

ORDINANCE NO. 153042

An Ordinance amending Title 33, Planning and Zoning, of the Municipal Code of the City of Portland, Oregon by amending Sections 33.62.050, 33.74.060, 33.77.060, 33.79.070, 33.94.080, 33.98.025, 33.106.020, 33.110.030, and 33.114.060 to provide proper notice for approval and denial of land use applications in order to comply with state law, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that:

1. The City of Portland currently sends written notice of public action to land use applicants and to the appellants.
2. In 1979, the Oregon Legislature amended ORS 227.173, adding subsection (3) which states:

"Written notice of the approval or denial shall be given to all parties to the proceeding."
3. The Portland City Attorney's Office has found that the amendments herein to Title 33 are necessary in order to comply with state law.
4. The proposed code amendments provide the City with a uniform and fair method for notification of land use planning case decisions.
5. The Planning Commission reviewed and recommended City Council adoption of this ordinance on January 5, 1981.
6. It is appropriate and in the public interest that the following amendments to Title 33 be adopted.

NOW, THEREFORE, the Council directs:

- a. Title 33, Planning and Zoning, Section 33.62.050, is hereby amended to read as follows:

33.62.050 Procedures

 - (1) *** (no change)
 - (2) The Design Committee on major projects, the Planning Director or his delegate on minor projects or the Landmarks Commission on designated landmarks within D Zones shall use the following procedures when reviewing projects under their jurisdiction:
 - A. Minor Project. When a request meets the criteria specified for a minor project in Section 33.62.040 (4), the Planning Director or his delegate may, by administrative action, grant, grant with conditions, modify or deny the design requested; and the decision and findings shall be made in writing within ten (10) working days of the receipt of the application. The

findings shall include the conclusions and the basic facts upon which the decision is based, although such findings need not be transmitted unless such decision has been appealed.

Such decision shall be transmitted to the applicant, to the City Auditor, and to the Bureau of buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who submitted written testimony as well as to all who submitted a written request for such notification.

The decision shall be final unless an appeal to the Design Committee has been filed in writing with the City Auditor and a copy with the Bureau of Planning by the applicant, whose application has been denied or specially conditioned, within fourteen (14) days of the written decision.

Such administrative action shall not require a public hearing.

If the applicant appeals the administrative action, the design request shall be placed on the next appropriate agenda of the Design Committee for a public hearing and processed in an identical manner as Major Projects, (B) below, regarding Design Committee review, decision and appeal to City Council.

- B. Major Project. The Design Committee shall act on all projects classified as major under Section 33.62.040 and hold a public hearing on such requests within sixty (60) days of receipt thereof unless such time limitation be extended with the written consent of the applicant.

Major projects should be submitted for initial design review during the conceptual stage of design preparation. Any subsequent review shall be conducted in an expeditious manner.

Before taking action on projects being reviewed, notification shall be mailed by the City Auditor to the owners of the property in the affected area, officials, and interested groups fourteen (14) days prior to a specified date at which the public hearing before the Design Committee is offered. The affected area is all real property located within lines 400 feet, including intervening street widths, from and parallel to the boundaries of the proposed development site, and such other contiguous area as is under the legal control of the applicant.

Upon review at the public hearing, the Committee, considering all testimony, may grant, grant with conditions, modify or deny the design request. The Committee shall accompany its decision with a statement

setting forth its findings and the reason for the decision it reached; and such decisions shall be made in writing. The findings shall include the conclusions and the basic facts upon which the decision is based, although such findings need not be transmitted unless such decision has been appealed.

Such decision shall be transmitted to the applicant, to the City Additor and to the Bureau of Buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

(C) through (E) *** (no change)

- b. Title 33, Planning and Zoning, Section 33.74.060, is hereby amended to read as follows:

33.74.060 Procedure and fee. Any persons desiring to erect a sign requiring approval under this chapter, or who desires approval or continuance of an existing sign requiring such approval, or whose application for building permit has been refused by the bureau of buildings in the absence of committee approval and the applicant claims that such approval is unnecessary, or whose existing sign has been ruled nonconforming and ordered to be taken down by the bureau of buildings, but the applicant claims that such order is not consistent with the intent of this title, may request in writing the approval or ruling by the sign review committee.

Such written request shall be filed with the sign review committee upon forms prescribed for that purpose by the sign review committee. Requests for approval or ruling shall be signed by the appicant and by the property owner if different, or his authorized agent. A fee shall be charged in accordance with the provisions of Section 33.114.122 (3). The request shall be accompanied by three copies of a site plan showing exact dimensions and arrangement of the proposed or existing sign and supporting structure. The committee may require other drawings, photographs or other material it finds appropriate to an understanding of the proposed or existing sign and its relationship to surrounding properties, and may view the site.

The city auditor shall compile a list of the names and addresses of all persons owning real property within the affected area. The affected area is all real property located within lines one hundred fifty feet, including intervening street widths, from and parallel to the boundaries of the property on which the sign will be or is located and such other contiguous area as is is under the legal control of the applicant. The committee shall hold a public hearing on each request. The committee shall notify the auditor of the date of the public hearing and the auditor shall mail notices of the public hearing to all property owners within the affected area at least seven days prior to the date of the hearing.

The committee shall grant in whole or in part, with or without conditions or shall deny the request and transmit a summary sheet of its decision in writing within fourteen days of the hearing to the applicant, to the City Auditor and to the Bureau of Buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

The committee's decision shall carry out the intent of this title.

- c. Title 33, Planning and Zoning, Section 33.77.060, is hereby amended to read as follows:

33.77.060 Decision by Planning Director. A decision on a Greenway Review application shall be made by the Planning Director. The Planning Director shall approve applications that comply with the intents and requirements of the applicable overlay zone. The director may also disapprove the application or approve it with such conditions as may be consistent with the Comprehensive Plan or necessary to assure compatibility with the elements of the Greenway Plan.

Copies of the completed application shall be mailed to the Oregon Department of Transportation and any persons or organizations who have requested such notice.

Within fourteen business days following receipt of a completed Greenway Review application, the Planning Director shall file a decision with the Director of the Bureau of Buildings, or if the proposed use can be expected to have a major impact on the Greenway, the river or adjacent lands, refer the application to the Hearings Officer, to be heard as stipulated under Chapter 33.106.

The Director shall mail a copy of the decision to the applicant and to the City Auditor. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who submitted written testimony as well as to all who submitted a written request for such notification.

A decision by the Planning Director on a Greenway Review application shall include written conditions, if any, and findings and conclusions. The conditions, findings, and conclusions shall specifically address the relationships between the proposal and the requirements of the Greenway Plan.

- d. Title 33, Planning and Zoning, Section 33.79.070, is hereby amended to read as follows:

33.79.070 plan review procedure, decision and appeal.

(a) through (c) *** (no change)

(d) Final development plan: review and appeal.

(1) and (2) *** (no change)

(3) Appeal procedure.

A. *** (no change)

B. The Hearings Officer shall consider these appeals based on the record from the proceedings involving approval of the Preliminary Plan, a report from the Planning Director, and a statement from the applicant and shall render a written decision within 30 days after the receipt of the notice of appeal. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

e. Title 33, Planning and Zoning, Section 33.94.080, is hereby amended to read as follows:

33.94.080 Special nonconforming uses. A nonconforming use which would otherwise be prohibited due to discontinued use as described in 33.94.020 (b) or destruction as described in 33.94.020 (c), may be reestablished if it meets certain requirements. A nonconforming use or structure may be reestablished if: (a) the nonconforming use and/or structure will be beneficial to the surrounding neighborhood; the use and/or structure will be reestablished or redesigned so as to be compatible with the neighborhood character as determined by the Design Review Committee; the use and/or structure will be compatible with the areas's current policy or comprehensive plan; and prior to its discontinued use or destruction, it:

- (1) Provided housing; or
- (2) Provided consumer services to the surrounding neighborhood which would be compatible with the neighborhood as established by the area's current policy or comprehensive plan; or
- (3) Was an established business whose operation would be compatible with the neighborhood character as established by the area's current policy or comprehensive plan.

Written application for the reestablishment of a nonconforming use shall be filed in the office of the Bureau of Planning upon forms prescribed for that purpose and shall be signed by the applicant and by the property owner if different. The application shall be accompanied by three copies of the proposed reestablishment of the nonconforming use and any other materials the applicant feels would be essential to an understanding of the way that this nonconforming use complies with the standards of the city code.

A fee shall be charged in accordance with the provisions of Section 33.114.122 (5). Upon receipt of an application for the reestablishment of a nonconforming use, which is within a D zone, or which is located within a designated historic district or which involves a designated historic building or site, the

Bureau of Planning staff shall notify the Design Committee of the City Planning Commission or the Historical Landmarks Commission, as the case may be, as to the scheduled date of the hearing and the date by which a report or recommendation of the committee or commission or their designee will be required by the Hearings Officer. In the case of the reestablishment of a nonconforming use involving both a D zone and a historic district or historic building or site, a report and recommendation to the Historical Landmarks Commission only will be required.

The City Auditor shall file a list of the names and addresses of all persons owning real property within the affected area. The affected area is all real property located within the lines 400 feet, including intervening street widths, from and parallel to the boundaries of the reestablishment site, and such other contiguous area under legal control of the applicant. A public hearing on each application for reestablishment of a nonconforming use shall be held. Notification shall be given to the City Auditor of the date of the public hearing and the Auditor shall mail notices of the public hearing to all property owners within the affected areas at least fourteen (14) days prior to the date of the hearing. Findings and determination upon the application shall be made in writing within sixty days (60) days from the date of filing of the application and a copy thereof shall be forthwith transmitted to the applicant, the City Auditor and the Bureau of Buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

In permitting the reestablishment of nonconforming uses the Hearings Officer may attach such conditions and restrictions as are necessary to protect the public interest and the surrounding

- f. Title 33, Planning and Zoning, Section 33.98.025, is hereby amended to read as follows:

33.98.025 Procedures. Variance requests for the types specified in Section 33.98.015 shall be processed as outlined below. In authorizing such variances, conditions may be attached thereto regarding the location, character and other features of the existing or proposed structures or use as may be deemed in the public interest and/or necessary to carry out the purpose of this chapter and title.

Upon receipt of an application for a minor or major variance which is located within a D zone or which is located within a designated historic district or which involves a designated historic building or site, the Bureau of Planning staff shall notify the Design Committee of the City Planning Commission or the Historical Landmarks Commission, as the case may be, as to the scheduled date of the variance hearing or the date for administrative action as required to be made and date by which a report and recommendation of the committee or commission or their designee will be required. In the case of a variance request involving both a D zone and historic district or a historic building or site, a report and recommendation from the Historical Landmarks Commission only will be required.

(a) *** (no change)

(1) through (6) *** (no change)

(7) Upon review at the public hearing, the committee may affirm, reverse, or modify in whole or in part any administrative decision or if initial action, the committee may grant, grant with conditions, modify or deny the variance request. The committee shall accompany its decisions with a statement setting forth its findings and the reasons for the decision it reached; and such decision shall be made in writing. The findings shall include the conclusions and the basic facts upon which the decision is based, although such findings need not be transmitted along with the decision but shall be on file in the office of the Bureau of Planning unless such decision has been appealed; then such findings shall accompany the decision to the appeal body for their consideration. Such decision shall be transmitted within five (5) days after rendering the decision at the public hearing to the applicant, to the City Auditor and to the Bureau of Buildings. A summary sheet of the decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification. The decision shall be final unless an appeal to the City Council has been filed in writing with the City Auditor and a copy with the Bureau of Planning within fourteen (14) days of the filing of the written decision of the variance committee with the City Auditor.

(b) Major Variance. When a variance request meets the criteria as specified for a major variance in Section 33.98.015 (b), the procedures shall be as follows:

(1) and (2) *** (no change)

(3) If no request for a public hearing has been received, the Planning Director or designated agent, after consultation with the Bureau of Buildings, may by administrative action grant, grant with conditions, modify or deny the variance request with consideration to any written comments received; and the decision and findings shall be made in writing within ten (10) working days of the date specified in item (2) above for written comments to be received. However, if the administrative action is so conditioned or modified to be unacceptable to the applicant or such action is for denial, the variance request shall be considered by the variance committee at the public hearing, originally scheduled in subsection (2) above. The findings of the administrative action shall include the conclusions and the basic facts upon which the decision is based, although such findings need not be transmitted along with the decision but shall be on file in the office of the Bureau of Planning unless such decision has been appealed; then such findings shall accompany the decision to the appeal body for their consideration. Such decision shall be transmitted within five (5) days after rendering the written decision to the applicant, to the City Auditor and the Bureau of Buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or

organizations who submitted written testimony as well as to all who submitted a written request for such notification. The decision shall be final unless an appeal, by a person as defined in 33.12.600 who has an interest in the action, to the variance committee has been filed in writing with the City Auditor, and a copy with the Bureau of Planning within fourteen (14) days of filing of the written decision with the City Auditor.

(4) *** (no change)

(5) Upon review at the public hearing, the committee, considering all written and oral testimony, may affirm, reverse, or modify in whole or in part any administrative decision; or if an initial action, the committee may grant, grant with conditions, modify or deny the variance request. The committee shall accompany its decision with a statement setting forth its findings and the reasons for the decision it reached; and such decision shall be made in writing. The findings shall include the conclusions and the basic facts upon which the decision is based; although such findings need not be transmitted along with the decision but shall be on file in the office of the Bureau of Planning unless such decision has been appealed; then such findings shall accompany the decision to the appeal body for their consideration. Such decision shall be transmitted within five (5) days after rendering the decision at the public hearing to the applicant, to the City Auditor and the Bureau of Buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally, or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification. The decision shall be final unless an appeal to the City Council has been filed in writing with the City Auditor and a copy with the bureau of Planning within fourteen (14) days of the filing of the written decision of the variance committee with the City Auditor.

(c) *** (no change)

g. Title 33, Planning and Zoning, Section 33.106.020, is hereby amended to read as follows:

33.106.020 Procedure and fee. Written application for the approval of a conditional use shall be filed in the Commission's office upon forms prescribed for that purpose and shall be signed by the applicant, and by the property owner if different. The application shall be accompanied by three copies of a site plan showing exact dimensions and arrangement of the proposed development or changes in an existing conditional use. Other drawings, topographic surveys, photographs or other material essential to an understanding of the proposed use and its relationship to surrounding properties may be required. A fee shall be charged in accordance with the provisions of Section 33.114.122 (10).

Upon receipt of an application for approval of a conditional use which is located within a D Zone or which is located within a designated historic district or which involves a designated historic building or site, the Bureau of Planning staff shall notify the Design Committee of the City Planning Commission or the Historical Landmarks Commission, as the case may be, as to the scheduled date of the conditional use hearing and the date by which a report and recommendation of the committee or Commission or their designee will be required by the Hearings Officer. In the case of a conditional use involving both a D Zone and a historic district or a historic building or site, a report and recommendation from the Historical Landmarks Commission only will be required.

The City Auditor shall compile a list of the names and addresses of all persons owning real property within the affected area. The affected area is all real property located within lines 400 feet, including intervening street widths, from and parallel to the boundaries of the conditional use site, and such other contiguous area as is under the legal control of the applicant. In the case of excavating and filling the distance defining the affected area shall be 150 feet, including intervening street widths, in each direction from the conditional use except along the frontage of access street where the distance shall be 400 feet, including intervening street widths, and from the site boundaries. A public hearing on each application for a conditional use shall be held. Notification shall be given to the City Auditor of the date of the public hearing and the auditor shall mail notices of the public hearing to property owners within the affected area at least fourteen days prior to the date of the hearing.

Findings and determination upon an application shall be made in writing within sixty days from the date of filing of the application and a copy thereof shall be forthwith transmitted to the applicant, the City Auditor and the Bureau of Buildings. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

- h. Title 33, Planning and Zoning, Section 33.110.030, is hereby amended to read as follows:

33.110.030 Appeals.

(a) *** (no change)

(b) In the event an appeal is filed, the special setback exceptions request shall be placed for public hearing on the variance committee agenda within thirty (30) days of such appeal, and the standard notification shall be mailed by the city auditor fourteen days (14) prior to the date of the hearing. Following the hearing, the auditor shall transmit to the applicant and the appellant, if different, to the bureau of planning, and to the bureau of buildings, the effect of the action taken. A summary sheet of such decision shall be transmitted to all persons, agencies or

organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

If a further appeal to the council is filed within fourteen (14) days in writing with the city auditor, the auditor shall set a date for a public hearing before the council, and not less than fourteen (14) days prior thereto, shall give notice of the hearing to all persons notified of any previous hearing and all other persons who have indicated interest in the matter. Upon review, the council may affirm, reverse or modify any decision of the variance committee. The council shall accompany its decision with a statement setting forth its findings and the reasons for the decision. The matter shall be filed for council consideration no later than thirty (30) days after the appeal from the decision of the variance committee.

Such decision shall be transmitted, within fourteen (14) days after rendering the decision, to the applicant, the City Auditor, the Bureau of Buildings and the Bureau of Planning. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification.

(c) through (e) *** (no change)

- i. Title 33, Planning and Zoning, Section 33.114.060, is hereby amended to read as follows:

33.114.060 Hearings officer procedure and findings.

(a) through (d) *** (no change)

- (e) Except as otherwise provided, the Hearings Officer shall render a written decision within ten days after the conclusion of a hearing. That decision shall be in writing and contain the elements required by 33.114.060 (b) of this title. A copy shall be provided to parties of record in the case requesting the same, and a copy shall be sent by certified mail to the applicant. A summary sheet of such decision shall be transmitted to all persons, agencies or organizations who testified personally or through a representative or in writing during the proceeding as well as to all who submitted a written request for such notification. The officer shall file a copy of his decision together with the recommended implementing ordinance with the Planning Commission and the City Auditor and notify Commission members of it within five days after the written decision is rendered. In the case of requests for variances or conditional uses, a copy of the decision shall also be filed with the Bureau of Buildings. The decision or recommendation of the Hearings Officer shall be final fourteen days after the Hearings Officer has filed it pursuant to this section, unless prior thereto an appeal is filed in accordance with

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33.114.070, by a person as defined in 33.12.600 who has an interest in the action, or the Commission, at the request of any one of its members within that fourteen days, initiates review of any decision or in the case of an appeal by an interested person, the Commission, at the request of any one of its members within ten days after such an appeal has been filed, may initiate its own review.

(f) through (g) *** (no change)

Section 2. The Council declares that an emergency exists because enactment of these amendments will clarify and facilitate the public notice process regarding decisions on Bureau of Planning Code Administration cases; therefore this ordinance shall be in full force and effect upon passage by the council.

Passed by the Council, **APR 1 1982**

Commissioner Mildred A. Schwab
Mike Saba:jm
February 4, 1982

At test:


Auditor of the City of Portland

Calendar No. **844**
~~781~~

ORDINANCE No. 153042

Title

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THURSDAY

MAR 25 1982

CONTINUED TO APR 1 1982

FEB 10 1982

Filed _____

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By _____

Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
JORDAN		
LINDBERG		
SCHWAB		
STRACHAN		
IVANCIE		

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

INTRODUCED BY
Commissioner Mildred A. Schwab

NOTED BY THE COMMISSIONER
Affairs <i>[Signature]</i>
Finance and Administration
Safety
Utilities
Works

BUREAU APPROVAL
Bureau: Planning Bureau
Prepared By: Mike Saba: jm Date: February 4, 1982
Budget Impact Review: <input type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: Terry D. Sandblast <i>[Signature]</i>

CALENDAR	
Consent	Regular <input checked="" type="checkbox"/>

NOTED BY
City Attorney <i>KS Beaumont</i>
City Auditor
City Engineer