



## Memo

Date: November 3, 2023  
To: Planning Commissioners  
From: Phil Nameny, City Planner  
Cc: Patricia Diefenderfer and Sandra Wood  
Re: Housing Regulatory Relief Project – Nov. 7, 2023 Discussion Guide

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On November 7, 2023, the Planning Commission will discuss the Housing Regulatory Relief Project. The intent of the project is to temporarily provide regulatory relief to development proposals, especially those providing housing. At the beginning of the meeting, Commissioners will have the opportunity to debrief about the hearing, before moving into the specific topics below.

This memo includes the comments that staff received from the Commission members to guide the discussion at the November 7<sup>th</sup> meeting. Commissioners provided a combination of general comments as well as questions and suggestions for specific topic areas. The topics have been organized in the memo as follows:

- Topic specific
  1. Neighborhood contact
  2. Ecoroofs
  3. Bird-safe glazing
  4. Ground floor active use/development
  5. Bike parking
  6. Threshold for development projects to qualify for waivers
  7. Non-conforming development
- General comments
- Topics outside current project scope

In addition, to aid in the discussion, we are sharing some regulatory information for the topics that were identified most frequently. That information is located at the end of this document.

On the next pages are the comments sorted by topic area, including a notation of which Commissioner provided the comment:

## **Topic Specific**

### **1. Neighborhood Contact**

While we heard a lot of testimony in opposition to the neighborhood contact modifications, I'm still supportive of these measures. In general, I advocate for process improvements over changes to the product (building) that may have negative environmental or urban realm impacts. I think we, as a city, should establish the rules/code for what buildings must achieve, and make it as easy as possible for people to build within those rules without opportunities for delay, NIMBY-ism, or outreach that adds time/cost. (Comm. Thompson)

I propose that all developments currently require a neighborhood notification maintain a minimum requirement of a site sign posting with contact information of the developer and/or architect provided in addition to contact information for BDS or other City Department that can provide information regarding the proposed development. (Comm. O'Meara)

### **2. Ecoroofs**

I'm inclined towards an amendment that would retain the eco-roof requirement. But I'd be interested to see if the 20% of projects that sought & obtained variances suggests have a code change to allow more approvals by-right. (Comm. Spevak)

Ecoroofs - current requirement to remain, except I recommended modifying requirement to allow roof area dedicated to Solar PV (installed at time of construction) to be deducted from the required ecoroof area. I would be interested to see how many of the requested variances for ecoroofs sought to do just this: replace green roof with PV area. I have personally worked on projects where PV adoption was constrained by the current ecoroof requirement, which I don't think is a net benefit toward reaching our city's climate goals. Aside from this condition, the benefits of ecoroofs far outweigh those of other stormwater management methods for little to no added cost. (Comm. Thompson)

Eco roof requirement can only be waived if project is otherwise including ecological or sustainable design features such as solar infrastructure covering more than 50% of roof area. (Comm. O'Meara)

Eco-roof: Removal of this standard seems to provide flexibility and in practice, eco-roofs may still be proposed. To clarify, since storm water management standards are still required, would an applicant often find that an eco-roof can be the most cost-effective method to address water retention? (Comm. Patel)

Retain bird glazing and ecoroof requirements. (Comm. Routh)

### **3. Bird-safe glazing**

I've been a little leary of the value bird-safe glazing, given that the biggest contributor to declining bird populations is habitat loss – and I'm pretty sure a 100-unit building downtown, even without bird-safe glass, is better for bird populations than 100 units spread out over multiple acres in the suburbs. But also appreciate that taller central city buildings in Portland and elsewhere tend to be near rivers, on

migration paths, which makes them particularly deadly. I also appreciate that local environmentalists & organizations also support compact urban development, which helps avoid habitat loss. Finally, the incremental cost of bird-safe glazing is fairly low and, I'm guessing, could decrease as it gets used more broadly. So I'm inclined toward an amendment that would retain the existing bird-safe glazing requirement, but retain staff's proposed language to clarify that spandrel glass meets the standard (which I think is non-contentious). (Comm. Spevak)

Bird safe glazing - current requirement to remain, except I recommend allowing a glassier ground floor condition on a wall where upper floors have window-to-wall ratio of 30% without penalizing the entire facade. Typical residential WWR can be achieved within 30% if someone wants to avoid this requirement, but it is reasonable and encouraged that the ground floor be more transparent and connected to pedestrian realm. Require bird safe only at ground floor where projects meet this condition. This provides added flexibility to create a design that doesn't require bird safe everywhere while meeting the city's other goals. (Comm. Thompson)

Is this only applicable to buildings over 60 feet? I would like to see the bird friendly glazing maintained and think that clarification around how many new buildings this has applied to since implementation of requirement would be helpful. (Comm. O'Meara)

Testimonial concerns appear to be mainly focused on eco-roofs, bird-safe glazing, and bike parking. Out of those standards and per the 2017 ECONorthwest study, does the bird-safe glazing standard pose as the lowest incremental cost? (Comm. Patel)

Retain bird glazing and ecoroof requirements. (Comm. Routh)

#### **4. Ground floor active use/development**

I support the general intent of the ground floor changes, but think we need to get more specific and strategic in how housing flexibility can be promoted without compromising the urban realm. I don't know if we can get there on the HRR [Housing Regulatory Relief Project] timeline, hence my proposed amendment below. (Comm. Thompson)

Ground floor active uses, heights and windows - I support increased flexibility in use at the ground floor, but I do not support removing requirements related to height and windows that ensures long-term flexibility at the pedestrian level. I recommend we remove these proposed changes from this package and emphasize to council that a ground-floor work group be established that can explore how to bring residential to grade without creating inactive facades that contribute to safety and walkability issues. This is a nuanced conversation that should include urban design experts, design commission, housing developers, and a discussion of specific streets and locations where housing should be encouraged or where modifications to the existing standards makes sense. (Comm. Thompson)

Can we look at a percentage for active use on ground floor that is more flexible? I.E., community room, gym, resident services offices, etc for a certain percentage (25%) and enable residential on the ground floor for remaining to still stay in the spirit of mixed use development on our main streets? (Comm. O'Meara)

Also interested in an exemption for regulated affordable housing if there is an attempt to utilize higher percentage of ground floor units with universal design/accessibility standards. (Comm. O’Meara)

Is it possible to still require the taller ground floor ceiling heights while encouraging a live/work type of ground floor unit and maintaining 25% of ground floor as some sort of active use/ resident amenity space? (Comm. O’Meara)

What options can we make available to flex live/work space as active use on the ground floor? Is allowing residential on the ground floor enough to make live/work a possibility? (Comm. Routh)

## **5. Bike Parking**

If (as Street Trust’s testimony suggests) maneuvering dimensions required for bike storage have sometimes been enforced to mean 2 sides of a square, then that’s a problem – because I don’t believe that was the code intent. I’ve worked with staff on amendment language to clarify that maneuvering dimensions refer just to back-up distances. I’d like to see that amendment adopted (even if it doesn’t get enforced for 5 years). Beyond that, I support recommendations in the Bike Loud and Portland:Neighbors Welcome letter – which would require no further amendment but a strong call for follow-up. (Comm. Spevak)

Incorporate bike parking modifications via Street Trust and Bike Loud/P:NW testimony, and create an advisory group to evaluate the impacts of those modifications. (Comm. Routh)

## **6. Threshold for development projects to qualify for waivers**

Jessica Richman, in her testimony, notes that including a 150sf dwelling would suffice to qualify a project for all the exemptions this code project has to offer. I’m not sure if the value of these exemptions is high enough for someone to game the system by proposing a 150sf dwelling within an otherwise non-residential building. But I like her idea of setting a minimum number of dwelling units (three) or minimum net building area in residential use (1,500sf), whichever is larger, to qualify for requirements to be waived. (Comm. Spevak)

## **7. Nonconforming development**

I brought up a question at our previous meeting regarding non-conforming requirements and I believe staff was going to look further into that and report back. I don’t think we heard anything about this at our last meeting. (Comm. Lange)

## **General Comments**

I served on PSC [Planning and Sustainability Commission] for the bike parking project, neighborhood contact project, and DOZA (Design Overlay Zone Assessments), where bird-safe glazing and eco-roof standards were integrated into the code. Each of these projects balanced competing goals and afforded our commission significant time & expertise to make thoughtful recommendations. They also generally happened during Portland’s last building boom. Although we were attentive at the time to how higher costs could dampen development activity, I think we’re more sensitive to that issue now – as housing

production has slowed dramatically despite tremendous need. I feel proud of the codes we adopted, but also humble and open to the possibility that in some places we may have over-reached. Hence I appreciate that this project is coming to the Planning Commission, affording us a chance to take another look. (Comm. Spevak)

As someone who has developed both market and affordable housing, I particularly appreciated Jill Chen's comments about how regulations impact affordable and/or market housing projects. From my experience, market rate housing is more sensitive to small incremental costs than subsidized affordable housing. Why? Because with market housing, you can only build it if there's a reasonable expectation rent generated by the building can cover all the costs. As the saying goes, "If you can't get enough rent to cover the costs, you can't build the building." With affordable housing, there's an opportunity to pay for the building through a combination of *both* rent (sometimes) *and* public funds. So if a jurisdiction requires ecoroofs, eco-roofs, tall/active ground floor spaces, ..., it's possible to request additional funds to cover these costs from public funders – who often say "Yes" because funders also often support the same broader goals. Disclaimer: When this happens, it does mean that affordable housing funds don't stretch to produce as many units. (Comm. Spevak)

Technical Amendments. I shared with staff a few technical amendment ideas to clarify intent. For those they agree with, I'd like to offer them as amendments. They could probably be part of a consent package, meaning that anyone could pull them off consent – but otherwise we'd just consider them as a batch. (Comm. Spevak)

I am leaning towards supporting the package of regulation pauses as presented by staff. Having worked on multi-family development in my previous position I know how these regulations can impact a go, no-go decision for a developer. It seems the city would rather not have us cherry pick those regulations we would want to pause and those we would like to continue, so I would like to explore that in more with staff. Commissioner Spevak brought up some very good points and I am glad we have the opportunity to meet once more to discuss his and the other commissioner's thoughts in more depth. (Comm. Lange)

In response to comments submitted, I do not question the value of existing green standards and sustainable development practices at issue. However, the fact is that the city has been under-producing housing for decades. We are in a housing crisis and when in a crisis, we have to make tough decisions. (Comm. Patel)

The HNA [Housing Needs Analysis] shows the city has more than enough capacity to build. As such, as a practical matter, we have to address development feasibility in order to build units in a difficult market environment (i.e. inflation, rising interest rates, rising construction costs, etc.). (Comm. Patel)

Here, the proposed temporary suspension of standards are reasonable methods (under the city's control) to help address feasibility and housing production. To put it simply, the proposal can *help* rather than hinder the production of housing at a time of need and during challenging market conditions. (Comm. Patel)

*The whole is greater than the sum of its parts* seems to apply here. It may seem like removing few standards from the proposed relief package has a negligible impact. However, when you combine the temporary rollbacks as proposed, the proposal can make an actual difference as shown in staff's presentation and the ECONorthwest study. (Comm. Patel)

Eli your summary was extremely helpful to me as I work to deepen my insight and understanding into the nuances associated with the matters brought before us. As a relative novice to many of these issues, I hope to gain additional knowledge from my fellow commissioners as we approach the decision point on the code amendments. (Comm. Alexander)

**Topics outside current scope**

Depave testimony re: Conditional Use parking requirements – This project picks up multiple technical, non-contentious code changes that were originally part of the RICAP scope, and not especially related to housing regulations. I'm glad it does so, as I'm always a fan of cleaning up the code, especially when it's not totally clear when RICAP will get to us. I think Depave's testimony calls appropriate attention to an item that ought to be in the RICAP scope, if it isn't already. In practice, the CU (Conditional Use) code ratchets up parking requirements that were never required as part of an original CU approval. It also makes it time consuming and expensive to remove more than a few parking spaces. I believe the city has been consistent in its enforcement of these provisions. But that just means that the 2 projects DePave cited in their letter are unlikely to be the last to be thwarted by current code – until we change the code itself. Please prioritize this for another code project soon. Churches and schools often have tight budgets. If they want to shift how they use their properties away from paved parking, let's make the regulatory piece of that easy. (Comm. Spevak)

Conditional Use parking requirements - if feasible to pick this up, I think we should. Current rules are not consistent with our move away from required minimums and seem unfair. (Comm. Thompson)

### **Background Information to aid the discussion**

The following provide some code information for the topic areas of bird-safe glazing, ecoroofs, and ground floor active use/standards.

## **Bird-safe Exterior Glazing**

**Purpose:** Reduce the risk of bird-to-building collisions in Portland, which is on the Pacific Flyway, a major north-south flyway for migratory birds in the Americas.

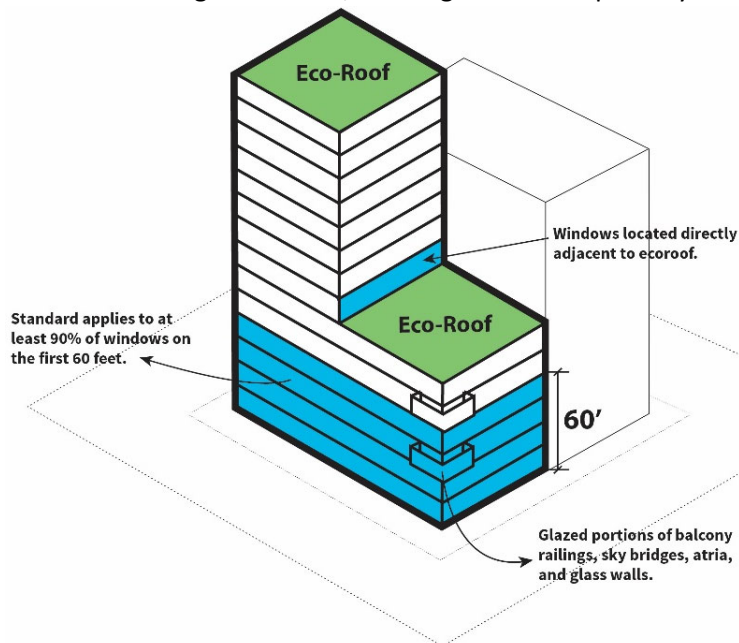
**Where:** Central City Plan District (33.510.223) and Willamette South Reach (33.475.235).

**Applicability:** Façades with 30% or more glazing within the first 60 feet from grade and glazed areas adjacent to ecoroofs on 1) new buildings and 2) major remodels when at least 75% of the façade is altered. **Exempt:** houses, duplexes, triplexes, ADUs, historic landmarks and districts.

**Standard:** At least 90 percent of the windows and glazing on the following portions of each façade must choose treatments from the [Portland Bird Safe Windows List](#):

1. Windows and glazing, including glazed balcony railings, located within the first 60 feet from grade;
2. Windows and glazing located within the first 15 feet above an adjacent ecoroof, roof garden, or other vegetated or landscaped roof area; and
3. The glazed portions of sky bridges or fences.

**Treatments:** The [Bird Safe Window List](#) (administrative rule) specifies the required pattern dimensions and spacing as well as allowed materials, including: Fritted Glass, Etched Glass, UV Coated Glass, Window Films, Permanent Stencils or Frosting, and Exterior Apparatus. Only the first four material options are allowed on the ground floor, where greater transparency in the public realm is desired.



## Ecoroofs

**Purpose.** Multiple benefits including stormwater management, reduction of air temperatures, mitigation of urban heat island impacts, air quality improvement, urban green spaces, and habitat for birds, plants and pollinators.

**Where:** Central City Plan District (33.510.243).

**Applicability:** In the CX, EX, RX, and IG1 zones, new buildings with a net building area of 20,000 square feet or more.

**Standard:** Ecoroofs must cover 100 percent of the building roof area, except that up to 40% of the roof area can be covered with a combination of the following:

- a. Mechanical equipment;
- b. Areas used for fire evacuation routes;
- c. Stairwell and elevator enclosures;
- d. Skylights;
- e. Solar panels;
- f. Wind turbines;
- g. Equipment used for capturing or directing rainwater to a rainwater harvesting system; or
- h. Uncovered common outdoor areas.

The ecoroof must be approved by the Bureau of Environmental Services and meet the [Stormwater Management Manual's](#) (administrative rule) ecoroof design criteria (section 3.1.1.1).

### Key concepts from the BES [Stormwater Management Manual](#):

- **1.3.1 Onsite Stormwater Management Required.** Onsite stormwater management is required to the maximum extent feasible unless stormwater management is provided in a regional facility as part of a larger plan or project. ("site" includes adjacent ROW)
- **1.3.2 Facility Selection: Vegetation and Infiltration.** The City's stormwater management approach prioritizes vegetation and infiltration to meet stormwater requirements and to maximize environmental, system and urban design benefits. Designers must evaluate and use vegetated and infiltration facilities to the maximum extent practicable. Sites with a qualifying ecoroof may receive an exception to infiltration requirements.
- **1.3.3 Infiltration and Discharge Hierarchy.** Portland has three primary receiving systems for disposal and conveyance of stormwater. The highest technically feasible level must be used, unless otherwise directed by BES. In order of preference, the levels are:
  1. Onsite infiltration.
  2. Surface water systems or separated storm systems that ultimately drain to surface water.
  3. Combined sewers that convey water to the wastewater treatment plant.

**Additional info:** [Guidance on CC2035 Ecoroof Requirements and the Stormwater Management Manual](#)



## **Ground Floor Active Use**

The following overlay zones/plan districts have provisions requiring a certain percentage of the ground floor (25% or 50%) be in one of a list of specific use types. This generally applies within 100-ft of a specific street or transit street.

- Centers Main Street overlay zone
- Northwest plan district
- West Portland Multicultural plan district

Central City plan district's only use-specific provision is to prohibit dwelling units on the ground floor when projects are fronting on mapped streets.

## **Ground Floor Active standards (i.e. height and window provisions)**

The following overlay zones/plan districts have provisions specific to the 'design' of the ground floor, not necessarily tied to requiring certain use (above). The standard universally includes a height (generally 12-ft) and depth (25-ft back from street/plaza) requirement to the space, and sometimes includes other limitations.

- Design overlay zone (outside of Central City if applying standards vs review)
- Central City plan district
- Gateway plan district
- Hollywood plan district
- Kenton plan district
- North Interstate plan district
- Northwest plan district

The following overlay zones/plan districts have provisions for increased window percentages on the ground floor frontages facing specific streets.

- Centers Main Street overlay zone
- Central City plan district
- West Portland Multicultural plan district