



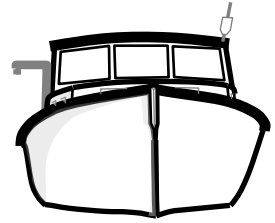
## Waterfront Working Group

7th Meeting Agenda

March 28, 2019

Room 24, City Hall

3:00pm to 5:00pm



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**1. Welcome and Introductions:**

*Jon Jennings, City Manager, Chair*

**2. Review Meeting Notes from**

a. Meeting 6, 3-21-19

**3. Working Group discussion on unresolved zoning issues**

a. See Summary Table of Issues and Approaches, attached and Zoning Memo from Meeting #3

**4. Working Group discussion on Schedule moving forward**

a. Meeting Materials

**Agenda 2**  
**WWG Meeting 6 Notes**  
**3-21-19**

City of Portland  
Waterfront Working Group

Meeting #6  
Thursday, March 21, 2019  
3:00 - 5:00 p.m.

Attendance

Becky Rand  
Mike Alfiero  
Bill Coopersmith  
Willis Spear  
Togue Brawn  
Dory Waxman - made it!  
Charlie Poole  
Steve Dimillo  
Cyrus Hagge  
John Bisnette here in place of Keith Lane

Staff: Jon Jennings, Bill Needleman, Christine Grimando, Greg Mitchell, Ethan Strimling, Matthew Grooms, Bruce Hyman

Meeting Summary:

There were 3 major components of this week's meeting: 1) John Jennings' (City Council's) response to concerns of pier owners, which were received only this morning; 2) Continued TIF discussion with Greg Mitchell and survey amongst PWWG of most desired TIF money distribution; and 3) Continued discussion on waterfront zoning issues and ordinance language, again emphasizing the non-consensus of percentages of marine v non-marine use (70/30 was emphatically opposed by pier owners), nmouz distances and ordinance language.

It was also determined during this meeting that good and necessary work is being done by the PWWG and that meeting more often could help hammer out contentious issues in a productive, positive and very civil manner. As such the next meeting of the PWWG will be next Thursday, March 28 from 3-5 pm.

**Issue 1 - Concerns of Pier Owners:**

The morning of this meeting, John Jennings received information from pier owners, (a few of whom are members of PWWG and some of whom are not) who had met separately from PWWG. The pier owners informed him of their concerns regarding "decisions" being made by PWWG. John Jennings clarified that the PWWG is not making decisions, but recommendations that will be taken to City Council, and also noted that some pier owners expressing concerns were not at the PWWG meetings. Mr. Jennings also noted that this was the 1st the City had heard of these specific concerns and stated that the progress he thought was being made in the PWWG meetings seems to have been set back by the information he received this morning. Clearly this is a frustration for the City, as there are issues he thought were clear and had agreement (or agreement to disagree) amongst PWWG members. That said, Mr. Jennings stated that the PWWG is doing good work and believes that the recommendations it will put forth to the City

Council will bear positive outcomes -- although no one will get everything they want, compromises will be fair and will benefit the future of both fishermen's futures and commercial development. Mr. Poole, Mr. Dimillo, and Mr. Alfiero each expressed the desire to continue the work of the PWWG recognizing that complete consensus was not going to be possible.

**Issue #2: Continued TIF Discussion with Greg Mitchell:**

Bill Needleman and Greg Mitchell conducted an "exercise" to determine the PWWG's most desired distribution of TIF funds (currently about \$600,000 -- much more will be available in future as captured properties generate significantly more anticipated revenue). Based on previous data collected from PWWG, the categories for potential TIF funds distribution are as follows -- including the highest votes for 1st, 2nd and 3rd from PWWG:

1. Pier and Wharf Structural Repair (Public Piers)
- 2 and 3) Street Studies and Improvements, Pedestrian and Multi-Modal Circulation - 2 #1 votes, 6 #2 votes, 4 #3 votes**
- 4) New Publicly owned pier = 1 # 1 vote
- 5) Surface and structural parking
- 6) Utilities Infrastructure
- 7) Environmental Improvements, Including Sea Level Adaptation
- 8 and 9) Dredging of Commercial Vessel Berthing, Dredge Sediment Disposal and CAD Cell Development - 6 #1 votes, 3 #2 votes, 1 #3 vote**
- 10) Workforce Training Fund
- 11) Credit Enhancement Agreements (required development on-site)
- 12) Other...
- 13) Professional Services Costs
- 14) City Staff Salaries
- 15) Local Match for Ocean Gateway Project

Dredging of commercial vessel berthing and dredge sediment disposal overwhelmingly received the most #1 votes with Street Studies/Improvements and Pedestrian/Multi-Modal Circulation receiving the majority of #2 and #3 votes. Mr. Needleman and Mr. Mitchell emphasized that this was a general survey, but that they wanted to have a good idea of preferences to take to City Council for an April 8 budget meeting.

It was noted that the current TIF pot is at about \$600,000, which is not enough to fund complete dredging projects or a new pedestrian bridge on Commercial Street, but that it is enough to fund studies and to begin projects that will seek federal matching money, DOT funding and other grant money. It was also noted that future TIF funds should be significantly more substantial, once captured properties in the waterfront TIF zone generate their potential funds. It was noted, again, that Credit Enhancement Agreements require development **on-site**, which is an issue that will need to be addressed.

**Issue #3 - Continued Discussion on Zoning Issues and Percentages:**

It was noted that the fishermen are extremely concerned about what they have already lost to commercial development on the waterfront and that they are emphatic about specific city ordinances and strict zoning restrictions going forward. The fishermen are not willing to allow loopholes in ordinance language for

development (most specifically for hotels) and will stand strong for marine vs non marine percentages to stay at least 55/45.

It was emphasized that marketing requirements need to be left in any ordinance as a safety valve. It was offered that 6 months of required marketing vs. 2 months could be more effective in bringing in marine use tenants.

### **Abbreviated Dialog**

#### **Issue 1 - Pier owners:**

JJ: This morning city made aware of concerns by pier owners. 1st city had heard of these concerns.

CP: We understand there will be public process. We are mostly concerned about where we sit with current zoning. There is good work being done by group, and we don't want to derail....having said that, we felt this group needed to know the concerns of pier owners.

SD: In 2010 we dealt with Commercial Street traffic and a hotel. Property owners believed there were ample protections in existing language for fishermen. There may need to be better enforcement but we need to continue to put money back into properties, which will not happen with the restrictions wanted by lobsterman.

MA: (To fishermen) Where are you being squeezed? What's going to happen to businesses on the corridor? 150 was ok, then 125 -- I didn't understand, but ok. The 3 properties -- Long Wharf, Union Wharf, Fisherman's Pier are the elephants in the room, I don't know what the solution is.

CP: All the fishermen are in the room, property owners are not. We felt it important to let it be known that when it comes time for the public process, there will be pushback to restrictions. Parking and commercial use are 2 biggest problems.

BC: What we're worried about as fishermen is stuff we've lost . We're losing space all the time. The future is our concern. We're being squeezed all the time. We don't want to lose future. Now our day starts at 3 o'clock because access to the boats is harder. 6:30 to 3 was our old day. The hotel was the straw that broke camel's back, that's why we're here today. Moratorium is near, June 17. Do we double up? If we need to, we will. We understand it has to go to the Planning Board, then City Council, but we're hoping that you see and meet the fisherman. We have no other place to go except the water and that's why we're sitting here today.

TB: Is there a better way to get these things done? Hire a professional facilitator, hammer something out? Reasonable people are here, but there are many other players, who are not so reasonable.

BC: Do we need another moratorium? Double up -- twice as many meetings?

JJ: We take a step forward, then some group members take us a step back. I thought we had moved on, then the phone call from the pier owners this morning was a step back. We will never have complete agreement. What we have been focused on is a balanced approach that is a compromise that everyone can live with and go forward and that is fair for all sides.

CP: Agree to have some disagreements. Compromise. There was no overlay zone in 2008. I don't want it to go away. However, we're at a point where we have to have the most balanced ---- we can have. This is an excellent group, proud to be part of it, but there are issues we haven't addressed yet and we need to hammer out these issues as a group, I hope.

Most of group wants to continue with meetings, probably more often.

WS: Can we have another moratorium?

JJ: If need be, but I hope not. We are taking steps to alleviate traffic congestion, some things you aren't aware of yet.

BC: Give the TIF money back to the wharves.

### **Abbreviated Dialog Issue 2: TIF Discussion - Greg Mitchell**

BN: See handout from Greg Mitchell. It is the wish list. Waterfront TIF district covers entire waterfront. It's spine is Commercial St. On map/chart the green are the revenue generators.

GM: We listened to what you said. 3 priorities. 3 Different areas for consideration for TIF money. We felt it was better to look at a small number of big ticket items than lots of smaller ticket items,

GM: City Council needs budget by April 8, so we need to get answers now.

CP: How about a pedestrian bridge to alleviate problems with crosswalks?

BN: We need to prioritize generally, not specifically to see what the group thinks as a whole. Note that CEA requires development. If you don't build anything there is nothing to be returned.

JJ: This is just informative, it's really up to the group.

BN: This does not replace a conversation it is a prompt for conversation.

(See categories above in meeting summary.)

Is there funding to enhance commercial fishing ventures?

GM: In 1991, we established a non-profit with 11 members who make decisions regarding commercial lending. Not supposed to replace a bank, lend up to \$250,000 in combination with bank financing and other sources. It is supposed to complement existing options (traditional lending.) There is a small

amount of grant money available that is intended to stimulate new investment like Charlie did on Union Wharf.

TIF money really needs to go to public infrastructure. If you cross the line into private investment, you need a CEA.

What about a staging area for bait trucks?

JJ: There are places along Commercial Street that are designated for bait.

BN: Priority Exercise -- 1st priority on green, 2nd on blue, 3rd on yellow

Results: Dredging and Street Improvements win overwhelmingly.

JJ: What does \$600,000 get us?

BN: Dredging costs upwards of 30 million dollars.

JJ: DOT has to come into play because city will never come up with 30 million on its own.

JJ: I know this group needs to see some tangible results -- 200,000 won't show tangible results

BN: Sediments involved not good for open disposal -- we'll have to involve federal funding.

BN: We're as poised as we're going to be in terms of permitting -- getting a permit within next months gets us in a better position for funding when it becomes available.

JJ: We have a Commercial Street study that should be wrapping up within a few months.

CP: If a small amount of money helps getting us over the permitting hump...

BC: That stuff is coming back -- I don't want to lose it.

JJ: WE have significant economic development tools available to us. We have CEA.

### **Overview of PDC Commercial Loan and Grant Programs**

JJ: We going to create a bucket of \$600,000 now. We'll work with you regarding multi-modal circulation.

We feel TIF money should be set aside for PWWG. Capturing all of this new development has been critical for us. Example, WEX building. We captured Wex at dirt, we will see significant TIF revenue from WEX

### **Non Agended Item Discussion - Zoning 55/45**

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BN: RE: Non-Marine use parking. If a car is parked in support of marine use it counts toward 55%; if car is not there in support of marine use it does not count.

In overlay zone, it can be 100% non-marine, we don't use percentages, but performance standards do apply.

Gear storage is considered an exterior marine use.

BN: Gulf of Maine has a parking lot with a lot of space. Not allowed to lease space to hotels or restaurants because commercial parking is non-marine use and it is not included on the permitted use list in the zone. Commercial parking lots that exist are legal if they existed prior to zoning of 1993 (meaning it existed before 1987).

JJ: We need a parking discussion. It can be dealt with on a pier to pier basis.

WS: What about last week's discussion regarding doing away with 45%? I think we should leave that. We need that marketing as a safety valve. We'd like to see it remain.

BC: Keep a building designated for marine use.

CP: I think keeping marine use percentage is a priority and the marketing is happening.

BN: The other approach is to strengthen it (marketing requirement). It doesn't appear to be doing anything now. How can it be more effective? (see last week's notes regarding marketing requirement)

BC: What is the difference between generating vs. keeping marine use?

BN: It does not require a permit change.

CH: Hotel lobby does not convert back easily into marine use -- whatever gets built needs to have the flexibility to move back and forth, markets will change, new industries will come in, buildings have to be adaptable to what comes in.

SD: I can support that concern of Cyrus.

MA: Inside the nmouz there needs to be flexibility. Outside the nmouz definitely.

CP: We need truck access and berth access.

BN: Does this conversation bring us any closer to the percentages?

CP: We have to go back to the marine priority.

BN: Is 2 months too short for marketing?

CP: Yes, we need at least 6.

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BN: That's a significant change that we can put into zoning text. Need to think about verbage for "targeted media" and its meaning for 21<sup>st</sup> century

CP: Likes 6 month marketing.

**Summary Table of Zoning Issues, Approaches, and Status****Agenda 3, Zoning Issues**

Zoning Issue	Approaches Under Consideration	Status	Next Steps
<b>Contract/Conditional Rezoning</b>	Eliminate option for site specific zoning within the WCZ	<b>Resolved.</b> The WWG will likely not have complete agreement on elimination of the tool	Staff to recommend to Planning Board
<b>Non-marine Use Overlay Zone</b>	Revise line to 125 ft offset from Commercial St with 300 ft at Long Wharf	<b>Likely to Remain Un-Resolved.</b> The WWG will likely not have complete agreement.	Staff ready to recommend to Planning Board
<b>55% first floor and open area Marine Use Requirement</b>	Separate open areas from first floor.	<b>Apparently Resolved.</b> Percentages discussed by WWG on 3-7-19 and 3-21-19. General support for the status quo. Lobsterman's letter suggests 70/30	Staff ready to recommend No changes to Planning Board, subject to Parking discussion results
	Lobstering group suggests 70/30 split for open areas		
	Require marine use occupancy as a condition for non-marine occupancy		
<b>First floors marketed to marine use as a condition for non-marine use occupancy</b>	Eliminate the requirement, subject to agreement that the Marine/N-M use split has been adequately addressed	<b>Rejected by the WWG on 3-21-19</b>	Staff ready to recommend to Planning Board extending the marking time from 60 days to 180 days
	Strengthen the requirement	<b>Resolved.</b> Extend marketing time to 180 days	
<b>Marine Use Inventory</b>	Replace with annual report of "significant development." Add periodic broad "assessment of the marine economy"	<b>General agreement</b>	Staff ready to recommend to Planning Board
<b>Parking</b>	Some issues to be covered with the Performance Standards	<b>Not yet discussed</b>	Needs a dedicated meeting
<b>Permitted Uses</b>	Restricting some uses from areas subject to marine use requirements (outside of more permissive Overlay areas)	<b>Not yet discussed</b>	WWG discussion
<b>Performance Standards</b>	Combine NM parking, functional utility, and Marine/N-M compatibility standards under a single standard. Create a submission requirement for an "access management plan"	<b>Not yet discussed</b>	WWG discussion
	Suggestion to limit pier edge occupancy by Non-Marine uses		
<b>Lot Coverage, Building size</b>	Suggestion to limit both	<b>Not yet discussed</b>	WWG discussion
<b>Enforcement</b>	Likely, no ordinance changes, but will explore better reporting and education	<b>Not yet discussed</b>	WWG discussion

Non-zoning issues to be addressed separately



Portland, Maine



Yes. Life's good here.

Economic Development Department

**Memorandum****Date:** February 4, 2019**To:** Waterfront Working Group**RE:** Meeting #3, February 7, 2019  
Zoning Issues**From:** Bill Needelman, Waterfront Coordinator**CC:** Jon Jennings, City Manager  
Greg Mitchell, Economic Development Director  
Jeff Levine, Planning and Urban Development Director  
Christine Grimando, Acting Planning Director  
Matt Grooms, Planner  
Jennifer Thompson, Associate Corporation Counsel  
John Peverada, Parking Manager**Introduction:**

At the January 17 meeting of the Waterfront Working Group (WWG,) City staff was directed to develop a suite of zoning issues and approaches for consideration at the February 7 meeting. Following the January 17 meeting, members of the fishing community, including WWG members, provided staff with a document titled, *Selected Issues Proposed for Review by the Working Waterfront Group* (attached to this memo.)

The *Selected Issues* list is introduced by 10 zoning related issues. This staff memo concentrates on *zoning* issues and will follow the order and structure of the *Selected Issues* document. Below, the zoning portion of the *Selected Issues* text is pasted in full in *red italics* followed by a staff response or suggested approach in standard type. Other, non-zoning issues will be addressed during following meetings on topics such as Waterfront TIF allocation, the Commercial Street Operations and Master Plan, and other processes.

As noted in previous meetings, it is the intent to use the current process to identify zoning issues and approaches that have the support of WWG members. Staff will then bring these issues and approaches to the Planning Board for review and assimilation into zoning code language.

## Zoning Issues:

- 1. Contract/Condition Rezoning must be eliminated for all prohibited uses in all waterfront zones.**

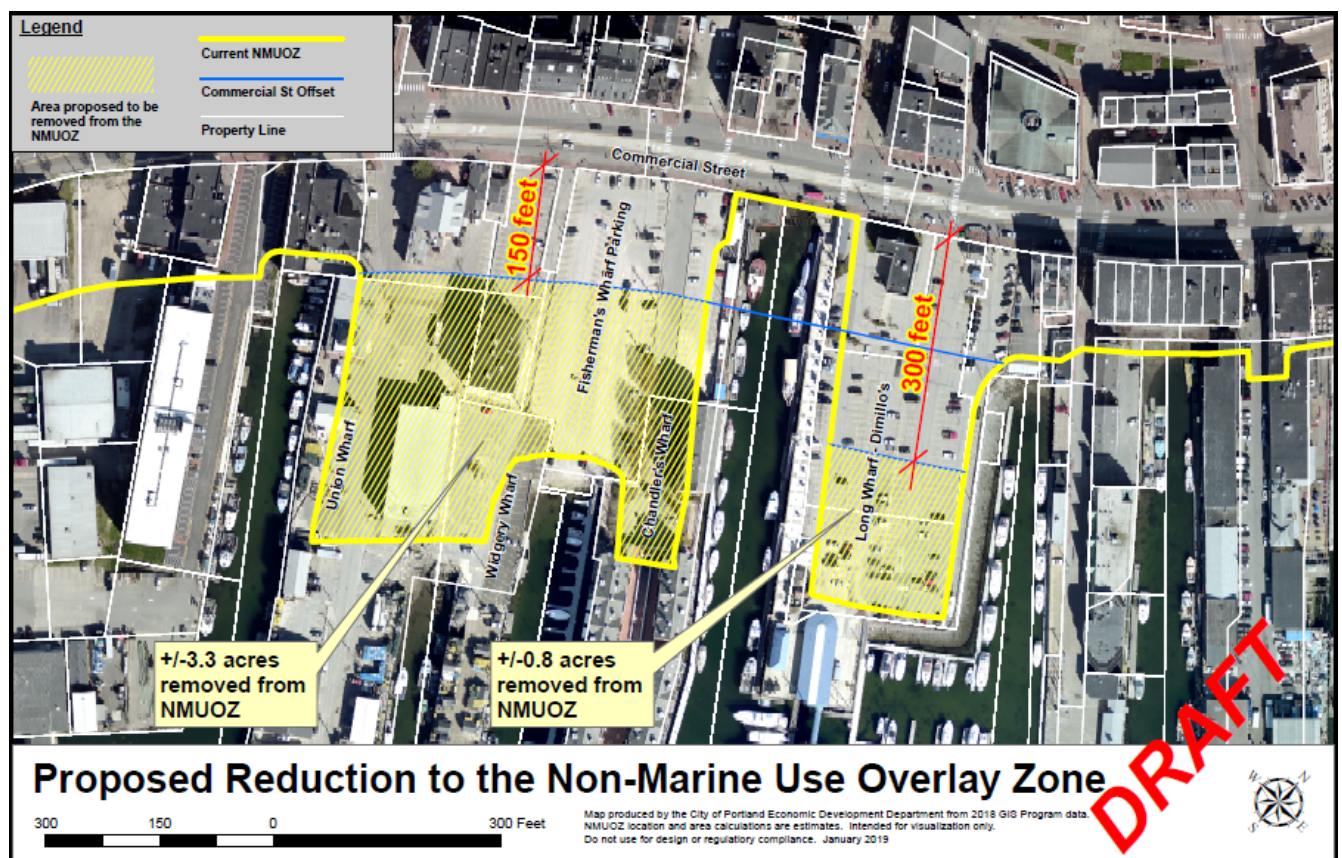
### City Staff Suggested Approach.

At the January 22, 2019 workshop of the Portland Planning Board, city staff from Planning and Economic Development presented a proposal to eliminate contract and conditional (C/C) rezoning from the Waterfront Central Zone (WCZ) consistent with the *Selected Issues* letter. At the workshop, members of the WWG and supporting legal representatives spoke against this approach, suggesting as an alternative that standards for C/C be tightened, but that the tool remains as an option within the zone. City staff continues to recommend eliminating the C/C option, but only within the WCZ, as consistent with the parameters of the WWG process.

- 2. Non-Marine Use Overlay Zone (NMUOZ) must be eliminated.**

### City Staff Suggested Approach.

Based on the discussion at the previous WWG meeting, staff is suggesting a 'north/south' reduction of the NMUOZ in the areas between Long Wharf and Union Wharf. The suggested approach is to retain the 150 foot strip of NMUOZ along the entire Commercial Street sideline, while allowing for a 300 foot portion only on Long Wharf. Long Wharf's development history, its current use, and limited potential to support marine industry warrant its unique treatment. As recommended by staff, the proposed amendments would remove +/-4 acres of land from the NMUOZ. A map illustrating the proposed approach is provided below. Other 'east/west' reductions in the extent of the NMUOZ did not appear to have support at the previous WWG meeting.



3. ***The 55% marine use/45% non-marine use designation for ground floors and open areas. (14-311). To enforce the 55%/45% split, the City is interpreting this so that vacant counts as marine use. This gives owners an incentive to keep areas vacant rather than leasing to marine uses. This presumption should be reversed so that vacant counts as non-marine in the calculation of allowable percentages. 14-311(a)(3). The ratio should be amended to 70%/30%.***

City Staff Suggested Approach.

Clarifying the assertion above, staff does not interpret vacant space to be marine. The inventory process accounts for vacant space as available to marine use. The marine use marketing requirement outside of the NMUOZ warrants such a designation. To count vacant space as having any use is self-contradictory.

Regarding the percentage split, staff looks to the WWG for guidance. The 55%/45% split was a negotiated number resulting from the 2010 process. There are 3 significant projects that we can look to for examples of application: Merrill's Wharf (Pierce Atwood,) Maine Wharf (Scales,) and 60 Portland Pier (Lukes.) *Note: Proprietors of Union Wharf constructed their project under the NMUOZ standards.*

Merrill's Wharf: Constructed after the 2006 WCZ amendments, the Pierce Atwood renovations originally required 100% of the first floor to house a marine use. With five floors of useable space, the property managers were able to reinvest in the pier with *no guarantee of non-marine use on the ground level*. Additionally, as demonstration of adherence to the Development Standards, the project improved berthing access at the pier edge. The project additionally improved storm water quality outletting into the harbor with site improvements. After 2010, the property managers were able to house non-marine uses on the first floor – such as the King's Head Pub. Currently, +/-10% of the first floor is vacant, 45% is in marine office use, and 45% is in non-marine use. Used for self-storage for many years, current marine use of the facility is an expansion over the pre-development condition.

Maine Wharf: The construction of the Scales building on Maine Wharf was the first, and remains the largest, application of the 55%/45% standards. The pier was in failed structural condition prior to the project with the subject building condemned and the southerly end of the pier abandoned due to structural failure. Coincident with construction of the Scales building, utilities were improved and berthing expanded by rebuilding the southerly end and bringing in new floats. Clearly the value of the non-marine ground floor use (Scales) was an important contributor to the property owner's decision to take on the rehabilitation of the pier. If the percentage of non-marine use were less, it is unclear whether investment in the marine components of the pier would have been undertaken.

60 Portland Pier: Similar to the Maine Wharf example above, but smaller in scale, the rehabilitation of the southerly end of Portland Pier was premised on the potential for a high value tenant (Luke's Lobster restaurant.) Previously, public portions of the pier

were in active failure and the New Meadow's Lobster Pound had been inactive for several seasons. The Luke's project is using almost all of the non-marine first floor allowance available for the building (43%), and nearly all allowed for open areas (39%.) Given the deferred maintenance needs of the pier, it is unclear that any investor would have taken on the project without the prospect of the restaurant use. With Luke's, the lobster pound is renewed, berthing improved, and public access secured.

The above examples do not suggest that 45% non-marine use is *needed* for all piers. The Maine Wharf and Portland Pier examples, however, demonstrate that 45% was *sufficient* to spur investment where investment was critically needed. The Pierce Atwood project had sufficient value in upper floors alone; but the historic 5-story, 100,000 sq ft structure is unique within the zone.

Given that fishing community members have spoken most often regarding pressures placed on open areas (parking and storage,) it may be prudent to *look at first floor building space differently from open space* and pier deck area. Staff asks that the WWG discuss the 70%/30% request in the *Selected Issues* separately for building space and open areas. Given that a *lack of marine use parking* continually surfaces as a problem (an *open space issue*) and *first floor vacancies* currently exist (a *building issue*) it is reasonable to consider using different percentage requirements for each.

***Planning staff recommends that further study and analysis be undertaken prior to a decision on the marine/non-marine percentage recommendation.***

4. ***Revise the provisions which were intended to give marine uses first option to rent vacant ground floor space. In non-NMUOZ areas 14-311(a)(3) requires ground floor vacancies and change of occupancy to be offered to water dependent/marine uses. Any time there is a change in occupant, it is to be "made available to new marine occupants." The 60 day marketing period and methods, the terms and rates for comparable marine use space, etc. need to be reexamined, as well as how to put a limit on how much the space can be "improved" or changed (e.g. carpet, removal of exterior doors and loading docks, cosmetic finishes, etc.) so that it is no longer realistically usable by water-dependent uses. The standards should require it to remain usable by active water-dependent uses, not marine office uses, and TIF funds should be allocated toward making these occupancies affordable for these non-office marine uses.***

City Staff Suggested Approach.

Staff agrees that the 60-day marketing provision within the WCZ warrants examination. To staff's knowledge, no marine use has taken advantage of the requirement, nor have any non-marine proposals failed to meet the test. It is unclear whether the provision should be abandoned or tightened. The requirement is unique in the City's land use code and unusual for zoning generally.

Regarding the suggestion that interior finishes be limited to those "realistically useable by water dependent uses," staff recommends caution. Marine offices are permitted as are non-marine uses. For the City to dictate that they may not be

carpeted, as an example, appears overly prescriptive. Finish treatments can be removed in the future as needed.

The dimensional requirements already dictate 15 feet of floor to ceiling clearance to promote industrial use and potential conversion to marine use for the future. Staff recommends tightening the performance standards to *ensure that buildings can be accessible for loading as an additional measure* – a measure not employed in the Pierce Atwood building on Maine Wharf with the lack of loading potential possibly contributing to long-standing vacancy.

***Planning Staff will research alternatives for possible presentation at the February 7 meeting or at a future meeting.***

**5. *The provision on the required City inventory should be examined and enforced. (14-311((a)(3)(d)).***

City Staff Suggested Approach.

Staff agrees that the marine economy needs to be regularly assessed as a measure of success for land use regulations. The current inventory requirement is two-fold.

Firstly, at time of site plan projects must demonstrate their adherence to the 55%/45% requirements. This is a necessary step and has been successful in understanding the application of zoning on individual piers and wharfs at the time of regulatory review.

Secondly, the City is responsible for creating an aggregate inventory for all areas outside of the NMUOZ on an annual basis. Given the effort of a building-by-building accounting for all properties (with no data to aggregate unless there is an active site plan,) staff asks the WWG *is there an alternative to the current process?* Data is needed; but, is the current process producing the data set that is most useful for future decision making?

The current inventory could be replaced with an alternative assessment of the marine economy with a broader use than the narrow version on the books. The current inventory is limited to only a portion of the WCZ, does not count the number of commercial vessels, is silent on marine employment, and provides no indication of the value of economic impact of marine industries. It does capture projects and change, excluding the NMUOZ; however, those are changes that are largely evident from more casual observation. All careful observers of the WCZ knew that the Scales building was the biggest project between 2012 and 2018 and that the vacancy of Berlin Mills Wharf was a major event worth paying attention to.

In 2010, the City Council was right to hold the community accountable to changes on the Waterfront. However, an annual report of “significant development” would be far more achievable than the current requirement and likely as informative. If coupled with a regularly funded “state of the waterfront” assessment of broad marine industry

indicators every 2-5 years, the community would likely be far better informed than provided for in the current WCZ language.

- 6. Reinforce exclusive marine use of the pier edge.** *The pier edge reserved for marine uses is only defined as a 5 foot setback from the edge of the pier, bulkhead, or engineered shoreline. It says that area may only be used by marine uses, but there is no requirement that it affirmatively be made available for that use. In theory, it could be kept vacant and as it is now written, this vacant space is allocated toward the 55% requirement for marine uses. This needs to be amended and enforced so that the 5-foot setback (or the current physically available setback) is not reduced or eliminated. The 5-foot setback area (or the current physically available setback) should be combined with dockage rental.*

City Staff Suggested Approach.

The current 5-foot pier edge set back is both a dimensional requirement for building placement, and a performance standard for development outside of the NMOUZ. It was originally established to ensure pedestrian access to berthed vessels. Staff is aware of no instances where such spaces have been kept vacant or cordoned off to exclude vessel access. Staff does not recommend requiring leased space on the pier deck to be dedicated to the adjacent berth. Such a relationship is best negotiated between land lord and tenant. To *require* that deck space be tied to the berth would cause berthing rates to increase on those piers where such a relationship has not been negotiated between the pier owner and berthing tenant. One should note, that many piers do offer space adjacent to the berth, while other provide or allow for floats. Access to berthed vessels, however, is important and best addressed through the performance standards. See below.

The primary pier edge use running contrary to the *5-foot rule* is non-marine parking – much of which has been in constant use for decades and is legally non-conforming (grandfathered.) Newer pier edge non-marine use parking, not covered by any grandfathering status, has expanded incrementally over the years and staff agrees that increased enforcement against such expansion is warranted. See the discussion on Parking (section 8) and Enforcement (section 9) below. *An outright ban on new non-marine pier edge parking is worth considering* to strengthen the language of the performance standards.

- 7. Reexamine and revise contract or conditional rezoning standards in all waterfront zones to make sure they further retention of the working waterfront.** *In addition to meeting the performance standards, the intent is that it a proposed non-marine development is only justifiable and will only be allowed if it produces a net benefit for one or more water dependent uses -- "without the development the site could not otherwise support an economically viable water-dependent use." There are several other standards. These standards should be reviewed and strengthened to make sure they further the retention of the working waterfront.*

City Staff Suggested Approach.

Staff continues to recommend eliminating Contract and Conditional rezoning in the WCZ. Consistent with the tasks for the WWG, other waterfront zones are not currently under evaluation.

- 8. Analyze parking provisions to clarify what parking should be allowed in the WCZ and amend as necessary.** *Parking is a major competitor for space that is otherwise needed by WDUs to function adequately. 14-311 (d)(8), the performance standard for off-street parking and loading, and the interpretation of permitted uses, should be strengthened to provide a priority for permissible parking for various uses (permitted, conditional, accessory, located inside or outside the zone, on or off the lot) and to determine under what conditions, if ever, a parking structure should be allowed in the WCZ. Parking for any uses not permitted in the zone should be made available only if the parking needs of permitted uses and island parking needs have been satisfied. Enforcement of two parking spots on the piers for captain and crew per commercial fishing boat.*

City Staff Suggested Approach.

**NOTE: Parking is a complex and extensive issue. Staff suggests taking an entire future meeting, or more, to adequately cover. The following discussion is provided as an introduction to the topics raised in the Selected Issues letter.**

Authors of the *Selected Issues* letter are right to identify parking as a critical issue to address. Parking is a problem in both its lack and its abundance – too few spaces for some, too many spaces occupying area otherwise useful for industry or access. Parking draws unwanted traffic to the waterfront at the same time it is needed for the waterfront to survive. The revenues generated by parking are predictable, low cost, and needed by many pier owners, dissuading improvements for marine industry. Parking rules are also wickedly difficult to enforce on private properties where the City has no authority to ticket or tow. How does one determine if a car is associated with a marine use? One can make *assumptions* based on vehicle appearance, but zoning enforcement needs a stronger basis prior to taking municipal action against a property owner or tenant.

Taking the *Issues*, one at a time:

- a. provide a priority for permissible parking for various uses (permitted, conditional, accessory, located inside or outside the zone, on or off the lot)**

Currently, the WCZ standards prioritize marine and water dependent use parking.

- Non-marine parking is subject to the 55%/45% rule – either inside or outside a structure.
- All new non-marine parking is subject to an evaluation of adequacy for marine use.
- Water dependent uses “shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.” wcz 14-311(d)8d

Staff is open to hearing suggestions for further prioritizing parking uses, but cautions that overly complex hierarchies will likely be difficult or impossible to enforce - a criticism that has reasonably been leveled at the *current* hierarchy by many.

As noted in the 55%/45% discussion above, parking is a major component of both marine and non-marine use for open areas. One approach to prioritizing marine use parking, is to prioritize marine use of open areas generally – leaving it to pier owner and tenant to allocate space as needed for tenant needs, but to *further limit non-marine use in open areas of the zone*. The *Selected Issues* letter suggests 70%/30% as noted above.

***b. determine under what conditions, if ever, a parking structure should be allowed in the WCZ.***

There are no parking structures in the WCZ. Currently, new parking developed in the zone is only allowed to serve on-site use (for either permitted or conditional uses.) *Commercial parking* – as a primary use serving off-site uses or daily transient parkers - is currently *not a permitted use*. All lots providing such services are either older legal non-conforming (grandfathered) lots or are in violation of zoning. For example, the Portland Fish Pier has a commercial parking lot providing significant revenue for the pier operations and maintenance – this lot was developed prior to the 1987 referendum and is therefore grandfathered to serve off-site uses. Newer lots, such as at the Gulf of Maine Research Institute, are only allowed to serve their own employees, tenants and visitors.

Staff seeks guidance from the WWG as to whether an on-site parking use should be prohibited from developing a garage for permitted uses.

***c. Parking for any uses not permitted in the zone should be made available only if the parking needs of permitted uses and island parking needs have been satisfied.***

The WCZ performance standards for parking currently provide the following:

*Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.* wcz 14-311(d)8c

The significant issues appear to occur on piers where grandfathered non-marine parking is extensive or on piers where little parking is available for any use. Illegal non-conforming parking exacerbates shortages but does not appear to be a primary source of conflict on most piers.

*Islander parking* is currently considered parking for an *off-site use* and therefore *not permitted* in the zone as a distinct use. Islanders can and do make use of the grandfathered non-conforming commercial lots within the WCZ, but they compete

within the general parking market for these spaces. Making the limited parking supply available in the WCZ beyond the grandfathered commercial lots available to islanders will further compete with on-site marine use, which appears contradictory to the priorities of the zone and the concerns expressed by fishing interests.

Extinguishing grandfathered rights for commercial parking is worth discussing, but is a significant issue and not taken lightly. Dozens of businesses and hundreds of individuals have relied on legal grandfathered parking in the WCZ for decades. Revenue from these lots has been a significant contribution to the financial stability of the Portland Fish Pier as well as other private piers. City Corporation Counsel will need to opine on the advisability, legality, liability (regulatory taking?) and mechanism for such an approach, if suggested. *If extinguishing legal non-conforming status of existing parking lots is to be considered, the WWG should provide City Corporation Counsel and other staff sufficient time to research the issue and take the topic up as a separate agenda item at a future meeting.*

#### *Adding new permitted parking uses*

If expanding islander parking is considered within the WWG process, the permitted use section of the zone (14-307) could be amended to add *Islander Parking* as a permitted use. Staff suggests caution on such an approach. The supply of Islanders hungry for waterfront parking could well place significant strains on an already strained parking supply. It would be an unfortunate outcome of the WWG process if marine uses were left with fewer parking options due to competition from Islanders.

Other off-site parking uses may be considered, included creation of a *Marine Use Parking* category. Technically, under current rules, one pier cannot rent parking space to a marine tenant on another pier (as an off-site use) except within the grandfathered commercial lots. A *marine use parking* category could allow lease of parking on piers by marine users located on different piers.

#### *d. Enforcement of two parking spots on the piers for captain and crew per commercial fishing boat.*

Currently the WCZ *does not require any specific number of parking spaces to be dedicated to each vessel*. See subsection c. above for how water dependent uses are prioritized. Mandating reservation of two parking spaces per berth will likely result in a significant cost increase for berthing for some, or many commercial vessels.

The City is considering several ways to *provide parking for marine uses outside of zoning*, such as hang tag systems and prioritized access to the municipal parking

supply. Such options lie outside of zoning and should be thoroughly explored by the WWG during an agenda item dedicated to that topic at a future meeting.

- 9. Reexamine/revise key performance standards to make certain they are adequate to protect Water Dependent Uses (WDUs).** *Performance standards 15 and 16 (14-311(d) (15 and (16)) are critical for protecting marine uses, particularly WDUs, and giving them priority in the zone. They need to be reexamined to determine how the City is applying them, and to make certain they are adequate and to determine whether it is possible to use these provisions to require that pier owners, where possible, provide the minimum needed by commercial fishing tenants (e.g., a dedicated parking space, access to utilities, storage, loading and offloading space, etc.) and whether they are being used to protect the ability to accommodate potential future WDUs even if WDUs are not currently occupying the space.*

City Staff Suggested Approach.

**Planning Staff will provide a memo under separate cover addressing Performance Standards**

- 10. Enforcement of zoning.**

City Staff Suggested Approach.

Enforcement of the code is important and staff looks to the WWG for a discussion on appropriate *mechanisms for reporting violations for City follow up*. City Corporation Counsel cautions that enforcement of ordinance is a municipal function subject to local and state statute with an assumption of discretion in application – *not all violations rise to the level of an enforcement action.*

It is hoped that better communication between pier owners and tenants and a *wider understanding of applicable rules can foster better land use compliance prior to municipal action.*

Attachments:

*Selected Issues Proposed for Review*, provided by Sandra Guay, by email to the Economic Development Department by email on January 24, 2019



Memorandum  
Planning and Urban Development Department  
Planning Division

To: Waterfront Working Group Members  
From: Matthew Grooms, Planner  
Date: February 4, 2019  
Re: Waterfront Central Zone (WCZ) Performance Standards  
Meeting Date: Meeting #3, February 7, 2019

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**I. Introduction:**

In response to feedback from the Waterfront Working Group at the January 17, 2019 meeting, Planning staff in coordination with the Economic Development Department have drafted responses to ten concerns raised regarding Waterfront Central Zone standards. Broadly speaking, these concerns focus on finding a sustainable balance, fostered through zoning standards, between marine and non-marine uses, wherein non-marine uses are leveraged to support marine uses through revenue and infrastructure investment. Marine uses meanwhile are subject to fewer restrictions and permitted across the entire zone. The memo as drafted by Mr. Needelman, Waterfront Coordinator, identifies conceptual first approaches in addressing these issues, and is intended as the basis for a follow-up discussion with the WWG.

As part of this response package, Planning staff are providing a memo under separate cover that discusses performance standards in greater detail. Performance standards were specifically identified by members of the fishing community and their legal representatives as an area of concern and should be looked at as a critically important tool for ensuring compatibility between marine and non-marine uses. The discussion found herein is not intended as a prescriptive or fully flushed out recommendation, but as an overview of staff's initial response to these concerns. Staff will be seeking feedback from members of the group before preparing draft amendments to the zone for presentation and review by the Planning Board.

**II. Approach**

From a zoning perspective, the goal of this process is to rectify substantive issues with the Waterfront Central Zone (WCZ), shore up language that is unclear or easily misinterpreted and remove redundancy and out of date language where it exists. The existing WCZ framework will remain; however staff have identified several possible improvements worth further consideration that fall outside the scope of the WWG process. This includes general formatting, standards that function as intended (though may be more appropriately located in another section of the City's code), and other standards subject to future change in accordance with studies or planning processes currently being completed.

Simultaneous with the WWG process, the City is undertaking a rewrite of the City's Land Use Code which aims to significantly streamline the document and create a more flexible regulatory framework that is in harmony with the Comprehensive Plan. The 'ReCode Portland' process, (<https://www.recodeportland.me/>), is well underway and may be the appropriate vehicle for

addressing organizational or clarifying changes that are outside the scope of the WWG's top priorities. Any ReCode changes proposed would be consistent with the feedback received from this process, and would be available for input prior to implementation.

### III. Performance Standards

#### A. Overview of Performance Standards

The Waterfront Central Zone (WCZ) like many zones across the City takes a hybrid approach to regulating uses. This is accomplished through traditional "Euclidean" zoning (use and dimensional restrictions) and performance-based zoning, which regulates the impact of uses, ensuring that disparate uses are compatible with one another. Existing performance standards apply to all uses, regardless of whether or not they are permitted by-right or conditionally. For the reference of the WWG, the list of performance standards are as follows (See Section 14-311(d) for complete description):

- Outdoor storage of materials
- Noise
- Vibration
- Federal and state regulations
- Discharges into harbor areas
- Storage of vehicles
- Landfill of docking and berthing areas
- Off-street parking and loading
- Public view protection
- Shoreland and Flood-Plain Management
- Lighting
- Signs
- Storage of Pollutants
- Urban Design
- Pier and Wharf Extension
- Compatibility of Non-Marine Uses
- Functional Utility of Piers

#### B. Discussion of WWG Concerns Related to Performance Standards

At prior WWG meetings, members of the group raised concerns regarding impacts related to parking and traffic and those generated by non-marine uses. As noted above, members of the fishing community and their legal representatives also provided staff with a document titled, "Selected Issues Proposed for Review by the Waterfront Working Group", which stated the following:

*Reexamine/revise key performance standards to make certain they are adequate to protect Water Dependent Uses (WDUs). Performance standards 15 and 16 (14-311(d)(15 and 16)) are critical for protecting marine uses, particularly WDUs, and giving them priority in the zone. They need to be reexamined to determine how the City is applying them, and to make certain they are adequate and to determine whether it is possible to use these provisions to require that pier owners, where possible, provide the minimum needed by commercial fishing tenants (e.g., a dedicated parking space, access to utilities, storage, loading and offloading space, etc.) and whether they are being used to protect the ability to accommodate potential future WDUs even if WDUs are not currently occupying the space.*

In reviewing performance standards, the staff have considered not only the two standards identified by the WWG, but how they work in combination with the other fifteen (15) standards as well. In beginning this discussion, it is worth mentioning that zoning is not applied retroactively to existing uses that pre-date the WCZ performance standards. New development, at time of site plan

review (and certain changes of use) are required to demonstrate compliance with the zoning as written. The review authority must determine that these seventeen (17) standards as written are being met before approval of a site plan application may be granted. Uses in existence prior to the adoption of this ordinance that do not comply with these standards are considered legally non-conforming (grandfathered), and so long as the level of non-conformity is not increased and the use continues to operate, that use is exempt from meeting these standards. Since adoption in 2010, the following projects were reviewed under the current standards; Pierce Atwood Building, Union Wharf Office Building, Scales Restaurant, and Lukes Lobster. There have also been several smaller 'changes of use' not identified here that were reviewed against the noticing standards as part of the building permit review.

Below is a summary of performance standards fifteen (15) and sixteen (16), and some potential improvements to make these two, and the performance standards overall, operate more effectively. As everyday users of the working waterfront, the zoning necessarily relies upon input from stakeholders and additional input is welcome about what aspects of the standards, if any, could be improved. The February 7<sup>th</sup> meeting is an opportunity to gather feedback and incorporate additional restrictions as necessary to a future draft amendment.

1. #15: Compatibility of Non-Marine Uses with Marine Uses

This standard requires that non-marine uses and activities associated with those uses shall carefully and thoughtfully take into consideration the ongoing needs of marine uses, whether that be maintaining necessary travel-ways, access to berthing areas or general operations, when designing a site to accommodate a non-marine use.

Staff Discussion: This standard is open-ended, and reinforced throughout the zoning (see other applicable standards listed under Section 14-311(a and b) regarding the NMUOZ and non-marine standards). The standard itself does not attempt to foresee every eventuality, and instead provides the developer with some flexibility in designing their site. A possible way to retain this flexibility while strengthening the standard is to explicitly outline the requirement for an **Operations and Access Management Plan** (a narrative and visual) from applicants to demonstrate how the non-marine use would not impede the operation of an existing marine use. This could be incorporated into a stand-alone requirement related to access management combining several items from 14-311, and that option is discussed below.

2. #16: Functional Utility of Piers

Standard #16 (a-d) applies to new development's impact on the functional and operational needs of water-dependent pier tenants to access the water's edge for the transfer of goods, including provisions for storage and movement of goods; retention of adequate circulation areas abutting and near pier edges; limitations on new non-commercial berthing; and retention of access, parking, and loading areas for marine uses. Portland's working waterfront depends on the efficient transfer of goods between vessels and the shore, and then from the shore to our street system. The functional utility of piers standard applies to both marine and non-marine uses, and requires that those uses not interfere with a water dependent use's ability to complete this transfer of goods.

Staff Discussion: Standard #16 is an extensive, multi-part requirement. Staff will run through the individual criteria at the February 7<sup>th</sup> meeting and will be seeking feedback from the WWG based on practical experience to see if #16 needs changes. Given the prescriptive nature of this standard, and the existing overlap between several of the performance standards, staff are contemplating combining a few of the standards into a new required **Operations and Access Management Plan**, that would be required of all projects located in the WCZ. This is discussed in greater detail below. If a project is otherwise subject to a site plan review, performance standard requirements of the zone are to be incorporated into the submitted material.

#### C. Operations and Access Management Plan

One concept that is being considered is a new standard that may be incorporated as a performance standard, being called an **Operations and Access Management Plan**. This standard would seek to condense several existing standards, namely standards eight (8), fifteen (15) and sixteen (16) into a new requirement that any proposed development in the zone provide a detailed plan and accompanying narrative that describes how a proposed use accommodates reasonable access for pedestrians, vehicles and freight transfer to and from berthed vessels. The intent is that a proposed use would need to clearly identify travel ways (existing and proposed), areas for material storage, parking, and public access points to the water's edge. The standard requiring this plan would likely be less prescriptive than the existing set of standards, providing greater flexibility to the developer in designing their site and accommodating the needs of water dependent uses. It also would combine several related standards by bringing them together under one submission requirement.

#### D. Other Recommendations

As mentioned in the introduction, the staff envisions removing several redundant and or unnecessary standards, namely the 'federal and state environmental regulations', 'shoreland and floodplain management' and 'signs' standards, as they are applicable city-wide, in all zones, and are not performance standards and are not unique to the WCZ. Similarly, language may be cleaned up to read more clearly, while maintaining the substance of the standard. Some initial observations were that the lighting standard may make more sense in the City's Technical Manual for site lighting and that the parking standards, in line with other zones, may be relocated to the City's Off-Street Parking and Loading section of the zoning code. These are preliminary observations and may warrant further discussion as we continue on in this process.

### IV. **Next Steps**

The purpose of the February 7<sup>th</sup> meeting is first to respond to concerns raised by the Waterfront Working Group, and to discuss potential zoning tools to further the goals of the group. Based on feedback of staff approaches to zoning, as well as further discussion at the February 7<sup>th</sup> meeting, we will begin to incorporate the feedback received from the group into a comprehensive amendment to the WCZ, which would then be taken to the Planning Board for review. At the January 22<sup>nd</sup> meeting of the Planning Board, the Board indicated that they would prefer to see this process with the WWG as it relates to zoning conclude, and then review all proposed changes at one time to the extent possible. Staff will continue to provide updates on zoning at future meetings of the WWG, and encourage active participation of group members at future Planning Board meetings. All meetings of the Planning Board would include opportunities for public input. The goal is to complete the Planning Board process before the moratorium on new non-marine uses in the WCZ end in May of 2019.

V. **Attachments**

- a. WCZ Performance Standards