



# Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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[www.lcd.state.or.us](http://www.lcd.state.or.us)



## NOTICE OF ADOPTED AMENDMENT

01/21/2009

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Portland Plan Amendment  
DLCD File Number 006-08A

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, February 06, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

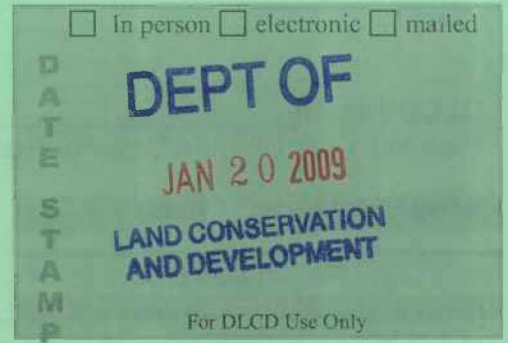
**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Phil Nameny, City of Portland  
Gloria Gardiner, DLCD Urban Planning Specialist  
Meg Fernekees, DLCD Regional Representative  
Bill Holmstrom, DLCD Transportation Planner  
Amanda Punton, DLCD Regional Representative

<paa> YA/

# Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **Portland**

Local file number: **N/A**

Date of Adoption: **1/14/2009**

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **8/27/2008**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The adopted amendment was originally part of the Regulatory Improvement Code Amendment Package 4 (RICAP 4), but was separated off to allow the Council to continue their discussion. The adopted amendment modifies the limitation for Retail Sales And Service Uses in the Division Street Main Street overlay zone.

Does the Adoption differ from proposal? Yes, Please explain below:

This specific change was not part of the original RICAP 4 proposal, but was added at the Planning Commission hearing, as explained in the DLCD Form 2 sent on 12/19/08. RICAPs consist of a collection of code amendments that are not necessarily related. Changes are often made during the public review and hearing process. After adopting the bulk of the RICAP 4 amendments on 12/17/08, the City Council agreed to defer their vote on the Division Street regulations. On 1/7/09, the Council took additional testimony and requested that staff make further amendments. The final adopted code is attached, and affects only Chapter 33.460.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **N/A**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

- |                                     |                          |                          |                          |                          |                          |                          |                          |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                            | <b>2</b>                 | <b>3</b>                 | <b>4</b>                 | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                            | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

**Yes**  **No**

If no, do the statewide planning goals apply?

**Yes**  **No**

If no, did Emergency Circumstances require immediate adoption?

**Yes**  **No**

**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Metro, Multnomah County

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Local Contact: **Phil Nameny**

Phone: (503) 823-7709 Extension: N/A

Address: **1900 SW 4<sup>th</sup> Ave., #7100**

Fax Number: **503-823-7800**

City: **Portland**

Zip: **97201**

E-mail Address: **pnameny@ci.portland.or.us**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



City of Portland  
Bureau of  
**Planning and  
Sustainability**

Sam Adams, Mayor  
Susan Anderson, Director

**Planning**

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**CERTIFICATE OF MAILING**

I hereby certify that on January 16, 2009, I mailed a correct copy of Form 2, DLCDC Notice of Adoption regarding RICAP 4, Council Revisions to Division Street Regulations, to the following persons by first class mail at the post office at Portland, Oregon. The following is a list of persons to whom a copy of this document was mailed.

Name	Address
Mara Ulloa Plan Amendment Specialist	DLCDC 635 Capitol St NE, Suite 150 Salem OR 97301-2540
Planning Manager	Metro Planning Department Metro Community Development 600 NE Grand Ave Portland OR 97232-2736
Stuart Farmer	Multnomah County Land Use Planning 1600 SE 190 <sup>th</sup> Ste 116 Portland OR 97233

Name / Title Joan Hamilton,  
Management Assistant

January 16, 2009  
Date

ORDINANCE No. **182474** As Amended

Revise Retail Sales And Service regulations for Division Main Street through the Regulatory Improvement Code Amendment Package 4 (Ordinance; amend Title 33)

The City of Portland Ordains:

Section 1. The Council finds:

**General Findings**

1. This project is part of the Regulatory Improvement Workplan, an ongoing program to improve City building and land use regulations and procedures. Each package of amendments is referred to as a Regulatory Improvement Code Amendment Package (RICAP), followed by a number.
2. During the Spring and Summer of 2007, staff from the Planning Bureau and the Bureau of Development Services (BDS) worked with the Regulatory Improvement Stakeholder Advisory Team (RISAT) to develop a workplan for the fourth Regulatory Improvement Code Amendment Package (RICAP 4). The RISAT includes participants from city bureaus and the community and advises staff.
3. On July 24, 2007, the Planning Commission held a hearing to discuss and take testimony on the RICAP 4 workplan. The workplan consisted of 49 issues proposed for further research in order to find potential solutions. Three additional items were added during the research of the workplan items; two were added by the Bureau of Development Services and one by City Council, bringing the total to 52 items.
4. During the Winter of 2007 and Spring of 2008, Planning staff worked with BDS and RISAT to address the issues in the workplan.
5. During the Spring and Summer of 2008, Planning staff also worked with BDS and RISAT to develop a workplan for the fifth Regulatory Improvement Code Amendment Package (RICAP 5).
6. At the August 26, 2008 Planning Commission hearing on the workplan for RICAP 5, members of the public requested the regulations for Retail Sales And Service Uses for the Division Main Street be amended.
7. At the conclusion of this hearing, the Planning Commission directed staff to prepare a code amendment to modify the Retail Sales And Service Uses limit for Division Main Street. They directed staff to bring the amendment before them as part of RICAP 4. This issue is the item addressed by this ordinance.
8. On August 27, 2008, notice of the proposed RICAP 4 code amendments was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by ORS 197.610.
9. On September 11, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland as well as those involved with the Division Green Street / Main Street Plan (also known as Division Vision). In addition, notice was sent to those who were interested in a 2006 land use adjustment case and appeals involving the former Natures / Wild Oats

building on Division Street. The adjustment and appeals involved the regulations for Retail Sales And Service Uses for the Division Main Street. The notice was for the Planning Commission Hearing on the staff proposal for the Regulatory Improvement Code Amendment Package 4 (RICAP 4), and to announce the availability of the Proposed Draft.

10. On September 16, 2008, the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4) Proposed Draft* was published. It included an amendment to the Division Street retail limits that would remove the floor area restriction from buildings that existed when the regulation was adopted.
11. On October 14, 2008, the Planning Commission held a hearing on the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Proposed Draft*. Staff presented the proposal and public testimony was received. At the end of the meeting, Planning Commission directed staff to prepare amended language on several issues, including a change to the proposed Division Street retail limits. In response to testimony, they asked staff to prepare language that applied the retail limitation to only the ground floor of buildings that existed when the regulation was adopted.
12. On October 28, 2008, the Planning Commission heard additional testimony on the Division Street retail limits, and considered language staff had prepared in response to their October 14 request.
13. At the conclusion of the hearing, the Commission voted to recommend that City Council adopt the staff recommendation for RICAP 4, including the language that applied the Division Street retail limits only to the ground floor of buildings that existed when the regulation was adopted.
14. On December 10, 2008, City Council held a hearing on the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that affects Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone. Staff presented the proposal and public testimony was received.
15. On December 17, 2008, Council decided to defer their vote on the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that amends the regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone.
16. On January 7, 2009, Council made amendments to the Planning Commission's recommended code language, and voted to adopt the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that amends the regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone, as amended.
17. For clarity, the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4)*, affecting Retail Sales And Service Uses on Division Street is now a separate document titled *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009, and attached as Exhibit A.
18. On January 14, 2009, Council voted to adopt *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009.

#### **Findings on Statewide Planning Goals**

19. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.
20. **Goal 1, Citizen Involvement**, requires the provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of this amendment has provided numerous opportunities for public involvement:
  - On July 24, 2007, the Planning Commission held a public hearing on the RICAP 4 Proposed Workplan and heard testimony from citizens on the proposed issues. The Planning Commission voted to adopt the workplan, directing staff to work on code amendments on the 49 issues listed in the workplan. The RICAP 4 workplan did not contain amendments to the regulations affecting Retail Sales And Service Uses on Division Main Street.
  - During 2007 and 2008, staff worked on proposed code amendments for RICAP 4.
  - During the summer of 2008, Planning received letters and phone calls from the Division/Clinton Business Association, Hosford/Abernathy Neighborhood Development Association and Richmond Neighborhood Association regarding the retail size limitations in the Zoning Code established through the Division Green Street / Main Street Plan.
  - On August 26, 2008, during the Planning Commission hearing on the workplan for RICAP 5, several members of the neighborhood and business associations as well as an owner in the Division Street area, testified to request that staff address the retail size limitations on Division Street. This Ordinance applies to the amendments associated with their request.
  - On September 11, 2008, notice was sent to all neighborhood associations and coalitions, and business associations in the City of Portland, as well as persons involved with the Division Green Street / Main Street Plan (also known as Division Vision), as well as all those who were interested in a 2006 land use adjustment case and appeals involving the former Natures/Wild Oats building on Division Street. The adjustment and appeals involved the regulations for Retail Sales And Service Uses for the Division Main Street. The notice was for the Planning Commission Hearing on the staff proposal for the Regulatory Improvement Code Amendment Package 4 (RICAP 4) and to announce the availability of the Proposed Draft.
  - On September 16, 2008, the *Regulatory Improvement Code Amendment Package 4 (RICAP 4) Proposed Draft* was published. The report explained the proposed amendments to the Zoning Code. The report was available to City bureaus and the public and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
  - On October 14 and 28, 2008, the Planning Commission held a public hearing to discuss and take testimony on the report. The bulk of the testimony was on the proposed amendment to the Division Street retail size limits.
  - On November 21, 2008, notice was sent to those who testified at the Planning Commission hearings, and to people interested in RICAP 4, of the proposed City Council hearing on the Planning Commission recommendation for RICAP 4.
  - On December 10, 2008, the City Council held a public hearing to discuss and take testimony on the recommendations from the Planning Commission.
  - On December 17, 2008, Council voted to defer their decision on the portion of the *Regulatory Improvement Workplan: Regulatory Improvement Code Amendment Package 4 (RICAP 4), Planning Commission Recommended Draft* that amends the regulations affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone.

- On January 7, 2008, Council discussed the amendments affecting Retail Sales And Service Uses on Division Street in the Main Street Corridor Overlay Zone, and accepted additional testimony.
21. **Goal 9, Economic Development**, requires the provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. The amendment to the Division Street retail regulations support this goal by providing additional flexibility for the economic re-use of existing buildings, while maintaining a pedestrian scale to the ground floor retail environment.

#### Findings on Metro Urban Growth Management Functional Plan

22. The following element of the Metro Urban Growth Management Functional Plan is relevant and applicable to the amendment affecting Retail Sales And Service regulations for Division Street in the Main Street Corridor Overlay Zone.
23. **Title 6, Central City Regional Centers, Town Centers and Station Communities**, defines Metro's policy to enhance Centers by encouraging growth within these Centers. This amendment is consistent with this Title by providing additional flexibility for commercial development within existing buildings along Division Street, which is designated a Region 2040 Main Street.

#### Findings on Portland's Comprehensive Plan Goals

24. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program, and reaffirmed the plan's compliance with statewide planning goals.
25. The following goals, policies, and objectives of the Portland Comprehensive Plan are relevant and applicable to the amendment affecting Retail Sales And Service regulations for Division Street in the Main Street Corridor Overlay Zone.
26. **Goal 1, Metropolitan Coordination**, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. The amendment is consistent with this goal because it does not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.
27. **Goal 2, Urban Development**, calls for maintaining Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers. This amendment supports this goal by expanding the opportunities for the re-use of existing commercial buildings along Division Street, while retaining the street's character as an established commercial node.
28. **Goal 3, Neighborhoods**, calls for the preservation and reinforcement of the stability and diversity of the city's neighborhoods while allowing for increased density.

**Policy 3.1, Physical Conditions** calls for the provision of programs to prevent the deterioration of existing structures and public facilities. This amendment supports the policy by adding flexibility for the re-use of existing buildings that may have exceeded the size limits in place at the implementation of the Division Green Street / Main Street Plan, and that may have remained vacant as a consequence of these limits.

**Policy 3.5, Neighborhood Involvement** encourages active involvement of neighborhood residents and businesses in decisions affecting their neighborhood, through the promotion of neighborhood and business associations. This amendment supports this policy since the amendment is based upon suggestions from the neighborhood and business associations surrounding Division Street.

**Policy 3.6, Neighborhood Plan** calls for maintaining and enforcing neighborhood plans that are consistent with the Comprehensive Plan and that have been adopted by City Council. This includes the Division Green Street / Main Street Plan which was adopted by Council in February, 2006. The Division Plan includes goals to focus commercial activity in a series of villages, including building at a pedestrian scale. The Division Plan also calls for supporting a healthy local economy, including businesses that provide a diverse range of goods and services, and to allow a collaborative approach to achieve a connected community. The amendment supports these plan goals by forwarding a code change that was suggested by the neighborhood and business associations. The amendment also supports these goals by adding flexibility to use existing buildings for a wider range of retail uses. At the same time, the provision maintains the pedestrian scale of the ground level of buildings.

29. **Goal 5, Economic Development**, calls for the promotion of a strong and diverse economy that provides a full range of employment and economic choices for individuals and families in all parts of the city. The amendment to the Division Street retail limitation supports this goal by adding flexibility for the economic re-use of existing buildings, while maintaining a pedestrian scale to the ground floor retail environment.
30. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and amendment of the Comprehensive Plan. This project followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement
31. **Goal 10, Plan Review and Administration**, includes several policies and objectives. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, directs that amendments to the zoning and subdivision regulations should be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city.

The amendment is supportive of Policy 10.10 because it clarifies and streamlines a regulation in the Zoning Code. It also responds to an identified current and anticipated problem, such as a barrier to desirable development, and will help ensure that Portland remains competitive with other jurisdictions as a location in which to live, invest, and do business.

32. **Goal 12, Urban Design**, calls for enhancing Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. Policy 12.4 recognizes that Portland is experienced most intimately by pedestrians and that development should ensure a pleasant, rich and diverse experience for pedestrians. The amendment is consistent with this policy by maintaining the retail size limit along the ground level of buildings in the Division Green Street / Main Street plan, thus ensuring a variety of uses along the ground level frontage.

NOW, THEREFORE, the Council directs:

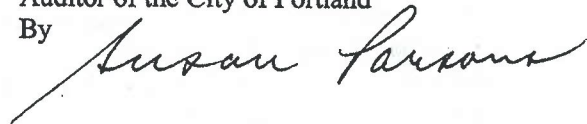
- a. Adopt Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009;
- b. Amend Title 33, Planning and Zoning as shown in Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009
- c. Adopt the commentary and discussion in Exhibit A, *Regulatory Improvement Code Amendment Package 4 (RICAP 4): City Council Revisions to Division Street Regulations*, dated January 9, 2009, as legislative intent and further findings;
- d. Direct staff to monitor the effect of the other amendments as part of their overall monitoring program.

Passed by the Council: JAN 14 2009

GARY BLACKMER

Auditor of the City of Portland

By



MAYOR SAM ADAMS

Prepared by:  
Phil Nameny Bureau of Planning and Sustainability  
November 21, 2008

Deputy

# Regulatory Improvement Workplan



## Regulatory Improvement Code Amendment Package 4

(RICAP 4)



CITY OF PORTLAND  
BUREAU OF  
PLANNING



Council Revisions to  
Division Street Regulations

January 9, 2009

182474

The Bureau of Planning and Sustainability is committed to providing equal access to information and hearings. If you need special accommodation, please call 503-823-7700, the City's TTY at 503-823-6868, or the Oregon Relay Service at 1-800-735-2900.

For more information about **this report** or **Regulatory Improvement Code Amendment Package 4** please contact:

Phil Nameny, City Planner  
Portland Bureau of Planning and Sustainability  
1900 SW 4<sup>th</sup> Avenue, Suite 7100  
Portland, Oregon 97201-5380  
**Phone:** 503-823-7709  
**Email:** [bopregimp@ci.portland.or.us](mailto:bopregimp@ci.portland.or.us)

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## **I. Introduction**

### **Summary**

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

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

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

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

## II. Impact Assessment

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

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

### Stakeholder Outreach and Feedback

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

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

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

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

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

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

## Division Street Regulations

### 33.460.300 Purpose

### 33.460.310 Additional Standards

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

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

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

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

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

[Commentary continues on next even-numbered page]

Language to be **added** is underlined  
Language to be **deleted** is shown in ~~strikethrough~~

### Division Street Regulations

#### 33.460.300 Purpose

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

- Activates Division Street corners and enhances the pedestrian environment;
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- Is constructed with high quality materials in combinations that are visually interesting;
- Consists of retail that primarily serves the surrounding neighborhood, is small in scale and promotes pedestrian activity; and
- Provides neighbors with the opportunity to give early input to developers on significant projects.

#### 33.460.310 Additional Standards.

A-C. [No change.]

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

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

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

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

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**E. Neighborhood contact.** Proposals meeting the following conditions are subject to the neighborhood contact requirement as specified in Section 33.700.025, Neighborhood Contact. All of the steps in 33.700.025 must be completed before a building permit is applied for:

1. The proposed development has not been subject to a land use review, and
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CITY OF PORTLAND  
BUREAU OF  
PLANNING



# Regulatory Improvement Workplan



## Regulatory Improvement Code Amendment Package 4

(RICAP 4)



**Council Revisions to  
Division Street Regulations**

**January 9, 2009**

The Bureau of Planning and Sustainability is committed to providing equal access to information and hearings. If you need special accommodation, please call 503-823-7700, the City's TTY at 503-823-6868, or the Oregon Relay Service at 1-800-735-2900.

For more information about **this report** or **Regulatory Improvement Code Amendment Package 4** please contact:

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**Email:** [bopregimp@ci.portland.or.us](mailto:bopregimp@ci.portland.or.us)

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# **I. Introduction**

## **Summary**

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

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

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

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

## II. Impact Assessment

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

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

### Stakeholder Outreach and Feedback

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

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

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

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

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

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

## Division Street Regulations

### 33.460.300 Purpose

### 33.460.310 Additional Standards

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

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

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

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

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

**[Commentary continues on next even-numbered page]**

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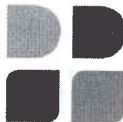
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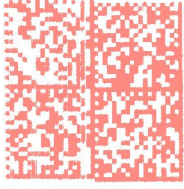
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