

ORDINANCE NO.

153827

An Ordinance amending Title 33, Planning and Zoning of the Code of the City of Portland, Oregon, by amending the pre-existing use regulations, adding pre-existing use regulations to Chapter 33.54, and amending section 33.32.130 to provide sign regulations for pre-existing uses in the R1 zone.

The City of Portland ordains:

Section 1. The Council finds:

1. The adoption of the Comprehensive Plan included substantial changes to the zoning map and zoning code which caused many activities that were previously in conformance with the zoning code to no longer be so.
2. Instead of becoming non-conforming uses, these activities became pre-existing uses, a new category of use created by the Council.
3. The intent of the pre-existing use regulations was to minimize hardships on the land use activities that were subject to restrictive zone changes resulting from implementation of the Comprehensive Plan.
4. The language of the pre-existing use regulations has been unclear and has not addressed many situations that have arisen. City staff has had to interpret the pre-existing use regulations with minimal guidance from the Code.
5. Two problems exist with the current pre-existing use regulations: (1) the regulations have not been applied to uses that are no longer conforming uses at their locations due to changes in the use list of the zone, and (2) the regulations have not addressed signs, including commercial signs in R1 zones.
6. The pre-existing use regulations need to be amended to more clearly state and implement the City Council's intent regarding these uses.
7. The Planning Commission recommended that the period allowed for a pre-existing use to discontinue but maintain its status be extended from one year to two. This is intended to create less of a burden for owners of structures with pre-existing uses during difficult economic periods.
8. The Planning Commission considered these proposals on April 27, 1982, and recommended that the Council adopt them.

NOW, THEREFORE, the Council directs:

- a. Title 33, Planning and Zoning, is hereby amended by amending Section 33.32.130 to read as follows:

33.32.130 Signs Permitted

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

(e) A sign or signs for pre-existing uses not previously having a sign shall meet the requirements contained in Section 33.40.130.

- b. Title 33, Planning and Zoning, is hereby amended by amending Sections 33.32.135 and 33.34.140 to read as follows:

PRE-EXISTING USES

33.____ Pre-existing uses.

(a) Purpose. The purpose of the pre-existing use section is to minimize hardships on land use activities that were subject to restrictive zone changes resulting from the implementation of the Comprehensive Plan on January 1, 1981. The Comprehensive Plan contained significant zoning map and zoning code changes to better guide future land use decisions in the City. As a result, some land use activities no longer comply with the regulations of this Title. The pre-existing use regulations are a means to provide these affected uses some of the rights of their previous zoning, while making new uses subject to the current zoning code and map. The regulations provide flexibility for expansion and continued operation of the pre-existing use. They are intended to generally be less restrictive than the non-conforming use regulations of Chapter 33.94.

(b) Definition. A pre-existing use is:

(1) A use that was:

Existing at the time the Comprehensive Plan took effect on January 1, 1981; and

Was a principal or approved conditional use in its zone, and complied with all siting, structural and parking regulations; but

(2) As a result of a zoning map or zoning code change at the time of the Plan's implementation:

The use is no longer a principal or conditional use in its zone; or

The use no longer complies with all siting, structural and parking standards of this chapter.

(c) Regulations. Pre-existing uses shall be subject to the following regulations:

(1) Change of use. Upon issuance of a certificate of occupancy a pre-existing use may change to a conforming use. A pre-existing use may be changed to a use of the same or more restrictive classification in accordance with the conditional use procedures of Chapter 33.106 without loss of pre-existing status. However, a pre-existing use may not be changed to a use that would not have been permitted at that location prior to the implementation of the Comprehensive Plan on January 1, 1981. After change of a pre-existing use to a conforming use, or more restrictive use, it shall not hereafter be changed to any less restrictive use.

(2) Change of ownership. A pre-existing use may change ownership without loss of pre-existing use status.

(3) Damage by fire. Any structure containing a pre-existing use damaged or destroyed by a fire or other cause beyond the control of the owner may be reconstructed in accordance with the floor area ratio, yard, height and parking regulations currently in effect for the zoning category in place on December 31, 1980.

(4) Floor area expansion.

A. A pre-existing use may increase floor area on an existing site subject to the floor area ratio, yard, height, and parking regulations currently in effect for the zoning category in place on December 31, 1980.

B. For the purpose of subsections (4) and (5) of this section, a lot will be considered part of the existing site of a pre-existing use if, on December 31, 1980 it was in the same ownership, it was in active use by the pre-existing use as part of its business and the lot contains some improvements supporting its active use.

(5) Site expansion. A pre-existing use may expand up to 100 percent in site area subject to the following requirements:

A. Site expansion shall occur only on adjacent parcels, or on ones wholly or in part directly across a public right-of-way from the original location of the pre-existing use.

B. Site expansion shall occur only on parcels that have the same or less restrictive zoning than the pre-existing use site, but in no case shall expansion be onto parcels where the expansion would not have been allowed under the zoning in place on December 31, 1980.

C. In cases where the expansion site was in the same ownership as the existing site on December 31, 1980, and the expansion site had the same zoning as the pre-existing use site on that date, the expansion is allowed outright. All other site expansions shall be subject to the conditional use process of Chapter 33.106.

D. The regulations for the site expansion governing floor area ratio, yards, height and parking shall be those currently in effect for the zone category on the expansion site in place on December 31, 1980.

E. At the time of such expansion of area, street trees must be provided on all rights-of-way abutting the use, and all parking areas must be landscaped to conform with the requirements of Chapter 33.82. Tree planting layout and selection shall be in conformance with the City's street tree planting guidelines and approved by the City Forester and the Fire Bureau.

(6) Signs

A. Signs that were in conformance with the zoning in place on

December 31, 1980 may be replaced by a sign of comparable area, height and illumination, or by a sign which complies with the regulations of this Chapter, whichever is less restrictive.

B. Pre-existing uses not previously having a sign may install a sign subject to the regulations of this Chapter.

(7) If a pre-existing use is discontinued for more than two years, it shall not be re-established. Future use of the site shall be limited to those allowed under the provisions of this Chapter, except as provided for in Section 33.94.080.

- c. Title 33, Planning and Zoning, is hereby amended by amending Sections 33.40.155, 33.41.170, 33.42.135, 33.50.135 and 33.52.135, and adding Section 33.54.135 to read as follows:

PRE-EXISTING USES

33.____ Pre-existing uses.

(a) Purpose. The purpose of the pre-existing use section is to minimize hardships on land use activities that were subject to restrictive zone changes resulting from the implementation of the Comprehensive Plan on January 1, 1981. The Comprehensive Plan contained significant zoning map and zoning code changes to better guide future land use decisions in the City. As a result, some land use activities no longer comply with the regulations of this Title. The pre-existing use regulations are a means to provide these affected uses some of the rights of their previous zoning, while making new uses subject to the current zoning code and map. The regulations provide flexibility for expansion and continued operation of the pre-existing use. They are intended to generally be less restrictive than the non-conforming use regulations of Chapter 33.94.

(b) Definition. A pre-existing use is:

(1) A use that was:

Existing at the time the Comprehensive Plan took effect on January 1, 1981; and

Was a principal or approved conditional use in its zone, and complied with all siting, structural and parking regulations; but

(2) As a result of a zoning map or zoning code change at the time of the Plan's implementation:

The use is no longer a principal or conditional use in its zone; or

The use no longer complies with all siting, structural and parking standards of this chapter.

(c) Regulations. Pre-existing uses shall be subject to the following regulations:

- (1) Change of use. Upon issuance of a certificate of occupancy by the Bureau of Buildings, a pre-existing use may be changed to a conforming use or to a use of the same or more restrictive classification without loss of pre-existing status. However, a pre-existing use may not be changed to a use that would not have been permitted prior to the implementation of the Comprehensive Plan on January 1, 1981. Differences between the property owner and the Bureau of Buildings as to the determination of whether a proposed use is at the same or more restrictive classification shall be referred for interpretation as specified in Section 33.114.030. After a change of a pre-existing use to a conforming use or to a more restrictive use, it shall not thereafter be changed to any less restrictive use.
- (2) Change of ownership. A pre-existing use may change ownership without loss of pre-existing use status.
- (3) Damage by fire. Any structure containing a pre-existing use damaged or destroyed by a fire or other cause beyond the control of the owner may be reconstructed in accordance with the floor area ratio, yard, height, and parking regulations currently in effect for the zoning category in place on December 31, 1980.
- (4) Floor area expansion.

 - A. A pre-existing use may increase in floor area on an existing site subject to the floor area ratio, yard, height, and parking regulations currently in effect for the zoning category in place on December 31, 1980.
 - B. For the purpose of subsections (4) and (5) of this section, a lot will be considered part of the existing site of a pre-existing use if, on December 31, 1980 it was in the same ownership, it was in active use by the pre-existing use as part of its business and the lot contains some improvements supporting its active use.
- (5) Site expansion. A pre-existing use may expand up to 100 percent in site area subject to the following requirements:

 - A. Site expansion shall occur only on adjacent parcels, or on ones wholly or in part directly across a public right-of-way from the original location of the pre-existing use.
 - B. Site expansion shall occur only on parcels that have the same or less restrictive zoning than the pre-existing use site, but in no case shall expansion be onto parcels where the expansion would not have been allowed under the zoning in place on December 31, 1980.
 - C. In cases where expansion site was in the same ownership as the existing site on December 31, 1980, and the expansion site had the same zoning as the pre-existing use site on that date, the expansion is allowed outright. All other site expansions shall be subject to the conditional use process of Chapter 33.106.

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- D. The regulations for the site expansion governing floor area ratio, yards, height and parking shall be those currently in effect for the zone category on the expansion site in place on December 31, 1980.
- E. At the time of such expansion of area, street trees must be provided on all rights-of-way abutting the use, and all parking areas must be landscaped to conform with the requirements of Chapter 33.82. Tree planting layout and selection shall be in conformance with the City's street tree planting guidelines and approved by the City Forester.

(6) Signs

- A. Signs that were in conformance with the zoning in place on December 31, 1980 may be replaced by a sign of comparable area, height and illumination or by a sign which complies with the regulations of this Chapter, whichever is less restrictive.
- B. Pre-existing uses not previously having a sign may install a sign subject to the regulations of this Chapter.

- (7) If a pre-existing use is discontinued for more than two years, it shall not be re-established. Future use of the site shall be limited to those allowed under the provisions of this Chapter, except as provided for in Section 33.94.080.

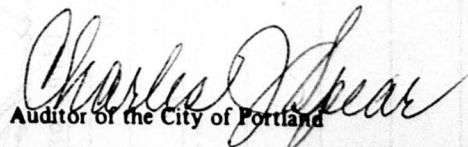
Passed by the Council, SEP 16 1982

Commissioner Mildred Schwab
August 25, 1982
Bruce Halperin:rs

Attest:

Chief Deputy

Auditor of the City of Portland



2713
Sub. Calendar No. ~~2591~~

ORDINANCE No. 153827

Title

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(Date of hearing: September 2, 1982)

THURSDAY

SEP 2 1982

PASSED TO SECOND READING

SEP 16 1982

| THE COMMISSIONERS VOTED AS FOLLOWS: | | |
|--|------|------|
| | Yeas | Nays |
| JORDAN | 1 | |
| LINDBERG | 1 | |
| SCHWAB | 1 | |
| STRACHAN | 1 | |
| IVANCIE | 1 | |

| FOUR-FIFTHS CALENDAR | |
|----------------------|--|
| JORDAN | |
| LINDBERG | |
| SCHWAB | |
| STRACHAN | |
| IVANCIE | |

Filed AUG 23 1982

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By Gordon Chace
Deputy

| | |
|------------------------------|--|
| INTRODUCED BY | Commissioner Mildred Schwab |
| NOTED BY THE COMMISSIONER | |
| Affairs | |
| Finance and Administration | |
| Safety | |
| Utilities | |
| Works | |
| BUREAU APPROVAL | |
| Bureau: | |
| Bureau of Planning | |
| Prepared By: | Date: |
| Bruce Halperin:rs | 8/25/82 |
| Budget Impact Review: | |
| Completed | <input checked="" type="checkbox"/> Not required |
| Bureau Head: | <u>Terry D. Sandolast</u> |
| Terry D. Sandolast, Director | |
| CALENDAR | |
| Consent | Regular <input checked="" type="checkbox"/> |
| NOTED BY | |
| City Attorney | <u>K. Beaumont</u> |
| City Auditor | |
| City Engineer | |