

## **Deconstruction Ordinance (Portland City Code Chapter 17.106) Amendment Proposal Summary**

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**July 25, 2019**

### **Background:**

In 2016, the City of Portland became the first city in the nation to require deconstruction (instead of mechanical demolition) for its oldest and most historic houses and duplexes when proposed for removal. This ground-breaking deconstruction ordinance was a direct outcome of the Deconstruction Advisory Group (DAG) - a dedicated body of industry/community stakeholders and government partners that helped guide the Bureau of Planning and Sustainability (BPS) in developing recommendations on how best to advance deconstruction. The deconstruction ordinance has resulted in hundreds of houses being deconstructed and over two million pounds of material salvaged for reuse over the past three years.

The current deconstruction ordinance is part of a multi-phased approach to increase deconstruction and building material reuse in Portland over time. What began as a voluntary grant program in 2015 progressed to the current deconstruction ordinance which went into effect October 31, 2016. The deconstruction ordinance applies to houses and duplexes built in 1916 or earlier or designated as a historic resource. These structures are required to be deconstructed using a [Certified Deconstruction Contractor](#). Part of the phased approach in the original ordinance was a goal to raise the year-built threshold to 1940 by 2019. Given the successful outcomes of the ordinance to date, the Bureau of Planning and Sustainability is proposing to raise the year-built threshold from 1916 to 1940. If approved the proposed amendment would take effect December 31, 2019.

The year 1916 or older was originally chosen because it would apply to approximately one-third of house/duplex demolition permits. Stakeholders felt that was a reasonable and attainable first step in requiring deconstruction that allowed capacity building in terms of contractors/workforce and market infrastructure. Houses and duplexes designated as historic resources make up a very small percentage of annual demolition permits. Changing the year-built threshold to 1940 would result in approximately two-thirds of house demolitions being required to deconstruct. However, the number of annual demolition permit applications has been steadily decreasing since peaking in 2016 so raising the year-built threshold to 1940 would equate to approximately 20 additional house deconstructions annually when compared to permit activity in 2016. Houses and duplexes built in 1940 or earlier still contain valuable old-growth lumber, which is sought after for its tight grain, beauty and limited knots. Houses built after 1940 generally have increasingly less old-growth lumber and increased use of construction adhesives (making it more difficult to deconstruct) as the decades progress.

### **Deconstruction Ordinance Benefits and Outcomes:**

The purpose of the deconstruction ordinance is to maximize salvage of building materials for reuse, reduce carbon emissions and landfill waste, and minimize the adverse impacts associated with building removal. Additionally, BPS committed to providing equitable opportunity within the industry by prioritizing participation from people of color, women, and other historically underrepresented groups in construction.

**Reuse.** Based on receipts and inventories for required deconstruction projects, the average deconstructed home in Portland yields approximately 10,000 pounds of salvageable material. That's over two million pounds of building material salvaged for reuse since the ordinance went into effect that would otherwise end up in the landfill or burned. Most of the material salvaged from these projects is old-growth lumber desired by craftspeople for its tight grain, scarcity of knots, and beauty. Other salvaged items such as doors, windows, wood flooring and fixtures are used in remodels to match original styles. The material that comes from these houses is part of Portland's built heritage that continues to live on and is showcased in residential remodels, furniture, art, and restaurants in Portland.

**Carbon.** Based on Oregon Department of Environmental Quality research and analysis, deconstructing a house has twice the carbon benefits of mechanically demolishing the same house. Deconstruction yields a net carbon benefit of approximately 7.6 metric tons of CO<sub>2</sub>eq per house compared to demolition. This is primarily due to the benefits of reusing materials as opposed to burning or landfilling waste material associated with mechanical demolition. To date, the beneficial impact of the deconstruction ordinance is equivalent to removing approximately 350 cars from the road for a full year.

**Economy.** The ordinance has resulted in the creation and expansion of several companies and two new retail outlets have opened to sell material salvaged from the deconstructed houses. Two whole-house deconstruction contractors existed prior to the ordinance. Today there are 10 contractors certified to perform work covered by the ordinance. The cost to deconstruct has come down because of increased competition and the vision and hard work of the people in the industry. Meanwhile, the cost of mechanical demolition has increased because of new regulations and rising disposal costs. Several additional companies are in the process of receiving training and certification in deconstruction as part of a capacity building initiative focusing on increasing equitable opportunities. Expanding the ordinance to 1940 would provide additional opportunities for both existing and new contractors.

**Best Practice.** Whole-house deconstruction is a recognized best practice by the Oregon Health Authority (OHA) for minimizing impacts of lead-based paint and asbestos. Deconstruction produces less dust than mechanical demolition and provides increased opportunities to discover unabated hazardous materials and allow for their safe removal before resuming work. All Certified Deconstruction Contractors have lead-based paint and asbestos certifications.

**Equitable Opportunities.** Providing opportunities for women, people of color and other disadvantaged groups in the field of construction has been an important component of the programs and policies that have been developed as an outcome of the Bureau of Planning and Sustainability's efforts on deconstruction. Awarding deconstruction grants was based in part on how proposed deconstruction projects helped advance equity and/or community engagement. Contractor and workforce training prioritized participation by people of color, women, and post-incarcerated individuals. Four of the Certified Deconstruction Contractors are also part of the City's [Prime Contractor Development Program \(PCDP\)](#).

**Proposed Code Amendments:**

The following are code sections and proposed amendments followed by staff commentary explaining the change. Deletions are represented by ~~red-strike through~~ and additions are represented by red underline. A full copy of the code and proposed amendments follows on Page 5.

**17.106.020 Definitions.**

- C. “Director” means, the Director of the Bureau of Planning and Sustainability or ~~his or her~~ their authorized designee.

**Commentary:** Make “Director” definition gender neutral.

**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~~ 1940 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 120-day delay provisions of Title 33.

**Commentary:** Change the year-built threshold from 1916 to 1940. This is the primary code change explained above.

- E. Request for an Exemption. An applicant may request an exemption from the requirements of this Chapter under ~~Subsection 17.106.040-D.~~ Paragraph 17.106.040.D.3 above by submitting a written request for exemption, together with supporting evidence, when submitting a demolition permit application.

**Commentary:** Clarify that exemption requests only apply to Paragraph 17.106.040.D.3 since the other exemptions are automatic exemptions and do not require a request or Director determination.

**17.106.050 Enforcement and Penalties.**

- F. If the Director assesses an enforcement penalty as described in this Section against a property owner, the Director ~~will~~ may file a statement with the City Auditor that identifies the property, the amount of the penalty, and the date from which the 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 enforcement 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, penalties, and costs are paid in full; and the Director certifies that all violations listed in the original or any subsequent notice of violation have been corrected.

**Commentary:** Clarify that this Subsection only applies if an enforcement penalty is assessed against a property owner and gives the Director discretion as to whether to file a statement with the City Auditor. In cases where enforcement action is quickly resolved by the property owner, the need to file a statement with the City Auditor is unnecessary.

## **CHAPTER 17.106 - DECONSTRUCTION OF BUILDINGS LAW**

(Chapter added by Ordinance No. 187876, effective  
October 31, 2016.)

### **Sections:**

- 17.106.005 Short Title.
- 17.106.010 Purpose.
- 17.106.020 Definitions.
- 17.106.030 Authority of Director to Adopt Rules.
- 17.106.040 Regulations.
- 17.106.050 Enforcement and Penalties.
- 17.106.060 Right of Appeal.

### **17.106.005 Short Title.**

Chapter 17.106 of the Portland City Code shall be known as the Deconstruction of Buildings Law.

### **17.106.010 Purpose.**

This Chapter provides deconstruction requirements for the removal of Portland's older and more historic primary dwelling structures. The Deconstruction of Buildings Law seeks to:

- A. Maximize the salvage of valuable building materials for reuse;
- B. Reduce carbon emissions associated with demolition;
- C. Reduce the amount of demolition waste disposed of in landfills; and
- D. Minimize the adverse impacts associated with building removal.

### **17.106.020 Definitions.**

The terms used in Chapter 17.106 are defined as provided in this section:

- A. **“Certified Deconstruction Contractor”** means a contractor licensed with the Oregon Construction Contractors Board (CCB) that has successfully completed a deconstruction certification program recognized by the Bureau of Planning and Sustainability. A firm will be considered certified if at least one person currently employed by the firm is certified.
- B. **“Deconstruction”** means the systematic dismantling of a structure, typically in the opposite order it was constructed, in order to maximize the salvage of materials for reuse, in preference over salvaging materials for recycling, energy recovery, or sending the materials to the landfill.
- C. **“Director”** means, the Director of the Bureau of Planning and Sustainability or ~~his~~ ~~or her~~ their authorized designee.

- D. **“Primary Dwelling Structure”** means one and two-family structures (detached and attached) based on current permitted occupancy at the time of demolition permit application. Primary Dwelling Structures do not include accessory structures such as garages or accessory dwelling units.
- E. **“Recycling”** means the processing of waste materials into new products or material feed stock for products. Materials that can be recycled include but are not limited to concrete, metal piping, and asphalt roofing shingles.
- F. **“Responsible Party”** means any owner or person in control of a primary dwelling structure, or their authorized agent.
- G. **“Reuse”** means the utilization of a product or material that was previously installed for the same or similar function to extend its life cycle. Materials salvageable for reuse include but are not limited to cabinets, doors, hardware, fixtures, flooring, siding, and framing lumber.

**17.106.030 Authority of Director.**

- A. The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B. The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
  - 1. Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
  - 2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations, taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor’s Portland Policy Documents repository.
- C. The Director may temporarily suspend or modify the requirements of this Chapter based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The Director’s determination to temporarily suspend or modify shall be filed as a report with the City Council. The Director’s determination shall be effective after the Council has accepted the report.

**17.106.040 Regulations.**

(Amended by Ordinance No. 188259, effective March 31, 2017.)

- 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~~ 1940 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 120-day delay provisions of Title 33.
- B.** Requirements. Primary dwelling structures must be deconstructed in accordance with the provisions of this Chapter and associated administrative rules. Salvaged material may be sold, donated, or reused on site.
1. Demolition Permit Application. An application for a demolition permit under Chapter 24.55 for any primary dwelling structure shall not be considered complete unless it is accompanied by a completed Pre-Deconstruction Form provided by the Director.
  2. Certified Deconstruction Contractor. Deconstruction work must be performed by a Certified Deconstruction Contractor. A Certified Deconstruction Contractor shall be assigned to the project throughout the course of deconstruction. Certified Deconstruction Contractors must comply with the requirements of this Chapter and the administrative rules. The Bureau of Planning and Sustainability will maintain on file and available to the public a list of current Certified Deconstruction Contractors.
  3. Site Posting. On the first day of active deconstruction a yard sign provided by the Director when the permit is issued must be posted at the site. The sign must indicate that the structure is being deconstructed and must provide City of Portland contact information for questions or concerns.
    - a. The sign must remain in place throughout the course of deconstruction.
    - b. The sign must be placed on each street frontage of the site.
    - c. Signs must be posted within 5 feet of a street lot line and must be visible to pedestrians and motorists. Signs may not be posted in a public right-of-way. Signs are not required along street frontages that are not improved and allow no motor vehicle access.
  4. Heavy Machinery. Heavy machinery may be used in deconstruction to assist in the salvage of materials for reuse or to remove material not required to be salvaged for reuse. Heavy machinery may not be used in deconstruction to remove or dismantle components of buildings in ways that render building components unsuitable for salvage. For purposes of this

Chapter 17.106, heavy machinery includes, but is not limited to, track hoes, excavators, skid steer loaders, or forklifts.

5. Documentation. Certified Deconstruction Contractors must maintain receipts for donation, sale, recycling, and disposal of all materials for any deconstruction project. Materials intended for reuse on site must be documented with photographs. The Director may ask that a Certified Deconstruction Contractor produce the receipts or photographs for inspection any time until the demolition permit is approved to be finalized.
  6. Demolition Permit Final. A completed Post-Deconstruction Form and all documentation required in Subsection 5. above must be submitted to the Bureau of Planning and Sustainability before the Bureau of Development Services may approve a demolition permit as finalized.
- C. Additional Regulations. Compliance with Chapter 17.106 does not exempt the demolition of buildings from any other requirements of the City Code, such as in Title 11 Trees, Title 24 Building Regulations, or Title 33 Planning and Zoning.
- D. Exemptions. The following are exempt from the requirements of Chapter 17.106:
1. A building permit to move a structure as provided under Chapter 24.25.
  2. Any primary dwelling structure that has been determined by the Bureau of Development Services to be dangerous and is required to be abated by demolition as provided in Section 29.40.030.
  3. Any primary dwelling structure that the Director has determined is unsuitable for deconstruction because:
    - a. The structure is structurally unsafe or is otherwise hazardous to human life; or
    - b. Most of the material in the structure is not suitable for reuse.
- E. Request for an Exemption. An applicant may request an exemption from the requirements of this Chapter under ~~Subsection 17.106.040-D.~~ Paragraph 17.106.040.D.3 above by submitting a written request for exemption, together with supporting evidence, when submitting a demolition permit application.
- F. Determination of an Exemption. The Director will make the final determination of exemption based on evidence submitted by the applicant as well as an inspection to confirm conditions and unsuitability. The demolition permit will not be issued until the final determination is made on the exemption request. Should the applicant disagree with the final determination the determination may be appealed by the applicant under Subsection 17.106.060 B.

**17.106.050 Enforcement and Penalties.**

- A.** The Director may impose penalties on any responsible party who fails to comply with the requirements of this Chapter or who has misrepresented any material fact in a document or evidence required to be prepared or submitted by this Chapter.

  - 1. A first violation of this Chapter may be subject to a penalty of up to \$500.
  - 2. A second violation of this Chapter by the same person may be subject to a penalty of up to \$1,000.
  - 3. Third and subsequent violations of this Chapter by the same person may be subject to a penalty of up to \$1,500.
  - 4. Penalties may be imposed on a per month, per day, per incident, or such other basis as the Director may determine as appropriate based upon criteria in Subsection E below.
  - 5. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
  
- B.** Heavy Machinery.

  - 1. Improper use of heavy machinery in violation of this Chapter may be subject to a penalty of up to \$10,000.
  - 2. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
  
- C.** Additional Enforcement Actions for Certified Deconstruction Contractors. The Director may impose the following additional remedies for Certified Deconstruction Contractors.

  - 1. A first violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 6 months.
  - 2. A second violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 12 months.
  - 3. Third and subsequent violations may result in revocation of certification whereby a contractor may not apply for recertification for a period of 18 months.
  - 4. Temporary removal from the list of approved Certified Deconstruction Contractors will expire immediately following the term of removal and will not require further action from the Director.

- D.** Stop Work Orders. When necessary to obtain compliance with this Chapter, the Director may issue a stop work order requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, activity subject to the order may not be resumed until such time as the Director gives specific approval in writing. The stop work order will be in writing and posted at a conspicuous location at the site. When an emergency condition exists, a stop work order may be issued orally, followed by a written stop work order. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order. Any person subject to a stop work order may seek administrative review of the order and may appeal the Director's administrative determination as provided in Subsection 17.106.060 B.
- E.** The Director will consider the following criteria in determining the amount of penalties or remedies to impose under this Section:
1. The nature and extent of the person's involvement in the violation;
  2. Whether the person was seeking any benefits, economic or otherwise, through the violation;
  4. Whether other similar prior violations have occurred with that person;
  5. Whether the violation was isolated and temporary, or repeated and continuous;
  6. The length of time from any prior violations;
  7. The magnitude and seriousness of the violation;
  8. The costs of investigation and remedying the violation;
  9. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.
- F.** If the Director assesses an enforcement penalty as described in this Section against a property owner, the Director will may file a statement with the City Auditor that identifies the property, the amount of the penalty, and the date from which the 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 enforcement 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, penalties, and costs are paid in full; and the Director certifies that all violations listed in the original or any subsequent notice of violation have been corrected.
- G.** Inspections. The Director may conduct inspections whenever necessary to enforce any provisions of this Chapter, to determine compliance with this Chapter or whenever the Director has reasonable cause to believe there exists any violation of this Chapter. If the responsible party is at the site when the inspection is occurring, the Director will first present proper credentials to the responsible party and request entry.

**17.106.060 Right of Appeal.**

- A.** Whenever the responsible party has been given a written notice or order pursuant to this Chapter or has been directed to make any correction, pay a penalty or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the Director. If a review is sought, the responsible party will submit a written request to the Director within 10 days of the date of the notice or order. Such review will be conducted by the Director. The responsible party requesting such review will be given the opportunity to present evidence to the Director. Following a review, the Director will issue a written determination. Nothing in this Section shall limit the authority of the Director to initiate a code enforcement proceeding under Title 22.
- B.** A responsible party may appeal the Director's written determination to the Code Hearings Officer in accordance with Portland City Code Chapter 22.10. The filing of an appeal request will remain the effective date of a penalty until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of a penalty is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.

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**For comments or questions, contact Shawn Wood at [shawn.wood@portlandoregon.gov](mailto:shawn.wood@portlandoregon.gov) or 503-823-5468.** The public comment period ends August 15, 2019 at 4:00 PM. A public hearing to consider the proposed amendment at Portland City Council will be scheduled for early fall. If approved by City Council, the proposed amendment would go into effect on December 31, 2019.

The City of Portland is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact 503-823-7700 or use City TTY 503-823-6868.