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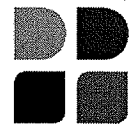
EXHIBIT A

# Regulatory Improvement Workplan



## Regulatory Improvement Code Amendment Package 4

(RICAP 4)



CITY OF PORTLAND  
BUREAU OF  
**PLANNING**



**Council Revisions to  
Division Street Regulations**

January 9, 2009

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## **I. Introduction**

### Summary

This report is part of the Regulatory Improvement Workplan, an ongoing program to improve City building and land use regulations and procedures. Each package of amendments is referred to as a Regulatory Improvement Code Amendment Package (RICAP), followed by a number. The amendments addressed in this report were part of RICAP 4.

The workplan for RICAP 4 was adopted by the Planning Commission at a public hearing in July, 2007. The amendments addressed in this report, which affect Retail Sales And Service uses along Division Street, were not initially a part of this package. At the Planning Commission Hearing for the RICAP 5 workplan on August 26, 2008, there was considerable testimony about the retail size limitation, which is part of the portion of the Main Street Overlay Zone that applies to Division Street. The Planning Commission asked staff to bring forward a code amendment for this issue in time for the RICAP 4 Planning Commission hearing.

There was extensive testimony and discussion on this issue at the Planning Commission hearings. As a result, staff created a separate ordinance to allow the Council to approve the RICAP 4 package independent of the Division Street issue. Council also heard extensive testimony on December 10, 2008 and January 7, 2009.

On January 7, 2009, City Council adopted several amendments to the Planning Commission's recommended code language. This report includes Council's amendments.

## II. Impact Assessment

During each RICAP review process, an impact assessment is conducted in order to identify and evaluate positive and negative impacts of regulations that may be proposed. The process also identifies situations where a nonregulatory approach is a better solution.

The impact assessment in the *Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* describes the process used to select and analyze the items in RICAP 4, including the item addressed in this report. The information in this section supplements that assessment.

### Stakeholder Outreach and Feedback

During the August 2008 Planning Commission Hearing for our next workplan (RICAP 5), several representatives of neighborhood and business organizations requested that the Commission direct staff to address the retail limits along part of SE Division Street. Their concern was that the current standard was having the unintended consequence of forcing the former Natures/Wild Oats building to remain vacant, and it was having a negative effect on the area. After hearing the testimony, the Planning Commission directed staff to prepare a code amendment on this issue as part of the RICAP 4 package of amendments.

In addition to the outreach and notice described in the *Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft*, notice was also sent to those who had been involved in Division Street planning, in the adjustment requested for the former Natures/Wild Oats building, and the subsequent appeals.

The Planning Commission Hearing afforded members of the public the opportunity to testify about any of the items in RICAP 4. Most of the testimony was on the proposed changes to the Division Street retail limits. Testimony was received both in favor and opposed to the proposed changes. The Commission felt that the neighborhood's proposal to waive the limitation only within existing buildings on floors other than the ground floor was the best compromise. This option would allow greater flexibility to reuse older buildings while maintaining a streetscape that features smaller storefronts.

Additional notice and opportunities to testify were provided with the City Council hearings on December 10 and January 7.

### **III. Amendments to the Zoning Code (Title 33)**

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

## Division Street Regulations

### 33.460.300 Purpose

### 33.460.310 Additional Standards

The Division Green Street / Main Street Plan went into effect in March 2006. One of the regulations added to the Zoning Code was a limitation on the size of individual Retail Sales And Service uses to 10,000 square feet of net building area. Supermarkets are exempt from the limitation.

According to the commentary in the adopting report, the purpose of the regulation was: "The community places a high value on retaining the local scale of retail along Division. Although this does not prohibit chain stores less than 10,000 square feet, it sends a message that the scale of retail along Division is local serving, rather than providing a regional draw. Supermarkets require larger floor area to provide local services and are exempt from this regulation."

After the plan took effect, a grocery store in the plan area closed, and the building owner has had difficulty finding a tenant for the space. The floor area of the existing building is more than 10,000 square feet and includes a second story, but potential tenants must either use only part of the building, or seek an adjustment to the 10,000 square foot limitation. One potential tenant did request an adjustment; the City approved it, but it was appealed to LUBA and remanded to the City.

Concerned about the potentially blighting effect of a long-vacant large building, the neighborhoods in the area asked that the 10,000 square foot limitation be lifted in very limited circumstances. Several options were considered. The first, and simplest was originally offered by staff, and would exempt buildings that were larger than 10,000 square feet on the date the Division Street Plan took effect. The second option was one suggested by a coalition of neighborhood groups. This would apply the 10,000 square foot limitation only to the ground floor of buildings.

At the Planning Commission hearings, there was a considerable amount of testimony, both in favor and against the proposal. The Commission felt that the proposal from the coalition of neighborhood groups was the best approach to retain the desired neighborhood character of smaller storefronts, while increasing the flexibility to re-use buildings. The area this regulation applies to is small, and this regulation affects only a few buildings. This analysis was specific to the Division Street corridor. They agreed that a separate analysis should be done in any future areas that consider incorporating the Division Street retail limitations. Based upon the testimony of neighbors, the Planning Commission recommended that Council adopt the second option.

[Commentary continues on next even-numbered page]

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### Division Street Regulations

#### 33.460.300 Purpose

These regulations promote development that fosters a pedestrian- and transit-oriented main street and reinforces the pattern of older industrial, commercial, and residential buildings along the street. These regulations ensure that development:

- Activates Division Street corners and enhances the pedestrian environment;
- Steps down building heights to reduce the negative impacts of larger scale buildings on the adjoining single-dwelling zones;
- Is constructed with high quality materials in combinations that are visually interesting;
- Consists of retail that primarily serves the surrounding neighborhood, is small in scale and promotes pedestrian activity; and
- Provides neighbors with the opportunity to give early input to developers on significant projects.

#### 33.460.310 Additional Standards.

A-C. [No change.]

#### D. Floor area for Retail Sales And Service.

1. Generally. Each individual Retail Sales And Service use is limited to 10,000 square feet of net building area.
2. Exceptions.
  - a. Supermarkets are exempt from this regulation.
  - b. A Retail Sales And Service use may exceed 10,000 square feet if:
    - (1) The building it is in had more than 10,000 square feet of floor area on March 17, 2006;
    - (2) The maximum floor area of that use on the ground level of the building is no more than 10,000 square feet;
    - (3) The total building floor area is no more than 120 percent of the floor area that existed on March 17, 2006; and
    - (4) The applicant must present the proposal to City Council before a building permit is applied for. The Council discussion is advisory only and is not binding on the applicant.

At the City Council hearings, there was also a considerable amount of testimony, both in favor and against the proposal. In Council's discussion, they were particularly concerned about the potential for buildings expanding by significant amounts to take advantage of the proposed provisions, and about removing the opportunity for neighborhood involvement. As a result, they added three elements to the Planning Commission recommendation:

1. Buildings taking advantage of this provision may have no more than 120 percent of the floor area that they had on the date the original regulation was adopted (March 17, 2006).
2. Applicants using this provision must offer to meet with the neighborhood, as is now required for applicants adding more than 5,000 square feet of floor area to a site.
3. Applicants using this provision must present their proposal to City Council for an advisory discussion before applying for a building permit.



**PROPOSED ZONING CODE LANGUAGE**

Language to be **added** is underlined  
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- E. Neighborhood contact.** Proposals meeting the following conditions are subject to the neighborhood contact requirement as specified in Section 33.700.025, Neighborhood Contact. All of the steps in 33.700.025 must be completed before a building permit is applied for:
1. The proposed development has not been subject to a land use review, and
  2. The proposed development will add more than 5,000 square feet of gross building area to the site, or will utilize the Retail Sales And Service exception of D.2.b above.

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