1. Adopt the *RICAP 8: Recommended Draft,* dated January 2017; and
2. Amend the Zoning Code (Title 33) and Tree Code (Title 11) as shown in *RICAP 8: Recommended Draft*.

Thank you for the opportunity to participate in the review of this project and for considering our recommendations.

Sincerely,

Mark Bello

Mark Bello, Chair
Urban Forestry Commission

Acknowledgements

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I. Introduction

A. What is RICAP?

The Regulatory Improvement Code Amendment Packages (RICAP) continually update and improve City building and land use regulations, as well as related procedures. RICAPs address simpler technical matters and clarifications, or refinement of existing policy, typically in a one-year cycle. This report is RICAP 8. It contains substantive items related to Title 33, the Zoning Code, and Title 11, the Tree Code. It also contains minor amendments to Title 17, Public Improvements and Title 24, Building Regulations, made for consistency.

Items to be considered for a RICAP originate in an online database of potential Zoning Code amendments suggested by City staff, citizens, and others. Together, the Bureau of Planning and Sustainability (BPS) and Bureau of Development Services (BDS) periodically review and rank items in the database, resulting in a workplan for the next RICAP.

The workplan is reviewed and adopted by the Planning and Sustainability Commission (PSC) at a public hearing. The list selected for each package is not a list of amendments, but of issues and areas that will be researched and analyzed; each issue may or may not result in an amendment to the Code. The RICAP 8 workplan was adopted by PSC at a public hearing on April 28, 2015. The original workplan included 37 items: 12 minor policy changes and 25 items that clarify and update code provisions.

Due to changes in staffing, this RICAP package was delayed. The extended timeline provided an opportunity to add several new items that were identified by City staff as needing urgent resolution. These 14 items are included in this report: four items related to the Zoning Code and ten related to the Tree Code.

B. Document Contents

1. Amendments & Bundles

Amendments are divided into two main categories: minor policy items and technical/clarification items. Most minor policy items are organized in bundles. Bundles are groups of items that are related to one another. Bundles may mix items that scored higher in the ranking process with related but lower-scoring items. Bundling helps realize economies of scale in the research and development work required for code amendments. There are two bundles in RICAP 8:

- <u>Land Divisions/Property Line Adjustments (Title 33)</u>
  Six of the nine minor policy amendments in this bundle relate to issues that arise during the land division process. They address how density is calculated in multi-dwelling zones and how dedications of right-of-way for pedestrian connections should be considered when calculating maximum density. They also include items related to how water features in land divisions, like drainageways and wetlands, should be defined and protected.

  A seventh item relates to how flag lots are measured. The remaining minor policy amendments deal with the movement of lot lines. These amendments address the development and service standards applied when lots lines are moved through a property line adjustment.

- Tree Bundle (Title 11)
  The Tree Code was adopted in 2011 and implementation began in early 2015. After several months of working with the Code, the Bureau of Development Services (BDS) and Urban Forestry staff identified several minor policy and technical or clarification amendments needed in the Code. These 17 amendments make up the tree bundle.

2. Other City Titles Amended for Consistency
   Because Item 14 proposes to change the name of a procedure from "Demolition Delay Review" to "120-Day Delay," and this procedure is referenced in Title 17, Public Improvements and Title 24, Building Regulations, amendments to these titles are also recommended for consistency. An additional amendment is recommended for Title 24 that would ensure that neighbors continue to receive at least 35 days notice of proposals to demolish structures in residential zones.

3. Non-Amendments to the Zoning Code
   A number of items identified in the RICAP 8 workplan did not result in changes to the Zoning Code because they either did not merit a change or the change was not timely. Additional rationale for why amendments were not developed for these items is provided in the Proposed Draft. The Planning and Sustainability Commission approved the Proposed Draft and staff's recommendation to not develop amendments for these items. Therefore, those items do not appear in this Recommended Draft.

C. Stakeholder Outreach and Feedback

The RICAP 8 workplan was published on April 10, 2015 and notice was sent to 565 agencies and individuals. The PSC held a public hearing and unanimously approved the proposed workplan on April 28, 2015.

The Discussion Draft was published on August 29, 2016 and was made available for public review and comment through October 14th. In the intervening period, staff conducted a series of outreach efforts and meetings with interested parties to answer questions and solicit feedback and suggestions. Materials were provided for all of the Neighborhood Coalitions and project staff met with Southeast Uplift and the Citywide Land Use Group, and briefed the Urban Forestry Commission, Historic Landmarks Commission and Development Review Advisory Committee. Three additional meetings with Neighborhood Coalition groups took place between October 14 and the release of the Proposed Draft, to educate and inform community members about the project so they might meaningfully engage in the hearings process. Staff also received feedback and comments via email from several members of the Portland community.

The Proposed Draft was published on November 9, 2016, for Urban Forestry Commission and Planning and Sustainability Commission review. Staff mailed written notice to 615 agencies and individuals, emailed notice to an additional 700, and continued to meet with interested parties in the intervening period. Public hearings were held on December 7 and 13, 2016, respectively. Testimony was heard at both hearings, and the Commissions separately voted to recommend RICAP 8 to City Council with minor amendments.

II. Zoning Code Items Table

RICAP 8 ITEMS RELATED TO TITLE 33: PLANNING AND ZONING

RIW #	Item Name	Amendment	Code Sections	Page #
MINOR POLICY ITEMS				
Bundle 1: Land Division/Property Line Adjustment Bundle				
1.	Flag lot - width requirement	Clarify width standards for historic flag lots and lots of record shaped like flag lots.	Table 33.110-6	12
2.	Land Divisions - Pedestrian Connections/Common Greens	i) Consider alternative site area reduction or exemption for narrow, pedestrian-only streets; ii) Clarify whether common greens and ped connections are considered streets the can create corner lots.	i) 33.610.100, 33.610.200 ii) No amendment proposed, see Proposed Draft	i) 66, 70 ii) N/A
3.	Regular Lot Lines	Reduce ability to create lot lines in PLAs and land divisions that are not straight.	33.610.200; 33.611.200; 33.667.300	68, 72, 92
4.	Land Divisions - Streams, Springs, Seeps and Wetlands	In land divisions, protect wetlands in a tract.	33.630.100; 33.640.010; 33.640.100; 33.640.200; 33.660.120; 33.662.120; 33.664.120; 33.664.220; 33.665.340	74, 78, 86
5.	Multi-Dwelling Zones Minimum Density Calculations	i) Allow removal of landslide hazard from calculation in land divisions; ii) Remove flood plain from density calculation.	i) 33.632.100 ii) No amendment proposed, see Proposed Draft	i) 76 ii) N/A
6.	Lot Consolidations	Allow the creation of up to 3 lots through a lot consolidation.	33.663.320; 33.675.010; 33.675.300; 33.675.400	84, 98
7.	Plat Consolidation	Provide a process to remove conditions of approval that are no longer relevant.		
8.	Property Line Adjustments - Services	Update standards to prevent infrastructure service conflicts.	33.667.300	
9.	Lot confirmation process and standards	Provide a process and set of standards for reviewing lot confirmations.	No amendment proposed, see Proposed Draft	N/A
10.	ROW dedications in land divisions and building permits	i) Clarify when development standards apply (before or after dedication/designation); ii) Align density calculations in single family and multifamily zones.	i) 33.930 ii) No amendment proposed, see Proposed Draft	i) 114 ii) N/A
Other Minor Policy Items				
11.	Loading Standards	Allow Standard B loading spaces on local streets that do not enter and exit the site in a forward motion.	33.266.310	26
12.	Radio Frequency Facilities Collocations	Evaluate the City's regulations to ensure consistency with federal mandate.	No amendment proposed, see Proposed Draft	N/A
13.	Signs in Historic Overlay	Provide exemption from Historic Design Review for small signs in Historic Districts.	No amendment proposed, see Proposed Draft	N/A

RIW #	Item Name	Amendment	Code Sections	Page #
14.	120-Day Delay Procedure	Require 120-day delay and notice when a ranked resource is removed from Historic Resource Inventory.	33.445.150; 33.445.210; 33.445.240; 33.445.430; 33.445.510; 33.445.520; 33.445.800; 33.445.810; 33.855.075; see Section VI	30, 36, 40, 46, 110
15.	Commission Term Limits	Allow one-year term extension for commission members if seat would otherwise be vacant.	33.710.030	104
TECHNICAL AND CLARIFICATIONS ITEMS				
16.	Established Building Line Setbacks	Clarify that the nonconforming development is the primary structure and that the reduced setback applies only to additions to the primary structure.	No amendment proposed, see Proposed Draft	N/A
17.	Amenity Bonus	Match the maximum allowed amenity bonus for preserving trees to other amenity bonus maximums.	33.120.265	14
18.	Short-Term Rental Notice	Change Figure 207-1 to clarify that notice must be mailed to both nearby owners and residents.	Figure 33.207-1	16
19.	Nonconforming change of use	Clarify what is intended by change of use.	33.258.050; 33.910.030	18, 112
20.	Nonconforming residential density	Add new section that covers intentional destruction of residences.	33.258.060	20
21.	Nonconforming upgrades	Align tree density with Title 33 required nonconforming density.	33.258.070 *See also 11.50.050*	22
22.	Rooftop ductwork and vents	Add ductwork and vents to the d overlay mechanical exemption.	33.420.045; 33.445.140; 33.445.230; 33.445.320; 33.445.420	28, 34, 38, 42
23.	Institution Zone and Design Review	Clarify that development outside of an IMP is not subject to design review.	33.420.045	28
24.	Pleasant Valley Overlay Zone - Exemptions	Add an exemption for gardens and play areas that matches the environmental overlay zone exemption.	33.465.080	56
25.	Pleasant Valley Overlay Zone - Procedures	Amend the plan review procedures to match the environmental overlay zone procedures.	33.465.410; 33.465.430	
26.	Plan District Maps - References to Code Sections	Add code references to plan district maps.	No amendment proposed, see Proposed Draft	N/A
27.	Plan District Maps - Consistent Legends	Make legends consistent across plan district maps.	No amendment proposed, see Proposed Draft	N/A
28.	Northwest Plan District - Certification Letter	Change reference from Portland Development Commission to Housing Bureau.	33.562.230	64

RIW #	Item Name	Amendment	Code Sections	Page #
29.	Posting Notices - City Council Hearings	Clarify that posted notices are not required for appeal hearings before City Council.	33.730.030; 33.730.080	106
30.	Conditional Use Review Procedures	Clarify when conditional use reviews are required on sites with two primary uses.	No amendment proposed, see Proposed Draft	N/A
31.	Definitions - Drainageway	Update the definition of drainageway for consistency with changes to BES stormwater manual and EPA watershed regulations.	33.910.030	112
32.	Definitions - Hazardous Substances	Update the definition of hazardous substances to match current federal requirements.	33.910.030	112
33.	Definitions - Seep or Spring, Stream	Update the definition of seeps and springs, and streams for consistency with changes to BES stormwater manual and EPA watershed regulations.	33.910.030	112

See Section IV for a list of Tree Code Amendments.

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III. Amendments to Title 33, Planning and Zoning

A. Section Organization

Recommended amendments to the Zoning Code are included in this section and ordered by relevant code section. For example, items amending portions of the base zone requirements (33.100's) will come before items amending portions of the overlay zones (33.400's) or plan districts (33.500's). It is important to note that some of the workplan items include amendments that span several areas of the Zoning Code. To follow the amendments for a particular item, refer to the Zoning Code Items Table in Section II, which includes references to the code sections that are being amended.

B. How to Read the Amendments

Commentary Pages

Commentary pages are formatted in "*Comic Sans*" font on even-numbered pages, opposite the code amendments they reference on the odd-numbered pages. The commentary includes a description of the problem being addressed, the legislative intent of the recommended amendment, and an assessment of the impact of the change. Also on the commentary pages is a reference to the RICAP item being addressed.

Code Amendment Pages

The code amendments appear in "Calibri" font on the odd-numbered pages. Text that is added is underlined, and text to be deleted is shown with ~~strikethrough~~. To reduce the size of the document, provisions of code that are not recommended to change are indicated by "[No Change]".

Item 1 – Flag Lot – Width Requirements

Table 110-6
Minimum Lot Dimension Standards for Lots, Adjusted Lots, Lots of Record, and Lot Remnants Created Prior to July 26, 1979

Table 110-6 shows the minimum dimensional requirements to be eligible to build on historic (created prior to July 26, 1979) lots and lots of record. This amendment clarifies that flag lots are measured at the midpoint of the flag portion of the lot, as opposed to the pole portion.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Table 110-6 Minimum Lot Dimension Standards for Lots, Adjusted Lots, Lots of Record, and Lot Remnants Created Prior to July 26, 1979		
RF through R7 Zones		
Lots, including Adjusted Lots [1]		36 feet wide and meets the minimum lot area requirement of Table 610-2. [4]
Lot Remnants		
Lots of Record		
R5 Zone		
Lots, including Adjusted Lots [1, 3]	If the lot has had a dwelling unit on it in the last five years or is in an environmental zone [2]	3000 sq. ft. and 36 ft. wide [4]
	If the lot has not had a dwelling unit on it within the last five years and is not in an environmental zone	2400 sq. ft. and 25 ft. wide [4]
	If the lot was approved through a property line adjustment under 33.667.300.A.1.d.	1600 sq. ft. and 36 ft. wide [4]
Lot Remnants [3]		3000 sq. ft. and 36 ft. wide [4]
Lots of Record [1, 3]		3000 sq. ft. and 36 ft. wide [4]
R2.5 Zone		
Lots, including Adjusted Lots [1]		1600 sq. ft.
Lot Remnants		
Lots of Record		

Notes:
[1] If the property is both an adjusted lot and a lot of record, the site may meet the standards for adjusted lots.
[2] Primary structures are allowed if the site has had a dwelling unit on it within the last five years that has been demolished as a public nuisance under the provisions of Chapter 29.40.030 or 29.60.080. The site is exempt from minimum lot dimension standards.
[3] Primary structures are allowed on a site if it has been under a separate tax account number from abutting lots or lots of record on April 24, 2010 or an application was filed with the City before April 24, 2010 authorizing a separate tax account and the site has been under separate tax account from abutting lots or lots of record by April 24, 2011. The site is exempt from minimum lot dimension standards.
[4] Lot width for a flag lot is measured at the midpoint of the flag portion of the lot.

Item 17 – Tree Code – Amenity Bonus

33.120.265 Amenity Bonuses

Title 11 requires that at least 1/3 of the trees 12-inches or greater be preserved on site. In multi-dwelling zones, preserving additional trees makes a project eligible for an amenity bonus that will increase the maximum allowed residential density. There are other amenities that can be added to a multi-family development that also make a project eligible for density bonuses. These include outdoor recreation facilities, children's play facilities, sound insulation, and solar water heating.

All listed amenities other than trees trigger a residential density bonus between 5 and 10 percent. There is a cap of 50 percent density increase that can be awarded for all amenities. Trees are currently eligible for a bonus of 5 percent for each tree preserved beyond the base requirement (1/3 of existing), with no limit on the total increase. Preserving 2 trees would make a project eligible for a density bonus of 10 percent, for example. Preserving 10 trees would make a project eligible for an increase of 50 percent. However, the intent of the amenity bonus provisions is to encourage a mix of amenities, not just trees.

This amendment reduces the eligible bonus to 2 percent for each preserved tree less than 20 inches in diameter; 3 percent for trees with diameters between 20 and 36 inches; and 5 percent for each tree 36 inches or greater in diameter. The amendment also sets a maximum limit on the tree bonus of 10 percent so that the bonus achieved via tree preservation is consistent with other amenities and the entire 50 percent maximum bonus cannot be awarded for tree preservation alone.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.120.265 Amenity Bonuses

A.- B. [No Change]

C. The amenity bonus options.

1. – 8. [No Change]

9. Tree preservation. Development proposals that preserve more than the required number or percentage of the trees on the site may receive up to a maximum of 10 percent density bonus. ~~use this amenity bonus option~~. The density bonus that may be received ~~is 5 percent~~ for each tree that is preserved in addition to those required to be preserved on the site is shown in Table 120-5.

Table 120-5 Density Bonus for Tree Preservation in Multi-family Zones	
Diameter of Tree Preserved	Density Bonus
12 to 20 inches	2 percent
20 to 36 inches	3 percent
36 inches or greater	5 percent

Each tree counted toward the bonus must be documented in an arborist report that the following are met:

a. Be at least 12 inches in diameter;

b. Not be dead, dying, or dangerous; and

c. Not be on the Nuisance Plants List.

Item 18 – Short-Term Rental Notice

Figure 207-1: Type A Accessory Short-Term Rental Permit Notice Area For All Dwelling Units Except Those in Multi-Dwelling Structures

This amendment revises Figure 207-1 so that it matches the code text in Chapter 33.207 Accessory Short-Term Rentals. One requirement of an accessory short-term rental permit is that the resident send notice to neighbors that a short-term rental will be operated in the home. The code text requires that notice be sent to residents and owners of properties that abut, or are across the street from, the short-term rental. The figure currently refers to the notification of owners, but not residents.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Figure 207-1
Type A Accessory Short-Term Rental Permit Notice Area
For All Dwelling Units Except Those in Multi-Dwelling Structures

Notice of the proposed Type A short-term rental is sent or delivered to the residents and owners of these sites.

DRAFT

Item 19 – Nonconforming Change of Use

33.258.050 Nonconforming Uses

This Section regulates when nonconforming uses can continue to operate, change, or expand – and when a change triggers either conformance with off-site impacts or nonconforming situation review.

The Section has been reorganized to more clearly differentiate three situations:

A. Continued Operation (no change of primary use)
B. Change of use in the same use category - must meet off-site impacts
C. Change of use in a different use category - subject to nonconforming situation review

These amendments also provide examples to illustrate each situation.

Additional language has been added to 33.910 to help clarify when a "change of use" has occurred.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.258.050 Nonconforming Uses

A. Continued operation. Nonconforming uses may continue to operate. Changes in operations, such as changes in ownership, hours of operation and the addition or subtraction of accessory uses, are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period of 11 pm to 6 am.

B. Change of use in the same use category. A change to ~~another~~a different use in the same use category, such as a change from one type of Community Services use to another type of Community Services use, is allowed by right, provided that the off-site impact standards of Chapter 33.262, Off-Site Impacts, are met. The applicant must document in advance that the nonconforming use will meet the off-site impact standards. For changes of use within the same use category which do not meet the off-site impact standards, the change may be allowed through a nonconforming situation review.

C. Change of use in a different use category. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review. In R zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density may be allowed through a nonconforming situation review. An example of this is conversion of a storefront in an R7 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).

C.-D. [Renumber, No Change]

Item 20 – Nonconforming Residential Density

33.258.060 Nonconforming Residential Densities

B. Discontinuance and damage. Chapter 33.258 Nonconforming Situations regulates when uses and development that no longer meet existing zoning standards are allowed to continue. The chapter allows nonconforming residential development that is damaged or destroyed by fire or other causes beyond the control of the owner to be rebuilt at the same density as the existing development under certain circumstances. These circumstances do not include those where the residential development is intentionally damaged or destroyed by the owner (including demolition).

Elsewhere in the nonconforming chapter, a distinction is made between things that are "accidental" as opposed to "intentional." This amendment adds a condition requiring a development with nonconforming residential density to meet current development standards if the development is intentionally damaged, destroyed or demolished.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.258.060 Nonconforming Residential Densities

A. [No Change]

B. Discontinuance and damage.

1. Building unoccupied but standing. Nonconforming residential density rights continue even when a building has been unoccupied for any length of time.

2. Accidental d~~D~~amage or destruction.

   a.-b. [No Change]

3. Intentional damage, destruction or demolition. When a structure that is non-conforming for residential density is intentionally damaged, destroyed or demolished by fire or other causes within the control of the owner, the nonconforming residential density rights are lost, and the new development must meet all development standards for the site.

Item 21 – Trees – Nonconforming Upgrades

33.258.070 Nonconforming Development

D. Development that must be brought into conformance. This chapter regulates how older development is upgraded to meet current development standards when expansions, remodels, or other alterations are made. Chapter 33.258 sets a cost trigger (currently $155,900). If alterations exceed this cost, upgrades to the development are required to bring the site closer into conformance with current standards. Chapter 33.258 requires the applicant to devote 10 percent of the project cost toward this goal. All of the standards are listed in Title 33, except for tree density standards, which are in Title 11.

Title 11 tree density standards are intended to be treated the same as Title 33 development standards and should count toward the 10 percent, but this is not clear. For projects over the nonconforming use threshold, compliance with Title 11 density is one of the options for coming closer to conformance, rather than being triggered in full in all cases. The applicant is allowed to choose how to spend the 10 percent.

Title 11 uses the cost trigger in Chapter 33.258, but only requires tree density standard upgrades for exterior alterations. The Title 33 standards are required for both interior and exterior alterations. It is not clear, when making upgrades with interior alterations, that the cost of trees planted that bring a site closer into conformance with the tree density standards count towards the 10 percent requirement. It is beneficial to count them, as it encourages projects to plant trees to meet the tree density standard even when not explicitly required by Title 11.

The reference to the tree density standard in Chapter 258 is also made more specific, changing from "Chapter 11.50" to "Subsection 11.50.050.C". This is the actual location in the Tree Code of the tree density standards. The intent of citing the actual Title 11 subsection where the tree density requirements reside is to clarify that trees planted to bring the site closer into conformance with the tree density standards count toward the 10 percent whether they are triggered by Title 11 for exterior alterations or whether they are associated with other alterations that are required to make nonconforming upgrades by Title 33.

Changes recommended for Title 11 Subsection 11.50.050 can be found in Section V.

Amendment also fixes typos by removing hyphens from "non-conforming" throughout Subsection (not shown).

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.258.070 Nonconforming Development

A.–C. [No Change]

D. Development that must be brought into conformance. The regulations of this subsection are divided into two types of situations, depending upon whether the use is also nonconforming or not. These regulations apply except where superseded by more specific regulations in the code.

1. Nonconforming development with a new nonconforming use or new nonconforming residential density. When there is a change to a different nonconforming use, or a change from a nonconforming nonresidential use to a nonconforming residential density, the following nonconforming development must be brought into compliance with the development standards that apply to the site (base, overlay, plan district, special use, tree density standards in Title 11):

   a. Landscaping and trees required for the following areas:
      - Exterior display, storage, and work activity areas;
      - Setbacks for surface parking and exterior development areas;
      - Interior parking lot landscaping;
      - Existing building setbacks;
      - Minimum landscaped areas other than described above; and
      - On-site tree density standards of ~~Chapter~~ Subsection 11.50.050.C ~~for the site~~.

   b.-f. [No Change]

2. [No Change]

Commentary

Item 21 – Trees – Nonconforming Upgrades

(See commentary for Item 21 – Tree Code – Nonconforming Upgrades)

b. Standards which must be met. Development not complying with the development standards listed below must be brought into conformance or receive an adjustment.

(1) Landscaping and trees required for the following areas:

- Exterior display, storage, and work activity areas;
- Setbacks for surface parking and exterior development areas;
- Interior parking lot landscaping;
- Existing building setbacks;
- Minimum landscaped areas other than described above; and
- On-Site tree density standards of ~~Chapter~~ Subsection 11.50.050.C. ~~for the site~~,

(2)–(6) [No Change]

c.–d. [No Change]

E.–G. [No Change]

Item 11 - Loading Standards: Forward Ingress/Egress

33.266.310 Loading Standards

F. **Forward motion.** Current standards require that loading spaces be constructed so that trucks can both enter and exit a space using a forward motion, as opposed to backing into, or out of, a loading space. The intent of the current regulation is twofold: i) it ensures that trucks, especially larger trucks, will not block street traffic while backing into a loading space; and ii) it ensures truck drivers have maximum visibility to safely exit the space and re-enter traffic.

This amendment removes the forward ingress/egress requirement for Standard B sized loading spaces that are i) outside of the Central City and ii) accessed from a Transportation System Plan-designated Local Service Street. A local service street is a street that generally provides access into and out of neighborhoods, carrying a low volume of traffic.

Increasingly, adjustments are being approved to allow more flexibility for Type B loading spaces on Local Service Streets, which have lower volumes of traffic. Forward ingress/egress loading spaces requires a much larger maneuvering area than back-in loading spaces. As more and more development in Portland is infill, it is difficult and undesirable to have large paved areas dedicated strictly for loading.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.266.310 Loading Standards

A.-E. [No Change]

F. Forward motion.

1. Outside the Central City plan district. Outside the Central City plan district, loading facilities generally must be designed so that vehicles enter and exit the site in a forward motion. Standard B loading spaces that are accessed from a Local Service Traffic Street are exempt from this requirement.

2. [No Change]

G. [No Change]

Item 23 – Institutional Zone and Design Review

33.420.045 Exempt From Design Review

K. Institutional development is allowed in the IR zone through an approved Conditional Use (CU), Conditional Use Master Plan (CUMP) or approved Impact Mitigation Plan (IMP). The CU and CUMP process include approval criteria that address compatibility with surrounding development, but the IMP process does not. Therefore, in the IR zone, design review is used in conjunction with IMPs, but unnecessary for development approved through a CU, CUMP or allowed by right in the IR zone.

This code amendment clarifies that any development not within an approved IMP – i.e. those approved through a CU or CUMP, or allowed by right in the IR zone – is exempt from design review.

Item 22 – Rooftop Ductwork and Vents

33.420.045 Exempt From Design Review

M. The installation of mechanical equipment on a rooftop is exempt from design review if there are no more than 8 units total and they are installed to limit visibility from the street. The amendment to Subsection M clarifies what is meant by mechanical equipment (that it includes associated elements, like ductwork).

N. There is commonly a need to place numerous vents on a rooftop – some related to mechanical equipment within the building – and others that have nothing to do with mechanical equipment, like sewer pipe vents. These are all important for the function of a building. New Subsection N creates an exemption specifically for rooftop vents, and does not cap the number, provided they meet certain criteria that limit their visibility.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.420.045 Exempt From Design Review

The following items are exempt from design review:

A.-J. [No Change]

K. ~~In the IR zone:~~Development in the IR zone, including alterations, that is not located within the boundaries of an approved Impact Mitigation Plan.

~~1. Development proposed or approved through a Conditional Use or Conditional Use Master Plan; or~~

~~2. An expansion or alteration that does not require conditional use review under 33.815.040;~~

L. [No Change]

M. Rooftop mechanical equipment and associated ductwork, other than radio frequency transmission facilities, that is added to the roof of an existing building if the following are met.

1. The area where the equipment will be installed must have a pitch of 1/12 or less;
2. No more than 8 mechanical units are allowed, including both proposed and existing units;
3. The proposed mechanical equipment must be set back at least 4 feet from the edge of the roof for every 1 foot of height of the equipment above the roof surface or top of parapet; and
4. The proposed equipment must have a matte finish or be painted to match the roof.

N. Rooftop vents installed on roofs if the vent and associated elements such as pipes, conduits and covers meet the following:

1. The area where the vent and associated elements will be installed must have a pitch of 1/12 or less;
2. The proposed vent and associated elements must not be more than 30 inches high and no larger than 18 inches in width, depth, or diameter;
3. The proposed vent and associated elements must be set back at least 4 feet from the edge of the rooftop for every 1 foot of height above the roof surface or top of parapet; and
4. The proposed vent and associated elements must have a matte finish or be painted to match the roof.

O.- CC. [Renumber, No Change]

Item 14 – 120-Day Delay Procedure

33.445 Historic Resource Overlay Zone

Portland's Historic Resource Inventory (HRI) was adopted by the Historic Landmarks Commission on October 10, 1984, as a "resource to be used by the Commission in evaluating applications for landmark designation or other recognition." The Inventory consists of two classifications of properties: ranked (I, II or III) and unranked. The Inventory was considered a first step in the formal historic designation process.

When an owner applies for the demolition of a ranked resource listed in the City's HRI, BDS cannot issue a permit for a demolition or alteration until 120 days later. The purpose of the delay is to notify the public of the application for demolition so they can contact the property owner to explore alternatives to demolition.

However, until recently, another option was for the owner to request to be removed from the HRI prior to applying for a demolition permit. The resource was removed from the HRI when the owner sent a written request to BDS. Once removed from the list, demolition delay review was no longer triggered by the demolition application, and the 120-day delay did not apply. The opportunity for the public to work with the property owner to explore alternatives to demolition was lost.

A recent Oregon Supreme Court decision interpreted a state law that applies to the designation of historic properties by local governments. Among other things, the law requires the City to wait 120 days before issuing a permit for modification or demolition of a building designated as a historic resource. In response, BDS issued a Level of Service Update on September 1, 2016 to implement this interpretation.

The following amendments, consistent with the Oregon Supreme Court decision and BDS' Level of Service Update, codify a more consistent approach to applying a 120-day delay to ranked resources proposed for demolition or removal from the HRI. They also require neighborhood and organization notice when either request has been made.

STAFF NOTE: The Planning and Sustainability Commission's recommendation authorized staff to further refine code language as necessary when preparing the Recommended Draft. For consistency with discussion at the Planning and Sustainability Commission hearing and ease of implementation, code language in this Chapter was refined to clarify that a ranked resource will be removed from the HRI at the completion of the 120-day delay, rather than at the beginning of the procedure. Additionally, recommended language in 33.445.810.B.3 was refined and restructured to further make this clear.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445 Historic Resource Overlay Zone

445

Sections:

General
33.445.010 Purpose
33.445.020 Where These Regulations Apply
33.445.030 Types of Historic Resources and Map Symbols
33.445.040 Adoption of Design Guidelines
33.445.050 Modifications that Enhance Historic Resources
33.445.060 Notice of Building and Housing Code Violations
Historic Landmarks
33.445.100 Designation of a Historic Landmark
33.445.110 Removal of a Historic Landmark Designation
33.445.120 Historic Preservation Incentives for Historic Landmarks
33.445.130 Relocation of a Historic Landmark
33.445.140 Alterations to a Historic Landmark
33.445.150 Demolition of a Historic Landmark
Conservation Landmarks
33.445.200 Designation of a Conservation Landmark
33.445.210 Removal of a Conservation Landmark Designation
33.445.220 Historic Preservation Incentives for Conservation Landmarks
33.445.230 Alterations to a Conservation Landmark
33.445.240 Demolition of a Conservation Landmark
Historic Districts
33.445.300 Designation of a Historic District
33.445.310 Removal of a Historic District Designation
33.445.315 Preservation Agreements in Historic Districts
33.445.320 Development and Alterations in a Historic District
33.445.330 Demolition of Historic Resources in a Historic District
Conservation Districts
33.445.400 Designation of a Conservation District
33.445.410 Removal of a Conservation District Designation
33.445.415 Preservation Agreements in Conservation Districts
33.445.420 Development and Alterations in a Conservation District
33.445.430 Demolition of Historic Resources in a Conservation District
Historic Resource Inventory Listing
33.445.500 Listing in the Historic Resource Inventory
33.445.510 Removal of Historic Resource Inventory Listing
33.445.515 Preservation Agreements for Resources Listed in the Historic Resource Inventory
33.445.520 Demolition of Properties Listed in the Historic Resource Inventory
Historic Preservation Agreements and Historic Preservation Incentives
33.445.600 Preservation Agreements
33.445.610 Historic Preservation Incentives

Commentary

Item 14 – 120-Day Delay Procedure

33.445 Historic Resource Overlay Zone

(See commentary for Item 14 – 120-Day Delay Procedure)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Community Design Standards

33.445.700 Purpose 33.445.710 When Community Design Standards May Be Used

33.445.720 When Community Design Standards May Not Be Used

~~Demolition Reviews~~120-Day Delay

33.445.800 Types of Reviews

33.445.805 Supplemental Application Requirements

33.445.810 Demolition Delay Review 33.445.810 ~~Demolition Delay Review~~120-Day Delay

Item 22 – Rooftop Ductwork and Vents

33.445.140 Alterations to a Historic Landmark

(See commentary for Item 22 - Rooftop Ductwork and Vents)

B. **Exempt from historic resource review.** Amendments make this Section consistent with the structure and exemptions of 33.420.045.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.140 Alterations to a Historic Landmark

Alterations to a Historic Landmark require historic resource review to ensure the landmark's historic value is considered prior to or during the development process.

A. [No Change]

B. Exempt from historic resource review.

1.-6. [No Change]

7. Rooftop mechanical equipment and associated ductwork, other than radio frequency transmission facilities, that is added to the roof of an existing building if the following are met.

   a. The area where the equipment will be installed must have a pitch of 1/12 or less;

   b. No more than 8 mechanical units are allowed, including both proposed and existing units;

   c. The proposed mechanical equipment must be set back at least 4 feet from the edge of the roof for every 1 foot of height of the equipment above the roof surface or top of parapet; and

   d. The proposed equipment must have a matte finish or be painted to match the roof.

8. Rooftop vents installed on roofs if the vent and associated elements such as pipes, conduits and covers meet the following:

   a. The area where the vent and associated elements will be installed must have a pitch of 1/12 or less;

   b. The proposed vent and associated elements must not be more than 30 inches high and no larger than 18 inches in width, depth, or diameter;

   c. The proposed vent and associated elements must be set back at least 4 feet from the edge of the rooftop for every 1 foot of height above the roof surface or top of parapet; and

   d. The proposed vent and associated elements must have a matte finish or be painted to match the roof.

8.-12. [Renumber, No Change]

Commentary

Item 14 – 120-Day Delay Procedure

33.445.150 Demolition of a Historic Landmark
33.445.210 Removal of a Conservation Landmark Designation

Changes throughout the Chapter reflect the renaming of "demolition delay review" to "120-day delay." Because a property owner may remove a resource from the HRI without intending to demolish it, the procedure name was not appropriate. The new procedure will provide a more consistent process and eliminate the incentive to remove a ranked resource from the HRI to avoid the 120-day delay.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.150 Demolition of a Historic Landmark

Demolition of a Historic Landmark requires one of two types of review to ensure the landmark's historic value is considered. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

A. [No Change]

B. ~~Demolition delay review~~120-day delay. Unless addressed by Subsection A, above, or exempted by Subsection C, below, all Historic Landmarks are subject to ~~demolition delay review~~120-day delay.

C. Exempt from demolition review and ~~demolition delay review~~120-day delay. The following are exempt from demolition review and demolition delay review:

1.-2. [No Change]

Conservation Landmarks

33.445.200 Designation of a Conservation Landmark

A.-B. [No Change]

33.445.210 Removal of a Conservation Landmark Designation

A.–B. [No Change]

C. Removal after demolition. If the resource is demolished or relocated, after either approval of demolition through demolition review or after ~~demolition~~120-day delay, its Conservation Landmark designation is automatically removed.

Item 22 – Rooftop Ductwork and Vents

33.445.230 Alterations to a Conservation Landmark

(See commentary for Item 22 - Rooftop Ductwork and Vents)

B. **Exempt from historic resource review.** Amendments make this Section consistent with the structure and exemptions of 33.420.045.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.230 Alterations to a Conservation Landmark

Alterations to Conservation Landmarks require historic resource review to ensure the landmark's historic value is considered prior to or during the development process.

A. [No Change]

B. Exempt from historic resource review.

1.-6. [No Change]

7. Rooftop mechanical equipment and associated ductwork, other than radio frequency transmission facilities, that is added to the roof of an existing building if the following are met.

   a. The area where the equipment will be installed must have a pitch of 1/12 or less;

   b. No more than 8 mechanical units are allowed, including both proposed and existing units;

   c. The proposed mechanical equipment must be set back at least 4 feet from the edge of the roof for every 1 foot of height of the equipment above the roof surface or top of parapet; and

   d. The proposed equipment must have a matte finish or be painted to match the roof.

8. Rooftop vents installed on roofs if the vent and associated elements such as pipes, conduits and covers meet the following:

   a. The area where the vent and associated elements will be installed must have a pitch of 1/12 or less;

   b. The proposed vent and associated elements must not be more than 30 inches high and no larger than 18 inches in width, depth, or diameter;

   c. The proposed vent and associated elements must be set back at last 4 feet from the edge of the rooftop for every 1 foot of height above the roof surface or top of parapet; and

   d. The proposed vent and associated elements must have a matte finish or be painted to match the roof.

8.-12. [Renumber, No Change]

Commentary

Item 14 – 120-Day Delay Procedure

33.445.240 Demolition of a Conservation Landmark

Changes throughout the Chapter reflect the renaming of "demolition delay review" to "120-day delay." Because a property owner may remove a resource from the HRI without intending to demolish it, the procedure name was not appropriate. The new procedure will provide a more consistent process and eliminate the incentive to remove a ranked resource from the HRI to avoid the 120-day delay.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.240 Demolition of a Conservation Landmark

Demolition of a Conservation Landmark requires one of two types of review to ensure the landmark's historic value is considered. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

A. Demolition review.

1.-2. [No Change]

B. ~~Demolition delay review~~120-day delay. Unless addressed by Subsection A, above, or exempted by Subsection C, below, all Conservation Landmarks are subject to ~~demolition delay review~~120-day delay.

C. Exempt from demolition review and ~~demolition delay review~~120-day delay.

1.-2. [No Change]

Item 22 – Rooftop Ductwork and Vents

33.445.320 Development and Alterations in a Historic District

(See commentary for Item 22 - Rooftop Ductwork and Vents)

B. Exempt from historic resource review. Amendments make this Section consistent with the structure and exemptions of 33.420.045.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.320 Development and Alterations in a Historic District

Building a new structure or altering an existing structure in a Historic District requires historic resource review to ensure the resource's historic value is considered prior to or during the development process.

A. [No Change]

B. Exempt from historic resource review.

1.-8. [No Change]

9. Rooftop mechanical equipment and associated ductwork, other than radio frequency transmission facilities, that is added to the roof of an existing building if the following are met. ~~For vents, the applicant may choose to meet either the standards of this paragraph or those of paragraph B.10, Vents.~~

   a. The area where the equipment will be installed must have a pitch of 1/12 or less;

   b. No more than 8 mechanical units are allowed, including both proposed and existing units;

   c. The proposed mechanical equipment must be set back at least 4 feet from the edge of the roof for every 1 foot of height of the equipment above the roof surface or top of parapet; and

   d. The proposed equipment must have a matte finish or be painted to match the roof.

10. Vents. On all residential structures in the RF through R1 zones and residential structures with up to three dwelling units ~~on~~in other zones, vents that meet all of the following:

   a. [No Change]

   ~~b.~~ Rooftop vents. Vents installed on roofs, and associated elements such as pipes, conduits and covers, must meet the following. ~~The regulations and measurements include elements associated with the vent, such as pipes and covers. The vent must:~~

      (1) Be on a flat roof;

      (2) Not be more than 30 inches high and no larger than 18 inches in width, depth, or diameter;

      (3) Set back from the perimeters of the building at least 4 feet for every 1 foot of height; and

      (4) Painted to match the adjacent surface.

11.-22. [No Change]

Item 22 – Rooftop Ductwork and Vents

33.445.420 Development and Alterations in a Conservation District

(See commentary for Item 22 - Rooftop Ductwork and Vents)

B. Exempt from historic resource review. Amendments make this Section consistent with the structure and exemptions of 33.420.045.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.420 Development and Alterations in a Conservation District

Building a new structure or altering an existing structure in a Conservation District requires historic resource review to ensure the resource's historic value is considered prior to or during the development process.

A. [No Change]

B. Exempt from historic resource review.

1.-8. [No Change]

9. Rooftop mechanical equipment and associated ductwork, other than radio frequency transmission facilities, that is added to the roof of an existing building if the following are met. ~~For vents, the applicant may choose to meet either the standards of this paragraph or those of paragraph B.11, Vents.~~
   a. The area where the equipment will be installed must have a pitch of 1/12 or less;
   b. No more than 8 mechanical units are allowed, including both proposed and existing units;
   c. The proposed mechanical equipment must be set back at least 4 feet from the edge of the roof for every 1 foot of height of the equipment above the roof surface or top of parapet; and
   d. The proposed equipment must have a matte finish or be painted to match the roof.

10. Vents. On all residential structures in the RF through R1 zones and residential structures with up to three dwelling units in other zones, vents that meet all of the following:
   a. [No Change]
   b. Rooftop vents. Vents installed on roofs, and associated elements such as pipes, conduits and covers, must meet the following. ~~The regulations and measurements include elements associated with the vent, such as pipes and covers. The vent must:~~
      (1) Be on a flat roof;
      (2) Not be more than 30 inches high and no larger than 18 inches in width, depth, or diameter;
      (3) Set back from the perimeters of the building at least 4 feet for every 1 foot of height; and
      (4) Painted to match the adjacent surface.

11.-22. [No Change]

Item 14 – 120-Day Delay Procedure

33.445.430 Demolition of Historic Resources in a Conservation District

Changes throughout the Chapter reflect the renaming of "demolition delay review" to "120-day delay." Because a property owner may remove a resource from the HRI without intending to demolish it, the procedure name was not appropriate. The new procedure will provide a more consistent process and eliminate the incentive to remove a ranked resource from the HRI to avoid the 120-day delay.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.430 Demolition of Historic Resources in a Conservation District

Historic Landmarks in a Conservation District are subject to the regulations of Section 33.445.150. Conservation Landmarks in a Conservation District are subject to the regulations of Section 33.445.240. Demolition of other historic resources in a Conservation District requires one of two types of review to ensure the resource's historic value is considered prior to or during the development process. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

A. Demolition review.

1.-2. [No Change]

B. ~~Demolition delay review~~120-day delay. Unless addressed by Subsection A, above, or exempted by Subsection C, below, all primary structures in Conservation Districts are subject to ~~demolition delay review~~120-day delay.

C. Exempt from demolition review and ~~demolition delay review~~120-day delay. The following are exempt from demolition review and ~~demolition delay review~~120-day delay:

1.-2. [No Change]

Item 14 – 120-Day Delay Procedure

33.445.510 Removal of Historic Resource Inventory Listing

This amendment establishes a 120-day delay for removal from the HRI and permit issuance – renamed "120-day delay" – and a noticing requirement triggered by the removal of a ranked resource from the HRI, consistent with ORS 197.772. This ensures adequate opportunity for the public to explore preservation opportunities when ranked resources are removed from the Inventory. No permits for alteration or demolition may be issued during the 120-day delay period, other than a permit for relocation of a ranked resource.

33.445.520 Demolition of Resources Listed in the Historic Resource Inventory

These subsections were revised to allow the same exemptions that are currently allowed for demolition review and demolition delay review to apply to the removal of ranked resources from the HRI.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.445.510 Removal of Historic Resource Inventory Listing

A. Automatic removal of listing in the Historic Resource Inventory. When a resource listed in the City's Historic Resource Inventory is demolished or destroyed by causes beyond the control of the owner, its listing in the Inventory is automatically removed.

B. Requests for removal of ranked resources. Removal of ranked resources in the City's Historic Resource Inventory is subject to the 120-day delay specified in Sections 33.445.520.B and 33.445.810. ~~A resource listed in the City's Historic Resource Inventory will be removed from the Inventory if the owner sends a written request to the Bureau of Development Service. The resource will be removed from the Inventory on the date that the Bureau of Development Services receives the request.~~

C. Requests for removal of unranked resources. An unranked resource will be removed from the Inventory on the date that the Bureau of Development Services receives the property owner's written request to remove the resource from the Inventory.~~Removal after demolition. When a resource listed in the City's Historic Resource Inventory is demolished, after either approval of demolition through demolition review or after demolition delay, its listing in the Inventory is automatically removed.~~

33.445.515 Preservation Agreements for Resources Listed in the Historic Resource Inventory [No Change]

33.445.520 Demolition of Resources Listed in the Historic Resource Inventory

A. Demolition Review. [No Change]

B. ~~Demolition delay review~~120-day delay. Unless addressed by Subsection A, above, or exempted by Subsection C, below, Rank I, II, or III resources listed in the City's Historic Resource Inventory are subject to ~~demolition delay review.~~120-day delay.

C. Exempt from demolition review, and ~~demolition~~120-day delay. Rank I, II, or III resources listed in the City's Historic Resource Inventory that are required to be demolished because of the following are exempt from demolition review and ~~demolition delay review~~120-day delay:

1.-2. [No Change]

Item 14 – 120-Day Delay Procedure

33.445.800 Types of Procedures.

Amendment updates "Demolition Delay Review" to "120-Day Delay."

33.445.810 120-Day Delay.

Revisions to this Section ensure that resources being removed from the HRI go through the newly termed "120-day delay", along with requests for demolitions of these resources.

Subsection B. These amendments clarify that permits for demolition or alteration of a property removed from the HRI, and subject to 120-day delay, will not be issued during the delay period. Permits that may be required to relocate a previously ranked structure could be issued during the delay.

Subsection C. The requirement to submit photos was added to the application requirement so that it would apply to both HRI removals and demolition permit applications. It was moved from Paragraph 3, which applied only to demolitions, not HRI removals.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

~~Demolition Reviews~~120-Day Delay

33.445.800 Types of ~~Reviews~~Procedures.

There are two types of ~~review~~procedure that may be required before a historic resource is demolished or a ranked historic resource is removed from the City Historic Resource Inventory. Other sections of this chapter describe when each review is required. The two types ~~of review~~ are:

A. ~~**Demolition Delay Review**~~**120-Day Delay.** See Section 33.445.810;

B. **Demolition Review.** See Section 33.846.080.

33.445.805 Supplemental Application Requirements

[No Change]

33.445.810 ~~Demolition Delay Review~~120-Day Delay.

A. **Purpose.** ~~Demolition~~120-day delay allows time for consideration of alternatives to demolition, such as restoration, relocation, or architectural salvage. It also provides notice when a request has been made to remove a ranked resource from the Historic Resource Inventory.

B. **Suspension of permit issuance.** During the 120-day delay period, no permit for the demolition or alteration of a ranked resource removed from the Historic Resource Inventory may be issued. This suspension of permit issuance does not apply to relocation of a ranked resource during the 120-day delay period.

~~**B.**~~**C.** **Procedure for ~~Demolition Delay Review~~120-Day Delay.** ~~Demolition~~120-day delay is a nondiscretionary administrative process with public notice but no hearing. Decisions are made by the Director of BDS and are final.

1. Application. The applicant must submit an application for a demolition permit or a written request to BDS to remove the ranked resource from the Historic Resource Inventory. Current or historic photographs of the features of the resource that were identified when the resource was nominated, designated, placed within a Historic District or Conservation District, or placed on the Historic Resource Inventory must be included with the application for a demolition permit or request for removal from the Historic Resource Inventory.

2. Notice of application.

   a. Posting notice on the site. Within 14 days of applying for a demolition permit or submitting a written request for removal of a ranked resource from the Historic Resource Inventory, the applicant must post a notice on the site of the historic resource proposed for demolition or removal from the Historic Resource Inventory. The posting must meet the following requirements:

Commentary

Item 14 – 120-Day Delay Procedure

33.445.810 120-Day Delay

Subsubparagraph (2). Amendments alter the existing noticing requirements for demolition requests to apply to both demolitions and requests for removal of ranked resources from the HRI. Specified organizations and residents would also receive Title 24 residential delay notice if a structure in a residential zone is proposed to be demolished.

(1) Number and location of posted notices. Notice must be placed on each frontage of the site occupied by the historic resource ~~proposed for demolition~~. Notices must be posted within 10 feet of the street lot line and must be visible to pedestrians and motorists. Notices may not be posted in a public right-of-way. Notices are not required along street frontages that are not improved and allow no motor vehicle access;

(2) Content of the posted notice. The notice must include the following information:

- The date of the posted notice;
- The address of the resource proposed for demolition or removal from the City Historic Resource Inventory;
- A statement specifying what action triggered the 120-day delay procedure and this notice.
- A statement that during the 120-day delay period, no building permit for the demolition or alteration of a ranked resource requested to be demolished or removed from the Historic Resource Inventory may be issued, other than a permit for relocation of the ranked resource.
- A statement that the purpose of the 120-day delay is to allow time for notice, and if proposed for demolition, time to consider alternatives, including restoration, relocation or salvage of materials.
- A statement that building permits may be issued after [insert 120 days after a request for Historic Resource Inventory removal is accepted by the Bureau of Development Services], or, if proposed for demolition, the date on which the demolition permit will be issued.
- The name, address, and telephone number of the owner or the party acting as an agent for the owner;
- ~~The statement, "Structure to be demolished;"~~
- ~~The statement, "Demolition of this structure has been delayed to allow time for consideration of alternatives to demolition. Alternatives to demolition might include restoration, relocation, or architectural salvage;"~~
- ~~The address of the structure proposed for demolition;~~
- ~~The name, address, and telephone number of the owner or the party acting as an agent for the owner;~~
- ~~The date of the posting; and~~
- ~~A statement that a demolition permit may be issued 120 days after application was made for demolition, and the date that the permit will be issued.~~

(3) Removal of the posted notice. The posted notice must not be removed until the date on which ~~until~~ the demolition permit is issued~~.~~ or the resource is removed from the Historic Resource Inventory. The posted notice must be removed within 30 days of that date. ~~the issuance of the demolition permit.~~

Item 14 – 120-Day Delay Procedure

33.445.810 120-Day Delay

Subsubparagraph b.(1)
Amendment expands noticing requirement to nearby properties, consistent with noticing requirements in Title 24 for Residential Demolition Delay. Ranked resources in residential zones for which an owner applies for demolition, either initially or during a 120-day delay period triggered by an HRI removal request, will be subject to both titles. Because of this, language was added to ensure that the pool of those being notified was consistent for the two titles, reducing potential confusion.

Subsubparagraph b.(2)
This amendment removes an outdated code provision. BDS no longer maintains a subscription service for notice of demolition delay.

Paragraph 3
The photo requirement has been deleted here. The submission of photos is now required as part of the initial application/request.

This section was restructured and language has been added to clarify that the decision and requirement to respond to offers of salvage, relocation, etc., only apply to demolition permits, not HRI removal requests. It also makes clear when, in the procedure, a ranked resource is removed from the HRI.

b. Mailed notice.

~~(1) Notice to recognized associations.~~ Within 14 days of receiving the application for a demolition permit or request for removal of a ranked property from the Historic Resource Inventory, the Director of BDS will mail a notice of the proposed demolition or Historic Resource Inventory removal to all properties within 150 feet of the site of the resource, all recognized organizations within 1,000 feet of the site of the resource and to the State Historic Preservation Office. If the proposal is to demolish a resource or remove a ranked resource from the Historic Resource Inventory in a Conservation District or Historic District and the district has a Historic Advisory Committee that has been recognized by the neighborhood association, notice will also be sent to the Historic Advisory Committee. The notice will include the same information as in Subsubparagraph ~~B.1.b~~C.2.a.(2), above.

~~(2) Notice to other interested parties. The Director of BDS will maintain a subscription service for organizations and individuals who wish to be notified of applications for demolition of historic resources subject to demolition delay review. There is a fee for this notification service. Within 14 days of receiving the application for a demolition permit, the Director of BDS will mail a notice of the proposed demolition to all subscribers. The notice will include the same information as in Subparagraph B.1.b, above.~~

3. Decision.

a. Demolition permit. The Director of BDS will issue the demolition permit 120 days after receiving the application if the ~~following requirements have been met:~~applicant submits

~~a. Photographic documentation. The applicant must submit photographs of the features of the resource that were identified when the resource was nominated, designated, placed within a Historic District or Conservation District, or placed on the Historic Resource Inventory. BDS will retain a copy of the documentation for the purpose of public information.~~

~~b. Response to offers of relocation or salvage. The applicant must submit~~ a letter stating that the applicant responded to all offers to relocate the resource, or to salvage elements of the resource during demolition. The letter must also identify those who submitted offers, and the applicant's response to those offers.

b. Historic Resource Inventory removal. The Director of BDS will remove the ranked resource from the Historic Resource Inventory 120 days after a request for Historic Resource Inventory removal is accepted by the Bureau of Development Services.

Item 24 – Pleasant Valley Overlay Zone – Exemptions

33.465.080 Items Exempt From These Regulations

Regulations in Chapter 33.430, Environmental Zones were updated several years ago to allow activities like gardens and play areas where some disturbance of resources has already occurred. The Pleasant Valley Natural Resources Overlay Zone is written to closely match the Environmental overlay zone. When the amendments to allow gardens and play areas were added to the Environmental overlays, a similar change was not made in Pleasant Valley.

A review of the history of the garden and play areas change indicates that this was not intentional and that the reasons for making the change in the Environmental zones apply in the Pleasant Valley Natural Resources Overlay zone as well.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.465.080 Items Exempt From These Regulations

The following items, unless prohibited by Section 33.465.090, below, are exempt from the regulations of this chapter. Other City regulations such as Title 10, Erosion Control, and Title 11, Trees, must still be met. When no development or other activities are proposed that are subject to the development standards or review requirements of this chapter, tree removal allowed under the exemptions below is subject to the tree permit requirements of Title 11, Trees.

A.-B. [No Change]

C. Existing development, operations, and improvements, including the following activities:

1.-2. [No Change]

3. Changes to existing disturbance areas to accommodate outdoor activities such as gardens and play areas so long as plantings do not include plants on the Nuisance Plants List and no trees 6 or more inches in diameter are removed;

3.-9. [Renumber, No Change]

D. [No Change]

Item 25 – Pleasant Valley Overlay Zone – Procedures

Notice and Review Procedure

Regulations in Chapter 33.430, Environmental Zones were updated several years ago to streamline the notification and review procedures for environmental plan checks. The Pleasant Valley Natural Resources Overlay Zone was written to closely match the Environmental overlay zone, and when the latter code was updated, similar updates were not carried over to the Pleasant Valley section.

A review of the history of the changes indicates that this was not intentional and that the reasons for making the change in the Environmental zones apply in the Pleasant Valley Natural Resources Overlay zone as well. These amendments will make the procedures in the Pleasant Valley overlay the same as in the Environmental overlay.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Notice and Review Procedure

33.465.410 Purpose

The purpose of this notice and review procedure is to provide for participation by the applicant and the public in the process of permitting development in areas having identified significant resources and functional values. ~~Public participation will reduce the chance of avoidable detrimental impacts on resources and functional values.~~

33.465.420 When These Regulations Apply

These regulations apply when a building permit or development permit application is requested within the resource area of the Pleasant Valley Natural Resources overlay zone and is subject to the development standards of Section 33.465.110 through .180. These regulations do not apply to building permit or development permit applications for development that has been approved through Pleasant Valley resource review.

33.465.430 Procedure

Applications for building permits or development permits that qualify under 33.465.420 will be processed according to the following procedures:

A. Application. The applicant must submit a site plan with an application for a permit. The site plan must contain all information required by 33.465.130, Permit Application Requirements, and any additional information required for a building permit or development permit review.

B. Notice of an application ~~request~~.

1. Notice on website. Upon receipt of a complete application for a building or development permit, the Director of BDS will post a notice of the application on the BDS website and mail a notice of the request to all recognized organizations within 400 feet of the site. The posted notice of the application will contain at least the following information:

   - A statement that a building or development permit has been applied for that is subject to the Development Standards of Section 33.465.110 through .180.
   - The legal description and address of the site;
   - A copy of the site plan;
   - The place where information on the matter may be examined and a telephone number to call; and
   - A statement that copies of information on the matter may be obtained for a fee equal to the City's cost for providing the copies.
   - The notice will remain on the website until the permit is issued and administrative decision is made, or until the application is withdrawn.

2. E-mailed notice to recognized neighborhood associations. At the time a notice is posted on the BDS website, the Director of BDS will e-mail information about the internet posting to all recognized neighborhood associations and neighborhood coalition offices within 400 feet of the site. When an e-mail address is not available, the notice will be mailed to the neighborhood association and coalition office.

Item 25 – Pleasant Valley Overlay Zone – Procedures

Notice and Review Procedures

(See commentary for Item 25 – Pleasant Valley Overlay Zone – Procedures)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

~~1. Mailed notice. Within one business day of receipt of a complete site plan for a building or development permit application, the Director of BDS will mail a notice of the request to all recognized organizations within 400 feet of the site. The notice of request will contain at least the following information:~~

~~A statement that a building or development permit has been applied for that is subject to the development standards of Section 33.465.110 through .180.~~

~~a. The legal description and address of the site;~~
~~b. A copy of the site plan;~~
~~c. The place where information on the matter may be examined and a telephone number to call;~~
~~d. A statement that copies of information on the matter may be obtained for a fee equal to the City's cost for providing the copies; and~~
~~e. A statement describing the comment period.~~

~~2. Posting notice on the site. The applicant must place a public notice about the request on the site within 24 hours after the application is deemed complete by the Bureau of Development Services. A posted notice must be placed on each frontage of the site. If a frontage is over 600 feet long, a notice is required for each 600 feet, or fraction thereof. Notices must be posted within 10 feet of a street lot line and must be visible to pedestrians and motorists. Notices may not be posted in a public right-of-way. The posted notice will contain the same information as the mailed notice.~~

~~3. Marking proposed development on site. Within 24 hours of submitting an application for permit, the applicant will mark all trees over six inches diameter to be removed on the site and the building and pavement outlines with high visibility tape. The extent of the disturbance area must be marked with orange construction fencing or similar highly visible material.~~

C. Posting the site and marking development. The applicant must post notice information on the site and identify disturbance areas as specified below.

1. Posting notice on the site. The applicant must place a public notice about the request on the site when the application is deemed complete by the Bureau of Development Services. A posted notice must be placed on each frontage of the site. If a frontage is over 600 feet long, a notice is required for each 600 feet, or fraction thereof. Notices must be posted within 10 feet of a street lot line and must be visible to pedestrians and motorists. Notices may not be posted in a public right-of-way. Notices are not required along street frontages that are not improved and allow no motor vehicle access. The posted notice will contain the same information as the notice posted on the internet.

Item 25 – Pleasant Valley Overlay Zone – Procedures

Notice and Review Procedures

(See commentary for Item 25 – Pleasant Valley Overlay Zone – Procedures)

2. Marking proposed development on site. Prior to inspection of the site, the applicant will mark all trees over six inches diameter to be removed on the site and the building and pavement outlines with high visibility tape. The extent of the disturbance area must be marked with orange construction fencing or similar highly visible material. For corrections to violations, the disturbance area and remediation area to be planted must be identified with high visibility tape or similar high visibility material.area to be planted must be identified with high visibility tape or similar high visibility material.

~~C~~**D. Site inspection.** ~~The Bureau of Development Services~~ A BDS inspector will inspect the site prior to issuance of the permit and will complete one of the following:

1. An inspection report that confirms the accuracy of the site plan and conformance with the applicable development standards; or
2. A check sheet identifying the deficiencies in the plan. Deficiencies must be corrected before a building permit is approved, or they may be addressed through Pleasant Valley resource review as described in Sections 33.465.210 through 33.465.280.

~~**D. Notice of intent to approve a permit.** Upon receipt of the inspector's report indicating that the standards are met, the Director of BDS will mail a notice of intent to approve the permit to all recognized organizations within 400 feet of the site and anyone who has commented on the matter. The notice of request will contain at least the following information:~~

~~1. A statement of the intent to approve a permit;~~

~~2. The legal description and address of the site;~~

~~3. A copy of the site plan; and~~

~~4. A statement indicating where and how to respond with objections.~~

E. ~~Objections~~Comments. Any interested person may ~~object to the approval of a~~ comment on the permit application by writing and specifically identifying errors or ~~concerns~~ non-compliance with development standards. ~~Objections must be received within 14 days of the mailing date of the notice of intent to approve the permit.~~

~~**F. When no objection is received.** If no one objects within the 14-day comment period, the Director of BDS will approve the permit if it meets all applicable standards and regulations of the Zoning Code.~~

~~**G**~~**F. Response to ~~objections~~comments.** If a~~n objection~~ comment is received, the Director of BDS will respond in writing ~~within 14 days of the end of the initial 14-day comment period~~ or in a manner suitable to the comment. The ~~written~~ response will specifically address each comment ~~or objection~~ that concerns compliance with the development standards of Section 33.465.150 through .180. The Director of BDS will recheck permits for compliance with development standards and approve the permit if compliance is reaffirmed or when identified deficiencies are corrected, and when all applicable standards and regulations of the Zoning Code are met.

Item 28 – Northwest Plan District – Certification Letter

33.562.230 Bonus Options

E. **Height and floor area ratio bonuses for affordable housing.** This section references the Portland Development Commission (PDC) as the agency that certifies housing affordability. PDC no longer has this role. It was transferred to the Portland Housing Bureau. This amendment reflects the change in authority.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.562.230 Bonus Options

A.-D. [No Change]

E. Height and floor area ratio bonuses for affordable housing. In bonus areas A, B, and C shown on Map 562-6, development that includes affordable housing may be up to 120 feet in height and receive an additional floor area ratio of 1 to 1 if the following requirements are met:

1.-2. [No Change]

3. The applicant must submit with the development application a letter from the Portland Housing Bureau~~Development Commission (PDC)~~ certifying that the development will include affordable housing that meets the standards of one of the options of Paragraph E.2, above;

4-5. [No Change]

F. – G. [No Change]

Item 2 - Land Divisions - Pedestrian Connections

33.610.100 Density Standards

For land divisions in a single dwelling zone, an automatic 15% is deducted from the site area to calculate minimum and maximum density when the division will result in the creation of a street. This deduction is based on an assumed right-of-way dedication, but does not take into account differences in streets. A bicycle and pedestrian connection is generally much narrower than a street designed to accommodate automobile traffic. In these cases, the 15% deduction may not be appropriate but can preclude the land division.

This amendment exempts pedestrian connections that are self-contained streets created solely for the use of pedestrian and bicyclists from the automatic 15% deduction from the density calculation.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.610.100 Density Standards

A.-C. [No Change]

D. Street created. Where a street will be created as part of the land division, the following maximum and minimum density standards apply. Pedestrian connections that are self-contained streets created solely for the use of pedestrians and bicyclists are not considered streets for the purposes of calculating density under this subsection. Adjustments to this subsection are prohibited.

1.-2. [No Change]

Item 3 - Regular Lot Lines

33.610.200 Regular Lot Lines

Prior to 2002, Title 34 (the land division code) included a requirement that side lot lines be perpendicular to a street (or radial in the case of a curve). The 2002 Land Divisions Code Update project moved the land division review and approval process into Title 33. The Title 34 requirement for side lot lines was not included in the 2002 land division requirements in Title 33. In practice, the lack of a requirement for straight, perpendicular lines can lead to situations where oddly shaped lots are created in land divisions to circumvent other lot dimensional requirements like lot area and lot width. This can lead to irregular lot patterns in single-dwelling zones with jagged property lines that are confusing to future property owners and that can lead to complications in building fences or installing and maintaining utilities.

This amendment would introduce the perpendicular side lot line criterion that was in Title 34 into Title 33 for single-dwelling zones. The criterion requires that all lot lines be straight and that side lot lines be perpendicular to the street (or radial to a curve) as far as is practicable. This will allow the decision-maker for the land division to evaluate situations where there are justifiable reasons, such as natural resource protection, for which these criteria are not feasible – and could approve alternate configurations.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.610.200 Lot Dimension Regulations

Lots in the RF through R5 zones must meet the lot dimension regulations of this section.

A. Purpose. The lot dimension regulations ensure that:

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;
- Lots are compatible with existing lots;
- Lots are wide enough to allow development to orient toward the street;
- Lots don't narrow to an unbuildable width close to the street
- Each lot has adequate access from the street;
- Each lot has access for utilities and services; ~~and~~
- Lots are not landlocked; and
- Lots are regularly shaped.

Table 610-2 [No Change]

B.-F. [No Change]

G. Regular lot lines. As far as is practical, all lot lines must be straight and the side lot lines of a lot or parcel must be at right angles to the street on which it fronts, or be radial to the curve of a curved street.

Commentary

Item 2 - Land Divisions - Pedestrian Connections/Common Greens

33.611.100 Density Standards

(See commentary for Item 2 Land Divisions - Pedestrian Connections/Common Greens)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.611.100 Density Standards

A-C. [No Change]

D. Street created. Where a street will be created as part of the land division, the following maximum and minimum density standards apply. Pedestrian connections that are self-contained streets created solely for the use of pedestrians and bicyclists are not considered streets for the purposes of calculating density under this subsection. Adjustments to this subsection are prohibited.

1.-2. [No Change]

Commentary

Item 3 - Regular Lot Lines

33.611.200 Lot Dimension Regulations

(See commentary for Item 3 - Property Line Adjustments – Regular Lot Lines)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.611.200 Lot Dimension Regulations

Lots in the R2.5 zone must meet the lot dimension regulations of this section. Lots that do not meet these regulations may be requested through Planned Development Review. Adjustments to the regulations are prohibited.

A. Purpose. The lot dimension regulations ensure that:

- Each lot has enough room for a reasonably-sized attached or detached house;
- Lots are of a size and shape that development on each lot can meet the development standards of the R2.5 zone;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;
- Lots are wide enough to allow development to orient toward the street;
- Each lot has access for utilities and services;
- Lots are not landlocked;
- Lots don't narrow to an unworkable width close to the street; and
- Lots are compatible with existing lots while also considering the purpose of this chapter; and
- Lots are regularly shaped.

B.-E. [No Change]

F. Regular lot lines. As far as is practical, all lot lines must be straight and the side lot lines of a lot or parcel must be at right angles to the street on which it fronts, or be radial to the curve of a curved street.

Commentary

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.630.100 Minimum Tree Preservation Standards

D. Location of preserved trees

(See commentary for Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands in 33.640)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.630.100 Minimum Tree Preservation Standards

A.-C. [No Change]

D. Location of preserved trees. Trees may be preserved on lots, within tree preservation tracts, or within other privately managed tracts, such as flood hazard, recreation area or stream, spring, ~~and~~ seep, and wetland tracts. Proposed tree preservation within tracts that are to be managed by the City of Portland or a service district, must be approved by the City or service district.

Item 5 – Multi-Dwelling Zones – Minimum Density

33.632.100 Landslide Hazard Area Approval Criterion

This amendment clarifies that this criterion can be used for land divisions in the multi-dwelling zones to reduce the density below the required minimum or maximum in potential landslide hazard areas. This criterion requires a review of the safety of land divisions in areas mapped as potential landslide hazard areas. Reductions in density on the site are one way that the criterion may be met.

In single-dwelling zones, the area within a potential landslide hazard area is not included in the area used to calculate minimum density on a land division site. In multi-dwelling zones, the potential landslide hazard area is included in the minimum density calculation. It is clear in single-dwelling zones that there is no minimum density requirement in potential landslide hazard areas. This is not the case in multi-dwelling zones. The criterion indicates that density may be reduced, but does not state whether it may be reduced below the required minimum. This amendment is intended to clarify that it can. If the carrying capacity of the land will not allow safe development at a density greater than something below the minimum then that minimum becomes the de facto maximum density.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.632.100 Landslide Hazard Area Approval Criterion

The following approval criterion must be met: Locate the lots, buildings, services and utilities on parts of the site that are suitable for development in a manner that reasonably limits the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site.

Determination of whether the proposed layout and design reasonably limits the risk of a landslide will include evaluation of the Landslide Hazard Study and will take into consideration accepted industry standards for factor of safety. Specific improvements, engineering requirements, techniques or systems, or alternative development options, including alternative housing types and reduced density (minimum or maximum), may be required in order to facilitate a suitable development that limits the risk to a reasonable level. Reductions to minimum or maximum density are done as part of the land division review, and do not require an adjustment.

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.640 Stream, Spring, and Seep Standards

Regulations requiring that streams, springs and seeps in land divisions be placed in a protective tract were added to Title 33 as part of the Land Division Code Update in 2002. These protections were added because BES identified them as key for water quality preservation.

At that time, the same regulations were considered for wetlands, and BES supported this. However, the Bureau of Planning (now BPS) advocated that additional protections should be provided through a careful inventory and mapping of resources completed through the environmental zoning program, rather than on a site-by-site basis. Since that time, the environmental zoning program has completed extensive inventories of water resources and is now in favor of protecting wetlands in land divisions along with streams, springs, and seeps. As a result, wetlands are now included in the standards for protection. Language has also been added to clarify that for the purposes of this chapter, the definition of stream does not include the Columbia or Willamette River. Greenway and environmental regulations generally apply to these bodies of water.

The environmental zoning program is currently working on a rewrite of the definition of top-of-bank in a different ongoing project. One of the goals of this effort is to clarify the measurement of top-of-bank along smaller streams that more typically would be regulated by the streams, seeps, and spring land division chapter. When completed, this should help resolve issues with delineating the boundary of the tract along a stream.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.640 Streams, Springs, ~~and~~ Seeps, and Wetlands

640

Sections:

33.632.010 Purpose
33.632.020 Where This Approval Criterion Applies
33.632.100 Landslide Hazard Approval Criterion

33.640.010 Purpose

The standards in this chapter ensure that important streams, springs, seeps, ~~and springs~~ and wetlands that are not already protected by the Environmental Overlay Zones, are maintained in their natural state.

33.640.100 Where These Standards Apply

The standards of this chapter apply to all land divisions where a stream, spring, ~~or~~ seep, or wetland on the site is outside of an Environmental Overlay Zone. For purposes of this chapter, the definition of stream does not include the Willamette or Columbia River.

33.640.200 Stream, Spring, ~~and~~ Seep and Wetland Standards

A. Preservation in a tract. Streams, springs, ~~and~~ seeps, and wetlands must be preserved in a tract as follows:

1 The edges of the tract must be at least 15 feet from the edges of the stream, spring, ~~or~~ seep, or wetland. The edges of a seep, ~~or~~ spring, or wetland are determined through a wetland delineation, performed by an environmental scientist, and approved by BDS. For seeps and springs, ~~I~~if one or more wetland characteristics are absent from the resource, the delineation will be based on the wetland characteristics present. The edges of a stream are defined as the top-of-bank. Where the edge of the stream, spring, ~~or~~ seep or wetland is less than 15 feet from the edge of the site, the tract boundary will be located along the edge of the site;

2 Existing structures within the area described in Paragraph A.1 may be excluded from the tract;

3 Exception. Where the tract required by Paragraph A.1 would preclude compliance with the front lot line requirements of Chapters 33.610 through .615, the stream, seep, ~~or~~ stream, or wetland may be in an easement that meets the other requirements of Paragraph A.1.

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.660.120 Approval Criteria

J. Streams, springs, and seeps

(See commentary for Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.660 Review of Land Divisions in Open Space and Residential Zones

660

33.660.120 Approval Criteria

The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met. The approval criteria are:

A.-I. [No Change]

J. Streams, springs, ~~and~~ seeps, and wetlands. The approval criteria of Chapter 33.640, Streams, Springs, ~~and~~ Seeps, and Wetlands, must be met;

K.-L. [No Change]

Commentary

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.662.120 Approval Criteria

I. **Streams, springs, and seeps.**

(See commentary for Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.662 Review of Land Divisions in Commercial, Employment, and Industrial Zones

662

33.662.120 Approval Criteria

The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met. The approval criteria are:

A.– H. [No Change]

I. Streams, springs, ~~and~~ seeps, and wetlands. The approval criteria of Chapter 33.640, Streams, Springs, ~~and~~ Seeps, and Wetlands, must be met.

J. – K. [No Change]

Commentary

Item 6 – Lot Consolidations - Procedures

33.663.320 Changes to Final Plat Survey After Recording

(See commentary for Item 6 –Lot Consolidations – Procedures in 33.675)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.663.320 Changes to Final Plat Survey After Recording

After the Final Plat Survey has been recorded with the County Recorder and Surveyor, changes are processed as a new land division or alternative process, such as a Lot Consolidation under Chapter 33.675, or Property Line Adjustment under Chapter 33.667 ~~or Lot Consolidation under Chapter 33.675~~, if allowed.

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.664.120 Approval Criteria

B.3. Streams, springs, and seeps, and wetlands

33.664.220 Approval Criteria

B.1.g. Springs, streams, and seeps, and wetlands.

(See commentary for Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.664 Review of Land Divisions on Large Sites in Industrial Zones

664

33.664.120 Approval Criteria

A Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met. The approval criteria are:

A. [No Change)

B. The following standards and criteria must be met as part of the Preliminary Plan:

1. Clearing, grading, and land suitability. The approval criteria of Chapter 33.635, Clearing, Grading, and Land Suitability must be met;
2. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements, must be met; and
3. Streams, springs, ~~and~~ seeps, and wetlands. The approval criteria of Chapter 33.640, Streams, Springs, ~~and~~ Seeps, and Wetlands, must be met.

Review of Final Plat

33.664.220 Approval Criteria

These approval standards apply to land divisions where the Preliminary Plan was reviewed under the regulations of this chapter. The Final Plat for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met. The approval criteria are:

A. [No Change]

B. Conformance with requirements of this Title. Where lot lines are proposed as part of the Final Plat process:

1. The following must be met for the portion of the site where lot lines are proposed:

   a. – f. [No Change]

   g. Springs, streams, ~~and~~ seeps, and wetlands. The approval criterion of Chapter 33.640, Springs, Streams, ~~and~~ Seeps, and Wetlands, must be met;

   h. – i. [No Change]

2. [No Change]

C. – G. [No Change]

Commentary

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.665.340 Proposals Without a Land Division

F. Streams, springs, and seeps.

(See commentary for Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.665.340 Proposals Without a Land Division

The approval criteria of this section apply to Planned Developments that do not include a land division. The approval criteria are:

A. – E. [No Change]

F. Streams, springs, ~~and~~ seeps, and wetlands.

1. If there is a stream, spring, ~~or~~ seep, or wetland outside of an Environmental Overlay Zone on the site, then the stream, spring, ~~or~~ seep, or wetland must be preserved in an easement. The edges of the easement must be at least 15 feet from the edges of the stream, spring, ~~or~~ seep, or wetland. The edges of a seep, ~~or~~ spring, or wetland are determined through a wetland delineation, performed by an environmental scientist, and approved by BDS. For seeps and springs, ~~I~~if one or more wetland characteristics are absent from the resource, the delineation will be based on the wetland characteristics present. The edges of a stream are defined as the top-of-bank where the edge of the stream, spring, ~~or~~ seep, or wetland is less than 15 feet from the edge of the site, the easement boundary will be located along the edge of the site.

2. The following development, improvements, and activities are allowed in the easement:

   a. Disturbance associated with discharging stormwater to the stream channel, if BES has determined that the site's storm water cannot discharge to a storm sewer and BDS has determined that on-site infiltration is not an option;

   b. Removal of non-native invasive species with hand held equipment;

   c. Planting of native vegetation listed on the Portland Plant List when planted with hand held equipment;

   d. Erosion control measures allowed by Title 10 of Portland City Code;

   e. Construction of required driveway connections or required connections to services when there is no practicable alternative to locating the driveway or service connections within the easement; and

   f. Maintenance and repair of existing utilities, services, and driveways;

3. Public or private rights of way may cross the seep, spring, ~~or~~ stream, or wetland easement if the following approval criteria are met:

   a. There is no reasonable alternative location for the right-of-way;

   b. The applicant has demonstrated that it is possible to construct street improvements within the right-of-way that will meet all of the following:

Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands

33.665.340 Proposals Without a Land Division

F. Streams, springs, and seeps. (cont'd)

(See commentary for Item 4 – Land Divisions – Streams, Springs, Seeps, Wetlands)

(1) The street improvements will not impede the flow of the stream, spring, or seep;

(2) The street improvements will impact the slope, width, and depth of the stream channel, spring, ~~or~~ seep, or wetland to the minimum extent practicable; and

(3) The street improvements will not impede fish passage in a stream, spring, or seep that has been identified by the Oregon Department of Fish and Wildlife as fish-bearing.

4. Minimum density is waived in order to better meet the standards of paragraphs F.1-F.3, above.

G. [No Change]

Item 3 – Regular Lot Lines

Property Line Adjustments (PLAs) are a process used to move a property line between two properties. There are many reasons to move a property line, for example, moving a line to match the line of a fence that was built in the wrong location. Often the PLA process will also be used to move the property line between a vacant property and a developed property to make the vacant property developable by making it large enough to meet the minimum lot area standards. This can lead to the approval of oddly shaped lots that meet the letter, but not necessarily the intent of the minimum lot standards. This amendment is intended to encourage straight lot lines that do not result in the creation of oddly shaped lots – consistent with amendments proposed for land divisions.

33.667.010 Purpose

The purpose statement has been expanded to provide additional guidance on when adjustments may be allowed.

33.667.050 When These Regulations Apply

The final sentence, deleted here, was originally added to make Portland's code consistent with the ORS 92 definition of a Property Line Adjustment. As a jurisdiction, Portland has chosen a narrower definition of a Property Line Adjustment to be consistent with the way the City has reviewed them over the years. To reflect this, the sentence has been deleted.

33.667.100 Prohibited Property Line Adjustments
33.667.300 Regulations

These sections were reformatted for clarity. Some standards, identified as qualifying situations for when a property line adjustment is allowed, were removed from 33.667.300 and used to create 33.667.100 Prohibited Property Line Adjustments.

Language was added to the standards remaining in 33.667.300 to clarify which may be adjusted through a land use review, and which may not. When the language of a standard states "adjustments are prohibited," it means that standard is not adjustable.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

CHAPTER 33.667
PROPERTY LINE ADJUSTMENT

Sections:

33.667.010 Purpose
33.667.050 When these Regulations Apply
33.667.100 Prohibited Property Line Adjustments
33.667.~~100~~150 Method of Review
33.667.200 Application Requirements
33.667.300 ~~Regulations~~Standards
33.667.400 Recording an Approval

33.667.010 Purpose

This chapter states the procedures and regulations for property line adjustments. A Property Line Adjustment (PLA) is the relocation ~~or elimination~~ of a common property line between two abutting properties. A Property Line Adjustment does not create lots. The regulations ensure that:

- A Property Line Adjustment does not result in properties that no longer meet the requirements of this Title;
- A Property Line Adjustment does not alter the availability of existing services to a site; ~~and~~
- A Property Line Adjustment does not result in properties that no longer meet conditions of approval~~.~~; and
- A Property Line Adjustment does not make it difficult to delineate property boundaries or apply use and development standards predictably and uniformly.

33.667.050 When These Regulations Apply

A Property Line Adjustment is required to relocate a common property line between two properties. If a public agency or body is selling or granting excess right-of-way to adjacent property owners, the excess right-of-way may be incorporated into abutting property through a Property Line Adjustment. ~~A Property Line Adjustment may be used to remove a common property line between two properties.~~

33.667.100 Prohibited Property Line Adjustments

The following are prohibited as part of a Property Line Adjustment:

A. A Property Line Adjustment that configures either property as a flag lot, unless the property was already a flag lot;

B. A Property Line Adjustment that results in the creation of a buildable property from an unbuildable lot remnant;

C. A Property Line Adjustment that results in the creation of street frontage for property that currently does not have frontage on a street; and

D. A Property Line Adjustment that creates a nonconforming use.

Item 3 – Property Line Adjustments: Regular Lot Lines

33.667.300 Regulations (cont'd)

B. Regular Lot Lines. This amendment, which applies only in R10 through RH zones, would:

- reduce the ability to create non-straight lines through property line adjustments;
- require adjusted side lot lines to be perpendicular to the street on which the lot fronts, or radial to the curve on a curved street;
- allow a small amount of flexibility to the straight line requirement (20% longer or shorter line) to address individual situations;
- exempt lines adjusted to follow an established zoning line or boundary of a special flood hazard area or floodway, so they could curve with that mapped boundary.

This standard is adjustable.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.667.~~100~~150 Method of Review

Property Line Adjustments are reviewed through a non-discretionary, administrative procedure. The decision of the Director of BDS is final.

33.667.200 Application Requirements

No more than three ~~p~~Property ~~l~~Line ~~a~~Adjustments may be requested on a site within one calendar year. The application must contain the following:

A.-C. [No Change]

33.667.300 ~~Regulations~~Standards

The site of a Property Line Adjustment is the two properties affected by the relocation of the common property line. A request for a Property Line Adjustment will be approved if all of the following are met:

A. ~~Properties~~Conformance with regulations. ~~For purposes of this subsection, the site of a Property Line Adjustment is the two properties affected by the relocation of the common property line. 1. The~~ ~~P~~properties will remain in conformance with regulations of this Title, including those in Chapters 33.605 through 33.615, except as follows:

1~~a~~. If a property or development is already out of conformance with a regulation in this Title, the Property Line Adjustment will not cause the property or development to move further out of conformance with the regulation;

2~~b~~. If both properties are already out of conformance with maximum lot area standards, they are exempt from the maximum lot area standard;

3~~c~~. If one property is already out of conformance with maximum lot area standards, it is exempt from the maximum lot area standard; and

4~~d~~. If at least one lot is already out of conformance with the minimum lot area standards and the site is in the R5 zone, the minimum lot area is 1600 square feet and the minimum width is 36 feet, if:

a~~(1)~~. At least one lot is a corner lot;

b~~(2)~~. The adjusted property line must be perpendicular to the street lot line for its entire length; and

c~~(3)~~. New houses must meet the standards of 33.110.213. Existing houses are exempt from the standards of 33.110.213.

See Figure 667-1.

B. Regular Lot Lines. In the R10 through RH zones, the adjusted property line must be a straight line or up to 20 percent shorter or 20 percent longer than the existing lot line. If the adjusted property line is a side lot line it must be at a right angle to a street lot line, or be radial to the curve of a curved street. Lines that are adjusted to follow an established zoning line or the boundary of the special flood hazard area or floodway are exempt from this requirement.

Item 8 – Property Line Adjustments – Service Standards

33.667.300 Standards

E. Services. This amendment clarifies that the requirements of service bureaus (water, sanitary sewer, stormwater) apply to development on both the properties subject to the PLA. The existing wording in the code which says that "availability of services to the properties may not change" is intended to assure that existing services remain. In practice, this wording can make it challenging to apply service bureau requirements prior to or following the property line adjustment approval. Services may need to be moved or altered in another manner to provide service that remains compliant with service bureau standards.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

C. Split zoning. The Property Line Adjustment will not result in a property that is in more than one base zone, unless that property was already in more than one base zone.

~~**2.** The Property Line Adjustment will not configure either property as a flag lot, unless the property was already a flag lot;~~

~~1. The property line Adjustment will not result in the creation of a buildable property from an unbuildable lot remnant;~~

~~2. The Property Line Adjustment will not result in the creation of street frontage for a land-locked property;~~

D~~5~~. Environmental overlay zones. If any portion of either property is within an environmental overlay zone, the provisions of Chapter 33.430 must be met. Adjustments are prohibited.

~~6. The Property Line Adjustment will not result in a property that is in more than one base zone, unless that property was already in more than one base zone; and~~

~~7. The Property Line Adjustment will not create a nonconforming use.~~

E~~B~~. Services. The adjustment of the property line will not eliminate the availability of services to the properties ~~may not change~~ and the properties will not move out of conformance with service bureau requirements for water, sanitary sewage disposal, and stormwater management. Adjustments are prohibited.

F~~C~~. Conditions of previous land use reviews. All conditions of previous land use reviews must be met. Adjustments are prohibited.

Item 6 – Lot Consolidation – Procedures

Item 7 – Plat Consolidation - Procedures

Lot consolidations are a process to remove lot lines within a site to consolidate into one lot. The lot consolidation site may be part of a larger land division or may consist of the entire subdivision. The end result is that the site is recorded as a single lot, although any previous approval criteria associated with the land division still apply.

There have been two problems with the current process. First, there is no mechanism to remove lot lines but end up with a multiple of more than one lot. As a result, several consecutive lot consolidations must be submitted and approved to achieve the lot layout. Secondly, if all the lot lines of a land division are removed, the current process requires that all conditions of approval of the previous land division continue to be met, even those that are no longer relevant to the consolidated lot. As an example a previous land division to develop row houses was consolidated back to one lot, but the condition that the lot be developed with row houses still remained, although the lot could not be developed with an apartment or condo building with the land division restriction. This required a new land division to remove the condition of approval, instead of a consolidation.

The amendments correct these two issues by allowing a single lot consolidation process to be used to combine a group of lots into one to three lots. Three lots is the maximum number of lots that can be recorded under the partition plat. The amendments also expand on the existing approval criteria/standards to allow an applicant to demonstrate whether the previous land division approval criteria are relevant to the combined site. If findings can be made that these criteria no longer apply, then they can be removed. However, approval criteria from any other land use reviews applicable to the site will continue to apply. Lastly, an approval criteria has been added to ensure that services can continue to be provided to the combined lots.

33.675.010 Purpose

The Purpose Statement is revised to acknowledge the expansion of the lot consolidation process to allow the end result to be a total of one to three lots. Additional amendments further clarify the current process.

33.675.200 Application Requirements.

A. [No Change.]

B. Surveys.

3. This amendment clarifies the final plat survey requirement to align with other changes allowing the consolidation to be between one and three lots.

C. Other.

1. Legal Descriptions. These application requirements were taken from the Property Line Adjustment chapter. However, since the result is a replat of the land, the legal descriptions are part of the plat survey. A separate document of legal descriptions is not needed for recording, so this requirement is duplicative and is removed.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.675 Lot Consolidation

675

Sections:

33.675.010 Purpose
33.675.050 When These Regulations Apply
33.675.100 Review Procedure
33.675.200 Application Requirements
33.675.300 Standards
33.675.400 Recording an Approval

33.675.010 Purpose

This chapter states the procedures and regulations for removing lot lines within a site to combine into one to three lots~~create one lot~~. The regulations ensure that the lot consolidation does not circumvent other requirements of this Title, and that lots and sites continue to meet conditions of land use approvals. The lot consolidation process described in this chapter is different from (and does not replace) the process used by~~ the~~ counties~~y~~ to consolidate lots under one tax account. A tax account consolidation does not affect the underlying platted lots. A lot consolidation results in a new plat for the consolidation site.

33.675.050 When These Regulations Apply

A lot consolidation may be used to remove lot lines within a site. The perimeter of consolidated lots must follow existing lot lines. Lot lines cannot be created or moved through this process. The applicant may also choose to remove ~~such~~ lot lines through a land division. A lot consolidation may be required by other provisions of this Title.

33.675.100 [No Change]

33.675.200 Application Requirements.

An application for a lot consolidation must contain the following:

A. [No Change]

B. Surveys.

1-2. [No Change]

3. A Final Partition Plat ~~Survey~~ showing the ~~single~~ consolidated lot or lots. Copies of the Final Plat ~~Survey~~ must be drawn to scale and of a format, material, and number acceptable to the Director of BDS. The following statement must be on the Final Plat ~~Survey~~: "This plat is subject to the conditions of the City of Portland Case File No. LUR…"

Item 6 – Lot Consolidation – Procedures

Item 7 – Plat Consolidation - Procedures

33.675.200 (cont'd)

33.675.300 Approval Criteria~~Standards~~

These standards are being expanded to include other criteria that related to previous conditions of approval. Since this expansion creates discretionary criteria subject to findings of fact, the section is changed from standards to approval criteria, acknowledging that the Type Ix review allows for discretionary review and approval or denial based upon that review.

A. Lots. These amendments acknowledge the change made to the chapter to consider lot consolidations to combine a site into one to three lots. Current regulations only allow the consolidation to result in a single lot, so approval language is amended to indicated that more than one lot may be the result of the consolidation.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

C. Other.

~~1. Legal descriptions. Two copies of the legal descriptions for each of the lots or tracts within the lot consolidation site. The legal descriptions must be prepared and signed by a registered land surveyor; and~~

2-4. [Renumber, No Change]

33.675.300 Approval Criteria~~Standards~~

A lot consolidation will be approved if the review body finds that the applicant has shown that all of the approval criteria have been met~~must meet the following standards~~:

A. Lots. Consolidated lots must meet the standards of Chapters 33.605 through 33.615, with the following exceptions:

1. Lot dimension standards.

   a. Minimum lot area. If the area of the entire lot consolidation site is less than that required of new lots, lots in the lot consolidation site ~~is~~are exempt from minimum lot area requirements;

   b. Maximum lot area. If any of the lots within the lot consolidation site are larger than the maximum lot area allowed, lots in the lot consolidation site ~~is~~are exempt from maximum lot area requirements;

   c. Minimum lot width. If the width of the entire lot consolidation site is less than that required of new lots, lots in the lot consolidation site ~~is~~are exempt from minimum lot width requirements;

   d. Minimum front lot line. If the front lot line of the entire lot consolidation site is less than that required of new lots, lots in the lot consolidation site ~~is~~are exempt from minimum front lot line requirements;

   e. Minimum lot depth. If the depth of the entire lot consolidation site is less than that required of new lots, lots in the lot consolidation site ~~is~~are exempt from minimum lot depth requirements.

2. Maximum density. If the consolidation brings the lot consolidation site closer to conformance with maximum density requirements, the consolidation does not have to meet maximum density requirements;

3. Lots without street frontage. If the lot consolidation consolidates lots that do not have street frontage with ~~a~~ lots that have~~s~~ street frontage, the consolidation does not have to meet minimum density and maximum lot area requirements;

4. Through lots. If any of the existing lots within the lot consolidation site are through lots with at least one front lot line abutting an arterial street, then the consolidated lots may be ~~a~~ through lots;

5. Split zoning. If any of the existing lots within the lot consolidation site are in more than one base zone, then the consolidated lot may be in more than one base zone.

Item 6 – Lot Consolidation – Procedures

Item 7 – Plat Consolidation - Procedures

B. Conditions of land division approvals.

This is a new approval criterion that augments the criterion in Subsection C. Currently, a lot consolidation must still abide by all previous conditions of approval, including those from the land divisions that created the original lots being consolidated. Often these conditions are specific to the created lots and would not be applicable if the previous lots hadn't been created. As an example, a land division for row houses may include special conditions for each row house lot. These conditions would not apply if the lots were consolidated back into the previous site configuration.

The amendment allows an applicant to demonstrate whether the previous land division approval conditions apply or not. However, the intent is for a planner to determine that the group of criteria apply or not. If some of the original criteria apply and others do not, then the applicant needs to amend the original land division to remove the specific criteria that would no longer apply to the replat.

C. Conditions of other land use Approvals.

This criteria remains essentially the same but clarifies that the criteria does not apply to previous land division approvals which are now subject to subsection B.

D. Services

This is a new approval criterion to ensure that there is a review of the lot consolidation process by other service bureaus (BES, Water) to ensure that the consolidation of lots into one to three lots does not affect the provision of services. The amendment formalizes the current informal process to allow the service bureaus to provide comments back to the planner and the applicant as part of the review process.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

B. Conditions of land division approvals. The lot consolidation must meet one of the following:

1. All conditions of previous land division approvals continue to be met or remain in effect; or
2. The conditions of approval no longer apply to the site, or to development on the site, if the lots are consolidated.

C. Conditions of other land use approvals. Conditions of other land use approvals continue to apply, and must be met.

D. Services. The lot consolidation does not eliminate the availability of services to the lots, and the consolidated lots are not out of conformance with service bureau requirements for water, sanitary sewage disposal, and stormwater management.

33.675.400 Recording an Approval

The Final Plat ~~Survey, legal descriptions,~~ and the deed for the consolidated lot or lots must be recorded with the County Recorder and Surveyor within 90 days of approval by the Director of BDS.

Item 15 – Commission Term Limits

33.710.030 Commissions, Committees, and Boards Generally

A. Length of terms. Terms are limited to 4 years for service as a member on the Planning and Sustainability Commission, the Design Commission, the Historic Landmarks Commission, and the Adjustment Committee. The terms are staggered to provide continuity and overlap between members. Sometimes at the end of a 4-year term it can be difficult to recruit a new member in time to fill the position before the existing member's term expires, leaving the commission or committee without full membership. This can make it difficult to meet the required quorums necessary for holding public hearings and performing the other duties of the commission or committee.

This amendment would allow the terms of existing members to be extended up to one year to allow more time to recruit a new member. The recommended method of extending a term is the same as the method for appointing new members, which is generally appointment by the Mayor and confirmation by the City Council.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.710.030 Commissions, Committees, and Boards Generally

A. Length of terms. Members of commissions, committees, and boards provided under this chapter may be appointed to terms of not more than 4 years. In the event a new member is unable to be appointed prior to the expiration of an existing member's term, the term of the existing member may be extended by up to 1 year. Initial appointments for newly formed commissions, committees, and boards must include a sufficient number of appointments for less than the maximum 4 year term of office to provide overlap and a continuity of membership. Members of commissions are limited to a maximum of two full terms. Vacancies which may occur must be filled for the unexpired terms.

B.-J. [No Change]

Item 29 – Posting Notices – City Council Hearings

33.730.030 Type III Procedure

This item clarifies the requirements for posting notices for Type III land use reviews. Two kinds of notice are required for Type III land use review hearings; a mailed notice and a posted notice. The mailed notice is sent to the specified list of interested parties in 33.730.030.D.1 that includes, among others, public agencies and recognized organizations, and all property owners within 400 feet of the site. The posted notice is posted at a visible location at the site.

Most decisions on Type III land use reviews are made by Portland's Hearings Officer, Design Commission or Landmarks Commission and can be appealed to the City Council. The exception is Type III decisions that change the comprehensive plan designation of a property. For these decisions, the Hearings Officer makes a recommendation to the City Council, and the City Council makes the decision.

When the Hearings Officer or other review body make a decision on a Type III case, notice of the decision is sent only to those who responded to the original mailed or posted notice, testified at the hearing, or requested notice of the decision as specified in 33.730.030.E.5. Those receiving notice can then choose to appeal the decision to the City Council. If appealed, BDS will schedule an appeal hearing before the City Council and mail notice of that hearing to all those who were mailed notice of the decision, as specified in 33.730.030.H.2.

The code does not clearly state that only a mailed notice of the appeal hearing is required, and not a posted notice. Like the first mailed notice that goes to all property owners within 400 feet of the site, the posted notice is intended to provide general awareness that the Type III land use review is under consideration. The mailed appeal notice is intended to notify those who participated or showed interest in the land use review that the decision is being appealed. This amendment clarifies that a posted notice on site is not required to notify those who have participated already.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.730.030 Type III Procedure

A Type III procedure requires a public hearing before an assigned review body. Subsections A through D apply to all sites. If the site is within the City of Portland, Subsections E through H also apply. If the site is in the portion of unincorporated Multnomah County that is subject to City zoning, Subsection I also applies.

A.-D. [No Change]

E. Decision by review body if site is in City of Portland

1.-4. [No Change]

5. Mailed ~~N~~notice of decision (pending appeal). When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director of BDS will mail notice of the decision. Within 17 days of the close of the record, or within 30 days for Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer or Director of BDS will mail notice of the review body's decision (pending appeal) to the owner, the applicant if different, and all recognized organizations or persons who responded in writing to the notice of the request, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070.G, Notice of Type II, Type IIx or Type III decision (pending appeal).

F-G. [No Change]

H. When an appeal is filed. Appeals must comply with this subsection.

1. [No Change]

2. Mailed ~~N~~notice of the appeal hearing. The Director of BDS will mail a copy of the appeal within 3 working days of its receipt to the applicant, unless the applicant is also the appellant, and the owner. Within 5 working days of the receipt of the appeal, the Director of BDS will mail a notice of the appeal hearing to the owner, the applicant if different, the review body, and all persons and recognized organizations that received the notice of the decision. See 33.730.070.H, Notice of a Type II, Type IIx, or Type III appeal hearing. No notice of the appeal hearing is required to be posted on the site.

3. – 9. [No Change]

I. [No Change]

Commentary

Item 29 – Posting Notices – City Council Hearings

33.730.080 Posting Requirements

(See commentary for Item 29 – Posting Notices – City Council Hearings)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.730.080 Posting Requirements

Posting of notice on the site is required for land use applications processed through a Type III or Type IV procedure. The requirements for the posting of notice are stated below.

A.-B. [No Change]

C. Standards and timing. The applicant must prepare the notice to BDS standards and post it on the site at least 30 days before the first scheduled evidentiary hearing before the Hearings Officer or other assigned review body. At least 14 days before the hearing, the applicant must file with BDS a signed statement affirming that the posting was made. Failure to post the notice and affirm that the posting was done will result in automatic postponement of the hearing until the property has been posted for 30 days.

D. Removal. The applicant may not remove the notice before the first evidentiary hearing before the Hearings Officer or other assigned review body. Except when final City Council action is required by section 33.730.040, the applicant must remove the posted notice within 2 weeks of ~~a~~the ~~final~~ Hearings Officer's or other assigned review body's decision on the request. When final council action is required by section 33.730.040, the applicant must remove the posted notice within 2 weeks of the City Council's decision on the request.

E. [No Change]

Item 14 – 120-Day Delay Procedure

33.855.075 Automatic Map Amendments For Historic Resources

References to demolition delay review are deleted and replaced with the "120-day delay" language to be consistent with the updates to 33.445 Historic Resource Overlay Zone.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.855.075 Automatic Map Amendments For Historic Resources

The Official Zoning Maps will be amended automatically to add or remove historic resources as follows:

A.-B. [No Change]

C. Removal after demolition. If a Historic Landmark or Conservation Landmark is demolished, after either approval of demolition through demolition review or after ~~demolition delay or demolition delay extension review~~120-day delay, the Landmark designation for the resource is automatically removed from the Official Zoning Maps.

D. [No Change]

33.910.030 Definitions

Item 19 – Nonconforming Change of Use

When implementing 33.258.050, confusion has arisen around whether or not a "change of use" has occurred. This amendment updates the code to provide an examples of when the primary type of activity has changed, and when it has not.

Item 31 – Definitions – Drainageways

The Bureau of Environmental Services is updating Portland's stormwater management manual to be consistent with recent scientific guidance on waterways from the Environmental Protection Agency. This amendment proposes changes to the Title 33 drainageway definition that are consistent with changes BES will make to the stormwater manual and with the regulations of Title 33.

Item 32 – Definitions – Hazardous Substances

The definition of hazardous substances has not changed since the original adoption of the Zoning Code in 1992. This amendment updates the code to reflect the most recent federal lists of hazardous substances. It also explains that the most recent versions of these volumes should be used when they are updated or amended.

Item 33 – Definitions – Seep or Spring, Stream

The land division code has requirements that seeps and springs be protected inside a tract. The primary purpose of this requirement is to protect water quality. The intent is that all seeps and springs will be protected. In a recent land use decision it was successfully argued that the current definition of seeps and springs does not include seeps and springs where the water ultimately discharges into a storm drain or pipe. The design of Portland's stormwater system includes many water bodies that, over their entire course, flow into and out of streams and pipes. It was not the intent of the original definition to exclude seeps and springs that might flow into a storm drain or pipe somewhere downstream. This amendment clarifies that a seep or spring is still a seep or spring regardless of where the water from the seep or spring ultimately flows. An amendment to the definition of stream is also recommended. The word "surface" is recommended for removal from the definition to clarify that streams in Portland may run underground for parts of course in pipes or other artificial or natural conveyance systems.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.910.030 Definitions

The definition of words with specific meaning in the zoning code are as follows:

Change of Use. Change of the primary type of activity on a site. For example, in the Retail Sales and Service use category, a change from a restaurant to a bank would be considered a change in the primary type of activity; a change from a restaurant to a restaurant would not be considered a change in the primary type of activity.

Drainageway. A~~n open linear depression, whether~~ constructed or natural channel or depression, which at any time ~~functions for the~~ collect~~ion~~s and conveys ~~drainage of surface~~ water. It may be permanently or temporarily inundated.

Hazardous Substances. Any substance, material, or waste listed below:

- Nuclear or radioactive materials or waste;
- Chemicals listed in the~~Title III~~ List of Lists: Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Section 112(r) of the Clean Air Act ~~Reporting Under Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986~~, published March 15, 2015 ~~July, 1987~~, U.S. Environmental Protection Agency, or as subsequently updated or amended; and
- Hazardous Materials Table, in the Code of Federal Regulations (CFR), Title 49, Part 172.101, or as subsequently updated or amended.

Seep or Spring. ~~The point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into a wetland or other water body.~~ An area where groundwater is discharged onto the land surface, creating either saturated soil conditions or visible flow at the land surface.

Stream. An area where ~~enough natural surface~~ water flows to produce a stream channel, such as a river or creek, that carries flowing ~~surface~~ water during some portion of the year. This includes:

- The water itself, including any vegetation, aquatic life, or habitat;
- Beds and banks below the high water level which may contain water, whether or not water is actually present;
- The floodplain between the high water level of connected side channels;
- Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and
- Stream-associated wetlands.

Item 10 – Right-of-way Dedications

33.930.025 Measuring Development Standards

This request originally included two components.

The first was to treat right-of-way dedications the same in single-dwelling and multi-dwelling zones for the purpose of calculating density. The Planning and Sustainability Commission supported the staff's decision to not propose an amendment to address this issue. Please see the explanation in Section III. C. of the *Proposed Draft*.

The second was a request to calculate floor area based on a site area prior to right-of-way dedication, rather than after right-of-way dedication. This request is not carried out by the amendment recommended, but the amendment is intended to clarify the existing process of calculation.

33.930.025 Measuring Code Development Standards

This amendment creates a new measurement standard and simply clarifies that development standards apply to the site after public right-of-way dedication or private right-of-way designation.

The reasons for calculating maximum floor area after dedication are threefold:

1. Standards apply to private property -- There are many development standards that apply to the site area. Examples include maximum floor area, building coverage, and minimum landscaping. All are calculated after right-of-way dedication. This is a fundamental basis of Portland's Zoning Code provisions – regulations apply to sites, not to the land that was part of the site in the past.

2. Conforming development -- Calculating development standards after dedication ensures that the site conforms to the regulations when the site is developed, instead of immediately becoming nonconforming. In the case of maximum floor area allowed, basing the calculation on the pre-dedication site area increases floor-to-area ratio (FAR) on the site beyond the planned intensity.

3. Regulatory consistency – It's simpler to use the same site area for all calculations, rather than pre-dedication for some and post-dedication for others. In addition, regulations would be needed to differentiate between properties that are dedicating right-of-way now (and are entitled to more FAR) and those that dedicated right-of-way in the past (and presumably aren't entitled to it).

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.930 Measurements

930

Sections:

33.930.010 Purpose
33.930.020 Fractions
33.930.025 Measuring Development Standards
33.930.030 Measuring Distances
33.930.040 Measuring Distances on Maps
33.930.050 Measuring Height
33.930.055 Measuring the Area of Limited Uses
33.930.060 Determining Average Slope
33.930.070 Determining the Area of the Facade of a Building
33.930.080 Determining the Plane of a Building Wall
33.930.090 Determining the Garage Wall Area
33.930.100 Measuring Lot Widths and Depths
33.930.103 Measuring Lot Depths
33.930.110 Measuring Areas with Squares of Specified Dimensions
33.930.120 Setback Averaging
33.930.130 Measuring Tree Diameter
33.930.140 Measuring the Root Protection Zone

33.930.025 Measuring Development Standards

Unless stated elsewhere in this Title, all measurements involving development standards are based on the property lines and area of the site after dedication of public rights-of-way and/or designation of private rights-of-way. Standards include, but are not limited to, building coverage, floor area ratio, setbacks, and landscaping requirements.

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IV. Tree Code Items Table

RICAP 8 ITEMS RELATED TO TITLE 11: TREES

RIW #	Item Name	Amendment	Code Sections	Page #
MINOR POLICY ITEMS				
Bundle 2: Tree Code				
34.	Heritage Tree - Penalties for Unlawful Damage or Removal	Modify Heritage Tree penalties to increase penalty for unlawful damage or removal on private property.	11.20.060; 11.70.080; and Title 11 Trees Fee Schedule	122, 152
35.	Timelines	Extend required timelines for City staff in appeals and Programmatic Permits to provide adequate time for City action.	11.30.040.D and .050.D; 11.45.030.C	124, 132
36.	Minimum Pruning Threshold	Raise permitting threshold for pruning of branches to 1/2" from 1/4".	11.40.040	128
37.	Ground Disturbance	Allow small amounts of ground disturbance without triggering tree plan requirements. Require tree plan for projects with exterior staging or construction but no ground disturbance.	11.50.040; 11.50.070.A; 11.60.030.C	136, 142, 146
38.	Root protection zone requirements	Allow reasonable separation between construction and required tree protection.	11.50.040; 11.60.030.C	136, 146
39.	Tree plan requirements	Ensure dead, dying, dangerous or nuisance species trees are not used to meet tree preservation requirements.	11.70.080	152
40.	Tree Preservation and Protection-Root Protection Zone Fencing	Clarify how tree protection applies when a portion of the root protection zone extends off the site onto an adjacent property or right-of-way. Provide allowance to use existing fences for tree protection.	11.60.030.C	146
41.	Enforcement	Add authority to levy liens and utilize other mechanisms for unpaid fees tied to Tree Code violations.	11.70.090.B; 11.70.100.E	160
TECHNICAL AND CLARIFICATION ITEMS				
42.	Liability for ROW Trees	Clarify owner responsibility for the maintenance of trees in all rights-of-way adjacent to their property.	11.05.110.B; 11.60.060.A	120, 150
43.	Title 33 Landscaping Standards and Tree Removal Permits	Clarify language to ensure compliance with Zoning Code requirements along with Tree Code compliance.	11.40.020.C	126

RIW #	Item Name	Amendment	Code Sections	Page #
44.	Table Reference	Correct reference to tree density requirements for development impact area.	11.50.030	134
21.	Non-conforming upgrades	Align tree density with Title 33 required non-conforming upgrade.	11.50.050 *See also 33.258.070*	140
45.	Tree Preservation and Protection near Develop ment Impact Area	Update language to ensure protection measures are implemented for trees located within 25 feet of the development impact area.	11.50.070.A	142
46.	Root protection zone encroachments	Clarify 25% area/50% allowed distance encroachments at property lines and structures.	11.60.030.C	146
47.	Definition of Removal	Update definition of "Removal" to clarify code intent. Current code is vague when it comes to removal of roots.	11.80.020.B	168
48.	Definitions	Incorporate new definitions for "tree", "building", "attached structure", and "development, alteration".	11.80.020.B	168
49.	Tree plan carryover	Clarify how tree plans carryover to different project phases.	No amendment proposed, see Proposed Draft	N/A
50.	Septic and plumbing permit exemption	Clarify that septic and plumbing permits do not trigger tree density standards.	11.50.050.B.1.e	140
51.	Plant material labels during inspection	Add language to ensure plant materials are labeled during City inspections.	11.60.020.E.1	144

V. Amendments to Title 11, Trees

A. Section Organization

Recommended amendments to Title 11, the Tree Code are included in this section and ordered by relevant code section. It is important to note that some of the workplan items include amendments that span several areas of the Tree Code. To follow the amendments being recommended for a particular item, refer to the Tree Code Items Table in Section IV, which includes references to the code sections that are being amended.

B. How to Read the Amendments

Commentary Pages

Commentary pages are formatted in "*Comic Sans*" font on even-numbered pages, opposite the code amendments they reference on the odd-numbered pages. The commentary includes a description of the problem being addressed, the legislative intent of the recommended amendment, and an assessment of the impact of the change. Also on the commentary pages is a reference to the RICAP item being addressed.

Code Amendment Pages

The code amendments appear in "Calibri" font on the odd-numbered pages. Text that is added is <u>underlined</u>, and text to be deleted is shown with ~~strikethrough~~. To reduce the size of the document, provisions of code that are not recommended to change are indicated by "[No Change]".

Commentary

Item 42 – Tree Code – Liability of ROW Trees

11.05.110.B Liability.

The amendment aims to better clarify property owners' responsibility for tree maintenance in adjacent, unimproved, or partially-improved rights-of-way, in addition to sidewalks, planting strips, and on their property. This modification in two sections of the Tree Code (11.05.110 and 11.60.060) will avoid confusion in maintenance responsibilities and liability moving forward.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.05.110 Liability.

A. Permits required. Any person pruning, removing, or conducting any other work on any Street Tree or City Tree and any person removing any regulated Private Tree in order to comply with the requirements of this Section, shall first obtain a Type A tree permit in accordance with the provisions of Chapter 11.30. The application fee may be waived when the City forester has directed the work to be done.

B. Every property owner shall be liable to persons injured or otherwise damaged by reason of the property owner's failure to keep his/her private property, any adjacent unimproved or partially-improved rights-of-way, sidewalks, planting strips and trees fronting or upon such private property in a safe condition so as not to be hazardous to public travel.

C. Furthermore, every property owner shall be liable to the City of Portland for all expenses, including attorney fees, incurred by the City in defense of or paid by the City in settlement or satisfaction of any claim, demand, action or suit brought by reason of that property owner's failure to satisfy the obligations imposed by this Title.

Commentary

Item 34 – Tree Code – Damage or Removal of Heritage Trees

11.20.060 Heritage Trees.

To better communicate that all requirements for Heritage Trees contained within Title 11 are applicable to private trees, a small update to the language in 11.20.060.C is recommended. This update makes clear that any designated Heritage Tree on the property must be recorded on the deed and that the tree is subject to the regulations of the Title rather than just the Chapter, as is currently stated.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.20.060 Heritage Trees.

A.-B. [No Change]

C. Private trees. Trees on private property may not be designated as Heritage Trees without the consent of the property owner; however, the consent of a property owner will bind all successors, heirs, and assigns. When a Private Tree is designated as a Heritage Tree, the owner shall record the designation on the property deed, noting on such deed that the tree is subject to the regulations of this ~~Chapter~~Title.

D.-I. [No Change]

Commentary

Item 35 – Tree Code – Timelines

11.30.040.D.1 Procedure for Type A Permits.

11.30.050.D.1 Procedure for Type B Permits.

The Tree Code currently requires that appeal hearings for both Type A and B permits be processed within 45 days of the City Forester's decision. Given that appeals can be filed up to 14 days after the decision, appeal hearings are often required to be scheduled and decisions finalized within approximately one month of the appeal. Urban Forestry employs an all-volunteer Appeals Board that meets monthly. Therefore, meeting the required timelines has been challenging and often requires an extension.

The amendment adjusts the timeline for the appeal hearing to 45 days after the appeal is filed, rather than the time of the City Forester's decision. This change will give the City Forester time to ensure the appeal process deadlines are met.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.30.040 Procedure for Type A Permits.

A.-C. [No Change]

D. Appeal process.

1. Scheduling the appeal hearing. The appeal hearing will be scheduled within 45 days ~~of the City Forester's decision~~ of the date the appeal was filed. However, the applicant may request the hearing at a later time.

2. [No Change]

3. [No Change]

E. [No Change]

11.30.050 Procedure for Type B Permits.

A.-C. [No Change]

D. Appeal process.

1. Scheduling of the appeal hearing. The appeal hearing will be scheduled within 45 days ~~of the City Forester's decision~~ from the date the appeal was filed. However, for good cause shown by any party, the Appeals Board may extend the hearing deadline.

2. [No Change]

3. [No Change]

E. [No Change]

Commentary

Item 43 – Tree Code – Title 33 Landscaping Standards and Tree Removal Permits

11.40.020.C. When a Tree Permit is Required

In implementing the Tree Code there has been some confusion about the applicability of Title 33 Zoning Code landscape requirements in relation to Tree Code requirements for non-development situations. Specifically, the Tree Code allows for payment into the Tree Planting and Preservation Fund to meet replanting requirements. In some cases, this allowance for payment may result in non-conformance with applicable Zoning Code landscaping requirements. The amendment makes it clear that all Zoning Code requirements must be confirmed in addition to Tree Code compliance.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.40.020 When a Tree Permit is Required.

(Amended by Ordinance No. 187216, effective July 24, 2015.) A tree permit is required for all trees in the City of Portland as further described below, unless the activity is exempt from the requirements of this Chapter as specified in Section 11.40.030.

A.-B. [No Change]

C. Private Trees. Private trees 12 or more inches in diameter are regulated by this Chapter unless otherwise specified in Table 40-1. Trees required to be preserved by a condition of a land use review may be subject to other requirements. All applicable Zoning Code landscape requirements, including landscape buffers and parking lot landscaping, must be met on the site.

D.-G. [No Change]

Commentary

Item 36 – Tree Code – Minimum Pruning Threshold

11.40.040 City and Street Tree Permit Standards and Review Factors

The Tree Code currently requires permits for pruning of all City and Street Trees 1/4" or greater. Since the adoption of the Tree Code it has become clear that such a low pruning permit threshold is cumbersome and inefficient. Therefore, the amendment proposes to raise the minimum branch pruning and sucker shoot, self-sown trees thresholds to 1/2" or greater. This will allow for the necessary oversight by the City Forester while making the process more efficient.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.40.040 City and Street Tree Permit Standards and Review Factors.

Type A and B permit applications for tree related work affecting City or Street Trees shall be reviewed using the following applicable review factors and standards in accordance with the application procedures set forth in Chapter 11.30.

Table 40-2
Summary of Permit Requirements for City and Street Trees

Activity	Permit Type	Tree Replacement [1] (See Section 11.40.060)	Public Notice / Public May Appeal
No Permit is required for: - pruning branches <1/2" or roots <1/4"; - removing City Trees <3" in diameter; - removing street trees that are sucker shoots, self-sown trees <~~1/4~~1/2"; or - other activities that are exempt from the requirements of this Chapter (see 11.40.030).			
Planting trees Pruning branches larger than 1/2" or roots larger than 1/4" Other activities as described in 11.40.040 A.3	A	n/a	No
[NO CHANGES TO REMAINDER OF THE TABLE]			

Commentary

Item 36 – Tree Code – Minimum Pruning Threshold

(See commentary for Item 36 – Tree Code – Minimum Pruning Threshold)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

A. Standards and Review Factors for Type A Permits for City and Street Trees.

1. Planting. **[No Change]**

2. Pruning or root cutting. The City Forester will grant a permit for pruning of branches 1/2 inch or larger or ~~root~~ cutting of ~~branches or~~ roots 1/4 inch or larger if the applicant demonstrates to the City Forester's satisfaction that the pruning or root cutting will be performed in accordance with proper arboricultural practices, and that it will not adversely impact the health or structural integrity of the tree.

3.-4. **[No Change]**

B. **[No Change]**

Commentary

Item 35 – Tree Code – Timelines

11.45.030.C Procedures.

The Tree Code currently requires a decision on a programmatic permit request in fewer than 90 days. In some cases, this deadline has been difficult to meet due to the multi-step nature of the process, which includes drafting a permit, appellant review, revisions, and final approval. For example, the review/revisions process alone can take more than a month. The amendment extends this period by 30 days – to a total of 120 days – to provide enough time for the City Forester's decision.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.45.030 Procedures.

A.-B. [No Change]

C. Decision. The City Forester shall take action to approve, approve with conditions, or deny a Programmatic Permit request within ~~90~~120 days of determining an application contains sufficient information. The decision will be based on an evaluation of the request against the applicable review factors in Section 11.45.040.

D.-F. [No Change]

Commentary

Item 44 – Tree Code – Table Reference

11.50.030 Development Impact Area Option for Large Sites and Streets.

This is a typographical correction. The table reference is to Option B when it should be Option A.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.50.030 Development Impact Area Option For Large Sites and Streets.

Where development is proposed on a site larger than one acre or where work is occurring in the street and is not associated with an adjacent development site, the applicant may choose to establish a development impact area. For sites using the development impact area option, tree preservation requirements shall be based on the trees within the development impact area and tree density will be based on meeting Option ~~B~~A as applied only to the area within the development impact area. Trees may be planted to meet tree density requirement elsewhere on the site.

Item 37 - Tree Code – Ground Disturbance

Item 38 – Tree Code – Root Protection Zone, Proximity to Construction Activities

11.50.040.A & B Tree Preservation Standards

Tree preservation standards are triggered by any development that includes ground disturbance. Therefore, even small improvements like window wells and deck piers that require a minimal amount of ground disturbance trigger the tree protection requirements. Because these types of development may require only a small amount of ground disturbance in a contained area, the potential impact on trees may be less than with new construction or major alterations to existing buildings. The protection requirements for small projects have added expense and created applicant frustration.

The recommended amendments to 11.50.040.B and 11.50.040.C provide more flexibility related to tree protection requirements when certain criteria are met. Exterior alterations within 10 feet of an existing structure will not trigger tree preservation requirements, as long as no trees are proposed for removal and a tree plan demonstrates that construction activities will not be conducted in the root protection zones of existing trees on site. Additionally, replacement of existing fences and decks will be exempt from tree preservation requirements as long as no trees are proposed for removal and the footprint or length of the existing structure remains the same.

In addition to the changes identified above, an amendment is recommended to 11.50.040.A to recognize the fact that ground disturbance is not the only activity that should trigger tree protection requirements. Construction staging areas, where materials and equipment are stored during construction, and the activities that are associated with them, also have the potential to harm trees. Therefore, the amendment proposes to add construction staging areas of 100 square feet or more on unpaved areas to the list of activities that trigger tree preservation requirements. A new definition of construction staging area is also recommended for Subsection 11.80.020, Definitions and Measurements. These additional protections will ensure trees are adequately protected during the construction process, even when ground disturbance is not expected.

Language to be **added** is underlined
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11.50.040 Tree Preservation Standards.

A. Where these regulations apply.

1. Except when exempted by Subsection B., below, this Section applies to trees within the City of Portland and trees on sites within the County Urban Pocket Areas in the following situations:

a. On sites. Development activities with either ground disturbance or a construction staging area greater than 100 square feet on unpaved portions of the site where there are Private Trees 12 or more inches in diameter and/or City Trees 6 or more inches in diameter and the site:

(1) is 5,000 square feet or larger in area; and

(2) has existing or proposed building coverage less than 85 percent.

b. In streets. Development activities with ground disturbance or construction staging not limited to existing paved surfaces where there are Street Trees 3 or more inches in diameter.

2. Any Heritage Trees and trees required to be preserved through a land use condition of approval or tree preservation plan cannot be removed using the provisions in this Chapter, but may be counted toward the tree preservation requirements of this Section.

B. Exemptions. The following are exempt from the tree preservation standards of this Section:

1. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.

2. Trees that are dead, dying, dangerous, or a nuisance species, as documented in a Tree Plan per Subsection 11.50.070 B. These are subtracted from the total number of trees to be addressed by the standards.

3. Trees exempted from this standard by a land use decision.

4. Tree preservation requirements approved in a land division or planned development review under Title 33, Planning and Zoning and the requirements of that review are still in effect.

5. Repair and replacement of existing fences and decks that are not changing in footprint or length when no trees are to be removed as a part of the project.

Commentary

Item 37 - Tree Code – Ground Disturbance

Item 38 – Tree Code – Root Protection Zone, Proximity to Construction Activities

(See commentary for Item 37 - Tree Code – Ground Disturbance and Item 38 - Tree Code – Root Protection Zone, Proximity to Construction)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

C. Tree Preservation Requirement. Any trees preserved shall be protected in accordance with the specifications in Section 11.60.030. The regulations for Private Trees in Subsection 11.50.040 C.1. sunset after December 31, 2019. After December 31, 2019 the regulations in effect will be those in effect on January 1, 2015.

1. Private Trees.

a. General tree preservation.

(1) Tree preservation is not required for development activities within 10 feet of existing primary structures, garages, or detached accessory structures permitted as living space if the submitted tree plan confirms the following:

(a) Tree removal is not a part of the project; and

(b) Ground disturbance will not occur in the root protection zone of any existing tree on site, as defined in Subsection 11.60.030.C.1.a.

(2)~~(1)~~ Retention. **[No Change]**

(3)~~(2)~~ Mitigation. **[No Change]**

b. Preservation of trees 36 inches or greater. **[No Change]**

c. Exception for Capital Improvement Projects. **[No Change]**

Item 21 – Trees – Nonconforming Upgrades

11.50.050 On-Site Tree Density Standards

The recommended amendment aligns Title 11 triggers for on-site tree density requirements with Title 33, Planning and Zoning, non-conforming upgrades requirements. The amendment makes it clear that when an exterior alteration triggers the Title 11 on-site tree density requirements, the cost of coming into conformance is limited to an amount equal to 10 percent of project value, and that the 10 percent is not in addition to the amount spent to come into compliance with other nonconforming development.

Changes recommended for Title 33 Subsection 33.258.070 can be found in the Zoning Code Technical and Clarifications Items section.

Item 50 – Trees – Septic and Plumbing Permit Exemption

11.50.050.B.1.e. On-Site Tree Density Standards

Current code exempts work conducted under demolition, site development, and zoning permits from the on-site tree density standards. During implementation it has become clear that a few other, similar permit types, including septic and plumbing permits, should be included in the list of exempt permit types, as it was not the intent of the Tree Code to require tree density standards be met in these cases.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.50.050 On-Site Tree Density Standards.

A. Where these Regulations Apply. This Section applies to sites within the City of Portland and the County Urban Pocket Areas. Unless exempted in Subsection 11.50.050 B., the following are subject to the On-Site Tree Density Standards:

1. New Development;

2. Exterior alterations to existing development with a project valuation that is more than the threshold stated in 33.258.070.D.2.a.~~;~~

~~**3.** Additions in excess of 200 square feet to single dwelling development.~~

B. Exemptions.

1. The following development activities are exempt from the on-site tree density standards:

~~**a.** Additions or exterior alterations to existing development with a project valuation less than the non-conforming upgrade threshold noted in Title 33, Planning and Zoning.~~

a~~b~~. A specific condition of land use review approval exempts the site from these density standards.

b~~c~~. The site is within the Portland International Airport Plan District or Cascade Station/Portland International Center Plan District and is subject to the Airport Landscape Standards; see Title 33, Planning and Zoning.

c~~d~~. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.

d~~e~~. Work conducted under Demolition, Site Development, Septic, Plumbing or Zoning Permits.

2. [No Change]

C. New development shall meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in D, below. Exterior alterations shall meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in D, below, but are only required to spend 10 percent of project value on the requirements in D and the nonconforming upgrades required by 33.258, Nonconforming Situations.

D~~C~~. On-Site Tree Density Requirements. ~~Planting on sites shall meet City specifications and standards in Chapter 11.60 and the following:~~

1.-3. [No Change]

Item 37 - Tree Code – Ground Disturbance

11.50.070.A.2 Tree Plan Submittal Requirements

In some cases a project may have no ground disturbance but still involve substantial construction activities, including staging and others, that could result in tree damage or death. To ensure adequate tree protection in these cases, a tree plan will now be required (see recommended changes to 11.50.040) and the tree plan submittal must include documentation of any construction staging areas. If 100 square feet or more of the construction staging area is located on existing unpaved ground, tree preservation requirements will be triggered. A new definition of construction staging area is also recommended for Subsection 11.80.020, Definitions and Measurements.

Item 45 - Tree Code – Tree Preservation and Protection near Development Impact Area

11.50.070.A.4.a(3) Tree Plan Submittal Requirements

The Tree Code allows for the establishment of a development impact area on sites larger than one acre or where work is occurring in the street. In these cases, the tree plan must identify all trees 6 inches in diameter or greater inside and 25 feet beyond the edge of the development impact area. The current code provides no direction when the development impact area includes the root protection zone of trees located outside the development impact area. As construction activity in the development impact area has the potential to damage trees outside its boundary, tree protection methods should address any trees with a root protection zone in the development impact area. The amendment modifies language to direct applicants to protect, per Subsection 11.60.030.C, all trees shown in the tree plan.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.50.070 Tree Plan Submittal Requirements.

A tree plan submittal shall include the following information. The tree plan information may be combined with other relevant plan sheets. The submittal shall include:

A. Site Plan Requirements. The site plan shall include the following information with sufficient detail to show that the proposal complies with this Title.

1. Existing improvements;

2. Any construction staging areas on site;

3~~2~~. Proposed alterations including structures, impervious area, grading, and utilities;

4~~3~~. Existing trees:

a. Trees on the site. Indicate the location and the diameter size of:

(1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval. These shall be clearly labeled.

(2) All trees completely or partially on the site that are at least 6 inches in diameter.

(3) Trees smaller than 6 inches in diameter shall be shown when proposed to be retained for tree density credit. On City-owned or –managed sites, the City Forester may require smaller size trees be shown.

Applicants using the development impact area option as described in Section 11.50.030, need only identify the trees on the site inside and 25 feet beyond the edge of the development impact area. For all trees shown to be retained on the tree plan (including those beyond the development impact area), tree protection methods detailed in Subsection 11.60.030.C. shall be implemented. Protection may be achieved using the Prescriptive Path or Performance Path.

b. **[No Change]**

5~~4~~. Proposed tree activity. **[No Change]**

B. Narrative requirements. **[No Change]**

Commentary

Item 51 – Tree Code – Plant Material Labels

11.60.020.E.1 Tree Planting Specifications.

This amendment updates language in the tree planting specifications to require labels be placed on planting materials during inspection. This will ensure trees on site are installed per the submitted planting plan.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.60.020 Tree Planting Specifications

A.- D. [No Change]

E. Installation and establishment.

1. Installation. All required trees shall be planted in-ground, except when in raised planters that are used to meet Bureau of Environmental Services stormwater management requirements. Plant materials shall be installed to current nursery industry standards and proper arboricultural practices. Plant materials shall be labeled for the inspector and properly supported to ensure survival. Support devices such as guy wires or stakes shall not interfere with vehicular or pedestrian movement:

Item 37 - Tree Code – Ground Disturbance

Item 38 – Tree Code – Root Protection Zone, Proximity to Construction Activities

11.60.030.C Tree Preservation Standards

A source of confusion during implementation of the Tree Code has been the installation of landscaping within the root protection zones of existing trees. The recommended amendment incorporates language to confirm that the installation of landscaping required by Title 33 is allowed within root protection zones and is not considered an encroachment. Language to clarify that in-ground irrigation systems are to be considered encroachments has been added. These changes provide additional guidance on the necessary protections to be implemented within the root protection zone.

Item 40 – Tree Code – Root Protection Zone, Fencing

Item 46 – Tree Code – Root Protection Zone, Permissible Encroachments

11.60.030.C.1 Tree Protection Specifications.

The formula to calculate the area of the RPZ assumes a full circle around the trunk of the tree where roots are growing close to the surface that could be damaged during construction. The formula overlooks situations where a tree is growing near an existing structure or a paved area that falls within the circle around the tree trunk. It also overlooks situations where part of the circle around the tree is located on private property and part in the public right-of-way, or partly on the subject site and an adjacent site. This amendment clarifies that existing structures and public right-of-way are allowed within the root protection zone. New encroachments would be allowed as long as the encroachments do not exceed the maximum limits. It also clarifies that protective fencing is not required around that portion of the root protection zone that falls outside of the property under the control of the applicant.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.60.030 Tree Protection Specifications

A. Intent. **[No Change]**

B. Applicability. **[No Change]**

C. **Protection methods.** The Tree Plan shall show that trees retained are adequately protected during construction using one of the methods described below:

1. Prescriptive Path.

a. A root protection zone is established as follows:

(1) For trees on the development site - a minimum of 1 foot radius (measured horizontally away from the face of the tree trunk) for each inch of tree diameter (see Subsection 11.80.020 C., Measurements):

(2) Street Trees – the City Forester may prescribe greater or lesser protection than required for on-site trees.

(3) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain. New encroachments into the root protection zone are allowed provided:

(a) the area of all new encroachments is less than 25 percent of the ~~total~~ remaining root protection zone area when existing encroachments are subtracted; and

(b) no new encroachment is closer than 1/2 the required radius distance (see Figure 60-1);

b. Protection fencing

(1) Protection fencing consisting of a minimum 6-foot high metal chain link construction fence, secured with 8-foot metal posts shall be established at the edge of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.

(2) When a root protection zone extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.

Commentary

Item 37 - Tree Code – Ground Disturbance

Item 38 – Tree Code – Root Protection Zone, Proximity to Construction Activities

Item 40 – Tree Code – Root Protection Zone, Fencing

Item 46 – Tree Code – Root Protection Zone, Permissible Encroachments

(See commentary for Item 37 - Tree Code – Ground Disturbance, Item 38 – Tree Code – Root Protection Zone, Proximity to Construction Activities, Item 40 – Tree Code – Root Protection Zone, Fencing, and Item 46 – Tree Code – Root Protection Zone, Permissible Encroachments)

c. **[No Change]**

d. Installation of landscaping required by Title 33 is allowed within the root protection zone and is not an encroachment. Any in-ground irrigation systems are considered encroachments.

~~c~~d. **[No Change]**

~~f~~e. **[No Change]**

2. Performance Path **[No Change]**

3. Additional information. **[No Change]**

D. Changes to tree protection. **[No Change]**

E. Tree protection inspections. **[No Change]**

Item 42 – Tree Code – Liability of ROW Trees

11.60.060.A.2 Tree Maintenance Specifications and Responsibilities.

(See commentary for Item 42 – Tree Code – Liability of ROW Trees)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.60.060 Tree Maintenance Specifications and Responsibilities.

The following specifications apply to all trees in the city. The purpose of these provisions is to protect the health, safety and welfare of the public, safeguard public infrastructure assets, and ensure the continued health of the urban forest.

A. General.

1. Permits required. Any person pruning, removing, or conducting any other work on any Street Tree or City Tree and any person removing any regulated Private Tree in order to comply with the requirements of this Section, shall first obtain a Type A tree permit in accordance with the provisions of Chapter 11.30. The application fee may be waived when the City forester has directed the work to be done.

2. Responsibilities

a. Property owner. It is the duty of every owner of property to maintain trees located on the property, in any adjacent unimproved or partially-improved rights-of-way, or on the adjacent sidewalk and/or street planting areas in accordance with this Section. Further, the owner shall be responsible for all costs associated with such maintenance, removal and any tree replacement, if required.

b. Bureau of Transportation. For trees located in center medians, the Bureau of Transportation is responsible for the requirements of this Section.

c. Bureau of Environmental Services. For trees located in green street facilities as described in Title 17, the Bureau of Environmental Services is responsible for the requirements in this Section

3.-4. [No Change]

Item 39 - Tree Code – Tree Plan Requirements

11.70.080 Correcting Violations of this Title

Tree plans are required to show that development will meet the tree preservation and tree density requirements of Title 11. Tree plan submittal requirements in 11.50.070 mandate that the size and location of trees be shown. There is no current requirement that the health of the tree or the tree species be shown, though 11.50.040.B.2 states that dead, dying, dangerous, or nuisance species are exempt and can, with an arborist report, be subtracted from the total number of trees to be used to meet the tree preservation standard.

In the field, City Forestry inspectors have found that in some cases trees identified to be preserved are dead, dying, dangerous or nuisance species trees. This is counter to the intent of Title 11 to preserve healthy, viable trees. At the same time, it was not the intent of Title 11 to require an arborist report for every project.

To address this issue, the amendment proposes an additional subsection in 11.70.080 to give the City Forester the ability to require a tree plan revision if, upon inspection, it is determined that a dead, dying, dangerous or nuisance species tree has been used to meet the tree preservation standards in 11.50.040.C.1.a. If the applicant disagrees with the determination of the inspector, the applicant may submit an arborist report demonstrating compliance with the requirements of the tree preservation standards.

Item 34 – Tree Code – Damage or Removal of Heritage Trees

11.70.080 Correcting Violations of this Title.

Heritage Trees are community assets that are assigned unique protections as a result of their special importance to the City, including age, size, and historical or horticultural value. The Heritage Tree program became part of City code in 1993 and the first Heritage Trees were designated in 1994. Heritage Trees are located on private land, on public property (e.g., parks or other lands), or in the right-of-way (ROW) and are distributed throughout the city.

Heritage Trees are formally recognized by the City Council and assigned substantial protections. Although afforded special protections by City Council, the current penalties associated with violations on private land – specifically, unpermitted tree removal – are not commensurate with their regulatory protections. This violation is deemed subject to a "Civil Penalty" and doesn't have its own fee schedule. Currently the maximum penalty for removal of a private Heritage Tree without a permit is $1,000, with a $250 Tree Permit Violation Review fee.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.70.080 Correcting Violations of this Title.

A. General. The following list of remedies gives the City Forester and BDS Director broad discretion in applying a reasonable and effective means to restore a tree or site where trees have been illegally removed or damaged, or where a dead, dying, dangerous, or nuisance tree has been identified to be preserved to meet 11.50.040.C.1. The rights and remedies provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law including the enforcement actions described in Section 11.70.090. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following remedies.

B. Standard remedies. Standard remedies are intended to address a wide variety of violations of this Title. Additional remedies specific to City and Street Trees, and trees in development situations are described in Subsections C. and D. When the City determines that a violation of this Title has occurred, any or all of the standard remedies described in this Subsection, and any applicable additional remedies described in this Section may be required depending on the severity and extent of the violation.

1. Minor Infractions. **[No Change]**

2. Treatment. **[No Change]**

3. Revised Tree Plan and Payment in Lieu. In cases where a dead, dying, dangerous or nuisance species tree is identified to be preserved to meet 11.50.040.C.1 , the City Forester may require a revision to the submitted tree plan to ensure that only healthy, viable trees are preserved to meet the requirement. If the applicant disagrees with the City's determination on the health or species of a tree to be preserved, an arborist report can be submitted by the applicant to demonstrate compliance. If no trees remain on site to meet the preservation requirement, the applicant may pay the applicable mitigation fee, as defined in 11.50.040.C.

~~4~~3.-54. [Renumber Paragraphs]

C. Additional remedies for City and Street Trees. In addition to the remedies provided by any other provision of this Chapter, when the City Forester determines that a violation of this Title has occurred involving a City Tree or Street Tree, the City Forester may seek additional remedies as described below.

1. Restoration Fees. The City may require any person to pay into the City's Urban Forestry Fund a restoration fee for the damaged or removed tree according to the City's adopted fee schedule. The restoration fee may be doubled if any of the following apply:

a. The person has been convicted of a previous violation of this Title; or

~~**b.** The tree is a Heritage tree; or~~

b~~c.~~. The tree was subject to the protection requirements of a Tree Plan.

Item 34 – Tree Code – Damage or Removal of Heritage Trees

To create a greater disincentive for private Heritage Tree removal or damage and bring the penalties for such actions in line with their historic and cultural value, two new Heritage Tree Restoration Fees are recommended for Chapter 11.70.080, Correcting Violations of this Title. A new sub-paragraph, 11.70.080.E., will establish restoration fees for damage and removal of Heritage Trees. The recommended Heritage Tree fees utilize an "inch-for-inch" structure, with damages incurring a $300.00 per inch fee and removal a $600.00 per inch fee. To demonstrate the potential fees and the process for calculating them, examples of both damage and removal fees are provided below.

The Restoration Fees are recommended to be incorporated into the *Title 11 Tree Fee Schedule*, and will address all Heritage Trees, including private, public, City and Street trees. These fees will be consistent with the existing fees associated with the damage or removal of a City or Street Heritage Tree, which are already established in the Tree Code.

<u>Heritage Tree Restoration Fee Examples – Damage</u>

Heritage Tree #260, Douglas Fir located in Powell Butte Nature Park

Circumference = 18.8 feet
Diameter [circumference/3.14] = 5.99 feet (71.85 inches)

Restoration Fee [diameter (71.85 in) x $300.00] = $21,554

Heritage Tree #268, Oregon White Oak located in ROW at 5813 SE Steele St

Circumference = 12.9 feet
Diameter [circumference/3.14] = 4.10 feet (49.30 inches)

Restoration Fee [diameter (49.30 in) x $300.00] = $14,790

<u>Heritage Tree Restoration Fee Examples – Removal</u>

Heritage Tree #260, Douglas Fir located in Powell Butte Nature Park

Restoration Fee [diameter (71.85 in) x $600.00] = $43,108

Heritage Tree #268, Oregon White Oak located in ROW at 5813 SE Steele St

Restoration Fee [diameter (49.30 in) x $600.00] = $29,580

As is demonstrated by these examples, the fees associated with these violations will be substantial and create a new and significant disincentive to damaging or removing private Heritage Trees.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

2. Civil Remedies. The City will have the right to obtain, in any court of competent jurisdiction, a judgment against any person removing or causing damage to any City tree or Street Tree in violation of this Title. In any such action, the measure of damages is the actual replacement value of the damaged or destroyed trees as well as any other consequential damage to other public facilities within the street.

D. Additional remedies for Private Trees Subject to a Tree Plan. **[No Change]**

E. Additional remedies for Heritage Trees. In addition to the remedies provided by any other provision of this Chapter, when the City Forester determines that a violation of this Title has occurred involving a Heritage Tree, the City Forester may seek additional remedies as described below.

1. Restoration Fees.

a. Private Heritage Trees. The City may require any person to pay into the City's Tree Planting and Preservation Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.

b. City and Street Heritage Trees. The City may require any person to pay into the City's Urban Forestry Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.

Commentary

Item 34 – Tree Code – Damage or Removal of Heritage Trees

(See commentary for Item 34 – Tree Code – Damage or Removal of Heritage Trees)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

PRK-2.03, Tree Review, Tree Inspections, Tree Permits, and Tree-related Enforcement Fee Schedule: Exhibit A, Tree Fee Schedule

City of Portland
Portland Parks & Recreation Urban Forestry
PROPOSED
Title 11, Trees Fee Schedule FY16-17

DEVELOPMENT REVIEW FEES [No Changes Recommended]		
Street Trees		
	Residential Remodel ≥ $25,000 valuation	$ 80.00
	Residential Construction ≤ $100,000 valuation	$ 150.00
	Residential Construction > $100,000 valuation	$ 200.00
	Commercial Remodel ≥ $25,000 valuation	$ 194.78
	Commercial Construction ≤ $1,000,000 valuation	$ 190.00
	Commercial Construction > $1,000,000 valuation	$ 300.00
	Public Works	$ 325.00
	Fee in Lieu of Planting and Establishment ~~(per inch)~~	$ 300.00 per inch
Street Trees – Land Use Services		
	Land Use Review	$ 150.00
	Early Assistance Written Info Only	$ 150.00
	Early Assistance Meeting & Written Info	$ 300.00
	Pre-Application Conference	$ 300.00
City and Private Property Trees		
	Tree Preservation Inspection	$ 97.00
	Tree Preservation Re-inspection Fee	$ 97.00
	Tree Violation Inspection Fee (if confirmed)	$ 97.00
	Preservation, Fee in Lieu (per tree)	
	Trees ≥12 and <20 inches diameter	$ 1,200.00
	Trees ≥20 and <36 inches diameter	$ 2,400.00
	Trees ≥36 inches diameter	$ $300.00 per inch
	Planting and Establishment, Fee in Lieu (per tree)	$ 450.00
	Planting and Establishment, Fee in Lieu ~~(per inch)~~	$ 300.00 per inch
NON-DEVELOPMENT PERMIT FEES [No Changes Recommended]		
Street Trees		
	Tree Removal Application	$ 35.00
	Tree Pruning Application	no charge
	Tree Planting Application	no charge
	Fee in Lieu of Planting and Establishment ~~(per inch)~~	$ 300.00 per inch
	Permit Appeal	$ 100.00
	Attaching Permanent Objects Application	$ 264.00

Commentary

Item 34 – Tree Code – Damage or Removal of Heritage Trees

(See commentary for Item 34 – Tree Code – Damage or Removal of Heritage Trees)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

City of Portland
Portland Parks & Recreation Urban Forestry
PROPOSED
Title 11, Trees Fee Schedule FY16-17

	Ornamental Lighting	
	Application Fee	$ 35.00
	1-10 trees, Additional Fee	no charge
	11-50 trees, Additional Fee	$ 45.00
	51-100 trees, Additional Fee	$ 75.00
	101-200 trees, Additional Fee	$ 100.00
	201-500 trees, Additional Fee	$ 175.00
	>500 trees, Additional Fee	$ 250.00
City and Private Property Trees		
	Tree Removal Application	$ 35.00
	Tree Pruning Application (c,p, v zones)	no charge
	Fee in Lieu of Planting and Establishment ~~(per inch)~~	$ 300.00 per inch
	Permit Appeal	$ 100.00
PROGRAMMATIC PERMIT FEES [No Changes Recommended]		
	Programmatic Permit Application	$ 5,500.00
ENFORCEMENT FEES AND PENALTIES		
	Tree Permit Violation Review	$ 250.00
	Administrative Review	$ 110.00
	Enforcement Penalty	$ 250.00
	Civil Penalty	$ 1,000.00
	Restoration Fee, Damaged Tree ~~(per inch)~~ city, street	$ 150.00 per inch
	Restoration Fee, Tree Removal ~~(per inch)~~ city, street	$ 300.00 per inch
	Restoration Fee, Damaged Tree, Heritage Tree	$ 300.00 per inch
	Restoration Fee, Tree Removal, Heritage Tree	$ 600.00 per inch
	Nuisance Abatement Charges	Cost to remove the nuisance
	Nuisance Abatement Administrative Charge	40% of abatement cost (min. $257)

Item 41 – Tree Code – Enforcement

The Tree Code was written with the intent of providing the same authority for enforcement that is provided for enforcing the building and zoning codes. However, in practice Urban Forestry inspectors have discovered that some enforcement tools are not the same as those given to BDS, or they are missing.

These amendments do several things to provide similar authority for Tree Code enforcement as for the other codes.

11.70.090 Enforcement Actions

11.70.090.B.1-2 In this recommended amendment, the term "complaint" is replaced with "citation" for BDS and "fee or penalty notice" for the City Forester. The BDS Director has the authority to issue a citation in response to a complaint, while the City Forester issues a fee notice or penalty notice in the case of a violation. This change increases the accuracy of the language in this section.

11.70.090.B.3 This amendment would give the City Forester the authority to delay intake or review of plans when there is an ongoing violation, similar to authority given to the Director of BDS.

11.70.090.B.8 and 11.70.090.B.9 The code is clear that the City Forester can issue penalties and impose liens on a property for penalties. These amendments clarify that the City Forester can also require fees and impose property liens to garner these fees.

11.70.100 Nuisance Abatement

11.70.100.E This is a recommended new subsection for Title 11 that would create the same authority as exists in the building and nuisance codes to level civil penalties to abate nuisances caused by violations of the Tree Code.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.70.090 Enforcement Actions.

A. General. The following list of enforcement actions gives the City Forester and BDS Director additional means to obtain compliance with the requirements of this Title. The rights and remedies provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following enforcement actions.

B. Standard enforcement actions. Standard enforcement actions may be invoked for general violations of this Title, including conducting tree activities without a required tree permit. In addition to these standard actions, the City Forester may take additional actions for City and Street Tree violations as described in Subsection C.

1. Civil penalties. The City Forester or BDS Director may issue a ~~complaint~~ (1) fee or penalty notice or (2) citation, as applicable, to any person who cuts, removes, prunes or harms any tree without a permit as required by this Title or is otherwise in non-compliance with any term, condition, limitation or requirement of an approval granted under this Title, and require payment of a civil penalty up to $1,000 per day. Each tree constitutes a separate violation, and each day that the person fails to obtain a permit or remains in non-compliance with a permit or tree plan may also constitute a separate violation.

2. Initiating a proceeding before the Code Hearings Officer. The City Forester and BDS Director are each authorized to initiate proceedings before the Code Hearings Officer, as stated in the procedures in Title 22 Hearings Officer, to enforce the provisions of this Section when the responsible person fails to respond to the City Forester or BDS Director's ~~complaint~~ notice or citation as described in Subsection B.1, above. The Hearings Officer may order any party to:

a. Abate or remove any nuisance;

b. Install any equipment or plant trees necessary to achieve compliance;

c. Pay to the City of Portland a civil penalty of up to $1,000 per day. In determining the amount of any civil penalty to be assessed, the Code Hearings Officer will consider the following:

(1) The nature and extent of the property owner or responsible party's involvement in the violation;

(2) The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;

Item 41 – Tree Code – Enforcement

(See commentary for Item 41 – Tree Code – Enforcement)

(3) Whether the violation was isolated and temporary, or repeated and continuing;

(4) The magnitude and seriousness of the violation;

(5) The City's cost of investigation and remedying the violation;

(6) Any other applicable facts bearing on the nature and seriousness of the violation.

d. Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.

3. Delayed intake of applications.

a. Development permits or land use reviews. When a violation of this Title has occurred on a site, the BDS Director may refuse land use or development permit applications until the violation has been satisfactorily resolved.

b. Tree permits. When a violation of this Title has occurred, the City Forester may delay intake or review of applications for tree permits from the property owner or other applicant, as identified on the violated permit application, until the violation has been satisfactorily resolved.

4.-7. [No Change]

8. Enforcement ~~penalty~~ fees and penalties.

a. The City may charge ~~a penalty~~ fees and penalties in the form of a monthly enforcement penalty for each property found in violation of this Title that meets the following conditions:

(1) The property is a subject of a notice of violation of this Title as described in Section 11.70.070;

(2) A response period of 30 days has passed since the effective date of the initial notice of violation; and

(3) The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.

b. The amount of the fees and penalties in the monthly enforcement penalty shall be charged as set forth in the Title 11, Trees Fee Schedule, as approved by the City Council.

c. Properties in violation for 3 months from the initial notice of violation will be assessed fees and penalties in the form of an enforcement penalty that is twice the amount as listed in the Title 11, Trees Fee Schedule, as approved by the City Council.

Item 41 – Tree Code – Enforcement

(See commentary for Item 41 – Tree Code – Enforcement)

d. Whenever the owner believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the Director. Upon receipt of such notice, the Director will promptly schedule an inspection of the property and notify the owner if any violations remain uncorrected.

e. Once monthly enforcement penalties begin, they will continue until all violations listed in the first or any subsequent notice of violation have been corrected, inspected and approved.

f. When a property meets the conditions for charging fees and penalties~~an enforcement penalty~~ as described in this Section, the BDS Director or City Forester, as applicable, will file a statement with the City Auditor that identifies the property, the amount of the monthly penalty and the date from which charges are to begin. The Auditor will then:

(1) Notify the property owner of the assessment of enforcement penalties;

(2) Record a property lien in the Docket of City Liens;

(3) Bill the property owner monthly for the full amount of fees and penalties owing, plus additional charges to cover administrative costs of the City Auditor; and

(4) Maintain lien records until the lien and all associated interest, fees, penalties, and costs are paid in full; and the BDS Director or City Forester, as applicable, certifies that all violations listed in the original or any subsequent notice of violation have been corrected.

C. Additional Enforcement Actions for City and Street Tree Violations. The City Forester may impose the following additional actions for City or Street Tree violations.

1. Criminal penalties. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may seek Criminal Penalties in any court of competent jurisdiction. The court may require that any responsible party violating any provision of this Title will, upon conviction, be fined a sum not exceeding $1,000 or will be imprisoned for a term not exceeding 6 months.

2. Institution of legal proceedings. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Title.

Commentary

Item 41 – Tree Code – Enforcement

(See commentary for Item 41 – Tree Code – Enforcement)

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.70.100 Nuisance Abatement.

A.-D. [No Change]

E. Cost of nuisance abatement

1. Whenever a nuisance is abated by the City, the BDS Director or City Forester shall keep an accurate account of all expenses incurred for each nuisance abated including but not limited to abatement costs, civil penalties, fees, administrative costs, recorders fees and title report charges as set forth in the Title 11, Trees Fee Schedule, as approved by City Council.

2. When the City has abated a nuisance maintained by any owner of real property, for each subsequent nuisance which is abated by the City within 2 consecutive calendar years concerning real property, owned by the same person, an additional civil penalty as set forth in the Title 11, Trees Fee Schedule, shall be added to the costs, charges and civil penalties. The additional civil penalty shall be imposed without regard to whether the nuisance abated by the City involved the same real property or is of the same character as the previous nuisance.

3. Costs and penalties resulting from nuisance abatement shall be assessed as a lien upon the real property as provided in Section 11.70.090 Enforcement Actions.

Item 47 – Tree Code – Definition of "Removal"

11.80.020.B Definitions and Measurements.

Removal – The amendment aims to clarify that the loss of physiological viability, structural integrity or death will now serve as the criteria for determining "removal". The updated language removes the reference to "50 percent or more" of the crown, trunk or root system due to difficulties in calculating this percentage during implementation.

Item 48 – Tree Code – Definition

11.80.020.B Definitions and Measurements.

For clarification, the following new definitions are recommended to be added to the Tree Code.

Development, Alteration – Changes contained herein reference an "alteration" so this definition was added to the Section 11.80.020. The Zoning Code definition of alteration is recommended to be used in Title 11.

Building - Title 11 includes standards that allow, in some circumstances, the removal of trees near existing structures without any review. A reason for adding the definition of building to the Tree Code is that garden sheds and other relatively easy to move structures have been placed near or under trees to justify tree removal using these standards. These definitions will make it clear that a building is a structure that required a development permit prior to construction. Trade permits, such as mechanical, electrical, etc., are not defined as development permits. This definition will prevent people from trying to use the ambiguities of what constitutes a structure as a loophole for avoiding Tree Code standards.

Attached Structure – The term "attached structure" is used in Chapter 11.40, Trees Permit Requirements (No Development), but a definition is not currently included in Chapter 11.80, Definitions and Measurements. The recommended amendment adds a reference to the definition of attached structure included in the Zoning Code. This will ensure consistency and clarity across relevant City regulations.

Tree - Experience in the field when implementing the Tree Code is that plants normally considered shrubs, like arborvitae or laurel hedges are often put forward as trees to be preserved to meet the tree standards. The main intent of adding this definition is to prevent planting and preservation of shrubs in lieu of trees. A review of dictionary definitions of tree finds that most of them include the elements of being a perennial, having a woody stem or trunk, having a distinct crown or lateral branches. Some also include height as a factor. The International Society of Arboriculture tree definition uses a mature height of 16 feet as a factor. This definition uses these elements. It also specifically excludes some common ornamental and landscaping shrubs listed in City-approved manuals from the definition of a tree.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

11.80.020 Definitions and Measurements.

A. Information about the use of terms in the tree code is contained in Section 11.10.030.

B. The definition of words with specific meaning in the tree code are as follows:

1.-3. [No Change]

4. "Attached Structure" means a structure attached to a building.

~~4.~~ [Renumber Paragraph]

6. "Building" means a structure that has a roof, is enclosed on at least 50 percent of the area of its sides and required a development permit prior to construction.

~~5.~~-~~9.~~ [Renumber Paragraphs]

10. "Construction Staging Area" means a designated area for the storage of equipment and vehicles, stockpiles, waste bins, and other construction-related materials during a construction project. Any construction trailers are to be included in the construction staging area. In some cases, more than one staging area may be established on site.

~~10.~~-~~12.~~ [Renumber Paragraphs]

14. "Development, Alteration" has the same meaning as in Title 33, Planning and Zoning.

~~11.~~-~~15.~~ [Renumber Paragraphs]

20. "Injury" means a wound inflicted upon a tree resulting from any activity, including trenching, excavating, altering the grade, smothering within the root protection zone of a tree, bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, herbicide or poisoning, or any other action leading to the death or permanent damage to tree health including the following:

a.-b. [No Change]

c. "Removal" is felling, cutting or removing ~~50 percent or more of the~~ any portion of the crown~~,~~ trunk, or root system of a tree, that ~~resulting~~ results in the loss of ~~aesthetic or~~ physiological viability or structural integrity, or any procedure that will result in the death of the tree, including girdling, poisoning, topping or drowning the tree.

~~17.~~-~~31~~ [Renumber Paragraphs]

Commentary

Item 47 – Tree Code – Definition of "Removal"

Item 48 – Tree Code – Definition

Construction Staging Area – The presence of a construction staging area is recommended as a new trigger for the tree preservation standard in Subsection 11.50.040. To reduce confusion on what qualifies as a "construction staging area", a new definition is recommended in this chapter.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

36. Tree Related Terms:

a.-k. [No Change]

l. "Tree" means a perennial, woody stemmed plant that typically supports a distinct crown of foliage and typically reaches a mature height of at least 16 feet and excludes plants listed as shrubs or herbaceous plants in the *Tree and Landscaping Manual* published by the Bureau of Development Services or the *Portland Plant List*.

~~l~~m. [No Change]

~~33.-34~~. [Renumber Paragraphs]

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VI. Other City Titles Amended for Consistency

References to "demolition delay review" were changed to "120-day delay" in Titles 17 and 24 to be consistent with recommended changes to Title 33 related to Item #14, 120-Day Delay Procedure. An additional amendment is recommended to Title 24 that would ensure that neighbors continue to receive at least 35 days notice of proposals to demolish structures in residential zones.

Item 14 – 120-Day Delay Procedure

17.106.040 Regulations

References to "Demolition Delay" were changed to "120-day delay" in Title 17 to remain consistent with Title 33.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

17 .106.040 Regulations

A. Scope. The deconstruction requirements of this Chapter apply to demolition permit applications under Chapter 24.55 of the City Code for:

1. Primary dwelling structures that were built in 1916 or earlier according to building permit records on file with the Bureau of Development Services, or if no such permit records exist, then County tax assessor information; or

2. Primary dwelling structures that have been designated as a historic resource subject to the demolition review or ~~demolition delay review~~120-day delay provisions of Title 33.

B.-F. [No Change]

Item 14 – 120-Day Delay Procedure

24.55.200 Residential Demolition Delay - Housing Preservation.

The provisions of 24.55.200 are "intended to allow an adequate amount of time to help save viable housing in the City while recognizing a property owner's right to develop or redevelop property. The regulations provide an opportunity for public notice of impending residential demolitions and coordination of the efforts of various City bureaus. The regulations also encourage seeking alternatives to demolition."

The provisions provide a 35-day delay period, a possible 60-day extension of this period, and require notice so that organizations and nearby residents have time to explore alternatives to demolition with the property owner. Subsection L exempts structures subject to either demolition review or demolition delay review (now 120-day delay) in Title 33 from these requirements. Those procedures impose a 120-day delay period and require notice, so to make structures subject to both Titles was redundant.

However, with the changes recommended to Title 33 in this report, the 120-day delay procedure would be applied to both demolition applications and requests to remove a property from the Historic Resource Inventory. A concern arose around a situation in which an applicant submits a letter to BDS asking to remove a structure in a residential zone from the HRI. The structure is removed from the inventory and enters the required 120-day delay period. Notice is sent that a request has been submitted to remove the property from the HRI. On day 115, the applicant applies for a demolition permit. The structure is no longer subject to Title 24, so on day 121, the demolition permit is issued and nearby organizations and neighbors never received clear notice of an intent to demolish, and never had the opportunity to negotiate with the property owners, which is the intent of this Section.

To avoid this situation, the amendment removes the exemption for structures subject to Title 33 120-day delay, making these subject to the provisions of both Titles 24 and 33. The delay periods could run concurrently, but if a demolition permit was applied for late in an HRI removal-triggered 120-day delay period, Title 24 demolition notices would be sent and the structure would still be subject to the 35-day delay, even if that extended past the expiration of the 120-day delay period.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

24.55.200 Residential Demolition Delay - Housing Preservation.

A.-K. [No Change]

L. Exceptions to demolition delay.

1. [No Change]

2. The provisions of this Section (24.55.200) do not apply to applications for building permits for demolition of structures that are subject to the demolition review ~~or demolition delay review~~ provisions of Title 33. In ~~these~~this situation~~s~~, the provisions of Title 33, Planning and Zoning, apply to the application. Any application not subject to the demolition review ~~or demolition delay review~~ provisions of Title 33 ~~are~~is subject to the demolition delay provisions of this Section (24.44.200).

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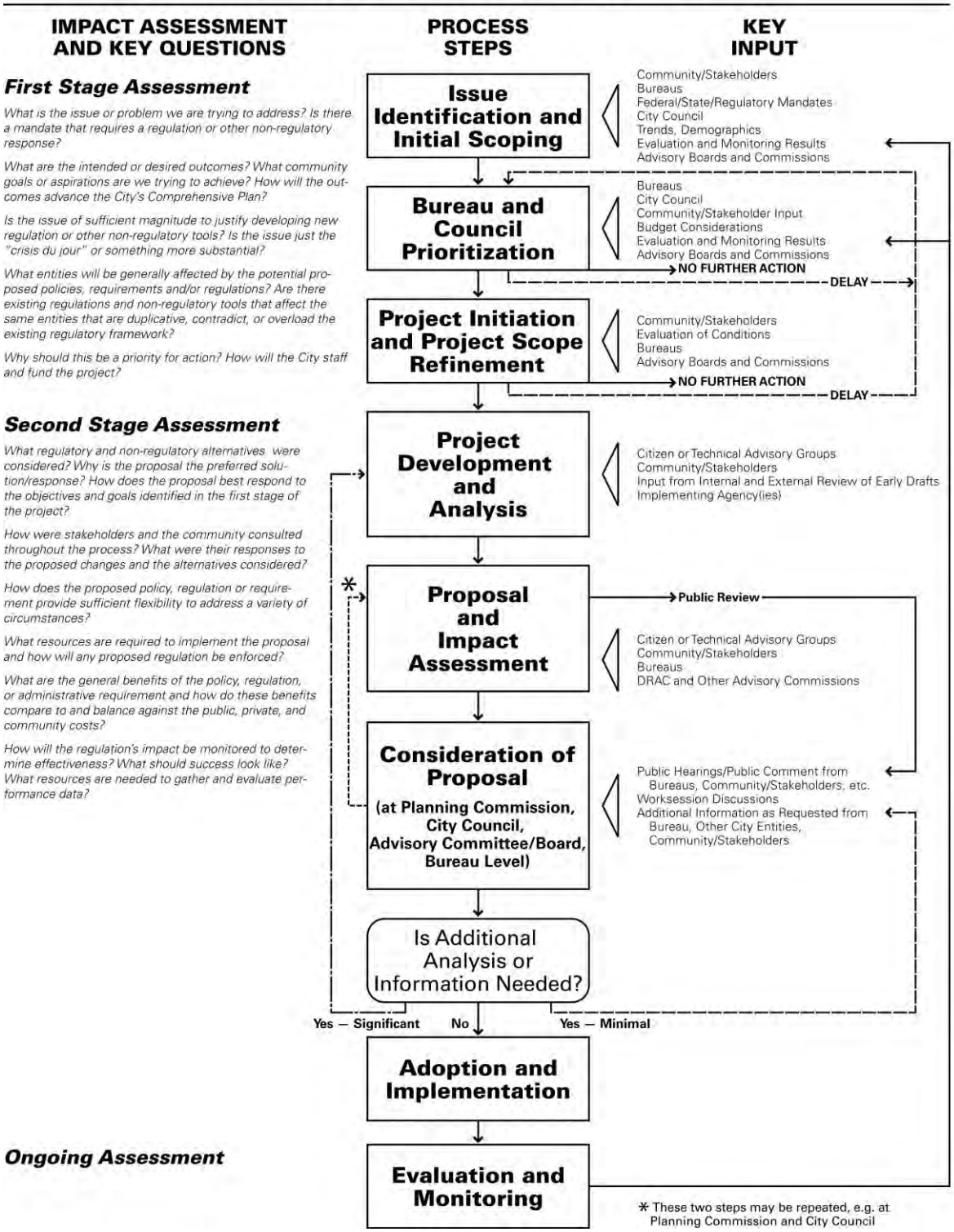
Appendix A

Model Process for Consideration and Assessment of Land Use and Development Actions



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