

# Regulatory Improvement Workplan



## **Regulatory Improvement Code Amendment Package 5b**

**(RICAP 5b)**



City of Portland  
Bureau of  
**Planning and  
Sustainability**

Sam Adams, Mayor  
Susan Anderson, Director

**Adopted by City Council**

**July 21, 2010**

**Ordinance No. 184016—Effective August 20, 2010**

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# Acknowledgements

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City of Portland Bureau of  
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## Project Summary

The amendments to the Zoning Code in this project are follow-ups to a previous Regulatory Improvement Code Amendment Package – RICAP 5 – and other directives the Bureau of Planning and Sustainability received from City Council.

The Regulatory Improvement Workplan was an ongoing program to improve City building and land use regulations and procedures. Council suspended the program with adoption of the 2009/10 budget, but workplan items underway at the time were continued. The most recent package of amendments, RICAP 5, was adopted on March 10, 2010 and was effective on April 24, 2010. At that time, City Council directed staff to take two items – identified as Items #1 and #2, below – back to Planning Commission for review and recommendation.

In addition to these two items, five other minor amendments to the Zoning Code are included. Two items are minor RICAP 5 follow-up issues, one is an amendment to support energy retrofits in historic districts, one is in response to a City Council resolution, and the last is necessary should Irvington be designated as an Historic District. These items are summarized below.

Item #	Item Name	Recommended Amendment	Zoning Code Section	Pages
1	Development on Lot Remnants (RICAP 5 follow-up; directed by Council)	Allow development on Lot Remnants if they meet the minimum lot size for new lots in the zone.	33.110.212	4-7
2	Retaining Wall Standards (RICAP 5 follow-up; directed by Council)	Adopt permanent standards to replace those adopted through RICAP 5 with a sunset date of October 24, 2010	33.110.257	8-11
3	Green Energy and Use (RICAP 5 follow-up)	--Clarify that Small Scale Energy Production is accessory regardless of where the power is used. --Add regulations to the OS zone allowing Small Scale Energy Production. --Allow Utility-Scale Energy Production as a Conditional Use in the OS and RF zones. --Merge definitions of Large and Utility-Scale Wind Turbines.	33.100.100 33.110.100 33.120.100 33.130.100 33.910	12-21
4	Historic Design Review for Solar Panels (RICAP 5 follow-up)	Clarify that solar panels that are part of a larger proposal are not exempt from Historic Design Review.	33.445.320. B	22-23
5	Historic Design Review for Vents (New item – supports Clean Energy Works Portland)	Exempt vents in Historic Districts from Historic Design Review if they meet certain requirements.	33.445.320.B	24-25
6	Design Review in the Northwest Plan Area (Directed by Council (Resolution No. 36744))	Require a Type III Design Review (Instead of a Type II) for projects valued at more than \$1,865,600 in the Northwest plan district.	33.825.025.A	26-27
7	Pending designation of Irvington Historic District	Delete references in Community Design Standards for Irvington Conservation District, pending designation of Irvington Historic District. Clarify what guidelines will apply to reviews in Historic District.	33.218.100 33.218.130 33.445.020 33.846.060	28-37

**City Council Action**

The City Council took the following actions:

- Adopted this report;
- Amended the Zoning Code as shown in this report;
- Adopted the report and commentary as further findings and legislative intent; and
- Adopted the ordinance.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

## **Amendments to the Zoning Code**

The amendments to the Zoning Code are in this section of the report. The amendments are on the odd-numbered pages. The facing (even-numbered) pages contain commentary about the amendments. The commentary includes a description of the problem being addressed, the legislative intent of the amendment, and an assessment of the impact of the changes.

## Item 1-Development on Lot Remnants

### 33.110.212 When Primary Structures are Allowed

#### Discussion regarding RICAP 5 adopted language for Lot Remnants

A "Lot Remnant" is defined as "A portion of a lot that has a lot area of 50 percent or less of the original platted lot." This term was created in RICAP 5 to distinguish it from an "Adjusted Lot," defined as "A lot that has had one or more of its lot lines altered...[and] must have a lot area that is more than 50% of the original lot area."

At the Planning Commission hearing for RICAP 5, staff recommended to NOT allow development on Lot Remnants. This amendment ensured that a platted lot whose lot lines had been altered retained only one building site; not two. The Adjusted Lot (containing the majority of the original lot area) could be developed, but the Lot Remnant (containing a minority of the original lot area) could not.

After the Planning Commission hearing, staff further explored this prohibition and discussed whether large Lot Remnants should be subject to the prohibition. In some situations, staff felt that the prohibition created undue hardship and created inconsistencies between what is allowed through a land division. For example: A 10,000 sq. ft. lot in the R5 zone could have had altered lot lines in the past, creating a 6,000 sq. ft. Adjusted Lot and a 4,000 sq. ft. Lot Remnant. The original amendment would not have allowed development on the 4,000 sq. ft. Lot Remnant under any circumstances, though it exceeds the minimum lot size for new lots created through a land division in the zone (3,000 sq. ft. and 36 ft. wide).

At the City Council hearing, staff recommended that development be allowed on Lot Remnants that meet the minimum lot size of the zone. Staff recognized that a platted lot that has been altered in the past MAY have two building sites, but only if the Lot Remnant is big enough to meet the minimum lot dimension standards that apply to new lots in the zone. In practice, this amendment will continue to prevent two building sites on smaller infill lots, but will allow them on larger sites, more consistent with what would be allowed through a land division.

City Council agreed with staff's reasoning and adopted language to allow development on Lot Remnants that meet the minimum lot dimensions of the zone, but directed staff to return to Planning Commission with this provision to ensure that Planning Commission agreed with the policy direction. The language shown in Table 110-6 is what Council adopted.

Planning Commission agreed with Council's decision, and recommended that the language in this report be adopted. Council readopted the language, which had been edited for clarity.

**Table 110-6, Footnote 1:** This footnote is only relevant in the R5 zone, where Adjusted Lots have different standards than Lots of Record—in other zones the standards are identical for both property types. Footnote [1] is therefore removed from the language regarding R2.5 and RF-R20 and it is added in the language regarding Lots of Record in the R5 as a cross-reference.

**Table 110-6, Replace the term "site:"** "Site" is currently defined as an "ownership," which causes confusion in this table. "Site" is replaced by the terms "lot" and "property" to achieve the code intent without creating unintended consequences or ambiguity.



Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

### **33.110.212 When Primary Structures are Allowed**

- A. Purpose.** The regulations of this section allow for development of primary structures on lots and lots of record, but do not legitimize plots that were divided after subdivision and partitioning regulations were established. The regulations also allow development of primary structures on lots that were large enough in the past, but were reduced by condemnation or required dedications for right-of-way.
- B. Adjustments.** Adjustments to this section are prohibited.
- C. Primary structures allowed.** In all areas outside the West Portland Park Subdivision, primary structures are allowed as follows:
1. On lots created on or after July 26, 1979;
  2. On lots created through the Planned Development or Planned Unit Development process;
  3. On ~~sites of any size~~ lots, lots of record, lot remnants, or combinations thereof that have not abutted a lot, lot of record, or lot remnant under the same ownership on July 26, 1979 or any time since that date; or
  4. On lots, lots of record, lot remnants, or combinations thereof created before July 26, 1979 that meet the requirements of Table 110-6.

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.
Lot Remnants		
Lots of Record		
R5 Zone		
Lots, including Adjusted Lots [1, 3]	If the <u>lot</u> site 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
	If the <u>lot</u> site 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
	If the <u>lot</u> site was approved through a property line adjustment under 33.667.300.A.1.d.	1600 sq. ft. and 36 ft. wide
Lot Remnants [3]		3000 sq. ft. and 36 ft. wide
Lots of Record [ <u>1</u> , 3]		3000 sq. ft. and 36 ft. wide
R2.5 Zone		
Lots, including Adjusted Lots [1]		1600 sq. ft.
Lot Remnants		
Lots of Record		

Notes:

- [1] If the property site 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.

## **Item 1-Development on Lot Remnants (cont'd)**

### **33.110.212 When Primary Structures are Allowed (cont'd)**

#### **33.110.212.D West Portland Park**

During RICAP 5, the City Council-adopted amendment to allow Lot Remnants to be developed if they meet the minimum lot dimension standards was inadvertently omitted from the subsection that regulates West Portland Park. West Portland Park has larger lot size minimums than the rest of the city. This amendment allows Lot Remnants, created prior to 1979, to be developed if they meet the minimum lot dimension standards of West Portland Park, consistent with the amendment for the remainder of the city.

The amendment also changes the language to make it consistent with the previous subsection, 33.110.212.C.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

### 33.110.212 When Primary Structures are Allowed (cont'd)

5. Primary structures are allowed on lots, lots of record, and lot remnants, and combinations thereof that did meet the requirements of Table 110-6, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

**D. Regulations for West Portland Park.** In the West Portland Park subdivision, primary structures are allowed as follows:

1. On lots created on or after July 26, 1979;
2. On lots, lots of record, lot remnants, or combinations thereof that have not abutted a lot, lot of record, or lot remnant under the same ownership on July 26, 1979 or any time since that date;
- ~~2.3.~~ On lots, lots of record, lot remnants, or combinations thereof of lots created before July 26, 1979, that meet the requirements of this paragraph, and on lots of record or combinations of lots of record that meet the requirements of this paragraph. The requirements are:
  - a. R7 zone. In the R7 zone, the lot, lot of record, lot remnant or combinations thereof of lots or lots of record must be at least 7,000 square feet in area;
  - b. R5 zone. In the R5 zone, the lot, lot of record, lot remnant or combinations thereof of lots or lots of record must be at least 5,000 square feet in area; or
  - c. R2.5 zone. In the R2.5 zone, the lot, lot of record, lot remnant or combinations thereof of lots or lots of record must meet the requirements of Table 110-6; ~~or~~
  - ~~d. On July 26, 1979, or any time since that date, the lot, lot of record, or combination of lots or lots of record did not abut any lot or lot of record owned by the same family or business;~~
- ~~3.4.~~ Primary structures are allowed on lots, lots of record, lot remnants and combinations thereof of lots or lots of record that did meet the requirements of D.2, above, in the past but were reduced below those requirements solely because of condemnation or required dedication by a public agency for right-of-way.

**E. Plots.** Primary structures are prohibited on plots that are not lots, lots of record, lot remnants, or tracts.

**F. Nonconforming situations.** Existing development and residential densities that do not conform to the requirements of this chapter may be subject to the regulations of Chapter 33.258, Nonconforming Situations. Chapter 33.258 also includes regulations regarding damage to or destruction of nonconforming situations.

## Item 2-Standards for Retaining Walls

### 33.110.257 Retaining Walls

Testimony at City Council in March 2010 on RICAP 5 raised the issue of large retaining walls. Some retaining walls create a fortress-like wall along the sidewalk; this is of particular concern in residential neighborhoods. As a result of this testimony, Council adopted standards for retaining walls with a 6 month sunset period, and directed staff to bring the issue to Planning Commission for further consideration and potential development of permanent standards.

The standards Council adopted in March 2010 apply to retaining walls over 4 feet tall along street frontages. The standards apply in single-dwelling zones, and apply to all development types (including non-conforming commercial uses and institutional uses). The standards require a "terracing" or step-back of the walls and landscaping of the step-back.

Staff and the Planning Commission looked at several aspects and consequences of regulating retaining walls, including:

- Scope of the problem. The number of times this problem arises is relatively small. In 2009, 32 permits for retaining walls were requested. Of those, 30 were located in single dwelling residential zones, where the standards apply. Of the 32 in all zones, up to 17 were along street frontages. Of those 17 along street frontages, 7 permits were for repair and maintenance of existing retaining walls; 10 were for construction of new retaining walls.

Of those 10 permits for new retaining walls, 6 were on sites with steep slopes (more than 20% slope), and 1 was in an environmental overlay zone. This leaves 3 permits in a year for new construction in any zone, on sites that are not steeply sloping or in environmental zones.

- Steeply sloping lots. Most of the permits issued in 2009 for retaining walls were on sites with steep slopes; such slopes often require a taller wall for slope stabilization. One option to address this concern would be to exempt steeply sloping lots (defined as lots with an average slope of 20% or more) from the standard. Council decided that exempting sites that sloped upward from a street would not address the original problem of fortress-like walls along sidewalks. However, they did exempt lots that slope downward from a street, as those retaining walls have no visual impact on the sidewalk.
- Environmental Overlay Zones. In an environmental overlay zone, a terraced retaining wall may have greater impacts on environmental resources than one, larger wall, depending on the circumstances of the site and the configuration of the environmental resources. In addition, for sites that can use environmental standards in lieu of Environmental Review, there may be conflicts between the two sets of standards. Because of this, Council chose to exempt sites in environmental overlay zones from the standards.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

### 33.110.257 Retaining Walls

**A. Purpose.** The standards of this section help mitigate the potential negative effects of large retaining walls. Without mitigation, such walls can create a fortress-like appearance and be unattractive. By requiring large walls to step back from the street and Provide landscaping, the wall is both articulated and visually softened.

**B. Where these regulations apply.**

1. Generally. These regulations apply to the portions of street-facing retaining walls that are in required setbacks along street lot lines. Where there is no required setback, or the setback is less than 10 feet, the regulations apply to the first 10 feet from the lot line.
2. Exceptions.
  - a. Retaining walls in the areas described in B.1 that are less than four feet high, as measured from the ground level on the lower side of the retaining wall bottom of the footing, are not subject to the regulations of this section.
  - b. Retaining walls on sites with an average slope of 20 percent or more, where the site slopes downward from a street, are not subject to the regulations of this section.
  - c. Replacing an existing retaining wall, where the replacement will not be taller or wider than the existing wall, is not subject to the regulations of this section.
  - d. Retaining walls on sites where any portion of the site is in an environmental overlay zone are not subject to the regulations of this section.

**C. Standards.**

1. Retaining walls ~~must include a step-back~~ are limited to 4 feet in height, measured from the bottom of the footing, as shown in Figure 110-156.
2. ~~The landscaped area shown in Figure 100-15~~ Retaining walls must be set back at least 3 feet from other street-facing retaining walls, as shown in Figure 110-16. The 3 foot setback area must be landscaped to at least the L2 standard, except that trees are not required. A wall or berm may not be substituted for the shrubs.

**D. ~~Sunset.~~** ~~This section will be removed from the Zoning Code on October 24, 2010.~~

## Item 2-Standards for Retaining Walls (cont'd)

### 33.110.257 Retaining Walls (cont'd)

- Location and development types. The problem is characterized as an issue for residential areas, and the standards adopted by Council in March 2010 apply to all types of development in single-dwelling residential zones, including nonconforming commercial and institutional uses. However, residential uses are allowed in all Residential and Commercial zones and in some Employment zones. Staff and Planning Commission considered whether the standards should continue to apply only in single-dwelling zones, and whether one set of standards was appropriate for all types of development.

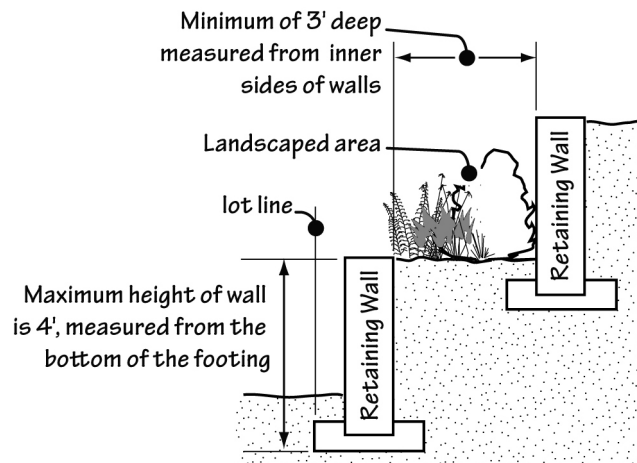
**Planning Commission Recommendation:** In general, code amendments attempt to address problems that are broad in scope; this situation is one that arises rarely. However, even problems that occur infrequently can have a significant effect on the livability of a neighborhood. For that reason, the Planning Commission recommends adopting standards for retaining walls located within the first 10 feet of the front lot line in single-dwelling zones. The amendment exempts sites on steeply-sloping lots and those in environmental zones. The standard limits the height of the retaining wall to 4 feet and requires additional retaining walls to allow for a landscaped terrace between the two walls.

**City Council** adopted the Planning Commission recommendation with two modifications. First, they did not exempt steeply sloping sites that slope upward from a street. Second, they applied the requirements limiting height to 4 feet and requiring a step back to all retaining walls within the 10-foot area closest to the street lot line.

Language **added** is underlined>. Language **deleted** is shown in ~~strike through~~.

**33.110.257 Retaining Walls (cont'd)**

**Figure 110-15-16**  
**Retaining Walls**



## Item 3-Green Energy and Use

RICAP 5 adopted regulations for "green energy" production, including wind turbines. There were several inadvertent omissions and some elements that are less than clear. The amendments under this item correct these deficiencies.

### All Zones

Small Scale Energy Production that generates energy from biological materials or byproducts from the site (sun, wind, water, ground) is considered accessory to the primary use on the site. The intent of RICAP 5 is that the energy generated may be used entirely on-site, both on-site and off-site, or entirely off-site, but the current code language does not reflect that. This is clarified in each of the base zone chapters.

### Open Space Zone

#### 33.100.100 Open Space Zone Primary Uses

##### B. Limited uses

6. RICAP 5 changed the regulations in the base zones to allow Small Scale Energy Production as an accessory use to the primary use on a site. However, this amendment was unintentionally omitted from the Open Space Zone, effectively preventing the same technology to be used in parks, some school facilities, and other uses in the zone. This amendment adds the language from the Residential and Commercial zones to the Open Space Zone.

##### 7. and Table 100-1

Under the current code, Utility-Scale Energy Production—including that from large wind turbines—is in the Manufacturing And Production use category. Manufacturing And Production uses are allowed to varying degrees in the Commercial, Employment, and Industrial zones, but are prohibited in the Open Space Zone.

While it is appropriate to prohibit large wind turbines and their impacts in higher density residential zones, allowing larger scale energy production in large open areas should be open to consideration. This is an element that was not thoroughly analyzed with RICAP 5, and is an inadvertent omission.

This amendment clarifies that, in the Open Space zone, energy produced from large wind turbines may be allowed through a conditional use review, creating a mechanism for case-by-case analysis.



Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

### 33.100.100 Primary Uses

#### A. [No change]

#### B. Limited uses.

1. -5. [No change] uses.
6. Basic Utilities. This regulation applies to all parts of Table 100-1 that have note [6]. ~~Basic Utilities that serve a development site are accessory uses to the primary use being served. All other Basic Utilities are conditional uses.~~
  - a. Basic Utilities that serve a development site are accessory uses to the primary use being served.
  - b. Small Scale Energy Production that provides energy for on-site or off-site use are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. The requirements of Chapter 33.262, Off Site Impacts, must be met;
  - c. All other Basic Utilities are conditional uses.
7. Manufacturing and Production. This regulation applies to all parts of Table 100-1 that have note [7]. Utility Scale Energy Production from Large Wind Turbines is a conditional use. All other Manufacturing And Production uses are prohibited.

Excerpt from Table 100-1 Open Space Zone Primary Uses	
Use Categories	OS Zone
<b>Industrial Categories</b>	
Manufacturing And Production	<u>CU [7]</u> N
<b>Institutional Categories</b>	
Basic Utilities	L/CU [6]

Y = Yes, Allowed

CU = Conditional Use Review Required

L = Allowed, But Special Limitations

N = No, Prohibited

## Item 3-Green Energy and Use

### 33.110.100 Single-Dwelling Zones Primary Uses

#### B. Limited uses

5.b. See Commentary on page 12.

6. and Table 110-1

Under the current code, Utility-Scale Energy Production—including that from large wind turbines—is in the Manufacturing And Production use category. Manufacturing And Production uses are allowed to varying degrees in the Commercial, Employment, and Industrial zones, but are prohibited in Residential zones.

While it is appropriate to prohibit large wind turbines and their impacts in higher density residential zones, allowing larger scale energy production in low density, large lot, areas that sometimes involve agricultural uses should be open to consideration. This is an element that was not thoroughly analyzed with RICAP 5, and is an inadvertent omission.

This amendment clarifies that, in the Residential Farm/Forest zone, energy produced from large wind turbines may be allowed through a conditional use review, creating a mechanism for case-by-case analysis.

Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

## **CHAPTER 33.110**

### **SINGLE-DWELLING ZONES**

#### **33.110.100 Primary Uses**

##### **A. [No Change]**

##### **B. Limited Uses.**

1.-4 [No Change]

5. Basic Utilities. This regulation applies to all parts of Table 110-1 that have note [5].

a. Basic Utilities that serve a development site are accessory uses to the primary use being served.

b. Small Scale Energy Production that provides energy for on-site or off-site use ~~both on and off site~~ are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. The requirements of Chapter 33.262, Off Site Impacts must be met;

c. All other Basic Utilities are conditional uses.

6. Manufacturing and Production. This regulation applies to all parts of Table 110-1 that have note [6]. Utility Scale Energy Production from large wind turbines is a conditional use in the RF zone. All other Manufacturing And Production uses are prohibited.

<b>Excerpt from Table 110-1 Single-Dwelling Zone Primary Uses</b>						
<b>Use Categories</b>	<b>RF</b>	<b>R20</b>	<b>R10</b>	<b>R7</b>	<b>R5</b>	<b>R2.5</b>
<b>Industrial Categories</b>						
Manufacturing And Production	<u>CU[6]</u> N	N	N	N	N	N
<b>Institutional Categories</b>						
Basic Utilities	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]

Y = Yes, Allowed

CU = Conditional Use Review Required

L = Allowed, But Special Limitations

N = No, Prohibited

## **Item 3-Green Energy and Use**

### **33.120.100 Multi-dwelling Zones Primary Uses**

#### **A. Limited Uses**

13.b. See Commentary on page 12.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**CHAPTER 33.120**  
**MULTI-DWELLING ZONES**

**33.120.100 Primary Uses**

**B. [No Change]**

**C. Limited Uses.**

1.-12 [No Change]

13 Basic Utilities. These regulations apply to all parts of Table 120-1 that have note [13].

a. [No change]

b. Small Scale Energy Production that provides energy for on-site or off-site use ~~both on and off site~~ are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. In RX and IR zones, up to 10 tons per week of biological materials or byproducts from other sites maybe used to generate energy. The requirements of Chapter 33.262, Off Site Impacts, must be met;

c. [No change]

## **Item 3-Green Energy and Use**

### **33.130.100 Commercial Zones Primary Uses**

#### **B. Limited Uses**

10.b. See Commentary on page 12.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

## CHAPTER 33.130 COMMERCIAL ZONES

### 33.130.100

A. [No change]

#### B. Limited Uses.

1-9. [No change]

10. Basic Utilities in C zones. This regulation applies to all parts of Table 130-1 that have note [10].

a. [No change]

b. Small Scale Energy Production that provides energy for on-site or off-site use ~~both on and off site~~ are considered accessory to the primary use on the site. However, it is only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; plus not more than 10 tons per week of biological material or byproducts from other sites. Installations that sell power they generate—at retail (net metered) or wholesale—are included.

c. [No change].

11.-12. [No change]

## Item 3- Green Energy and Use

### Definitions

#### 33.910 Definitions.

**Small Scale Energy Production and Utility Scale Energy Production.** These definitions are included for information only; no amendments are proposed.

**Wind Turbine or Wind Energy Turbine.** The definition of Wind Turbine distinguishes among Small, Large, and Utility-Scale wind turbines. Because Large and Utility-Scale turbines are regulated the same way, this amendment merges the two kinds of turbines under one name and so simplifies the code.



Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

## CHAPTER 33.910 DEFINITIONS

**Small Scale Energy Production.** Energy production where the energy is derived from the following:

- Solar;
- Small wind energy turbines;
- Geothermal;
- Hydroelectric systems that produce up to 100 kW;
- Waste heat capture, heat exchange or co-generation of energy as a byproduct of another manufacturing process;
- Biogas or Biomass systems that use only biological material or byproducts produced, harvested or collected on-site. Up to 10 tons a week of biological material or byproducts from other sites may be used where the base zone regulations specifically allow it; and
- Any of the methods listed here or natural gas used to produce steam, heat or cooling, with an output up to 1 megawatt.

See also Biogas, Biomass, Utility Scale Energy Production, and Wind Energy Turbine.

**Utility Scale Energy Production.** Energy production that does not meet the definition of Small Scale Energy Production.

**Wind Turbine or Wind Energy Turbine.** A wind turbine or wind energy turbine converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a mast or mounting frame and structural supports, electrical generator, transformer, energy storage equipment, and a rotor with one or more blades. Some turbines use a vertical axis/helix instead of rotor blades.

- Small Wind Turbines or Small Wind Energy Turbines are turbines with an American Wind Energy Association (AWEA) rated power output of 10 kW or less. They also are certified by the Small Wind Certification Council to meet the American Wind Energy Associations (AWEA) Small Wind Turbine Performance and Safety Standards. These turbines may or may not be connected to the power grid.
- Large Wind Turbines or Large Wind Energy Turbines are turbines with a rated power output of more than 10kW ~~and up to 300 kW~~. These turbines may or may not be connected to the power grid.
- ~~Utility Scale Wind Turbines or Utility Scale Wind Energy Turbines are turbines with a rated power output of more than 300 kW. These turbines are always connected to the power grid.~~

## **Item 4--Historic Design Review for Solar Panels**

### **33.445.320 Development and Alterations in an Historic District**

#### **B. Exempt from historic design review.**

8-9. RICAP 5 intended to exempt both solar panels and eco-roofs from Historic Design Review if they were proposed independent of other alterations. However the exemption for solar installations does not say this, while the eco-roof language does. This amendment corrects that omission and clarifies the language.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

## AMEND CHAPTER 33.445, HISTORIC RESOURCES

### 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 design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

#### A. [No Change.]

#### B. Exempt from historic design review.

1-7. [No Change.]

8. Solar panels ~~that are located~~ that meet the following requirements. When solar panels are proposed as part of a project that includes elements subject to historic design review, the solar panels are not exempt:

- a. On a flat roof, the horizontal portion of a mansard roof, or roofs surrounded by a parapet that is at least 12 inches higher than the highest part of the roof surface The panels must be mounted flush or on racks, with the panel or rack extending no more than 5 feet above the top of the highest point of the roof, Solar panels must also be screened from the street by:
  - (1) An existing parapet along the street-facing façade that is as tall as the tallest part of the solar panel, or
  - (2) Setting the solar panel back from the roof edges facing the street 4 feet for each foot of solar panel height.
- b. On a pitched roof. Panels must be mounted flush, with the plane of the panels parallel with the roof surface, with the panel no more than 12 inches from the surface of the roof at any point, and set back 3 feet from the roof edge and ridgeline. See Figure 218-5. In addition, solar panels may not be on a street-facing elevation, or on the front half of any roof surface of an elevation facing within 90 degrees of the street. See Figure 218-6.

9. Eco-roofs installed on existing buildings when the roof is flat or surrounded by a parapet that is at least 12 inches higher than the highest part of the eco-roof surface. When eco-roofs are proposed as part of a project that includes elements subject to historic design review, the eco-roofs are not exempt. ~~no other nonexempt exterior improvements subject to historic design review are proposed.~~ Plants must be species that do not characteristically exceed 12-inches in height at mature growth.

## Item 5-Historic Design Review for Vents

10. This amendment creates a new exemption from Historic Design Review for small vents. Most often, these will be vents for mechanical equipment, and this amendment will allow small-scale venting that could result from energy efficiency upgrades, such as new furnaces or water heaters.

We expect that various energy efficiency efforts, such as the City's Clean Energy Works Portland program, will spur an increase in these types of improvements; this exemption will facilitate participation by properties in historic districts while still respecting their special status. The exemption allows vents only on non-street facing facades or flat roofs. If the vent is on a flat roof, it must meet the standard requirement for mechanical equipment, a setback of 4 feet for each foot of height. The setback obviates the need for a parapet or other screening.

The other standards are designed to minimize the visual impact of the vents, which, if not on a street-facing façade may penetrate through, for example, less ornate water table trim (see photo below) commonly found at the base of houses.



Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

### 33.445.320 Development and Alterations in a Historic District

#### B. Exempt from historic design review.

1-5. [No Change.]

6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet. For vents, the applicant may choose to meet either the standards of this paragraph or those of paragraph B.11, Vents;

7-10. [No Change.]

11. Vents. On residential structures in the RF through R1 zones, vents that meet all of the following:

a. Wall vents. Proposed vents installed on walls 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 non-street facing façade;
- (2) Project no more than 6 inches from the wall;
- (3) Be no more than 1 square foot in area, where the area is width times height. The cumulative area of all proposed vents may be up to 2 square feet;
- (4) Be at least 1 foot away from architectural features such as windows, doors, window and door trim, cornices and other ornamental features, except when located at or below finish first floor framing; and
- (5) Be painted to match the adjacent surface.

b. Rooftop vents. Proposed vents installed on roofs 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.

## Item 6- Design Review in the Northwest Plan District

On October 21, 2009 City Council adopted Resolution No. 36744 that directed the Bureau of Planning and Sustainability "to initiate a limited amendment to the readopted Northwest District Plan that would institute Type III Design Review procedures in design overlay areas where Type III procedure was replaced with Type II procedure and community design standards for projects exceeding \$1.8 million in value;"

This amendment institutes a Type III Design Review for all projects in the Northwest Plan District with a value over \$1,865,600, instead of requiring such projects to be processed through a Type II procedure.

The differences between the two procedure types are time, cost, and decision-making and appeal bodies. The reviews are subject to the same approval criteria. The Type II Design Review is an administrative decision, appealable to the Design Commission. A Type III Design Review requires a pre-application conference and a hearing before the Design Commission. A Type III Design Review can then be appealed to City Council.

### Design Review

#### 33.825.025.A Procedures for design review

##### 1. Type III.

- e (9) This subparagraph is shown for reference only. This subparagraph includes all design districts that don't have their own guidelines, except as listed in paragraph A.2. The Northwest plan district does not have its own design guidelines. Because we are deleting the mention of the Northwest plan district from paragraph A.2., this subparagraph will address sites in the Northwest plan district.

##### 2. Type II.

- e (9) This subparagraph is included here to show that proposals in the Northwest plan district that have a value of \$1,865,600 or less will continue to be reviewed through a Type II process.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

## AMEND CHAPTER 33.825, DESIGN REVIEW

### 33.825.025 Review Procedures

**A. Procedures for design review.** Procedures for design review vary with the type of proposal being reviewed and the design district in which the site is located. Design review in some design districts requires an additional procedural step, the Neighborhood Contact requirement, as set out in Section 33.700.025, Neighborhood Contact. Some proposals in the Central City plan district must provide a model of the approved proposal, as set out in Paragraph A.5, below.

1. Type III. The following proposals are processed through a Type III procedure:

[a. through d. – no change]

e. Proposals in the following design districts with a value over \$1,865,600:

[(1) through (8) – no change]

(9) Design overlay zones not included in a design district that has its own design guidelines, except for proposals listed in Paragraph A.2, below.

[f. – no change]

2. Type II. The following proposals are processed through a Type II procedure:

[a. and b. – no change]

c. Proposals in the design districts identified in Subparagraph 1.e that have a value of \$1,865.600 or less;

[d. through q. – no change]

~~r. Proposals within the Northwest plan district that are outside the Alphabet Historic District;~~

[Reletter s through u to r through t]

[3. through 5. – no change]

## Item 7- Pending Irvington Historic District

### Introduction

Irvington is under consideration by The State Historic Preservation Office (SHPO) and the National Park Service to be designated as a National Register Historic District. This designation has been requested by the neighborhood association, and includes an area larger than the existing Irvington Conservation District.

If the district is designated, the regulations that apply to alterations and new construction will change. Currently, applicants in the Conservation District may choose to meet the objective Community Design Standards or go through discretionary Historic Design Review and comply with the Community Design Guidelines. The area not currently in the Conservation District is not subject to any design review.

After designation, all alterations and construction in the district will be subject to review, and applicants will not be able to use the objective Community Design Standards; proposals must go through discretionary Historic Design Review. In addition, the applicable guidelines will change. Under the general rules now in the code, proposals in most of the Historic District will have to meet the guidelines of Subsection 33.846.060.G, so properties in the Irvington Historic District will no longer use the Community Design Guidelines.

Many of the amendments in this report are to remove standards from the Community Design Standards that are specific to the Irvington Conservation District. They will no longer apply.

There is one anomaly: a small portion of the potential Historic District, along NE Broadway, is also in the Central City plan district. Under the general rules now in the code, this area would have to meet the Central City Fundamental Design Guidelines (CCFDG) and the Guidelines for the Lloyd Subdistrict of the Central City plan district. While the CCFDG offer some guidance for historic areas, they are not ideal. For that reason, there is a new regulation later in this report that will require proposals in the overlap area to meet the CCFDG, the Lloyd District guidelines, and Subsection 33.846.060.G. (See pages 36-37.)

The amendments related to Irvington Historic District will go into effect if and when this district is designated by the National Park Service.

### Chapter 33.218, Community Design Standards

The amendments on the next several pages remove standards from the Community Design Standards that are specific to the Irvington Conservation District. They will no longer apply.

A future project that either creates district-specific guidelines for the Irvington Historic District, or uses some other mechanism to apply them, may include guidelines that specifically address some of the standards that are deleted by this project. Examples of such standards are a required setback from street lot lines of 25 feet and a prohibition on attached garages unless they have a full story of residential area above them. This has been entered into the Regulatory Improvement Requests database to be considered in future project and budget cycles.



Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**AMEND CHAPTER 33.218, COMMUNITY DESIGN STANDARDS**

**33.218.100 Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones**

**A-E. [No Change]**

**F. Vehicle areas.**

1-3 [No Changes]

4. Attached garages. When parking is provided in a garage attached to the primary structure, and garage doors face a street, the following standards must be met:
  - a. The garage must not be more than 40 percent of the length of the street-facing façade or 12 feet long, whichever is greater. ~~Proposals in the Irvington Conservation District are exempt from this standard;~~

**G-M. [No Change]**

- N. Additional standards for historic resources.** The following standards are additional requirements for conservation districts and conservation landmarks.

1-3. [No Change].

4. ~~Irvington. The standards of this paragraph apply in the Irvington Conservation District:~~
  - a. ~~Finished grade in Irvington. A building site may be excavated to allow a story below grade, if the finished grade of the site along the street facing elevation is no more than 1 foot different from the grade that existed prior to development.~~
  - b. ~~Attached garages in Irvington. When parking is provided in a garage attached to the primary structure and garage doors face a street, the garage must have the entire area above it developed as at least 1 story of interior living space. Single story attached garages are not allowed.~~
54. Vertical building proportions in Eliot and Irvington. In the ~~Irvington and Eliot~~ Conservation Districts, the front facade of each primary structure must have vertical proportions. New development must meet one of the following standards:
  - a. It must be higher than it is wide; or
  - b. Where the size of the building requires horizontal proportions, the street-facing elevations must be divided into visually distinct areas with vertical proportions. This is accomplished through setbacks, use of vertical elements such as columns or multi-story bay windows, changes in materials or other architectural devices.

**Item 7- Pending Irvington Historic District (cont'd)**

**Chapter 33.218, Community Design Standards (cont'd)**

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**33.218.100.N Standards for Primary and Attached Accessory Structures in Single-Dwelling Zones, Additional standards for historic resources (cont'd)**

- ~~65.~~ Historic setback pattern in ~~Irvington and~~ Piedmont. In the ~~Irvington and~~ Piedmont Conservation Districts, the front facades of primary structures must be set back exactly 25 feet from the front property line. On corner lots, this standard can be met on either frontage.
- ~~76.~~ Woodlawn street pattern. Buildings may not be in the vacated portions of the angled street pattern in the Woodlawn Conservation District.

**33.218.110 Standards for Primary and Attached Accessory Structures in R3, R2, and R1 Zones**

**A-G. [No Change]**

**H. Vehicle areas**

1-3 [No Change]

- 4. Attached garages. When parking is provided in a garage attached to the primary structure and garage doors face a street the following standards must be met:
  - a. The garage must not be more than 40 percent of the length of the building frontage or 12 feet long, whichever is greater. ~~Proposals in the Irvington Conservation District are exempt from this standard;~~
  - b-d. [No Change]

**P. Additional standards for historic resources.** The following standards are additional requirements for conservation districts and conservation landmarks.

1-4. [No Change]

- ~~5. Irvington. The standards of this paragraph apply in the Irvington Conservation District:~~
  - ~~a. Finished grade in Irvington. A building site may be excavated to allow a story below grade, if the finished grade of the site is no more than 1 foot different from the grade that existed prior to development.~~
  - ~~b. Attached garages in Irvington. When parking is provided in a garage attached to the primary structure and garage doors face a street, the garage must have the entire area above it developed as at least 1 story of interior living space. Single story attached garages are not allowed.~~
- ~~65.~~ Stone or cast stone foundations in Kenton and Mississippi. In the Kenton and Mississippi Avenue Conservation Districts, stone or cast stone must be used as a foundation material on street-facing elevations. The stone, cast stone, or cast in place stone must be the material used between the finished building grade and the ground floor.

**Item 7- Pending Irvington Historic District (cont'd)**

**Chapter 33.218, Community Design Standards (cont'd)**

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

**33.218.110.P Standards for Primary and Attached Accessory Structures in R3, R2, and R1 Zones. Additional standards for historic resources (cont'd).**

- ~~76.~~ Vertical building proportions in ~~Eliot and Irvington~~. In the Eliot and Irvington Conservation Districts, the front facade of each primary structure must have vertical proportions. New development must meet one of the following standards:

a-b. [No Change]

- ~~87.~~ Woodlawn street pattern. Buildings may not be in the vacated portions of the angled street pattern in the Woodlawn Conservation District.

**33.218.130 Standards for Exterior Alteration of Residential Structures in Single-Dwelling, R3, R2, and R1 Zones**

The standards of this section apply to exterior alterations of primary structures and both attached and detached accessory structures in residential zones. These standards apply to proposals where there will be only residential uses on the site.

**A-E. [No Change]**

**F. Additional standards for historic resources.** The following standards are additional requirements for conservation districts and conservation landmarks.

1-3. [No Change]

4. Historic setback pattern in ~~Irvington and Piedmont~~. In the ~~Irvington and Piedmont~~ Conservation Districts, the front facades of primary structures in single-dwelling zones must be set back exactly 25 feet from the front property line.
5. [No Change].

## **Item 7- Pending Irvington Historic District (cont'd)**

### **Chapter 33.445, Historic Resources**

#### **33.445.020 Where These Regulations Apply**

This section specifies what standards apply to which types of historic resources, including those properties that have more than one type of designation—such as a Historic Landmark in a Conservation District. The current code doesn't address the situation where a site is in both a Conservation District and a Historic District. The amendment clarifies that such sites are governed by the regulations that apply to the Historic District because those regulations provide the most protection.

Language **added** is underlined. Language **deleted** is shown in ~~striketrough~~.

## **AMEND CHAPTER 33.445, HISTORIC RESOURCES**

### **33.445.020 Where These Regulations Apply**

- Sections 33.445.010 through .810 apply to all historic resources.
- Sections 33.445.100 through .150 apply to Historic Landmarks, including those within Historic Districts and Conservation Districts.
- Sections 33.445.200 through .240 apply to Conservation Landmarks, including those within Historic Districts and Conservation Districts.
- Sections 33.445.300 through .330 apply to ~~historic resources in~~ Historic Districts and to the portions of Conservation Districts that are within a Historic District.
- Sections 33.445.400 through .430 apply to ~~historic resources in~~ Conservation Districts that are not within a Historic District.
- Sections 33.445.500 through .520 apply to historic resources listed in the City's Historic Resource Inventory.

**Item 7- Pending Irvington Historic District (cont'd)**

**Chapter 33.846, Historic Reviews**

**33.846.060**

**F. Approval criteria in the Central City plan district.**

See commentary on Page 28.



Language **added** is underlined. Language **deleted** is shown in ~~strike through~~.

## AMEND CHAPTER 33.846, HISTORIC REVIEWS

### 33.846.060. Historic Design Review

**F. Approval criteria in the Central City plan district.** In the Central City plan district, requests for historic design review will be approved if the review body finds that the applicant has shown that all of the approval criteria have been met. Conflicts among guidelines and criteria are resolved as specified in Paragraph F.5, below. The approval criteria for historic design review in the Central City plan district are as follows:

1. Historic Districts. When historic design review is required for any resource in a Historic District, including Historic Landmarks and Conservation Landmarks, the approval criteria are:
  - a. Historic Districts with district-specific guidelines. Historic Districts may have guidelines that are specific to the district, such as the *NW 13th Avenue Historic District Design Guidelines*. When historic design review is required in such districts, the approval criteria are the *Central City Fundamental Design Guidelines* and the guidelines specific to the Historic District. If the resource is a Historic Landmark or Conservation Landmark, the criteria in Section 33.846.060.G must also be met;
  - b. Historic Districts without district-specific guidelines.
    - (1) Where there are no guidelines that are specific to the Historic District and the site is also in a subdistrict of the Central City plan district that has subdistrict design guidelines, the approval criteria are the *Central City Fundamental Design Guidelines* and the subdistrict design guidelines. If the resource is a Historic Landmark or Conservation Landmark, the criteria in Section 33.846.060.G must also be met;
    - (2) Where there are no guidelines that are specific to the Historic District and the site is not in a subdistrict of the Central City plan district that does not have subdistrict design guidelines, the approval criteria are the *Central City Fundamental Design Guidelines* and the criteria in Section 33.846.060.G;
  - c. Alphabet Historic District. In the portion of the Alphabet Historic District within the Central City plan district, when historic design review is required for any resource, including Historic Landmarks and Conservation Landmarks, the approval criteria are the *Central City Fundamental Design Guidelines* and the *Historic Alphabet District Community Design Guidelines Addendum*. If the resource is a Historic Landmark or Conservation Landmark, the criteria in Section 33.846.060.G must also be met;
  - d. Irvington Historic District. In the portion of the Irvington Historic District within the Central City plan district, when historic design review is required for any resource, including Historic Landmarks and Conservation Landmarks, the approval criteria are the Central City Fundamental Design Guidelines, the design guidelines for the Lloyd District subdistrict of the Central City plan district, and the criteria in Subsection 33.846.060.G;







City of Portland Bureau of  
**Planning and Sustainability**  
Sam Adams, Mayor | Susan Anderson, Director