



Urbanist Coalition of Portland

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ReCode Committee
urbanistportland.me/policy/recode

June 3, 2024
For Public Release

MEMORANDUM

Re: Urbanist Coalition of Portland's Preliminary Analysis Of
Recode Phase II Second Wave Draft Changes

Background on Recode

Recently, the city of Portland's Planning & Urban Development Department released the second wave of "ReCode Portland Phase II" draft changes. ReCode is the city's effort to modify and modernize Portland's Land Use Code, the set of rules which govern the construction, renovation, and use of all buildings in the city. ReCode began in 2017, its "Phase I" changes were adopted by the City Council in 2020, and the first wave of "Phase II" changes were released for public review in June 2023. After ten months of hearing and analyzing public responses to these changes, this second wave revises some of the first wave changes in response to community feedback, and covers parts of the Land Use Code which the first wave had not yet addressed.

Who We Are

The Urbanist Coalition of Portland (UCP) supports middle density housing, mixed-use neighborhoods, useful transit and cycling infrastructure, protecting our environment, ensuring affordable housing options, and overall working to make our city a more pleasant and safe place to live and work. We have been providing our own data-based and pro-housing policy recommendations to the city since before the release of Phase II's first wave, and are currently undertaking a thorough analysis of the second wave changes. While we expect to offer detailed proposals and our open research to city officials in response to the second wave over the coming months, it is the UCP's intention to provide both officials and the public with a broad overview of the new proposals. In particular, we'd like to highlight those suggestions from the

Planning Department which are clearly beneficial, identify those which ought to be explained or reconsidered, and demystify the underlying policy goals which motivate the entire ReCode process.

The Good

Among the motivations for ReCode, even back in 2017 when it first began, was to simplify and liberalize the code in response to modern demands for affordable housing, environmental protection, and walkable communities. It's taken us many years to reach this point, but the changes put forward by the Planning Department thus far do work towards these goals in several ways.

Fully Embracing LD2003 and Maintaining Affordability Bonuses

At the outset, the Planning Department embraced the progressive vision adopted by the City Council in living up to the spirit of LD2003, a recently-passed state law designed to promote abundant housing construction. While the Planning Department supported a very narrow interpretation of the state law, amendments sponsored by Councilor Rodriguez in collaboration with the UCP were embraced by the City Council last December, allowing for up to four-unit housing construction across the mainland. This incorporation of amendments also maintains the expanded affordability bonuses the city has had since the LD2003 reforms. The Second Wave changes embrace and integrate this landmark pro-housing reform into the proposed changes, demonstrating wisdom, grace, and respect for the democratic process.

Consolidation into Fewer Residential Zones

The re-categorization of residential zones, (from R-1, R-2, ..., R-6, with an R-7 overlay, to RN-1, RN-2, ..., RN-6,) represents a good start towards liberalizing residential areas in response to demand. While the number of zones being only slightly reduced in number is a missed opportunity to more significantly streamline the code, the character of the consolidations is much more gratifying, effecting a moderate but general 'pulling up' of neighborhoods towards greater density. In particular, the released maps reflect a number of incremental upzones from low- to medium- and high-density areas, and these seem both sensible and exciting.

New Transit Oriented Development (TOD) Zones

The addition of new TOD (Transit-Oriented Development) zones does, again, represent a missed opportunity to *reduce* the total number of zones, but otherwise represent a positive direction for land use in Portland. With car ownership being an expensive, risky, and environmentally-hazardous factor in many Mainers' lives, the enabling of car-light and car-free households to thrive in Portland is more important than ever. Reforms in dimensional standards, as well as initiatives from the Planning Department like instituting parking maximums across the city, will go further towards this goal.

The Concerning

Reduction in Allowed Building Heights

Several elements of the new changes, however, raise alarm bells at the UCP. As a prime example, one of the few notable revisions made to the first wave changes (now reflected in the second wave) was a walking-back of height increases in several zones across the city. The current height restrictions in Portland's Land Use Code are quite limiting for a city of our character, and the moderate increases proposed in the first wave changes were very nearly the sensible minimum to raise them. Despite this, the height increases apparently alarmed those segments of the public concerned about such things enough that they convinced the Planning Department to, essentially, return to the restrictive status quo.

This is a doubly concerning move, not only are the stricter height limits bad for working Portlanders, but this may also indicate an unwillingness on the part of planning staff to stand by their own proposals in the face of a small minority's criticisms. Raising height limits is far from the most important part of the ReCode process, but we encourage the city to stand by their original, data-driven assessment and proposals in this case.

Division into *More Residential Uses*

In the current code, there are three basic types of residence: single-family, two-family, and multi-family. The proposed changes shift this to single-family, two-family, three-family, four-family, and *then* multi-family. Besides the obvious redundancy – there are no functional differences between three- and four-family use permissions, and single- and two-family exclusive zones have effectively been abolished – this also indicates a concerning motivation. Despite the pressure from the state and elsewhere to allow more multi-family development, carving out unique permissions for three- and four-member buildings may mean that middle-density buildings (such as the six- and eight-unit structures essential to organic affordability) will continue to be frozen out of Portland.

Not Allowing Neighborhood Businesses

Permitting low-impact neighborhood business (e.g. grocers, childcare, or clinics) is key to creating walkable neighborhoods, and this has been recognized throughout the ReCode process. However, while the second-wave changes include a measure clearly intended to give the impression of supporting these businesses, in fact virtually nothing would change. The "Neighborhood nonresidential reuse" proposed in Phase II is touted as a means to reintroduce such amenities, but by UCP analysis, this "reuse" has such strict requirements for application that no more than a handful of lots across the entire city would qualify. Despite the "reuse" receiving front-page billing from the ReCode Portland team, it would – more likely than not – result in zero new neighborhoods business openings.

In response to concerns by the public that this "reuse" would do little (or nothing) to permit new neighborhood businesses, planning staff replied that "neighborhood business needs are addressed within the B-1, B-2 or other zones" dedicated to commercial uses. This confidence in the "B" zones to adequately serve neighborhood needs does raise the question of why the "reuse" was added at all, if it is both highly restricted and (apparently) unnecessary. This is

precisely the sort of complex, flashy, but ultimately fruitless measure which should not be allowed to further litter the land use code.

Need for More Setback Reductions

Setbacks are how far a building can be built from the property line. There are some improvements here – e.g. instead of having side setbacks increase in relation to building height, they stay static – but we still have front and rear setbacks in R3 and other zones that are 20-25 feet. This makes it functionally impractical to build a backyard Accessory Dwelling unit, and has no evident utility.

Walkable neighborhoods, communities where households can thrive with little-to-no driving necessary, have become a central plank for Portland's urban politicians. The UCP strongly believes that legalizing the development of such neighborhoods can save Portlanders money, make our city more beautiful, and alleviate the effects of climate change. To do this, one need only look at Portland's most delightfully walkable districts which exist now, such as those in downtown Portland, on Munjoy Hill, or in the West End. One of the key features of these neighborhoods is a dynamic streetscape with building fronts close to the street and building sides close to one another. Enabling this requires a substantial reduction in setback minimums, which have not been adequately addressed in these draft changes.

Too Many Restrictions on Places of Assembly

Places of Assembly, the most common use designated for churches and other places of worship, have been redefined in the Phase II proposals to apply to congregations of more than 8 people, a drastic reduction from 15 people in the current land use code. This broader requirement, which affects multiple small religious bodies, has been paired with a new restriction which bans places of assembly from non-major roadways. In other words, while a group of ten Jews, Christians, Muslims, or any other religious (or indeed non-religious) congregants are currently permitted to assemble freely nearly anywhere in Portland, under the proposed Phase II changes, they'd be restricted to upzoned parcels on major roads only.

While the justification provided for this change is an anodyne attempt at standardization with other definitions, the impact of this change on community groups and congregations should not be understated. It may even rise to the level of violating first amendment rights. This change is capricious and unnecessary, and should not be pursued. You've probably hosted or attended a gathering at a home with more than eight people yourself, why should this be any different?

The Missing

It's *Still* Too Long & Complicated

Beyond the changes which have been proposed, both for better and for worse, there are also those changes which haven't been proposed – or seemingly even addressed. As has already been made clear, despite one of the original goals laid out for ReCode being to simplify the very complex code, relatively few opportunities have been taken to attempt this. While at several points redundant or overly specific language has been streamlined, the overall character of the code remains much the same. There are still dozens of zones, the maps still look astonishingly

complicated, and the number of conditional and provisional uses still leave homeowners, tenants, builders, and others guessing as to what is allowed and what isn't. Cities should be walkable, and land use codes should be readable.

Where is TOD-2?

One of the most baffling apparent omissions, if it is an omission, is the lack of implementation of TOD-2, one of the two new transit-oriented zones. In the maps released by the Planning Department, not a single parcel appears to be designated TOD-2, despite the introduction of the high-density zone into the proposals. It's unclear why this zone hasn't been utilized; it may be that the proper use of this zone is still being considered internally at City Hall. However, if the purpose is in fact to treat the new zone as a special designation – not something to be baked into the maps but rather something to be requested by interested developers – then this would be very troubling. This is the sort of unpredictable spot-zoning which has given many local governments in Maine the reputation for obscurity, favoritism, and delay. We trust that this is not the case, and that a revised map will utilize the new zone and be released in the future.

No Remedy for Languishing Industrial Land

Much land in Portland is zoned and regarded by Portland's planners as dedicated to industrial use. This practice is a relic of an older economy, no longer relevant to the needs of Portland as a whole, and it would be an ideal area of reform in ReCode. Much of this land is vacant or deeply underutilized, but could hold great potential for development into housing, commercial, and other business uses. Despite this clear opportunity, only vague and minor adjustments to the land in question are included in the proposals. While the restrictions may keep land prices artificially low for the favored businesses in this market, these minority interests should not prevail against the general good.

How Will the City Streamline Approvals?

Another conspicuous absence from the ReCode conversation is all the more notable for how prominently it featured in Mayor Mark Dion's campaign – a significant streamlining of approvals. While there are many costs which go into building and renovating in Portland, one which should not be underestimated is the time and uncertainty involved in getting the appropriate permits and approvals from various city government organs. This bureaucratic slog is one of the primary factors driving builders elsewhere in the northeast, and one that Portland's administration ought to be seriously reckoning with. Yet, little evidence of such reckoning can be found here.

Transparency and Elegance

Lastly, the most important omission from ReCode is any commitment towards transparency. Why are the lots on one street zoned for low-density residential, while another similar street's lots are for dense mixed-use? Why are the borders where they are, and why are the zones restricted in the ways which they are? Even when planning staff do make attempts to explain the rationales behind their decisions, they tend to leave many assumptions unexamined. What's more, planning has consistently played catch-up with the city, only latently approving uses for which there is *already* great demand. While it's easy to forget, the very term "planning" necessitates a focus on the future: future needs, future demand, future growth. For too long, planning in Portland has been focused on, at best, the present – and often it's been stuck in the past.

Portland's land use code and zoning map ought to be based on concrete, rational decisions motivated by data. If zoning restrictions cannot be justified by solid material concerns, then they ought not be applied. Any sufficiently-motivated resident – with no advanced degrees or experience – ought to be able to look at the zoning map and understand why the zones of Portland are where they are, and why they are how they are, right across the city.

A natural corollary to this is that the zoning map should not look like a Jackson Pollock painting. When an individual lot is classified as a unique zone from all the land which immediately surrounds it, can that really be justified by reason? Maybe sometimes – but typically, “spot-zoning” and similar practices ought to be avoided at all costs. Zoning should not be a shadowy court of appeals where land use is decided by arbitrary boundaries, special interests, unspoken motivations, and unpredictable administrators. It should be a clear-cut, sensible process with which any homeowner can become comfortable. So far, Phase II looks to continue, and in some ways even worsen, the status quo of complexity and opacity.

Conclusion: The Mediocre is the Enemy of the Good

In the daunting pile of documents which have been released as Phase II, which UCP analysts are still reviewing in detail, there is much good work. Some of the most important updates are the simple standardizations and minor fixes, which is tedious work to compile (and makes no headlines) but is absolutely necessary. Many of the most important issues facing Portland's land use have been at least somewhat, imperfectly recognized. There is little which is plainly offensive or wrongheaded, and much which is sensible.

However, Phase II ultimately represents a continuance for the status quo in Portland. With skyrocketing prices, a severe housing shortage, dangerous streets, a climate crisis, and mass displacement facing our city, the status quo is not good enough.

Nearly a decade of effort and untold masses in taxpayer dollars should not be wasted on mediocrity. Portland ought to seize the opportunity to enact real change in a self-evidently failing system. We've so long prided ourselves on being leaders, on being at the cutting-edge of modern solutions for modern problems, and we should take the lead in land use reform here in New England. The changes don't need to be radical, (they ultimately represent a restoration of rights to homeowners and tenants,) but they must be meaningful.

The UCP will release more detailed policy recommendations for City Hall's consideration over the coming weeks, but we call on our elected representatives now to demand the sort of reform which Portland needs to make our housing affordable, our laws understandable, our neighborhoods walkable, our lifestyles sustainable, and our city livable.