

ORDINANCE No. 184842

*Amend Planning and Zoning Code to bring solar energy system regulations into conformance with State law, and to allow some rooftop mechanical equipment with a land use review.
(Ordinance; amend Title 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. On March 10, 2010 City Council adopted the Regulatory Improvement Code Amendments Package 5 (RICAP 5). RICAP 5 included a number of "green" amendments related to wind turbines, solar energy systems, water collection cisterns, and other elements.
2. Before RICAP 5 was adopted, proposals for rooftop solar panels in design overlay zones and historic and conservation districts had to go through discretionary design review or historic design review. RICAP 5 created an option where owners could meet certain standards instead of going through discretionary review.
3. Planning and Sustainability staff worked with the Historic Landmarks Commission, the Design Commission, and staff from the Bureau of Development Service (BDS) to create the standards.
4. After RICAP 5 was adopted, in historic and conservation districts, panels were allowed on pitched roofs without review only if they faced the rear lot line. Other standards also applied. The alternative to meeting the standards was discretionary review.
5. Beginning in July 2010, there was increasing concern in the community that these regulations were overly restrictive in Conservation Districts. Some property owners wanted to participate in neighborhood solar purchasing programs, but were unable to because what was allowed without a land use review was insufficient to make the project viable and the cost of a land use review was too high. In addition, it was considered unlikely that the Historic Landmarks Commission or their staff would approve solar panels that were highly visible from the street, especially those on the street-facing slopes of roofs.
6. As a result of these concerns coupled with other statewide land use issues related to solar, some citizens approached the Oregon Legislature and crafted a bill to address their concerns. In June 2011, the Legislature adopted House Bill 3516, which limits the degree to which municipalities can restrict the location of solar energy systems.
7. The amendments proposed through this ordinance will bring the Portland Zoning Code into conformance with House Bill 3516.

8. At the same time as the Bureau of Planning and Sustainability (BPS) was beginning work on the solar regulations addressed by this ordinance, the Bureau of Development Services (BDS) asked that an amendment for rooftop mechanical equipment in design overlay zones and historic and conservation districts be added to the project. Under existing code, proposals for rooftop mechanical equipment that meet certain standards do not have to go through discretionary review. However, this applies only to buildings at least 45 feet tall.
9. BDS noted that 10 to 15 percent of the requests they receive for design review or historic design review have to do with rooftop mechanical equipment on buildings less than 45 feet tall. As BDS staff worked with applicants, they developed a set of standards that they apply to these cases. The standards they have developed are part of the amendments included in this ordinance.
10. On June 22, 2011 notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
 - On July 8, 2011 notice was mailed to the project mailing list and all persons interested in legislative projects city-wide (approximately 560 addresses) announcing the availability of the *Solar and Mechanical Equipment Project: Proposed Draft*, and the Planning and Sustainability Commission hearing on August 9, 2011.
 - On July 8, 2011 information about the project was posted on the Bureau of Planning and Sustainability website.
 - On July 18, 2011 the *Solar and Mechanical Equipment Project: Proposed Draft* was published and posted on the Bureau of Planning and Sustainability website. Copies were mailed to those who requested them.
 - On July 20, 2011 BPS staff met with the Historic Resources Committee of the Portland Chapter of the American Institute of Architects. Staff explained the proposed amendments and process for adoption.
 - On July 21, 2011 BPS and BDS staff briefed the Portland Design Commission on the proposed amendments. The Commission had no comments.
 - On July 25, 2011 BPS and BDS staff briefed the Portland Historic Landmarks Commission on the proposed amendments. The Commission had no comments.
11. On August 9, 2011 the Planning and Sustainability Commission held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the proposal. There was no public testimony. Because there was no testimony, notice announcing the availability of the *Solar and Mechanical Equipment Project: Recommended Draft*, and the City Council hearing on August 31, 2011 was not sent to anyone.
 - On August 10, 2011 the *Solar and Mechanical Equipment Project: Recommended Draft* was published and posted on the Bureau of Planning and Sustainability website. Copies were mailed to those who requested them.

12. On August 31, 2011 City Council held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the recommendation of the Planning and Sustainability Commission, and public testimony was received.
13. On September 7, 2011 City Council voted to adopt the changes in the *Solar and Mechanical Equipment Project: Recommended Draft*.

Findings on Statewide Planning Goals

14. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.
15. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement, including:
16. On June 22, 2011 notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
17. On July 8, 2011 notice was mailed to the project mailing list and all persons interested in legislative projects city-wide (approximately 560 addresses) announcing the availability of the *Solar and Mechanical Equipment Project: Proposed Draft*, and the Planning and Sustainability Commission hearing on August 9, 2011.
18. On July 8, 2011 information about the project was posted on the Bureau of Planning and Sustainability website.
19. Planning and Sustainability staff engaged in telephone and email exchanges with property owners, developers, and members of the community in regards to project provisions.
20. The Bureau of Planning and Sustainability maintained and updated as needed the project web site that included basic project information, announcements of public events, project documents and staff contact information.
21. On July 18, 2011 the *Solar and Mechanical Equipment Project: Proposed Draft* was published and posted on the Bureau of Planning and Sustainability website. Copies were mailed to those who requested them.
22. On July 20, 2011 BPS staff met with the Historic Resources Committee of the Portland Chapter of the American Institute of Architects. Staff explained the proposed amendments and process for adoption.
23. On July 21, 2011 BPS and BDS staff briefed the Portland Design Commission on the proposed amendments. The Commission had no comments.
24. On July 25, 2011 BPS and BDS staff briefed the Portland Historic Landmarks Commission on the proposed amendments. The Commission had no comments.
25. On August 9, 2011 the Planning and Sustainability Commission held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the proposal.

There was no public testimony. Because there was no testimony, notice announcing the availability of the *Solar and Mechanical Equipment Project: Recommended Draft*, and the City Council hearing on August 31, 2011 was not sent to anyone.

26. On August 10, 2011 the *Solar and Mechanical Equipment Project: Recommended Draft* was published and posted on the Bureau of Planning and Sustainability website. Copies were mailed to those who requested them.
27. On August 31, 2011 City Council held a hearing on the proposal. Staff from the Bureau of Planning and Sustainability presented the recommendation of the Planning and Sustainability Commission, and public testimony was received.
28. **Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources**, requires the conservation of open space and the protection of natural and scenic resources. The amendments support this goal because the solar regulations adopted with RICAP 5 still apply to the most significant historic resources: historic landmarks, conservation landmarks, and historic districts. The amendments for rooftop mechanical equipment also support this goal because making it easier to install mechanical equipment—without compromising the design and historic aspects of the building—will encourage investment and preservation of buildings in design overlay zones and conservation and historic districts. In addition, the mechanical equipment amendments provide an incentive for removing older mechanical equipment.
29. **Goal 12, Transportation**, requires provision of a safe, convenient, and economic transportation system. The Oregon Transportation Planning Rule (TPR) was adopted in 1991 and amended in 1996 and 2005 to implement State Goal 12. The TPR requires certain findings if the proposed regulation will significantly affect an existing or planned transportation facility. The proposed amendments will have no effect on the transportation system because the amendments will not result in increases in housing units or additional jobs, and will not change the uses or intensities of uses allowed.
30. **Goal 13, Energy Conservation**, requires development of a land use pattern that maximizes the conservation of energy based on sound economic principles. The solar amendments support this goal because they will allow solar energy systems to be used at more locations throughout the city. The amendments for rooftop mechanical equipment also support this goal because making it easier to install mechanical equipment—without compromising the design and historic aspects of the building—will encourage upgrades to buildings' mechanical systems; the newer equipment is generally more energy-efficient.

Findings on Metro Urban Growth Management Functional Plan

31. **Title 1, Requirements for Housing and Employment Accommodation**, requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through citywide analysis based on calculated capacities from land use designations. The amendments are consistent with this title because they do not alter the development capacity of the city.

32. **Title 2, Regional Parking Policy**, regulates the amount of parking permitted by use for jurisdictions in the region. The amendments are consistent with this title because they will have no effect on parking.
33. **Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation**, protects the public's health and safety by reducing flood and landslide hazards, controlling soil erosion and reducing water pollution by avoiding, limiting, or mitigating the impact of development on streams, rivers, wetlands, and floodplains. The amendments are consistent with this title because they will have no effect on any of these elements.
34. **Title 4, Industrial and Other Employment Areas**, limits retail and office development in Employment and Industrial areas to those that are most likely to serve the needs of the area and not draw customers from a larger market area. The amendments are consistent with this title because they will have no effect on the uses allowed or amount of uses allowed at any location.
35. **Title 7, Affordable Housing**, ensures opportunities for affordable housing at all income levels, and calls for a choice of housing types. The amendments are consistent with this title because they will not have any effect on the types or amounts of housing allowed.
36. **Title 13, Nature In Neighborhoods**, calls for conservation, protection, and restoration of a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape. The amendments are consistent with this title because they will not have any effect on natural resources.

Findings on Portland's Comprehensive Plan Goals

37. Only the Comprehensive Plan goals addressed below apply.
38. **Goal 1, Metropolitan Coordination**, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. The amendments support this goal because the amendments related to solar energy systems bring the Zoning Code into conformance with state law.
39. **Policy 1.4, Intergovernmental Coordination**, requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The amendments support this policy because a number of other government agencies were notified of this proposal and given the opportunity to comment. These agencies include Metro and Multnomah County. The amendments also support intergovernmental coordination by responding to new state laws regarding solar regulations.
40. **Goal 2, Urban Development**, calls for maintaining Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. The amendments support this goal because the amendments make it more likely that the character of established residential neighborhoods and business centers will be retained because amendments related to rooftop mechanical equipment will encourage

investment and preservation of buildings in design overlay zones and conservation and historic districts.

41. **Goal 7, Energy**, calls for promotion of a sustainable energy future by increasing energy efficiency in all sectors of the city. The amendments support this goal because they will allow solar energy systems to be used at more locations throughout the city. The amendments for rooftop mechanical equipment also support this goal because making it easier to install mechanical equipment will encourage upgrades to buildings' mechanical systems; the newer equipment is generally more energy-efficient.
42. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and amendment of the Comprehensive Plan. This project followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement.
43. **Policy 10.10, Amendments to the Zoning and Subdivision Regulations**, requires amendments to the zoning and subdivision regulations to be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. The amendments support this policy by using clear, consistent language.
44. **Goal 12, Urban Design**, calls for enhancing Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. The amendments support this goal, and **Policy 12.3, Historic Preservation**, because the solar regulations adopted with RICAP 5 still apply to the most significant historic resources: historic landmarks, conservation landmarks, and historic districts. This will ensure that solar energy systems added to these resources will not detract from the important design and historic character of the buildings. The amendments for rooftop mechanical equipment also support this goal because making it easier to install mechanical equipment—without compromising the design and historic aspects of the building—will encourage investment and preservation of buildings in design overlay zones and conservation and historic districts. In addition, the mechanical equipment amendments provide an incentive for removing older mechanical equipment.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, *Solar and Mechanical Equipment Project: Recommended Draft*, dated August 10, 2011.
- b. Amend Title 33, Planning and Zoning, as shown in Exhibit A, *Solar and Mechanical Equipment Project: Recommended Draft*, dated August 10, 2011.
- c. Adopt the commentary and discussion in Exhibit A, *Solar and Mechanical Equipment Project: Recommended Draft*, dated August 10, 2011, as further findings and legislative intent.

Section 2. If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Section 3. The Council declares that an emergency exists because delay in implementing these amendments would preclude some homeowners from participating in certain tax incentive programs available for solar energy systems; therefore, this ordinance shall be in full force and effect on September 2, 2011.

Passed by the Council: AUG 31 2011

Mayor Sam Adams

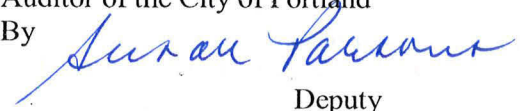
Prepared by: Jessica Richman

Date Prepared: August 16, 2011

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

Agenda No.

ORDINANCE NO. 184842

Title

*Amend ~~Title 33~~, Planning and Zoning to bring solar energy system regulations into conformance with State law, and to allow some rooftop mechanical equipment with a land use review.
(Ordinance; Amend Title 33)

INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams	CLERK USE: DATE FILED <u>AUG 26 2011</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <u>[Signature]</u> Deputy ACTION TAKEN:
BUREAU APPROVAL <u>Susan Anderson</u> Bureau: Planning and Sustainability Bureau Head: Susan Anderson Prepared by: Jessica Richman Date Prepared: August 18, 2011 Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Council Meeting Date August 31, 2011	
City Attorney Approval: <u>KS Beaumont</u> required for contract, code, easement, franchise, comp plan, charter	

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 10 minutes (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	<input checked="" type="checkbox"/>	
2. Fish	2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman	<input checked="" type="checkbox"/>	
4. Leonard	4. Leonard	<input checked="" type="checkbox"/>	
Adams	Adams	<input checked="" type="checkbox"/>	