



Bureau of Planning and Sustainability

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MEMO

DATE: October 24, 2017

TO: Planning and Sustainability Commissioners

FROM: Barry Manning, project manager

CC: Eric Engstrom, Joe Zehnder, Susan Anderson, Steve Kountz, Shannon Buono

SUBJECT: Additional staff proposed amendments

At the October 24, 2017 Planning and Sustainability Commission (PSC) meeting, the Commission is holding a public hearing on the *Code Reconciliation Project – Proposed Draft*.

In addition to the amendments in the Proposed Draft, staff is proposing several additional amendments that are technical issues or corrections. These are included in this memo. The specific amendments are highlighted, in addition to new language which is shown with strikethrough and underline.



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Commentary

Table 110-1

The use category for Retail Sales And Service has been amended to change from L to CU. This makes the letter more consistent with the use allowance.

33.110 Single-Dwelling Zones

Table 110-1 Single-Dwelling Zone Primary Uses						
Use Categories	RF	R20	R10	R7	R5	R2.5
Residential Categories						
Household Living	Y	Y	Y	Y	Y	Y
Group Living	CU	CU	CU	CU	CU	CU
Commercial Categories						
Retail Sales And Service	L CU [10]	L CU [10]	L CU [10]	L CU [10]	L CU [10]	L CU [10]
Office	N	N	N	N	N	N
Quick Vehicle Servicing	N	N	N	N	N	N
Vehicle Repair	N	N	N	N	N	N
Commercial Parking	N	N	N	N	N	N
Self-Service Storage	N	N	N	N	N	N
Commercial Outdoor Recreation	N	N	N	N	N	N
Major Event Entertainment	N	N	N	N	N	N
Industrial Categories						
Manufacturing And Production	CU [6]	N	N	N	N	N
Warehouse And Freight Movement	N	N	N	N	N	N
Wholesale Sales	N	N	N	N	N	N
Industrial Service	N	N	N	N	N	N
Bulk Fossil Fuel Terminal	N	N	N	N	N	N
Railroad Yards	N	N	N	N	N	N
Waste-Related	N	N	N	N	N	N
Institutional Categories						
Basic Utilities	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]	L/CU [5]
Community Service	CU [1]	CU [1]	CU [1]	CU [1]	CU [1]	CU [1]
Parks And Open Areas	L/CU [2]	L/CU [2]	L/CU [2]	L/CU [2]	L/CU [2]	L/CU [2]
Schools	CU	CU	CU	CU	CU	CU
Colleges	CU	CU	CU	CU	CU	CU
Medical Centers	CU	CU	CU	CU	CU	CU
Religious Institutions	CU	CU	CU	CU	CU	CU
Daycare	L/CU [3]	L/CU [3]	L/CU [3]	L/CU [3]	L/CU [3]	L/CU [3]
Other Categories						
Agriculture	L [7]	L [7]	L/CU [8]	L/CU [8]	L [9]	L [9]
Aviation And Surface Passenger Terminals	CU	N	N	N	N	N
Detention Facilities	N	N	N	N	N	N
Mining	CU	N	N	N	N	N
Radio Frequency Transmission Facilities	L/CU [4]	L/CU [4]	L/CU [4]	L/CU [4]	L/CU [4]	L/CU [4]
Railroad Lines And Utility Corridors	CU	CU	CU	CU	CU	CU

Commentary

33.110.100.B.10

The footnote for Retail Sales And Service has been clarified to ensure that only a retail nursery is allowed through a CU. All other Retail Sales And Service uses remain prohibited in the single-dwelling zones.

Proposed Code Amendments

33.110.100 Primary Uses

A. Allowed uses. Uses allowed in the single-dwelling zones are listed in Table 110-1 with a "Y". These uses are allowed if they comply with the development standards and other regulations of this Title. Being listed as an allowed use does not mean that a proposed use will be granted an adjustment or other exception to the regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters.

B. Limited uses. Uses allowed that are subject to limitations are listed in Table 110-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 110-1.

1.-9. [No change]

10. Retail Sales and Service. This regulation applies to all parts of Table 110-1 that have note [10]. Retail plant nurseries are a conditional use. All other Retail Sales And Service uses are prohibited.

C.-D. [No change]

Commentary

33.130.212.D. Affordable commercial space bonus.

The Portland Development Commission, also known as Prosper Portland, will administer the affordable commercial program. The agency is in process of developing specific program parameters, and meeting those parameters will qualify applicants for utilization of this bonus. The program will identify the type of tenants and businesses to be targeted, and could potentially include the following program elements:

1. Legally Binding Agreement - Affordable Commercial Space
 - Standardized tenant improvements
 - Rent reductions
 - Tenant technical assistance
 - Agreement to lease the space to qualified tenants for a designated period of years.
2. Legally Binding Agreement - Affordable Commercial In Lieu Fee
 - Pay In-Lieu fee to support citywide Affordable Commercial programs.

Proposed Code Amendments

33.130.212 Floor Area and Height Bonus Options

A-C. [No change to Proposed Draft]

D. **Affordable commercial space bonus.** Proposals that provide affordable commercial space may increase maximum height and FAR if all of the following are met. Floor area may be increased by 2 square feet for each square foot of affordable commercial space provided, up to the maximum stated in Table 130-3:

- ~~1.~~ A long term leasing agreement with Portland Development Commission must be executed. The leasing agreement must ensure that the commercial space will be rented for 25 percent less than prevailing market rates to qualified businesses that meet program requirements, including locally owned, minority or woman owned businesses;
- ~~12.~~ The applicant must submit with the development application a letter from the Portland Development Commission certifying that commercial leasing agreements are in place to meet the standards of this subsection, and that any program administrative requirements have been met; and
- ~~23.~~ The property owner must execute a covenant with the City that complies with the requirements of Section 33.700.060. The covenant must ensure that floor area built as a result of this bonus will meet the leasing and reporting administrative requirements of the Portland Development Commission or qualified administrator.

E. **Planned Development bonus.** [No change to Proposed Draft]

Commentary

33.130.B.2.b.3

This change clarifies the type of development the exemption addresses. The exemption is designed to allow one opening into a parking or vehicle area on a ground floor facade to be exempted from window requirements.

Proposed Code Amendments

33.130.230 ~~Ground Floor Windows~~

A. Windows in street-facing facades. [No Change to Proposed Draft]

B. Ground floor windows.

1. Purpose. In the commercial/mixed use zones, blank walls on the ground level of buildings are limited in order to:

- Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring within a structure to adjacent sidewalk areas, or allowing public art at the ground level;
- Encourage continuity of retail and service uses;
- Encourage surveillance opportunities by restricting fortress-like facades at street level; and
- Avoid a monotonous pedestrian environment.

B2. Ground floor window standard for wall area that is not the wall of a dwelling unit. The following standards apply to the portions of a ground floor wall of a street-facing façade that is not the wall of a dwelling unit:

1a. General standard.

a.(1) Windows must cover at least 40 percent of the ground floor wall area of street-facing facades that are 20 feet or closer to a street lot line or a publicly-accessible plaza. For the purposes of this standard, ground floor wall areas include all exterior wall areas from 2 feet to 10 feet above the finished grade, and include openings in the walls of structured parking. See Figure 130-11.

b.(2) If the lot has more than one street frontage, then the ground floor window standard in Subparagraph B.1.a. applies to the facade that faces the highest transit street classification. All other ground level street-facing facades that are 20 feet or closer to the street lot line must have windows that cover 25 percent of the ground level wall area. The walls of structured parking along these facades may be set back at least 5 feet and landscaped to the L2 standard instead of providing 25 percent windows. If two or more streets have the same highest transit street classification, then the applicant may choose on which of those street to meet the higher standard. Transit street classifications are identified in the Transportation Element of the Comprehensive Plan.

2b. Exemptions:

a.(1) Houses, attached houses, manufactured homes, and duplexes are exempt from this Section; and

b.(2) Ground floor street-facing walls of dwelling units must meet the standards in Subsection D; and

c.(3) One opening for vehicular access to onsite parking area. If the portion of the ground floor wall area that is not a dwelling unit is less than 250 square feet in area, then it is exempt from this Section.

3.-5. [No change to Proposed Draft]

Commentary

33.258.070.D

This amendment puts back in code that was inadvertently omitted with the Tree Code updates in 2015. The additional parenthetical clarifies that compliance with the minimum landscape area standard is only required to the extent that the site allows. For example, if the minimum landscaped area standard required 15 percent landscaping, but structures and other development on the site cover 90 percent of the site, only 10 percent of the site needs to be landscaped. The additional parenthetical ensures that adjustments are not required for legally nonconforming development.

33.258 Nonconforming Situations

258

33.258.070 Nonconforming Development

A.-C. [No change]

D. Development that must be brought into conformance. The regulations of this subsection are divided into two types of situations, depending upon whether the use is also nonconforming or not. These regulations apply except where superseded by more specific regulations in the code.

1. Nonconforming development with a new nonconforming use or new non-conforming residential density. When there is a change to a different non-conforming use, or a change from a nonconforming nonresidential use to a non-conforming residential density, the following nonconforming development must be brought into compliance with the development standards that apply to the site (base, overlay, plan district, special use, tree density standards in Title 11):

a. Landscaping and trees required for the following areas:

- Exterior display, storage, and work activity areas;
- Setbacks for surface parking and exterior development areas;
- Interior parking lot landscaping;
- Existing building setbacks;
- Minimum landscaped areas **(where land is not used for structures, parking, or exterior improvements)** ~~other than described above~~; and
- On-site tree density standards of Subsection 11.50.050.C.

b.-f. [No change]

2. Nonconforming development with an existing nonconforming use, allowed use, limited use, or conditional use. Nonconforming development associated with an existing nonconforming use, an allowed use, a limited use, or a conditional use, must meet the requirements stated below. When alterations are made that are over the threshold of Subparagraph D.2.a., below, the site must be brought into conformance with the development standards listed in Subparagraph D.2.b. The value of the alterations is based on the entire project, not individual building permits.

a. [No change]

b. Standards which must be met. Development not complying with the development standards listed below must be brought into conformance or receive an adjustment.

(1) Landscaping and trees required for the following areas:

- Exterior display, storage, and work activity areas;
- Setbacks for surface parking and exterior development areas;
- Interior parking lot landscaping;
- Existing building setbacks;
- Minimum landscaped areas **(where land is not used for structures, parking, or exterior improvements)** ~~other than described above~~; and
- On-site tree density standards of Subsection 11.50.050.C.

Commentary

Proposed Code Amendments

(2)-(6) [No change]

c.-d. [No change]

E.-G. [No change]

Commentary

33.526.220.B. Maximum floor area ratio

This amendment changes the current 2:1 additional FAR allowance for projects with 80% of floor area in residential use into an additional floor area allowance for projects subject to Inclusionary Housing. It was mistakenly proposed for deletion in the Proposed Draft.

33.526 Gateway Plan District

33.526

33.526.220 Floor Area Ratio

- A. Purpose.** These regulations encourage intense development throughout the plan district with a higher level of intensity occurring around light rail stations. This increased development reinforces Gateway's role as a regional center. In addition, the standards ensure a minimum level of development on some sites.
- B. Maximum floor area ratio.** The maximum floor area ratios (FAR) allowed are shown on Map 526-3 at the end of this chapter.
1. On sites with a maximum FAR of 6:1 or less, for projects that trigger or voluntarily comply with 33.245, Inclusionary Housing, where at least 80 percent of the proposed floor area on the site will be in Residential uses, an additional 2:1 FAR is allowed.
 2. FARs greater than shown on Map 526-3 or allowed by Paragraph B.1 are prohibited unless allowed by Section 33.526.230.
- C. Minimum floor area ratio.** The minimum floor area ratio (FAR) for new development is shown on Map 526-3.
- D. Limit on increased floor area.** Increases in FAR, whether by transfers of floor area or bonus floor area options, of more than 3 to 1 are prohibited.

Commentary

33.562.290 Use of Accessory Parking for Commercial Parking

This amendment changes this section to update the regulations consistent with new base zones and the plan district provisions. It maintains limitations on commercial parking in CM3, limiting the commercial parking to accessory parking only, rather than allowing the Commercial Parking use outright.

33.562 Northwest Plan District

562

33.562.290 Use of Accessory Parking for Commercial Parking

- A. Purpose.** This section encourages efficient use of accessory parking by allowing greater flexibility for use during times when accessory parking is typically underutilized. This section includes limitations to minimize negative impacts on nearby residents.
- B. Where these regulations apply.** These regulations apply to accessory parking in the Northwest plan district as follows:
1. On sites in an R or ~~EXCM3~~ zone, the regulations of this section apply to the entire site;
 2. On sites that are in both an R or ~~EXCM3~~ zone and a commercial/mixed use zone, if any of the accessory parking is in the R or ~~EXCM3~~ zone, the regulations of this section apply to the entire site;
 3. On sites that are in both an R or ~~EXCM3~~ zone and a CSCM2 zone, if all of the accessory parking is in the CSCM2 zone, and none is in the R or ~~EXCM3~~ zone, the regulations of this section do not apply to the site. The parking is subject to the regulations of the base zone;
 4. On sites that are in the CSCM2 zone, the regulations of this section do not apply. The parking is subject to the regulations of the base zone.
- C. Regulations.** [No change]

Commentary

33.700.110.B.2.b(1)

This amendment simply clarifies the entire list of land use review to which the provision applies. Originally, the term condition use was intended to cover all types of conditional use review (CU, CUMP, and IMP), however spelling it out clearly is the preferred method.

33.700 Administration and Enforcement

700

33.700.110 Prior Conditions of Land Use Approvals

This section addresses situations where a use, development, or land division was approved with conditions as part of a land use review under zoning or land division regulations that no longer apply to the site. Over time, there are instances when uses or development previously approved with conditions are subject to new zoning or land division regulations. This may result from a change of the content of zoning or land division regulations or from legislative zone changes including annexation rezonings.

- A. Conditions of approval prior to 1981.** [No change]
- B. Conditions of approval after 1981.** The regulations stated below apply to all prior conditions of approval for all types of land divisions, Planned Unit Developments (PUD), and any other quasi-judicial review approved in association with a land division or PUD, and for land use reviews applied for after January 1, 1981, unless the conditions of approval or the ordinance adopting the conditions provide for their continuance.
1. [No change]
 2. Conditional uses.
 - a. [No change]
 - b. Use allowed by right. If the use is now allowed by right, the conditions of approval no longer apply, except for the following:
 - (1) Colleges and Medical Centers in the CI1 and CI2 zones.
 - Conditions of approval that mandate a Transportation Demand Management plan or address parking, vehicle trips or any other transportation system related issue continue to apply until superseded by an approved Transportation Impact review;
 - If a College or Medical Center in a CI1 or CI2 zone was an approved through a conditional use, conditional use master plan, or impact mitigation plan under the prior regulations, and the conditional use, conditional use master plan, or impact mitigation plan has not expired, the applicant can continue to develop under the approved conditional use review, the conditional use master plan, or the impact mitigation plan until the review expires, or December 31, 2023, whichever comes first. If the applicant chooses to develop under the approved conditional use, the conditional use master plan, or the impact mitigation plan, they must develop under the zoning code regulations that were in effect on the date the land use application was deemed complete. Amendments to the conditional use are prohibited.
 - (2) [No change]
 - c. [No change]
 - 3.-4. [No change]

Commentary

33.930.050

This amendment simply clarifies how to measure height in the commercial/mixed use zones. BDS staff found the wording of the paragraphs hard to interpret.

33.930 Measurements

930

33.930.050 Measuring Height

A. Measuring building height. Height of buildings is generally measured as provided in the Oregon Structural Specialty Code (the Uniform Building Code as amended by the State.) The height of buildings is the vertical distance above the base point described in Paragraphs A.1. or A.2., unless the site is in a commercial/mixed use zone, in which case the height of buildings is measured as described in Paragraph A.3. The base point used is the method that yields the greater height of building. Methods to measure specific roof types are shown below and in Figure 930-5:

- Flat roof (pitch is 2 in 12 or less): Measure to the highest point of the roof except in the residential zones where the measurement is to the top of the parapet, or if there is no parapet, to the highest point of the roof.
- Mansard roof: Measure to the deck line.
- Gabled, hipped, or gambrel roof where roof pitch is 12 in 12 or less: Measure to the average height of the highest gable.
- Gabled or hipped roofs with a pitch steeper than 12 in 12: Measure to the highest point.
- Gambrel roofs where both pitches are steeper than 12 in 12: Measure to the highest point.
- Other roof shapes such as domed, shed, vaulted, or pyramidal shapes: Measure to the highest point.
- Stepped or terraced building: Measure to the highest point of any segment of the building.

1.-2. [No change]

3. In the commercial/mixed use zones, the height measurement is based on the location of a building relative to a street lot line and the elevation of sidewalk area adjacent to the site, as follows:

a. When any portion of a building is within 20 feet of a street lot line, the base point from which height is measured is described below. See Figure 930-25 and Figure 930-26:

(1) Within 25 feet of the building, when the difference between the highest elevation and the lowest elevation of sidewalk is 10 feet or less, the base point is the highest elevation of the sidewalk; or

(2) Within 25 feet of the building, when the difference between the highest elevation and the lowest elevation of sidewalk is more than 10 feet, the base point is a point 10 feet above the lowest elevation of the sidewalk.

b. For all other buildings, or if no sidewalk exists or is proposed within 25 feet of the building, height is measured using the base points described in Paragraphs A.1. and A.2. In the commercial/mixed use zones, when any portion of a building is within 20 feet of a street lot line the following base points apply. See Figure 930-25. For all other buildings, or if no sidewalk exists or is proposed within 25 feet of the building, height is measured using the base points described in Paragraphs A.1. and A.2.:

Commentary

Proposed Code Amendments

a. The base point from which the height of the building is measured is the highest elevation of the sidewalk area located adjacent to the site within 25 feet of the building if the highest elevation within the sidewalk area is not more than 10 feet above the lowest elevation within the area. See Figure 930-26.

b. The base point from which the height of the building is measured is a point 10 feet above the lowest elevation of the sidewalk area located adjacent to the site within 25 feet of the building if the highest elevation within the sidewalk area is more than 10 feet higher than the lowest elevation within the area. See Figure 930-26.

B. [No change]