



# Memo

Date: October 23, 2024

To: Mayor and City Commissioners

From: Sandra Wood, Principal Planner

Re: Housing Adjustment Compliance Project – Potential Amendments

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On October 30, 2024, City Council will hold a hearing on the Housing Adjustments Compliance Project (HACP). The HACP is an ordinance to amend Portland’s zoning code to bring it into compliance with several provisions of Senate Bill 1537. The compliance deadline is January 1, 2025.

This memo includes code language and commentary for an amendment that Mayor Wheeler will introduce at the October 30<sup>th</sup> hearing. The amendment is necessary to facilitate the replacement of the Burnside Bridge, by clarifying that only parts of the zoning code apply to development in the public right-of-way.

## **Recommended zoning code amendment**

(Language to be added is underlined. Language to be deleted is shown in ~~strikethrough~~)

### **33.10 Legal Framework and Relationships**

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#### **33.10.030 When the Zoning Code Applies**

- A. All land and water.** The zoning code applies to all land and water within the City of Portland except as provided in Subsections B., C., and D. below. All land divisions, uses and development must comply with all of the requirements specified in the zoning code for that location.
- B. Clarification for rights-of-way.** Land within private rights-of-way, including rail rights-of-way and utility rights-of-way, is regulated by Title 33. Land within public rights-of-way is regulated by Title 17, Public Improvements, and not by Title 33, except in the following situations where both Titles apply:
  - 1. The act of creating or dedicating public rights-of-way through a land division; Rights-of-way in the greenway, river, environmental conservation, environmental protection, pleasant valley natural resource, and scenic resource overlay zones, including the creation of new rights-of-way and the expansion or vacation of existing rights-of-way;
  - 2. Structures that project from private property over rights-of-way, such as oriel windows; ~~The act of creating or dedicating public rights-of-way through a land division;~~

3. ~~Proposals for park-and-ride facilities for mass transit; Development within the design overlay or historic resources protection overlay zone;~~
  4. Development within rights-of-way in the design, historic resource, greenway, river, environmental conservation, environmental protection, pleasant valley natural resource, and scenic resource overlay zones, including the creation of new rights-of-way and the expansion of existing rights-of-way. In this situation, the regulations and standards of the base zones, plan districts and 200 series of chapters do not apply. Structures that project from private property over rights-of-way, such as oriel windows; and
  5. ~~Proposals for park-and-ride facilities for mass transit.~~
- C. Clarification for waterbodies.** The siting of fills or structures on or over waterbodies is subject to the zoning code provisions. The zoning code does not regulate shipping, dredging, boating, and other similar uses on or in water bodies. The zoning code does regulate dredging in the Willamette River Central and South reaches and the Greenway overlay zone in the South Waterfront Subdistrict of the Central City but does not regulate dredging on or in any other portion of the Willamette River or any other water body.
- D. Private rights-of-way.** The creation of private rights-of-way is regulated by Title 33, Planning and Zoning. Street improvements in private rights-of-way are allowed by right in all zones.

**Recommended commentary:**

**33.10.030.B Clarifications for rights-of-way**

In most cases, the zoning code does not apply within public rights-of-way. However, there are a few exceptions where both Title 17, Public Improvements, and Title 33, Planning and Zoning, apply. The exceptions include public right-of-way in design, historic resource, greenway, river, and environmental overlay zones. The intent is for development in the right-of-way (such as a bridge) to comply with the purpose and regulations of these special overlay areas. An example is for development in the river overlay to "promote the protection, conservation, restoration, enhancement and maintenance of ... lands along the Central and South reaches of the Willamette River."

However, 33.10.030.B.1 and 3 suggest that when development is proposed in one of the overlay zones listed, the entire zoning code applies instead of just the regulations of the overlay zones. Because most of the other rules in the zoning code are written for development, such as buildings, on real property (e.g. setbacks from property lines, height limits, and maximum floor area ratios), it doesn't make sense to apply them to projects in the public right-of-way, which generally include roadway improvements, bike lanes, sidewalks, and bridges. In fact, the remainder of the zoning code regulations outside of the overlay zone rules have rarely, if ever, been applied by permitting staff to projects in the public right-of-way.

This amendment clarifies that, when the right-of-way is within one of the listed overlay zones, the zoning code regulations that are not relevant to projects in the public right-of-way, including base zone, plan district and the 200 series of regulations, do not apply. This

will narrow the application of the zoning code to the regulations in the applicable overlay zones as intended.

This amendment is necessary to ensure that the Central City height limits are not applied to the Burnside Bridge replacement because, as mentioned above, standards such as height limits, floor area ratios, and setbacks are intended for buildings and other structures on real property, not for bridges or other elements in the public right-of-way. The purpose statement for the Central City height standard (33.510.210) supports this conclusion, because it primarily contemplates heights being applied to buildings. For example, the purpose statement includes: "Locating the tallest building heights along the Transit Mall and high-capacity transit lines", and "Emphasizing bridgehead locations with taller buildings" [underline added]. In addition, the existing Burnside Bridge currently exceeds a height limit on the west side of the bridge in Tom McCall Waterfront Park—the height limit is 35 feet and, according to Multnomah County, the bridge is currently just over 40 feet tall.

To the extent that height limits in the Central City are there to protect important public views, the City Council adopted the Central City 2035 Plan (CC2035). CC2035 included adoption of the Scenic Resources Protection Plan (Ord. No. 190023), which identifies the Willamette River bridges as being part of important public views:

- **CC2035 Scenic Resource Protection Plan Volume 3A Part 1: Summary; pg. 1:** Views: A view is an aesthetically pleasing landscape or scene comprised of one or more visual features. A view may be framed, wide angle, or panoramic and may include natural and/or manmade structures and activities. A view may be to a faraway object, such as a mountain, or of a nearby object, *such as a city bridge (emphasis added)*. Views are also referred to as view corridors in the plan.
- **CC2035 Scenic Resource Protection Plan Volume 3A Part 1: ESEE Summary pg. 26**

A. Policy Priorities

The policy priorities are intended to describe the general approach to protect views and viewpoints in and around the Central City. The description of the protected views and viewpoints refines the general policy priorities based on the Central City Scenic Resources Economic, Social, Environmental and Energy Analysis (ESEE).

Willamette River Bridges

Portland is also known as "Bridge City USA" because there are 12 bridges that cross the Willamette River, nine of which are located in the Central City. There are unique and significant views of the bridges. *The Willamette River bridges can be seen in most views of and across the Central City (emphasis added)*.

The Burnside Bridge is mentioned as being visible in several views both of and from the Central City and is called out as a secondary focal point of view #SW61.

This amendment is being proposed for the Housing Adjustments Compliance Project because the project contains an amendment to allow adjustments to height limits in the Central City. However, the allowance for adjusting height is limited to projects that include housing. This is further evidence that the height standard is intended for development on private property not infrastructure in the public right-of-way because housing is not built in the public right-of-way.