



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

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## MEMO

**Date:** November 13, 2015  
**To:** Barry Manning and Bill Cunningham, BPS  
**From:** Gina Tynan  
Bureau of Development Services  
**CC:** Paul Scarlett, Susan Anderson, Joe Zehnder, Eric Engstrom, Rebecca Esau, Stephanie Beckman, Douglas Hardy, Kimberly Tallant, Jill Grenda, Kara Fioravanti  
**Re:** BDS Comments on Mixed Use Zone (MUZ) Project Discussion Draft

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Thank you for the opportunity to review and comment on the Mixed Use Zones (MUZ) Project Discussion Draft. This important project will shape the future of commercial and mixed-use development and our ability to meet the goals of the Comprehensive Plan to manage growth and to create and maintain healthy, vibrant centers and corridors, as well as neighborhoods, outside of Portland's Central City. We appreciate the chance to participate in informing this critical re-write of the Zoning Code's development standards.

The comments below highlight our primary areas of concern as well as continuing areas of concern and provide detailed comments on the proposal. We look forward to working with BPS staff to address our concerns and providing additional feedback as the project develops.

### **Primary Areas of Concern**

#### **1. Uncertain Impacts of Implementation Requires Testing and Modeling.**

- Insufficient testing and modeling - Due to the aggressive schedule of this project, the revised development standards, bonus incentives, and new and expanded Overlay zones and Plan Districts of the MUZ Project have not been sufficiently evaluated, tested or modeled to understand the implications on administration, economics and design that may result from their implementation. Elevations, perspectives and street-level views have not been developed to adequately evaluate design challenges that may result from the implementation of these standards. We are concerned that changing so many regulations at once will have unintended consequences. Testing and modeling are critical to the project at this stage in its development. For example, the regulations could make development on smaller sites infeasible. Until it's been tested on a variety of sites and projects, we don't know if/how it will all work together.
- New development vs. alterations or additions to existing development - Many of the standards are written for new development and will be particularly challenging to

administer when alterations or additions to existing development are proposed. The proposed code standards appear overly reactionary to the current market and development proposals; we are concerned that it will not stand the test of time to meet the goals of the Comprehensive Plan as market conditions change and development/re-development of commercial space or under-built sites becomes viable.

## 2. Complexity of Development Standards.

- Increase in number and complexity of development standards – simplification is needed  
Although the project reduces the number of zones applied to the centers and corridors outside the Central City, the number and complexity of development standards has substantially increased overall. There are too many instances of unnecessary and/or redundant regulation, especially given the proposed expansion of the “d” Design overlay. Examples of standards that will present challenges to implementation and unknown design consequences include:
  - limiting 75 percent of the building to the reduced building height (rather than 100 percent);
  - allowing an exception to the building height for a parapet;
  - increasing the height at a corner in exchange for cutting off the corner; and
  - requiring a special setback for side-facing windows and building articulation.
- Standards reliant on too many factors – The standards are not straightforward, and instead rely on the context of the site and considerations more typical of a discretionary review, are redundant with many existing Community Design Standards, and send many mixed signals in combination so that it is very difficult to determine basic development standards such as height and setbacks. BDS staff need to quickly and easily be able to answer customer questions about the required setbacks and the maximum height allowed in a zone. For example, determining allowable building height includes the evaluation of a wide variety of site conditions and code standards. The maximum building height allowed on a site will depend on the base zone standard as well as:
  - the street width;
  - adjacent transit street classification(s);
  - proximity to an R zone;
  - inclusion in or proximity to a Pedestrian District;
  - inclusion of rooftop decks;
  - whether the site is a corner lot;
  - whether or not a parapet is proposed;
  - whether active use of the ground floor is proposed;
  - the elevation of the sidewalk directly adjacent to the building where any portion of the building is within 25 feet of a street lot line;
  - Plan District standards (e.g., 10 foot height limit bonus applies in CM1 zone within the Lombard Street Plan District when housing is proposed per 33545.110.D);
  - Overlay Zone standards including the Community Design Standards; and

- whether or not the project proposes to utilize the development bonuses by providing on-site amenities for public benefit.

These standards are not clearly outlined or complete within Zoning Code Chapter 33.130, but rather are included within multiple chapters of the zoning code that may apply to a site depending on its specific location. These standards are not immediately apparent to the average property owner. And while deciphering the height standards appears complex, the setback standards are even more difficult to understand and, in some cases, conflict across code sections so that they cannot be met without discretionary land use review. This would possibly violate ORS 197.307(4) requiring for a two-path Design Review process, including “clear and objective” standards for prescriptive Design Review approval.

- 3. Implementation and Viability of Bonus Incentives.** The proposed bonuses to building height and floor area ratio (FAR) leave many unanswered questions regarding administration and economic feasibility to determine if they will be widely and successfully utilized and significant enough to further the city’s goals including the inclusion of affordable housing units and affordable commercial space. The bonuses rely heavily on recorded covenants, reporting requirements, lease agreements and as-yet unidentified development standards to be administered through multiple agencies including “the City”, Portland Housing Bureau, the Portland Development Commission and the Bureau of Environmental Services. It is unclear how these covenants for provision and maintenance of bonus incentives, which can be used together to achieve bonuses, would be administered together on a long-term basis. Administration of bonuses by other public agencies or third party delegates has not been successful in the past. FAR Bonus certification authority is unclear. Better clarification of who is envisioned as a “Qualified Administrator” is needed. What will the cost of administering the bonuses be? Will measurable public benefits outweigh the costs? In addition, some bonuses are allowed based upon a term of years or minimum time limitation for maintenance – what happens at the conclusion of the term of the covenant or agreement at these sites?

BDS Staff concurs with the comments provided by both the Historic Landmarks Commission and the Design Commission at their meetings on October 26, 2015 and November 5, 2015, respectively. While we are enthusiastically supportive of efforts to increase the inclusion of affordable housing in development projects, it is wholly unclear how the city will coordinate with the Portland Housing Bureau to administer the affordable housing bonus. Requiring only 25% of the additional floor area to be affordable does not seem to be nearly enough and the terms and time lengths of affordability must be clearly defined. Affordable units should be a long-term commitment and should be required to include ownership options and a mix of unit types (accessible units, 2- and 3-bedroom units, etc.) in order to be successful. This bonus also has the potential to create inequitable distribution of affordable housing as the lower cost of land in outlying areas will be a critical factor in where this bonus is utilized by developers and where these units are constructed and concentrated within the city. Further, requiring projects including affordable housing bonus incentives to go through

discretionary Design Review to achieve additional height and/or FAR possibly violates Goal 10 and ORS 197.307(4).

- 4. Compatibility with other Code Sections and Titles.** A thorough assessment of compatibility with other zoning code sections and other Titles has not been completed. A work plan and schedule for amendments to Title 11, Title 17, Title 18 and Title 32 to align them with the MUZ Project are crucial. For example, the new mixed use zone designations require assessment of compatibility with Title 11 Tree Code standards. Title 11 currently exempts sites within the EX, CX, CS and CM zones from Tree Preservation and On-Site Tree Density standards in development situations. These zones will receive new mixed use zone designations of CM1, CM2, CM3 or CE. The existing CN1, CN2, CO1, CO2 and GC zones, which are non-exempt from these Title 11 standards, will also be part of the CM1, CM2 and CE zones. As such, it is unclear which commercial and mixed use zones, if any, will be subject to these standards in the future.

In addition, there are several instances where setback standards of the base zone, Plan District, and Community Design Standards are in conflict and will require discretionary review in order to approve a project. Regulatory standards that force projects into discretionary review possibly violate Goal 10 and ORS 197.307(4). It is crucial that Chapter 33.218, Community Design Standards, be amended as needed to avoid this.

It is unclear when and how some of the Plan District development standards are applicable. For example, within the Lombard Street Plan District section 33.545.120.C.1 references standards implemented through Community Design Standards (33.218) as part of the 'd' Design overlay and identifies they may not be modified through design review but may be adjusted. Currently, Adjustments to the Community Design Standards are prohibited per that section and non-compliance triggers discretionary approval through Design or Historic Review. As such, it's unclear if Adjustments to these standards of the Plan District will then allow use of the Community Design Standards per 33.218 rather than triggering Design Review. Do the Plan District standards that reference the CDS also apply to historic resources?

- 5. Historic Preservation.** It is unclear how the development standards and bonus incentives for height and FAR will impact historic resources as well as the context of established older neighborhoods that are historic, but not designated as Historic or Conservation Districts such as town centers on the east side that developed organically which are not protected as historic resources. The base zone and bonus height allowances are greater than what would typically be approved in a Historic District (as part of a Historic Resources Review) based on the historic character and neighborhood context; as such, height bonuses may not be achievable through Historic Resource Review in these areas and may just set false expectations. The transfer of FAR from historic properties is not widely used; limiting the TDR radius to 1 mile may further hamper the use and intent of this bonus. Further, it is unclear if and when it would be appropriate to allow FAR bonuses through TDRs within

Historic Districts. An update of the Historic Resources Inventory is critical to inform future planning efforts and allow design solutions to be context-based.

- 6. Code Review Comments.** Please see the table, below, for additional detailed comments on the Discussion Draft.

### **Continuing Areas of Concern**

- 7. Expansion of the “d” Design Overlay without Critical Re-write of Community Design Standards.** It is crucial that the Community Design Standards be evaluated and updated prior to any expansion of the “d” Design Overlay Zone. BDS has identified a number of points of conflict between the proposed MUZ development standards/bonuses and the existing Community Design Standards. If these conflicts persist, projects will be forced to go through the discretionary design review process. Even without updates to the Community Design Standards, it is likely that expansion of the “d” Overlay will result in a greater number of discretionary design reviews, which will only exacerbate the current workload capacity issues faced by BDS Staff and the Design Commission. Solutions are needed to address this capacity issue, such as reconsidering thresholds for Type II, type IIx, Type III and Type IV reviews, possibly making more projects Type IIx instead of Type III.
- 8. Expansion of Neighborhood Contact Requirement.** Expansion of requirements for Neighborhood Contact without examining the success of the process in providing valuable feedback versus managing expectations and adding time and cost to the development process is ill advised. Any proposal to expand either the geographic area subject to the Neighborhood Contact requirement or the notification steps must follow a comprehensive re-thinking of the goals of the requirements and should place particular emphasis on equity and accessibility of the land use process to the public. The logistics of the process should also be examined and potentially updated, for instance to allow for email versus certificates of mailing, on-site posting of project information, and opportunities for online submittal of questions or comments from the public directly to developers.
- 9. Large Sites Master Plan Concept.** Concerns regarding the Large Sites Master Plan concept were forwarded to BPS in a memo dated September 11, 2015. We continue to be concerned that the Large Sites Master Plan concept is following a model (Conway, Gateway, etc.) that has proven itself highly problematic from an implementation standpoint. Serious consideration must be given to structuring the process such that applicants can reasonably achieve the stated purpose under 33.860.010; focusing the review to that of a site plan-level approval, and allowing some level of applicant flexibility during subsequent reviews while providing assurance to the community that performance obligations will be met. Does the large site flexibility plan assign density/affordable housing/open space locations/etc. to individual future projects or can the developer make those decisions at the time of individual project review – with the risk that some performance obligations may never be realized?

Keep in mind that these provisions are intended to be utilized. It is crucial that the appropriate review body(s), and their role(s), be identified. The approval criteria to be evaluated by the review bodies must be clearly defined. It would be beneficial to better define the Design Advice Request (DAR) as an initial step to get feedback from the hearings body on a conceptual design prior to application submittal. One concept that was discussed was the potential for a Type III review before the Design Commission with a mandatory DAR before either the Planning and Sustainability Commission or the Design Commission, and with subsequent Type III (or potentially Type II) Design Reviews. A mandatory DAR before the Planning and Sustainability Commission would add an additional procedural layer of review without the benefit of getting feedback from the hearings body making the decision on the later review, so would add time and cost without benefit. The purpose of the DAR is to present a conceptual design to the hearings body that will later hear the Design Review case, so to introduce a different Commission (PSC) at the DAR stage is counter to the intent of getting initial feedback from the Design Commission prior to the Design Review application being made. The Design Commission and BDS Staff are already under great pressure to reduce the time, cost and uncertainty associated with the existing Design Review process. Instituting a large number of procedures (DAR, Type III Review, Type III DZs for each individual project – and Pre-Application Meetings prior to each Type III LUR) is counter to the current direction to streamline the process, reduce time, cost and uncertainty, and may function as a disincentive to applicants.

**10. Inclusion of Requirements for TDMs within the Zoning Code.** The project proposes to revise Zoning Code Chapter 33.266, Parking and Loading, to require Transportation Demand Management (TDM) strategies. As proposed, TDM plans will be required for development on sites with more than 20 dwelling units as part of zoning regulations. These strategies will need to be fully vetted and approved by PBOT. It is critical that out-of-the-box, pre-approved TDM plan options are available no later than the effective date of the MUZ code language. TDM plans must include options that can be used when seeking affordable housing bonuses. How will PBOT ensure that TDM plans are binding and maintained for the life of a project? Which bureau will enforce them and how?

**Detailed Comments**

We offer the following additional detailed comments.

Page	Code Section	Comment
30	B. Development Bonuses	<p>Given that the bonus structure is so critical to the success of the Mixed Use Zones (MUZ) model, it is crucial that bonuses be evaluated for efficacy and amended/refined prior to adoption of the MUZ. If the bonuses are unused by real-world developers, the net result will be a significant reduction in anticipated floor area in Mixed Use Centers and Corridors, given the inclusion of residential FAR across the board.</p> <p>The CM2 zone proposes a base FAR of 2.5:1. This will include sites</p>

Page	Code Section	Comment
		<p>previously zoned CS, where the FAR approved through permitting 2009-14 averaged 3.1:1.</p> <p>Affordable Housing – Consider a more radical incentive for affordable housing such as not including affordable housing in floor area in max. FAR calculations. Also see p. 77.</p>
31	B. Development Bonuses	Historically staff from other bureaus, as well as leadership, has changed such that over time commitments to administer bonuses or verify the requirements of other city titles as met have waned. It is concerning that bonus administration concept moves ahead as drafted with this issue not fully resolved.
35	E. Tools to Enhance Key Places, Sec. 2	No expansion of the “d” overlay should occur without critical re-write of 33.218, Community Design Standards. As drafted, if MUZ is intended to contribute toward meeting needed housing provisions, a regulatory program that forces all such projects into discretionary Design Review possibly violates Goal 10 and ORS 197.307(4). It is crucial that 33.218 be amended as needed to avoid this.
36	E. Tools to Enhance Key Places, Sec. 3	It will be crucial that the “out of the box” versions of TDM plans are available for use by the go-live date. Additionally, the canned plans must allow for use when seeking affordable housing bonuses, etc.
37	E. Tools to Enhance Key Places, Sec. 4	The Historic Resources Inventory should be completed by the MUZ go-live date. Has re-use of existing historic buildings been considered as a bonus to encourage Historic Preservation?
45-47	33.130.030 Characteristics of the Zones	<p>The characteristics/distinguishing elements of the zones are not adequately identified. Distinct, well thought out zone descriptions and purpose statements are essential for Adjustment Review approval criteria. Identify the unique elements that set the zone apart from the others? What is the intent of the standards that needs to be considered when adjusting/waiving the standard? For example 33.130.222 just speaks to bulk yet there are other provisions that better address bulk—FAR, setbacks, height.</p> <p>Are these definitions sufficient to address approval criteria for Comprehensive Plan and Zoning Map Amendments?</p>
48	33.130.050 Neighborhood Contact	An update of 33.700.025 should explore updated and more broad based notification methods (i.e., allow email in place of certified mail receipts) as well as site posting to capture passersby as well as residents who do not attend Neighborhood Associations’ monthly

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
		meetings.
49	33.130.050.B.2.b & c Neighborhood Contact	Is a Group Living facility a residential use? Are micro-units or SRO's? Is the conversion of floor area into "living area" that doesn't meet the definition of a dwelling unit, subject to this requirement?
51	33.130.100.B.3 Primary Uses	If the uses require a CU Review, why set a size limit? Why not apply the floor area as a standard and then allow, through a CU, an increase beyond that?  Is there a limit on the number of individual businesses/tenants? Or is this standard just limiting the size of each industrial tenant/business on a site?
51	33.130.100.B.3.c Primary Uses	RICAP 7 changed all FAR references in use restrictions to be in terms of net building area.
55	33.130.100.B.9.c Primary Uses	This should reference surface parking lots that are "legally" constructed.
55	33.130.100.B.11 Primary Uses	Reorganize this limitation into two sentences for clarity. When can you use 33.237? Always? Only in CM1?
57	Table 130-1 Primary Uses	Where are the footnotes? Why is Retail and Office listed as "L" Limited? The use isn't limited is it? One doesn't have to apply the "L" because the zone restricts the overall scale/intensity of development.
59 and 261	33.130.205 Floor Area Ratio  33.910 Definitions	Definitions and figure drawings of what contributes to floor area (e.g. covered balconies, enclosed parking, lobbies, mechanical rooms, elevators/stairways, rooftop amenities such as partially covered deck and elevator alcoves) should be revisited and clarified/modified as part of this project. This is highlighted by the fact that changes to the definitions section has implications to the Central City Plan District [33.510], and coordination is critical. Diagrams and clarifications of exempt from FAR are critical to frequently "maxed out" FAR projects in Central City.
59	33.130.205.C Floor Area Ratio	The transfer of FAR from historic properties is not widely used; limiting the TDR radius to 1 mile may further hamper the use and intent of this bonus.
61	33.130.205.C.4 Floor Area Ratio	While this has already been clarified by the City Attorney as a qualifying situation, there has been confusion by customers wanting to Adjust the distance requirement. Please note "Adjustments are



Page	Code Section	Comment
		prohibited”.
61	33.130.205.C.5 Floor Area Ratio	<p>This provision is much too limiting and “territorial”. Historic resources are City jewels that contribute to the collective sense of place, not just for a specific neighborhood’s enjoyment. If a limit must be imposed, why not base it on the District Coalition boundaries?</p> <p>Is this written to allow an Adjustment to the distance restriction? Clarification should be noted with City Attorney and “prohibited” language for Adjustment requests.</p>
61	33.130.210.A Height	Would the Central City switch over to the new Mixed Use Zones?
63	33.130.210 Height	<p>Other than CX – which is only found in the Central City and Gateway Plan Districts, and therefore ineligible to use CDS, today’s commercial zones top out at 30ft and 45ft, which is probably why C zone height limits are not specifically mentioned in the CDS (33.218.110.D and 140.E) as they never attain a height of 55ft. However the MUZ code proposes a by-right bonus option of exceed a 55 ft height in some C zones. E zones are currently limited to 55 feet per these CDS sections.</p> <p>Additional building height may need design scrutiny. However, as worded today the maximum bonus height of the base zones would be achievable through CDS. Now that MUZ heights can exceed 55 ft, should the CDS be amended to specify a 55 ft height limit for MUZs as well, or is it BPS’ intention that proposals that bonus up to the maximum achievable height can do so using CDS?</p>
63	33.130.210.B.5 Height	What happens on sites where there is no sidewalk developed? Use regular base points? How does this work on corner lots or through lots?
65	33.130.210.C Height	<p>Is the cut-off intentionally “less than 70 feet” instead of “70 feet or less”? Rights-of-way are usually round numbers, so 70 feet or less might make more sense. Clarify in 33.130.210.C.1.a. that the remainder of the building is subject to the regular base zone height limit.</p> <p>In 33.130.210.C.b. why would it make sense to have a lower height limit along the more intense street and (if this is what is feared) create a canyon along the less intense street?</p> <p>Is this standard unintentionally or intentionally encouraging buildings to be located back from the public right of way? Will the 10-foot</p>

Page	Code Section	Comment
		setback contribute to the pedestrian experience?
67	33.130.210.C.2 Height	Specify a base point for this measurement. This would be more effective if the height measurement was taken from the average grade of the R5 adjacent lot line. Abutting the side or rear lot line of an R-zoned lot works better than within 25 feet of a site zoned R. This language creates a strange arc at the corner of the commercial zone. If this is intended, it should be reflected on the graphic.
67	33.130.210.D Height	Are these also allowed as exceptions to the reduced maximum heights?
67	33.130.210.D.2 Height	Is this parapet exception counted toward the 25 percent of the building that can exceed the reduced maximum height or is it in addition?  A parapet, that is less than 4 feet in height should not be limited to 40 percent. The rooftop screening/separation functions are a good thing. How about 40 percent, if 4-5 feet in height along each street facing facade?
69	33.130.210.D.4 Height	A 4-foot setback for the railing may not be enough to discourage views into neighboring yards. Clarification of 4-feet for street facing façade and 10-feet or more for shared property line walls of a building?
69	33.130.210.D.5 Height	Does the privacy screen also need to be 14 feet from the property line abutting an R-zone?
69	33.130.210.D.9 Height	Does the 100 square foot increased setback at the corner only apply to the ground floor or to the entire building?  This standard directly conflicts with 33.218.140.C
71	33.130.210.D.10 Height	A 3 foot height increase may not be a substantial enough benefit to encourage ground floor uses listed under 10.b. Consider increasing to 5 feet or more.
71	33.130.210.D.10.b Height	This needs to be rewritten to state that at least 50 percent of the ground floor must be constructed and utilized for the following (1) Retail, Sales and Service, (2) Office or (3) Community Service or other Institutional use. As written it could be read to restrict all the ground floor to those uses. There are other service-related spaces needs—utility vaults, loading spaces, shared lobbies, etc. that usually need to be located on the ground floor.

Page	Code Section	Comment
		Note: Mass shelters and short-term housing are classified as Community Service Uses. Would they be “active” with ground-level windows, etc?
73	Table 130-2	65 foot and 75 foot maximum heights in CM3 and CX zones, respectively, conflicts with Community Design Standards sections 33.218.110.D and 33.218.140.E.
75	33.130.212 Floor Area and Height Bonus Options	<p>Are these bonuses required in perpetuity? It is challenging to implement and enforce on these provisions in an ongoing basis since the building will already be there. What is the remedy if they are not meeting the requirements of the covenant? How would the City step in and kick out tenants and limit occupancy of a structure?</p> <p>It is one thing when the bonuses are not frequently used (amenity bonuses or elderly and disabled housing), but these are meant to be used broadly to achieve a level of development that implements the policies of our Comp Plan and get to the current code allowances.</p> <p>Many of the bonus/incentive options are similar to or draw from the Central City Plan District. We encourage the use of existing tools, if effective, and re-thinking of tools that are not, before adding new options and complexity.</p>
75	33.130.212.B.5.a Floor Area and Height Bonus Options	This appears to be reducing the height along the highest (more intense) street classification while allowing the taller portion of the building near local streets. <i>Is this correct?</i>
75	33.130.212.B.5.b Floor Area and Height Bonus Options	When wouldn't the CM2 zone not have either a Mixed Use-Urban Center or Mixed Use- Civic Corridor Comp. Plan designation?
77	33.130.212 Floor Area and Height Bonus Options	Existing code provisions have been difficult to administer over time when zoning requirements are certified by other agencies. Even when agreements are made at the time of code adoption, there is staff turnover and new people do not know what the expectations are for certification. Are the covenants administered by the certifying bureau or BDS? Please provide sample covenants for each bonus prior to the effective date of the code.
77	33.130.212.C Affordable housing	Given the city's affordable housing crisis, consider more substantial benefits such as exempting affordable housing FAR from FAR

Page	Code Section	Comment
	bonus	<p>calculations, or exempting all residential FAR from FAR calculations for sites providing a high percentage of affordable units.</p> <p>Land costs may create more affordable bonus options in outlying areas of the city as they may not be economically feasible in interior areas. This has the potential to result in the inequitable distribution of affordable units.</p> <p>Affordable housing should be required to provide a range of unit types including accessible, 2- and 3-bedroom units, etc. This bonus should not be achievable by simply providing a handful of affordable studio and 1-bedroom units.</p>
77	33.130.212.C.3 Affordable housing bonus	How long must the units remain affordable? In perpetuity? Clarify if standard 60 years is being implemented, and how enforcement [deed restrictions?] will occur.
77	Table 130-3 Summary of Bonus FAR and Height	<p>The CM3 zone Affordable Housing bonus – why is there only a 10 foot height bonus for an additional 2:1 FAR? Shouldn't these be in alignment if it is meant to be an incentive?</p> <p>The height bonus for CM2 allows for greater height in areas currently zoned EX than would be allowed per 33.218.110.D and 33.218.140.E, where the height is limited to 55 feet.</p>
79	33.130.212.D Affordable commercial space bonus	How long does affordable commercial have to be maintained? Will PDC be responsible for enforcing affordable commercial rental rates at sites that use this bonus? Who will track and enforce the leasing and reporting terms of recorded covenants?
79	33.130.212.E Public accessible plaza bonus	<p>This section seems very prescriptive and has rarely, if ever, been used in the past. Specific standards for the design and amenities of public plazas are not addressed to evaluate or measure how these features will be a community benefit. It should be clearly stated that these may not be double counted to meet the required outdoor area for residential and mixed use development.</p> <p>33.130.212.E.1.a may need to provide greater clarity. Could a plaza be located adjacent to a private street tract or common green? Or only adjacent to a public street, as stated?</p> <p>Who will administer and track compliance with public plaza covenants? What recourse would the city have to address hours of</p>

Page	Code Section	Comment
		accessibility and maintenance of public plazas on private property?
81	33.130.212.F High performance green features	The standards for high performance green features should be clear and measurable for their direct public benefits. The language in this section is not consistent with other similar sections. As echoed by the Design Commission, even “LEED-equivalent” is not sufficient and does not result in a measurable public benefit. Please consider requiring these to be LEED certified.
81	33.130.212.F.1.a High performance green features	Are the “low carbon requirements of BPS” spelled out somewhere? Will these be certified by BPS?  Why is there a 15-year limit? Shouldn’t they be maintained in place for the life of the project? What if renovation or reconfiguration of these areas is proposed?
81	33.130.212.F.1.b High performance green features	Are large canopy trees ever a good idea for a more intensely developed commercial area? They have a spread of 50+ feet – how is that ever going to work well in the long-term on these sites with minimum dimensions of 20 feet by 20 feet? These requirements and the 60 percent eco-roof requirement are so specific they seem like they would likely need modification through an Adjustment or some more flexibility on a case-by-case basis if they are to be used.
81	33.130.212.F.1.b.1 & 33.130.212.F.1.b.2 High performance green features	Is this based on Title 11? How is the canopy measured?
81	33.130.212.F.1.b.3 High performance green features	This standard is unclear. Does it refer to 33.130.215, 33.130.225, 33.130.228, or all of the above? Can this be counted toward meeting Title 11 On-Site Tree Density?
83	33.130.215.A Setbacks	The purpose statement could use some work. It would be very difficult to make findings that a project on an unusual lot could equally or better meet this purpose.
83	33.130.215.B.1.a Setbacks	What do we want in the 10 foot setback? Is this to be hardscaped or landscaped?
83	33.130.215.B.1.c(1) Setbacks	The code currently states that no setback is required for buildings under 15 feet tall, but where you provide a setback you need the five feet of L3. Is that still true?

Page	Code Section	Comment
85	33.130.215.B.1.c(2) Setbacks	This provision as written is far too complicated to implement. This allowance is really difficult to follow and would only seem to make sense if there were more intense residential development on the adjacent lot along the front lot line. What if there is a house next door? Can the side setback be reduced to zero? Is the five feet of L3 still required?
85	Figure 130-X	It may add clarity to include numbers, measurements, dimensions, etc. to this figure.
85	33.130.215.B.1.d Setbacks	<p>Is this really necessary? Don't the building code requirements take care of this?</p> <p>The language is confusing relative to the minimum setback distance from lot lines and the width of the window feature area setbacks. Please provide additional clarification on how to apply this standard. It seems this may create windows within shafts, which may not be the most desirable design solution to address light and air.</p>
87	33.130.215.B.2.a(3) Setbacks	How do these bay window extensions work with the residential window setback?
89	33.130.215.C.1 Maximum building setbacks	Maximum 20-foot setback standard on Civic Corridors conflicts with 33.218.140.A and B, where all building walls are subject to a maximum 10 foot setback in C and E zones. This would trigger requirement for discretionary land use review (DZ or HR).
95	33.130.215.E Alternative maximum building setback for large retailers	Should these provisions remain in the code or do we want applicants to follow a different path?
101	33.130.216 Additional Standards for Sites located Across from a Local Service Street from a Residential Zone	These provisions should not be located in a separate section. Rather, they should be placed under the respective Height and Setback sections.
101	33.130.216.C Additional Standards for Sites located Across from a Local Service Street from a Residential Zone	Where is the height limit provision for c-zoned lots that abut an R-zone site?

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
101	33.130.216.D.1 Additional Standards for Sites located Across from a Local Service Street from a Residential Zone	Allow pedestrian connections through the buffer. Note that these streets will have street tree requirements, so there will be duplicative trees like sometimes happens at the perimeter of parking lots.
103	33.130.220 Building Coverage	Please keep in mind that zones with 85 percent or less building coverage will have Title 11 tree density requirements. Please look at those and make sure they can be met with the other development standards proposed.
104	33.130.222.C Building Length and Façade Articulation	No, vegetated green walls should not be an option for meeting the standard. How do we ensure it is maintained or even grows?
105	33.130.222 Building Length and Façade Articulation	Do covered decks count as articulation – do we consider the wall at the back of the deck to be the articulation?
105	33.130.222.A Building Length and Façade Articulation	The purpose statement for max. building length and facade articulation standards needs elaboration/explanation beyond the concern about “bulk”.
105	33.130.222.B Building Length and Façade Articulation	The maximum building length of 110 feet may present particular design challenges on 200-foot long blocks. Other elements like balconies should be considered to articulate facades.
105	33.130.222.C Building Length and Façade Articulation	Why apply the articulation requirement only for tall (35+ feet) buildings? Variations in the wall plane are needed even for 2 story buildings that have a large street-facing façade.
105	33.130.222.C.1.a & b Building Length and Façade Articulation	Could a different measurement than street-facing façade area of 3,500 square feet be identified? That sounds very cumbersome to measure.
105	33.130.222.C.2 Building Length and Façade Articulation	Clarify how this will be applied to projects that are residential only and elect to use 33.218.110. Will this control or be supported by 33.218.110.E?  Why only off-set by 2 feet? That isn't very much.
109	33.130.228 Residential Outdoor Areas	If the required outdoor area is to be the same size as is required in multi-dwelling zones, it is not clear why the minimum dimension would be 4 feet by 6 feet. Consider reducing the minimum square footage or make the same. It would be helpful to include a graphic with an

Page	Code Section	Comment
		example of an outdoor area including the amenities provided.
109	33.130.228.B.2.b(2) Residential Outdoor Areas	The list of Indoor Common Areas is not very comprehensive and could lead to requests that P&Z isn't sure qualify. Also, I don't think we're seeing many indoor swimming pools being built.
109	33.130.228.B.3 Residential Outdoor Areas	Does the entire roof count toward common outdoor area requirements or just the area with the eco-roof?
111	33.130.230.B Ground Floor Windows	Does this apply in all commercial/mixed use zones?
111	33.130.230.B.2.c Ground Floor Windows	It is unclear how the ground floor window standards and parking work together. Specify what is supposed to happen with the walls of a parking structure if there is only one street frontage or if they cannot be setback five feet and landscaped to the L2 standard (for example the garage entrance). Spell out that these walls need display windows or public art.
113	33.130.230.C Ground Floor Windows	Regarding the last sentence, this reflects current language that may be read to exclude transoms above entrances. Is there a way to clarify whether such features are intentionally excluded from ground floor window calculations?
113	33.130.230.D.1 Ground Floor Windows	Can the flexible ground floor have partition walls within the 25 foot depth?
115	33.130.230.E Exception for public art	Currently, the exception for public art is seldom used. However, with the expanded area requirements of GFW, it is likely that they may be utilized more frequently. Have the potential impacts of the revisions of this code section been discussed with the Regional Arts and Culture Council, who currently approves these exceptions and manages these covenants?
115	33.130.230.F Exception for vegetated Green Walls	<p>What is the definition of a vegetated green wall and will standards including plant recommendations be provided? What purpose do the vegetated green walls serve? Maintenance and enforcement are of particular concern. How do we ensure they will be maintained on a long-term basis? Are these appropriate on all street frontage types, or only on side streets or streets with a lower transit classification?</p> <p>Per a meeting with Tim Heron, Jason Richling and BPS, this should</p>



Page	Code Section	Comment
		<p>not be counted as a ground floor window exception given issues of landscaping encroachment into the right-of-way, maintenance, etc.</p> <p>These can be allowed, but not as an exemption to Ground Floor Windows. PBOT and BES coordination is critical, and enforcement will be challenging over time. Before the Design Commission, vegetated wall elements are considered as a compliment to already successful architecture. In this case, views of active spaces behind clear Ground Floor Windows is the goal, vegetated green walls should be accents to this condition.</p>
117	33.130.235.C Screening	Is there a limitation or requirement for screening for wall-mounted mechanical equipment? What about street-facing facades?
119	33.130.240.B.2.a Pedestrian Standards	Consider allowing narrower circulation systems for fewer units as is allowed in multi-dwelling zones.
119	33.130.250.B.4 Pedestrian Standards	Why is this here instead of in the setback section?
121	33.130.240.B.1.a.(2)b Pedestrian Standards	The language “other areas of the site, such as” is too opened, providing discretion. Please clearly define what is intended.
127	33.130.245.D Exterior work activities	Perhaps apply this within 50 feet of an R zone here, too. Zone lines typically follow centerline and this may offer a loophole to applicants as worded.
129	33.130.250 General Requirements for Residential and Mixed-Use Developments	This section should just be for houses, attached houses, manufactured homes and duplexes. Move the one window standard that is required for projects with residential uses to the Ground Floor Window section and change the name of that section – why would we not require windows above the ground floor on a multi-story commercial development?
143	33.130.260.A Drive-Through Facilities	<p>Last sentence does not make sense. Is this a reference to a specific provision in 33.258? Otherwise, that chapter would not allow replacement.</p> <p>If drive-throughs are subject to Chapter 33.258, then why are the additional standards identified. Aren't the proposed new standards intended to supersede 33.258?</p> <p>The second sentence should clarify that it applies to a “legally” nonconforming drive-through facility.</p>

Page	Code Section	Comment
143	33.130.260.A.1 Drive-Through Facilities	Please rephrase – hard to read double negative.
143	33.130.260.A.5 Drive-Through Facilities	When/how could a facility be “rebuilt” if not on the same site as the existing facility? How about rewriting to state that the site of the original nonconforming facility cannot be expanded.
145	33.130.260.C.2 Drive-Through Facilities	33.510 is proposing to prohibit new Drive Thru facilities in Central City Plan District. This standard should reference 33.510 Drive-through facilities. Chapter for clarification if any Central City subdistrict will still allow drive through facilities . . . or simply restate that new drive through facilities are prohibited in Central City.
145	33.130.265.C Detached Accessory Structures	With new setbacks (none for buildings 15 feet or less in height), a covered deck is allowed a zero setback from an RF-RH-zoned lot, but an uncovered deck is not?
153	Map 130-3 Pattern Areas	Do the little pieces of Inner pattern area outside of the Inner area have the “d” overlay? What is gained by having them subject to different requirements than the surrounding area? Do they really warrant plan district-like treatment? It seems like this will cause confusion and may not be as appropriate with broader application of the pattern areas in other zones. If the Zoning Code is to use pattern areas, they need to be consistent across zones.
163	33.266.110.B.1 & 2 Minimum Required Parking Spaces	Consider changing “sites located 1500 feet or more” to “sites located more than 1500 feet from a transit station” and “or more than 500 feet from a transit street”.  In practice, BDS planners apply these provisions to allow the exception for sites “within” 1500 feet of a transit station or within 500 feet of a transit street with 20-minute bus service. This is cleaner than verifying that a site is no more than 499 feet or 1499 feet from these facilities.
165	33.266.110.B.3.c Minimum Required Parking Spaces	This seems like it involves discretion to determine if peak uses occur at different times and that the parking area is large enough for both uses. What kind of documentation is necessary? Could the applicant do the analysis?
167	33.266.110.D.4 Exceptions to the minimum number of	In practice this is not a meaningful exception unless there is an adjacent TriMet transit stop.

Page	Code Section	Comment
	parking spaces	
171	Table 266-1 Minimum Required and Maximum Allowed Parking Spaces by Zone	The reference to “site” is problematic given the code definition of site. It is not clear why the trigger for parking and parking requirement would be tied to the size of the site and not the number of units or floor area of the use.
175	Table 266-2 Parking Spaces by Use	Footnote [2] is identified in the header (which is sort of strange) and then identified by some uses, but missing on some of the obvious such as School uses. Parks and Open Areas need at least a maximum standard for other uses (not captured as “active”). What about Parks and Open Areas that are not CU but allowed outright in the zone. Should there not be a minimum and maximum parking requirement?
179	33.266.115.B.1.b Maximum Allowed Parking Spaces	Publication of an annual map update of TriMet’s service schedules to identify 20-minute peak hour service would be very helpful. Schedules and routes are subject to change. However, it’s unclear if PBOT is the appropriate bureau to take responsibility for maintaining this mapping.
183	Table 266-3 Location of Vehicle Areas	Currently we do not get requests for vehicle areas between the building and the street in CS zones. The proposed regulations allow adjustment requests, so the purpose statement should be clear about the intent of the regulations.
187	33.266.430 Transportation Demand Management in the Commercial/Mixed- Use Zones	<p>The pre-approved TDM plans must be ready to go when the MUZ code goes into effect.</p> <p>Consider a trigger of 30 dwelling units since this is consistent with when off-street parking is required. These numbers should intuitively be the same.</p> <p>The TDM requirements could apply to land use reviews that are not identified in this section. Should there be a section that identifies Conditional Use, Adjustment (transportation related), Central City Parking Review, etc.</p> <p>Also, is the trigger for the TDMP when 20 or more dwelling units are <i>proposed</i> on a site? What if someone comes in with a tenant improvement or some other site upgrade with no increase in units for an existing 30 unit building? Is a TDMP plan required?</p>
193	33.415.200 Required Ground	Clarify whether the intent is that 50 percent of the ground level of any building within 100 feet of a transit street must be in uses A through J; or whether the 50 percent of the ground level of all buildings on a site

Page	Code Section	Comment
	Floor Active Use	must be in uses A through J if any of the buildings on the site are within 100 feet of a transit street.
193	33.415.200.I & J Required Ground Floor Active Use	If office space is considered active, then why not allow associated office space in the ground floors for College and Medical Centers?
193	33.415.300 Prohibited Development	Houses, attached houses, and duplexes <u>on sites</u> within 100 feet of a transit street.
193	33.415.310 Minimum Floor Area Ratio	A minimum FAR of .05 to 1 seems extremely low and inconsistent with the purpose of the main street and its desired function.
195	33.415.330 Location of Vehicle and Exterior Display Areas	The purpose statement needs to be expanded and explain the desired function of corners. This provision will likely generate Adjustment Review requests.
195	33.415.330.B Location of Vehicle and Exterior Display Areas	It is not clear why so much frontage would be allowed in vehicle area adjacent to transit street and alternatively why we would limit exterior display. Is this standard necessary given the frontage limitation in 33.266 and required setbacks?
195	33.415.330.C Location of Vehicle and Exterior Display Areas	What about loading space requirements?
205	33.520.100 Reinforce the Corner	What are we getting with these two requirements that we are not requiring with the base zone? Are these areas within the “d” overlay? Do the design standards or review already take care of this?
207	33.520.110 Exterior Finish Materials	Because this section makes reference to 33.420, is this standard intended to only apply to sites mapped with a “d” overlay? The language needs to be clarified as to where these standards apply. If it is not intended to apply to sites with a “d” overlay, reference to 33.420 should be deleted, and those cited exemptions pulled into this chapter.
211 and 221	33.545 and 33.575 Lombard Street and Sandy Boulevard Plan Districts	Do the Lombard and Sandy Plan Districts need to be stand-alone? Can they be incorporated into the St. Johns and Hollywood plan districts?

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
215	33.545.110.C Retail Sales and Service and Office uses	Use floor area rather than net building area.
217	33.545.120.C Additional Standards in the R1 Zone	Similar to the above comment for page 207, it is not clear whether this section is intended to apply only to sites mapped with a “d” overlay. If not, reference to the 33.218 sections should be deleted and replaced here with a list of what standards apply. These should be represented just as development standards and not community design standards. On the other hand, if these are intended to apply to sites with the “d” overlay, Adjustments should not be allowed to the community design standards in lieu of a discretionary Design Review.
223	33.575.100 Sandy Boulevard Plan District	These regulations are duplicative (or close enough) of the new base zone requirements.
229	33.575.110.C Building Facades Facing Sandy Boulevard	If found to be appropriate to achieve desired design, Foster Road could use these standards, too.
229	33.575.110.C.2 Building Facades Facing Sandy Boulevard	Stepped facades at an angle to the diagonal street are not especially desirable except, perhaps, at corners. This standard has been carried over from the existing Plan District but is challenging to implement and should be re-evaluated.
235	33.730.130.B.3 When approved decisions expire	Please remove the reference “or in the plans themselves”. It will only be the LU decision that specifies when an approved CU MS, IMP, TIR will expired.
239	Chapter 33.852 Transportation Impact Review	Need section that states the TIR can apply concurrently with other reviews and will require that identified review procedure (likely a Type III).
239	33.852.100 Transportation Impact Review	Are these reviews appealed to the Hearings Officer?
243	33.852.110.A Approval Criteria for Transportation Impact Review	Will Level of Service be limited to intersection function for motor vehicles, or expanded to include multi-modal LOS?

Page	Code Section	Comment
243	33.852.115 Duration of a Transportation Impact Review	The Transportation Impact Review isn't "allowing" the development, it "examined" the proposed development.
245 - 258	33.860 Large Sites Master Plan Review	<p>This entire Chapter remains a significant concern, particularly as defined as only a two acre site limitation. The degree of subjectivity, required process, and length of review time makes this process appear arduous to Staff and likely any customer/applicant/property owner. As such, three points:</p> <ol style="list-style-type: none"> <li>1) Generally the same comments as forwarded by Jason Richling in September 11, 2015 dated Memo, RE: MUZ Large Site Flexibility Concept, still apply, with the one exception that ....</li> <li>2) the H.O. should NOT be involved, rather the Design Commission and/or the Planning and Sustainability Commission be a required Design Advice Review Body at the start of the application, and</li> <li>3) if a Large Site Master Plan should be incorporated, MUZ should adopt or even cross reference the currently being crafted Central City Urban Design Master Plan.</li> </ol>
247	33.860 Large Sites Master Plan Review	<p>Where is the section that describes which sites/projects are eligible to use these provisions? What is the definition of a "large site"?</p> <p>Bonuses that are not physical (e.g. affordable commercial) are very hard to track and ensure over time. We should expect markets to change, and use changes over time and provide non use-specific incentives to accommodate this dynamism while encouraging desired development characteristics.</p>
249	33.860.030 Review Procedure	It is crucial that the appropriate review body(s) and their role(s) be identified.
251	33.860.040.A Affordable housing	See page 77 for affordable housing comments.
251	33.860.040.C Energy efficient buildings	How do the Building Code energy efficiency requirements and the BPS requirements get reviewed? Are the code requirements the same? If not, does BDS Plan Review staff have the expertise?
253	33.860.045.C Design Commission recommendation	Can this be done through a Design Advice Request? Is a Design Review also required?

<b>Page</b>	<b>Code Section</b>	<b>Comment</b>
255	33.860.050.B.1 Urban design and development framework	What does “attractive and pleasant for users” mean?
255	33.860.050.D Stormwater Management	Why is this needed when all development has to meet the Stormwater Management Manual?
257	33.860.055 Duration of the Master Plan	It seems extremely generous to allow an LU to be good a full 10 years without any development. Code requirements and transportation capacity can change dramatically. A 10-year CU Master Plan decision makes sense because it is applied to developed sites with established institutions. The 10-year window doesn’t make sense for a large undeveloped site.
257	33.860.060.A.1 & 4 Amendment required	A very small change to the boundary may not warrant a Type III amendment process. Is there a way to allow a minor change as a Type II?  Changing the amount of parking by 20% is pretty significant. The Conditional Use chapter uses a trigger of 10% or greater for requiring a Type III Review.
257	33.860.060.A – C Amendments to a Large Site Master Plan	Clarify whether approval of each phase, which in practicality will involve at least some deviations from the original plan, will constitute and “amendment.’ Only if the thresholds of 33.860.060.A are crossed?  Will each project within the master plan be subject to a separate discretionary Design Review? If so, does this violate Goal 10, ORS 197.307(4) given the affordable housing requirement under 33.860.040.A?
301	Performance Bonuses	Is the economic testing and bonus calibration being completed? Please share results with us.
307	Other City Titles Requiring Amendment	These Title amendments are critical. Changes to Title 11 should be addressed early as currently CS, CX, EX and CM are Title 11 exempt while CM1, CM2, CO1, CO2 and CG are not. Given that the new zones aren’t an exact one-to-one translation, choices as to applicability will be required. Perhaps pattern areas can figure into decisions regarding applicability.

End of Comments