1. Legal Ad

   Documents: PB LEGAL AD 9-15-15.PDF

2. Agenda

   Documents: PB AGENDA 9-15-15.PDF

3. India Street Form Based Code

   3.I. Report And Attachments

   Documents: INDIA ST. FORM BASED CODE (REPORT AND ATTACHMENTS).PDF

4. India Street Historic District

   4.I. Report And Attachments

   Documents: INDIA STREET HISTORIC DISTRICT (REPORT AND ATTACHMENTS).PDF

5. Housing Incentives

   5.I. Report

   Documents: HOUSING INCENTIVES (REPORT).PDF

   5.II. Memo Attachments

   Documents: HOUSING INCENTIVES (MEMO ATTACHMENTS).PDF

   5.III. Revised Attachment A1

   Documents: REVISED ATTACHMENT A1 - IR-1 9.14.2015.PDF

   5.IV. Public Comment

   Documents: HOUSING INCENTIVES (PUBLIC COMMENT).PDF

LEGAL ADVERTISEMENT
PORTLAND PLANNING BOARD MEETING

The Portland Planning Board will hold a meeting on Tuesday, September 15, 2015, Council Chambers, 2nd Floor, City Hall, 389 Congress Street. **Public comments will be taken at this meeting.**

There is no Workshop portion of this meeting.

Public Hearing – 6:00 p.m.

i. Proposed India Street Form Based Code Zoning, City of Portland Applicant (6:00 – 7:00 p.m. estimated time). The Board will hold a public hearing on the draft India Street Form-Based Code. Form-Based Code is proposed zoning that would replace existing zoning regulations in the India Street neighborhood. Action taken at this meeting and any Planning Board recommendations will be taken up by the City Council.

ii. Proposed India Street Historic District, City of Portland, Applicant (7:00 – 8:00 p.m. estimated time). The Board will hold a public hearing on the India Street Historic District as recommended to the Planning Board by the Historic Preservation Board. Action taken at this meeting and any Planning Board recommendations will be taken up by the City Council.

iii. Housing Incentives (8:00-9:00 estimated time). The Board will hold a public hearing to consider the following Land Use Code text amendments: 1) Division 30 (Affordable Housing) to increase the density bonus for providing affordable units and to add a section requiring inclusion of workforce housing units in developments of 10 units or more; 2) Division 6 (R-5 Residential Zone) Section 14-117 to modify the standards for accessory dwelling units in pre-existing buildings; and 3) Division 7.1 - 7.2 (IR-1 and IR-2 Island Residential Zones) Section 14-145.3 and Section 14-145.9 to modify the standards for accessory dwelling units. The Board will consider a map amendment to the Downtown Height Overlay Map to increase the maximum building height from 45' to 65' in the vicinity of York, Maple and Danforth Streets.

STUART O'BRIEN, CHAIR - PORTLAND PLANNING BOARD

CITY OF PORTLAND, MAINE

PLANNING BOARD

AGENDA
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THERE IS NO WORKSHOP PORTION OF THIS MEETING

PUBLIC HEARING – 6:00 p.m.

1. **ROLL CALL AND DECLARATION OF QUORUM**
2. **COMMUNICATIONS AND REPORTS**
3. **REPORT OF ATTENDANCE AT THE MEETING HELD ON SEPTEMBER 8, 2015:**
   Workshop: Boepple, Dundon, Eaton, Hall, Morrissette (arrived 5:00 p.m.), and Soley present. O'Brien absent.
   Public Hearing: Boepple, Dundon, Eaton, Hall, Morrissette, and Soley present. O'Brien absent.

4. **REPORT OF DECISIONS AT THE MEETING HELD ON SEPTEMBER 8, 2015:**

   i. Recommendation by Historic Preservation Board to Designate the Portland Company Complex; 58 Fore Street; City of Portland, Applicant. Morrissette moved and Dundon seconded a motion to table this item to October 27, 2015 at 7:00 p.m. Vote: 5-1 (Hall, O'Brien absent)

   ii. Zoning Map Amendment; 1945 Congress Street; Northland Enterprises, Applicant. Morrissette moved and Dundon seconded a motion to find the proposed zoning map amendment from Residential R-2 to Office Park (O-P) as shown in Option C with a 40' offset of the OP from the eastern property line is consistent with the Comprehensive Plan and recommends adoption of the proposed amendment to the City Council. Vote: 4-2 (Morrissette and Hall, O'Brien absent)

5. **NEW BUSINESS**

   i. Proposed India Street Form Based Code Zoning, City of Portland Applicant (6:00 – 7:00 p.m. estimated time). The Board will hold a public hearing on the draft India Street Form-Based Code. Form-Based Code is proposed zoning that would replace existing zoning regulations in the India Street neighborhood. Action taken at this meeting and any Planning Board recommendations will be taken up by the City Council.

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STUART O'BRIEN, CHAIR - PORTLAND PLANNING BOARD

PLANNING BOARD REPORT
PORTLAND, MAINE

PROPOSED INDIA STREET FORM-BASED CODE ZONE (IS-FBC)
CITY OF PORTLAND, APPLICANT

Submitted to: Chair O'Brien and Members of the Portland Planning Board Public Hearing Date: September 15, 2015	Prepared by: Caitlin Cameron, Urban Designer Date: September 10, 2015

I. Introduction

The Planning & Urban Development Department is proposing the establishment of a new zone – the India Street Form-based Code zone (IS-FBC) – with related text and map amendments, and accompanying Building Design Standards. The intention of the India Street Form-Based Code is to provide zoning code that more adequately and appropriately reflects the existing and desired built form and scale of the India Street neighborhood. The IS-FBC is currently proposed for the India Street neighborhood only and would replace all existing zoning in the neighborhood.

Why Form-based Code?
A Form-based Code was first proposed as part of the India Street Sustainable Neighborhood Plan (ISSNP) process. The India Street neighborhood, one of the oldest in the city, has many available development parcels. Consequently, several new developments have recently been built or proposed in this neighborhood. Neighborhood residents called for a neighborhood plan that included consideration of the form of development in the neighborhood, many feeling as though the new development allowed by the current zoning was out of scale with the existing context. While the recently completed ISSNP does include development principles regarding the form of development in this neighborhood, it was determined an overhaul of the underlying zoning was appropriate to achieve the vision of the neighborhood plan document. Much of the existing zoning in this neighborhood was retroactively located and does not reflect the character of the built environment, much of which was developed before the zoning codes existed.

Form-based Code (FBC) is different from Euclidean zoning in that it shifts the priority away from use and focuses on the form, dimensional, and design components of zoning. Traditional Euclidean zoning will often have dimensional requirements but focuses on land use. The purpose of the new IS-FBC zone is to place primary emphasis on a building's physical form and its relationship to the street and to de-emphasize land use. As a mixed-use neighborhood, separation or regulation of uses in India Street is not highly desired or appropriate. The intent of the IS-FBC zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use, urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas.

The Planning Board hearing includes review of a new zone, related text and map amendments, Building Design Standards, code administration, interaction with historic preservation within the India Street Form-based Code zone, and a proposal for an evaluation process of the FBC.

II. Public Process

The India Street Form-based Code has been developed over several phases. In March/April 2013, as part of the Sustain Southern Maine initiative, a visual preference study and technical workshop were held to collect input from the neighborhood and other stakeholders especially on the topics of height, form, and land use. Subsequently, Richardson Associates compiled this information into an Emergent Vision Plan (found in the ISSNP) which was a guiding document in the development of the India Street Sustainable Neighborhood Plan. The ISSNP is pending Council approval and can be found here: http://www.portlandmaine.gov/1114/India-Street

With the formation of the India Street Neighborhood Advisory Committee in November 2013, a group of stakeholders tasked with developing the India Street Sustainable Neighborhood Plan, five Working Groups were created to develop different components of the Plan. One of these five groups is the Form-based Code/Land Development Working Group which has continued to work with staff on the development of the Form-based Code; this group is comprised of residents, business owners, developers/land owners, architects, and a member of the Planning Board. Components of the FBC have been presented throughout the neighborhood planning process to the India Street Neighborhood Advisory Committee (meetings were open to the public) for feedback and review as well as one public meeting held in the summer of 2014 to present the neighborhood plan and some of the implementation tools proposed such as the FBC and historic district. The materials were also periodically made available online on the project webpage.

Throughout the process the Working Group and Staff have sought out feedback from stakeholders and related groups – residents, business owners, real estate developers, Portland Society for Architecture, Greater Portland Landmarks, the Historic Preservation Board, and the India Street Neighborhood Association.

Planning Board Process
Workshop 1 – (2/24/2015) Introduction to proposed Form-based Code (FBC) content
Workshop 2 – (3/30/2015) Site Walk + Discussion of FBC revisions, Introduction to draft Historic District
Workshop 3 (6/06/2015) – Discussion of FBC revisions, Administration of code, Historic District interaction
Workshop 4 (6/23/2015) – Discussion of Future evaluation of code, Administration of code, FBC and Historic preservation interaction
Public Hearing (9/15/15) – Final presentation of IS-FBC documents for possible recommendation to Council (It is intended that the Planning Board recommendations on the ISSNP, the IS-FBC, and the proposed Historic District will be sent to the Council together as a package.)

III. Conformance with the Comprehensive Plan and the India Street Sustainable Neighborhood Plan

<u>Comprehensive Plan</u>
As an implementation tool of a neighborhood policy document, the IS-FBC conforms to the Comprehensive Plan in the following ways.

From the *Downtown Vision Plan*
"Three areas with significant development and redevelopment potential have been identified in areas that are on the perimeter of the Downtown . . . These sites – Bayside, India Street, and Gorham's Corner – each display characterizes that are colorful and truly unique. . . . Because market forces have not always produced beneficial results to both public and private interests, the City hopes to provide a design framework that would guide growth."

"A Vision of India Street in the Year 2020: Redevelopment would focus on strengthening the vitality of the community within and establishing clearer connections to the Downtown and Munjoy Hill. India, Middle, and Congress Streets would reinforce their identities as active retail corridors, through building infill along the streetlines and through encouraging small businesses to relocate to the area. As well, infrastructure improvements and landscaping would make these corridors pedestrian-oriented spaces. It is critical to retain the residential enclaves east and west of India Street, with special attention to the upper story residential along retail corridors in order to maintain a certain level of activity. . . . Because of the large number of vacant lots, infill of buildings on all streets is needed to make India Street a more vibrant and continuous community."

- The IS-FBC (as well as the ISSNP) is in agreement with the vision set forth in the Downtown Vision Plan for the India Street neighborhood. Regulations in the new code reflect the concentration of retail and activity on those streets identified here with the requirement of frequent entries, active storefronts. Mixed-uses and active street fronts are encouraged by not regulating or separating uses in the zone and placing surface parking to the interior of lots. New development is expected to meet the existing patterns of street walls.

From *A Community Vision for Portland*
<u>A City That is a Good Plan to Live</u>
"Portland retains a small town feel with a built environment that is scaled for people, is pedestrian friendly, and is accessible to the community. Residents value and seek to enhance the safety of the community, the proximity of commercial uses near residences, and the walkable nature of the city. . . .Portland has an active and vibrant downtown both day and night due to its interwoven mix of residential, commercial, institutional, and cultural land uses."

- The IS-FBC allows for and encourages mixed-use development and concentrates activity to specific streets. The goal of the IS-FBC is to encourage infill development that is appropriate for an urban context that is walkable. This is accomplished by maintaining smaller scale buildings, mixed uses, and frequent entries and ground floor design that provides activity on the street.

A City That Values its Natural, Architectural, and Cultural Heritage
"Portland is a historic maritime city, which: Retains a rich historic character for both commercial and residential neighborhoods; Offers a broad spectrum of architecture and distinctive landmarks; and Maintains unifying features, such as brick buildings and sidewalks, and established and traditional neighborhoods with narrow and interconnected streets."

- The IS-FBC guides new development towards context-sensitive designs. The regulations promulgated by the IS-FBC are derived from conditions in the existing built environment.

From *Portland's Goals and Policies for the Future*
State Goal A: "To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl."

- Like other neighborhood plans developed in Portland, the ISSNP and IS-FBC were created to promote and manage growth in an existing urban setting and using existing infrastructure. The code encourages infill development that is appropriate for the India Street community and Portland as a whole.

From *Housing and Population*
A Shortage of Housing: "Increasing Portland's housing stock in developed urban areas of the city is challenging, but necessary for the long-term health of the city."

- The IS-FBC, unlike other zones in the city, does not regulate density which allows flexibility of design and housing types that can accommodate more dwelling units.
- The code uses incentives like height bonuses for high residential density.
- The IS-FBC seeks to remove barriers like parking requirements to allow for more housing types and density to be built.

Current Impacts on Neighborhood Stability and Integrity: "Building the integrity and quality of Portland's neighborhoods is key to encouraging the type of growth Portland needs both to support it in the future and counter regional sprawl."

- The IS-FBC seeks to address this goal by regulating new development in a way that builds on the existing character and identity of the India Street neighborhood.

From *Transportation Resources*
Moving Locally: The Neighborhoods: "Balancing the realities of the motor age with the imperative of highly livable neighborhoods is at the heart of the transportation issues and policies at the neighborhood level. And it bears directly on the health of the City. If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently –then the City has lost much of its competitive advantage over the suburbs."

- The IS-FBC promotes urban development patterns which includes design choices that create safe and walkable streets.

Neighborhood Land Use: Some neighborhoods, especially those more recently developed, lack even routine daily services within walking distance. Where such services do exist, the zoning ordinance often considers them to be non-conforming uses."

- The IS-FBC removes land use regulation (except for a few prohibited uses) to further promote mixed-use development appropriate for an urban neighborhood.

Downtown Parking: Council Goals for Downtown Parking

- To manage the supply of on and off street parking spaces to achieve maximum and optimum use.
  - The IS-FBC specifies where parking may occur in order to promote active uses at the street and achieve maximum and optimum use of urban property at the street frontage.
- To explore the possibility of using assessments on parking to fund bicycle and pedestrian improvements, so facilities serve multiple uses.
  - The IS-FBC allows developments to take advantage of the parking fee-in-lieu which provides funding to multi-modal transportation infrastructure.

From *Waterfront Resources*

Redevelopment of Waterfront East: Character and Impact of Development: "Development within the eastern waterfront will be compatible with the surrounding areas, neighborhoods, natural environment and maritime uses."

- The code was developed with compatibility to the existing neighborhood and surround areas as a core goal.

Redevelopment of the Waterfront East: Mixed Use: "Development within the eastern waterfront will create a vital and active mixed use urban area that generates life and use every day of the year and all hours of the day."

- The IS-FBC removes land use regulation (except for a few prohibited uses) to further promote mixed-use and active development appropriate for an urban neighborhood.

India Street Sustainable Neighborhood Plan

The India Street Form-based Code zone is in direct response to the goals and development principles of the India Street Sustainable Neighborhood Plan. The ISSNP was previously reviewed and recommended by the Planning Board and is pending adoption by the City Council. The IS-FBC addresses the following Goals and Development Principles:

Goals:

Good Quality Design

- People are attracted to neighborhoods with good quality design. This includes not only the materials and aesthetics of new development but also the street presence and longevity of a project.
- Compatibility, especially in terms of building scale, is essential in a historic and mixed-used neighborhood such as this one.
- In this neighborhood, good quality design also includes good quality rehabilitation of existing and historic buildings.

Strong Neighborhood Identity Builds on Its Heritage

- Streetscape and building improvements (both existing and historic) as well as new development should contribute to an identity that promotes the neighborhood to prospective residents, tourists, and adjacent neighborhoods as a destination.
- The historic fabric and landmarks tell a story about this neighborhood and are critically important to its identity.

Development Principles:

1. Strong Neighborhood Identity – "The India Street Neighborhood presents a human-scale, downtown-adjacent neighborhood . . . The key principle here is to bring these unique characteristics and assets into closer connection and a cohesive neighborhood identity that will permeate the built environment."
2. Mixed-use Neighborhood – "The India Street neighborhood is today truly a mixed-use neighborhood with residences, businesses, offices, hotels, retail, and restaurants. The neighborhood plan should allow the mixed-use nature of this neighborhood to continue and expand."
3. Retail Corridors – "The neighborhood's vitality will be heightened with more concentrated commercial activity along India and on Congress, Commercial, and Middle streets."
4. Guided Growth – "Due to availability and size of land, significant growth will occur on large redevelopment sites toward the waterfront. As an urban avenue, Franklin Street has valuable frontage along which new development will redefine the neighborhood's edge and contribute to its identity as a desirable residential/mixed-use district. Smaller infill developments will be strongly encouraged as a way to expand the capacity for neighborhood growth."
5. Form of Development – "Neighborhood growth will carefully consider form and scale, with an emphasis on "human scale" development and good quality design. Graduation of form will vary by location so that future new development is appropriate to its surrounding context. Within intact historic streets, form is modulated to approximate surrounding building forms. In larger blocks presently dominated by surface parking, new buildings will be scaled proportionately to allow larger buildings with mass and scale designed to achieve a human scale street presence, protection of street view corridors, and varied and permeable block faces. The intended outcome will be a harmonious composition of new and old buildings that fit well together to create a lively fabric of modern and traditional building forms.

   The Importance of Form – The identity of a downtown adjacent neighborhood is dictated in large part by its scale and pedestrian-friendly design. Critical elements include[1]:

   - Relatively high residential density within a relatively small district, putting many people within walking distance of many activities and, for trips outside of the district, regular and reliable bus service with bus stops;

[1] These are drawn from the India Street Neighborhood workshop discussion, the City's design manual, and reference materials such as Ewing and Bartholomew, *Pedestrian- and Transit-Oriented Design* (2013).

- A fine-grained mix of uses – both horizontal and vertical – that invite a flow of people at different times of the day, seven days a week;
- A street pattern with pedestrian-scaled blocks. Longer blocks and larger buildings will be interrupted and made permeable by mid-block pedestrian ways, alleys, or streets;
- Continuous sidewalks designed with universal access and widths scaled to the pedestrian activity of the street, to allow two couples walking in opposite directions to comfortably pass each other;
- Strong street walls with development placed close to the property line at street frontage
- Street-oriented buildings, with commercial and mixed use buildings with "permeable" facades – front entrances and fenestration that relate to the street;
- Human-scale buildings – neither so tall as to block a pedestrian's cone of vision at four stories, nor so horizontally large or dominated by a single use as to discourage the casual interaction between pedestrians and a mix of uses along the street.

I. Proposed Amendments to Chapter 14: Land Use Ordinance

Article III: Zoning – Text and Map amendments
The new IS-FBC zone will be added to the existing Chapter 14 Land Use Ordinance.

1. Div. 1 Sec. 14-48. Establishment of the IS-FBC India Street Form-based Code zone (Refer to Attachment 3)
2. Div. 15.2 IS-FBC India Street Form-based Code zone (Refer to Attachments 1 & 2)
   The goal of the IS-FBC is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.
   i. Components of the zone
      1. Purpose and General Guiding Principles
      2. Applicability
      3. Definitions
      4. Establishment of Subdistricts
         - Urban Neighborhood (UN)
         - Urban Transitional (UT)
         - Urban Active (UA)
      5. Definitions Illustrated
      6. Regulating Plan
      7. General Development Standards
      8. Subdistrict Dimensional Requirements
      9. Dimensional Requirements Illustrated

   ii. Revisions from the previous version (6/06/15)

1. Removed unnecessary sections: Other Provisions, Severability, Compliance with the Regulating Plan, Administration – these items are addressed in other parts of Chapter 14
2. Definitions revised or added:
    a. GREEN ROOF – revised to reference applicable and enforceable Maine standards
    b. MID-BLOCK PERMEABILITY – definition added for clarity
3. General Development Standards
    a. Frontage Requirements – Additional Building Length – this section was moved from the Subdistrict Dimensional Requirements to because it applies to all subdistricts. Table format was added.
    b. Setbacks – The 10' exception for corners was moved from the Subdistrict Dimensional Requirements section because it applies to all subdistricts
    c. Landscaping and Screening
        i. Explicit requirement to screen surface parking added
        ii. Wall/Fence dimensional requirements changed to table format
    d. Building Additions – clarifying language added
    e. Height Bonus – this section revised to allow height bonuses only for those properties fronting Congress Street and UT streets.
4. Subdistrict Dimensional Standards
    a. UN
        i. Max. Building Length changed to 30' – to better reflect the existing context; in light of revisions to the India Street Historic District, to reinforce the existing scale of buildings and prevent aggregation of lots
        ii. Additional Building Length only allowed with Attached Buildings – to limit new construction to building types and scales appropriate to this subdistrict
    b. UT – formatting changes only
    c. UA
        i. Additional Building Length for Massing Variation no longer allowed – to limit new construction to building types and scales appropriate to this subdistrict
    d. All Subdistricts
        i. 75% of total building length must be built within the 1st LOT LAYER (changed from 60%)
5. Illustrations added to following sections:
    a. Subdistrict Dimensional Requirements - Corner
    b. Dimensional Requirements Illustrated

<u>Article III Division 20: Off-Street Parking</u> – Text amendments <u>(Refer to Attachment 3)</u>

In order to make it easier for new construction to meet the standards of the IS-FBC and to relieve building scale and form from being dictated by automobile parking, this zone will provide for several off-street parking options:

1. No off-street parking shall be required for the first three residential units
2. Any development subject to site plan review shall be eligible for the parking fee-in-lieu

Article V: Site Plan – Text amendments (Refer to Attachment 3)
In order to facilitate an efficient development review process, a higher Level III review threshold is proposed for project applications in the IS-FBC. Fewer projects would go to Planning Board review, theoretically shortening the review time for more applications. Two text amendments are proposed to reflect this administrative change:

1. Level II Site Plan Review: New Construction or Additions of less than 50,000 sf
2. Level III Site Plan Review: New Construction or Additions of 50,000 sf or more

II. Proposed Changes to the City of Portland Design Manual

IS-FBC Building Design Standards (BDS) (Refer to Attachment 4)
A new section is proposed to be added to the Design Manual to create design guidelines for the new IS-FBC zone. The goals and requirements of the design review are listed under three headings:

- Intent – Intent statements are provided to define goals which the guidelines and standards have been created to achieve. In circumstances where the appropriateness or applicability of a guidelines or standard is in question or under negotiation, the intent statement will provide additional direction.

- Guidelines – Design guidelines provide further considerations to promote the goals defined by the intent statements. Guidelines use the term "should" or "may" to denote they are considered relevant to achieving the stated intent, and will be pertinent to the review process but will not be required for approval. Guidelines will, however, be strongly considered when there is a request to waive a related standard.

- Standards – Design standards are objective criteria that provide specific direction based on the stated intent. Standards are used to denote issues that are considered critical to achieving the stated intent. Standards use the term "shall" to indicate that compliance is required.

The BDS is divided into the following categories of review:

1. Neighborhood Context
2. Massing & Proportion
3. Articulation & Composition
4. Fenestration
5. Building Materials
6. Building Entries
7. Roof Lines
8. Structured Parking

Waivers may be requested if an alternative is proposed that meets one or more of the following conditions:

1. The alternative better achieves the stated intent
2. The intent which the standard was created to address will not be achieved by application of the standard in this particular circumstance
3. The application of the other standards and guidelines to achieve state intents will be improved by not applying this standard
4. Unique site factors make the standard impractical or cost prohibitive

Revisions from the previous version (6/06/15)

1. Minor language revisions throughout for clarity
2. Addition of Standard 2.1 to provide guidance on the conditions for buildings using ground floor partitions to achieve additional building length.
3. Addition of Illustrations to emphasize desirable design elements in this zone

III. Code Administration

Application Requirements

Applicants submitting under the India Street Form-based Code shall submit required application materials defined in Article V Site Plan.

Development Review Procedures (Refer to Attachment 6)

- Staff will use an internal checklist developed to evaluate and process IS-FBC applications efficiently.
- Development review will be conducted in accordance with the procedures set forth in Article V Site Plan of the City of Portland Zoning Ordinance, and as further defined by the table below:

Type of Application	**Definition**	**Level of Review**	**Reviewing Authority**
Site Plan: Level I or II	• Construction of any new structures having a total floor area of **less than fifty thousand (50,000) square feet** in the IS-FBC zone. • The construction of any building addition(s), cumulatively having a total floor area of **less fifty thousand (50,000) square feet** within any three-year period in the IS-FBC zone.	Administrative Site Plan	Planning Staff

Site Plan: Level III	• Construction of any new structures having a total floor area of **fifty thousand (50,000) square feet or more** in all IS-FBC subdistricts. • The construction of any building addition(s), cumulatively having a total floor area of **fifty thousand (50,000) square feet or more** within any three-year period in the IS-FBC zone. • The construction of any building addition(s) have a total floor area exceeding that of the existing building to which it is an addition.	Level III Site Plan	Planning Board
Master Development Plan	The Master Development Plan option shall apply in the IS-FBC zone.	Master Development Plan	Planning Board

<u>Design Review</u>

- Building Design Standards (BDS) – The Building Design Standards will be adopted as part of the City of Portland Design Manual and will be the applicable design standards for the IS-FBC zone. The Design Manual may be revised by the Planning Board without City Council approval.
- Design review is mandatory for all new construction and addition projects in the IS-FBC zone.
- Process:
  - Projects will continue to have in-house design review (conducted by a committee of three Planning Division staff members including the Urban Designer).
  - Level III Site Plan design review will include Planning Board review.
- Historic District Design Review Process
  - Historic Landmarks and projects within a historic district: Alterations, Additions, and New Construction include design review by HP staff or board
  - Projects within 100’ of a historic district or historic landmark: Advisory review by Historic Preservation staff or board, Design review by Planning staff or board

IV. IS-FBC and Historic District Interaction

The IS-FBC zone includes an existing historic district and landmarks as well as a proposed historic district and landmarks. The following is proposed:

- Review Processes only covered by Historic Preservation
  Alteration – Building alterations do not undergo a design review under FBC.
  Demolition – Zoning/Planning does not review demolition applications.

- Existing Historic District (Eastern Waterfront Historic District)
  Where the existing historic district overlaps the FBC zone (Commercial and Franklin Streets), the current historic preservation review process will remain. The current historic preservation review process does allow heights to be reduced for compatibility reasons. No amendments are proposed to the Eastern Waterfront Historic District at this time.

- Proposed Historic District (India Street Historic District)
  Height - The following three recommendations as to height regulation are suggested for the India Street Historic District. These recommendations are a result of internal discussions, feedback from stakeholder groups, and the Historic Preservation Board process:
  1. Underlying zoning height of the IS-FBC will apply to the historic district and may not be limited by the Historic Preservation review process except in the case of a building addition which proposes to change the height of an existing building.
  2. The Historic Preservation review (board or staff) has authority to determine how the height is achieved including requirements that may reduce overall volume.
  3. Height bonuses may be applied within the historic district to properties fronting onto Congress Street only.

- 100’ Rule (Site Plan Ordinance)
  Historic Preservation provides an advisory review of new construction proposed within 100’ of a historic district boundary or the property line of a historic landmark. The HP review advises the Planning staff or board review of the project.

V. Future Evaluation of IS-FBC

The following evaluation process for the code would become part of the Planning Office work plan:

Upon IS-FBC Implementation

- Project data is logged for development projects subject to the IS-FBC (this data is currently kept and archived in Urban Insight and e-plan)
  - Project size, type, cost
  - Length of review
  - Checklist(s)
  - Memorandum of development review comments
  - Design drawings – evolution of design review documented

- Exit survey from development team at conclusion of project subject to the IS-FBC for feedback on the process and how the code affected the project implementation and design

At Year 3 (2018/19)

- Planning Staff work plan includes time (1-2 months) dedicated to review of IS-FBC
- Project Data: Staff reviews and analyzes project data
- Survey – Development teams: Exit surveys are collected and analyzed
- Survey – Neighborhood stakeholders: Neighborhood residents, business owners surveyed for feedback on new projects
- Survey – Staff: Internal feedback
- Staff Recommendations: Staff prepares a report and recommendations to address any issues or feedback resulting from the evaluation
- Planning Board Review: Staff presents report with analysis and recommendations for revision to IS-FBC to Planning Board which will then determine whether to adopt revisions or explore further options
- City Council: Potential map or text amendments approved by Council

VI. Staff Recommendations

Staff recommends that the Planning Board find the proposed new IS-FBC zone, related text and map amendments, and Building Design Standards to be consistent with the Comprehensive Plan and the India Street Sustainable Neighborhood Plan and recommend to the City Council adoption of the new IS-FBC zone, related text and map amendments, and Building Design Standards.

VII. Motions for the Board to Consider

On the basis of the information contained in the Planning Report and testimony presented at the public hearing, the Board finds:

The proposed India Street Form-based Code zone, related text and map amendments, and Building Design Standards (are or are not) in conformance with the City of Portland Comprehensive Plan and the India Street Sustainable Neighborhood Plan and therefore (recommends or does not recommend) approval of the proposed IS-FBC zone, related text and map amendments, and the Building Design Standards to the City Council.

Attachments

1. India Street Form-based Code Zone
2. India Street Form-based Code Regulating Plan
3. Chapter 14 Land Use Code Text Amendments
4. IS-FBC Building Design Standards
5. Administrative Checklist
6. Development Review Flow Charts (2)

Att. 1

DIVISION 15.2 IS-FBC - INDIA STREET FORM-BASED CODE ZONE

SEC. 14- XXX. PURPOSE

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use, urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.

   1. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.

   2. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.

   3. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept away from the street. Shared infrastructure to the extent practicable, including, but not limited to service alleys, parking areas, stormwater treatment, public transportation facilities, and driveways, shall be utilized.

   4. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the district which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.

   5. Respect historic character. If a property is within the India Street Historic District, **Sec. xx** is applicable. New construction, BUILDING ADDITIONS, or ALTERATIONS in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

SEC. 14- XX APPLICABILITY

The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN.

~~SEC. 14-XX OTHER PROVISIONS~~

~~All development must comply with relevant Federal, State, and City regulations. Whenever any provision of this Code imposes a greater requirement or a higher standard than is required in any State or Federal statute or other local by-law or regulation, the provisions of this Code shall govern unless preempted by State or Federal law.~~

~~SEC. 14-XX SEVERABILITY~~

~~The provisions of this Code shall be severable, and in the event one (1) or more of the provisions of this Code shall be judged to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired by such adjudication.~~

~~SEC. 14-XX COMPLIANCE WITH THE REGULATING PLAN~~

~~Within the India Street Form-based Code Zone as presented on the REGULATING PLAN, all lots hereafter created or modified, all buildings and structures hereafter erected, reconstructed, altered, enlarged or moved, all uses hereafter established, all other development or improvements, and all plans, applications and submissions shall comply with the requirements of this Form-based Code, as well as with all provisions of this Zoning Ordinance that are not superseded by the Form-based Code Zone.~~

SEC. 14-XX DEFINITIONS

Terms used throughout this Form-based Code Zone may be defined in Section 14-47 or elsewhere in the Zoning Ordinance. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in this Section and those in Section 14-47, or any other sections of the Zoning Ordinance, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this Form-based Code Zone shall take precedence.

ALTERATION: A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

BUILDING ADDITION: Any increase to footprint or volume of an existing structure. See Table 14.1c. Building – Principal & Accessory

BUILDABLE AREA: The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

BUILDING, ACCESSORY: Detatched structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building. See Table 14.1c. Building – Principal & Accessory

BUILDING, PRINCIPAL: The main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.1c. Building – Principal & Accessory

BUILDINGS, ATTACHED: Two or more independent buildings that share at least one common PARTY WALL but have full building separation and independent PRINCIPAL ENTRIES; not free-standing. Attached buildings may or may not have common ownership.

BUILDING DESIGN STANDARD (BDS): The basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

ELEVATION: An exterior wall of a building not along a frontage line. See FAÇADE and Table 14.1e. Frontage & Lot Lines

ENTRANCE, PRINCIPAL: The main point of access for pedestrians into a building. A building may have more than one principal entrance.

EXPRESSION LINE: A line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.

FAÇADE: Any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.1e. Frontage & Lot Lines

FAÇADE, BLANK: Building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

GREEN ROOF: A roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations.~~City of Portland Technical Manual and Chapter 500 standards for stormwater management.~~ A green roof installation must ~~may~~ serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane ~~, energy conservation, insulation, and reduced heat island effect~~. The vegetated area of a ~~G~~green roof~~s~~ may be considered pervious for zoning impervious calculations.

LOT LAYER: A range of depth of a lot within which certain elements are permitted. See Table 14.1d. Lot Layers

MID-BLOCK PERMEABILITY: A continuous, open-air corridor at least 20’ in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

PARTY WALL: Any partition wall common to two adjacent or attached buildings.

~~PASSAGE: A pedestrian connector, open or roofed, that passes between buildings to provide shortcuts through blocks.~~

REGULATING PLAN: A zoning map or set of maps that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

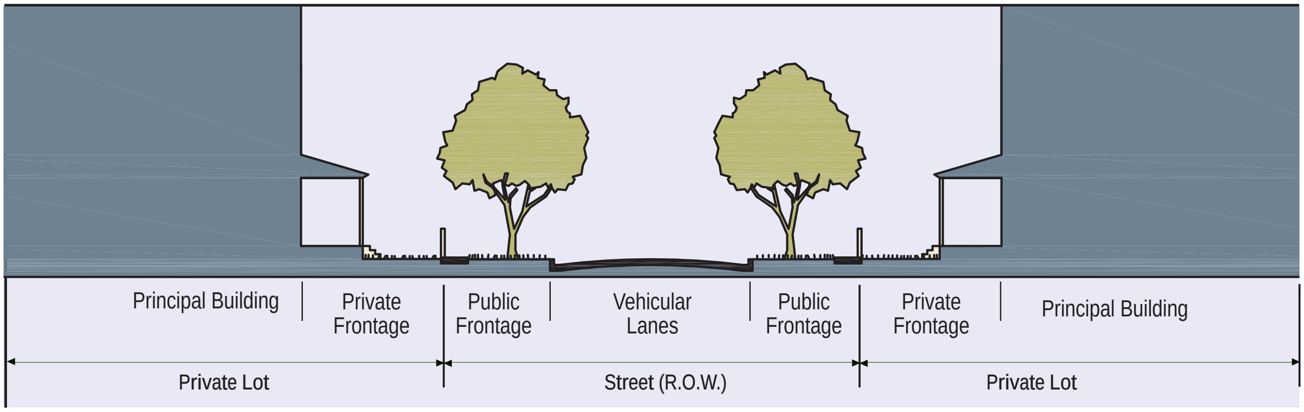
STEPBACK: A building setback of a specified distance measured from the ground floor building face ~~below~~ that occurs at a prescribed number of stories or height above the ground.

YARD, SIDE: A yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.1.b. Setback Designations

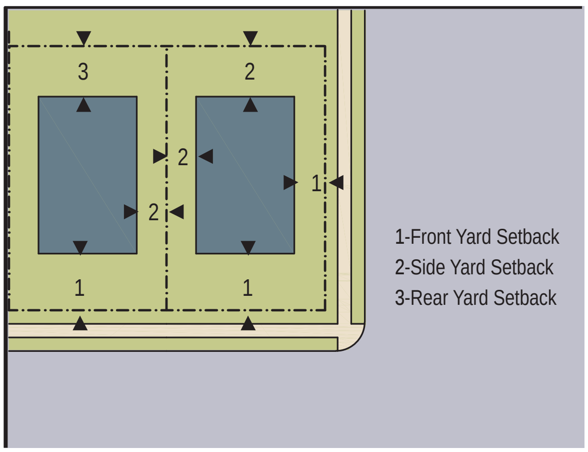
ZERO LOT LINE: The location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.1e. Frontage & Lot Lines

TABLE 14.1 DEFINITIONS ILLUSTRATED

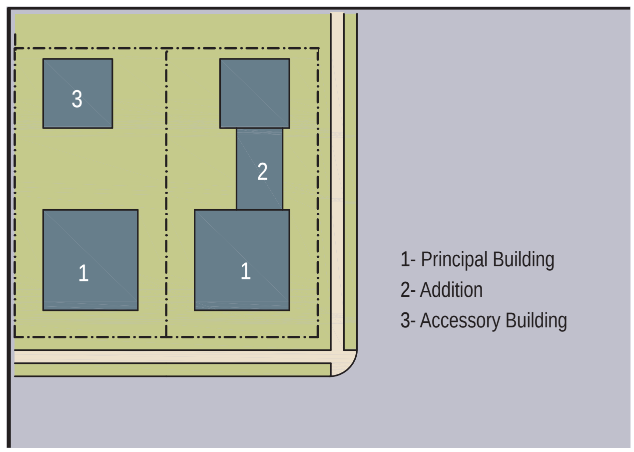
a. STREETS & FRONTAGES



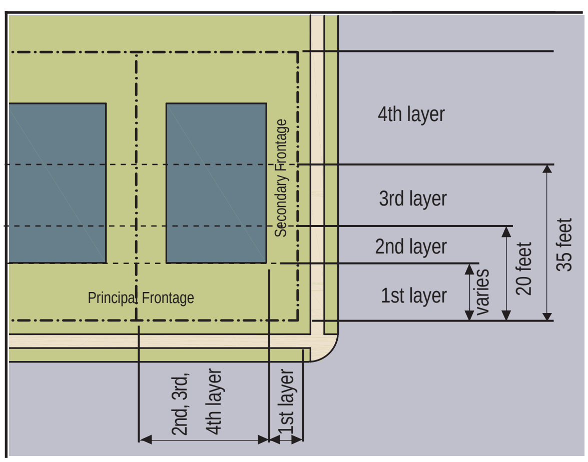
b. SETBACK DESIGNATIONS



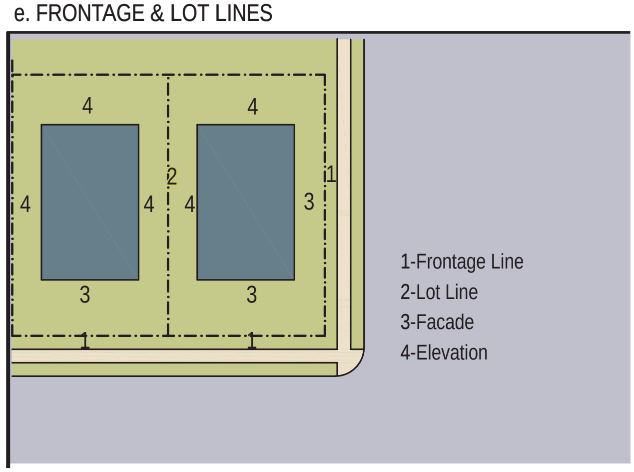
c. BUILDING - PRINCIPAL & ACCESSORY



d. LOT LAYERS



e. FRONTAGE & LOT LINES



SEC. 14-XX ESTABLISHMENT OF SUBDISTRICTS

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts.

a) Urban Neighborhood (UN) Subdistrict

b) Urban Transitional (UT) Subdistrict

c) Urban Active (UA) Subdistrict

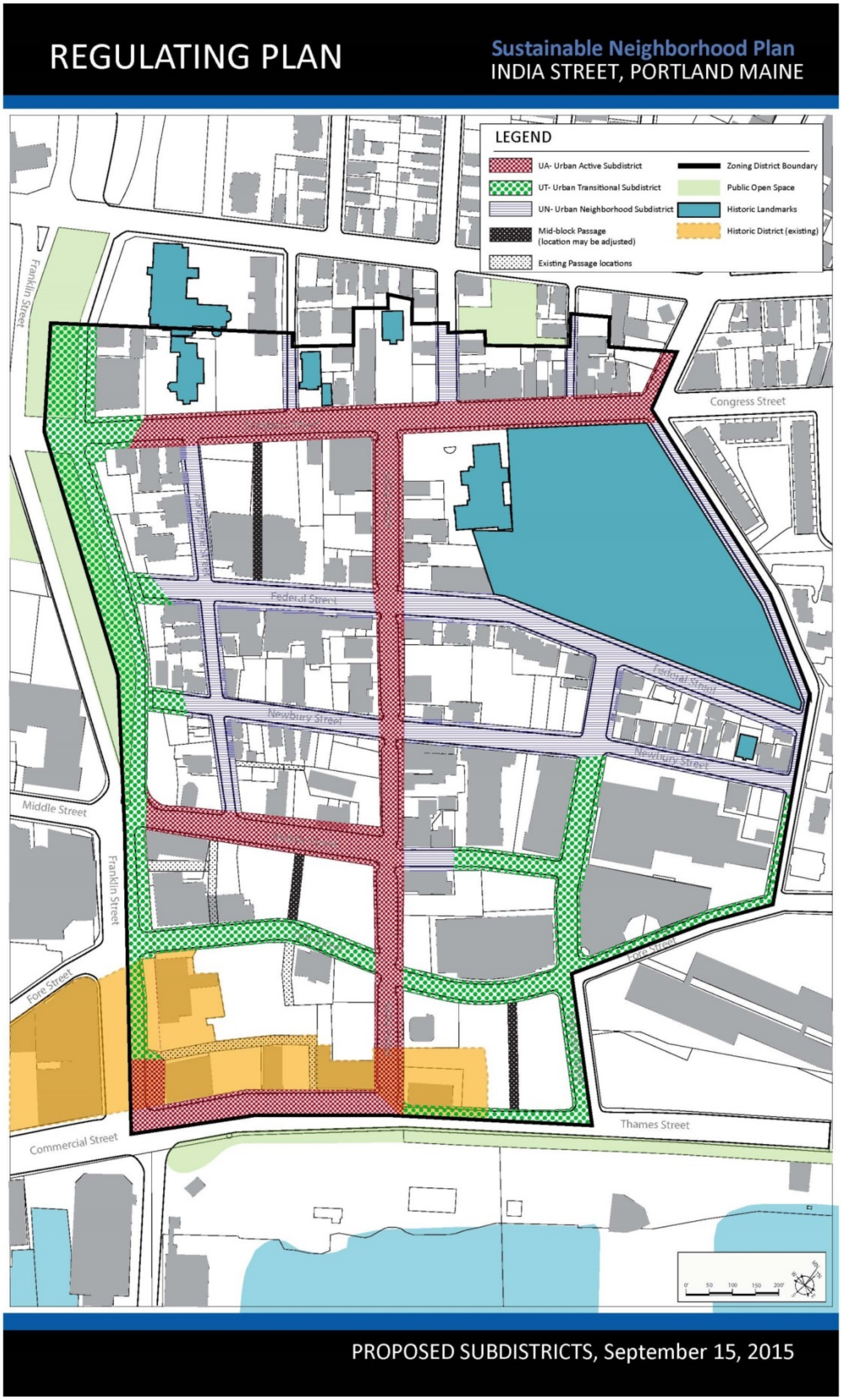
~~SEC. 14-XX ADMINISTRATION~~

~~a) Application Requirements.~~
~~Applicants submitting under the India Street Form-based Code shall submit required application materials defined in Article V Site Plan.~~

~~b) Common Review Procedures.~~
~~Development review will be conducted in accordance with the procedures set forth in Article V Site Plan of the City of Portland Zoning Ordinance, and as further defined by the table below:~~

SECTION 14-XX REGULATING PLAN

~~The REGULATING PLAN provides standards for the disposition of each property, or lot and how each relates to its adjacent properties and streets.~~



SEC. 14-XX GENERAL DEVELOPMENT STANDARDS

The following standards apply to all subdistricts unless expressly stated otherwise.

a) PROHIBITED USES – uses not to be established in the India Street Form-based Code Zone include:

Correctional facilities,

Cremation facilities,

Drive-through facilities,

High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e – y), (aa),

Major/minor auto-service station,

Truck terminals,

Waste related services,

and storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.

b) SITING STANDARDS

1. MID-BLOCK PERMEABILITY
   a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200' in street line length of lot, a full break between structures of at least 20' in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (see Table 14.2a. Mid-Block Permeability)
   b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.
   c. Any development providing ~~new~~ MID-BLOCK PERMEABILITY with public access between two streets is eligible for one (1) additional story of up to 12' in height (see Sec. 14-xx (c) Height Bonuses). Public access shall be defined through a legal agreement such as an easement or license.
   d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.
2. Frontage Requirements - Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:
   a. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.2.d Additional Building Length – ATTACHED BUILDINGS).
   b. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.2.f Additional Building Length – Ground Floor Partitions)
      1. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.
      2. Partitions must be architecturally expressed on the building exterior.

3. Each module created by partition must have at least one functional, street-facing entry.
4. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.

c. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3rd LOT LAYER (at least 20') (see Table 14.2.e Additional Building Length – Massing Variation).

~~a.~~d. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

Additional Building Length				
Subdistrict	**ATTACHED BUILDINGS**	**Ground Floor Partitions**	**Massing Variation**	**Structured Parking Exception**
UN	unlimited run	Not allowed	Not allowed	Not allowed
UT	unlimited run	200' max. length; 2 modules	200' max. length	200' max. length
UA	unlimited run	150' max. length; 3 modules	Not allowed	150' max. length

~~2.~~3. Setbacks

a. Side Yard Setbacks for Small Lots – Lots with street frontage of less than 35' are not required to have side yards.

b. Where new construction or BUILDING ADDITIONS creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement.

~~b.~~c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.

~~c.~~d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

~~3.~~4. Landscaping and Screening

a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof. ~~The lot shall be suitably landscaped to screen parking, surrounding uses, and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).~~

b. Wall/Fence Dimensional Requirements

Wall/Fence Dimensional Requirements		
LOT LAYER	**Height**	**Visual Permeability**
1ST	6' max.	Required above 2' from sidewalk grade
2ND – 4TH	8' max.	n/a

~~4.~~5. BUILDING ADDITIONS

a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds ~~6~~50,000 square feet shall be subject to Level III Site Plan review.

b. A BUILDING ADDITION length may match but not exceed the length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.2b. Additions)

c. BUILDING ADDITIONS may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply.

c) HEIGHT STANDARDS

1. Height Bonus

a. Applicability:

1. If principal frontage faces a UT street or Congress Street, then the building is eligible for a height bonus.
2. Only one height bonus may be applied per structure.

b. One (1) additional story of up to 12' in height is allowed if one of the following provisions is met:

1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor)
2. For any development providing a GREEN ROOF, where:
   □ at least 50% of the cumulative lot area is pervious and,
   □ at least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.

Height Bonuses						
Subdistrict	**Maximum pre-bonus Height**	**Mid-block permeability (publicly accessible)**	**Residential Density**	**GREEN ROOF**	**Maximum Height based on bonuses**	**Minimum Bonus floor Stepback** (from the ground floor building edge facing any public right-of-way)
UN	~~45' and 4 stories~~n/a	~~1 story Up to 12'~~n/a	~~1 story Up to 12'~~n/a	~~1 story Up to 12'~~n/a	~~57' up to 5 stories~~n/a	~~15'~~n/a
UT	65' and 6 stories	1 story Up to 12'	1 story Up to 12'	1 story Up to 12'	77' up to 7 stories	15'
UA (Congress Street only)	50' and 4 stories	1 story Up to 12'	1 story Up to 12'	1 story Up to 12'	62' up to 5 stories	15'

d) PARKING STANDARDS

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. ~~As specified in Division 20, no off-street parking is required to be provided for the first three dwelling units in a multi-family residential development.~~
3. ~~Any development shall be eligible for the Peninsula fee-in-lieu of parking subject to the provisions of Sec. 14-345 of Chapter 14 Land Use Code.~~

~~4.~~2. Structured ~~P~~parking ~~structures~~ must meet the BDS for *Structured Parking* (see City of Portland Design Manual).

~~5.~~3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

Urban Neighborhood (UN) Subdistrict:

INTENT: The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets and sidewalks tend to be narrow.

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length	30' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.)	
Additional Building Length	(see also Table 14.2)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	not allowed
Massing Variation	not allowed
Structured Parking Exception	not allowed

SETBACKS

Principal Building	
(a) Front Yard (1st Lot Layer)	5' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10' min.
Accessory Building	2nd thru 4th LOT LAYERS
Side Yard	5' min.
Rear Yard	5' min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 35'
Principal Entries	
Orientation	any orientation allowed
Elevated Stoop (> 1 step)	allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	25', at least 2 stories
Building Height Max.	45', up to 4 stories
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

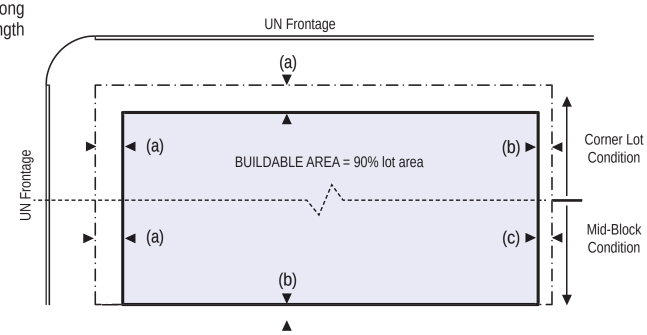
PARKING STANDARDS

Surface Parking Location	
Side Yard	20' max in width per lot; may not exceed 50% of frontage length
Rear Yard	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

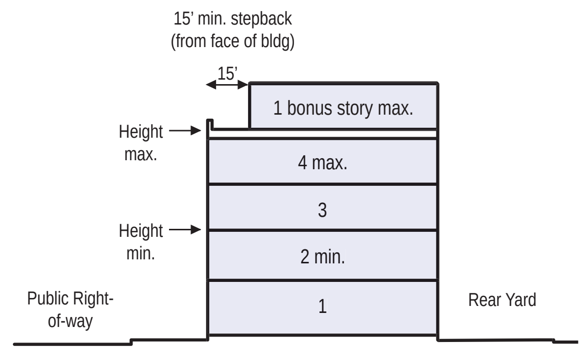
Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

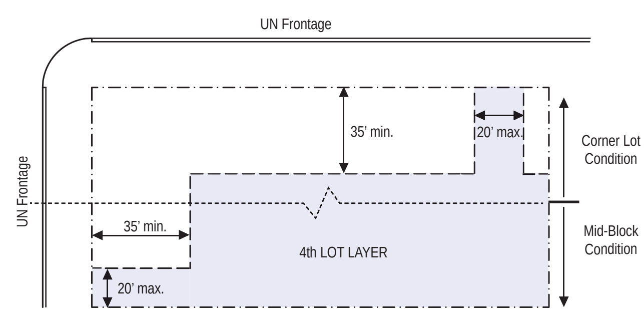
SITING STANDARDS
1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



HEIGHT STANDARDS
1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.



PARKING STANDARDS
1. Surface parking areas may be provided within the shaded area shown.



Urban Transitional (UT) Subdistrict:

INTENT: The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length	100' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.)	
Additional Building Length	(see also Table 14.2)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	200' max., 2 modules
Massing Variation	200' max.
Structured Parking Exception	200' max.

SETBACKS

Principal Building	
(a) Front Yard (1st Lot Layer)	10' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20'
(c) Rear Yard	10' min.
(d) STEPBACK (adjacent to UN)	10' min. stepback after 45' height
Accessory Building	2nd thru 4th LOT LAYER
Side Yard	5' min.
Rear Yard	5' min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 95'
Principal Entries	
Orientation	any allowed
Elevated Stoop (>1 step)	allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	3 stories
Building Height Max.	65', up to 6 stories
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

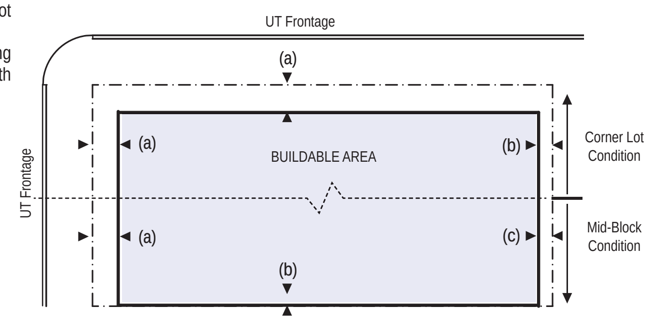
Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

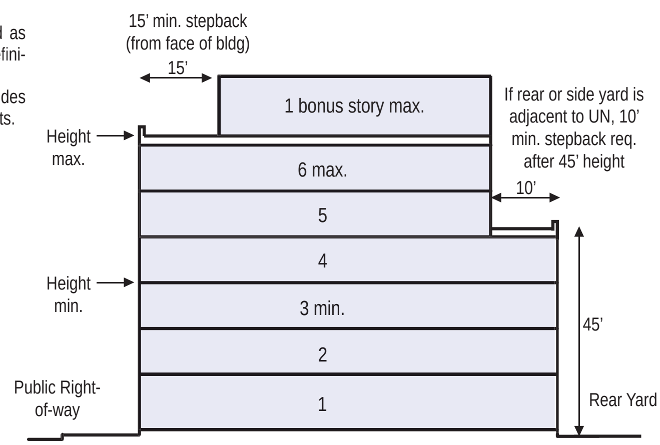
SITING STANDARDS

1. The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



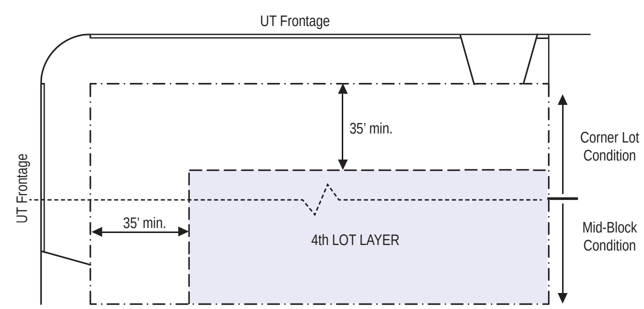
HEIGHT STANDARDS

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.



PARKING STANDARDS

1. Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



Urban Active (UA) Subdistrict:

INTENT: The intent of this subdistrict is to maintain and promote moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage with the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

SITING STANDARDS

Orientation - Principal Frontage	face a UA street
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length	50' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.)	
Additional Building Length	(see also Table 14.2)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	150' max., 3 modules
Massing Variation	not allowed
Structured Parking Exception	150' max.
Fenestration, ground floor	60-90% (see BDS) facade area

SETBACKS

Principal Building	
(a) Front Yard* (1st Lot Layer)	5'0" max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard**	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10'0" min.
Accessory Building	2nd thru 4th LOT LAYERS
Side Yard	5'0" min.
Rear Yard	5'0" min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 40'
Principal Entries	
Orientation	at least 1 facing UA street or corner
Elevated Stoop (>1 step)	not allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	3 stories
Building Height Max.	50', up to 4 stories
Ground Story Height	12'0" min. clear
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback	3rd LOT LAYER
Garage Door Opening (max)	n/a

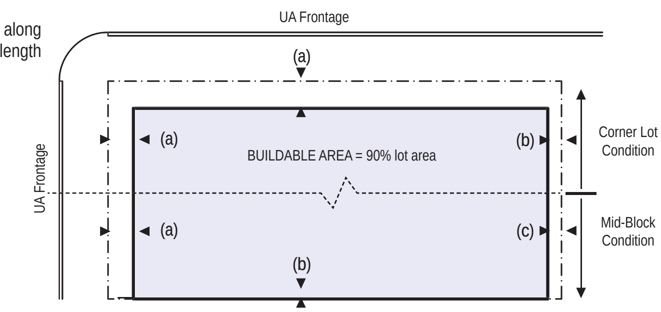
Notes and Exceptions

* Up to 10'0" max. front yard setback is allowed if ground plane at frontage is a continuation of the accessible public right-of-way

** Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

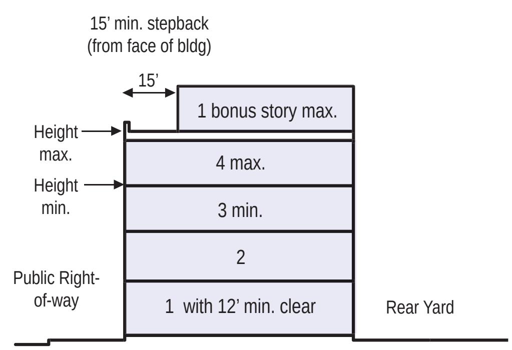
SITING STANDARDS

1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



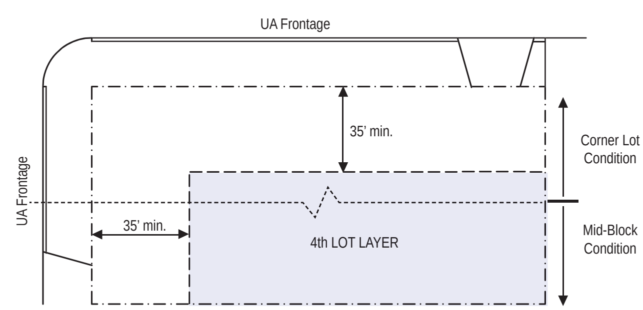
HEIGHT STANDARDS

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.



PARKING STANDARDS

1. Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



Corner Lot:

For corner lots where two different subdistricts intersect at a street corner, the Dimensional Requirements and Building Design Standards of the "dominant" subdistrict shall apply from the 1st through 3rd Lot Layer (35' deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, Dimensional Requirements shall be according to subdistrict onto which the building FACADE faces.

ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street*

SETBACKS

(a) Front Yard (1st Lot Layer)	according to subdistrict
(b) Side Yard	according to subdistrict

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments.

UA INTERSECTS UT

Dominant Subdistrict (35' deep)	UA
Orientation - Principal Frontage	UA street
Dominant Building Design Standards (applicable 35' deep)	
Ground Story Height	12' min. clear
Fenestration, ground floor	60-90% (see BDS) facade area

(measured as a percentage of the FACADE that is 2' above sidewalk grade)

UA INTERSECTS UN

Dominant Subdistrict (35' deep)	UA
Orientation - Principal Frontage	UA street
Building Length - UN FACADES	100' max.
Dominant Building Design Standards (applicable 35' deep)	
Ground Story Height	12' min. clear
Fenestration, ground floor	60-90% (see BDS) facade area

(measured as a percentage of the FACADE that is 2' above sidewalk grade)

UT INTERSECTS UN

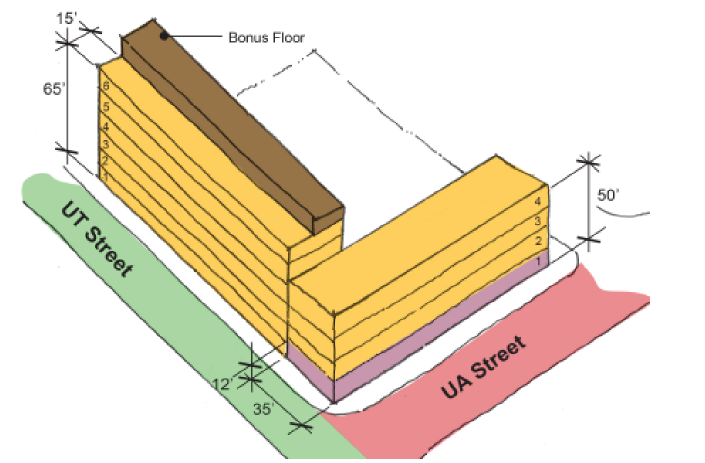
Dominant Subdistrict (35' deep)	UN
Orientation - Principal Frontage	determined by applicant

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation

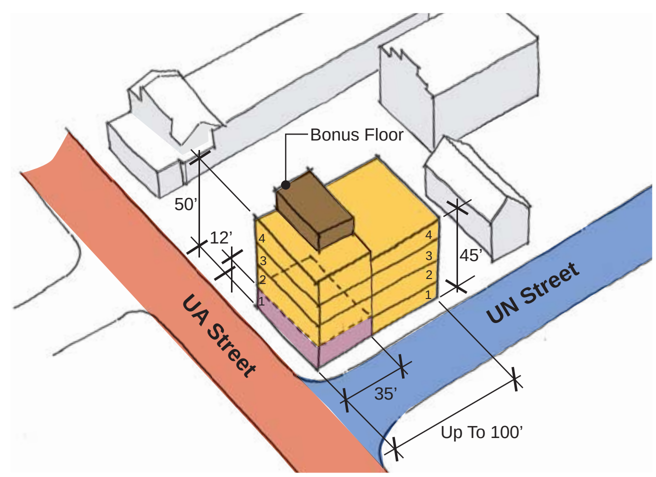
Notes and Exceptions

* Does not have to correspond to legal building address

UA INTERSECTS UT
(example only)



UA INTERSECTS UN
(example only)



UT INTERSECTS UN
(example only)

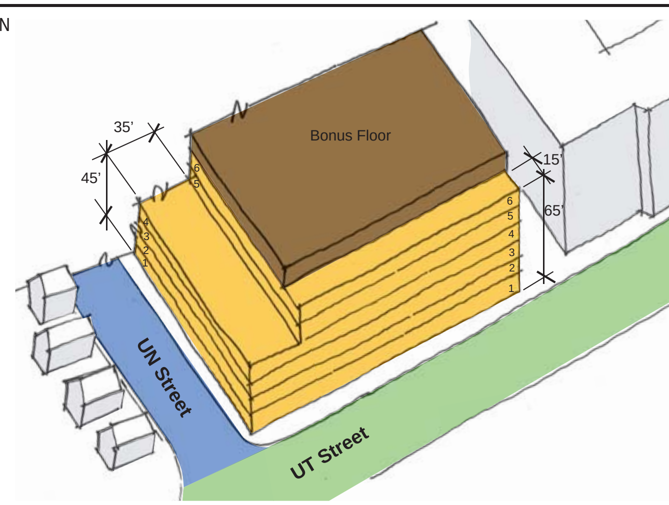
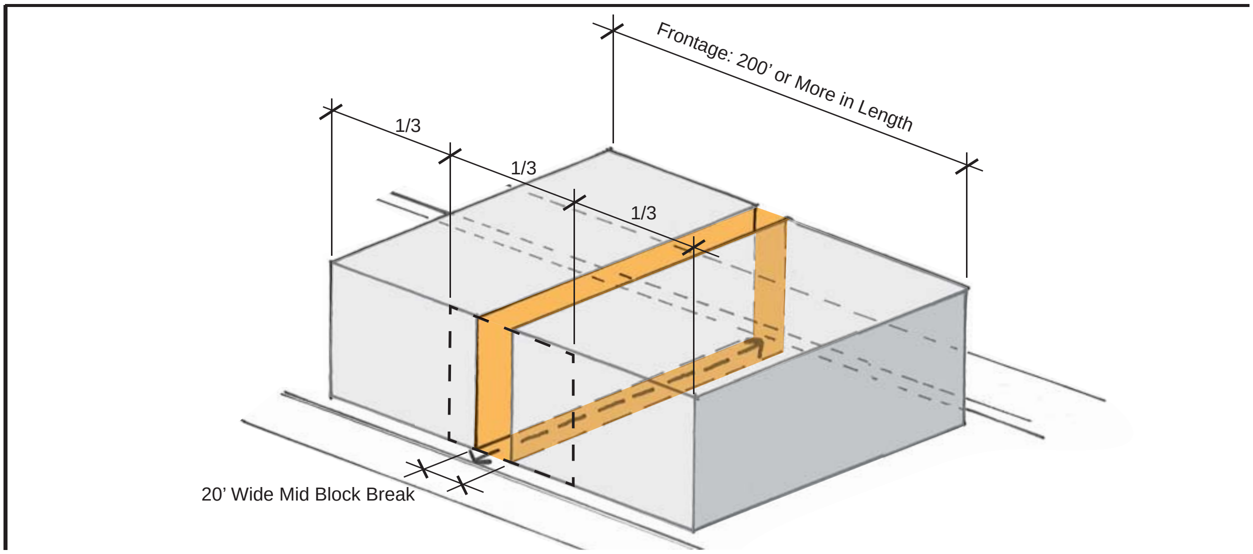
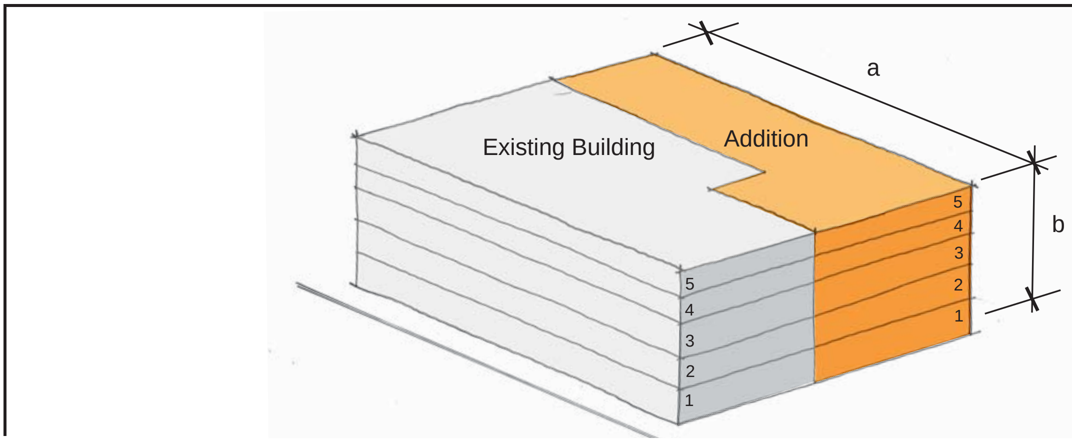


TABLE 14.2 DIMENSIONAL REQUIREMENTS ILLUSTRATED

a. MID-BLOCK PERMEABILITY



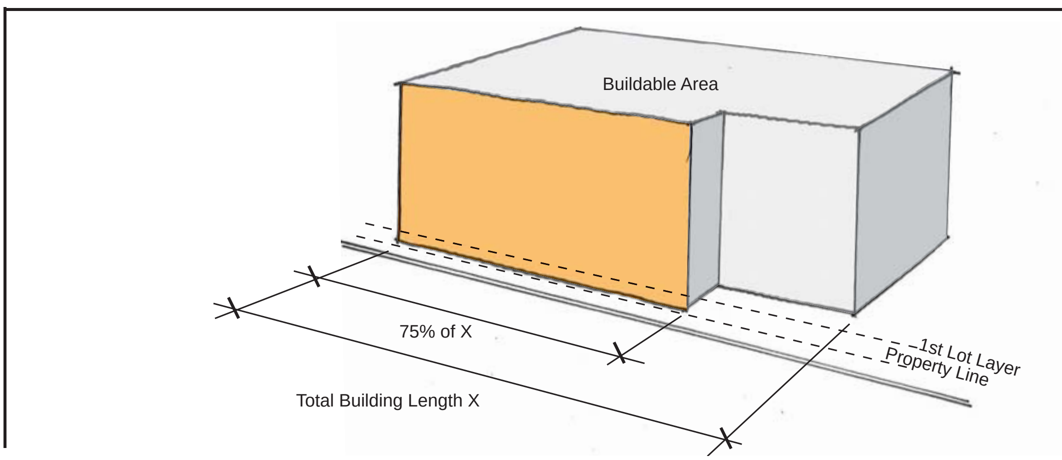
b. ADDITION



a - Addition length may match but not exceed the length of existing building to which it is an addition. All other Subdistrict Dimensional Requirements apply.

b - Addition height may match existing building in number and height of stories. All other Subdistrict Height Standards apply.

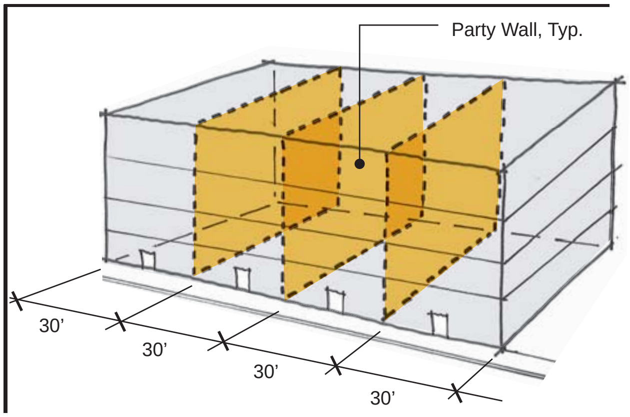
c. BUILDING LENGTH - 1st LOT LAYER



At least 75% of the total building length must be within the 1st LOT LAYER.

TABLE 14.2 DIMENSIONAL REQUIREMENTS ILLUSTRATED

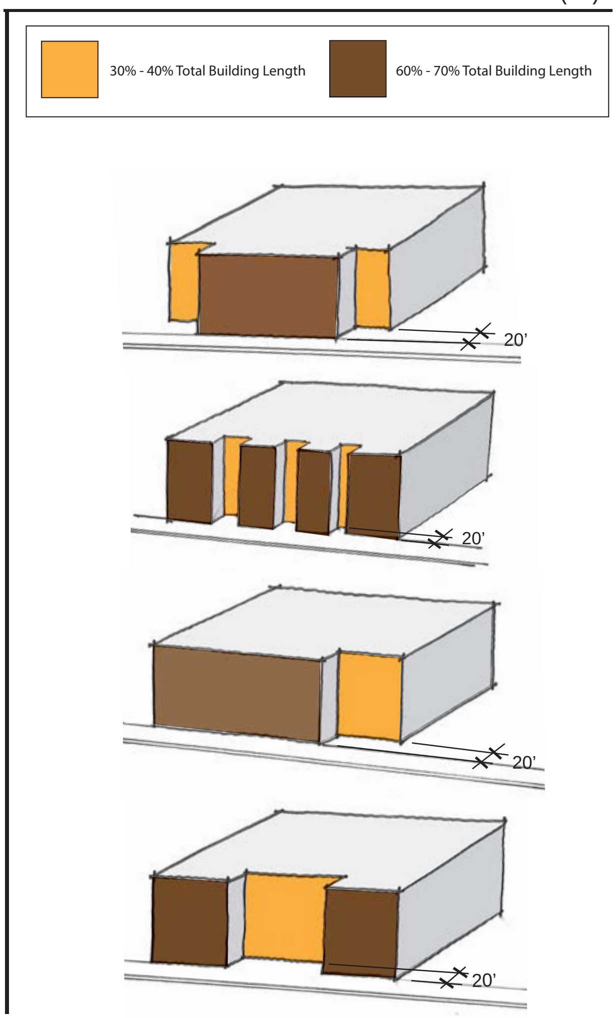
d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS



An unlimited number of ATTACHED BUILDINGS having up to 30’ street-facing building length is allowed.

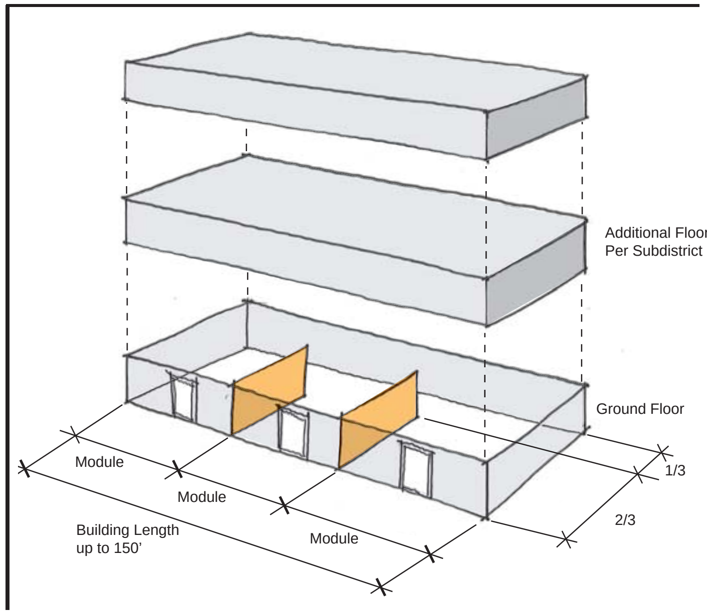
A PARTY WALL condition is required at least every 30’ and for the entire height of each building.

e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback to the 3rd LOT LAYER (20’).

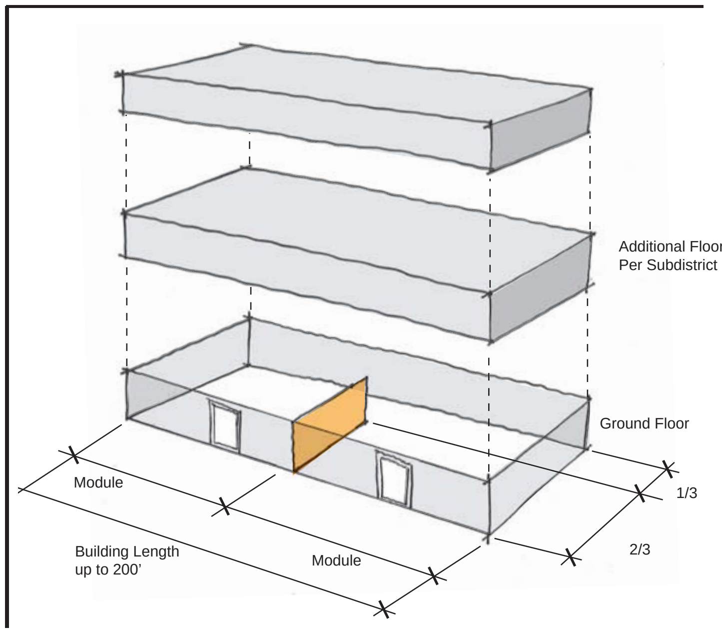
f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)



Additional Building Length is permitted up to 150’ with the provision of a least two Ground Floor Partitions

See General Development Standards and BDS for additional requirements.

f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)

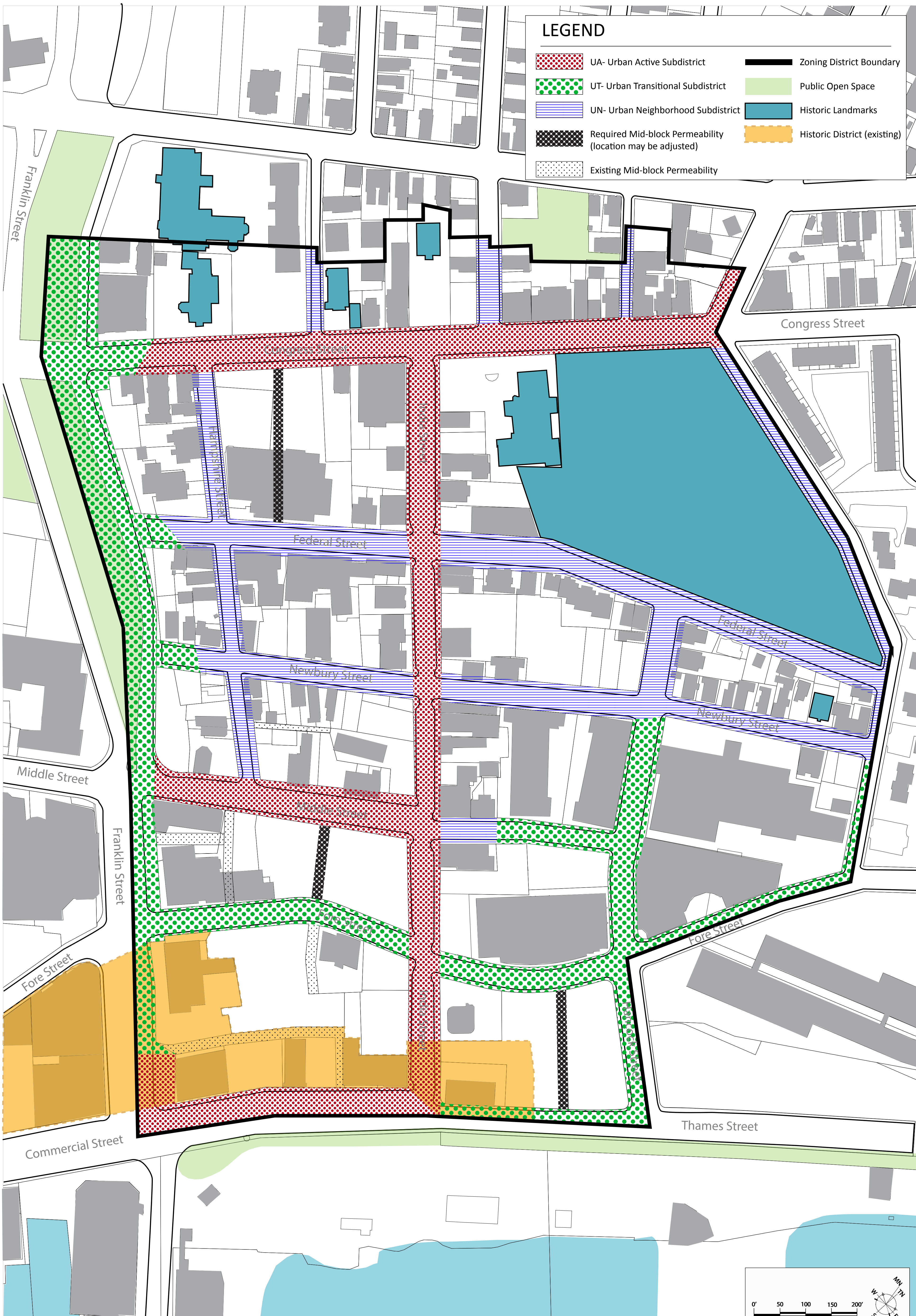


Additional Building Length is permitted up to 200’ with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

REGULATING PLAN

Sustainable Neighborhood Plan
INDIA STREET, PORTLAND MAINE



PROPOSED SUBDISTRICTS, September 15, 2015

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

(a) R-1 Residential zone

(b) R-2 Residential zone

(c) R-3 Residential zone

(d) FH Flexible housing zone

(e) R-4 Residential zone

(f) R-5 Residential zone

(g) R-5A Residential zone

(h) R-6 Residential zone

(i) R-7 Residential zone

(j) IR-1 Island residential zone

(k) IR-2 Island residential zone

(l) IR-3 Island residential zone

(m) Island transfer station overlay zone

(n) R-P Residence-professional zone

(o) R-OS Recreation and open space zone

(p) B-1 and B-1b Neighborhood business zones

(q) B-2 and B-2b Community business zone

(r) A-B Airport business zone

(s) B-3, B-3b and B-3c downtown business zones

(t) I-B Island business zone

(u) B-4 Commercial corridor zone

(u-1)B-5 Urban commercial mixed use zone

(v) O-P Office park zone

(w) I-L and I-Lb Industrial zones

(x) I-M, I-Ma and I-Mb Industrial zones

(y) I-H and I-Hb Industrial zones

(z) B-6 Eastern Waterfront Mixed Zone

(aa) Reserved

(bb) Waterfront central zone

(cc) Waterfront port development zone

(dd) Reserved

(ee) R-P Resource protection zone

(ff) Helistop overlay zone

(gg) Shoreland zone

(hh) Flood plain

(ii) S-P Stream protection zone~~.~~

(jj) IS-FBC India Street Form-based Code zone.

(Code 1968, § 602.1.B; Ord. No. 499-74, § 1, 8-19-74; Ord. No. 536-74, § 1, 8-19-74; Ord. No. 334-76, § 1, 7-7-76; Ord. No. 15-92, § 2, 6-15-92; Ord. No. 101-93, 9-20-93; Ord. No. 164-97, § 2, 1-6-97; Ord. No. 156-01, §1, 1-17-01; Ord. 184-14/15, 6-1-2015)

***Editor's note--**Although not expressly amended by the ordinances enacted subsequent to 1976 which created the several classes of zones, § 14-48 has been expanded to encompass all zoning classifications in the city at the discretion of the editor in consultation with the corporation counsel.

Sec. 14-49. Zoning maps.

state or federal law. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas.

c. The construction of any temporary or permanent parking area, paving of existing unpaved surface parking areas between 1,000 and 7,500 square feet, or creation of other impervious surface areas between 1,000 and 7,500 square feet.

d. The rehabilitation or reconstruction, but not new construction, of piers, docks, wharves, bridges, retaining walls, and other structures located within the shoreland zone.

e. A site alteration in which vehicle access is proposed from more than one (1) street;

(e) *Level II Site Plan Review.* Development meeting the criteria listed below will undergo Level II Site Plan Review as follows:

1. The construction of any new structures having a total floor area of less than ten thousand (10,000) square feet in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of less than twenty thousand (20,000) square feet.~~;~~ In the IS-FBC zone, the construction of new structures having a total floor area of less than fifty thousand (50,000) square feet;

2. The construction of any new temporary or permanent parking area, paving of existing unpaved surface parking areas in excess of 7,500 square feet and serving less than 75 vehicles, or creation of other impervious surface area greater than 7,500 square feet;

3. The construction of any building addition(s) having a total floor area of less than ten thousand (10,000) square feet cumulatively within a three-year period in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial Zone, the construction of building addition(s) having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of building addition(s) having a total floor area of less than fifty thousand (50,000) square feet.

(f) *Level III Site Plan Review.* Development meeting the criteria listed below will undergo Level III Site Plan Review as follows:

1. The construction of any new structures having a total floor area of ten thousand (10,000) square feet or more in all zones except the Industrial zones and IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of twenty thousand (20,000) square feet or more.~~;~~ In the IS-FBC zone, the construction of new structures having a total floor area of fifty thousand (50,000) square feet or more;

2. The construction of any new temporary or permanent surface parking area(s) or paving of existing unpaved surface areas for more than seventy-five (75) vehicles except in the case of temporary parking;

3. The construction of any building addition(s), cumulatively having ~~either~~ a total floor area of ten thousand (10,000) square feet or more within any three-year period in all zones except in the Industrial zones and IS-FBC zone. In Industrial zones, for the construction of building addition(s) having a total floor area of twenty thousand (20,000) square feet or more.~~;~~ In the IS-FBC zone, for the construction of building addition(s) either having a total floor area of fifty thousand (50,000) square feet or more or having a total floor area exceeding that of the existing building to which it is an addition.

4. A change in the use of a total floor area of twenty thousand (20,000) square feet or more in any existing building cumulatively within any three-year period in all zones,

5. Multiple-family development except for in the IS-FBC zone;

6. The addition of one or two dwelling units to a building, if the additional dwelling unit or units requires subdivision review under Maine State Statutes and Portland's Subdivision Ordinance;

7. The construction of any new major or minor auto business in the B-2 or B-5 zone, or the construction of any new major or minor auto business with a structure greater than ten thousand (10,000) square

(j) *Waterfront Zone parking requirements; Eastern Waterfront Port Zone; Waterfront Central Zone; Waterfront Port Development Zone; Waterfront Special Use Zone*: Off-street parking is required at fifty (50%) percent of the required number of parking spaces for specifi8ed uses as otherwise provided in division 20 of this article.

(k) *Residential development on the peninsula and in the R-6 and R-6A Zones,* including new construction, alterations that increase the number of units, and changes of use:

1. Except as provided below, there shall be one (1) space per unit

2. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.

3. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.

4. No parking shall be required for the first three units in the R-6 Residential Zone or the IS-FBC Zone.

5. For alterations of buildings containing three or more dwelling units in the R-6 zone no parking shall be required for the creation of one additional dwelling unit above existing conditions

(c) The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.
(Code 1968, § 602.14.M; Ord. No. 541-84, 5-7-84; Ord. No. 94-99, 11-15-99)

Sec. 14-345. Peninsula fee-in-lieu of parking.

Any major or minor development subject to site plan review located in a non-residential zone or the IS-FBC zone on the Portland Peninsula shall either provide the required parking or pay a fee according to the provisions of (a) and (b) below.

(a) Provide the number of off-street parking spaces according to the provisions of section 14-332 (uses requiring off-street parking) and section 14-334 (off-site parking) of this division; or,

(b) Pay a fee-in-lieu of parking of not less than $5,000.00 as adjusted annually per (c) below, per space not provided. Fees shall be deposited into the Sustainable Transportation Fund, as established in section 14-346 of this division.

(c) The value of the fee shall be adjusted annually according to the Engineer's News Record construction index as published on January 1st of the current calendar year. The fee adjustment shall be calculated by taking the index amount published on January 1st, of the current year, divided by the index amount published on January 1, 2010 (8660), multiplied by (the fee amount from (b) above). The base fee, the adjustment index, or the calculation method may be otherwise amended by action of the city council from time to time.

(d) The fee shall be paid on or before the date upon which

The Building Design Standards (BDS) contained herein address the quality of the India Street Neighborhood urban environment, recognizing that it is ultimately formed by numerous individual, private creative decisions. The BDS provide an overview of how to create a pedestrian-oriented, visually cohesive, and economically vital neighborhood. They are designed to promote a clear, consistent, and predictable process for the redevelopment of land within the India Street Neighborhood.

Description of Terms

Design review is mandatory for all new construction and ADDITION projects in the India Street Form-based Code zone. The goals and requirements of the design review are listed under three headings for each review issue: Intent, Guidelines, and Standards. Descriptions for each are as follows:

Intent: Intent statements are provided to define goals which the guidelines and standards have been created to achieve. In circumstances where the appropriateness or applicability of a guideline or standard is in question or under negotiation, the intent statement will provide additional direction.

Guidelines: Design Guidelines provide further considerations to promote the goals defined by the intent statements. Guidelines use the term “should” or “may” to denote they are considered relevant to achieving the stated intent, and will be pertinent to the review process but will not be required for approval. Guidelines will, however, be strongly considered when there is a request to waive a related standard.

Standards: Design standards are objective criteria that provide specific direction based on the stated intent. Standards are used to denote issues that are considered critical to achieving the stated intent. Standards use the term “shall” to indicate that compliance is required unless it can be demonstrated that an acceptable alternative meets one or more of the following conditions in which case a waiver may be requested:

- The alternative better achieves the stated intent;
- The intent which the standard was created to address will not be achieved by application of the standard in this particular circumstance;
- The application of the other standards and guidelines to achieve stated intents will be improved by not applying this standard;
- Unique site factors make the standard impractical or cost prohibitive.

1. Neighborhood Context

Intent

- Promote thoughtful architectural relationships between new and existing buildings ~~of various height and mass~~ and between adjacent urban neighborhoods
- Spatially define the street space to concentrate pedestrian activity and create a clear urban character and street wall edge
- Reinforce the distinctions between public and private spaces and uses
- Promote active ground levels and streets (especially in the UA Subdistrict)

Guidelines

- New construction and ADDITIONS should respect the surrounding context demonstrating recognition of patterns and characteristics that exist in the context sharing the same streetscape. Such patterns and characteristics include:
    - Rhythm of spacing and structures on the streetscape
    - Relationship of neighboring structures to the street
    - Proportion, directional expression, and composition of principal FACADES
    - Rhythm of solids to voids in FACADES
    - Rhythm and proportion of openings
    - Rhythm of entries and projections
    - Relationship of materials, texture, and color
    - Roof shapes

2. Massing & Proportion

Intent

- Ensure the provision of human-scaled architecture, especially at the pedestrian level
- Provide building massing that relates to the scale and proportions that exist in the context sharing the same streetscape

Guidelines

- Large scale architectural choices and variations in the building form, mass, and proportion should reflect surround lot and block patterns and relate to the scale of surrounding buildings and the context in which it is seen.
- The impact of large-scale forms should be mitigated by large-scale variations in the building form, mass, and proportion such as stepping back an upper floor, or a change in the direction of a wall or roof line.
- Variation in building massing may include changes in wall plane or height and may relate to primary building entries, important corners, or other significant architectural features.
- Building FACADES should be designed using simple proportions such as the rational (1:1, 2:1, 3:2, 4:3, etc.) or the irrational (the square root of 2 and the golden ratio).

Standards

- In cases where a building uses ground floor partitions to achieve additional building length, the following applies:
    - Partitions must extend from the FACADE at least 2/3rds of the building depth; pass-through openings are allowed
    - Partitions must be architecturally expressed on the exterior FACADE
    - Each module created by partition must have at least one functional, street-facing entry
    - Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length

3. Articulation & Composition

Intent

- Create a well-detailed and visually interesting urban environment through ~~the establishment of an organized variety of~~ FACADE composition and architectural ~~form, and~~ detail
- Provide for comfort and interest in the pedestrian environment through human-scaled architectural character
- Avoid creating large areas of inactive or inhospitable street wall ~~BLANK FACADES~~
- Establish architectural scale patterns or features that relate to adjacent buildings

Guidelines

- Architectural scaling elements should be used to break down the appearance of large building FACADES into authentic architectural patterns and component building forms.
- Building FACADES should provide variation corresponding to architectural or structural bays.
- Find common reference lines to surrounding built context, examples of which include EXPRESSION LINES, change of material, delineation of floors, window alignment, and roof line alignment.
- Variation in building massing and detail should relate to the scale and function of pedestrian-oriented uses along the street.
- A sense of enclosure for the pedestrian environment should be provided using building articulation either at the ground level, upper floors, or roof line.
- ~~Where the architecture meets the street,~~ The ground floor of buildings should be clearly expressed by the articulation of forms and details. Special ground level features such as canopies, awnings, storefront, and emphasized entrances lend richness to the street.
- Required articulation elements should be integral to the building form and construction, not a thinly applied veneer.
- Architectural detail may relate to but not necessarily mimic traditional building details to establish a human-scale vocabulary. Detail patterns may also relate to the inherent formal qualities of architectural structural systems.
- Projections such as balconies and terraces should be incorporated into vertical and horizontal shifts in building massing to avoid building FACADES that cantilever into the streetscape and public space.
- BLANK FACADES should be avoided.

Standards

3.1 Each building facade shall incorporate at least three of the following elements (listed in descending order of impact):

- Expression of building structural elements such as floors (e.g. banding, belt courses), columns (e.g. pilasters, piers), and/or foundations (e.g. watertables, rustication)
- Projections such as stoops, porches, bay windows, overhangs
- Recessed entrances and/or windows into the FACADE to create depth and shadow lines
- Projections or unique design features at building entrances or corners such as trellises, canopies, awnings
- EXPRESSION LINES such as at roof lines (e.g. cornices, moldings, trims, fascia boards, overhangs, parapets), and/or floor delineation (e.g. belt courses, railings, material changes)
- Patterns of window and/or door openings that are emphasized through change of plane (not less than 4” deep) and/or the use of sills, lintels, mullions, muntins, and other scale-providing elements
- Changes in material type, texture, pattern, module, and/or color
- Patterns of architectural ornament integral to the building material

3.2 Each change of material shall involve at least 1” variation in wall plane. Reveals shall not be less than 1” deep and 1” wide.

3.3 BLANK FACADES shall be limited as follows:

BLANK FACADES	UN	UT	UA
Maximum Length	15’	30’	15’

Articulation Elements: Examples

Base/Middle/Top, Bay projections, Recessed entry, Delineation of floors, Lintels, Overhang cornice

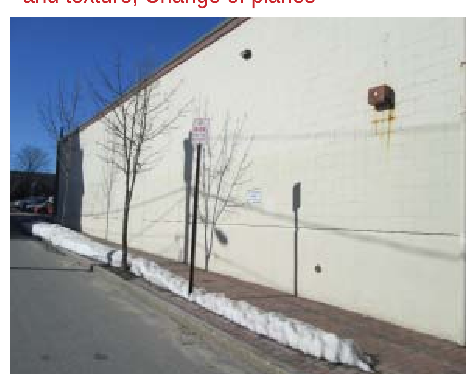
Expressed structural elements, Arcade, Fenestration recessed from building face, Change of materials, Lintels, Cornice

Delineation of floors, Recessed entry, Window details create scale, Change of materials, Parapet rail, Stepback

Base/Middle/Top, Change of facade planes, Recessed entry, Storefront, Window details create scale, Stepback, Overhang Cornice line

Blank Facades: Examples

In-active wall with articulation - Preferred
Visual interest created with Expressed structural elements, Change in material, Material scale and texture, Change of planes



BLANK FACADE - Not preferred
Lack of visual interest because of No openings, Flat wall without change of planes, Lack of material scale or texture

4. Fenestration

Intent

- Provide visibility that reinforces the safety and activity of the street (especially in the UA Subdistrict)
- Emphasize and distinguish between uses and functions within the building
- Provide visual interest and scale through fenestration patterns, material variation, detail, and surface relief

Guidelines

- FACADE design facing streets where activity is encouraged (especially in the UA Subdistrict) should have a high level of visual transparency at the ground level.~~The majority of the lower floor facades should be transparent glazing. (UA Subdistrict)~~
- Fenestration should punctuate FACADES providing scale and pattern.
- Fenestration location, variation, and patterns ~~Location and patterns of glazing should enhance building function and scale. Variation in fenestration patterns~~ should be used to emphasize building features such as entries, shifts in building form, or different functions.
- Recessed glazing, casement details, and mullion patterns may be used to provide depth and substance to the building façade and should consider the play of sunlight across the FACADE.

Standards

4.1 Between 60-90% of ground floor UA FACADES shall be constructed of transparent materials or otherwise designed to allow pedestrians to view activities inside the building or displays related to those activities (measured as a percentage of the ground-level FACADES 2' above sidewalk grade). (UA Subdistrict)

4.2 At least 25% of upper floor FACADES shall be transparent glazing.

4.3 Transparent glass shall have a Visual Transmittance (VT) of at least .61.

4.4 Areas of the building that are functionally restricted from providing vision glass may be exempted provided other architectural scaling techniques are employed.

5. Building Materials

Intent

- Encourage human-scaled buildings through the use of smaller material modules
- Ensure the consistent use of high-quality materials appropriate to the urban environment and climate

Guidelines

- High-quality materials and design techniques shall be applied. Developments shall use high quality, durable, and authentic materials that exhibit longevity and integrity.
- Building materials and techniques shall reflect or complement the existing materials and techniques within the India Street Form-based Code zone and shall be visually compatible with the predominant materials used in the structures to which they are visually related.
- Building materials used at the lower floors of FACADES shall be of the highest quality and most durable and authentic.
- Building materials used at the lower floors of FACADES should respond to the character of the pedestrian environment through such qualities as scale, texture, color, and detail.
- Carefully detailed combinations of materials should reinforce Articulation & Composition requirements.

6. Building Entries

Intent

- Enhance the scale, activity, safety, and function of the public streets by providing frequent entries oriented to the streets
- Reinforce the convenience of pedestrian activity and circulation along the street by creating as many external, street oriented entries as possible to ground floor, pedestrian-active uses

Guidelines

- Each building should have one or more clearly identifiable PRINCIPAL ENTRANCES that addresses the street.
- PRINCIPAL ENTRANCES should be emphasized through changes in wall plane or building massing, canopies or overhangs, differentiation in material and/or color, greater level of detail, enhanced lighting, and/or permanent signage.
- Entries to ground floor uses should be direct and as numerous as possible to encourage active pedestrian use.
- Where possible, garage entrances should be oriented away from the street.

Standards

6.1 All buildings shall provide at least one PRINCIPAL ENTRANCE oriented directly to a public street.

6.2 If the lot has UA frontage, at least one (1) PRINCIPAL ENTRANCE must directly face the UA street. (UA subdistrict)

6.3 All street-oriented building entries shall be directly connected to the public sidewalk via paved walk, stair, or ramp.

6.4 Each active use with street-level, exterior exposure shall provide at least one direct pedestrian entry from the street.

6.5 Recessed entries shall be excluded from the setback requirements.

6.6 Garage doors shall not be placed within the 1st Lot Layer.

6.7 Frequency and orientation of entries shall be as follows:

	UN	UT	UA
BUILDING ENTRY CONFIGURATION - PRINCIPAL ENTRY(IES) (allowed)			
Street-facing Entry	X	X*	X*
Side Entry	X		
Corner Entry	X	X	X
Elevated Stoop (more than 1 step above sidewalk grade)	X	X	
*At least 1 principal entry must face an UA street			
BUILDING ENTRY CONFIGURATION - NON-PRINCIPAL ENTRY(IES) (allowed)			
Street-facing Entry	X	X	X
Side Entry	X	X	X
Corner Entry	X	X	X**
Elevated Stoop (more than 1 step above sidewalk grade)	X	X	X**
**If corner entry is at an intersection of two subdistricts, elevated stoop is allowed			
ENTRY FREQUENCY			
Entry provided at least every	35'	95'	40'

7. Roof Lines

Intent

- Integrate all building systems within a complete architectural form
- Respect the character of and views from the surrounding context
- Make a positive contribution to the Portland skyline

Guidelines

- The architecture of the building's upper floors and termination should complete the building form within an overall design concept for the base, middle, and top that works in concert with the Articulation & Composition requirements.
- Roof forms should consider and respect the context in which it is viewed in terms of height, proportions, form, and materials, whether the context is surrounding buildings, view corridors, or the waterfront.

Standards

7.1 All rooftop building systems shall be incorporated into the building form in a manner integral to the building architecture in terms of form and material. All mechanical, electrical, and telecommunications systems shall be screened from view of surrounding streets and structures.

7.2 All roof forms are allowed in all Subdistricts.

8. Structured Parking

Intent

- Minimize the visual impact of parking structures on adjacent development and the street environment
- Minimize the impact of vehicle noise and headlights from within parking structures on adjacent streets
- Activate street level garage frontage (especially in the UA Subdistrict)

Guidelines

- Structured parking should not dominate (exceed 50% in length) any FACADE along a UA street. (UA subdistrict)
- Parking structures should use materials and architectural detailing found in the primary development being served.

Standards

8.1 Parking structures shall conform to the BDS for Articulation & Composition and Building Materials.

8.2 Parking structures shall be designed to conceal the view of parked cars and internal light sources from adjacent public rights-of-way or open space for the full height of the structure.

8.3 FACADE openings which face any public right-of-way or open space shall be vertically and horizontally aligned and the floors on such façades shall be level.

8.4 Parking structures shall provide adequate ground floor dimensions to allow use by or conversion to active uses. Adequate dimensions shall include floor-to-floor heights, structural, driving aisle, and utility layouts within 35' of the public right-of-way designed to accommodate occupancy by active uses.

Illustration: Private Residential Building
Typical of the Urban Neighborhood Subdistrict (UN)

Exemplary Design Features

- Building is positioned with a small front yard setback allowing for privacy and stoop but still maintaining the established street wall
- Private function of building is reinforced by raised first floor, elevated entry, and small front yard setback
- Entry is emphasized with stairs and canopy
- Bay window projections break up the building massing
- Fenestration patterns are consistent with surrounding context and function
- Building is gounded with the use of a rusticated masonry watertable at the base
- Visual interest is created with fine grain material texture, corner board and trim, cornice, and shadow lines from bay projections and slight window recess
- Cornice line is articulated with a material change and an overhang which provides a sense of enclosure at the street
- Fence and landscaping are used to maintain the street wall edge

Illustration: Active Commercial Building
Typical of the Urban Active or Urban Transitional Subdistricts (UA or UT)

Exemplary Design Features

- Building is positioned at the property line creating a strong, urban street wall
- Principal Frontage is oriented to the Urban Active street
- Corner is emphasized with a chamfer and corner entrance
- Ground floor is activated with modular storefront and multiple entries
- Entries are no more than one step above the sidewalk and frequent
- Building structure is expressed with trabeation
- Upper floor fenestration pattern is frequent and consistent with building structure and function
- Visual interest is created with expression lines and material texture and patterns on upper floors, and recessed storefront creating shadow lines

Att. 5

Development Review Checklist IS-FBC	Level I / Level II / Level III / Master Plan Project Name:____________________ Address:____________________ Description: Alteration / Addition / New Construction Date Received:__________ Prelim / Final Planner:____________________ Subdistrict UN / UT / UA

	Complies	**Complies with Administrative Deviation**	**Does Not Comply**	**N/A**	**Comments**
PURPOSE					
General Guiding Principles	☐	☐	☐	☐	
Subdistrict Intent	☐	☐	☐	☐	
GENERAL DEV. STANDARDS					
(a) Prohibited Uses	☐	☐	☐	☐	
(b) Siting Standards					
Mid-Block Permeability	☐	☐	☐	☐	
Frontage Req. – Additional Building Length	☐	☐	☐	☐	
Setbacks	☐	☐	☐	☐	
Small Lot < 35’	☐	☐	☐	☐	
Special corner treatment	☐	☐	☐	☐	
Attached Buildings	☐	☐	☐	☐	
Landscaping & Screening	☐	☐	☐	☐	
1st Lot Layer - Height	☐	☐	☐	☐	
1st Lot Layer – Perm.	☐	☐	☐	☐	
Other Lot Layer - Height	☐	☐	☐	☐	
Building Addition - Length	☐	☐	☐	☐	
Building Addition - Stories	☐	☐	☐	☐	
(c) Height Standards					
Height Bonus - Eligible?	☐	☐	☐	☐	

Height Bonus - Conditions	☐	☐	☐	☐	
(d) Parking Standards	☐	☐	☐	☐	
Existing Parking - Addition	☐	☐	☐	☐	
	Complies	**Complies with Administrative Deviation**	**Does Not Comply**	**N/A**	**Comments**
SUBDISTRICT DIMS REQ.	☐	☐	☐	☐	
Siting Standards					
Orientation	☐	☐	☐	☐	
Corner Condition	☐	☐	☐	☐	
Lot Coverage	☐	☐	☐	☐	
Frontage Requirements					
Building Length	☐	☐	☐	☐	
Additional Bldg Length	☐	☐	☐	☐	
Fenestration Req. (UA)	☐	☐	☐	☐	
Setbacks					
Principal Building					
Front Yard	☐	☐	☐	☐	
Exceptions (corner, 10’)	☐	☐	☐	☐	
Side Yard	☐	☐	☐	☐	
Side Yard	☐	☐	☐	☐	
Exceptions (small lot)	☐	☐	☐	☐	
Rear Yard	☐	☐	☐	☐	
Accessory Building(s)					
Side Yard	☐	☐	☐	☐	
Rear Yard	☐	☐	☐	☐	

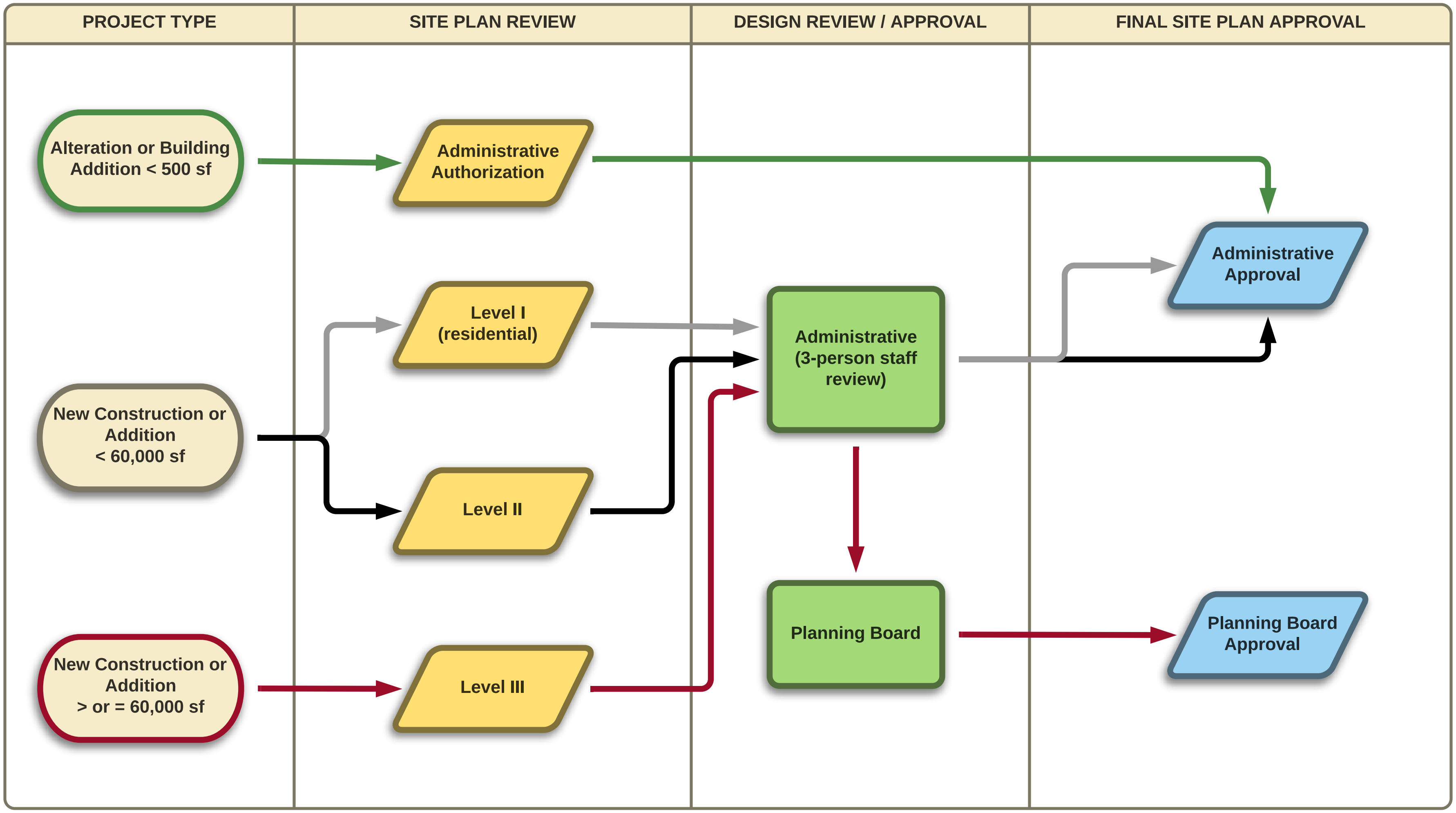
	Complies	Complies with Administrative Deviation	Does Not Comply	N/A	Comments
Building Entries					
Frequency	☐	☐	☐	☐	
Principal Entry Orientation	☐	☐	☐	☐	
Principal Entry Elevation	☐	☐	☐	☐	
Height Standards					
Principal Building	☐	☐	☐	☐	
Height	☐	☐	☐	☐	
Stories	☐	☐	☐	☐	
Stepbacks (UT)	☐	☐	☐	☐	
Accessory Building(s)	☐	☐	☐	☐	
Parking Standards					
Surface Parking Location	☐	☐	☐	☐	
Garage Door Setback	☐	☐	☐	☐	
Garage Door Opening	☐	☐	☐	☐	

	Complies	Complies with Administrative Deviation	Does Not Comply	N/A	Comments
BUILDING DESIGN STANDARDS (BDS)					
1. Neighborhood Context					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
2. Massing & Proportion					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
Standard 2.1	☐	☐	☐	☐	
3. Articulation & Composition					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
Standard 3.1: 3 required	☐	☐	☐	☐	
Standard 3.2	☐	☐	☐	☐	
Standard 3.3: Blank Wall	☐	☐	☐	☐	
4. Fenestration					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
Standard 4.1 (UA only)	☐	☐	☐	☐	
Standard 4.2	☐	☐	☐	☐	
Standard 4.3	☐	☐	☐	☐	
Standard 4.4	☐	☐	☐	☐	

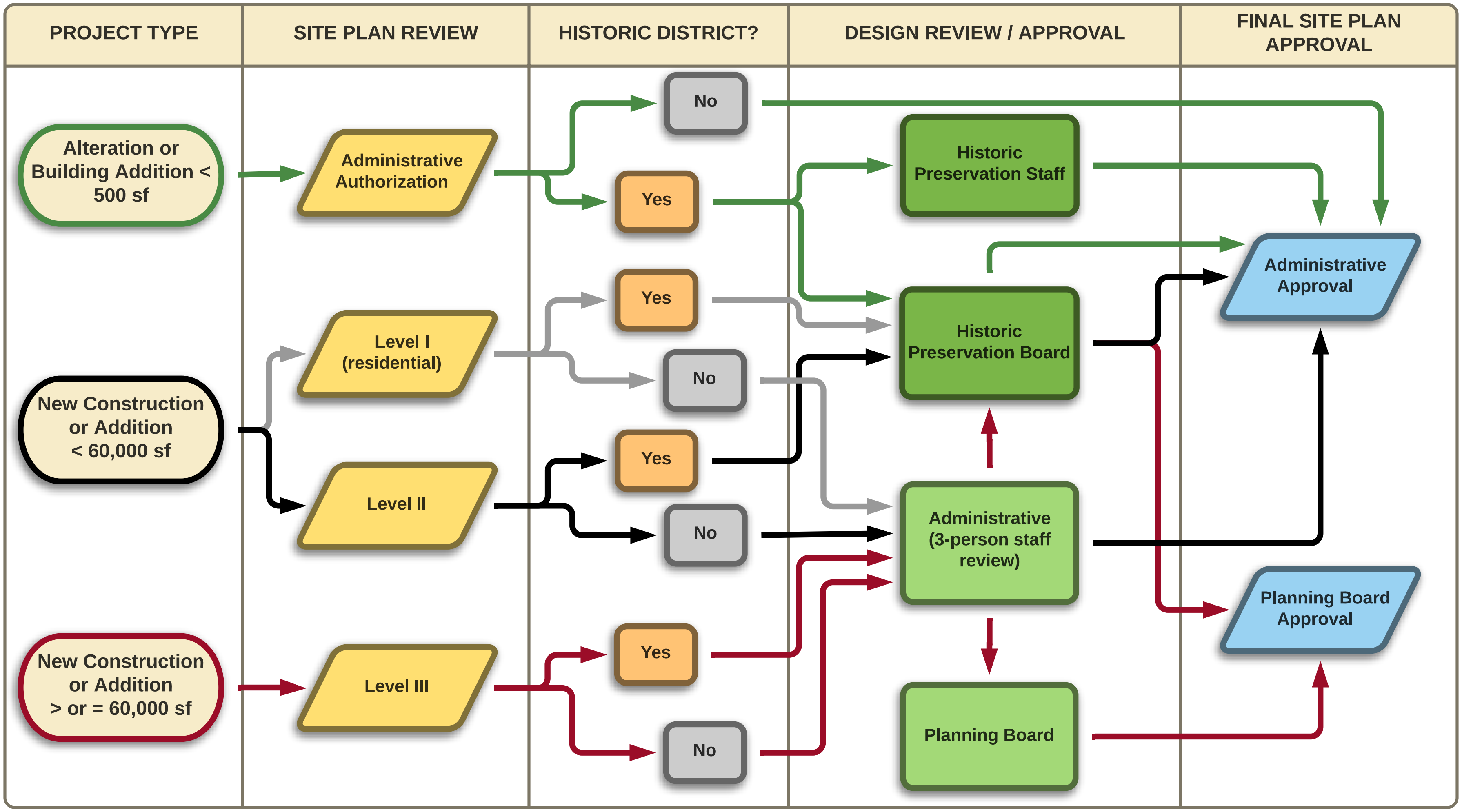
	Complies	Complies with Administrative Deviation	Does Not Comply	N/A	Comments
5. Building Materials					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
6. Building Entries					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
Standard 6.1	☐	☐	☐	☐	
Standard 6.2 (UA only)	☐	☐	☐	☐	
Standard 6.3	☐	☐	☐	☐	
Standard 6.4	☐	☐	☐	☐	
Standard 6.5	☐	☐	☐	☐	
Standard 6.6	☐	☐	☐	☐	
Standard 6.7: Frequency	☐	☐	☐	☐	
7. Roof Lines					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
Standard 7.1	☐	☐	☐	☐	
Standard 7.2	☐	☐	☐	☐	
8. Structured Parking					
Intent	☐	☐	☐	☐	
Guidelines	☐	☐	☐	☐	
Standard 8.1	☐	☐	☐	☐	
Standard 8.2	☐	☐	☐	☐	
Standard 8.3	☐	☐	☐	☐	
Standard 8.4	☐	☐	☐	☐	

Att. 5

DEVELOPMENT PROJECT APPLICATION FLOW CHART



DEVELOPMENT PROJECT APPLICATION FLOW CHART - WITH HISTORIC DISTRICT



PLANNING BOARD REPORT
PORTLAND, MAINE

Recommendation of Historic Preservation Board to Designate India Street Historic District

Submitted to: Portland Planning Board Public Hearing Date: September 15, 2015	Prepared by: Deborah Andrews, HP Program Manager Date: September 9, 2015

I. INTRODUCTION

The Planning Board will hold a public hearing and final deliberations on a recommendation by the Historic Preservation Board to designate an area within the India Street neighborhood as a local historic district subject to the provisions of Article IX (Historic Preservation) of the Land Use Code. The Planning Board's role in this matter is to determine whether the nominated **India Street Historic District** meets applicable designation criteria in Division 3 of the historic preservation ordinance, specifically the criteria identified in Sec. 14-610 (a) and (b) and Sec. 14-611. The Planning Board is also charged with considering the effect of such designation on other aspects of the Comprehensive Plan. Based on its determination, the Planning Board will forward its recommendation regarding designation of the India Street Historic District to the City Council, which has the final authority as regards local designation of nominated historic properties.

The proposed district designation applies to an area focused around the principal corridors that serve the India Street neighborhood, namely Congress, India and Middle Streets. The proposed district encompasses 7 landmarks (3 previously designated and 4 additional), 36 contributing historic structures and 13 noncontributing structures, as well as several surface parking lots or undeveloped parcels. Note that the district as proposed in the Historic Preservation Board's final recommendation is substantially smaller than that originally considered and focuses on the major religious, institutional, commercial and residential structures that largely define the character of the India Street neighborhood. Not included in the final proposed district are several interior blocks within the neighborhood which are largely residential.

The HP Board's recommendation also includes two additional and related elements:

- A proposed amendment to the historic preservation ordinance which addresses the applicability of historic preservation ordinance new construction review standards (as regards allowable building heights) as they relate to the Form-Based Code dimensional standards

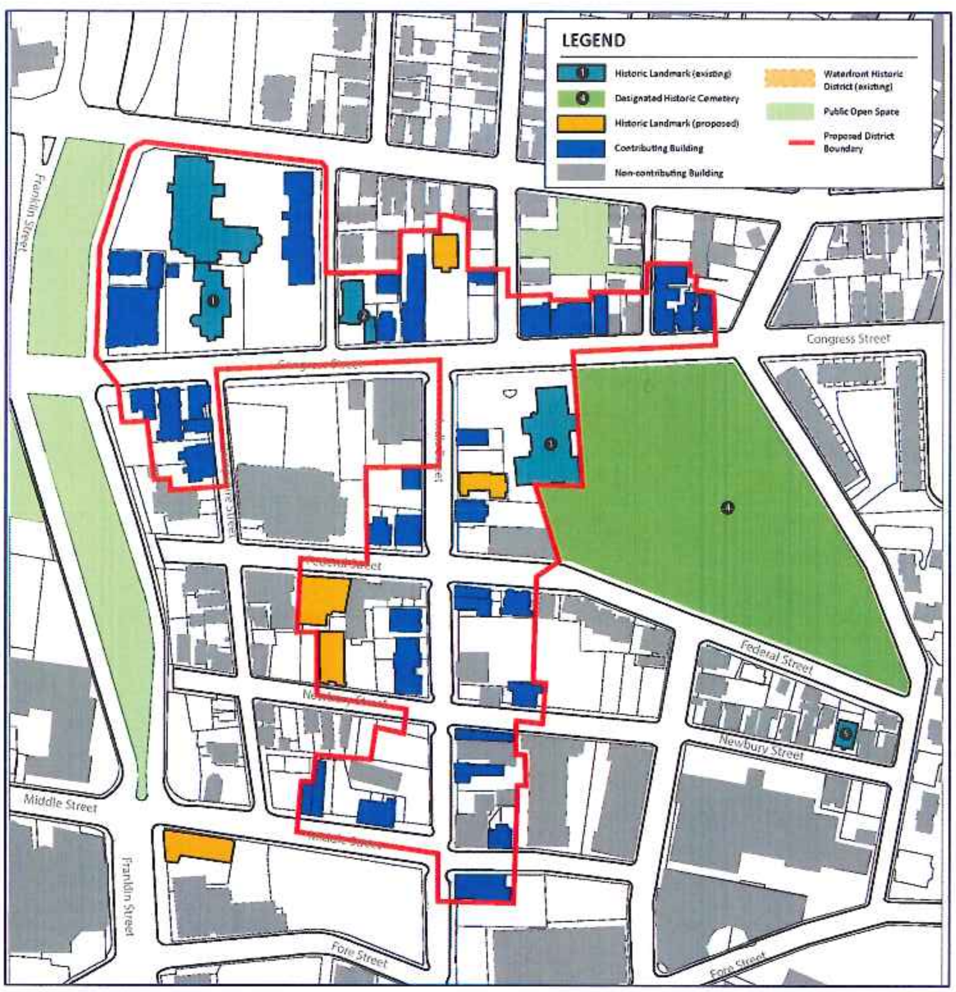
- a proposal to designate the Abraham Levey Block at 78-88 Middle Street as an individual Landmark. Individual designation is proposed because the building, which is an important gateway structure for the neighborhood, is now physically separated from the concentration of historic structures within the proposed district.

Attachment 1 is a copy of the draft **India Street Historic District Designation Report**. Attachment 2 is a map of the proposed district boundaries with assigned classifications for individual buildings within the district boundaries (i.e. landmark, contributing or noncontributing). Attachment 3 is the draft amendment to the historic preservation ordinance which addresses the applicability of Form-Based Code regulations in the review of new construction projects within the India Street Historic District. Attachment 5 is India Street: Analysis of Eligibility as a Local Historic District, prepared by ttl-architects for the Planning Department. Other reference material related to the proposed designation in the backup material for the 9/15/15 public hearing.

An analysis of the proposed historic district designation's consistency with other elements of the Comprehensive Plan is provided in Section IX of this report—see page 8.

II. HISTORIC PRESERVATON BOARD RECOMMENDATION

On September 2, 2015, the Historic Preservation Board voted 7-0 to recommend to the Planning Board and City Council that a defined area within the India Street neighborhood be designated a local historic district as delineated below and as further defined/described in the attached India Street Historic District Designation Report—see ATTACHMENT 1. The Historic Preservation Board's recommendation was based on findings that the proposed district meets the designation criteria in Division 3 (Categories and Criteria for Designation) of the historic preservation ordinance (Article IX of the Land Use Code).



Proposed India Street Historic District boundary and individual building classifications

The Historic Preservation Board also voted unanimously to recommend that the historic preservation ordinance (Article IX of the Land Use Code) be amended as follows:

Under *Sec. 14-651. Standards for review of new construction (a) Scale and Form,* add the following provision:

> *7. Applicability to India Street historic district.*
> *In the India Street historic district, for new construction within the India Street Form-based Code Zone (IS-FBC), the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone except for in the case of a building addition which proposes to change the height of an existing building. For all other new construction, the historic preservation board has the authority to determine the means or manner by which the allowable height is achieved including modifications that might change the total allowable volume.*

Note that the Historic Preservation Board also voted unanimously to recommend to the City Council that the Abraham Levey Block (1922) at 78-88 Middle Street be designated as an individual landmark under Portland's preservation ordinance. This matter is not formally before the Planning Board as recommendations for individual building designations are forwarded directly to the City Council, as per Sec. 14-619 of the ordinance. However, the proposed designation will be bundled with the other recommendations for purposes of final Council review.

III. ROLE OF THE HISTORIC PRESERVATION BOARD IN THE DESIGNATION PROCESS

As described in the historic preservation ordinance, the Historic Preservation Board's role in the designation of historic districts is to review the merits of the proposed designation and, based on findings as to whether or not the nominated area meets the ordinance's designation criteria (see Division 3, Categories and Criteria for Designation) forward a recommendation regarding designation to the Planning Board and Council for their consideration. The ordinance requires that the Historic Preservation Board's recommendation be accompanied by a **Designation Report** which addresses the nominated district's significance and level of integrity, provides a map of the nominated district and a list (with assigned classification) of every building within the district, and provides specific design guidelines for the district where appropriate.

The formal **India Street Historic District Designation Report** is enclosed as Attachment 1. The report reflects the findings of the Historic Preservation Board and is informed by documentation and analysis provided in several documents prepared by ttl-architects in conjunction with the India Street neighborhood planning process and the City's evaluation of a potential India Street historic district. These include a written history of the India Street neighborhood and a historic resources inventory that includes historical information and an architectural description of every building in the neighborhood. Also prepared by ttl-architects was an analysis of the India Street neighborhood's eligibility as a local historic district. See Attachment 4.

IV. BACKGROUND - INITIATION OF PROPOSAL, PROFESSIONAL DOCUMENTATION & ANALYSIS, INDIA STREET NEIGHBORHOOD PLANNING PROCESS

Specific discussions of a possible India Street district began in 2007, when HP staff was asked by the Council's Housing & Community Development Committee to provide an update on the historic preservation program and to identify individual structures and areas that warranted consideration as landmarks or historic districts. At that time staff recommended that the India Street neighborhood be considered for designation, among other identified areas and sites. Although the HCDC voiced support for a potential India Street district, staff decided to move forward with designation of Congress Street and abutting blocks within the downtown core as a first priority. The decision to focus on the downtown district first was based on the availability of limited staff resources and in recognition of the amount of public process involved in any district initiative. In 2009, following a two-year planning process, the City Council formally approved designation of the Congress Street Historic District.

A potential India Street historic district was discussed with the Planning Board in 2011, when representatives of the India Street neighborhood association began voicing interest in exploring tools to better manage the scale and character of development in their neighborhood. Again, the Planning Board endorsed efforts to establish an historic district. Planning staff recommended at that time that the historic district study be part of a larger neighborhood planning effort for the neighborhood. The current proposal is the product of that neighborhood planning exercise.

In preparation for the launch of the India Street neighborhood planning process, the City engaged the firm of ttl-architects to conduct a comprehensive historic resources inventory of the India Street area. Julie Larry of ttl-architects, with assistance from Gabrielle Daniello, researched the historical and architectural development of the neighborhood and documented every building within the identified study area. They produced a written history of the neighborhood and produced an architectural description, historical narrative and photograph of approximately 120 buildings. They also offered their professional opinion as to each building's "preservation value," based on its condition and relative significance. Board members will recall that Julie Larry presented her findings to the Historic Preservation in a powerpoint presentation in January 2014.

As part of the neighborhood planning process, an advisory committee was established to study and develop recommendations on a number of topics as they affect this area, including historic preservation, the potential for a form-based code to guide new development, public infrastructure improvements, housing and equity issues, and the economy of the area. Within the India Street Neighborhood Advisory Committee (ISNAC), a working group was formed to focus on historic preservation and the potential for an India Street historic district. The working group, with assistance from HP staff, used the information provided by ttl architects and input from the Maine Historic Preservation Commission to develop recommendations regarding district boundaries.

HP staff provided updates on the historic preservation working group's progress during the course of the 9-month neighborhood planning process and also presented preliminary boundaries to solicit feedback from the larger group. As the plan neared completion, a larger public meeting was held to solicit feedback from area residents, property owners and business owners.

Ultimately, the India Street Advisory Committee voted to recommend to the City Council adoption of the neighborhood *plan*, which calls for several specific implementation tools, including the adoption of a historic district and a form-base code to replace traditional zoning. The ISNAC stopped short of recommending to the Council a specific historic district boundary or form-based code regulations, based on the fact that these two implementation tools warranted further review, as well as coordination between the two land use regulatory tools. (Historic District regulations and form-based codes are most effective when the regulations are coordinated at the outset.) It was also recognized that the responsible land use boards (HP Board and Planning Board) would need to conduct their own evaluation of any specific proposal before the City Council was in a position to take formal action.

V. SUMMARY OF PRELIMINARY HISTORIC PRESERVATION BOARD WORKSHOPS

In December 2014, the Historic Preservation Board began its formal review of the proposal forwarded by the India Street Neighborhood Advisory Committee to designate an area within the India Street neighborhood as a local historic district. (The Board had previously received a presentation by Julie Larry on the history and architecture of the India Street neighborhood. The presentation was made in January 2014, shortly after Ms. Larry completed her study for the neighborhood planning process.)

The Historic Preservation Board's review process began with a two-part workshop. On December 3rd, the Board conducted a site walk of the neighborhood to familiarize Board members with the neighborhood's historic building stock and observe existing conditions within the area. The site walk was followed by a workshop session in City Hall on December 17th. Staff provided a brief overview of the neighborhood planning process that resulted in the recommendation to establish a historic district. Staff also reviewed the status of efforts to identify boundaries for the proposed district and familiarized Board members with the factors that are typically considered in delineating historic district boundaries. The Board also took public comment prior to its preliminary discussion of the proposed district as envisioned.

In preparation for the initial workshop discussion, Board members were provided with the documents prepared by ttl-architects, including the written neighborhood history and historic building survey, as well as excerpts from *A Guide to Delineating boundaries of Historic Districts* published by the National Trust for Historic Preservation.

Subsequent workshops were spent considering appropriate boundaries for an India Street district, taking into consideration the information provided to the Board, Board members' own observations and analysis of the area, as well as public input. During the review process, and at the request of staff, preservation consultant Julie Larry prepared for the Board's review an *Analysis of Eligibility of the India Street Neighborhood as a Local Historic District*—see Attachment 6. This document summarized the areas of significance of the neighborhood, addressing the specific designation criteria that must be met in the historic preservation ordinance. The analysis also addressed the issue of integrity of the neighborhood, as defined in the ordinance.

Also discussed during the Board's workshops was the relationship between historic district designation and the proposal to establish a Form-Based Code for the neighborhood (which would replace traditional zoning). Caitlin Cameron and Alex Jaegerman provided several updates on the progress of that initiative and described how the two regulatory tools were envisioned to work together. Among the topics discussed was the issue of building height and whether the historic preservation regulations would supersede the FBC's height allowances.

VI. CONSIDERATION OF ALTERNATIVES OR MODIFICATIONS TO ORIGINAL DISTRICT PROPOSAL

On July 22nd, the Historic Preservation Board held a workshop to consider various alternative measures to address the stated historic preservation goals within the India Street Neighborhood Plan. This workshop followed a neighborhood meeting held earlier in the month to invite and respond to questions and comments from area property owners and other interested parties. Based on feedback from this meeting as well as other public input at previous workshop sessions, it became evident that there were reservations about the district as proposed, particularly as it would affect some of the more vernacular residential buildings within the neighborhood. Some also argued that given the spotty nature of some of the blocks within the draft district boundary, these blocks should not be included. Others argued that Form-Based Code would be adequate to guide future development in the neighborhood. The HP Board's consideration of alternative mechanisms was also pursuant to input received from the Planning Board. During a workshop held to update the Planning Board on the historic district initiative, some members of the Board questioned whether there might be an alternative tool to provide protection for historic structures within the neighborhood and encouraged exploration of such.

Alternatives presented to the HP Board included a new designation classification which would be added to Portland's ordinance to allow for a "Multiple Property Designation". A Multiple Property Designation would provide protection for individual identified historic structures, without creating a contiguous district. Also presented for review was a preliminary proposal for smaller historic district.

Following a presentation by staff and opportunity for public comment, Board members discussed at length the relative merits of the two options. Ultimately, Board members were unanimous in favoring a smaller historic district over a Multiple Property Designation. This conclusion was based in part on additional information that came to light after the staff report was prepared about the intent of the Multiple Property Designation category as developed by the National Park Service and as implemented in several municipalities throughout the country. Further research revealed that the concept as envisioned applying to the India Street neighborhood was not consistent with how this category of designation works elsewhere throughout the country. As intended, an "MPD" applies typically to thematic designations (e.g. bridges or early 20th century auto showrooms) where the buildings related to the specific theme are geographically dispersed. Additionally, Board members expressed concern that the creation of a Multiple Property Designation (MPD) would create confusion between "landmarks" as currently defined in the ordinance and individually designated historic structures that would be designated as part of a Multiple Property Designation. A more significant factor in the Board's conclusion, however, was the Board's finding that the creation of an historic district, albeit smaller, would the most effective tool to implement the Plan's historic preservation goals. District designation would not only protect individual historic structures from demolition and encourage sympathetic rehabilitation/alterations/building additions, it would also reinforce the context of these historic structures into the future through a design review process that ensures compatibility with the major visual characteristics that distinguish this area.

In response to concerns raised by several residential property owners in the neighborhood about district designation (which appeared to be based in large part on the perception that the ordinance requirements would be overly burdensome or unduly restrict the use of their property), Board members concluded that perhaps it was appropriate to limit the district to the major corridors within the neighborhood where many of the more architecturally notable and landmark structures are located. Board members also noted that these corridors include the greatest concentration of historic structures, are more visually cohesive and exhibit fewer gaps in the building fabric. In coming to this conclusion, Board members expressed regret that negative perceptions persist notwithstanding the positive effect district designation has had in other residential neighborhoods in Portland, some of which include housing stock very similar to that of the India Street area. Board members also expressed regret about eliminating most of the vernacular residential blocks from the district, as these blocks clearly convey an important aspect of the neighborhood's history. That said, the Board appeared willing to reduce the size of the district, focusing on the neighborhood's major commercial corridors and the key institutional, religious, commercial and residential structures on or immediately abutting them.

The draft district map included as part of the notice for the September 2, 2015 HP Board public hearing reflected the Board's general consensus regarding boundaries during its final workshop, held on August 5th.

VII. PROPOSED ORDINANCE AMENDMENT CONCERNING HEIGHT ALLOWANCE IN HISTORIC DISTRICT

As noted in a previous section of this report, during the Board's preliminary review of the proposed historic district, Planning staff provided several updates on the drafting status of a Form-Based Code for the neighborhood. (This was the other key land use regulatory tool recommended by the India Street Neighborhood Advisory Committee.) Given the Planning Department's desire to coordinate these two tools and avoid conflicting regulations, the Board was asked to consider allowing the dimensional standards (including height allowances) to rule as regards new development within the neighborhood. As provided in the historic preservation ordinance, preservation review standards may supersede underlying zoning requirements. Typically, the Board does not override the underlying dimensional standards, but the ordinance provides for such. In the case of the Congress Street Historic District, in conjunction with the district's designation, the Board agreed to include an amendment in the preservation ordinance stipulating that the height allowances as provided for in the B3 zone would rule. As of the August 5th workshop, it appeared that Board members might support a similar amendment for the India Street district, provided the language make clear that the provision would apply to new construction only and would not apply to proposed additions to the height of existing historic structures. See Section II above for draft provision that would be added to the historic preservation ordinance under Sec. 14-651 *Standards for Review of New Construction.*

VIII. HP BOARD PUBLIC HEARING – BOARD FINDINGS AND FORMAL RECOMMENDATION

A public hearing on the nomination was held on September 2, 2015. At the hearing, 14 individuals, including representatives of local organizations, provided testimony. Testimony was mixed, with 10 speaking in support, 3 in opposition and 1 raising a question regarding noticing. Several speakers expressed disappointment that the district boundaries had been reduced to eliminate a number of the residential streets within the neighborhood. Those voicing this concern included a representative of the Abyssinian Meeting House, who noted that many of the historic homes around the Meeting House were built by parishioners of Portland's 19th century free Black community and that the context around the Abyssinian should be preserved.

Following the public hearing and final Board deliberations, the **Board voted 7-0 as follows:**

1. To recommend to the Planning Board that the India Street Historic District as delineated on the map enclosed with the 9/2/15 staff report be designated a local historic under

the provisions of Article IX (Historic Preservation) of the Land Use Code, based on findings that the proposed district meets Criteria 1, 3 and 6 under Sec. 14-610 (a), as well as Criterion 14-610 (b) which applies specifically to the designation of historic districts. Additionally, the Board finds that the extant historic resources within the proposed India Street Historic District boundaries exhibit the sufficient integrity of location, design, condition, materials and workmanship to make them worthy of preservation, as required under Sec. 14-611;

2. to recommend to the City Council that the Abraham S. Levey Block at 78-88 Middle Street be designated a Landmark under the provisions of Article IX (Historic Preservation) of the Land Use Code, based on findings that the commercial block meets Criteria 1,3,5 and 6 under Sec. 14-610 (a) as well as the integrity criterion under Sec. 14-611 of the historic preservation ordinance; and

3. to recommend to the Planning Board that Article IX, Sec.14-651 Standards for Review of New Construction (a) Scale and Form be amended to add the following provision:

   7. Applicability to India Street historic district.
   In the India Street historic district, for new construction within the India Street Form-based Code Zone (IS-FBC), the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone except for in the case of a building addition which proposes to change the height of an existing building. For all other new construction, the historic preservation board has the authority to determine the means or manner by which the allowable height is achieved including modifications that might change the total allowable volume.

IX. ANALYSIS OF DESIGNATION'S CONSISTENCY WITH COMPREHENSIVE PLAN

The Comprehensive Plan is widely supportive of preservation of Portland's historic resources. Volume 1, State Goal I, *To preserve the State's historic and archeological resources*, endorses preserving and enhancing distinctive areas, sites, structures and objects that have historic, cultural, architectural and archeological significance. It includes an overview of preservation efforts in the city, recommendations for furthering preservation, and reference to the adoption, as part of the 1990 Comprehensive Plan, of the <u>Historic Preservation Ordinance</u>, and the <u>Historic Resources Design Manual</u>, both still being utilized today.

Among the specific responsibilities of the Historic Preservation Board as listed in Sec. 14-609 of the ordinance are: "to conduct or administer an ongoing survey to identify historically, culturally or architecturally significant areas" and "to ...recommend to the Planning Board adoption of ordinances designating structures and areas...as landmarks and districts."

Preservation of the India Street neighborhood's historic resources and distinct visual character were identified as key goals early on in the India Street neighborhood planning process. The final proposed ***India Street Sustainable Neighborhood Plan***, which has been reviewed by the Planning Board and will soon be forwarded to the City Council for adoption, includes the following specific citations related to historic preservation:

Goals

<u>Good Quality Design</u>

**Compatibility, especially in terms of building scale, is essential in a historic and mixed-use neighborhood such as this one.*

**In this neighborhood, good quality design also includes good quality rehabilitation of existing and historic buildings.*

Strong Neighborhood Identity that Builds on its Heritage

**India Street was the first street in Portland and the neighborhood is rich in cultural history. These qualities are at the heart of the neighborhood identity and should be at the forefront of any strategy that deals with neighborhood character, objectives, relationships, or environment.*

**The historic fabric and landmarks tell a story about this neighborhood and are critically important to its identity.*

Development Principles

1. Strong Neighborhood Identity

The key principle here is to bring [the] unique [neighborhood] characteristics and assets into closer connection and a cohesive neighborhood identity that will permeate the built environment as well as associated housing and business – all serving to strengthen and enhance the community.

3. Neighborhood Heritage and Historic Preservation

Unlike many other neighborhoods on the peninsula, the India Street neighborhood grew to become a strikingly diverse and self-contained neighborhood, with its own "main street," houses of worship, institutional buildings, and workshop industries that provided employment for minority groups that populated the area. While the neighborhood has lost significant elements of its past, much remains to tell its compelling story. The historic buildings that remain not only tell the story about how this neighborhood has evolved and functioned, but also contribute significantly to its unique character, scale, and patterns.

Protecting and enhancing India Street's historic building stock is essential if the area is to retain its authenticity and build a strong sense of place. Alterations to existing buildings, both historic and non-historic, will be carefully considered so the neighborhood's character will not diminish over time. Infill construction will be a clear product of its own time, and respect established development patterns that characterize the neighborhood.

5. Vibrant Local Economy

The India Street neighborhood draws people who recognize and enjoy its unique character and heritage. Those who visit or live in the neighborhood appreciate its authenticity, local artisan retail and eating establishments, and diverse cultural history. Building on these strengths through communication of identity, concentration of commercial uses, protection of the historic and human-scaled built fabric, and stronger relationships within the neighborhood will attract greater numbers of visitors, residents, and businesses to the area and move the neighborhood towards its economic goals.

Designation of an historic district within the India Street neighborhood, particularly as it is limited to the area with the highest concentration of landmarks and readily identifiable historic structures, is consistent with the Comprehensive Plan. The historic district does not preclude additional development, including affordable housing development, within its boundaries and the historic preservation ordinance's new construction standards specifically encourage new architecture that is a product of its own time. Also, the Form-Based Code being proposed for the India Street neighborhood is based on a careful analysis of existing development patterns.

X. MOTIONS FOR CONSIDERATION

Based upon the recommendation of the Historic Preservation Board; the contents of the India Street Historic District Designation Report; documentation and analysis provided in reports prepared by ttl-architects; information included in the September 15, 2015 staff report and public comment received at the September 15, 2015 public hearing, THE Planning Board finds:

A. that the proposed India Street Historic District **meets/does not meet** the historic preservation ordinance's minimum criteria for designation as set forth in Sec. 14-610 (a) (specifically Criteria 1, 3, 5 and 6) and Sec. 14-610 (b), as well as the integrity criterion in Sec. 14-611; and that designation of the India Street Historic District **is/is not consistent** with the Comprehensive Plan, including the January 2015 *India Street Sustainable Neighborhood Plan* recommended for adoption as part of the Comprehensive Plan ; and

   recommends/does not recommend to the City Council that the proposed India Street Historic District be designated a local historic district subject to the provisions of Article IX of the Land Use Code; and

B. **recommends/does not recommend** to the City Council that Article IX, Sec.14-651 Standards for Review of New Construction (a) Scale and Form be amended to add the following provision:

   7. *Applicability to India Street historic district.*
   In the India Street historic district, for new construction within the India Street Form-based Code Zone (IS-FBC), the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone except for in the case of a building addition which proposes to change the height of an existing building. For all other new construction, the historic preservation board has the authority to determine the means or manner by which the allowable height is achieved including modifications that might change the total allowable volume.

Attachments

1. India Street Historic District Designation Report
2. Proposed Historic District Map with Boundaries and Individual Building Classifications
3. Excerpts from Portland's historic preservation ordinance (Article IX of the Land Use Code)
4. India Street Neighborhood: Analysis of Eligibility as a Local Historic District, prepared by ttl-architects
5. Historic resources inventory form for Abraham S. Levey Block at 78-88 Middle Street
6. Written public comment regarding *current* historic district proposal

Other reference material related to the designation, including a neighborhood history and the full historic building inventory can be accessed at http://www.portlandmaine.gov/211/Planning-Board

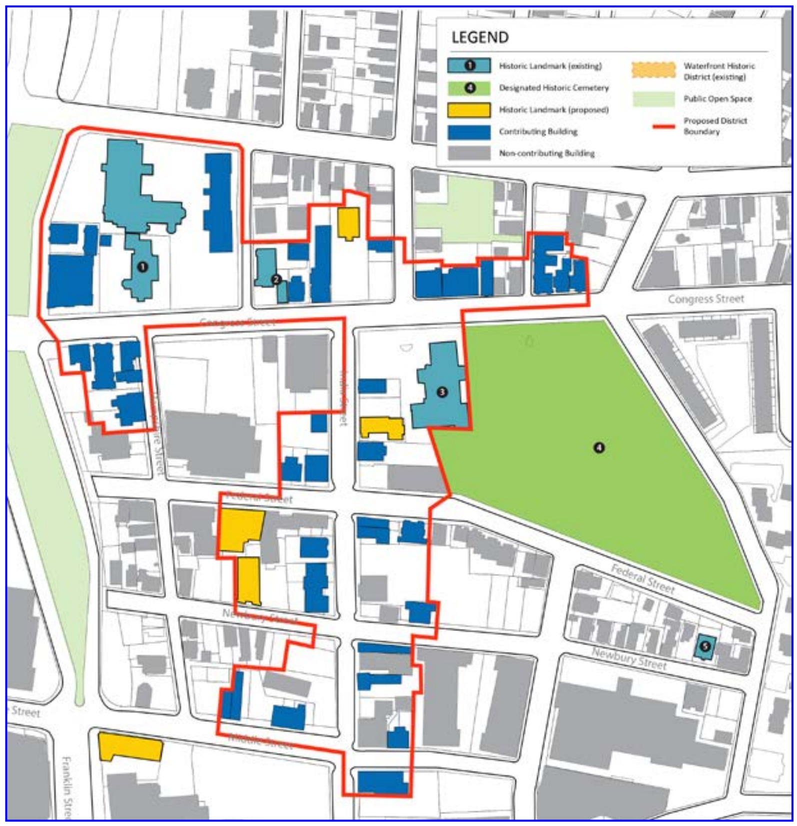
Att. 1

India Street Historic District

Designation Report

General Description of the District

The India Street neighborhood as we know it today encompasses a 19-block area, extending west to east from Franklin Arterial to Washington Avenue/Mountfort Street and north to south from Congress Street to Commercial Street.   Within this larger neighborhood boundary, the proposed **India Street Historic District** encompasses portions of 10 blocks and is focused on the major corridors (Congress, India and Middle) that define the historic core of the neighborhood and around which many of the neighborhood's most significant institutional, commercial, religious and residential structures are concentrated.



Within or just outside the district boundaries are located five previously-designated landmark structures or sites. These include the Cathedral of the Immaculate Conception, St. Paul's Church and Parish Hall, North School, the Abyssinian Meeting House and Eastern Cemetery. Four additional landmarks are proposed for designation in conjunction with the district designation. These include the former Etz Chaim Synagogue (now Maine Jewish Heritage Museum), the former India Street Fire Station, St. Peter's Catholic Church, the former Shaarey Tphiloh Synagogue, and the Abraham S. Levey Commercial Block. These structures are recommended for landmark status based on their significance in the development of the neighborhood, their architectural significance and/or their position at a key gateway into the neighborhood.

In addition to these individual landmarks, the district includes approximately 36 contributing historic structures and 13 noncontributing structures, as well as several surface parking lots or undeveloped parcels. Within the district are exhibited a wide variety of building types—institutional, religious, commercial, and residential—reflecting the area's history as a largely self-contained neighborhood settled early on by African Americans and later by successive waves of immigrant groups (including Irish, Italian, Eastern European and Scandinavian) who established their own places of worship, commercial enterprises and services to support the needs of their community.

Although the district includes a few scattered buildings that predate the Great Fire of 1866, most of the existing historic resources were built 1866 and 1920. Existing historic structures are mostly brick, with the exception of a few wood frame structures. Predominant building styles include Italianate and Second Empire. Also represented in the district are several early 20th century commercial blocks and multi-family triple deckers which are typical of their construction era.

History of the India Street Neighborhood

The history of the India Street neighborhood is as old as the history of Portland itself, as it was the site of the first European settlement on the Portland peninsula. Nothing, however, exists from this first settlement or from other early attempts at settlement. The first settlement was destroyed during conflicts with Native Americans in the 17th century, rebuilt and then destroyed again in the late 18th century by the British. Even the waterfront no longer resembles its early configuration, having been filled in during the mid-nineteenth century to accommodate maritime and railroad development.

Notwithstanding the loss of structures and sites associated with the neighborhood's earliest periods of development (with the exception of Eastern Cemetery), the remaining building stock provides a compelling story of the neighborhood during the nineteenth and twentieth centuries—illustrating not only the wide range of activities that were supported in this area but also the unique resident mix that populated the neighborhood and gave it its rich, ethnically diverse character.

Life in the India Street neighborhood during the early 19th century revolved largely around waterfront activities. A significant number of the laborers and mariners were free black men who prospered in Portland's maritime economy, settled in the India Street neighborhood, and built their own homes. In 1828 the community built their own church, the Abyssinian Meetinghouse on Newbury Street.

As the African American population prospered and moved out of the neighborhood, they were replaced by Irish immigrants who worked on the waterfront and in the construction of the Atlantic and St. Lawrence Railroad. The Great Fire of 1866 destroyed nearly all the neighborhood once again. Only a few brick dwellings and a small number of resources at the eastern end of Federal and Newbury Streets were spared. Rebuilding was swift, however. Nearly sixty percent of the extant historic resources in the neighborhood were built from 1866 to 1890. Architects from all over the region moved to Portland to help in the rebuilding efforts. Most of the buildings constructed immediately after the fire were built of brick in the predominate styles of the period, Italianate and Second Empire. Almost all the residential buildings built after the fire were multi-family reflecting the increasing need for housing the City's growing population. The City's increase in population was significantly impacted by European immigration.

Following the Irish were immigrants from Eastern Europe and Italy. At the turn-of-the-20th century 4,000 immigrants a year were passing through the port city. Many settled in the India Street neighborhood, drawn by its close proximity to jobs on the railroad, on the waterfront, or at nearby industrial complexes, like the Portland Company and Thomas Laughlin Company. The cultural and economic impact of each of these immigrant communities on the India Street neighborhood can be found in the variety of the religious buildings that are the area's key landmarks and in the many family businesses established in the neighborhood, some that continue to the present day.

Reflecting the neighborhood's multicultural nature and tradition of living above one's place of business, this 3-family building on Middle Street with store on the ground floor was owned by Hyman Finklestein in 1924. The flanking brick buildings remain.

In the mid twentieth century abutting neighborhoods to the east and west of India Street were targeted for urban renewal. Demolition for the construction of Franklin Arterial and construction of the Munjoy South development shrunk the historic boundaries of the India Street neighborhood. Although there have been physical changes in recent decades, many of the immigrant families and their family businesses continue to have a strong presence in the neighborhood.

For a more detailed history of the neighborhood, please see *A History of Portland's India Street Neighborhood,* researched and written by Julie Larry and Gabrielle Daniello of ttl-architects for the City of Portland. Historical and architectural information about each individual structure within the district is provided in an historic resources inventory prepared for the City by ttl-architects.

Significance of the India Street Neighborhood

Historical and Cultural Significance

The India Street neighborhood is significant for its association with the City's nineteenth century free African American population. Two thirds of Portland's African American citizens in the first half of the nineteenth century lived in the India Street neighborhood. The center of their community was the Abyssinian Church built in 1828. The church, listed on the National Register of Historic Places in 2006, served as the community's religious center, meeting hall, and school. Many of the homes and businesses associated with this community were destroyed in the Great Fire of 1866; however a small group of homes on or near Newbury Street and the church survived the fire. Although the Abyssinian Meeting House is located outside the proposed district boundaries (primarily because of its physical separation from the area of concentration of extant historic structures), it is individually designated as a local landmark and is strongly associated with the history, development and significance of the neighborhood.

The neighborhood is also significant for its strong role in Portland's immigration history. First settled by European immigrants and later joined by a by a strong concentration of free black citizens, these groups were followed by large numbers of Irish, Italian, and Eastern European Jewish immigrants. It was also home to immigrants from Canada, Scotland, Finland, Sweden and Portugal, although in smaller numbers. Its close proximity to the waterfront, the railroad, industrial centers like the Portland Company, and to the commercial center of the city that developed post-Fire along Middle Street provided these newcomers easy access to jobs.

The neighborhood's sites, structures, and areas express the significance of 19^{th} and 20^{th} century immigrants on the cultural history of Portland. Multi-family dwellings, like the neighborhood's many duplexes, triple deckers, and apartment buildings, built following the fire and into the early twentieth century accommodated large multi-generational families, making the area one of the city's densest urban neighborhoods. While many of these immigrant families lived in modest homes within the neighborhood, their influence is present in large landmark religious structures like St. Paul's Church and Rectory, the Abyssinian Meeting House, Shaarey Tphiloh, St. Peter's Catholic Church, and the Cathedral of Immaculate Conception.

While the neighborhood was home to nationally notable persons like Henry Wadsworth Longfellow and General Samuel C. Fessenden and locally notable persons like Ruben Ruby, Abraham W. Niles, and James McGlinchy, it was also the home and workplace of numerous members of the city's various immigrant communities. These immigrants have significantly shaped the culture, history, and development of Portland in a myriad of ways. Some through their public service, like City Councilor Richard Duddy and his son City Councilor Edward Duddy, or through their community engagement, like Dr. Elias Caplan, a WWI medical corps veteran and the city's second Jewish physician, who along with his wife, was active in local and statewide community organizations. Many of the immigrants became well known and prominent businesspeople. Giovanni Amato settled in Portland circa 1902 and created the iconic sandwich known as the Italian in his bakery at the corner of Newbury and India Streets. At their home on Newbury Street, Vincenzo and Maria Reali started the Village Café, which was greatly expanded and operated by their son and grandson. Jacob Levinsky first established his military surplus store on Washington Avenue before moving to India and Congress Street in 1920.

Architectural Significance

The proposed district possesses a significant concentration of buildings and structures that are united aesthetically. The neighborhood contains many examples, both high style and vernacular, of the Italianate and Second Empire styles. Both styles were popular when a large portion of the neighborhood was rebuilt following the Great Fire of 1866. Almost sixty percent of the 117 historic resources surveyed in the neighborhood were built from 1866 to 1890. Like the adjacent Old Port area, rebuilt during the same period, the predominance of these styles creates a distinctive architectural identity for the neighborhood.

The remaining resources in the neighborhood reflect a variety of styles prevalent in the nineteenth and twentieth centuries. Other styles present in the neighborhood include Federal (Joseph Barbour House, c 1846, 123-125 Newbury Street), Greek Revival (Woodbury & Dorcas Poole Hatch House, 1867-1873, 32 Hampshire Street), Gothic (St. Paul's Church and Rectory, 1869, 279 Congress Street), Renaissance Revival (St. Peter's Catholic Church, 1929, 82 Federal Street), and Beaux Arts (Shaarey Tphiloh Synagogue, 1904, 145-147 Newbury Street).

The India Street neighborhood boasts an unusually high number of landmark buildings, many of which are religious structures built by various immigrant groups.

Several examples of four-bay brick double houses are present in the district. This multi-family building type, with paired central entrances, is present in the Greek Revival (25-27 Middle Street), Federal (123-125 Newbury Street), Italianate (45-47 Hancock Street), and Second Empire Styles (98-100 India Street).

Following the Great Fire of 1866 many architects from around the region moved to Portland to work in the city. They worked in conjunction with local architects and builders to rebuild the city as quickly as possible following the devastating fire. Classically trained in the Beaux Arts method, most of the architects were facile at creating beautiful and well-proportioned buildings in the variety of styles popular in the middle of the nineteenth century.

Levi Newcomb was the architect for the 1867 North School as well as the 1867 First Baptist Church at 353 Congress Street. Construction of the Franklin Street arterial effectively severed the church from the India Street neighborhood it once served. His firm, Levi Newcomb & Son, was located in Boston, but after the Great Fire of 1866 he relocated his firm to Portland. The firm returned to Boston in 1868.

George Browne Pelham was an English born architect who immigrated to Canada before moving to the United States. He, like many other architects of the period didn't stay in Portland long, as he opened an architectural office in New York City in 1875. He designed the James R Lunt-Harriet W Weatherbee Block (1868) at 98-100 India Street and St. Paul's Church and Rectory (1869) at 279 Congress Street.

George M. Harding was a prominent Portland architect who designed the India Street Fire Station in 1867. (He was also responsible for the design of the Rackleff Block at 127-133 Middle Street (1867), the Thompson Block at 117-125 Middle Street (1867), the Woodman Building at 133-141 Middle Street (1867), the Boyd Block at 178 Middle Street (1868), and his own residence at 6 Deering Street.)

The Shaarey Tphiloh Synagogue of 1904 on Newbury Street and the Workingmen's Club Building of 1904 at the southern end of neighborhood on Commercial Street were designed by John James Cunningham. Cunningham had his start in Portland, working in the office of noted Portland architect Francis Fassett from 1892-1896. He left Portland to work in Boston, came back to Portland at the turn of the century and in 1905 established with his father and brother FW Cunningham & Sons, an architecture and construction firm. The firm was also responsible for a number of other Portland landmarks, including the Cumberland County Courthouse, the Federal Courthouse, the Fidelity Building, Mercy Hospital, Union Station, and the Nathan Clifford School.

Integrity of District's Historic Resources

The historic character and integrity of the larger India Street neighborhood has been somewhat eroded in recent decades by demolition, introduction of large surface parking lots and incompatible development. This has had an especially marked impact on the neighborhood's interior blocks that abut the main thoroughfares. The area identified for historic district designation, however, which encompasses key stretches of the neighborhood's major vehicular corridors (Congress Street, the upper portion of India Street and Middle Street), has experienced less of this erosion and still exhibits a strong sense of the neighborhood's 19^{th} and early 20^{th} century character.

The district includes a relatively high percentage of local landmark structures that are not only historically and architecturally noteworthy, but which have also been well preserved. In addition, there are numerous other historic institutional, commercial, mixed use, and multi-family residential structures that, while not landmarks in and of themselves, nevertheless retain a high level of architectural integrity and lend a strong visual cohesiveness to this portion of larger neighborhood.

It is worth noting here that several blocks within the interior of the neighborhood—outside the boundaries of the proposed historic district--still exhibit a number of historic single–family and multi-family residential structures. Although a number of the buildings, particularly the wood-framed structures, have been altered by replacement windows and/or siding, most retain their original form, massing and scale and, in several cases, key architectural details such as front door surrounds and hoods. Although not architecturally noteworthy, these buildings reflect the nature of the area's population and represent the modest vernacular structures that made up much of the neighborhood's building stock during most of its history. Where small concentrations of these structures remain—on lower Hampshire Street and on Newbury Street, west of the Abyssinian--their similarity of scale and massing provides a measure of architectural cohesiveness and historic character to their respective blocks. Although the decision was ultimately made not to include these blocks within the final proposed district boundary due to the spotty nature of most of these blocks as well as other considerations, the preservation and stewardship of the area's historic vernacular housing stock is strongly encouraged.

Visual Character of the India Street Historic District

Although the district encompasses a wide variety of building types, a number of common visual characteristics serve to unify the district. A preponderance of brick buildings and an architectural vocabulary shared by the Italianate and Second Empire styles popular during the second half of the 19th century provide a level of visual consistency. Also, the substantial, blocky massing of the district's many duplexes provides a strong unifying form to the area's building stock. With few exceptions, the buildings fill their respective lots and sit directly at the sidewalk line. This is

The neighborhood's large number of brick Italianate and Second Empire duplexes, with their simple blocky massing, serves as a unifying visual characteristic of the district

Especially true on India Street. Building heights on India and Middle are generally consistent as well; most of the historic structures are 2 ½ to 3 stories tall.

Within the district, the Congress Street corridor exhibits the greatest diversity of scale and form. Relatively massive buildings such as North School are located across the street from long, one-story commercial blocks. The stone façade of St. Paul's Church, the matchboard wood exterior of St. Paul's Rectory and the striking clapboard Italianate double house at the corner of Congress and Hampshire provide a level of architectural contrast and relief to the otherwise brick streetwall. Also, the otherwise consistent building setback (or lack thereof) is broken at several points along the street: at the Cathedral complex, Maine Jewish Heritage Museum and North School. Notwithstanding the more architecturally varied nature of Congress Street, its strong concentration of 19th century and early 20th century structures clearly communicates the area's rich history. (The one notable exception within this historic fabric is the large 1971 shopping plaza on the south side of the street between Hampshire and India (which is not included within the district boundaries).

Classification of Individual Structures within District Boundary

Please see the India Street Historic Resources Survey for an architectural description and history of each structure within the district.

Street	**Original Building Name or Use**	**Date**	**Classification**
<u>Congress Street</u>			
223 Congress	James O'Brien's Shoe Store & Apt. Building	ca. 1903	Contributing
225-227 Congress	Duddy Family Grocery Store & Dwelling	ca. 1870	Contributing
229-231 Congress	Duddy & McPhee Store & Apts.	ca. 1914	Contributing
235 Congress	Daniel Lucy Watch Store & Apt. House	ca. 1881	Noncontributing
239 Congress	E. Thomas Apts & Store	ca. 1875	Noncontributing
241 Congress	Edward Murphy Store & Apts.	1888	Contributing
243-247 Congress	Edward Murphy Block	1923 & 1924	Contributing
248 Congress	North Street School	1867	Landmark
249 Congress	Farris Bros. Dry Goods Store	ca. 1912	Contributing
251 Congress	Bakery, Cleansers & Dyers	ca. 1935	Contributing
267 Congress	Etz Chaim Synagogue	1921	Landmark

272 Congress	MMC Family Practice Center	1999	Noncontributing
273 Congress	John Swett House and Store	1865, 1923	Contributing
277 Congress	James Cunningham House	ca. 1875	Contributing
279 Congress	St. Paul's Church & Rectory	1869	Landmark
281 Congress	James Cunningham Carriage House	ca. 1900	Contributing
284 Congress	Catir Apartments	1928	Noncontributing
290 Congress	Congress Plaza	1971	Noncontributing
306 Congress	Captain Charles Chase House	1867	Contributing
172-196 Cumb. 289 Congress	Cathedral of the Immaculate Conception & Bishops House	1869	Landmark
312 Congress	Bristol Apartment Building	ca. 1910	Contributing
316 Congress	George S. Swasey House	ca. 1867	Contributing
316a Congress	Dr. Elias Caplan Office Building	ca. 1914	Contributing
317 Congress	Guild Hall, Cathedral of the Imm. Con.	1923	Contributing

<u>Federal Street</u>

56 Federal	Double triple-decker	1906-07	Contributing
63 Federal	Lewis Garage	1927	Noncontributing
69-71 Federal	John Gulliver Block	1868	Contributing
73-75 Federal	Horatio Quincy Block	1867	Contributing
68-76 Federal	St. Peter's Catholic Church St. Peter's ancillary bldgs.	1929	Landmark Noncontributing

<u>Hampshire Street</u>

60-62 Hampshire	John Barbour & Jane Staples Block	1867	Contributing
68 Hampshire	J. Davis House	ca. 1867	Contributing

India Street

45 India	Cartonio's Store	ca. 1930	Contributing
47 India	Commercial Fruit Building	1968	Noncontributing
50 India	Jenny Mfg. Co. Service Station	ca. 1938	Noncontributing
55 India	Commercial Structure	1968	Noncontributing
61 India	Larrabee House & Stable	1866-67	Contributing
65 India	Bowdoin College Edw. Mason Dispensary	1912	Noncontributing
67 India	Giovanni Amato's Bakery	1922	Contributing
71 India	Amato's	2000	Noncontributing
72-74 India	Peter Tabachnik Grocery Store	ca. 1915	Contributing
76 India	Mary Damery House	1884	Contributing
78 India	Franklin Simonds Block	1883-84	Contributing
85-87 India	Simonds Dye House	1868	Contributing
95 India	Franklin Symonds Block	1880	Contributing
97 India	India Street Fire Station	1867	Landmark
98-100 India	James R. Lunt-Harriet Wetherbee Block	1868	Contributing
105 India	Patrick Feeney House	ca. 1874	Contributing

Locust Street

2-26 Locust	Cathedral School	1927	Contributing

Middle Street

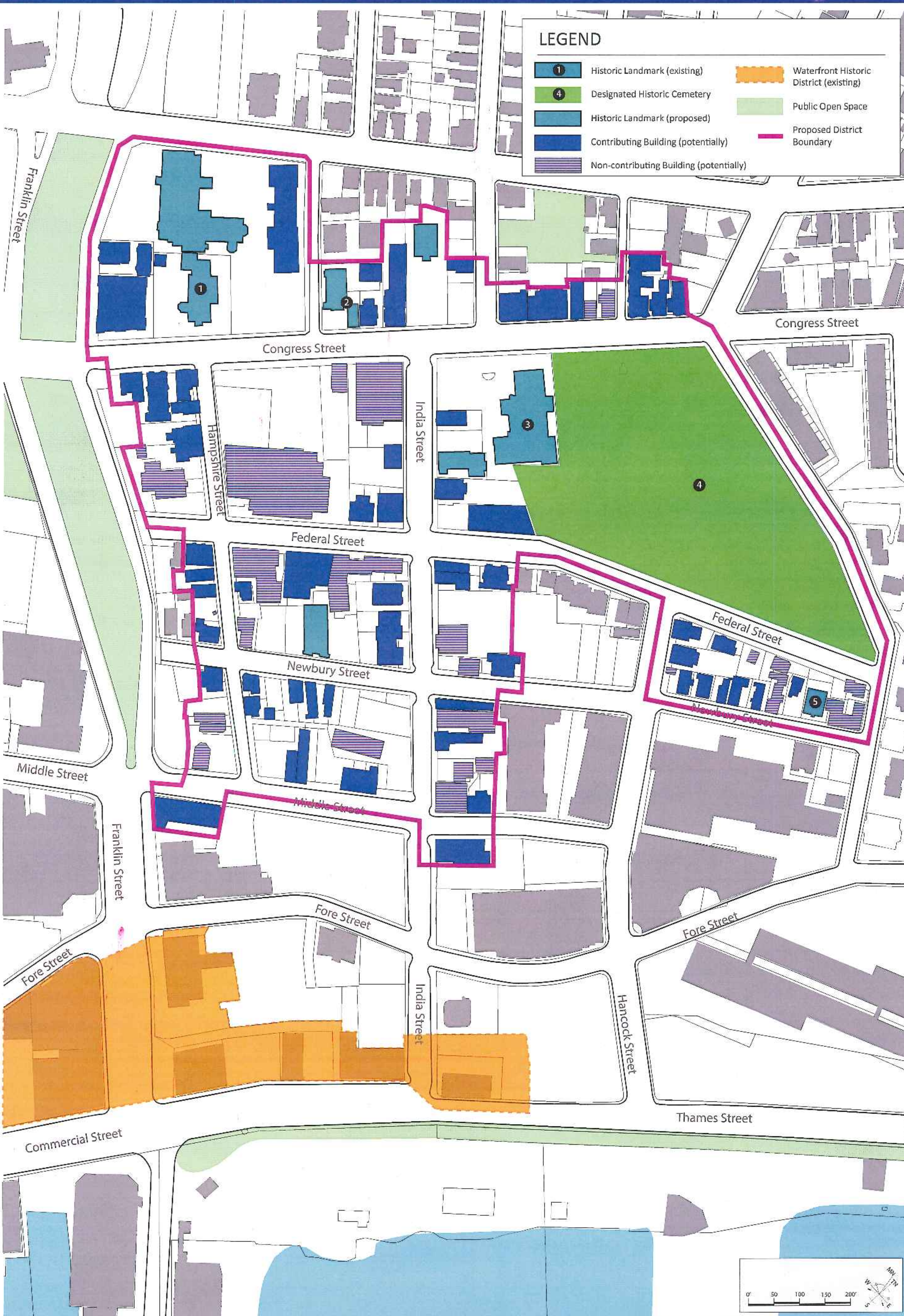
25-27 Middle	George Jewett Block	1856-58	Contributing

39-37 Middle	James McGlinchy Block	1868	Contributing
59 Middle	Abrams Block	1867	Contributing
78-88 Middle	Abraham S. Levey Commercial Block	1922	Landmark (outside distr. boun.)
<u>Newbury</u>			
73-75 Newbury	Abyssinian Meeting House	1828	Landmark (outside dist. boun.)
123-125 Newbury	Joseph Barbour House	by 1846	Contributing
129 Newbury	Dominic Reali Realty building	1977	Noncontributing
137-139 Newbury	Abel Chase & Emery Cushing House	ca. 1867	Contributing
145 Newbury	Shaarey Tphiloh Synagogue	1904	Landmark

Note: The findings and analysis included in this report are based in part on documentation and professional assessments prepared by ttl-architects and commissioned by the City of Portland's Historic Preservation Office. Commissioned reports include a comprehensive architectural survey and written history of the neighborhood and analysis of the neighborhood's eligibility for local historic district designation.

HISTORIC DISTRICT

Sustainable Neighborhood Plan
INDIA STREET, PORTLAND MAINE



Proposed India Street Historic District Boundary - June 3, 2015

Att. 2 ~~XXX~~ AAA I

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Att. 3

(s) To annually report to the council with respect to the following matters:

1. Survey work in progress or completed;

2. The number of projects reviewed (by type);

3. How many certificates of each type were issued.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

DIVISION 3. CATEGORIES AND CRITERIA FOR DESIGNATION

Sec. 14-610. Minimum criteria for designation.

(a) The historic preservation board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure or object for designation by ordinance as a landmark or district:

(1) Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States;

(2) Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property;

(3) Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;

(4) Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;

(5) Its identification as the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States; or

(6) Its representation of a significant cultural, historic,

architectural, archeological or related theme expressed through distinctive areas, sites, structures or objects that may or may not be contiguous.

(b) In the case of a nominated historic district, the historic preservation board shall also determine whether a substantial number of the properties, sites, structures or objects have a high degree of cultural, historic, architectural or archeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties, sites, structures or objects which, while not of such cultural, historic, architectural or archeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites, structures or objects located within it.

(c) In the case of a nominated historic landscape district, the historic preservation board shall also consider its significance as a geologic, natural or man-made landscape feature associated with the development, heritage or culture of the City of Portland, State of Maine, New England region, or the United States.

(d) The planning board and council shall apply the criteria of subsections (a), (b) and (c) but shall also consider the effect of such designation on other aspects of the comprehensive plan of the city.
(Ord. No. 235-90, 2-26-90)

Sec. 14-611. Integrity of landmarks and historic districts.

Any area, structure or object that meets the criteria in section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration.
(Ord. No. 235-90, 2-26-90)

Sec. 14-612. Designation of historic landscape districts.

An historic landscape district may be nominated and considered for designation only if the entire area of the district is owned by a unit of federal, state or local government, or any combination of such ownership.
(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 2, 5-17-93)

Sec. 14-613. Reserved.

DIVISION 4. NOMINATION, CONSIDERATION AND DESIGNATION

Sec. 14-614. Procedure.

The provision of this division shall govern the nomination, consideration and designation of landmarks and districts.
(Ord. No. 235-90, 2-26-90)

Sec. 14-615. Initiation of nomination.

(a) Nomination of an area, site, structure or object for consideration of designation as a landmark, historic district or historic landscape district shall be submitted to the department, on a form provided by the department, by the following:

(1) Any two (2) members of the historic preservation board on their own initiative, by written notice to the department; or

(2) By written petition of any owner, in the case of a landmark; or

(3) By written petition of one (1) or more owners of affected property in the case of a district; provided two (2) members of the historic preservation board must sponsor the petition.

(b) A nomination shall be completed and filed with the department with all required signatures and any fees specified therefore for the nomination to be pending.

(c) Upon nomination, the department shall notify the owner or owners of the nomination and shall transmit the nomination to the historic preservation board for its consideration at its next scheduled meeting, which in no event shall be held later than thirty (30) days following nomination.

(d) At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the historic preservation board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the historic preservation board that the structure is eligible for a permit shall be conclusive.
(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-616. Notification of nomination and public hearing.

(a) A public hearing on the nomination shall be held by the historic preservation board within thirty (30) days following the first scheduled meeting referred to in section 14-615(c), but in no event later than sixty (60) days following receipt of the completed nomination form by the department. Notice of the nomination and of the public hearing shall be in accordance with the procedures for public hearings before the planning board for site plan approval.

(b) The hearing shall be conducted in accordance with procedures adopted by the historic preservation board. The historic preservation board shall consider all testimony or evidence relating to the designation criteria in division 3 from any person who makes written submissions or appears at the public hearing. Historic preservation board members may also present testimony or make submissions. The owner of a nominated landmark or of property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in division 3.
(Ord. No. 235-90, 2-26-90)

Sec. 14-617. Recommendation by historic preservation board.

Within thirty (30) days following the close of the public hearing, the historic preservation board shall make recommendation to the council in the case of a landmark, or to the planning board in the case of a district, upon the evidence as to whether the nominated landmark or district meets the criteria for designation in division 3. Such recommendation shall be approved by at least four (4) members of the historic preservation board and shall be accompanied by a report to the council or planning board containing the following information:

(a) Explanation of the significance or lack of significance of the nominated landmark or district as it relates to the criteria for designation.

(b) Explanation of the integrity or lack of integrity of a nominated landmark or historic district.

(c) Proposed design guidelines for review of alteration or construction. The specific design guidelines may provide explanation by text and/or schematic examples of visual compatibility for purposes of division 7.

(d) Relationship of the nominated landmark or district to the ongoing effort by the committee to identify and nominate all potential areas, sites, structures and objects that meet the criteria for designation.

(e) A map showing the location of the nominated landmark and the boundaries of the nominated district.

(f) A list, including the address, of every site, structure and object in each nominated historic district indicating their degree of cultural, historic, architectural or archeological significance by classification as of a landmark or contributing significance.

Where a motion either in favor of a recommendation or in opposition to a recommendation results in a vote of fewer than four (4) members, the item shall automatically be tabled to the next regularly scheduled meeting.
(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 3, 5-17-93)

Sec. 14-618. Reserved.

Sec. 14-619. Notification of historic preservation board recommendation.

(a) The recommendation of the historic preservation board, including a copy of the report, shall be transmitted to the city council in the case of a landmark and to the planning board in the case of a district. Notice of the recommendation shall be sent by mail to the owner of a nominated landmark and to all owners within a nominated district within ten (10) business days following adoption of the recommendation and report.

(b) If the recommendation of the historic preservation board is that the property or district not be designated, the nomination process shall terminate and no new nomination shall be submitted for the identical property or area for a period of one (1) year from the date of termination, except upon a showing of substantial and material newly discovered information.
(Ord. No. 235-90, 2-26-90)

Sec. 14-620. Determination by planning board.

(a) The planning board, upon receipt of a recommendation and a report from the historic preservation board concerning nomination of a district, may hold a workshop meeting pursuant to the provisions of section 14-26. After review of the historic preservation board recommendation and report, the planning board shall hold a public hearing.

(b) All meetings, hearings and deliberations of the planning board to consider the recommendation and report of the historic preservation board shall be held in conformity with sections 14-24 through 14-28.

(c) The planning board may request the chair of the historic preservation board, or a member designated by the chair, to appear at any meeting, hearing or deliberation to explain any recommendation or report.

(d) The planning board shall make its final determination including written findings as to whether the nominated district meets the criteria for designation in division 3 within forty-five (45) days following receipt of the recommendation and report from the historic preservation board. A copy of the determination of the planning board shall be sent by regular mail to all owners within a nominated district within ten (10) business days following the determination.
(Ord. No. 235-90, 2-26-90)

Sec. 14-621. Planning board recommendation to city council.

The recommendation of the planning board regarding a nominated district shall be filed with the city clerk within ten (10) business days. It shall be accompanied by a copy of the report and recommendation of the historic preservation board and, in the case of a recommendation that the council designate, a draft of a proposed designation ordinance, including any proposed design guidelines for review of alteration, construction, removal or demolition. The recommendation of the planning board may include proposed changes in other city ordinances, policies, infrastructure, or recommendations with respect to the comprehensive plan of the city relating to the proposed designation.
(Ord. No. 235-90, 2-26-90)

Sec. 14-622. Action by the city council.

(a) Within sixty (60) days after the filing of a recommendation on the nomination with the city clerk pursuant to section 14-620, the council shall designate the landmark or district or reject designation. Any designation ordinance may include design guidelines for the designated landmark or district.

(b) Designation of a district shall be accompanied by a list, including the address, of every site, structure and object in the district which is determined to be a landmark or considered to be contributing or noncontributing, indicating their degree of cultural, historic, architectural or archeological significance. This list may be amended thereafter by the council upon recommendation from the planning board under the same procedures as set forth above. Where there are no express findings by the council in the designation ordinance, there shall be a presumption that the council found that all requirements of sections 14-610 and 14-611 were met.

(c) Notice of the proposed action of the council shall be provided by mail to the nominator and the owner of the nominated landmark and/or of all properties adjacent thereto prior to council action. The notice shall include a copy of the resolution or designation ordinance and design guidelines.

(d) Notice of council action to the same persons shall be sent within ten business days following the council action. A copy of each designation ordinance and design guidelines shall be sent to the planning board, the historic preservation board and the department. A complete schedule of all landmarks and districts, including design guidelines and a listing of landmark and contributing structures, shall be maintained by the department as part of the design manual and shall be available for public inspection and copying during ordinary business hours.
(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-623. Amendment and rescission of designation.

Amendment and rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the council, and shall follow the procedure set forth in division 4 for designation. The council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the committee, planning board and council shall be limited to those provided in section 14-610(a) and section 14-611. Amendments may include refinement or correction of design guidelines, maps, and other parts of any designation ordinance.
(Ord. No. 235-90, 2-26-90)

Sec. 14-624. Reserved.
Sec. 14-625. Reserved.

***Editor's note** - Order No. 197-03/04 adopted 9/8/04, repealed §14-625 Projects of Special Merit in its entirety.
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department evidencing a determination that specific plans for alteration of a structure or new construction on a site do not require approval under this article.

Contributing: A classification applied to a site, structure or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural or archeological significance as embodied in the criteria for designating an historic district, but without being itself a landmark.

Council: The city council.

Demolition: Any act or process that partially or totally destroys a structure or object.

Department: The department of planning and urban development.

Design guidelines: Any design standard specified for alteration or new construction which is unique to a particular landmark, historic district or historic landscape district.

Design manual: The historic resources design manual described in section 14-675.

District: An historic district or historic landscape district.

Historic district: An area designated as an "historic district" by the council.

Historic landscape district: An area designated as an "historic landscape district" by the council.

Landmark: A property, site, structure or object designated as a "landmark" by the council as having a high degree of historical, cultural and/or architectural significance.

Major development: As defined in article V of this chapter.

Minor development: As defined in article V of this chapter.

New construction: The adding to a structure by an addition; the erection or placement of any new structure on a lot or property; or the comprehensive redesign/renovation of an existing structure.

Noncontributing: A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that 1) it odes not contribute generally to the qualities that give the historic district cultural, historic, architectural or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or 3) where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the historic preservation board to be non-contributing if it meets one or more of the above conditions.

Object: Anything constructed, fabricated or created, the use of which does not require permanent or semi-permanent location on or in the ground.

Open space: Any park and any other area outside of a building open to the public.

Ordinary maintenance: Acts of maintenance or repair which do not include a change in the design, material or outer appearance of a structure, including without limitation repainting, replacement of materials or windows of the same scale, texture and color, and landscaping other than within an historic landscape district.

Owner: The person or persons holding record title to the building, site or property; provided, however, the last previous tax roll in the records of the city assessor's office may be relied upon as showing record ownership in the absence of substantial evidence to the contrary.

Property: Land and improvements identified as a separate lot for purposes of subdivision, site plan, or zoning regulation.

Relocation: Any removal or relocation of a structure on its site or to another site.

Restoration: Any act which returns a structure or a feature of a structure to a prior state of historic significance.

Sign: As defined in section 14-47.

Site: The location of an event, activity, structure or object.

Att. 4

INDIA STREET NEIGHBORHOOD - ANALYSIS OF ELIGIBILITY AS A LOCAL HISTORIC DISTRICT

Introduction

In April 2013 the City of Portland's Department of Planning & Development retained ttl-architects to conduct an intensive historic resources survey of the India Street neighborhood and prepare a written report documenting the history of the area. The boundaries of the study area are identified in Figure 1. The survey and report, prepared by Julie Larry and Gabrielle Daniello, were used to inform the India Street Neighborhood Master Plan initiative. The survey information served as the foundation of the India Street Neighborhood Advisory Committee's recommendation to establish an India Street historic district.

As the Historic Preservation Board begins its evaluation of the historic district proposal, Planning Department staff asked ttl-architects to follow up on its previous work by providing a professional assessment of the neighborhood's eligibility as a local historic district. The following analysis addresses the designation criteria outlined in Portland's historic preservation ordinance.

Figure 1

Summary Description of A Potential India Street Neighborhood Local Historic District

The India Street neighborhood is located to the west of Franklin Street at the base of Munjoy Hill. The potential India Street Neighborhood Local Historic District includes five locally designated landmarks as well as contributing religious, commercial, and residential resources. The neighborhood includes historic resources that predate the Great Fire of 1866, including several resources associated with the neighborhood's nineteenth century free African American population. The neighborhood also has numerous historic resources associated with Portland's immigrant communities, especially the Irish, Italian, and Eastern European Jewish immigrants who settled in the city during the nineteenth and early twentieth centuries.

Summary Historical Background

The history of the India Street neighborhood is as old as the history of Portland, as it was the site of the first European settlement on Portland's peninsula. The settlement was destroyed during conflicts with Native Americans in the 17th century, rebuilt and then destroyed again in the late 18th century by the British. Almost nothing exists from these early attempts at settlement except for Eastern Cemetery; even the original waterfront has been filled to accommodate 19th century maritime and railroad development. Life in the India Street neighborhood during the early 19th century revolved largely around waterfront activities. A large number of the laborers and mariners were free black men who prospered in Portland's maritime economy, settled in the India Street neighborhood, and built their own homes. In 1828 the community built their own church, the Abyssinian Meetinghouse on Newbury Street.

As the African American population prospered and moved out of the neighborhood, they were replaced by Irish immigrants who worked on the waterfront and in the construction of the Atlantic and St. Lawrence Railroad. The Great Fire of 1866 destroyed nearly all the neighborhood once again. Only a few brick dwellings and a small number of resources at the eastern end of Federal and Newbury Streets were spared. Rebuilding was swift. Nearly sixty percent of the extant historic resources in the neighborhood were built from 1866 to 1890. Architects from all over the region moved to Portland to help in the rebuilding efforts. Most of the buildings constructed immediately after the fire were built of brick in the predominate styles of the period, Italianate and Second Empire. Almost all the residential buildings built after the fire were multi-family reflecting the increasing need for housing the City's growing population. The City's increase in population was significantly impacted by European immigration. Following the Irish were immigrants from Eastern Europe and Italy. At the turn-of-the-20th century 4,000 immigrants a year were passing through the port city. Many settled in the India Street neighborhood, drawn by its close proximity to jobs on the railroad, on the waterfront, or at nearby industrial complexes, like the Portland and Thomas Laughlin companies. The cultural and economic impact of each of these immigrant communities on the India Street neighborhood can be found in the variety of the religious buildings that are the area's key landmarks and in the many family businesses established in the neighborhood, some that continue to the present day. Neighborhoods to the east and west of India Street were targeted in the mid twentieth century for renewal. Demolition for the construction of Franklin Arterial and the Munjoy South development shrunk the historic boundaries of the India Street neighborhood. Although there have been physical changes within the neighborhood, many of the immigrant families and their family businesses continue to have a strong presence in the neighborhood.

For a more detailed history of the neighborhood, *A History of Portland's India Street Neighborhood* researched and written by Julie Larry and Gabrielle Daniello of ttl-architects presents a history of the neighborhood from its early European settlement to the early 21st century. Individual histories of each historic resource surveyed within the study area are included in the individual survey sheets prepared by ttl-architects for the City of Portland.

Determination of the Neighborhood's Eligibility for Designation as a Local Historic District
Based on our research of the neighborhood and the neighborhood's historic resources we find that the India Street neighborhood meets the minimum criteria standards for designation as a local historic district as defined in Section 14-610 of the City of Portland's Historic Preservation Ordinance and summarized below:

Section 14-610 - Minimum Criteria for Designation
(a) The historic preservation board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure or object for designation by ordinance as a landmark or district:

(1) [The proposed district's] *value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States;*

The neighborhood is significant for its association with the City's nineteenth century free African American population. Two thirds of Portland's African American citizens in the first half of the nineteenth century lived in the India Street neighborhood. The center of their community was the Abyssinian Church built in 1828. The church, listed on the National Register of Historic Places in 2006, served as the community's religious center, meeting hall, and school. Many of the homes and businesses associated with this community were destroyed in the Great Fire of 1866; however a small group of homes on or near Newbury Street and the church survived the fire.
The neighborhood is also significant as an example of Portland's immigration history. First settled by European immigrants, the neighborhood was then home to large numbers of African Americans and Irish, Italian, and Eastern European Jewish immigrants. It was also home to immigrants from Canada, Scotland, Finland, Sweden and Portugal, although in much smaller numbers. Its close proximity to the waterfront, the railroad, industrial centers like the Portland Company, and to the commercial center of the city that developed post-Fire along Middle Street provided these newcomers easy access to jobs. Multi-family dwellings built following the fire and into the early twentieth century accommodated large multi-generational families making the area one of the city's densest urban neighborhoods.

(2) [The proposed district's] *identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;*

While the neighborhood was home to nationally notable persons like Henry Wadsworth Longfellow and General Samuel C. Fessenden and locally notable persons like Ruben Ruby, Abraham W. Niles, and James McGlinchy, it was also the home and workplace of numerous members of the city's various immigrant communities. These immigrants have significantly shaped the culture, history, and development of Portland in a myriad of ways. Some through their public service, like City Councilor Richard Duddy and his son City Councilor Edward Duddy, or through their community engagement, like Dr. Elias Caplan, a WWI medical corps veteran and the city's second Jewish physician, who along with his wife, was active in local and statewide community organizations. Many of the immigrants became well known and prominent businesspeople. Giovanni Amato settled in Portland circa 1902 and created the iconic sandwich known as the Italian in his bakery at the corner of Newbury and India Streets. At their home on

Newbury Street, Vincenzo and Maria Reali started the Village Café, which was greatly expanded and operated by their son and grandson. Jacob Levinsky first established his military surplus store on Washington Avenue before moving to India and Congress Street in 1920.

(3) *Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;*

See 14-610 (b) for a discussion of the India Street neighborhood's architectural significance.

(4) *Its identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States;*

See 14-610 (b) for a discussion of significant architects and builders of historic resources within the neighborhood whose work contributes to the neighborhood's architectural significance.

(5) [The proposed district's] *representation of a significant cultural, historic, architectural, archeological or related theme expressed through distinctive areas, sites, structures or objects that may or may not be contiguous.*

The neighborhood's sites, structures, and areas express the significance of 19^{th} and 20^{th} century immigrants on the cultural history of Portland. First settled by European immigrants, the neighborhood was then home to large numbers of African Americans and Irish, Italian, and Eastern European Jewish immigrants. It was also home to immigrants from Canada, Scotland, Finland, Sweden, Portugal and other nations, although in much smaller numbers. Multi-family dwellings, like the neighborhood's duplexes, triple deckers, and apartment buildings, built following the fire and into the early twentieth century accommodated large multi-generational families, making the area one of the city's densest urban neighborhoods. While many of these immigrant families lived in modest homes within the neighborhood, their influence is present in large landmark religious structures like St. Paul's Church and Rectory, the Abyssinian Meeting House, Shaarey Tphiloh, St. Peter's Catholic Church, and the Cathedral of Immaculate Conception.

(b) In the case of a nominated historic district, the historic preservation board shall also determine whether a substantial number of the properties, sites, structures or objects have a high degree of cultural, historic, architectural or archeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties, sites, structures or objects which, while not of such cultural, historic, architectural or archeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites, structures or objects located within it.

While the neighborhood is comprised mainly of properties that may not qualify as landmarks they contribute to the overall visual characteristics of the neighborhood. There are buildings and structures within the neighborhood that exemplify a significant architectural type, style or design and/or the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States.

Architectural Significance

The proposed district possesses a significant concentration of buildings and structures that are united aesthetically. The neighborhood contains many examples, both high style and vernacular, of the Italianate and Second Empire styles. Both styles were popular when a large portion of the neighborhood was rebuilt following the Great Fire of 1866. Almost sixty percent of the 117 historic resources surveyed in the neighborhood were built from 1866 to 1890. Like the adjacent Old Port area, rebuilt during the same period, the predominance of these styles creates a distinctive architectural identity for the neighborhood.

The remaining resources in the neighborhood reflect a variety of styles prevalent in the nineteenth and twentieth centuries. Other styles present in the neighborhood include Federal (Joseph Barbour House, c1846, 123-125 Newbury Street), Greek Revival (Woodbury & Dorcas Poole Hatch House, 1867-1873, 32 Hampshire Street), Gothic (St. Paul's Church and Rectory, 1869, 279 Congress Street), Renaissance Revival (St. Peter's Catholic Church, 1929, 82 Federal Street), and Beaux Arts (Shaarey Tphiloh Synagogue, 1904, 145-147 Newbury Street).

Several examples of four-bay brick double houses are present in the neighborhood. This multi-family building type, with paired central entrances, is present in the Greek Revival (25-27 Middle Street), Federal (123-125 Newbury Street), Italianate (45-47 Hancock Street), and Second Empire Styles (98-100 India Street).

Following the Great Fire of 1866 many architects from around the region moved to Portland to work in the city. They worked in conjunction with local architects and builders to rebuild the city as quickly as possible following the devastating fire. Classically trained in the Beaux Arts method, most of the architects were facile at creating beautiful and well proportioned buildings in the variety of styles popular in the middle of the nineteenth century.

Levi Newcomb was the architect for the First Baptist Church at 353 Congress Street (1867), the Joseph C Noyes Block at 57-59 Deering Street (1868), and the North School (1867). His firm, Levi Newcomb & Son, was located in Boston, but after the Great Fire of 1866 he relocated his firm to Portland. The firm returned to Boston in 1868.

George Browne Pelham (1831-1899) was an English born architect who immigrated to Canada before moving to the United States. He, like many other architects of the period didn't stay in Portland long, as he opened an architectural office in New York City in 1875. He designed the James R Lunt-Harriet W Weatherbee Block (1868) at 98-100 India Street and St. Paul's Church and Rectory (1869) at 279 Congress Street.

George Harding (1827-1910) was a prominent Portland architect who designed the India Street Fire Station in 1867. He was also responsible for the design of the Rackleff Block at 127-133 Middle Street (1867), the Thompson Block at 117-125 Middle Street (1867), the Woodman Building at 133-141 Middle Street (1867), the Boyd Block at 178 Middle Street (1868), and his own residence at 6 Deering Street.

John James Cunningham (1875-1951) of Portland worked in the office of Francis Fassett from 1892-1896. He then traveled to Europe for six months and returned to the United States to work in Boston in the offices of several leading architects. He came back to Portland at the turn of the century and in 1905 established with his father and brother FW Cunningham & Sons, an architecture and construction firm. The firm was responsible for the construction of the Cumberland County Courthouse, the Federal Courthouse, the Fidelity Building, Mercy Hospital, Union Station, and the Nathan Clifford School. John J Cunningham designed Shaarey Tphiloh Synagogue (1904) and the Workingmen's Club Building at 17-19 Commercial Street (1904).

Section 14-611 - Integrity of Landmarks and Historic Districts

The character and integrity of the neighborhood's historic resources have been affected and somewhat eroded by demolitions and 21st century development. However, the neighborhood retains sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration. The neighborhood includes local landmark structures that retain a high level of architectural integrity. In addition there are several religious, mixed use, and multi-family residential buildings that have not been individually designated as local landmarks that retain a high level of architectural integrity. The neighborhood also is comprised of wood framed dwellings, some single-family and some multi-family, that have been altered by replacement windows and siding. While many of these dwellings retain very little architectural detail, historic images and the history of their use as residences for poor or moderate income families indicate they had little architectural detail when they were originally constructed. They do retain some architectural details, usually door surrounds or hoods. These structures are more architecturally significant for their similarity of scale and massing and their contribution to streetscapes within the district.

Julie Ann Larry, Principal
ttl-architects
29 January 2015

Att. 5

78-88 Middle Street *Abraham S. Levey Commercial Block, 1922*
Contributing

Architectural Description
The two story commercial block at 78-88 Middle Street is a two story flat roofed brick building that retains its long original nine bay pattern along Middle Street. The building abuts the sidewalk along Middle and Franklin Street. The street level bay pattern is defined by a series of eight wide storefronts set within broad masonry openings. Each corner of the Middle Street facade is truncated, presenting an 8 foot wide section of diagonal facade. The ninth bay at the corner of Middle and Franklin features a broad, recessed wooden storefront that spans the corner. A full glass wooden entry door with transom above provides access to a well known and nationally recognized restaurant. Two pebble clad risers lead to the entry and the corner recessed alcove is supported by two 8" diameter painted steel columns. A single pane wood storefront window with painted wood panel below flanks each side of the entry door. The steel columns support a band of transom window above the recessed alcove. A single pane appears at the truncated facade and one pane appears to either side, above the recessed alcove. One additional wooden storefront/transom combination extends along Franklin Street and Middle Street. The adjacent fifth through eighth bay each contain a broad central wood storefront window and transom with narrower sidelight/transom combination. The third section of each bay contains a recessed, full light wood entry door. All bays are separated by a 16" wide brick pier. The fourth bay at Middle Street is an arched top brick opening that provides access to the offices above. The first three bays at street level have similar storefront treatment. The third bay has an entry door and the first and second bays replace the door with a matching thin storefront. The first second and third bays each have a quarter round canvas canopy. The truncated corner at the first bay has a simple fixed pane window that matches the return at the east facing facade. The final first story feature at the east facing facade is a full light wood exit door with transom. The canopy above wraps the truncated corner and east facing openings. The second story openings relate to the bays below and are comprised of individual one-over-one metal double hung windows in the following patterns: the first bay is a grouping of two double hung windows separated by a 12" wide brick pier; the second bay is three double hung window separated bya 12" wide pier; the third bay matches the second and the fourth bay is a single one-over-one metal double hung. The fifth second floor bay contains only two metal double hungs separated by wider brick piers. The sixth, seventh and eighth bays have three one-over-one metal double

hung windows, separated by a 16" brick pier between windows within each bay. A 4'-8" wide brick pier separates bays. The ninth bay is two metal double hungs and a single metal double hung at the truncated corner. All second story windows are capped with flat jack arch that in turn support a corbelled soldier course frieze ban. Three more courses of brick appear above the soldier course frieze band which in turn is capped by a course of painted metal roof termination flashing. The second story windows share a sill band of projecting bricks. The secondary facade along Franklin Street presents two simple horizontally proportioned fixed windows at the first floor level. Three windows appear at the basement level towards the rear and the second story presents groupings of metal double hung windows in the following pattern, left to right: three, two, three, two. A small chimney appears at the rooftop at the southwest corner along Franklin.

Historical Narrative
Built 1922, designed by John Calvin and John Howard Stevens, contractor was Antonio Leo, owner was Abraham S. Levey, a house painter.

In 1924, the first year tenants occupied the new structure, the Reliable Furniture & Clothing store and David Blumenthal, a fruit dealer, were listed at the address.

In 1930, the Great A & P Tea Company occupied one storefront. There was also the New England Supply Co. Dry Goods and Rose Caiazzo’s restaurant.

In 1940, shops included Louis Blumenthal’s meat market, Anthony Albano’s restaurant, Benjamin Levinsky’s fruit store, and the State Upholstering Co. Blumenthal’s kosher meat market closed in the mid-70’s. State Upholstering was at the address still in 1950.

Att. 6

From: Linda Murnik <lmurnik@me.com>
To: <dga@portlandmaine.gov>
Date: 9/1/2015 3:48 PM
Subject: India Street Historic Designation

To the Historic Preservation Board Members:

Although I cannot attend the Historic Preservation public meeting on September 2, I write as a former resident and one long involved with the India Street neighborhood. I write to support ISN's designation as an Historic District as one long involved with preservation in Portland as chair of Greater Portland Landmarks public issues committee and as a long past president of the Board. I've also been a good and appreciative customer of Micucci's for decades - no matter where I've lived in Portland.

As the oldest and most diverse neighborhood in the city and past home to successive waves of immigrants and workers of all sorts for over several hundred years in a developing shipping and industrial period, ISN deserves designation.

Portland continues to change rapidly. To protect the historic buildings, significant houses of worship, commercial and residential buildings that remain at its' core - even though not all are in architectural high style - and to help tell the neighborhood's story, ISN deserves designation.

Historic districts work. Not only do they attract visitors and new commerce, but the economic benefits in rehabilitating income-producing properties are very real.They help to sustain a healthy mixed-use neighborhood, and improve property values (as my husband and I discovered when we rehabbed a building on Park St. in the 1980's).

Much to the dismay of many residents, the pressure for large-scale higher rise development in the neighborhood is strong and will continue, but the benefit of added scrutiny and a consistent review process that comes with historic designation is a form of protection for period buildings that should not be underestimated. "Downtown adjacent" neighborhoods are understandably under pressure, but the value of preserving the historic character of a city while sensitively integrating new development of appropriate scale is of enormous long-term value to a city.

I strongly urge the members of the Historic Preservation Board to support designation of the India Street Neighborhood as an
Historic District.

Sincerely,
Linda J. Murnik

Deb Andrews - Bill Stauffer comments

From: <bstauffer@eco-story.com>
To: <dga@portlandmaine.gov>
Date: 8/5/2015 3:10 PM
Subject: Bill Stauffer comments

I am sorry that I will be out of town on vacation for tonight's meeting.

I would like to reiterate that as a business owner and property owner within this district that I am in full support of an historic district for the India Street Neighborhood. In the past I was not in favor of historic districts but have changed my mind for the following reasons:

1. I owned several buildngs that became part of the West End's historic district a few years after I purchased these properties. What I found was that the historic approval process was quite easy. In fact, most of my approvals for work done were approved at the clerical level.
2. It is clear that historic guidelines increases property values. As I have said before a well maintained historic building allows the owner to offer high end units or market rates. However, a building with vinyl siding and other non period details will always be limited by its "skin" in terms of rental or resale values.
3. Some have said that historic regulations gentrifies or increases rents above market. If this were true, some of our recent buildings like the Bay House would be inexpensive housing –yet this is simply not true. There is no correlation between non period and non-historic buildings offering lower rents.
4. There are numerous examples of modern new construction that fits within the historic guidelines. I ask anyone to compare the look of these buildings to the buildings that were not required to conform to historic guidelines.

Thank you,

Bill Stauffer

Bill Stauffer
PH: (207) 699-5727 x11
FX: (207) 699-2321

Eco-story LED Lighting
151 Newbury Street
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Deb Andrews - Historic Preservation Board-9/2-India Street Neighborhood

From: Liv Chase <livchase@yahoo.com>
To: Deb Andrews <dga@portlandmaine.gov>, Chris Korzen <chriskorzen@gmail.com...
Date: 8/30/2015 9:27 AM
Subject: Historic Preservation Board-9/2-India Street Neighborhood

Dear Historic Preservation Board,
I am not able to attend this upcoming meeting on the India Street Neighborhood. I have reviewed the latest proposed boundary for a historic district in the India Street Neighborhood. Although the latest boundary is a smaller area and the properties that I currently own are outside of the district, I am still opposed to the idea of any historic district for the following reasons: 1) The 100' foot rule still impacts my property at 52 Federal St. and any other property within 100' of the historic district. Although the design guidelines are less restrictive within 100' of the district, they are still more restrictive then the guidelines that currently exist. 2) I do not agree that the contributing buildings represented in the proposed boundary are significant (with the acceptation of a few individual buildings) and creating a historic district will only cause added cost, time, and money for the owners of these properties. 3) At the last meeting I attended, Deb Andrews presented the idea that the Historic District was a benefit to everyone because it "protected" historic buildings from being torn down. I am extremely confident, based on all of the neighbors that I know in the neighborhood, if they purchased brick buildings, they are interested in keeping them that way. Therefore, I do not see how regulating the mortar used on bricks or preventing someone from making a building more energy efficient, is a means of "protecting" current building stock. 4) Lastly, as a comment from a neighbor, Frank Reali, the real threat to the neighborhood is large scale upcoming development and there is no longer a way to change this because it is too late. All of the larger parcel have been sold, permitted for construction under the current code, and they will move forward regardless. The only thing that a historic district will do for our neighborhood is place major restriction on small property owners that don't have the funds to make repairs that are historic in nature.
Base on these comments and observation, I am recommending that the proposed historic district is eliminated and individual properties can hold a "historic designation" if there are specific properties that the city feels need to be protected.
Regards,
Liv Chase

Deb Andrews - 125 Newbury Street

From: Lindsay Clarke <clarkelindsay@gmail.com>
To: <dga@portlandmaine.gov>
Date: 9/7/2015 9:36 AM
Subject: 125 Newbury Street

To Whom It May Concern,

I am writing as the owner of 125 Newbury Street, Portland, ME 04101. In the current draft of the proposed India Street Historic District, my property has been included as the only historic building on its block. I am writing to formally request that my building be excluded from the India Street Historic District.

Thank you for your cooperation.

Sincerely,

Lindsay Clarke
125 Newbury Street
Portland, ME 04101

clarkelindsay@gmail.com
207-518-8218

From: alice white <alilib@main.nc.us>
To: <dga@portlandmaine.gov>
Date: 8/5/2015 3:32 PM
Subject: I hate what has happened to the neighborhood East of Franklin Arterial and within the confines of Congress and the Bay

I was a resident of Munjoy Hill.
The move was precipitated because the neighborhood within the above boundary 'including India Street' has changed too much, and not in the right direction.
The Morrill building coming down was not good. But the two crappy 'low rent' hotels with contemporary exteriors built in the past six years DO NOT ENHANCE THE NEIGHBORHOOD.
The Western half of the East End, has already lost 60% of it's previous charm.
Older residential buildings look stupid next to cheap contemporary commercial buildings. Why cant anyone see that?
The older brick and stone commercial buildings that are still functioning in the neighborhood are like 'hens teeth'. When a few more go: you can throw the towel in on the West end of the EAST END.

:)

a previous resident of Munjoy Hill, I particularly chose that area as my home because I hate homogeneous neighborhoods, and I dislike inexpensive unattractive new development.
I have done preservation projects all over the Eastern Seaboard from Georgia to Massachusettes from 1973 until 2010.

I wqw involved in the first historic renovations EVER conceived and completed in many medium sized cities in the South and on the East Coast.

I am close to 70 years old, and don't want to live in a neighborhood that looks like a war zone. Old does not mean 'bad' or 'poor'.
There has not been one attractive building added to the East End in ten years.

YOU ARE MAKING A MESS by not requiring preservation of the remaining architectural treasures that you have. Even small commercial buildings count for something.

STOP the wrecking and think in the long term. If you don't start preservation now, you will NEVER have any historic district.

Alice E White
Falmouth, Maine
(HATED MOVING AWAY FROM THE CITY).

Deb Andrews - India Street Preservation

From: Tony Castro <tonycastro.company@yahoo.com>
To: "dga@portlandmaine.gov" <dga@portlandmaine.gov>, "info@portlandlandmarks...
Date: 8/5/2015 1:58 PM
Subject: India Street Preservation

I regret that I will not be able to attend the meeting tonight but do wish to express my support for the proposed 'India Street Historic District'. Sincerely, Tony Castro

http://www.tonycastrocompany.com

372 Intervale Road
New Gloucester, Maine 04260
phone (207) 926-5618

Deb Andrews - I agree

From: Sue Cabot <suecabot4@gmail.com>
To: <dga@portlandmaine.gov>
Date: 8/5/2015 1:52 PM
Subject: I agree

I agree with Greater Portland Landmarksâ€™ endorsement of the proposed India Street Historic District entwined with a zoning change.

Sincerely,

Sue Cabot
49 Morning St.
Portland 04101
780.0351

Deb Andrew,

Date:8/4/15

Portland Maine Historic Preservation Board
389 Congress Street
Fourth Floor
Portland, Maine 04011

Dear Board Members,

After careful consideration, I wish to express my general opposition to the existing proposal to create an historic district or Multiple Resource Designation in the India Street neighborhood, and my specific opposition to including my building as a contributing structure in any preservation plan.

I am opposed to my building's inclusion in these plans for the following reasons:

1. While I support the cause of preservation, I agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including mine, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating these structures as official landmarks.

2. My structure is of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.

3. I feel that I am best suited to decide what is best for my property, and do not wish to submit to Historic Preservation Board oversight or bear higher construction and repair costs associated with board mandates.

Please remove my property from any historic preservation plans.

Sincerely,

Florence A. Olebe
Owner, 142 Newbury, St. Property

Greater Portland Landmarks Statement
for the Historic Preservation Board Public Hearing Sept. 2, 2015

Greater Portland Landmarks strongly believes that it is essential to designate a historic district at the core of the India Street neighborhood in order to maintain its distinctive identity and authentic historic character. India Street served as an important link to the city from the waterfront and was home to generations of immigrants who left their mark in the buildings they created and inhabited in the neighborhood.

We support the Historic Preservation Board's proposed district boundaries. These boundaries focus on the area with the highest concentration of historic synagogues and churches, commercial storefronts, schools and civic structures such as the North School, Fire Station, Shaarey Tphiloh synagogue, Cathedral of the Immaculate Conception, and St. Peter's Church.

We also support landmark designation for the Abraham Levey Block, a commercial building designed by architects John Calvin Stevens and John Howard Stevens in 1922, that defines an important corner as you enter the neighborhood and relates to the buildings in the district but lies just outside the boundaries.

Landmarks has been actively involved in the India Street neighborhood master planning process that also includes new Form-Based zoning code. While we support creation of a form based code in this neighborhood, we believe it is only through historic district designation that it will be possible to truly preserve the neighborhood's authentic character. Within an historic district property owners are assured that the abutting properties will be held to the same standards that they are with regard to design details, quality of materials, and protection from demolition – elements that are not addressed by the form-based zoning.

We support the proposed ordinance amendment as drafted in the staff report to integrate the historic district designation with the new form based zoning. This clarifies: 1) that the underlying heights allowed by the Form Based Code may not be limited by the historic preservation board review, except for vertical additions to historic buildings; and 2) that the Historic Preservation review for new construction has the ability to adjust how the maximum and minimum heights are achieved by a proposed project;

The intent of the Historic District is not to prevent change, but to thoughtfully manage it over time and over changes in property ownership. **We believe that India Street Historic District supports the goals of the Master Plan and is the most effective way to protect the historic buildings, preserve the character of the neighborhood, and bring the benefits of consistent review process that have been proven in the Old Port and Congress Street historic districts.**

An India Street Historic District will celebrate the history of immigrants and working people of Portland's past, while encouraging sensitive new infill construction on vacant lots, flexibility of building use and architectural innovation. We urge adoption of the district as proposed.

Thank you for considering our views.

Hilary Bassett
Executive Director

PLANNING BOARD REPORT
PORTLAND, MAINE

Encourage and Ensure Housing Amendments
Text Amendments TO THE Land Use Code and a B-3 Height Map Amendment
City of Portland, Applicant

Submitted to: Portland Planning Board: Public Hearing Date: September 15, 2015	Prepared by: Tyler Norod, Housing Planner and Jeff Levine, Director, Department of Planning and Urban Development Date: September 10, 2015

I. INTRODUCTION

The Department of Planning and Urban Development has prepared a set of four amendments to Article 14 for the Planning Board's consideration and recommendation to the City Council. Collectively, along with the R-6 zoning changes recently enacted by the City Council and the B-2 zoning changes adopted by the Council previously, these constitute what we are referring to as the "Encourage and Ensure" package of amendments. That name is because they are designed to "encourage" additional housing development through thoughtful zoning changes to modernize our ordinance and allow for additional housing development; and further that changes proposed to Division 30 are designed to "ensure" that a reasonable percentage of the housing developed in Portland is affordable to those making the area median income.

The ordinance amendments before you, in Attachment A, are as follows:

1. Changes to the Downtown Height Overlay Map to increase allowed heights in some areas from 45' to 65';
2. Changes to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU's on more parcels, provided certain conditions are met;
3. Changes to the Accessory Dwelling Unit language for the R-5 zoning district to allow more use of existing building space for ADU's; and
4. Changes to Division 30 that:
    a. Clarify terminology related to affordable housing;
    b. Expand density bonuses for developments providing affordable housing; and
    c. Require that new developments of 10 units or more restrict at least 10% of the units to be affordable to those making 100-120% of the area median income or below (currently about $77,500-96,875 for a family of four) or contribute a fee-in-lieu of $100,000 per unit to the Housing Trust. These developments would also be eligible for a 25% density bonus, and consideration for an Affordable Housing Tax Increment Finance District.

This package of amendments, in addition to the R-6 and B-2 changes, will allow production of additional housing in Portland by reducing the per-unit cost of housing, while at the same time making sure that some portion of that additional housing remain affordable to the workers Portland needs to attract, such as entry level professionals and career blue collar workers. For context, a unit affordable to a median income family of four would rent for about $1,900 a month, or have a mortgage of about $350,000. These numbers seem attainable now without much market intervention. However, the need for deed-restricted units at this level stems from the fact that the gap between what is affordable to such a family and what the market produces is likely to continue to grow.

Median Income	FY 2015 Income Limit s	Persons in Family 1	2	3	4	5	6	7	8
$77,100	**80% Income Limits**	$ 43,200	$ 49,400	$ 55,550	$ 61,700	$ 66,650	$ 71,600	$ 76,550	$ 81,450
	Housing Expense at 30% of Income	$ 1,080	$ 1,235	$ 1,389	$ 1,543	$ 1,666	$ 1,790	$ 1,914	$ 2,036
	100% Income Limits	$ 53,970	$ 61,680	$ 69,390	$ 77,100	$ 83,268	$ 89,436	$ 95,604	$ 101,772
	Housing Expense at 30% of Income	$ 1,349	$ 1,542	$ 1,735	$ 1,928	$ 2,082	$ 2,236	$ 2,390	$ 2,544
	120% Income Limits	$ 64,932	$ 74,208	$ 83,484	$ 92,760	$ 100,181	$ 107,602	$ 115,022	$ 122,443
	Housing Expense at 30% of Income	$ 1,623	$ 1,855	$ 2,087	$ 2,319	$ 2,505	$ 2,690	$ 2,876	$ 3,061

II. PUBLIC COMMENT

The legal ad for the amendments appeared in the Portland Press Herald on September 7 and 8, 2015. Notices for the map amendment were sent to 272 property owners. Public comment was received on May 13, 2015 from Todd Alexander and is attached as part of this memo. Mr. Alexander expressed concerns and recommendations related to the term of the affordability restrictions and thresholds for affordability. A Planning Board workshop was held on May 19, 2015. No public written public comments were received in response to the September legal ad or public notices to local property owners by the time this memo had been submitted.

III. BACKGROUND

These submissions were developed over the course of several months of meetings between City staff, the public and the Housing and Community Development Committee (HCDC). In February, HCDC convened a Housing Forum in City Hall, where city staff could present city goals and possible tools to address them, and answer questions or concerns raised by the public. Public testimony was also taken at several HCDC meetings on this issue. After reviewing a long list of possible ordinance changes, and refining staff language proposed for inclusionary zoning as well as other changes to Division 30, the submission was refined to the set of ordinance changes before you.

In 2002, the City approved an amendment to its Comprehensive Plan entitled "Housing: Sustaining Portland's Future."

In 2014, the City Council set a goal to "Promote Housing Availability [and p]rovide increased availability in all segments of the housing market while insuring that there is a suitable balance of housing opportunities among those sectors." HCDC put this issue in its workplan for calendar year 2014.

In late 2014 and early 2015, following from this goal and the interests of the Housing and Community Development Committee to address this goal, the City commissioned the Greater Portland Council of Governments to complete a study of the housing market in Portland. That study (Attachment C) was designed to answer the following questions:

1. What is the state of the housing production market in Portland?
2. What kinds of housing are being produced?
3. How does that production compare to City goals and plans with respect to affordability, such as "Housing Portland"?
4. How does that production result in the need for additional housing at different income levels through economic multiplier effects?

The key findings of this study were as follows:

- Our current housing production is not producing enough units for those making below median income
- Our existing housing rental stock appears to generally be reasonably affordable, but in part because the renters may be "sizing down" to a unit they can afford.
- Family sized rentals appear to be less affordable
- Our existing owner-occupied units appear to be primarily affordable to those making above the median income.
- There is a gap between the City's housing policy goals and what is being produced by the market.
- Every unit of high end housing that is produced in the City brings with it the need for housing for those with lower incomes – for example, to provide services for those high end housing residents

On January 15, 2015, HCDC heard the findings from the Housing Study, along with a universe of possible policy responses to these findings. Following that presentation they instructed staff to come back to their meeting on January 28th with some refined recommendations for actions to take in response.

On February 25, 2015, in lieu of their regular meeting, HCDC held a housing forum to present some possible actions and hear from the public. That forum was recorded and is available for viewing from the City web site. The slideshow from that presentation is Attachment D.

On March 11, 2015, the HCDC met to debrief from the forum and hear staff recommendations for policy actions. Staff proposed a laundry list of 17 actions that could be taken, including a proposed inclusionary zoning ordinance. Staff noted that best practices in New England and nationally involved an inclusionary component to permitting housing of a certain scale, and recommended the ordinance be kept fairly simple for implementation reasons. That list of actions was as follows:

1. Revisions to the B-2 zoning district for 500 acres in key commercial corridors/nodes
2. Revisions to the R-6 zoning district for 530 acres of residential land on the Peninsula
3. Rezoning 10 acres of land along the eastern waterfront to B-6 to allow for multifamily housing development
4. Eliminate Parking Requirements for Residential Uses in B3, B5, B6, and B7
5. Eliminate Residential Density Limits in B1 and B2
6. Harmonize off-peninsula residential parking requirements with those of the peninsula
7. Allow the use of the fee in lieu of parking in all off-peninsula (citywide) business zones
8. Update definitions & dimensional standards to promote the viability of lodging houses
9. Amend Downtown Height Overlay Map where to increase 45' heights
10. Allow 1 ADU per owner-occupied single-family homes in all IR zones if leased annually
11. Begin R5 rewrite to reflect current patterns & legalize most nonconforming structures
12. Begin R3 rewrite to reflect current patterns & legalize most nonconforming structures
13. Consider rewriting R7 zone & consider applying it to the zoning map in downtown R6s
14. Limit the removal of dwelling units from the rental market in favor of vacation rentals
15. Limit the conversion of rental housing into condominiums
16. Look at Housing Trust Fund ordinance for revisions to reflect its role in these efforts
17. Changes to Division 30 (Affordable Housing) to provide more useful density bonuses, and to add an inclusionary zoning requirement.

HCDC recommended eight, unimplemented policies in this list be explored in more detail:

1. Rezoning 10 acres of land along the eastern waterfront to B-6 to allow for multifamily housing development
2. Eliminate Parking Requirements for Residential Uses in B3, B5, B6, and B7
3. Eliminate Residential Density Limits in B1 and B2
4. Allow the use of the fee in lieu of parking in all off-peninsula (citywide) business zones

5. Amend Downtown Height Overlay Map where to increase 45’ heights
6. Look at Accessory Dwelling Units in Island Residential Zones
7. Look at R5 Zone Accessory Dwelling Unit Requirements & Reuse of Existing Structures
8. Amend Division 30 (Affordable Housing) to (1) Provide Additional Density through Incentives and (2) Add Workforce Housing Requirement (Inclusionary Zoning)

On April 8, 2015, HCDC took up this issue again. The staff memo from that meeting is Attachment E. They refined the list down to seven options to “encourage” further housing and a more specific recommendation for an Inclusionary Zoning Ordinance. They voted 3-1 to forward the Inclusionary Zoning Ordinance to the Planning Board for formal review, and asked that staff prioritize the seven options at their next meeting.

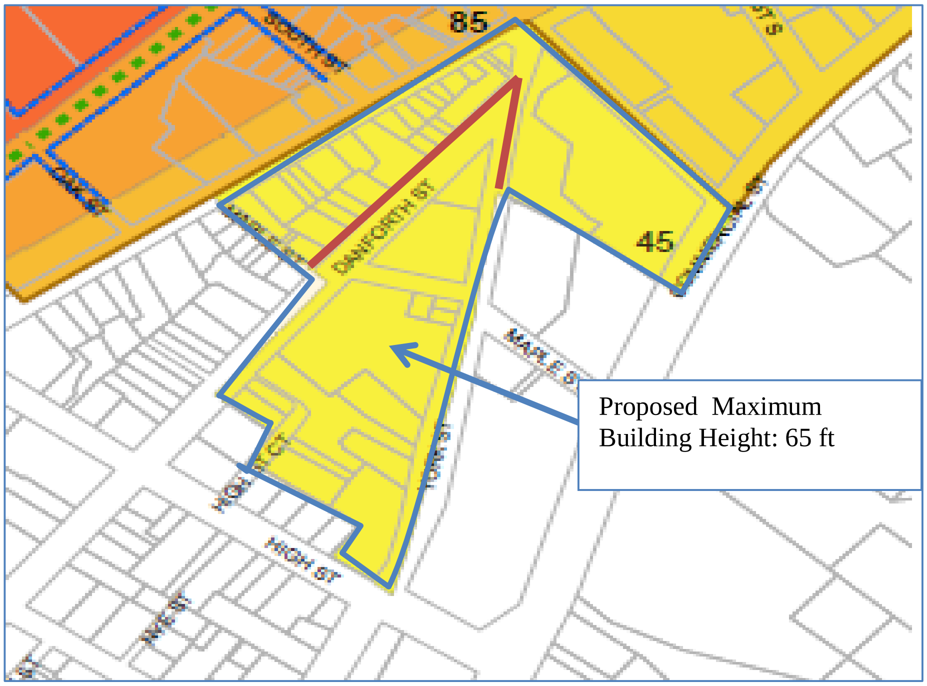
On April 22, 2015, HCDC took up those seven options and recommended the items before you for further study in conjunction with the Inclusionary Zoning Ordinance. The other items may be forwarded at a future dates but the HCDC did not recommend they move forward at this time.

On May 19, 2015 the Planning Board held a workshop to consider this Housing Incentives package.

IV. PROPOSED AMENDMENTS

1. Changes to the Downtown Height Overlay Map to increase allowed heights in some areas from 45’ to 65’

There is an area of the downtown height overlay that is 45’. As you probably know, that area was recently rezoned to allow for mixed-use development and the height was examined at that time. The HCDC is asking that the height in this area be potentially increased to 65’ to allow for more housing development.



Staff is recommending that any change in height from 45’ to 65’ be focussed on the block between Danforth, York and High as shown on the map above. The other areas include existing buildings with significant character that should be preserved or expanded without the wholesale pressure to demolish them that such an increased height might create.

<u>2. Changes to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU’s on more parcels, provided certain conditions are met</u>

A Peaks Island organization called HomeStart has been seeking changes to the ADU language on Peaks Island to allow for year-round, affordable dwelling units in a context sensitive way. The goal is to allow residents the option of creating units that would not be rented on a seasonal basis but instead be available to workers who live year round on Peaks. That organization suggested a model from Wellfleet, MA, a similar community to Peaks Island. Staff adopted this model to the language before you. It should be noted that since the last Planning Board workshop on May, 19, 2015 staff is now proposing the inclusion of similar text amendments for IR-1 on Peaks Island. This revision comes from additional conversations with the HomeStart organization based on housing needs on the islands.

Currently, ADU’s are limited to lots of 70,000 and 30,000 square feet or more for IR-1 and IR-2 zones respectively. These changes would allow ADU’s on smaller lots as long as certain conditions are met:

- ✓ The unit must be rented year-round
- ✓ The unit must be affordable

This seems to be a reasonable way to develop additional workforce housing in an island context.

3, Changes to the Accessory Dwelling Unit language for the R-5 zoning district to allow more use of existing building space for ADU’s

The R-5 zones in Deering Center, Oakdale, and other relatively dense off-Peninsula locations allows more than one unit on a lot but the conditions required mean that, in practice, it is difficult to have more than one unit on many lots. At the same time, there are existing built spaces in the R-5 zone, such as carriage houses, attics, basements and even formerly used buildings. This amendment would expand the conditions under which ADU’s can be added to allow the reuse of existing built space for ADU’s provided that the units are affordable.

4. Changes to Division 30 (Affordable Housing) including an Inclusionary Zoning Requirement: This amendment updates the affordable housing section of the ordinance to make three key changes:

a) Clarify terminology related to affordable housing;

For example, the current ordinance uses the term “affordable” somewhat loosely. These amendments would differentiate between “affordable,” meaning 30% or less of a household income is spent on housing; and income levels such as “low income” and “workforce.”

b) Expand density bonuses for developments providing affordable housing

The current provisions only take effect when housing is affordable at 80% of area median income. This change would allow units at a workforce housing level to qualify for these density bonuses. There was some talk of increasing the bonuses as well, but the final recommendation was to leave the density bonus levels as currently existing and rely on other, systematic zoning changes such as the R-6 amendments to go farther where appropriate.

c) Require that new developments of 10 units or more restrict at least 10% of the units to be affordable to those making 100-120% of the area median income or below.

HCDC had a great deal of discussion about issues such as if and when to permit off-site units or fee-in-lieu to count towards that total; whether to require a comparable finishes and sizes for market-rate and required workforce units; whether to require the locations of the required workforce units to be mixed throughout a development; and the cost of cashing out of this requirement. The language before you includes the HCDC’s final recommendations on these issues, as well as some additional draft language on terms of affordability. Based on some public comment received since the last HCDC meeting on this subject, we have developed a sliding scale for affordability terms based on the number of workforce units provided in a project. Projects only meeting the minimum requirements would have longer deed restriction terms than projects providing additional units that meet affordability requirements.

Finally, the HCDC recommended that this section have a sunset provision so it can be reexamined after a few years of implementation. They discussed, but did not recommend, limiting this requirement to certain zones or areas of the City.

Inclusionary Zoning
For many of you, the idea behind Inclusionary Zoning is not new. However, it is worth providing a quick summary of the concept here. There is more material in the backup to this memo and in the material from the HCDC meetings. Attachment B to this report is one of the more comprehensive reports on this policy tool I have found.

Inclusionary zoning is a set of related tools that essentially require that developments over a certain size provide for units that are affordable for low-, moderate- or even median income households. The justification for such a requirement is that there is a market failure in the form of a gap between the what the market is producing and what the needs of the community are. Further, there is often a nexus identified between the production of higher-end units and the need for housing that is affordable at lower incomes, due to the fact that people who live in high-end units tend to eat at restaurants, get professional services like dry cleaning and housekeeping, and increase the need for public services. The people who will fill those jobs also need housing in the community, or they will have to live far away and use more of their limited income for transportation, further exacerbating their financial issues.

Usually an inclusionary ordinance requires that a certain percentage of units meet these standards, have a term under which these affordability levels must be maintained, and provide options for either providing the units off-site and/or providing a fee-in-lieu option.

Over 500 communities around the country, in more than half the states, have inclusionary zoning requirements. They are most common in markets that are having affordability issues.

The issue of the impact of an inclusionary zoning requirement on housing prices and supply has been extensively studied and discussed. It is a reasonable concern that, if you add a requirement to housing production it may either increase the cost of production or reduce supply, or both. However, the most extensive studies I have found to date suggest that inclusionary zoning requirements have a minor impact on housing production or pricing. These impacts are in the 2 to 3 percent range. Given the various “encourage” policies the City is pursuing, which are designed to drive down the cost of housing production by making it easier to produce housing in Portland, I believe we are more than compensating for such an impact by driving down costs in other ways by removing regulatory barriers.

The ordinance before you is a flexible form of inclusionary zoning that chooses a relatively high threshold (10 units or more) and does not limit a developer’s option to pay a fee-in-lieu of the units. While it does require that units be comparable in terms of number of bedrooms, it does not require comparable finishes nor that the units be mixed into the development equally. Finally, this draft is written to sunset in six years, to give the City a chance to evaluate how it is operating and whether it is effective. All of these details were discussed at the HCDC and voted on as policy directions they wanted the Planning Board to know they supported.

V. Consistency with Comprehensive Plan

The proposed text amendments have been designed to allow the Downtown Height Overlay Map, the IR-1, IR-2, R5, and Division 30 better accomplish the City’s goals particularly as they relate to the creation of housing with a focus on housing that is affordable to a diverse range of households. In this, the amendments comport with the city’s Comprehensive Plan.

The Comprehensive Plan, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the city, and clearly advocates dense commercial and mixed-use development that both serves and suits the neighborhood context. *Housing: Sustaining Portland's Future* includes policies to "[m]aintain and enhance the livability of Portland's neighborhoods as the city grows and evolves through careful land use regulation, design and public participation that respects neighborhood integrity" and "encourage sustainable development patterns and opportunities within the city by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities." In order to do so, the plan suggests "encourag[ing] increased residential densities and mixed uses" and "promot[ing] through city policies a mix of housing types, retail and service businesses, community services, and open space/recreation opportunities of appropriate size, scale, and type within neighborhoods."

VI. STAFF RECOMMENDATION

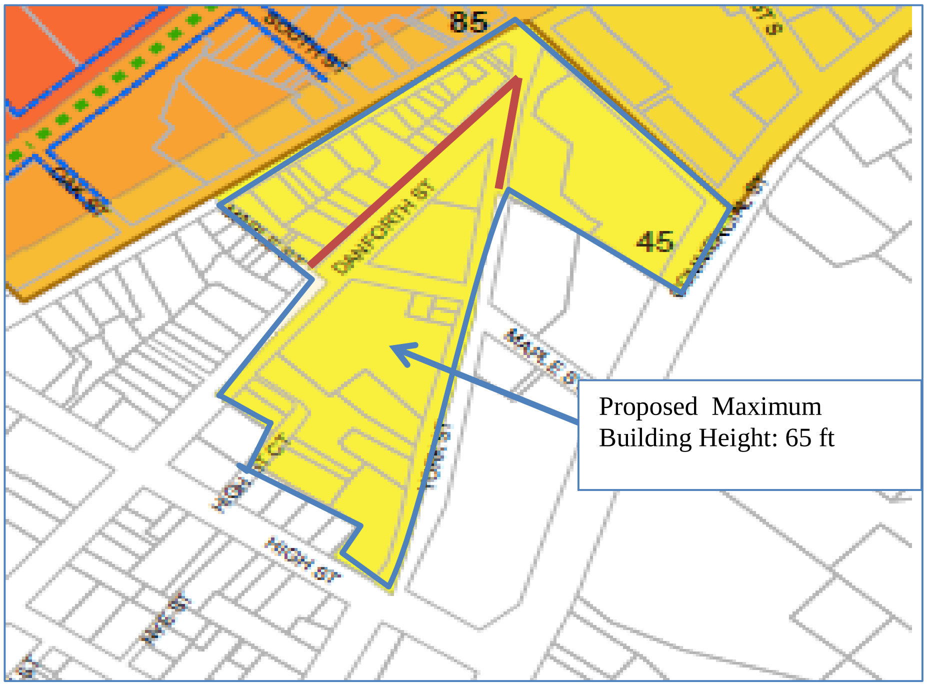
The staff recommends that the Planning Board find the proposed text amendments to be consistent with the Comprehensive Plan and recommend to the City Council adoption of the proposed text amendments. The staff also recommends that the Planning Board find the proposed map amendment to be consistent with the Comprehensive Plan and recommend to the City Council adoption of the proposed map amendments to the Downtown Height Overlay Map.

VI. PROPOSED MOTIONS

On the basis of the material provided in this report, public testimony, a review of applicable policies, Portland's Comprehensive Plan, the information provided in a workshop on May 19, 2015 for the Housing Incentives package and/or other information as follows:

1. Map Amendment to the Downtown Height Overlay Zone

The Planning Board finds that the proposed package including map amendments to the Downtown Height Overlap Map allowing for an increase in height from 45 to 65 feet to allow for more housing development in the blocks around Danforth, Maple, York, and High Streets, as shown on the map below, **[are or are not]** consistent with the Comprehensive Plan for the City of Portland; and



Therefore, the Planning Board **[recommends or does not recommend]** to the City Council approval of map amendment to the Downtown Height Overlay District.

2. **Text Amendments to Definitions, IR-1 and IR-2**
The Planning Board finds that the proposed text amendments to IR-1 and IR-2 island residential zones accessory dwelling unit language as presented in Attachments A1 and A2 **[are or are not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[recommends or does not recommend]** to the City Council approval of the zoning text amendments to IR-1and IR-2.

3. **Text Amendments to Definitions, R5**
The Planning Board finds that the proposed text amendments to R5 residential zone accessory dwelling unit language as presented in Attachment A3 **[are or are not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[recommends or does not recommend]** to the City Council approval of the zoning text amendments to R5.

4. **Text Amendments to Definitions, Division 30**
The Planning Board finds that the proposed text amendments to Division 30 (Affordable Housing) including density bonuses and an inclusionary zoning requirement as presented in Attachment A4 **[are or are not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[recommends or does not recommend]** to the City Council approval of the zoning text amendments to Division 30.

VIII ATTACHMENTS

Attachement A: Proposed Ordinance Amendments

- A1 – IR-1 ADU Language (clean version followed by markup version)
- A2 – IR-2 ADU Language (clean version followed by markup version)
- A3 – R5 ADU Language (clean version followed by markup version)
- A4 – Division 30 (Affordable Housing) – density bonuses and inclusionary zoning

Attachment B: Handbook on Developing Inclusionary Zoning

Attachment C: City Workforce Housing Study – 2015

Attachment D: Slideshow from February Housing Forum

ATTACHMENT A: PROPOSED ORDINANCE AMENDMENTS

A1: IR-1 ADU Language

(a) *Residential:*

1. One additional accessory dwelling unit clearly subordinate to a principal single-family or on Peaks Island a legal multi-family dwelling provided that:

   a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;

   b. Lot shall be thirty thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;

   c. There shall be no open outside stairways or fire escapes above the ground floor;

   d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

   e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

   f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences;

   g. Accessory units on Peaks Island on lots of less than 70,000 square feet must remain under common ownership with the primary unit on the lot;

h. Any units created under this section on Peaks Island may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

i. Any units created under this section on Peaks Island on lots of less than 70,000 square feet must be rented as “workforce housing unit for rent” as per Division 30 and are subject to income verification as further outlined in implementing regulations;

j. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations. On lots of less than 70,000 square feet on Peaks Island, the property must have City water and sewer.

k. The accessory unit on Peaks Island must be rented on an annual basis and may not be used for seasonal or weekly rentals.

(a) *Residential:*

1. One additional accessory dwelling unit ~~within and~~ clearly subordinate to a principal single-family ~~detached~~ or on Peaks Island a legal multi-family dwelling provided that:

   a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;

   b. Lot shall be thirty thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;

   c. There shall be no open outside stairways or fire escapes above the ground floor;

   d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

   e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

   f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences;~~and~~

   g. Accessory units on Peaks Island on lots of less than 70,000 square feet must remain under common ownership with the primary unit on the lot;

h. Any units created under this section on Peaks Island may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

i. Any units created under this section on Peaks Island on lots of less than 70,000 square feet must be rented as “workforce housing unit for rent” as per Division 30 and are subject to income verification as further outlined in implementing regulations;

j. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations. On lots of less than 70,000 square feet on Peaks Island, the property must have City water and sewer.

k. The accessory unit on Peaks Island must be rented on an annual basis and may not be used for seasonal or weekly rentals.

A2: IR-2 ADU Language

(a) *Residential:*

1. One additional accessory dwelling unit clearly subordinate to a principal single-family or legal multi-family dwelling provided that:

   a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;

   b. Lot shall be thirty thousand (30,000) square feet in area, or be an existing lawfully non-conforming lot as of May 1, 2015;

   c. There shall be no open outside stairways or fire escapes above the ground floor;

   d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

   e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

   f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences;

   g. Accessory units on lots of less than 30,000 square feet must remain under common ownership with the primary unit on the lot;

   h. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

i. Any units created under this section on lots of less than 30,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;

j. On lots of less than 30,000 square feet, the property must have City water and sewer. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.

k. The accessory unit must be rented on an annual basis and may not be used for seasonal or weekly rentals.

(a) *Residential:*

1. ~~Accessory~~One additional accessory dwelling unit ~~within and~~ clearly subordinate to a principal single-family ~~detached~~or legal multi-family dwelling provided that:

   a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;

   b. Lot ~~area~~ shall be thirty thousand (30,000) square feet in area, or be an existing lawfully non-conforming lot as of May 1, 2015;

   c. There shall be no open outside stairways or fire escapes above the ground floor;

   d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

   e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

   f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; ~~and~~

   ~~g.~~

   g. Accessory units on lots of less than 30,000 square feet must remain under common ownership with the primary unit on the lot;

h. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

i. Any units created under this section on lots of less than 30,000 square feet must be rented as “workforce housing unit for rent” as per Division 30 and are subject to income verification as further outlined in implementing regulations;

j. On lots of less than 30,000 square feet, the property must have City water and sewer. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.

k. The accessory unit must be rented on an annual basis and may not be used for seasonal or weekly rentals.

A3: R-5 ADU Language

5. Use of space existing as of September 3, 2008 to accommodate additional dwelling units under the following conditions:

a. This section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted;

b. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site;

c. Any units created under this section must be "low-income housing unit[s] for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;

d. The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.

e. Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;

f. Parking shall be provided as required by Division 20 of this article;

g. There shall be no open, outside stairways or fire escapes above the ground floor; and

f. The project shall be subject to Article V for site plan review and approval and the following additional standards:

i. Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and

ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.

5. ~~Alteration~~Use of ~~a single-family dwelling~~ space existing as of September 3, 2008 ~~on a nonconforming lot~~ to accommodate ~~an accessory~~ additional dwelling units under the following conditions:

a. This section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted;

b. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site;

~~a.~~c. Any units created under this section must be "low-income housing unit~~ within and clearly subordinate the principal structure provided that:~~[s] for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;

~~b.~~d. ~~a.~~ The ~~accessory unit~~additional units shall have a minimum floor area of four hundred (400) square feet ~~that represents no~~and may not involve removing more than ~~thirty (30)~~ten percent of the gross floor area of ~~the principal~~an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.

~~b. The principal dwelling unit shall be located on a lot of no less than four thousand (4,000) square feet and no more than six thousand (6,000) square feet;~~

~~c. Either the accessory or principal dwelling unit shall be occupied by the owner of the lot, except for bona fide absences of a temporary nature;~~

e. ~~d.~~ Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;

~~c.~~f. Parking shall be provided as required by Division 20 of this article~~.~~;

~~d.~~g. ~~e.~~ There shall be no open, outside stairways or fire escapes above the ground floor; and

f. The project shall be subject to Article V for site plan review and approval and the following additional standards:

i. Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and

ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.

A4: Division 30 (Affordable Housing) – density bonuses and inclusionary zoning

DIVISION 30. ~~INCENTIVES FOR~~ AFFORDABLE HOUSING

Sec. 14-484. Purpose.

~~The City believes that i~~It is in the public interest to promote an adequate supply of affordable housing for its residents. The purpose of this Division therefore is to offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the City. The City believes that this Division will assist in meeting the City's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare or its citizens.

Sec. 14-485. Definitions.

"Affordable" means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's income, or other amount established in City regulations that does not vary significantly from this amount.

"~~Affordable~~ Low-income housing unit for rent" means a dwelling unit for which: (1) the rent is affordable ~~to~~ a household earning 80% or less of ~~the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~Area Median Income (AMI) as defined by the U.S. Department of Housing and Urban Development (HUD); and (2) annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size.

"~~Affordable~~ Low-income housing unit for sale" means a dwelling unit for which: (1) the sale price is affordable to a household earning ~~120~~80% or less of the ~~U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~HUD AMI; and (2) the resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size, as calculated for the year in which the sale takes place.

“Development fees” means: (1) the following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; condominium conversion permit fees; and administrative fees; and (2) construction and permit fees as described in chapter 6. “Development fees” does not include any fees charged for reviews conducted by a party other than the City.

“Dwelling unit” has the same meaning as that term is defined in section 14-47.

“Eligible project” means a development project: (1) to which the City has not committed nor will commit any funding, reduced-interest loans or other subsidies or incentives other than those described in this Division; and (2) that creates new dwelling units, among which is at least one affordable housing unit for rent or sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

“Workforce housing unit for rent” means a dwelling unit which: (1) Is affordable to a household earning less than 100% of HUD AMI and (2) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

“Workforce housing unit for sale” means a dwelling unit for which (1) the purchase price is affordable to a household at 120% of HUD AMI and (2) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 14-486. Reduction of Fees and Priority Review~~.~~

Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the following table:

Percentage of new units that are ~~affordable~~ low-income or workforce housing units	**Percentage discount of development fees**
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

~~**Sec. 14-487. Priority Review.**~~

The Planning Division shall perform its review of an eligible project in as expedited a manner as is practical. The Planning Division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The Planning Board shall make its best efforts to hear, review, and approve, conditionally approve or deny within one workshop and one public hearing any plans or applications required for an eligible project that are within the Planning Board's jurisdiction, and shall rely on reviews prepared by the Planning Division to the greatest extent practical and appropriate. At the conclusion of these public meetings, the Planning Board shall promptly issue a decision on all such plans and applications before it for consideration.

Sec. 14-487. Ensuring Workforce Housing.

1. Purpose

Based on the City's Comprehensive Plan and the housing study completed in 2015, ~~the City believes that~~ it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that ~~large~~ housing developments over a certain size provide a portion of workforce housing units, and by doing so, promoting the health, safety, and welfare of Portland citizens.

2. Applicability/Conditional Use Requirement/Sunset

This division shall apply to development projects that create ten or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

All Developments of Ten Units or More Conditional Uses

Notwithstanding any language to the contrary in Article 14, all developments of ten units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of this section 14-487.

This section 14-487 shall be in effect for six years following its passage, at which time the overall effectiveness of this section shall be assessed and either this expiration date shall be deleted or the entire section shall be removed from the City's Code of Ordinances

3. Workforce Housing Minimum

At least ten percent of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per 4.b. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per 4.c. below.

4. Standards

a. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.

b. Workforce units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no indications from common areas that these units are workforce housing units.

c. Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be 10 percent of the total number of bedrooms in the development. For the purposes of this section, for every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

d.As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be $100,000 per unit, adjusted annually in the same way as the fee under Division 29 for Housing Replacement.

e.Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.

f. If at least 33 percent of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing TIF, subject to City Council approval.

g. The term of affordability for the required 10 percent workforce units provided shall be defined as follows.

Percentage of Workforce Units Provided	Minimum Term of Affordability for Required Workforce Units
10%	Longest term permitted under federal, state and local laws and ordinances
25%	30 years
50%	20 years
100%	10 years

5. Implementing Regulations

Regulations to further specify the details of this section shall be developed, including, but not limited to:

- Specific methodology for income verification;
- Situations where less than permanent affordability might be considered;
- Guidelines for meeting the requirement that off-site units be "in the same neighborhood".

6. Reporting to City Council
In conjunction with the annual report on the Housing Trust, City staff shall report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

Sec. 14-488. Density, Parking and Dimensional Bonuses and Reductions.

Notwithstanding any other provision of this chapter to the contrary:

(a) Density bonuses. The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are ~~affordable~~ low-income or workforce units	**Percentage increase in maximum number of units allowed**
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase
15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase
Projects Under 14-487	25% increase

(b) Parking requirement reduction. For each ~~affordable~~ low-income or workforce housing unit for rent or sale within an eligible project, no more than one (1) parking space shall be required. The Planning Board may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.

ATTACHMENT B

Handbook On:

Developing

Inclusionary

Zoning

**For the Comprehensive
Housing Production and Rehabilitation Act of 2004**

***Harrisville Village
Burrillville, Rhode Island***

**Updated , 2006
Statewide Planning Program,
Division of Planning,
Rhode Island Department of Administration**

www.planning.ri.gov

Abstract

The Rhode Island Statewide Planning Program is established by *Chapter 42-11-10 of the Rhode Island General Laws* as the central planning agency for state government. The State Planning Council comprised of state, local, and public representatives, and federal and other advisors, guides the work of the Program.

The objectives of the Program are:

(1) to prepare strategic and systems plans for the state
(2) to coordinate activities of the public and private sectors within this framework of policies and programs
(3) to assist local governments in management, and
(4) to advise the Governor and others concerned on physical, social, and economic topics.

 Copies of this information are also available in a format for the physically challenged and electronic file on the RI Statewide Planning World Wide Web site: http://www.planning.ri.gov. Contact the RI Statewide Planning Program, One Capitol Hill, Providence, RI, 02908, and (401) 222-7901 for further information.

The cover images are from the Burrillville Planning Office for the Harrisville Village redevelopment project located in Burrillville, RI. For information on the project contact Thomas Kravitz, Burrillville Town Planner and Economic Development Director, at 401-4300 ext. 130 or look on the web at

http://www.burrillville.org/Public_Documents/BurrillvilleRI_EconDev/Redevelopment_Projects.

Preface

The affordability of housing is not a problem restricted to lower-income populations of inner cities and declining urban areas. It is, in fact, an issue for all municipalities, affecting the poor and lower-income as well as a large portion of the middle-income population of every city and town. The cost of land and basic building construction are matters largely beyond the control of local governments, but housing opportunities and affordability can be promoted through land use codes and development controls that reduce development costs.

Factors Limiting Housing Affordability in Rhode Island

- High land costs, aggravated by requirements in excess of environmental or social need
- High construction costs
- High rents or sales prices
- High median household income and low vacancy rates
- Deterioration of older housing stock
- Elimination of housing stock by demolition or conversion to other uses
- Marginal funding of federal and state housing programs
- Unemployment and under-employment
- Attraction of employment opportunities without consideration of housing supply availability and cost for workers
- Municipal development moratoria, time-consuming procedures and permit limits, and fees
- Lack of municipal facilities and services for potentially suitable housing and development sites
- Failure to use federal, state or private programs designed to enhance housing opportunity and availability
- Local opposition to affordable housing development

This handbook examines the use of inclusionary zoning to promote affordable housing. This edition of the handbook was updated to provide Rhode Island communities with a recommended set of guidelines, derived from the "Rhode Island Five Year Strategic Housing Plan", for the drafting of inclusionary zoning provisions in order to promote affordable housing in the State. It is intended to assist municipalities in developing actions for compliance with the **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I. Gen. Law 42-128.8.1).**

The Act finds that the "state in partnership with local communities must remove barriers to housing development". It goes on to require "affordable housing plans" to be prepared and adopted by cities and towns to satisfy the requirements of the *Low and Moderate Income Housing Act* (R.I. Gen. Law 45-53.). These "affordable housing plans" developed by each community establish guidelines for higher density development including inclusionary zoning.

Acknowledgements

In recognition of the adoption of the **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I. Gen. Law 42-128.8.1)** this handbook was prepared by the RI Statewide Planning Program to help municipal officials begin to address expanding opportunities for affordable housing in their community. The handbook represents a sum of efforts contributed by numerous individuals of the Program. The following individuals assisted with the writing of this handbook:

RI Division of Planning, Statewide Planning Program:

Kevin Flynn, Associate Director, RI Division of Planning
John O'Brien, Chief, Statewide Planning Program
Nancy Hess, Principal Environmental Planner
Derwent Riding, Principal Planner
Benny Bergantino, Senior Planner
Paul Gonsalves, Senior Planner
Rachel Lauter, Planning Intern

In addition to the individuals above, the RI Statewide Planning Program would like to thank a number of persons who took time to read and provide valuable comments on the handbook content as it was developed. Therefore, RI Statewide Planning would like to acknowledge and thank the following readers for their assistance and generous contribution of their time to this handbook:

Amy Rainone, Policy and Planning Manager, RI Housing and Mortgage Finance Corporation
Annette Mann Bourne, Technical Assistance Coordinator, RI Housing and Mortgage Finance Corporation
Katia Balassiano, Planning & Community Development Director, Town of Cumberland (Former Town Planner)
Peter D. Ruggiero, Esquire, Ruggiero, Orton & Brochu
Andrew Teitz, Esquire, Ursillo, Teitz & Ritch, Ltd
Dan Varin, Associate Director, Division of Planning (Retired)

Table of Contents

Part 1: Introduction

This handbook is intended to be a guide for municipal governments to utilize, as a reference tool, to craft an inclusionary housing section for their zoning ordinance that fits the needs and staffing levels of their own community. This handbook is a compilation of existing work condensed for use by Rhode Island communities. This handbook does not attempt to outline all the possible options concerning affordable housing; however, it does outline those items to be considered along with legal counsel concerning inclusionary zoning for affordable housing. Furthermore, every community must realize that inclusionary zoning is not a cure-all for Rhode Island's housing problems; it is one of many tools available to local agencies to develop affordable housing units in their communities. Therefore, each community will have to draft its own text, and use the type of provisions for affordable housing that will work for them based on the advice presented herein and the requirements of the Comprehensive Housing Production and Rehabilitation Act of 2004 and recommended guidelines from the "Rhode Island Five Year Strategic Housing Plan".

This handbook is not a substitute for legal advice.

The handbook is divided into five sections. The first and second sections provide a brief explanation and general introduction to inclusionary housing. The third section contains excerpts from national, regional, and local case studies that deal with established inclusionary affordable housing programs. The fourth section looks at provisions to consider before crafting the ordinance. Lastly, the fifth section looks at the technical aspects involved in the writing of such ordinance provisions and it provides excerpts of inclusionary housing ordinances from other local New England municipalities to illustrate the various techniques in use. The fifth section, also presents recommended guidelines from the "Rhode Island Five Year Strategic Housing Plan", which have been highlighted in bold print. At the end of the handbook is the Bibliography Section, which contains the citations, world-wide-web addresses and a list of additional housing resources should the reader wish to find more information on the topics. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

Part 2: What is Inclusionary Zoning?

The fundamental purpose of inclusionary zoning is to allow the development of affordable housing to become an integral part of other kinds of development taking place in a community. Inclusionary housing provisions promote the production of affordable housing by requiring developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households. It is to the benefit of the public that a minimum percentage of affordable units be constructed to meet the affordable housing needs of the community that adopts the ordinance. The goal of such a process is to establish a relatively permanent stock of affordable housing units provided by the private market. Typically, inclusionary provisions require that new developments include “mandatory set-asides” of affordable units, which are made available to low and moderate-income households within future market-level developments. According to recent studies by the American Planning Association[1], mandatory programs have produced the most affordable housing units across the United States.

The *amended Zoning Enabling Act*, R.I. Gen. Law 46-24-46.1, requires that an inclusionary housing section of a zoning ordinance must address the following:

1. Affordable housing, as defined by the Act in subsection 42-128.81(d), be constructed.
2. A minimum of 10 % of the total units in the development must comply with the above-cited affordable definition of the Act.
3. The affordable units must remain affordable for a period of not less than 30 years from initial occupancy enforced through a land lease and/ or deed restriction.

The types of housing that are required can vary from community to community as well as within a municipality and will relate to the specific needs as defined in the approved Affordable Housing Plan. Some inclusionary zoning programs include a payment in lieu of construction of affordable units option. These payments may support a dedicated fund such as a housing trust fund that would finance future affordable units. Some programs include incentives such as density bonuses, allowing a developer to create more units on a parcel of land, the relaxation of development regulations, or the reduction or waiver of fees to encourage more affordable housing than the minimum percentage mandated.

[1] *Zoning Practice*, no. 9 (Washington, DC: American Planning Association, September 2004).

Part 3: Case Studies

There is a range of programs in use around the country as providing affordable housing is a national issue all communities face today. This part reviews several programs that have adopted procedures through zoning ordinances to provide for affordable housing. These programs vary and have been adopted to fit local housing needs and market conditions and many use a combination of providing affordable housing units along with market rate units to produce affordable housing.

A. NATIONAL CASE STUDY

Montgomery County, Maryland

Inclusionary zoning started in the Washington, D.C. metropolitan area. In 1973, Montgomery County, Maryland, instituted countywide mandatory inclusionary zoning, known as the Moderately Priced Dwelling Unit (MPDU) ordinance. Montgomery County is the leading national example of the use of this technique at the county level. According to the Innovative Housing Institute, the Montgomery County program has produced nearly 10,000 units of affordable housing. Most jurisdictions can trace some aspect of their inclusionary zoning ordinances to the Montgomery County program.[2]

The MPDU ordinance requires that developments of 50 units or more include 15% MPDUs. Of that 15%, two-thirds are sold to moderate-income homebuyers and the remainder is offered to housing commissions and non-profits for use in their affordable housing programs (many of which retain rental units). Developers receive a density bonus of up to 22% through this program.[3] Throughout the program's history, nearly 10,600 affordable units have been created. However, roughly 6,800 units are no longer governed by inclusionary zoning requirements or any other affordability regulations. According to the ordinance, rental units must be regulated under the inclusionary zoning provisions for 20 years and owner-occupied units for 10 years.[4] Montgomery County's program targets households earning 65% or less of the area median income of $82,800 in the fiscal year 2000.[5]

One of the greatest challenges facing the Montgomery County program is that the first units built by the program are quickly becoming unregulated and the development of new affordable units is slow. Many policy think tanks and housing advocates, including the Brookings Institution, suggest that one-way to remedy the situation is to make it easier for non-profits and housing authorities to purchase the units once the affordable price regulations expire. Perhaps by extending the non-profit agency's right of first refusal so that they may pre-empt private developers from purchasing the affordable units.[6]

B. MASSACHUSETTS (MA) CASE STUDIES

Federal and state low and moderate-income housing programs have created more than eight % of Massachusetts's housing stock. The creation of new affordable units, however, has slowed due to scarce developable land, opposition to development in general, and the reputation of large affordable housing projects.[7] In 1975 Massachusetts enacted a state zoning act authorizing the use of incentives for the development of low and moderate-income housing. While more than a third of the communities in

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[2], Robert W. Burchell and Catherine C. Galley, "Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? Inclusionary Zoning: Pros and Cons," *New Century Housing Newsletter* 1, no.2 (Washington DC: Center for Housing Policy, October 2000).

[3] Karen Destorel Brown, "Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area," *Cities and Suburbs* (Washington DC: The Brookings Institution, October 2001).

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Phillip B. Herr & Associates, "Zoning for Affordability," *Community Strategies* (Boston, MA: Massachusetts Housing Partnership, 1999).

Massachusetts have adopted zoning incentives for affordable developments, very few units are generally created.[8] The zoning statute, Chapter 40B commonly known as the "anti-snob" zoning ordinance, exempts developers of affordable units from certain zoning regulations if 20-25% of units in municipalities have affordability restrictions. The restrictions include being affordable for households earning less than 80% of the area's median income and must remain affordable for 30 years.[9] Much of land use control is local in Massachusetts, so depending on the community, inclusionary zoning programs may or may not be directly influenced by 40B.[10] The following are two different examples of the impact of Chapter 40B, and the successes and failures of inclusionary zoning.

Barnstable, MA.

In an attempt to address the state's 10 % affordability requirement, the town of Barnstable, Massachusetts on Cape Cod drafted an Inclusionary Housing Ordinance that charged developers a fee that was placed in an Inclusionary Housing Fund to purchase land and develop affordable units. A suit was brought against the town, claiming that the fee was an illegal tax. A Superior Court ruled in favor of the plaintiff in Dacey v. Town of Barnstable. A part of the inclusionary ordinance was struck down when the court ruled that the Town's imposition of an Inclusionary Housing Fee on developers whose projects were not covered under the ordinance constituted an exaction.[11] ***The lesson learned from Barnstable is that an inclusionary zoning program can be implemented in several different ways, and that it is important to find a program that suits an individual town.*** In the case of Barnstable, the courts ruled that imposing an exaction places the burden of developing affordable units on developers only. Rather, an inclusionary zoning program should be viewed as a community program. The Comprehensive Permit Law in Massachusetts (under Chapter 40B) expedites the permitting process for developers building affordable units, thus providing incentives for private development- making it the better option to achieve affordable housing goals.

Newton, MA.

Newton, Massachusetts is an older suburb of Boston with a population of 85,000. In 1977, Newton drafted its own inclusionary zoning ordinance, which has since provided 225 units of affordable housing over a thirty-year period. In addition, almost 450 units have been constructed in the community under the mandate of Chapter 40B. Newton's ordinance mandates that all units created have to be rental and leased through the Newton Housing Authority. Other options for developers such as off-site units and cash payments in lieu of construction are available, although tightly regulated. Newton's program also contains strict regulation in the design of affordable units. The units must be equal in character to market rate units, in order to avoid stigmatization.

One of the challenges of the Newton program is that there is a fee for developments under 10 units that do not come under the town ordinance. Therefore, many developers choose to pay the fee and under-develop. However, the Newton Housing Authority does not have an effective method to allocate funds received by the fee and in lieu payments. This case study shows the difficulty in creating many cash payment loopholes for developers. One remedy would be to mandate the construction of affordable units in all developments in return for a density bonus.[12]

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[8] National Housing Conference (NHC), "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (Washington, DC: Center for Housing Policy, January 2002).

[9] Ibid.

[10] Phillip B. Herr & Associates, "Zoning for Affordability," *Community Strategies* (Boston, MA: Massachusetts Housing Partnership, 1999).

[11] Commonwealth of Massachusetts Superior Court, Civil Action No. 00-53 (October 18, 2000), *Brian Dacey vs. Town of Barnstable*.

[12] National Housing Conference (NHC), "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (Washington, DC: Center for Housing Policy, January 2002).

C. RHODE ISLAND (RI) CASE STUDIES

Rhode Island's municipal affordable housing provisions within existing zoning ordinances are widely varied. In Rhode Island at this time, only East Providence and Tiverton have mandatory inclusionary zoning in use. There are 8 other municipalities that have some sort of an incentive zoning provision in the local zoning ordinance relating to affordable housing. These municipalities are Barrington, Burrillville, East Greenwich, Hopkinton, New Shoreham, North Kingstown, Richmond, and South Kingstown. This section provides a brief summary of the various incentive zoning techniques currently in use. The local ordinance citations follow each summary with a web link to the homepage of the municipality where on-line information is available for more information about each community and the ordinance cited.

- **Barrington, RI:** density bonus in an Elderly Housing District as part of a zoning ordinance amendment, with a 30-year affordability provision, but there is no provision for a percentage of low/moderate income family units. [Section 185-139-B] http://www.ci.barrington.ri.us/.
- **Burrillville, RI:** In Village Planned Development Districts flexibility in siting units is permitted by the Planning Board for all dimensional requirements but the 12,000 square feet minimum lot size. [Section 11-8.9.4] http://www.burrillville.org/Public_Documents/index.
- **East Greenwich, RI:** density bonus to a maximum of six units per acre provided that 10% of the units within the development are affordable in Mixed Use Planned Development Districts. [Article VIII, 6.3] http://www.eastgreenwichri.com/.
- **East Providence, RI:** a density bonus of up to 10% may be permitted according to the number of affordable units developed [Article VIII, Section 19-456]. Also the new Waterfront Development District (WWD) requires that all new residential development or property conversions resulting in 5 or more parcels or new dwelling units must supply a minimum of 10% of low to moderate income housing units as part of the development. An In-Lieu fee option is allowed per the rules and regulations of the East Providence Waterfront Special Development District Commission. [Article 9,(j), Affordable Housing] http://www.eastprovidence.com/.
- **Hopkinton, RI:** a density bonus of up to 10% may be permitted by the Planning Board according to the number of affordable units developed in cluster developments. [Section 14(A)(2)]
- **New Shoreham, RI:** density bonus of 100% may be granted to accommodate affordable units by the Zoning Board as a special-use permit. [Section 405]
- **North Kingstown, RI:** 10% density bonus may be granted for 10% of all dwelling units to be marketed at a moderate price in a Planned Unit Development by the Planning Commission. [Section 21-487(m)] http://www.northkingstown.org/.
- **Richmond, RI:** 20% affordable units in subdivisions (if the Planning Board determines that the development meets critical needs), the development is exempt form Growth Rate Control [Section 18.72.020(C), and affordable units are also exempt from impact fees. [Section 18.33.040(A)] http://www.richmondri.com/.
- **South Kingstown, RI:** Affordable Housing is exempted from the Fair Share Development Fee. [Section 1101 D 1] http://www.southkingstownri.com/.
- **Tiverton, RI:** A mandatory alternative concept plan for all major land developments showing a 20% set-aside for low or moderate income housing is required. Planning Board will endorse or reject concept plan. A density bonus up to 30% over allowed density for additional units of low or moderate housing may be granted at the discretion of the Planning Board. [Article XXI, Section 9, a & b]

Part 4: Items to Consider

Developing an inclusionary housing section for a zoning ordinance is difficult, and many components of such an ordinance must be taken into consideration before the section can be written. Before proceeding, it is critical to familiarize oneself with the Rhode Island General Laws establishing the planning framework for housing development and zoning in general, along with the requirements of the *Comprehensive Housing Production and Rehabilitation Act of 2004* and the associated amendments to 7 other related enabling acts concerning affordable housing. The following 12 items are considered essential for communities to address concerning inclusionary housing and were adopted from an Enterprise Foundation Brief.[13]

A good World Wide Web site to review the RI planning and development laws is located at:

http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM.

To view the House and Senate bills related to the *Comprehensive Housing Production and Rehabilitation Act of 2004 see:*

H-8574A, S-3148.

1. How does the ordinance provision relate to adopted Municipal Plans?

When drafting inclusionary provisions for a zoning ordinance, a nexus needs to be established between the approved Affordable Housing Plan of the municipality and the purpose of the ordinance. The ordinance sections concerning Findings and Purpose should restate the community need for affordable housing, environmental and infrastructure constraints, and recommendations from the approved Affordable Housing Plan and the Housing Element of the Comprehensive Plan.

2. Will the inclusionary requirement be mandatory or voluntary?

The decision to make your requirement mandatory or voluntary is an important one. It seems most inclusionary zoning ordinances are voluntary. Voluntary programs are harder to challenge in court, but they should have incentives included to be successful. Mandatory programs, on the other hand, are obviously easy to enforce and evidence supports that they produce more units. The combination of approaches is probably best. Included within regulatory strategies usually are requirements to insure that developments mitigate the impacts of their projects on the community's need for affordable housing and incentives for developers to volunteer to provide affordable housing.

3. What will be the development threshold size for applicability?

The threshold size describes how the size of a development will trigger an affordability requirement.[14] In the examples that follow in Part 5, there is a low of 3 units to a high of 50. In the Burlington example, a redevelopment of project of 10 acres or 50 or more units or a development using more than 10 acres or 50 or more units will trigger an affordability requirement.

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[13] Peter Werwath, "Program Design Considerations," *An Enterprise Issue Brief* (Columbia, MD: The Enterprise Foundation, 1994).

[14] Business and Professional People for the Public Interest. "Issues to Consider in Developing an Inclusionary Zoning Ordinance," *Inclusionary Zoning Policy Briefs*, (Chicago, IL: Business and Professional People for Regional Affordable Housing Publications, Winter 2003).

4. What "set aside" of affordable units must be included?

It is important to gauge your community's needs (by referencing your municipality's Affordable Housing Plan) and determine a percentage of the total development's units that will be deemed as a "set aside." Certain inclusionary zoning ordinances either only include for-sale housing or rental housing.
It appears that including both types of housing stock would benefit because the ordinance could target both low and moderate-income households. Some inclusionary programs have found that a key to success is an appropriate mix of affordable units coupled with a density bonus for market units. **Keep in mind that under the recent changes to the *Zoning Enabling Act*, any inclusionary housing zoning must provide that at least 10% of the total units in a development satisfy the affordable definition of the Act.**

5. What income groups are to be served?

A statement of the income group to be served must be drafted. Income eligibility standards are adjusted by family size, and most ordinances have a system for certifying income eligibility by an agreed-to standard. An ordinance may include a tiered income standard to aid developers: a lower percentage of affordable units can be built if the units are lower priced. Every ordinance should have some type of system to verify and certify incomes, or other special characteristics (such as disabilities).[15] The system will have to adjust for varying incomes and family sizes. Whose regulations will you use to target a specific income group? In some communities, nonprofit organizations qualify homebuyers and renters for inclusionary developments, and they may also regulate trust fund monies, and other monies. It is important to establish who will supervise and enforce your inclusionary zoning ordinance.

6. What types of housing stock will be developed?

Another element to take into consideration is the style and design of affordable housing units. Some ordinances include strict design regulations. It would be beneficial for the community if the affordable units were compatible and similar to market rate design construction in the community.[16]

7. When will the affordable units be developed?

A sensitive issue for the developer and the municipality involves the timing of the affordable unit construction. While a developer may argue that s/he needs revenues from the market-rate units in order to feasibly construct the affordable units, a common goal is to have both types built concurrently to avoid any community controversy or having the developer leave the affordable units un-built. A compromise solution that appears in a number of ordinances is a phased construction of affordable rate units at an agreeable ratio to market-rate construction (e.g., one affordable unit for every five market-rate units constructed). Additionally, fees would be paid at the appropriate juncture (Netter, 2000).[17]

8. What type of cost- offsets and / or incentive(s) will you provide the developer?

There are ways of reducing the costs of a development to enable the construction of affordable housing such as the waiving of certain review fees or the amount of parking to be provided (see Part 5 for more details). These cost offsets allow a municipality to decrease the costs developers would incur for affordable housing, and minimize the possibility of a developer showing that mandatory inclusionary zoning causes an excessive loss such that it effects a taking. The cost offsets give developers certain benefits to compensate the developer for pricing some units below market rates. One of the most common incentives for an inclusionary zoning ordinance is to provide density bonuses to developers. Density bonuses allow developers to increase the number of units allowed on a piece of property if they

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[15] Peter Werwath, "Program Design Considerations," *An Enterprise Issue Brief* (Columbia, MD: The Enterprise Foundation, 1994).

[16] Joyce Siegel, "Inclusionary Zoning Around the Country" (Baltimore, MD: Innovative Housing Institute, 2 March 2000).

[17] Edith Netter, Esq., "Inclusionary Zoning Guidelines for Cities and Towns," *Community Strategies*. (Boston, MA: Massachusetts Housing Partnership, September 2000).

agree to make some percentage of those units affordable. Developers use additional cash flow from these bonus units to offset the revenue lost from the affordable units.[18]

9. How will the municipality sustain an ongoing inclusionary program?

It is important to ensure a total program when adopting an inclusionary zoning ordinance. If developers create affordable units without long-term affordability controls (30 year minimum in RI) or site units close too far from community and social services then the program will fail. This is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. Special siting factors such as proximity to employment and other public services are necessary for affordable units. For example, one siting requirement may be that affordable units be located close to major employers and or public transportation routes where possible.

10. What will be the type of controls on rental and for-sale housing?

A successful inclusionary zoning ordinance must include explicit restrictions on the future rental or sale of affordable units. Again, this is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. The ordinance must require the units to remain affordable for a minimum of thirty years, and it may also specify that the affordable units must continue to be available to income-qualified occupants. Restricting income levels and rents for rental units is simple- the jurisdiction can specify rent limits and require verification of new tenant's incomes as they move into the development. Maintaining affordability on for-sale housing is more complicated. The ordinance may require that homeowners sell their unit to income-qualified buyers at a price that incorporates inflation and the cost of home improvement, but remains affordable. One compromise would be that homeowners could sell their home with affordability restrictions and donate a certain percentage of the profits to a housing trust fund.[19] The ordinance should take into consideration inflation and the cost of living adjustments over time and who will be qualified in later years (see Part 5, numbers 10 & 11 for more details).

11. Can the developer make in-lieu-of payments?

A town may determine that the developer not be required to build affordable units if he pays a fee-in-lieu of development either (a) in cash or (b) by dedication of land. This fee is usually dedicated to a land trust or land bank for future affordable housing for the town, which may need to be established if none exists. A dedication of land may be advantageous to a community that has prioritized conservation along with affordable housing as a complementary goal. The community should specify whether the developer has the option of a fee-in-lieu by right, or require that the developer demonstrate that building the units as required presents a financial hardship.

In deciding the amount of a fee-in-lieu the ordinance needs to consider what the developer's costs might be to produce a unit of affordable housing, including current land costs, the need for infrastructure, current construction costs, etc. The object is to create a fee that is not too low so as to make it economically advantageous for the developer to opt out of building affordable units and high enough to make a reasonable gain by the community's affordable housing trust fund or land bank if they choose to allow the developer to opt out.

12. Can the developer build affordable units off-site?

Allowing developers the flexibility of delivering affordable housing off-site can help them economically. For example, if they are developing on expensive land, they can build more affordable units on other land. Also, affordable units may have special needs such as proximity to transportation

[18] Regulatory Barriers Clearinghouse , "Considerations for Density Bonus Ordinance," *Breakthroughs: Solutions that support affordable housing* 2, no. 4, Washington, DC.

[19] Anne Ray, "Inclusionary Housing A Discussion of Policy Issues," (Gainesville, FL: Shimberg Center for Affordable Housing, 15 June 2001).

and employment. Alternatively, while a municipality may allow the developer to build the affordable units off-site; however, this practice is less favored since one of the goals of inclusionary zoning is to promote the mixture of affordable units among market-rate housing to soften opposition to the construction as well as for the beneficial socio-economic impact. If off-site building is permitted, it is recommended that the units continue serving the same geographic locality.

Part 5: Developing an Ordinance

During the development of an inclusionary housing section for a municipal zoning ordinance, it is critical to tailor the section to the unique local housing conditions/ needs, governmental structure, and staffing levels - as defined by each locally approved Affordable Housing Plan. Therefore, the drafting of an effective inclusionary zoning ordinance requires the municipality to present a wide array of options that need to be viewed separately, and then evaluated in terms of how they work together.

This handbook is a reference tool not a model ordinance.

This section addresses those variables and options to be weighed in developing an effective inclusionary zoning ordinance. Communities should utilize this section as a guide to explain those issues that contribute to their unique needs, as there does not exist a one-size fits all solution. A municipality seeking to draft and implement an inclusionary zoning ordinance should consult with their legal counsel. In addition, this section is formatted to resemble a general municipal zoning ordinance provision and includes the recommended guidelines presented within the "Rhode Island Five Year Strategic Housing Plan".

The eleven items below are standard items for a community to include when drafting an inclusionary zoning ordinance. These standard items were adopted from a multitude of sources and a regional housing educational publication by the Business and Professional People for the Public Interest. An explanation of each item is presented, along with a bolded description of the recommended guideline for each, if applicable, from the "Rhode Island Five Year Strategic Housing Plan". Following the explanation and recommendation is actual ordinance language examples that have been underlined to identify the illustrated State law and guideline requirements. Lastly, the language municipalities use to draft the inclusionary zoning ordinance should be checked for consistency with Rhode Island law by legal counsel.

1. Findings

An ordinance section on inclusionary housing should begin with findings stating the need for affordable housing in the municipality as cited in the approved local Affordable Housing Plan. Typically this is the section that would summarize the planning process the community has undertaken, trends in housing stock, the need for and benefits of affordable housing, the constraints to be addressed and the benefits anticipated by enactment of an inclusionary zoning ordinance provision.

The first findings below are citied from the newly adopted **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L 42-128-8.1)**. A findings section should mirror the general statewide findings in addition to any local findings from the local approved Affordable Housing Plan. Additional sample findings are from other places using inclusionary housing provisions in their zoning ordinances.

> ***42-128-8.1. Housing production and rehabilitation.***
>
> *(a) Short title. This section shall be known and may be cited as the "Comprehensive Housing Production and Rehabilitation Act of 2004."*
>
> *(b) Findings. The general assembly finds and declares that: (excerpts)*
>
> > *(2) Efforts and programs to increase the production of housing must be sensitive to the distinctive characteristics of cities and towns, neighborhoods and areas and the need to manage growth and to pace and phase development, especially in high growth areas.*
> >
> > *(3) The state in partnership with local communities must remove barriers to housing development and update and maintain zoning and building regulations to facilitate the construction, rehabilitation of properties and retrofitting of buildings for use as safe affordable housing.*

(4) Creative funding mechanisms are needed at the local and state levels that provide additional resources for housing development, because there is an inadequate amount of federal and state subsidies to support the affordable housing needs of Rhode Island's current and projected population.

(5) Innovative community planning tools, including, but not limited to, density bonuses and permitted accessory dwelling units, are needed to offset escalating land costs and project financing costs that contribute to the overall cost of housing and tend to restrict the development and preservation of housing affordable to very low income, low income and moderate income persons.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

A *Findings: A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of the recent Lincoln Affordable Housing Production Plan, it has become clear that the provisions of the Article are necessary in order to preserve some diversity of housing opportunities for the residents and the working people of Lincoln.*

The program defined by this article is necessary to provide continuing housing opportunities for low and moderate income persons in Lincoln. It is necessary to help maintain a diverse housing stock and allow residents and employees of Lincoln to have better access to housing and jobs. The local and statewide trend of increasing housing costs as identified in the Lincoln Affordable Housing Production Plan will, without intervention; result in inadequate supplies of affordable housing here for low and moderate income residents and employees.

Remaining land for residential development in Lincoln is limited. It is essential that at least ten percent (10%) of such land be developed into housing units affordable to low and moderate income households. The primary objective of this article is to obtain affordable rental and homeownership units within qualified subdivisions or land development projects. Some provisions of this chapter provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this article is that wherever possible, affordable units constructed pursuant to this Article be located on site.

2. Statement of Purpose

Purpose statements typically explain broad policy directives of an ordinance.

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

a. To encourage and perpetuate the historic diversity of the community through the development of housing and housing for all populations within the Town, including, but not limited to, housing for the resident workforce and housing for special needs populations;
b. To promote mixed income Household occupancy in new subdivisions and land development projects throughout the Town;
c. To promote affordable housing production in the Town in accordance with the goals and policies of the South Kingston Comprehensive Community Plan's Housing Element and Affordable Housing Production Plan;
d. To encourage the development and availability of housing that qualifies as low and moderate income housing as mandated by RIGL 45-53, the Rhode Island Low and Moderate Income Housing Act, and the Rhode Island Comprehensive Housing Production and Rehabilitation Act of 2004, as amended;
e. To allow landowners and/or developers a reasonable return in all zones permitting residential development where the applicant proposes a development that would be classified as a major subdivision (6 residential units or greater) or major land development project under the South Kingstown Subdivision and Land Development Regulations.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

The purposes of this article are to:
(1) Maintain a balanced community that provides housing for people of all income levels, and
(2) Promote the construction of rental and homeownership housing that is affordable for the low and moderate income households of Lincoln.

(3) Implement the Lincoln Affordable Housing Production Plan, and the Housing Element of the Lincoln Comprehensive Plan, and Help Lincoln achieve the 10% low-moderate income housing goal set by the State.

3. Definitions

This part provides explanations to clarify certain specific terms used in the inclusionary zoning ordinance. Any housing, planning, or zoning terms that are not commonly used should be included in this section. Knowledge of existing definitions as established by the various Rhode Island General Laws (http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM) concerning housing development is necessary for this section. Definitions are already provided in the legislation for many terms relevant to an inclusionary zoning ordinance provision such as:

- Affordable Housing
- Approved Affordable Housing Plan
- Moderate Income Household
- Seasonal housing
- Year-round Housing
- Low and Moderate Income Housing

(1) ***"Affordable housing"*** *means residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, which may be adjusted by state and local programs for property tax relief, and insurance constitute no more than thirty percent (30%) of the gross household income for a household with less than one hundred and twenty percent (120%) of area median income, adjusted for family size. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size. Affordable housing shall include all types of year-round housing, including, but not limited to, manufactured housing, housing originally constructed for workers and their families, accessory dwelling units, housing accepting rental vouchers and/or tenant-based certificates under Section 8 of the United States Housing Act of 1937, as amended, and assisted living housing, where the sales or rental amount of such housing, adjusted for any federal, state, or municipal government subsidy, is less than or equal to thirty percent (30%) of the gross household income of the low and/or moderate income occupants of the housing [§ 42-128-8.1(d)-1].*

(2) ***"Affordable housing plan" -*** *means a plan prepared and adopted by a town or city either to meet the requirements of chapter 45-53 or to meet the requirements of [§ 45-22.2-10(f)], which require that comprehensive plans and the elements thereof be revised to conform with amendments to the state guide plan.*

(3) ***"Approved affordable housing plan" -*** *means an affordable housing plan that has been reviewed and approved in accordance with [§ 45-22.2-9].*

(4) ***"Moderate income household"*** *- means a single person, family, or unrelated persons living together whose adjusted gross income is more than eighty percent (80%) but less than one hundred twenty percent (120%) of the area median income, adjusted for family size.*

(5) ***"Seasonal housing"*** *- means housing that is intended to be occupied during limited portions of the year.*

(6) ***"Year-round housing" -*** *means housing that is intended to be occupied by people as their usual residence and/or vacant units that are intended by their owner for occupancy at all times of the year; occupied rooms or suites of rooms in hotels are year-round housing only when occupied by permanent residents as their usual place of residence.*

(7) ***"Minor subdivision" -*** *A plan for a subdivision of land consisting of five (5) or fewer units or lots, provided that the subdivision does not require waivers or modifications as specified in this chapter [§45-23-32 (25)].*

(8) ***"Major subdivision"*** *- Any subdivision not classified as either an administrative subdivision or a minor subdivision [§45-23-32 (22)].*

(9) ***"Cluster" -*** *A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings shall be specified in the ordinance and may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development there is no increase in the number of lots that would be permitted under conventional development except where ordinance provisions include incentive bonuses for certain types or conditions of development [§ 45-24-31 (13)].*

(10) ***"Incentive Zoning" -*** The process whereby the local authority may grant additional development capacity in exchange for the developer's provision of a public benefit or amenity as specified in local ordinances *[§* 45-24-31 *(35)].*

4. Standards - Threshold Size and Applicability

Threshold size and applicability is a two-fold standard requirement, by which the developer must comply. Therefore, the language within the inclusionary zoning ordinance must identify a standardized number of units or acres to be established as the threshold size. If the number of units or acres within the proposed land and/or building rehab development meets or exceeds the threshold size, then the threshold size will function as a trigger for the application of a set-aside provision requirement. For instance, **the "Rhode Island Five Year Strategic Housing Plan" guidelines suggest the minimum threshold trigger for this inclusionary zoning provision to be six for-sale or six rental units. This standard trigger of six for-sale or six rental units is based on R.I. enabling legislation, which differentiates a major subdivision from a minor subdivision based upon a standard of six or more units.** Nonetheless, the State would not discourage a reduction of this standard trigger as every municipality possesses unique local housing conditions/ needs, governmental structure, staffing levels, and locally approved Affordable Housing Plans. Furthermore, in some cases where large redevelopment projects are involved, a standardized number of acres must be identified as the trigger. Additionally, and only if applicable, this section of the ordinance should state whether the threshold size be applicable to all zoning districts or just specific zoning districts.

Details for the income groups to be served by the set-aside provision will be established in the "certifying buyers and renters and maintaining affordability" provision within the inclusionary zoning ordinance.

(Burlington, VT) *The following residential development projects shall be Covered Projects and shall be subject to the requirements of this Article: <u>all development of residential property larger than 10 acres or containing 50 or more dwelling units taking place through the construction of new structures or through the substantial rehabilitation of existing structures. Covered Projects shall include all development of residential property in excess of 10 acres or containing 50 or more dwelling units in the City by the same responsible party in any calendar year.</u>*

(A covered project in Burlington, VT is defined as - units that are offered for sale via the conveyance of a deed or share for individual units).

(Lexington, MA) *These provisions shall apply to <u>all residential developments with three or more dwelling units</u> which are authorized through special permits with site plan review, including residential developments in CD or RD Districts.*

(Lincoln, RI) [DRAFT: 02-06 Article VII]

E. Number of Inclusionary Units: <u>Any development containing five or more dwelling units</u> is required to include at least twenty percent (20%) of the total number of dwelling units within the development as affordable units.

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

B. Applicability. <u>This section shall be applicable in all zones permitting residential development where the applicant proposes a development that would be classified as a major subdivision (6 residential units or greater) or major land development project under the South Kingstown Subdivision and Land Development Regulations.</u>

5. Standards - Set-Asides

A set-aside provision pertains to the required percentage of a proposed development that a developer must price as affordable. There is no one-size-fits-all set-aside that can be used to do this. **The Zoning Enabling Act [R.I.G.L. 45-24-46.1] mandates that inclusionary zoning set-asides must be at least 10% of the total units proposed for development. In an attempt to maintain progress towards achieving the State's 10% goal, the "Rhode Island Five Year Strategic Housing Plan" guidelines suggest that municipalities consider a higher affordability set-aside, which will be off-set with a higher density bonus.** Based upon the State law and guidelines, perhaps the best general set-aside for a municipality would be to allow no less than 12.5% to 15%, but no greater than 25%.

Additionally, the municipality must decide what income tier to target for the affordable units, and balance those requirements with projects thought to have economic feasibility. Within this provision of the ordinance, the developer's pricing schedule must be consistent with the municipal affordable housing element of the comprehensive plan and the fiscal boundaries pre-established by the municipality. (The set-aside should be related directly to the Findings Section for ordinance consistency).

(Lincoln, RI) [DRAFT: 02-06 Article VII]

E. Number of Inclusionary Units: Any development containing five or more dwelling units is <u>required to include at least twenty percent (20%) of the total number of dwelling units within the development as affordable units.</u>

(Canton, MA)

<u>Ten percent (10%) of the dwelling units in the Continued Care Retirement Community shall be available to and permanently affordable for households earning less than or equal to 80% of the median income for Worcester County. An increase in the number of units of up to twenty percent (20%) of the maximum dwelling units allowed may be permitted on a one to one basis for units above and beyond the required ten percent (10%).</u>

(Duxbury, MA) [DRAFT]

<u>At least ten (10) percent of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units</u> in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.

6. Standards - Design and Building Requirements

Within the inclusionary zoning ordinance, it is important to establish the specific site design and architectural standards that will be implemented to move forward with the construction of the affordable housing units. In addition, while the type and design of a proposed development will be determined by the needs of the community, **the inclusionary zoning ordinance should implement guidelines that require affordable units to be similar in outward appearance to market rate units in the municipality.** More often than not, visual compatibility positively contributes to the overall aesthetic quality of the municipality; and this can make it easier for low or moderate income residents to both accommodate and assimilate themselves into the municipality. **In addition, the ordinance should provide implementation guidelines for developments that may include a mix of housing types and lot sizes, such as single-family units, duplexes, triplexes, and quadraplexes.**

Lastly, the inclusionary zoning ordinance should address two additional building alternatives: off-site construction and land dedication. In the event a developer proves that the construction of on-site affordable units is infeasible (due to environmental constraints or other fiscal considerations); he may be granted the option, with approval from the municipal Planning Board, for off-site construction. An approval of this nature should require the developer to construct both the market and the affordable units simultaneously. A land dedication provision would allow a developer, demonstrating a unique hardship, to **substitute a donation of land suitable for development that can accommodate affordable units in place of constructing the units.**

Presented below are six examples of either approved ordinances or ordinances still in the drafting phase demonstrating those guidelines set within the "Rhode Island Statewide Strategic Housing Plan". Examples one and two demonstrate guideline language for development design and location; examples three and four demonstrate guideline language for a variety of different mixed use developments; example five demonstrates guideline language for the circumstances and requirements for off-site developments; lastly, example six demonstrates guideline language for the requirements for land dedication.

Example One

(Lexington, MA)

6. Development Design. Location and design of Inclusionary Units shall comply with the following:

(a) Inclusionary Units shall be sited in no less desirable locations than the other units located on the same site.

(b) The materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to those of the other units in the development, but amenities such as designer or high end appliances and fixtures need not be provided for Inclusionary Units.

(c) To be credited towards the count of Inclusionary Units any existing dwelling units must be in full compliance with all applicable construction and occupancy codes, and shall be sufficiently maintained or rehabilitated so that all major systems (including, but not limited to, roof, windows and building envelope, HVAC, plumbing, and electrical) meet standards comparable to new construction.

(d) The exterior appearance of the Inclusionary Units shall be compatible with the other units on the same site.

Example Two

(Lincoln, RI) [DRAFT: 02-06 Article VII]

J. Design Guidelines

(1.) The exterior appearance of the Inclusionary units in any development shall be visually compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for inclusionary units as for market rate units and have the appearance of a single family home.

Example Three

(Providence Inclusionary Zoning Recommendations) [PolicyLink]

Design Standards for Inclusionary Units

Affordable units must be similar to and compatible with market rate units in outward appearance and in number of bedrooms, but size of affordable units may be reduced to a minimum standard, e.g. for apartments, the minimum sizes could be:

- *Efficiencies at 450 sq. ft.*
- *One bedrooms at 600 sq. ft.*
- *Two bedrooms at 850 sq. ft.*
- *Three bedrooms at 1,050 sq. ft.*
- *Four bedrooms at 1,120 sq. ft.*

Townhouses, multiplex, and single family units would generally be larger than these minimums due to developer design and compatibility goals. Interior finishes, appliances, and amenities need not be compatible with market rate units.

Example Four

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

C. *Permitted Uses. (Note: the section below is modeled after the existing provisions of Section 502.5 Flexible Design Residential Projects.).*

a) The following residential uses are permitted (Y) in subdivisions or land development projects to these inclusionary provisions.

Use Code	*Description*
10	*Single household detached structure*
11	*Two household detached structure*
12	*Multi-household detached structure (up to four-dwelling units per structure in subdivisions, up to 12 units per structure LDP, Land Development Project)*
12.1	*Multi-household Land Development Project (see Appendix A, Use Code Descriptions)*
12.2	*Multi-household Detached Structure-Elderly Only, LDP (see Appendix A, Use Code Descriptions)*
12.3	*Multi-household Land Development Project - Elderly Only, LDP (see Appendix A, Use Code Descriptions)*
12.4	*Residential Compound (see Appendix A, Use Code Descriptions)*
16.1	*Mobile or Manufactured Home Park, Land Development Project (see Appendix A, Use Code Descriptions)*
16.2	*Senior Residential Community – LDP (Land Development Project) – Elderly-Only, (see Section 501.7, permitted only in the R40 zoning district subject to the additional requirements listed therein)*

I. Design Standards for Inclusionary Dwelling Units in Major Subdivisions and Major Land Development Projects

1 Intent

It is the intent of this Section to establish general design and procedural standards for the siting and construction of affordable dwelling units (inclusionary zoning) in major land developments and major subdivisions. By the application of these standards and procedural requirements it is intended to create subdivision neighborhoods and land development projects that have long desirability, provide housing opportunities for a broad range of households with varying incomes and housing needs and are compatible with the surrounding community.

a) Inclusionary Dwelling Unit Design Considerations -…For conventional subdivisions or Flexible Design Residential Projects (FDRP's) such units may be designed as single household units, duplexes, triplexes or in a quadraplex configuration.

Example Five

(Lincoln, RI) [DRAFT: 02-06 Article VII]

M. Off-site Construction of Inclusionary Units: Inclusionary units may be constructed off-site only upon the determination by the Planning Board or Zoning Board that on-site construction is infeasible. If this option is chosen, then the off-site inclusionary units must be constructed prior to or concurrently with the construction of the on-site project. The inclusionary unit size and count must meet the same requirements as if the inclusionary units were constructed on-site.

Example Six

(Towns in Barnstable County, MA) [Inclusionary Housing Bylaw]*

05 Provision of Affordable Units:

4. An applicant may offer, and SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this provision/ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

*Note: If item 4 were to be incorporated into the language of a RI ordinance, replace the “SPGA” with “Zoning Board of Review or Planning Board (ZBR or PB)”; and replace the word “bylaw” with the word “ordinance”.

7. Standards - Timing of construction

It is important to establish when the affordable units shall be constructed. Most municipalities require affordable units to be built concurrently with market units to ensure integration of affordable and market units, and to prevent developers from abandoning projects prior to completing the affordable units. This section can be used to stipulate when phasing is used how many affordable units are to be constructed as part of each phase. **The "Rhode Island Five Year Strategic Housing Plan" guidelines state that the inclusionary ordinance may stipulate an upfront commitment from developers to create affordable units in a timely manner through the use of bonds or the requirement of phased construction plans, encouraging developers to construct affordable units either before or concurrent with market rate units.**

(Burlington, VT) *Inclusionary units shall be made available for occupancy on approximately the same schedule as a Covered Project's market units, except that certificates of occupancy for the last ten percent of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a Covered Project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article.*

(A covered project in Burlington, VT is defined as - units that are offered for sale via the conveyance of a deed or share for individual units).

(Lexington, MA) *POLICY 4.15: TIMING OF CONSTRUCTION: Building permits should not be issued for the construction of any dwelling unit in the second 50% of the market rate dwelling units, which are linked to affordable dwelling units, whether on the same site or elsewhere in town, until construction has begun on ALL the affordable dwelling units.*

(Massachusetts Smart Growth Model IZ Bylaw)
05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:

3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market rate Unit (% Complete)	*Affordable Housing Unit (% Required)*
<30%	*-*
30% plus 1 unit	*10%*
Up to 50%	*30%*
Up to 75%	*50%*
75% plus 1 unit	*70%*
Up to 90%	*100%*

Fractions of units shall not be counted.

(Charlton, MA) [DRAFT]

(4.) The construction of the affordable units will be built (a unit is considered "built" upon the issuance of an Occupancy Permit) coincident with the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market rate units (% built)	*Affordable housing units (% built)*
Up to 30%	*None required*
30% to 50%	*At least 30%*
51% to 75%	*At least 75%*
76% or more	*100%*

8. Cost Offsets and Density Bonuses

State inclusionary zoning guidelines suggest ways of reducing the costs of a development to enable the construction of affordable housing. Municipalities may implement cost offsets in a variety of ways. These include waivers from development standards such as set-back requirements, parking and landscaping requirements, waivers of impact fees and streamlining permitting to reduce the cost of constructing affordable units. These cost offsets allow a municipality to decrease the developer costs to be incurred while constructing affordable housing. In addition, the cost offsets minimize the possibility of a developer showing that inclusionary zoning causes an excessive loss such that it presents itself as a taking. Furthermore, the cost offsets give developers certain benefits to compensate themselves for pricing some units at below market rates.

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

502.6 A. Fair Share Development Fee Exemption. Per section 1101.D. 1. of this Ordinance, required Inclusionary dwelling units in major land development projects, major subdivisions or off-site exactions shall be exempt from payment of Fair Share Development Fees for both school facilities and open space, conservation, park and recreation land and/or facilities.

One of the most popular developer incentives used by a municipality is the density bonus. Consequently, the incorporation of the density bonus provision has become an essential component of the inclusionary zoning ordinance, as it has proven advantageous to both the developer and municipality. **The State guidelines indicate that for the density bonus provision to be effective, it must be offered at a higher percentage then the affordable set-aside requirement in order to offset the cost of the affordable unit requirements.**

(Charlton, MA) [DRAFT]

O. ***Provision of Affordable Units and Density Bonus***

(1.) Utilizing the Affordable Housing Incentive Option will require the granting of a Special Permit from the Planning Board.

*(2.) *Density Bonus Applicability: The density bonus is only available in those areas of Charlton serviced by **both** municipal water and sewer, or upon approval of **both** the Planning Board and the Board of Health.*

(3.) Density Bonus Formula: For projects resulting in a net increase of six (6) or more dwelling units, the applicant has the option of obtaining a density bonus in exchange for the provision of affordable housing. The number of additional lots derived from the density bonus shall not exceed 25% of the total lots that could be created under a conventional definitive subdivision plan design. The density bonus shall be calculated according to the following formula:

3-a. For those residential development projects that will set aside a minimum of fifteen percent (15%) of the total proposed housing units for affordable housing, the minimum lot area per dwelling normally required in the applicable zoning district may be reduced by the amount necessary to permit up to two (2) additional units for each one affordable housing unit provided.

3-b. For those residential development projects that will set aside a minimum of ten percent (10%) of the total proposed housing units for affordable housing, the minimum lot area per dwelling normally required in the applicable zoning district may be reduced by the amount necessary to permit up to one (1) additional unit for each one affordable housing unit provided.

3-c. Fractions: If when applying the above percentages to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction shall be rounded up to the next whole number.

*Note – If item (2) were to be incorporated into the language of a RI ordinance, the language would need to be specific with regard to the type of water supply (i.e. – municipal water source; or a private/public well water source) available to it and its wastewater management system. Furthermore, if specific approvals need to be obtained, the municipality would need to identify those particular municipal and state departments.

(Lincoln, RI) [DRAFT: 02-06 Article VII]
Density Bonus: All projects shall be entitled to a density increase of twenty-five percent (25%) in accordance with the provisions of this section. This density bonus qualifies as a locally provided subsidy. Any project shall be entitled to an increase in the maximum lot coverage allowed for the site on which the project is located following the calculation of density, lot coverage, and setbacks.

(Somerville, MA) *The affordable housing requirements of this Article shall apply to all residential developments seeking special permits with site plan review to develop 8 or more dwelling units, whether new construction, substantial rehabilitation, or adaptive reuse. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Developers providing more than 12.5% of the total units in the development as affordable units may apply for an additional density bonus under the terms of this Article. Bonuses may be awarded on the basis of a 2 to 1 ratio of market rate units to affordable housing units. For every additional unit provided beyond the 12.5% required, 2 additional market rate units may be authorized.*

9. Fee In Lieu

An inclusionary zoning ordinance may allow the option for the developer to pay a fee in lieu should it not be possible to construct the required affordable units for a variety of reasons. Several methods exist for the use of fee in lieu of construction. Such fees can be established that permit payment as a right. **In addition, an alternative is to require developers to show that constructing units would constitute a unique hardship, or that a fee would produce a greater benefit. State guidelines recommend that each community adopt a schedule of in-lieu fees that is based on a sound methodology, such as a percentage of the appraised value of the market-rate units. The fee should not exceed the difference between the cost of development and the sales price for an affordable unit.** The fee in lieu paid, is linked to the cost of producing a unit, and typically varies in every community, as the formulas for calculating an appropriate fee in lieu are dependent upon the local housing market.

(Massachusetts Smart Growth Model IZ Bylaw)
07.0 Fees-in-Lieu-of Affordable Housing Unit Provision: [Commentary Included]

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.

COMMENT: *This Section provides a cash payment option in lieu of providing affordable units. The payment value may differ for each municipality and will depend on the size of the affordable housing unit discount that would be necessary to make the unit affordable (e.g. median sale price of market rate unit minus maximum sale price of a three-bedroom affordable dwelling unit). Fees in- lieu will need to be recalculated regularly to account for inflation and other market changes. Furthermore, the local housing trust fund will need to be closely regulated to ensure that dollars contributed to the fund are spent exclusively on the provisioning of affordable housing. This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed. Municipalities that significantly lack* *affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available. Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.*

(Duxbury, MA) [DRAFT]

560.12 Fees-in Lieu of Affordable Housing Unit Provision

As an alternative to the requirements of Section 560.5, and as allowed by law, an applicant may contribute to the Duxbury Housing Trust Fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay fees in lieu of the construction of affordable units. For the purposes of this Bylaw, the fee in lieu of the construction or provision of affordable units is determined to be $200,000 per unit. Fox example, if the applicant is required to construct two affordable income units, they may opt to pay $400,000 in lieu of constructing or providing the units. Unless and until adjusted by Town Meeting, the fee in lieu of the construction of affordable units shall increase three (3%) percent every twelve months from the effective date of this Bylaw.

10. Certifying Buyers and Renters and Maintaining Affordability

An inclusionary zoning ordinance can provide regulations with extensive instructions for marketing to and certifying buyers and renters of affordable units. **Affordable dwelling units for sale cost guidelines comprise: the principal, interest, property insurance, and taxes - which may be adjusted by state and local programs for property tax relief. These consolidated costs may not constitute more than 30 percent of the gross household income for a moderate income household. In the case of affordable dwelling units for rent cost guidelines comprise: the rent, heat, and utilities - other than telephone - and may not constitute more than 30 percent of the gross annual household income for a household with 80 percent or less of Area Median Income (AMI), adjusted for household size. State guidelines suggest that income ranges targeted in local zoning ordinances be consistent with the needs identified in the community's affordable housing plan.**

In addition, the provisions must have a system to make sure that eligible families are being housed in the affordable units over the long-term. **The Zoning Enabling Act [R.I.G.L. 45-24-46] mandates that the minimum time period for affordability maintenance shall be 30 years; and the State guidelines recommend that the period of affordability can be established in the ordinance as perpetuity meaning 99 years or the useful life of the building.**

The methods utilized to maintain the time frames for affordability vary with regard to the staffing and enforcement capabilities of each municipality. Typically affordability is maintained by certain legal mechanisms such as deed restrictions and covenants that can be used to guarantee the units remain affordable for that time period maintained through deed restrictions or covenants recorded against the property. These affordability controls often specify that a unit must be sold or rented to an income eligible buyer at an affordable price. Most ordinances impose price restrictions that keep units affordable when they pass to new occupants. More recently, municipalities have incorporated specific affordability maintenance periods, which would subsequently reinstate the original time period of affordability.

Lastly, guidelines need to be provided on the subject of resale pricing and maintaining the affordability of the housing units. Municipalities must address whether sellers should be allowed to recoup the value of capital investments in their homes. All of the aforementioned considerations can be facilitated by designating a monitoring agent in the ordinance. **The State inclusionary zoning guidelines recommends that the local municipality should select an agent approved to**

monitor the affordable units for long-term compliance from RI Housing's list of approved monitoring agents, which may include local housing authorities, RI Housing, a community housing land trust, or the state or federal agency providing subsidies.

(Duxbury, MA) [DRAFT]

560.10 Maximum Incomes and Selling Prices: Initial Sale

To ensure that only eligible households purchase affordable units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the Duxbury Housing Authority, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Division of Housing and Community Development, and as may be revised from time to time.

The maximum housing cost for affordable units created under this Bylaw is as established by the Commonwealth's Division of Housing and Community Development or as revised by the Town.

560.11 Preservation of Affordability; Restrictions on Resale

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful.

Resale Price – Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price to and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 560.11. For example, if a unit appraised for $300,000 is sold for $225,000 as a result of this Bylaw, it has sold for 75% of its appraised value. If several years later, the appraised value of the unit at the time of proposed resale is $325,000, the unit may be sold for no more than $243,750, or 75% of the appraised value of $325,000.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

O. *Requirements*

(2) Determination of Rental Rates for Affordable Units:
Maximum Rents: Rents charged for inclusionary rental units in any one project must average, be affordable to households earning eighty percent (80%) or less of the Area Median Income (AMI) as determined by HUD. No unit may rent at a rate, which exceeds affordability for a household earning fifty percent (50%) to eighty percent (80%) of AMI as determined by HUD. Latest AMI statistics may be obtained from Rhode Island Housing at www.rihousing.com.

(3) Sales Prices for Affordable Units: The maximum sales price for an affordable ownership unit shall be set by Rhode Island Housing according to their accepted formula. The home price for affordable units in any development shall be a price affordable to a household earning no more than eighty (80%) of the AMI as defined by HUD if subsidized with federal funds. The home price for affordable units in any development not being subsidized by federal funds the price must be affordable as follows:

a One unit shall be made available at a price affordable to a household earning no more than eighty percent (80%) of the AMI as defined by HUD.

b One unit shall be made available at a price affordable to a household earning no more than one hundred percent (100%) of the AMI as defined by HUD.

c Any additional units may be made available at a price affordable to a household earning no more than one hundred twenty percent (120%) of AMI as defined by HUD.

(4.) Approved Purchasers of Affordable Units: A developer or owner shall select an eligible purchaser after completing a good faith marketing and selection process. Upon request, the Town may provide the developer or owner of an affordable unit with a list of households certified by the Town as eligible to purchase the unit. However, a developer or property owner may select an income eligible purchaser who is not on a furnished list so long as the Town can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this chapter.

(5.) Purchasers of Affordable Units Required to Reside in Those Units: A purchaser of an affordable unit shall occupy the purchased unit as their primary residence. No person shall rent an affordable

ownership unit. Ownership units must remain exclusively owner occupied for the entire required affordability period.

(6.) *Resale Restrictions**;** Applicable to Affordable Units: All affordable ownership units as developed under this Article shall be subject to the following restrictions: A seller of an affordable unit must select a low-income purchaser by a method that complies with an approved good faith marketing and selection process. At the request of the applicant, the Town will provide the seller with the description of a process that meets this requirement. Upon request, the Town may provide the seller with a list of households certified by the Town as income eligible to purchase the unit. All purchasers of affordable units shall be part of an income eligible household.*

(7.) *Resale Price for Affordable Units: The resale price of any affordable unit shall not exceed that which is affordable to a household earning no more than eighty percent (80%) to one-hundred twenty percent (120%) of the AMI as defined in Section N.(3).*

11. Housing Agency Right to Purchase

Where appropriate, some inclusionary zoning ordinances give the municipality and/or designated not-for-profit entities a right to purchase a fixed percentage of affordable units. This can be required when the units are first offered for sale or rent, so that the units will stay permanently affordable. Lastly, the local trends in housing stock, the need for and benefits of affordable housing, and the staff capability of each community and/or the presence of a qualified community development corporation should dictate how this guideline shall be incorporated within the municipality's inclusionary zoning ordinance.

(Duxbury, MA) [DRAFT]
560.11 Preservation of Affordability; Restrictions on Resale
Right of first refusal to purchase – The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than one hundred and eighty (180) days to purchase the property of assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

(Lincoln, RI) [DRAFT: 02-06 Article VII]
O. *Requirements*

(8.) *Deed Restriction or Incorporation into a Community Land Trust Required: No person offering an affordable unit for sale shall fail to lawfully reference in the grant deed conveying title of any such unit and recorded with the Register of Deeds, a covenant or Declaration of Restrictions in a form approved by the Town. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this Article.*

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Rhode Island State Agency World Wide Web Pages:

RI Statewide Planning Program	http://www.planning.state.ri.us.
RI Housing and Mortgage Finance Corporation	http://rihousing.com.
Rhode Island Government	www.ri.gov.
Rhode Island General Laws	http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM.

World Wide Web Pages of Various Case Studies & Sample Ordinances

Barrington, RI	http://www.ci.barrington.ri.us.
Barnstable, MA	www.capecodcommission.org/bylaws/affordhous.html.
Boston, MA	http://www.cityofboston.gov.
Burlington, VT	http://www.ci.burlington.vt.us.
Burrillville, RI	http://www.burrillville.org.
Cambridge, MA	http://www.cambridgema.gov/index.cfm.
Canton, MA	http://www.town.canton.ma.us.
Charlton, MA [DRAFT]	http://www.townofcharlton.net.
Duxbury, MA [DRAFT]	http://www.town.duxbury.ma.us.
East Greenwich, RI	http://www.eastgreenwichri.com.
East Providence, RI	http://www.eastprovidence.com.
Lexington, MA	http://ci.lexington.ma.us.
Lincoln, RI [DRAFT: 02-06 Article VII]	http://www.lincolnri.org.
Massachusetts	http://www.state.ma.us/dhcd/components/hac/zone.htm.
Massachusetts Smart Growth Model IZ Bylaw	http://www.mass.gov/ocd.
Montgomery County, MD	www.inhousing.org/InclusionaryZoning/zonelaws.htm.
North Kingstown, RI	http://www.northkingstown.org.
Providence Inclusionary Zoning Recommendations [PolicyLink]	http://www.policylink.org/Projects/IZ/.
Richmond, RI	http://www.richmondri.com.

Somerville, MA http://www.ci.somerville.ma.us.

South Kingstown, RI [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations; Revised February, 2006] http://www.southkingstownri.com.

Links

If you are looking for additional housing-related information, you may want to visit one of the following sites. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

Citizens' Housing and Planning Association www.chapa.org.

Enterprise Foundation www.enterprisefoundation.org.

Fannie Mae www.fanniemae.com.

Federal Home Loan Bank of Boston www.fhlbboston.com.

Freddie Mac www.freddiemac.com.

Grow Smart Rhode Island http://www.growsmartri.com/affordablehousing.html.

Harvard University Joint Center for Housing Studies www.jchs.harvard.edu.

HUD www.hud.gov.

LISC www.liscnet.org.

Massachusetts Housing Partnership Fund www.mhp.net/termsheets/inclusionaryzoning.pdf.

Minority Business Enterprise Commission www.rimbe.org.

National Association of Housing & Redevelopment Officials www.nahro.org.

National Association of Realtors www.realtor.com.

National Association of Home Builders www.nahb.com.

National Coalition for the Homeless www.nationalhomeless.org.

National Council of State Housing Agencies www.ncsha.org.

National Housing Conference www.nhc.org.

National Low Income Housing Coalition www.nlihc.org.

Neighborworks www.nw.org.

Pioneer Institute www.pioneerinstitute.org.

Research Institute for Housing America www.housingamerica.org.

Rhode Island Association of Realtors www.riliving.com.

RI Builders Association www.ribuilders.org.

RI Chapter of the American Planning Association www.riapa.org.

RI Coalition for the Homeless www.rihomeless.com.

RI Housing Resources Commission www.hrc.state.ri.us.

Southeastern Regional Planning and Economic Development District http://www.srpedd.org.

Statewide Housing Action Coalition www.shac-ri.org.

ATTACHMENT C: CITY WORKFORCE HOUSING STUDY 2015

Portland

2030 Workforce Housing Demand

GPCOG

Greater Portland Council of Governments
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Portland, Maine 04103

ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

Purpose

In 2002, the City of Portland adopted a Housing Plan with a policy goal to ensure an adequate supply of housing to meet the needs, preferences, and financial capabilities of all Portland households. In order to reach this goal, the City established a target of maintaining Portland's current proportion of subsidized units at 20% of the housing stock. Since the plan's adoption, over 2,000 housing units have been permitted in the city for the construction of apartments, condominiums, and single-family homes. This study examines recent trends in the Portland housing market in order to help policymakers determine what gaps, if any, may exist between what is curently being provided in the market and the city's housing needs.

Methodology

In August of 2014, the City of Portland contacted the Greater Portland Council of Governments to discuss the design of a study to assess progress in meeting the city's housing production goals. Staff conducted a literature review of studies used in other states and presented these approaches to the city for consideration.

- *Massachusetts Approach:* This method, so named for its prevalence amongst cities and towns in the Commonwealth, is based on the goals articulated in a municipality's comprehensive plan. In the future, Portland will capture a certain percentage of the region's population growth. People form households, whose demand can be projected by the current distribution of housing units by tenure and affordability.

- *California Approach*: This technique has been piloted in cities throughout California by the consulting firm of Keyser Marston Associates, Inc. The underlying philosophy is that the construction of market-rate units attracts high income households. Through the purchase of goods and services, these households support low-paid service jobs, which in turn support lesser income households whose needs might best be met by living near where they work.

For purposes of this analysis, "affordable" and "workforce" are used interchangably to refer to housing units that a household earning 100% of the county's median income can afford, assuming they spend no more than 30% of their income for housing. The term "subsidized," which is also confused with "affordable," generally refers to public investment to make housing affordable to households earning up to 80% of the county's median income.

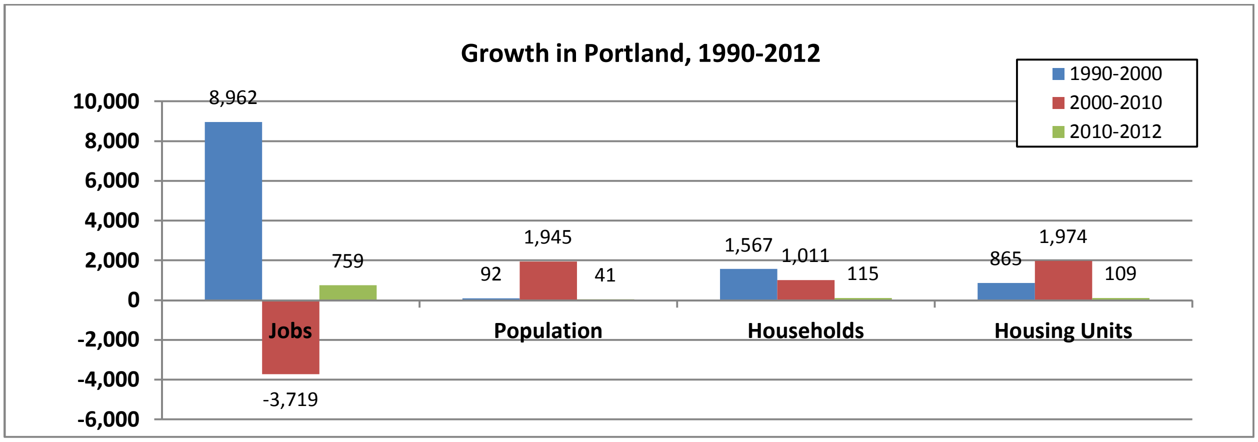
Findings

Sixty-two percent of Portland households earn less than the county's median income, including 38% of homeowners and 81% of renters. Over the last decade, the number of households earning less than median income has increased 10%. While rising incomes have narrowed the affordability of existing homes and apartments, new construction is well beyond the means of the middle class. From 2010 to 2014, 1,130 housing units were permitted and/or built in Portland, including apartments, condominiums and single-family homes. Just 29% were offered at a rent or sales price affordable to a household earning the median income. If robust growth continues, Portland will continue to lose the affordability of its housing stock.

Two approaches were deployed to help policymakers determine what percentage of new construction should be made affordable by policy to increase diversity in the city's housing stock.

- Under the Massachusetts approach, the gap between future demand for workforce housing units and potential supply is 33%.
- Under the California approach, the gap between future demand for workforce housing units and potential supply is 24%.

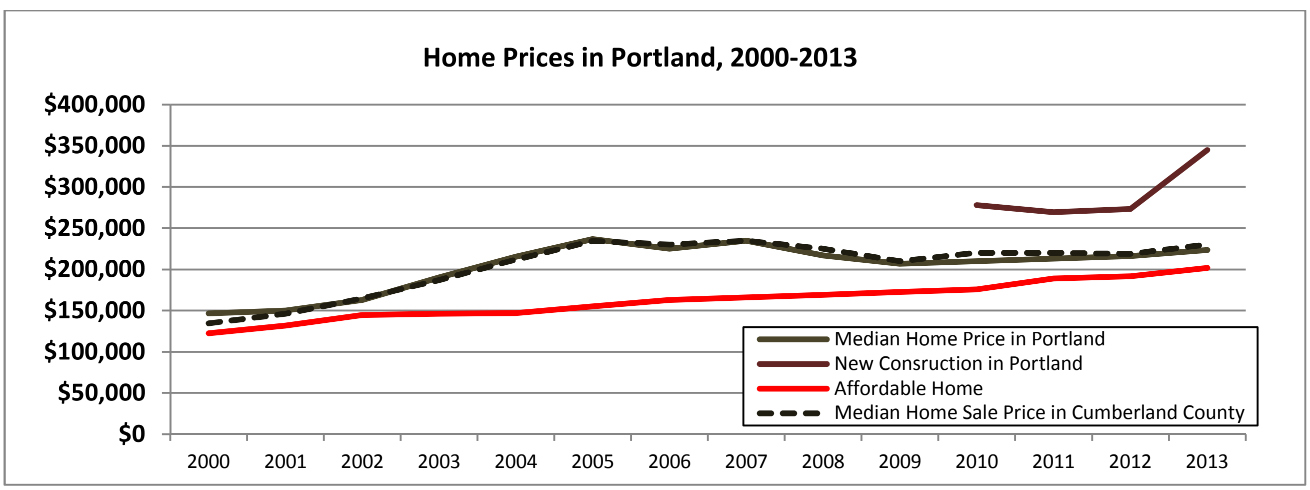
HOUSING MARKET TRENDS



Source: Maine Deparment of Labor, American Community Survey

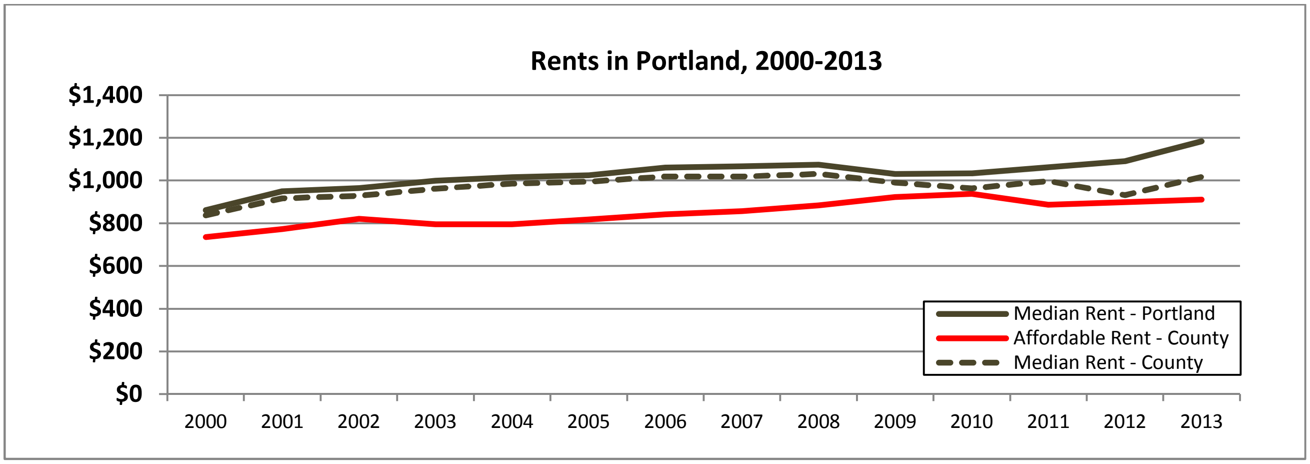
The economic recession of 1991 ushered in an era of slow growth throughout the nation. In just twelve months, the unemployment rate in Cumberland County soared from 3.7% to a decade high of 7.4%. The sluggish economy led to a lag in home construction. Driven by the dramatic increase in single people living alone, the formation of new households in Portland outstripped the construction of housing units by almost a 2:1 margin. By the late 1990's, the economy rebounded with the "dot com" revolution. Job growth and rising incomes created a pent-up demand for housing that set the stage for the boom of the 2000's.

In 2000, the "dot com" bubble burst, triggering another economic downturn. With its relatively small technology sector, Greater Portland weathered the recession better than the rest of New England and the nation. Fueled by the lowest interest rates in 40 years, real estate proved to be a lucrative investment. In Portland, new housing construction outpaced the formation of new households by almost a 2:1 margin. Without real job growth, however, the boom could not be sustained. In 2008, the collapse of the credit market ushered in the greatest economic recession since the Great Depression.



Source: Maine Housing, Portland Assessing Office

Home prices in the region peaked at $235,000 before dropping 12% in 2009. Since then, rising incomes and low interest rates have improved affordability. In 2013, a household in Cumberland County earning the median income of $58,500 could afford a home price of $202,000, while the median home was $223,500. In 2005, the gap between the median and affordable home price was $68,985. By 2013, the gap had narrowed to $21,500. New construction, however, remains out of reach for all but the wealthiest households. From 2000 to 2014, 282 new condominiums and single-family homes were sold in Portland posting a median price of $313,000, 55% over the affordable price. For example, in 2013, 85 condominiums at the Bay House in Portland's India Street neighborhood sold for a median of $366,350, 64% above the median home price and 81% above the affordable home price.



Source: Maine Housing, Portland Assessing Office

Rents in Portland continue to outpace incomes. In 2013, a household earning the median renter income of $36,438 could afford a rent of $911. The median rent in Portland, however, is $1,183, 30% more than what is affordable. Market rents associated with new construction are even higher. West End Place, a new 39-unit apartment complex at the corner of Brackett and Pine streets, is courting rents at $1,300 to $2,500, 43% to 170% higher than what is affordable.

MASSACHUSETTS APPROACH

Portland's Housing Plan established as a goal to maintain the city's 25% share of the county's population. In order to create enough affordable housing for the future, this share can be applied to the county's future growth projections. The following is a breakdown of the methodology.

1. Establish a long range population forecast at the county level

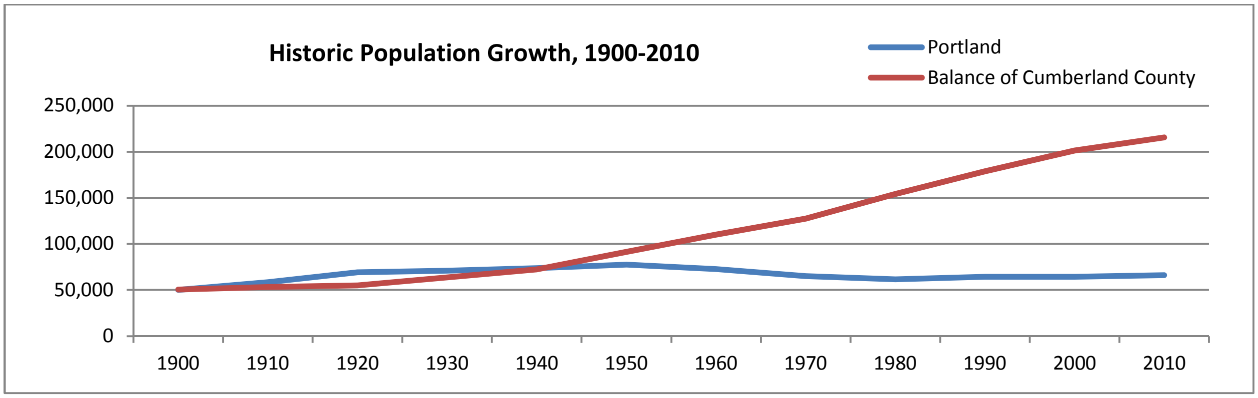
In Maine, there are two sources for population projections at the county level:

State Office of Policy and Management: In 2013, Maine's Economist released the State's 2030 Forecast. These projections assume that fertility of the current population is the primary driver of growth. Future growth is expected to be much slower than the past because Maine has a higher proportion of Baby Boomers, who are past their child-bearing years, along with a high proportion of non-Hispanic Whites, who have the lowest birth rates of any racial or ethnic group. From 2010 to 2030, the State projects that Cumberland County will grow by just 8,427 people, an increase of 1.5% per decade. This data comprises the "Low Growth" forecast.

Center for Business and Economic Research: In 2009, the University of Southern Maine's Muskie School of Public Service prepared a 2035 forecast for the Portland Area Comprehensive Transportation System (PACTS), the Metropolitan Planning Organization for the Portland, Maine Urbanized Area. This forecast, generated through Regional Economic Models, Inc. (REMI), assumes that the economy will drive population growth. From 2010 to 2030, Muskie projects that Cumberland County will grow by 79,924 people, an increase of 14% per decade. This data comprises the "High Growth" forecast.

The “Medium Growth” forecast is the average of the Low and High forecasts. Under this scenario, Cumberland County would grow by 44,176, people, an increase of 8% per decade.

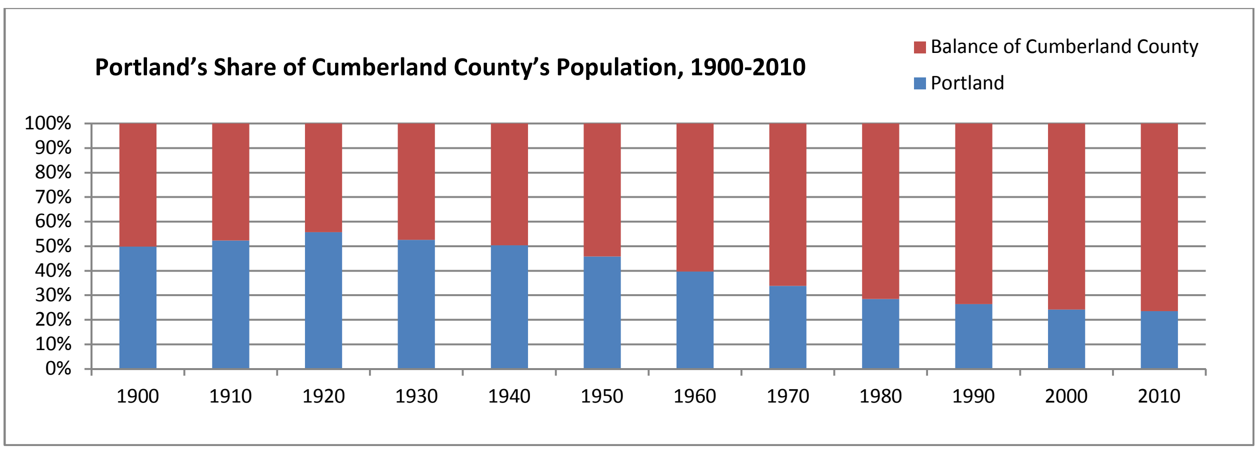
Over the last century, the county’s decennial growth rate has ranged from a high of 16% during the 1940’s to a low of 5% during the 1960’s. Therefore, the Low forecast, at 3% growth, represents a rate lower than in any decade of the last century, while the High forecast, at 14%, is only slightly higher than the pattern of the 1990’s. At 8%, the Medium forecast reflects the average growth rate per decade of the past century.



Source: U.S. Census Bureau

2. Assign Portland a 25% share of the county’s 2030 population growth

Portland’s goal of maintaining a 25% share of the county’s population is paramount to its vitality and its influence over state and regional politics. As the largest city in one of the nation’s smallest states, Portland exerts an extraordinary influence over Maine’s economy out of proportion with its actual size. Indeed, the number of jobs in the city now outstrips population, making Portland the engine of the largest labor market in Northern New England. Over the last century, Portland’s share of the county’s population has declined from a peak of 56% in 1920 to 24% in 2010. While this share is on a definite downward trajectory, Portland did not yield any ground during the 2000’s.



Source: U.S. Census Bureau

Low Growth: To claim a 25% share of the county’s population, Portland would need to grow by 6,331 people, or 317 people per year, a growth rate of 4.8% per decade. In order to reach this 25% share, which in 2010 slipped to 24%, Portland would need to claim 75% of the county’s future growth. Although this would represent a reversal of the sprawling choices made by residents during the 1970’s, 80’s and 90’s, this trend has already begun in the 2000’s. In order to accommodate new residents, Portland would need to build 4,188 housing units, or 210 units per year over a 20-year period. This modest housing growth is in line with the development patterns of the 2000's, which resulted in the construction of approximately 1,974 units, or 198 units per year.

Medium Growth: To claim a 25% share of the county's population, Portland would need to grow by 15,268 people, or 764 people per year, a growth rate of 11.5% per decade.. This would bring Portland's population to 81,462 people, just past its 1950 peak. In order to reach this 25% share, Portland would need to claim 35% of the county's future growth. In order to accommodate new residents, Portland would need to build 8,636 housing units, or 432 units per year over a 20-year period. This robust growth would be double that witnessed in the 2000's and five times the growth of the 1990's.

High Growth: To claim a 25% share of the county's population, Portland would need to grow by 24,206 people, or 1,211 people per year, a growth rate of 18.3% per decade. In order to reach this 25% share, Portland would need to claim 30% of the county's future growth. In order to accommodate new residents, Portland would need to build 13,084 housing units, or 654 units per year over a 20-year period. In terms of new construction, this represents three times the growth of the 2000's and eight times the growth of the 1990's.

2030 Housing Forecast for Portland

	2010		2030					
			Low Growth		Medium Growth		High Growth	
	Total	Change	Total	Change	Total	Change	Total	Change
Population of Cumberland County	**281,674**	**24%**	**290,101**	**8,427**	**325,850**	**44,176**	**361,598**	**79,924**
Population of Portland	**66,194**	**100.0%**	**72,525**	**6,331**	**81,462**	**15,268**	**90,400**	**24,206**
Population in ownership units	30,317	45.8%	33,217	45.8%	37,310	45.8%	41,403	45.8%
Population in rental units	33,264	50.3%	36,446	50.3%	40,937	50.3%	45,428	50.3%
Population in group quarters	2,613	3.9%	2,863	3.9%	3,216	3.9%	3,569	3.9%
Households	**30,725**		**34,945**	**4,220**	**39,252**	**8,527**	**43,558**	**12,833**
Population in households	63,581	96.1%	69,662	96.1%	78,247	96.1%	86,831	96.1%
Average household size	2.07		1.99		1.99		1.99	
Ownership	2.31		2.23		2.23		2.23	
Rental	1.89		1.82		1.82		1.82	
Housing Units	**31,908**		**36,096**	**4,188**	**40,544**	**8,636**	**44,992**	**13,084**
Ownership	13,321	41.7%	15,077	1,756	16,935	3,614	18,792	5,472
Occupied	13,124	98.5%	14,927	99.0%	16,767	99.0%	18,606	99.0%
Vacant	197	1.5%	149	1.0%	168	1.0%	186	1.0%

Source: Prepared by the Greater Portland Council of Governments based on the 2010 Census and County Population Forecasts from the State Office of Policy and Management and the Center for Business and Economic Research

3. Breakout Portland Forecast by Household Income and Tenure

Owners: As of 2011, 38% of Portland's 13,845 homeowners earned less than the county's median income. This is unchanged from the 2000 Census. Approximately 28% of homeowners are considered to be of low to moderate income because they earn 80% or less of the county's median income. This is slightly lower than in 2000. The U.S. Department of Housing and Urban Development classifies households earning less than 80% as follows:

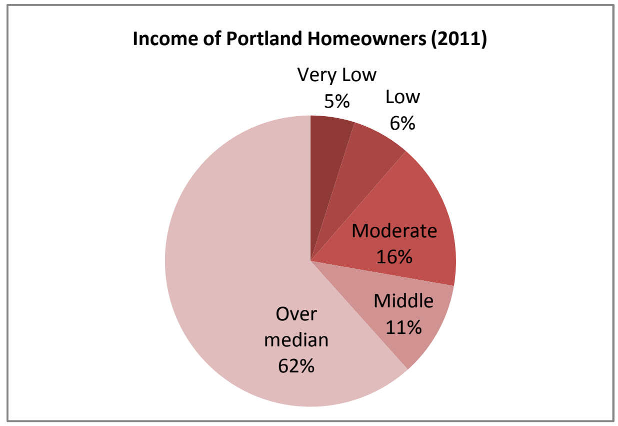
- Less than 30%: *Very low income*
- 30%-50%: *Low income*
- 50%-80%: *Moderate income*

For this analysis, middle income refers to those households earning from 80%-100% of median income. From 2000-2011, the greatest change was in the number of these middle income households, which increased by 52%.

Income of Owners in Portland, 2000-2011

	2000		2011			
	Households	%	Households	%	Net	%
Very Low	605	5%	680	5%	75	12%
Low	1,020	8%	895	6%	-125	-12%
Moderate	2,240	18%	2,265	16%	25	1%
Middle	970	8%	1,470	11%	500	52%
Over Median	7,865	62%	8,535	62%	670	9%
Total	**12,605**	**100%**	**13,845**	**100%**	**1,240**	10%
Low to Moderate	**3,865**	**31%**	**3,840**	**28%**	**-25**	-1%
Under Median	**4,835**	**38%**	**5,310**	**38%**	**475**	10%

Source: Special tabulation by the U.S. Department of Housing and Urban Development based on the 2007-2011 American Community Survey

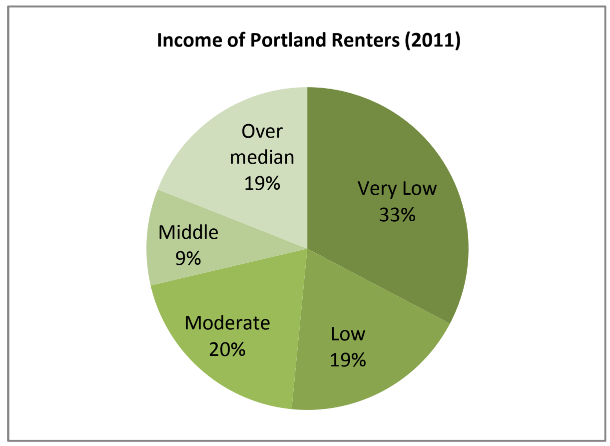


Renters: As of 2011, 81% of Portland's 17,260 renters earned less than the county's median income. Approximately 71% of renters are considered to be of low to moderate income. From 2000-2011, the greatest change was in the number of very low income households, which increased by 30%.

Income of Renters in Portland, 2000-2011

	2000		2011			
	Households	%	Households	%	Net	%
Very Low	4,330	26%	5,630	33%	1,300	30%
Low	2,755	17%	3,260	19%	505	18%
Moderate	4,165	25%	3,415	20%	-750	-18%
Middle	1,415	9%	1,665	10%	250	18%
Over Median	3,700	23%	3,290	19%	-410	-11%
Total	**16,365**	**100%**	**17,260**	**100%**	**895**	5%
Low to Moderate	**11,250**	**69%**	**12,305**	**71%**	**1,055**	9%
Under Median	**12,665**	**77%**	**13,970**	**81%**	**1,305**	10%

Source: Special tabulation by the U.S. Department of Housing and Urban Development based on the 2007-2011 American Community Survey

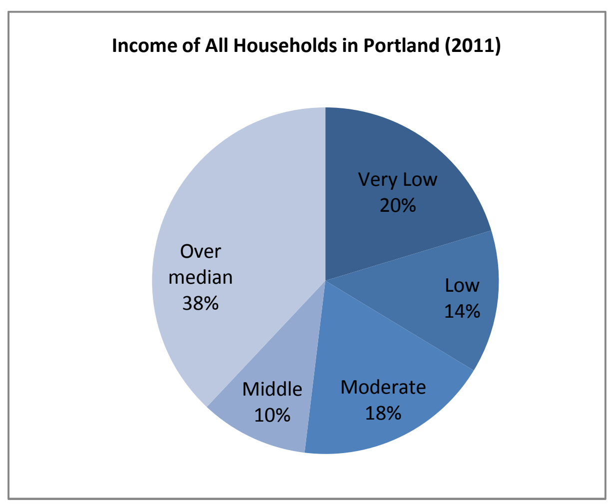


All households. As of 2011, 62% of Portland's 31,105 households earned less than the county's median income. Approximately 52% of all households are considered to be of low to moderate income. From 2000-2011, the greatest change was in the number of very low income households, which increased by 28%.

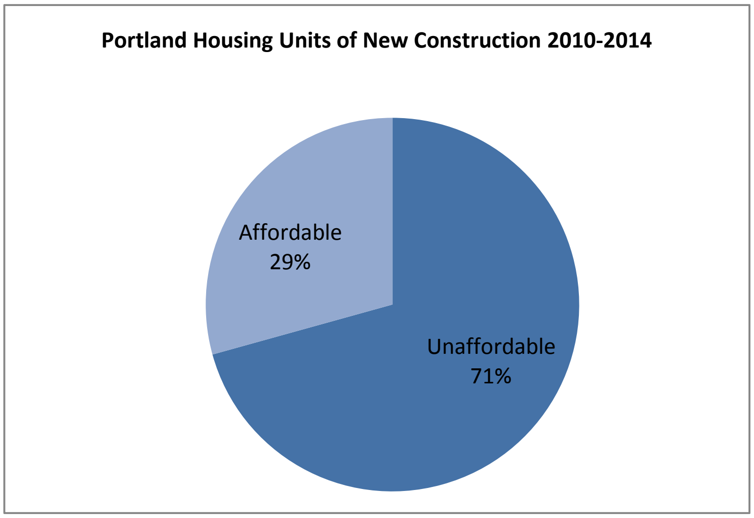
Income of All Households in Portland, 2000-2011

	2000		2011			
	Households	%	Households	%	Net	%
Very Low	4,935	17%	6,310	20%	1,375	28%
Low	3,775	13%	4,155	13%	380	10%
Moderate	6,405	22%	5,680	18%	-725	-11%
Middle	2,385	8%	3,135	10%	750	31%
Over Medium	11,565	40%	11,825	38%	260	2%
Total	**29,065**	**100%**	**31,105**	**100%**	**2,040**	7%
Low to Moderate	**15,115**	**52%**	**16,145**	**52%**	**1,030**	7%
Under median	**17,500**	**60%**	**19,280**	**62%**	**1,780**	10%

Source: Special tabulation by the U.S. Department of Housing and Urban Development based on the 2007-2011 American Community Survey



4. Calculate Gap between Current Production Trends and Future Demand



While the median price of new construction is beyond the reach of the middle class, some proportion of new homes is affordable. From 2010-2014, 384 new condominiums and single-family homes were permitted in Portland. The percentage of units sold or marketed for sale at an affordable price was 7%. During the same period, 746 new rental units were permitted. The percentage of units marketed for rent at an affordable price was 41%. Overall, 29% of new housing units permitted from 2010-2014 were offered to the market at a price affordable to a household earning 100% of median income.

Approximately 62% of Portland households earn less than the county's median income. If recent construction trends hold, the market, without compulsion, will build affordable units to meet 29% of demand. This leaves a gap between supply and demand of 33%.

Supply and Demand for Housing Affordable to Households at 100% of Median Income

		Low Growth	Medium Growth	High Growth
Housing Units	**Percent of Market**	**4,188**	**8,636**	**13,084**
Projected 2030 Demand	62%	2,597	5,354	8,112
Projected 2030 Supply	29%	1,215	2,504	3,794
Gap	**33%**	**1,382**	**2,850**	**4,318**

CALIFORNIA APPROACH

This method is based on the underlying theory that the construction of market-rate units attracts high income households. Through the purchase of goods and services, these households support low-paid service jobs, which in turn support lesser income households whose needs might best be met by living near where they work. The following is a breakdown of the methodology.

1. Calculate the income of market-rate households

A household must earn approximately $90,000 to afford the market price of a newly constructed home ($313,000) or rental unit ($2,500 per month), presuming it spends no more than 30% of its income for housing. This percentage is consistent with mortgage underwriting practice, traditional credit analysis, and housing policy.

2. Quantify the collective purchasing power of market-rate households

The National Consumer Expenditure Survey was used to calculate the disposable income of market rate households. A typical household in the Northeast spends the largest chunk of its income, 28%, on housing, including mortgage, insurance, and property taxes as well as home maintenance and furnishings. At 17%, the second largest category is transportation, including vehicle payments, registration, maintenance, and fuel. The third largest expenditure, 14%, is food, which includes meals eaten at restaurants as well as produce, meat, dairy, and other products purchased at supermarkets and eaten at home. Other categories include insurance, utilities, health care, entertainment, education, and apparel. Once taxes and housing costs are eliminated, the market-rate household has $45,900 in disposable income accounting for 51% of gross household income. One hundred market-rate households would have a collective purchasing power of $4,590,000.

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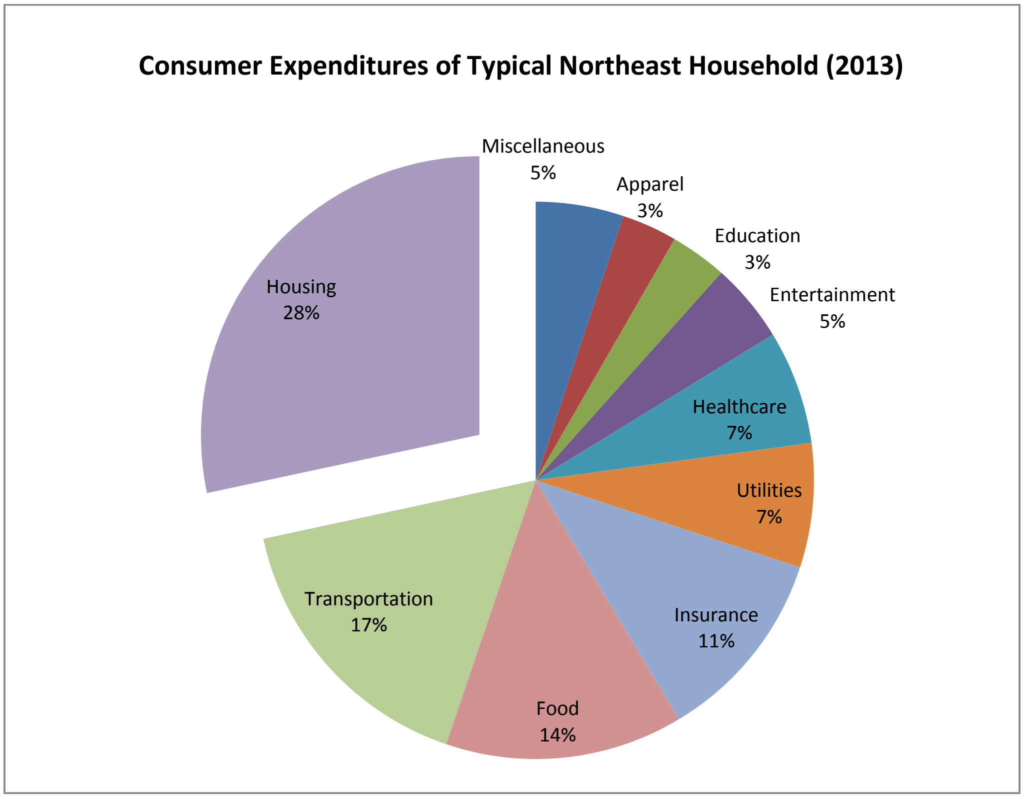
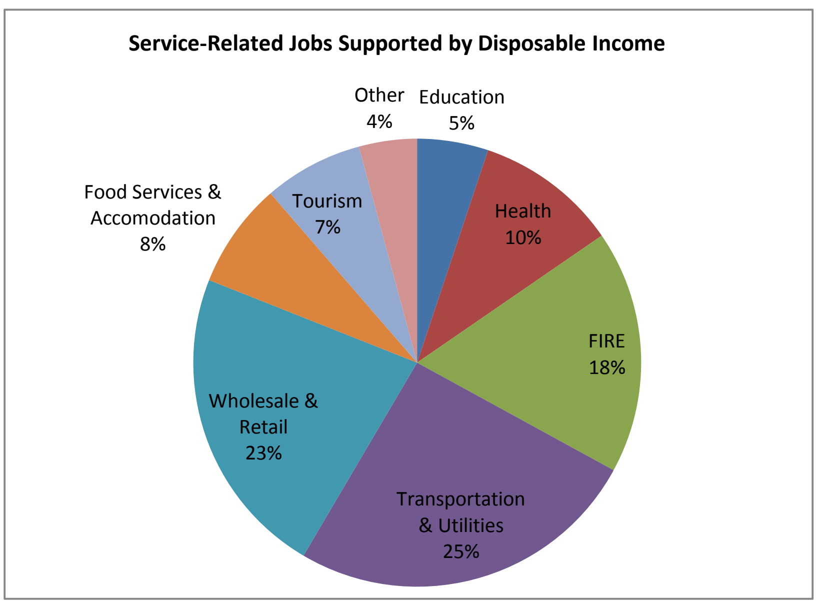


3. Translate collecting purchasing power to jobs



Estimates were made to correlate household spending by category with service jobs by industry sector. Jobs generated by mortgage and rent payments were excluded from analysis. The goods-producing sector, which includes jobs in agriculture, fisheries, forestry, mining, construction, and manufacturing, was also excluded. Thus, while food purchased at the supermarket may be grown in the field and processed in a factory, only the retail jobs supported by household spending are counted. Food eaten at home, for example, was assigned to the Wholesale and Retail sector, while meals eaten away from home were assigned to the Accommodation and Food Services sector. Similarly, income paid to utilities was assigned to Transportation and Utilities.

4. Calculate the economic impact of job creation

The disposable income of 100 households purchasing market-rate homes in Portland would generate an economic impact of 121 jobs, $4.8 million wages, $13.4 million in GDP, and $20.9 million in total output, which is broken down on the following chart. Each job has an average income of $40,020.

Economic Impact of 100 Households Purchasing Market Rate Ownership Units

	Employment	Earnings	GDP	Output
Direct	80	$3,336,816	$9,984,358	$15,617,667
Indirect + Induced	41	$1,505,576	$3,382,239	$5,309,542
Total	**121**	**$4,842,392**	**$13,366,597**	**$20,927,209**

Outputs were generated from the 2011 version of the *Connect Northern New England Economic Scenario Model* developed by Vital Economy and FairPoint Communications. Outputs were adjusted for inflation to 2014 dollars. The model is designed to provide order of magnitude estimates of economic impact resulting from the gain or loss of jobs, including the following:

- **Direct Employment**: Employment attributed to a particular business, activity or industry.
- **Indirect Employment**: Employment in down-stream industries that supply or provide services to the direct business, activity or industry.
- **Induced Employment**: Employment generated because of expenditures made by individuals employed directly or indirectly by the particular business, activity or industry.
- **Earnings**: Sum of wage and salary disbursements, supplements, and proprietors' income.
- **GDP**: Total market value of all final goods and services produced in the region.
- **Output**: Total economic output of a firm, industry, or economy without deducting intermediate inputs such as goods and services consumed by industries in the production of other final goods and services.

The Economic Scenario Model derives its data from the U.S. Bureau of Economic Analysis (BEA), which produces detailed data on economic activity by region and state. In order to calculate the indirect and induced effects on employment, earnings, output, and GDP, the Model uses BEA RIMS II multipliers, which are based on estimates of local area personal income and on the national input-output accounts.

5. Calculate the number of median households supported by new jobs

Cumberland County's labor force is comprised of 167,365 workers age 16 and over. In the 2010 Census, 117,339 households were recorded in the county. Thus, there are 1.43 households for every job in the region. The disposable income from 100 new market rate households generates 121 jobs in the local economy, which can support 85 workforce households. The number of workforce households is multiplied by 62%, which is the percentage of Portland households earning less than the county's median income. The result, 53%, is the percentage of workforce housing demand generated by these 100 market-rate units. If the market, in keeping with current production patterns, supplies 29 affordable units for every 100 built, there would still be an unmet gap for 24 affordable units.

Median Housing Demand Generated by Market Rate Households

Jobs per Household	1.43
Median income households in Portland	62%
Total jobs generated by 100 market-rate households	121
Households supported by jobs	85
Affordable housing demand generated per job	53%
Potential market supply of affordable units	29%
Gap	**24%**

AFFORDABILITY OF CURRENT HOUSING STOCK

Rental Units

While recent trends demonstrate that new construction is increasingly unaffordable, there are still thousands of existing housing units in Portland that are affordable due to condition, size, turnover and other factors. Thanks to a special Census tabulation prepared by HUD, the chart below outlines the income of households who were living in these affordable units in 2011. In 2011, the HUD Area Median Family Income (HAMFI) for the Portland area was $72,300. HUD's basic affordability assumption is that rent should consume no more than 30% of a household's gross income.

There are several important issues left answered by the data. Because respondents to the households are the renters themselves and not the landlords, it is impossible to determine the following: 1) which units are located in a housing project where rents are subsidized; 2) whether the rent reported is the actual rent charged to the tenant or the rent paid by a tenant minus a Section 8 voucher; and 3) what the rent would be if the unit were available to the marketplace. For example, certain housing units might be rented by family members of the landlord, who would charge a higher rent to the general public. Also, many landlords purposefully keep rents low for longtime tenants in order to avoid turnover. Turnover often commands higher rents, particularly if renovations occur during the vacancy.

Of the city's 17,585 rental units, 90%, or 15,800, are offered at rents affordable to households earning up to 80% of the region's median income. At first glance, these numbers seem to indicate that there is no affordable housing problem in the rental market. The reality, however, is that there is a mismatch between income and availability because renters do not seek to maximize their incomes on rent. While many households seek to buy "more house" than they need, renters tend to seek out the best bargain for their preferred location and/or the smallest unit that they can squeeze into. Some renters want to spend as little as possible so that they can save money for a home. Other renters may not compete well for housing in the private market against higher income renters with more stable jobs, incomes, and credit ratings. Another problem is size. Virtually half of the city's affordable rental units are studios, efficiencies, and one-bedroom apartments. Families are hard pressed to find large units at rents they can afford.

Rent Affordable to Very Low Income Households Earning <= 30% of Median Income - These are units with a gross rent affordable to households at or below 30% HAMFI. Of the 3,390 rental units offered at this rent level, 92% are occupied by households earning up to 100% HAMFI. Judging by the vacancy rate, competition is stiffest for units with three or more bedrooms.

Rent Affordable to Low Income Households Earning >30 to <=50% of Median Income - These are units with a gross rent affordable to households earning 30% to 50% of HAMFI. Of the 2,490 rental units offered at this level, 86% are occupied by households earning up to 100% HAMFI. Judging by the vacancy rate of 0%, competition is stiffest for units with three or more bedrooms.

Rent Affordable to Moderate Income Households Earning >50 to <=80% of Median Income - These are units with a gross rent affordable to households earning 50% to 80% of HAMFI. Of the 9,145 rental units offered at this price range, 74% are occupied by households earning up to 100% of HAMFI. Vacancy is tightest in this price range.

Rent Affordable to Households Earning >80% of Median Income - These are units with a gross rent affordable to households with incomes above 80% of HAMFI. Of the 1,790 units offered at this rent level, 47% are occupied by households earning up to 100% of HAMFI. At 12.1%, the vacancy rate is highest amongst 3-bedroom units.

Name of Jurisdiction: Portland, Maine	Source of Data: 2007-2011 CHAS databook			
	Rental Units by # of bedrooms			
Rental Units by Affordability	**0-1**	**2**	**3+**	**Total**
Units with gross rent affordable to a household earning 30% HAMFI				
Household income 30% or less	1,320	480	425	2,225
Household income 30.1%-50%	365	100	205	670
Household income 50.1%-80%	80	65	60	205
Household income 80.1%-100%	15	0	0	15
Household income over 100%	10	10	95	110
Total occupied units	1,790	655	785	3,225
Vacant for Rent	80	60	25	165
Vacancy Rate	4.3%	8.4%	3.1%	4.9%
Units with gross rent affordable to 50% HAMFI				
Household income 30% or less	470	155	75	700
Household income 30.1%-50%	350	385	150	885
Household income 50.1%-80%	300	305	80	680
Household income 80.1%-100%	165	55	0	225
Household income over 100%	85	170	45	295
Total occupied units	1,370	1,070	350	2,790
Vacant for Rent	90	25	0	115
Vacancy Rate	6.2%	2.3%	0.0%	4.0%
Units with gross rent affordable to 80% HAMFI				
Household income 30% or less	1,270	695	410	2,375
Household income 30.1%-50%	660	600	115	1,375
Household income 50.1%-80%	915	945	310	2,165
Household income 80.1%-100%	530	405	220	1,155
Household income over 100%	720	920	435	2,075
Total occupied units	4,095	3,565	1,490	9,145
Vacant for Rent	170	135	55	360
Vacancy Rate	4.0%	3.6%	3.6%	3.8%
Units with gross rent affordable to household earning over 80% HAMFI				
Household income 30% or less	85	120	25	230
Household income 30.1%-50%	50	45	70	170
Household income 50.1%-80%	75	140	50	265
Household income 80.1%-100%	80	70	35	185
Household income over 100%	190	280	330	800
Total occupied units	480	655	510	1,650
Vacant for Rent	25	50	70	140
Vacancy Rate	5.0%	7.1%	12.1%	7.8%
Total Occupied	**7,735**	**5,945**	**3,135**	**16,805**
Number vacant for rent	**365**	**270**	**150**	**780**
Vacancy Rate	**4.5%**	**4.3%**	**4.6%**	**4.4%**
Units affordable to households earning up to 80% of AMI	**7,595**	**5,510**	**2,705**	**15,800**
Percent of housing stock that is affordable	**94%**	**89%**	**82%**	**90%**

Home Ownership Units

In 2011, 66% of existing homes, or 6,895 units, were affordable to households earning 100% of the region's median household income. Thanks to a special tabulation of the American Community Survey, the chart on the next page illustrates the income of households who were living in these affordable units in 2011.

The data should be used with caution. Unlike rents which can rise and fall with the economy, most homeowners lock themselves into a 30-year mortgage with a fixed interest rate. Except for fluctuations in taxes and insurance, they make the same monthly mortgage for the life of the loan. The Census asks homeowners to estimate what they think their home is worth. Some homeowners may consult their tax bill while others find out the selling prices earned by neighbors. Still others simply make a guess. Because this value does not necessarily align with the price the home would sell for if it was listed on the market, it is substantially different from the market data used earlier in this report, which was provided by Maine Housing and the City Assessor based on actual sales of new and existing homes. While it may be unreliable, particularly in light of the boom and bust of the housing market, it is the best source of data for determining who lives in the region's affordable ownership stock, including condominiums, ranches, capes and bungalows. Mobile homes, boats, and recreational vehicles are not included in the data.

Another caution is that the data is not indicative of cost burden. For example, in 2011, there were 555 homes with a value affordable to households earning over 100% of median income that were occupied by households earning 50% or less of median income. This does not mean that the home is unaffordable to them. Certainly a large percentage of homeowners have owned their homes for a very long time: while initially the mortgage payment may have been more than 30% of their income, as wages rise, mortgage payments gradually decline as a percentage of household income. Some low income owners, such as senior citizens, have paid off their mortgage completely, leaving them "house-rich" but "cash-poor."

To determine the maximum home value affordable to households by income, HUD utilized a series of assumptions: a 31% monthly payment standard, a 4.5% down payment, a 5.5% interest rate, a 1.75% upfront insurance premium, a .55% annual insurance premium, and 2% for annual taxes and insurance. Based on these assumptions, HUD's estimated value to income ratio for an affordable home is 3.36, i.e., a household can afford a home costing no more than 3.36 times its income. In 2011, the HUD Area Median Family Income (HAMFI) for the Portland area was $72,300. A household earning this median income could afford a home price up to $242,928, which is 22% than Maine Housing's estimate for the same base year. The reason for this discrepancy is a different definition of median income. HAMFI, the reference point for the HUD data, is scaled to a family of four. Maine Housing's estimate, however, encompasses for all households, including single people living alone. Thus, while the HAMFI for the Portland area was $72,300, Maine Housing's estimate for the same year was $54,944, and for the American Community Survey, it was $57,267.

Value Affordable to Low Income Households Earning 50% of Median Income – The value of these homes are less than or equal to the maximum amount that would be affordable to a household earning 50% of median family income, or $36,150. Under HUD's financing assumptions, such a family could afford a home of no more than $122,000. There were 540 occupied units with a value in this range: 75% were occupied by households earning 100% or less of median income. There were 100 vacant homes at this value accounting for a vacancy rate of 15.6%. Such a high rate is indicative of foreclosure and/or deferred maintenance.

Value Affordable to Moderate Income Households 80% of Median Income - A household earning 50.1-80% HAMFI, or $36,151-$57,840, could afford a home of $122,000-$194,000. There were 3,080 occupied units with a value in this range: 54% were occupied by households earning up to 100% HAMFI. While homes in this price range might be small, suffer from deferred maintenance, and/or be located in high traffic areas, the tight vacancy rate of 0.5% indicates they are in high demand.

Value Affordable to Households Earning 100% of Median Income - A household earning 80.1%-100% of median income, or $57,841-$72,300, could afford a home of $194,000-$243,000. There were 3,125 occupied units with a value in this range: 39% were occupied by households earning up to 100% HAMFI. These homes might in good condition and in desirable neighborhoods, but lack high value amenities, such as a water view, two-car garage, and/or historic character. Vacancy is lowest among homes with 0-2 bedrooms.

Value Affordable to Households Earning over 100% of Median Income – These homes, worth over $243,000, exceed affordability for a household earning 100% of HAMFI, or $72,300. There are 7,005 occupied units with a value in this range: 28% are occupied by households earning up to 100% HAMFI. At 3.9%, the vacancy rate is highest among homes with 0-1 bedrooms, which are probably condominiums.

Name of Jurisdiction: Portland, Maine			Source of Data: 2007-2011 CHAS databook						
	With a mortgage				Without a mortgage				
Homes by Affordability	Homes by # of bedrooms				Homes by # of bedrooms				
Occupancy by Income	0-1	2	3+	Total	0-1	2	3+	Total	Total
Units with a value less than $122,000 (affordable to a household earning 50% area median family income)									
Household income 30% or less	0	15	4	20	0	10	40	55	75
Household income 30.1%-50%	0	0	35	35	0	20	20	40	75
Household income 50.1%-80%	0	10	55	65	0	25	50	75	140
Household income 80.1%-100%	0	10	90	100	0	0	15	15	115
Household income over 100%	0	0	80	80	0	0	50	50	130
Total occupied units	0	35	264	305	0	55	175	235	540
Vacant for Sale	25	45	25	100					
Vacancy Rate	100.0%	33.3%	5.4%	15.6%					
Units worth $122,000-$194,000 (affordable to a household earning 50.1-80% of area median family income)									
Household income 30% or less	0	95	25	120	0	0	55	55	175
Household income 30.1%-50%	0	50	115	165	10	100	50	160	325
Household income 50.1%-80%	20	105	245	370	0	115	190	300	670
Household income 80.1%-100%	0	175	235	405	0	40	65	110	515
Household income over 100%	40	250	810	1,100	0	65	225	290	1,390
Total occupied units	60	675	1,430	2,165	10	320	585	915	3,080
Vacant for Sale	0	15	0	15					
Vacancy Rate	0.0%	1.5%	0.0%	0.5%					
Units worth $194,000-$243,000 (affordable to a household earning 80.1-100% of area median family income)									
Household income 30% or less	0	10	105	115	10	10	50	70	185
Household income 30.1%-50%	25	0	75	100	0	0	70	70	170
Household income 50.1%-80%	0	125	320	440	0	4	75	80	520
Household income 80.1%-100%	0	40	135	175	0	65	110	170	345
Household income over 100%	45	250	1,390	1,685	0	35	180	215	1,900
Total occupied units	70	425	2,025	2,520	10	114	485	605	3,125
Vacant for Sale	0	0	35	35					
Vacancy Rate	0.0%	0.0%	1.4%	1.1%					
Units worth over $243,000 (affordable to a household earning over 100% of area median family income)									
Household income 30% or less	30	70	25	130	30	60	25	115	245
Household income 30.1%-50%	60	20	75	155	0	70	85	155	310
Household income 50.1%-80%	115	295	215	620	15	90	170	280	900
Household income 80.1%-100%	30	125	190	350	0	50	90	140	490
Household income over 100%	125	1,100	2,730	3,960	85	335	680	1,100	5,060
Total occupied units	360	1,610	3,235	5,215	130	605	1,050	1,790	7,005
Vacant for Sale	20	0	35	55					
Vacancy Rate	3.9%	0.0%	0.8%	0.8%					
Total Occupied	**490**	**2,745**	**6,954**	**10,200**	**150**	**1,094**	**2,295**	**3,545**	**13,745**
Number vacant for sale	**45**	**60**	**95**	**205**					
Vacancy Rate	**6.6%**	**1.5%**	**1.0%**	**1.5%**					
Units affordable to households up to 100% of AMI	**175**	**1,684**	**5,024**	**6,895**					
Percent of housing stock that is affordable	**33%**	**60%**	**71%**	**66%**					

TOOLS TO INCREASE HOUSING AFFORDABILITY

The Great Recession of 2008 ushered in a market correction that has increased the affordability of Portland's existing housing stock. At the same time, however, the recovery, has generated a certain bullishness to create new housing at the high end of the market. Without incentive or control, new construction remains out of reach of the middle class. The following tools may inform the development of policy to balance access to the newest housing boom.

Density Bonus: This tool grants an increase in the number of units allowed by right in order to provide an incentive for the construction of affordable housing. While the incentive can work as a stand alone tool, it is typically incorporated into a contract zone, overlay district, or cluster subdivision. A model ordinance developed by the American Planning Association posits 20% as a reasonable target for affordable housing. The Town of Brunswick, Maine has incorporated a density bonus into their zoning ordinance, complemented by a provision for the reduction of fees, including building permits, stormwater, solid waste, recreation and traffic impacts.

https://www.planning.org/research/smartgrowth/pdf/section44.pdf
http://www.brunswickme.org/wp-content/uploads/2012/04/Web.Version.Zoning.Ordinance.pdf

Inclusionary Zoning: This tool requires that a certain percentage of units in a new development be set aside as affordable, with or without an increase in density. Inclusionary zoning is widely used by cities throughout the states of California, Massachusetts, New Jersey, Virginia, and Maryland. In Burlington, Vermont, the mandatory set-aside ranges from 15%-25%, depending on the market price of the rest of the units. The Town of Cape Elizabeth, Maine requires that 10% of the units in a subdivision be set aside for moderate income households, or 5% for low income.

http://www.nhc.org/media/documents/IZ_lessons_in_MA.pdf
http://www.burlingtonvt.gov/CEDO/Inclusionary-Zoning
http://www.capeelizabeth.com/government/rules_regs/ordinances/zoning/zoning.pdf

Reduction in Parking: This tool reduces the number of parking spaces that must be constructed to support each housing unit. Eliminating the typical suburban requirement of two spaces per unit can not only slash housing construction costs by 25%, but free up land that can be used to increase density. Concentrating homes, jobs, services, and stores increases the likelihood that people will walk, bike or take the bus to get from one place to another. On the Portland peninsula for example, 77% of households own just 0-1 vehicles, compared with 43% in the U.S. as a whole. The City of Portland, Oregon has reduced or eliminated parking requirements for new development based on the proximity of transit services.

http://www.vtpi.org/park-hou.pdf
http://www.portlandonline.com/shared/cfm/image.cfm?id=53320

Rent control: This tool establishes a ceiling on rent increases permitted in the public and private rental market. Los Angeles, San Francisco, New York City, and Cambridge, Massachusetts have previously adopted rent control policies. While rent control can act as a temporary "breather" from soaring prices, it has the potential to create housing shortages in the long run by discouraging new construction.

http://www.nycrgb.org/html/resources/faq/rentcontrol.html

Do Nothing: At first glance, the construction of luxury housing in any downtown would be considered a boon, not a burden. In the long run, however, neighboring property owners will follow suit, running up sales prices and rents unsustained by real growth in wages, incomes, jobs, or property improvements. For workers, the consequence is longer commutes from suburbs and rural areas. Others will establish themselves in less expensive urban markets, such as Biddeford, Lewiston, Gardiner, and Bath. Absent a correction by regulation or the market, these forces could take shape, first as a collection of individual choices which then swell into an undeniable movement. And they did happen during the 2000's.

CONCLUSION

Portland's vitality depends on the availability of a diverse array of housing options, particularly apartments, which are often the first and only choice for working professionals, immigrants, and families. Over the last five years, a number of trends have solidified:

- 62% of Portland households earn less than the county's median income, including 38% of homeowners and 81% of renters. Over the last decade, the number of households earning less than median income has increased 10%.

- The Great Recession of 2008 was a market correction that increased the affordability of existing housing – by giving wages a chance to catch up while stalling home sales and rents.

- Current housing production is not meeting the needs of households earning 80%-100% of median income. If recent trends continue, there will be a gap between supply and demand of workforce housing units ranging from 24%-33%.

- While the Portland housing market contains units in a variety of price ranges, the reality is that those with higher incomes, stable jobs, and good credit ratings are in a better position to compete for affordable units that are subsidized and unsubsidized. This creates a glut of affordable units at the low end of the range that may be in rough condition, with deferred maintenance issues.

- The rental market is extremely tight for 3-bedroom units that can accommodate working families.

- Based on the vacancy rate, the inventory of one-bedroom condos targeting households earning over the median income is reaching a point of saturation.

Well into the recovery, the region is on the pathway to another boom marked by a rise in new construction, low vacancy rates, and increasing rents and home prices. But the recovery also represents an opportunity for balance. By increasing the diversity of housing through incentive and regulation, the region can forestall the possibility of another crash due to soaring prices unsustained by real job growth. Trend or choice? It is up to us.

ATTACHMENT D: SLIDESHOW FROM FEBRUARY HOUSING FORUM

City of Portland Public Forum on Housing Production and Affordability

Sponsored by the City Council's

Housing and Community Development Committee

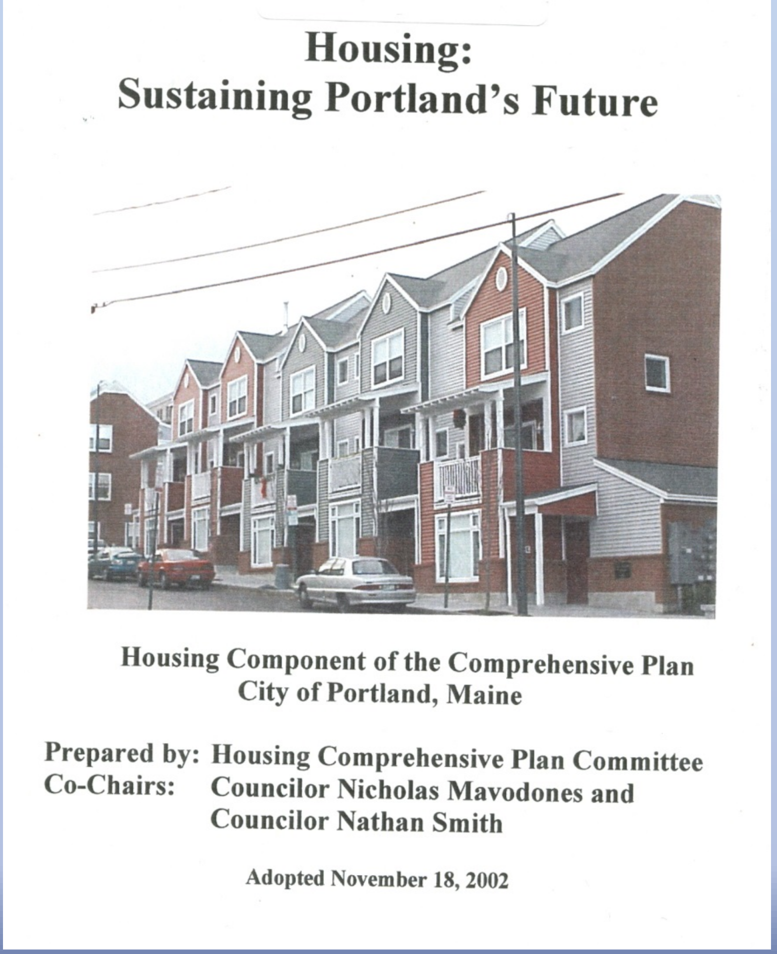
February 25, 2015

Terminology

- “Low Income Housing”: Housing, of any sort, for rent or to own, that is affordable to households at 80% of area median income or below (about $60,000 for a family of four.)
- “Workforce Housing”: Housing, of any sort, for rent or to own, that is affordable to households at 100% of area median income (about $75,000 for a family of four)
- “Affordable”: Paying 30% or less of your income on housing costs (rent or mortgage payments, insurance, taxes, etc.)
- “Deed Restricted”: The housing is not just affordable by chance, but by a written requirement that residents meet those restrictions. That restriction may last 20+ years or be in perpetuity.

2002 Housing Plan

- Approved by City Council in 2002 as part of the City's Comprehensive Plan
- Called for five key policies:
    1. *Adequate and diverse supply of housing for all*
    2. *Preserving a quality housing stock*
    3. *Building on neighborhood stability and integrity*
    4. *Housing as a regional issue*
    5. *Sustainable development*
    6. *Freedom of choice*
- Set goal of keeping Portland's population at 25% of County
- Called for Housing Replacement Ordinance
- Set goal of 20% of new units to be affordable at 80% AMI
- Set goal of 200 new affordable home-ownership units, most for families



Housing:
Sustaining Portland's Future

Housing Component of the Comprehensive Plan
City of Portland, Maine

Prepared by: Housing Comprehensive Plan Committee
Co-Chairs: Councilor Nicholas Mavodones and Councilor Nathan Smith

Adopted November 18, 2002

India Street Process

- India Street Sustainable Neighborhood Plan process had a working group on housing and equity
- Initially was recommending a requirement that part of all new larger developments in the neighborhood be affordable
- Decided that the requirement should be City-wide so as to not discourage investment in the district
- Prepared a draft ordinance
- Housing affordability is a goal of the draft plan

2030 Workforce Housing Demand

- GPCOG Study completed January 2015
  - 62% of Portland households earn less than the county's median income (38% of homeowners and 81% of renters) which is a 10% increase over last decade
  - 2010-2014 – 1,130 housing units permitted and/or built; only 29% were affordable to household earning median income.
  - There is a predicted gap in affordable housing production of between 24-33%. In other words, the production rate should roughly double

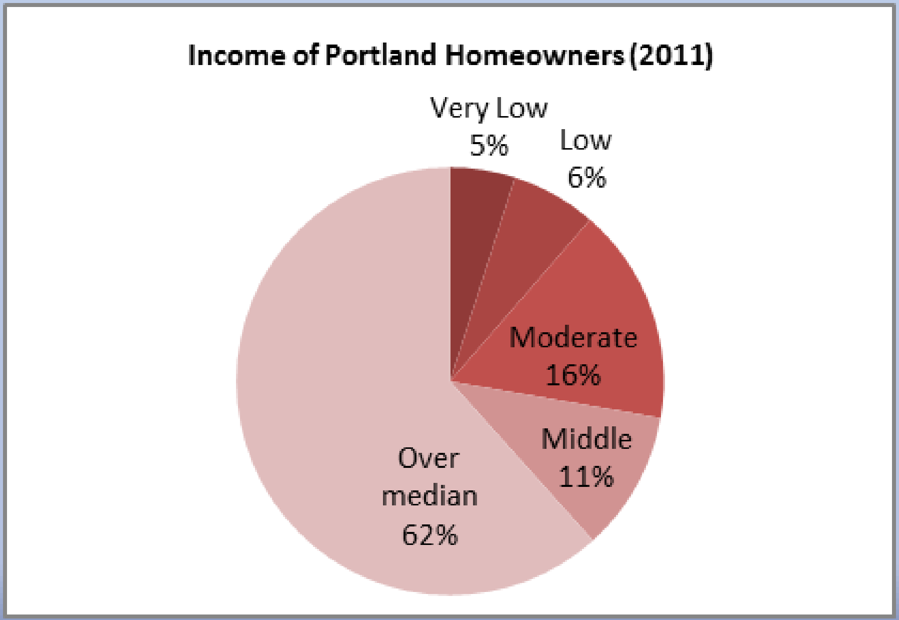
2030 Workforce Housing Demand

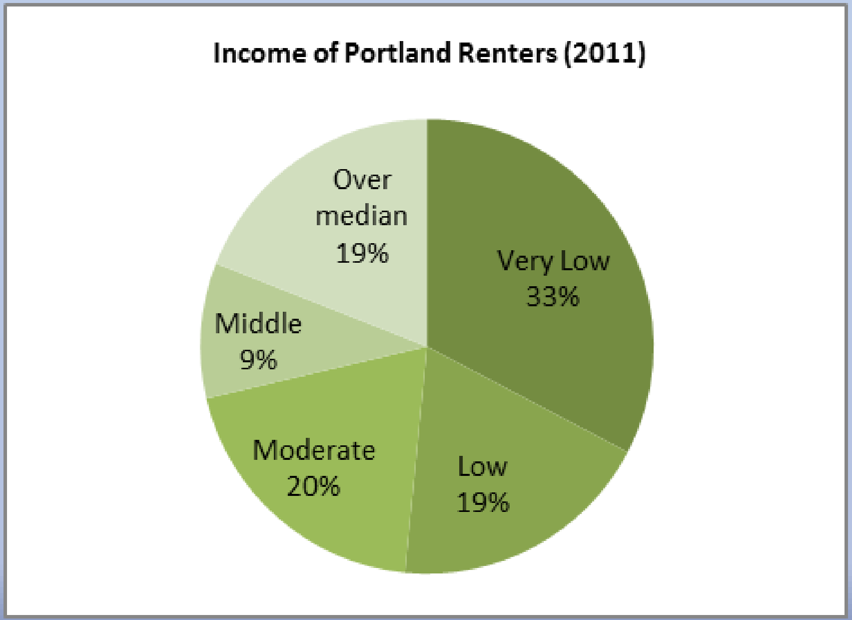
Prepared by Greater Portland Council of Governments January 2015

Less than 30% AMI = *Very low income*

30%-50% AMI = *Low income*

50%-80% AMI = *Moderate income*





2030 Workforce Housing Demand

Why do anything?

- 62% of Portland households earn less than the county’s median income(38% of homeowners & 81% of renters). Over the last decade, the number of households earning less than median income has increased 10%.
- The Great Recession of 2008 was a market correction that increased the affordability of existing housing – by giving wages a chance to catch up while stalling home sales and rents.
- Current housing production is not meeting the needs of households earning 80%-100% of median income. If recent trends continue, there will be a gap between supply and demand of workforce housing units ranging from 24%-33%.

2030 Workforce Housing Demand

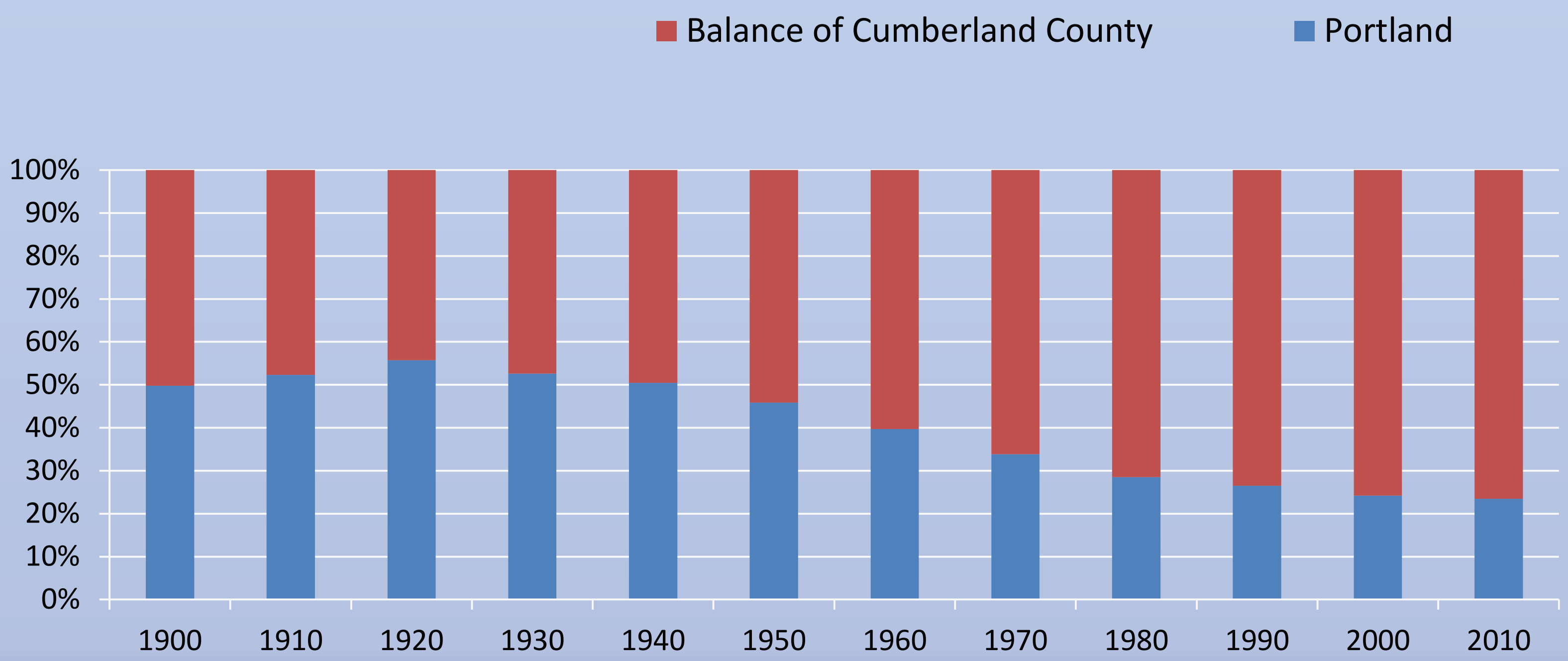
- While the Portland housing market contains units in a variety of price ranges, the reality is that those with higher incomes, stable jobs, and good credit ratings are in a better position to compete for affordable units that are subsidized and unsubsidized. This creates a glut of affordable units at the low end of the range that may be in rough condition, with deferred maintenance issues.
- The rental market is extremely tight for 3-bedroom units that can accommodate working families.
- Based on the vacancy rate, the inventory of one-bedroom condos targeting households earning over the median income is reaching a point of saturation.

MEREDA 2015 ANNUAL REAL ESTATE FORECAST CONFERECNCE

- “A higher end rental market expands and spurs investment”
- Rents up 8-12% this year, predicted another 5% next year
- Sales prices in Portland up 19% since 2009
- **Market Rate/mo**
  - ✓ Studio: $750 - $800 (Federal Fair Market: $739)
  - ✓ 1 Bd: $925 -$1,000 (Federal Fair Market: $880)
  - ✓ 2 Bd: $1,100 – 1,400 (Federal Fair Market: $1,087)
  - ✓ 3 Bd: $1,400 – 1,600 (Federal Fair Market: $1,405)

PORTLAND'S GROWTH

- 500 units of housing permitted in past two years
- Not quite meeting the 20% of county growth goal but doing OK



Source: U.S. Census Bureau – Included in GPCOG 2030 Portland Workforce Housing Demand Report

The housing production rate south of I-295 is higher than that north of I-295.

	Peninsula	Off-Peninsula	Island	Total
Affordable	320	16	0	336
Market Rate	675	108	11	794
Total	995	124	11	1130

Source: Greater Portland Council of Governments

WHAT ARE OUR EXISTING CITY ORDINANCES?

Housing Replacement Ordinance

Section 14-483 City Code of Ordinances

Primary source of capitalization for the Housing Trust Fund.

Currently at $64,700 per unit removed from the market and not replaced

Density Bonus

Section 14-484 City Code of Ordinances

Allows up to a 25% bonus in density for affordable housing developments.

WHAT ARE OUR EXISTING CITY PROGRAMS?

FINANCIAL SUPPORT:

U.S. Dept. of HUD- CDBG and HOME – affordable at or below 80% AMI

Since 2000 the City has invested $8.8 million of HUD funding to assist in the creation of over 800 units almost 700 of which are affordable at 50% to 80% of AMI

City's Housing Trust Fund – affordable at or below 120% AMI currently funded through the Housing Replacement Ordinance

Since 2002 the fund has received approximately $1 million and expended $455,585 (Avesta's Oak Street Lofts – 37 efficiency units; two pre-development grants to create Housing First units)

Current balance is approximately $640,000

How would increased density incentives and new requirements work together?

Changes to density of housing development allowed in key zoning districts. B-2 zone (approved by Council,) R-6 zone (before the Planning Board,) other business zones such as the B-6 zone.

Limited density bonus changes for workforce and affordable housing. The existing language amended to include all deed-restricted units at less than 120% of AMI. consider increasing the density bonuses - existing bonuses at (25%)

Inclusionary Zoning focused on 80-120% AMI Production. Increased densities alone will not address the need to increase development of low, moderate and average-income housing by 24-33%. If such a requirement had been in place over the past 10 years, 77 units of workforce housing would have been produced, in addition to $630,000 for the Housing Trust.

Examples of Inclusionary Zoning in other places

500 municipalities have requirements in more than half the states and DC

Sample Inclusionary Zoning Requirements from other Cities in the US

CITY	Year Enacted (est.)	Requirement	Units Produced	Target Incomes	Notes
Arlington, MA		15% of units			
Belmont, MA		10-15%, no minimum units			
Boulder, CO		20%, no minimum units		60% AMI	
Brookline, MA	1998	15% of 6 or more units and 15% of all bedrooms		80-100% AMI	Cash out up to 15 units
Burlington, VT		25% of 6 or more units			
Cambridge, MA	1998	15% of 10 or more units	450	65% AMI	30% density bonus
Cape Elizabeth, ME		5% (low)-10% (moderate income) of 5 or more units		Below 80% AMI	Also includes Accessory Dwelling Unit language
Carlsbad, CA	1994	15% of 7 units or more	1246	Below 80% AMI	
Emeryville, CA	1990	10-20% of 30 or more units			
Fairfax County, VA	1992	Over 20 Units	2448	"Affordable"	
Lincoln, RI	2006	20% of over 5 units		80% AMI	Given density bonus
Montgomery County, MD	1976	Over 50 Units	13000	"Moderate"	
Newton, MA		15% of units			
Petaluma, CA	1984	15% of 3 units or more	1157		
Pittsburg, CA	2004	6-20% of 5 units or more	11	Below 100% AMI	
Santa Fe, NM	2006	15% of 25 units or more		Up to 120% AMI	City provides up to $10,000 subsidy per unit
Tallahassee, FL	2004	10% of 50 or more units		70-100% AMI	
Waltham, MA		5% (if given to WHA) or 10%			
Washington, DC	2006	8-10%		50-80% AMI	
Watertown, MA		12.5% of 5 or more units		80% AMI	Rounds up to next full unit

Many of these requirements allow cash out (fee in lieu) as an option, although that option often only exists for smaller projects and/or fractional unit requirements

Some of these ordinances allow for off-site provision of affordable units

Inclusionary Zoning focused on 80-120% AMI Production.

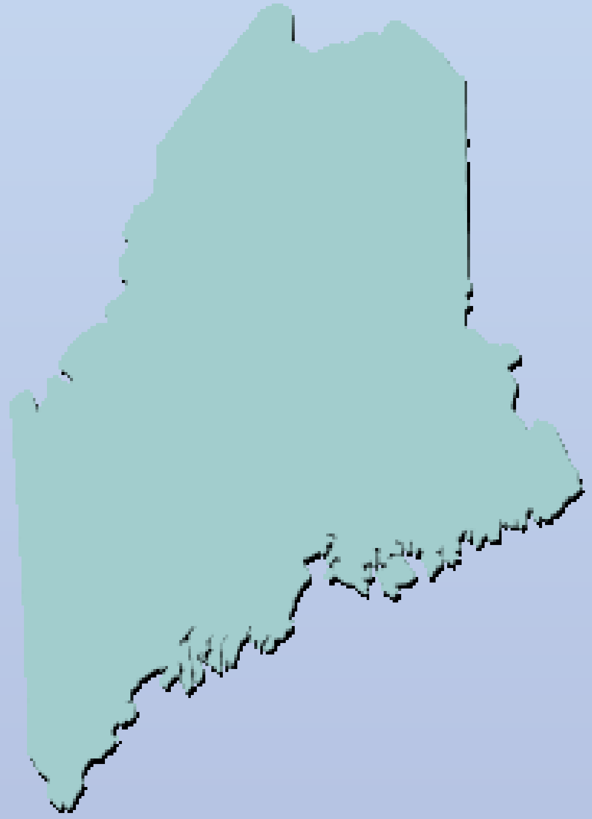
	OPTION 1	OPTION 2	
# of Units	Required Affordable Unit	In-Lieu Fees	Incremental Unit Fee %
10	1	100%	n/a
11	1 + Incremental Fee	100% + Incremental Fee	10%
12	1 + Incremental Fee	100% + Incremental Fee	20%
13	1 + Incremental Fee	100% + Incremental Fee	30%
14	1 + Incremental Fee	100% + Incremental Fee	40%
15	1 + Incremental Fee	100% + Incremental Fee	50%
16	1 + Incremental Fee	100% + Incremental Fee	60%
17	1 + Incremental Fee	100% + Incremental Fee	70%
18	1 + Incremental Fee	100% + Incremental Fee	80%
19	1 + Incremental Fee	100% + Incremental Fee	90%
20	2	n/a	n/a
21+	2 + Incremental Fee	n/a	10%
30	3	n/a	n/a
31+	3 + Incremental Fee	n/a	10%
40	4	n/a	n/a
41+	4 + Incremental Fee	n/a	10%

Fee in lieu of providing affordable housing of $100,000
Developments of twenty (20) units or greater, not eligible for the fee in lieu provision.
In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489.
Fee in lieu = number of required affordable units not provided multiplied by $100,000.

What are other communities in Maine doing?

- Cape Elizabeth is the only community in Maine with a mandatory inclusionary zoning requirement.

- Many communities have incentive based ordinances similar to those currently existing in Portland.



Effectiveness of Tools

- Density bonuses have some effectiveness in some circumstances. In Massachusetts and New Jersey, state level affordable housing requirements can trump local zoning.
- While economic arguments against inclusionary zoning suggest that it reduces housing production and/or increases market rate housing costs, most studies suggest there is either no such effect or that the effect is very modest

TWO PRONGED APPROACH RECOMMENDED

ENCORAGE HOUSING DEVELOPMENT BY REMOVING BARRIERS TO TRADITIONAL URBAN HOUSING TYPES

Under Way or Completed

- *R-6 Changes*
- *B-1 Changes*
- *B-2 Changes*

Additional Tasks

- *Looking at current accessory dwelling units and how we view "abandoned" residential space*
- *Density Bonuses*
- *Examining other zoning districts*
- *Remove regulatory barriers through ordinance streamlining*

ENSURE INCLUSION OF WORKFORCE HOUSING IN SIGNIFICANT PROJECTS

Inclusionary Zoning - "10/10/100"

- *Start a requirement at a development of 10 units or more*
- *Require that 10% of units be workforce or affordable housing*
- *The required portion would be affordable at 100% of median income, and possibly eligible for funding if below 80%*
- *Cash-out (to the Housing Trust) and off-site provisions (within the same neighborhood) for many developments*

QUESTIONS? COMMENTS?

(a) *Residential:*

1. One additional accessory dwelling unit clearly subordinate to a principal single-family or on Peaks Island a legal multi-family dwelling provided that:

   a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;

   b. Lot shall be seventy thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;

   c. There shall be no open outside stairways or fire escapes above the ground floor;

   d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

   e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

   f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences;

   g. Accessory units on Peaks Island on lots of less than 70,000 square feet must remain under common ownership with the primary unit on the lot;

h. Any units created under this section on Peaks Island may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

i. Any units created under this section on Peaks Island on lots of less than 70,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;

j. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations. On lots of less than 70,000 square feet on Peaks Island, the property must have City water and sewer.

k. The accessory unit on Peaks Island must be rented on an annual basis and may not be used for seasonal or weekly rentals.

(a) *Residential:*

1. One additional accessory dwelling unit ~~within and~~ clearly subordinate to a principal single-family ~~detached~~ or on Peaks Island a legal multi-family dwelling provided that:

    a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;

    b. Lot shall be seventy thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;

    c. There shall be no open outside stairways or fire escapes above the ground floor;

    d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;

    e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;

    f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; ~~and~~

    g. Accessory units on Peaks Island on lots of less than 70,000 square feet must remain under common ownership with the primary unit on the lot;

h. Any units created under this section on Peaks Island may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

i. Any units created under this section on Peaks Island on lots of less than 70,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;

j. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations. On lots of less than 70,000 square feet on Peaks Island, the property must have City water and sewer.

k. The accessory unit on Peaks Island must be rented on an annual basis and may not be used for seasonal or weekly rentals.

Jennifer Munson - Public Comment on Inclusionary Zoning Provisions

From: Todd Alexander <TAlexander@RenewalHousing.com>
To: Jeff Levine <JLEVINE@portlandmaine.gov>
Date: 5/13/2015 10:32 AM
Subject: Public Comment on Inclusionary Zoning Provisions
CC: Mary Davis <mpd@portlandmaine.gov>, Alex Jaegerman <AQJ@portlandmaine.go...

Hi Jeff:

I am submitting this email in response to the proposed changes to the City's Zoning Ordinance, Division 30 – Affordable Housing that the Planning Board will consider at its May 19th meeting. By way of background, I am a Portland resident and have been working as an affordable housing developer since 2003. My comments are focused specifically on **for-sale housing developments involving more than 10 units** and the impact of deed restrictions on the marketability of a housing unit.

Long-term deed restrictions have proven to work well on rental projects; units with restrictive covenants benefit current and future renters by ensuring that some portion of a market's housing stock will be available at rents that are affordable to low and moderate income households. However, when applied to a home ownership, a restrictive covenant can generate a number of unintended consequences; it a) reduces the value of the housing unit versus comparable unrestricted units that otherwise might have the same market value, b) generates re-sale risk for the buyer and c) limits the amount of equity an owner may realize in their home.

All of these factors taken collectively can discourage the buyers the policy is intended to serve and, in turn, dissuade developers from pursing the projects the city is trying to encourage. It appears that staff recognizes this issue and has attempted to deal with it in the definition section under "Workforce Housing Unit for Sale". My concern is that the proposed language may add complexity, uncertainty and risk for buyers and developers. Affordable for-sale housing projects are the most challenging type of housing to bring to market, and it would be unfortunate if a well-intended policy made these projects more difficult. I have two suggestions:

1. **Limit the term of the deed restrictions to 10 years from the date the project is placed in service**. This provides a homebuyer/homeowner some level of certainty regarding the issues described above. Over time, this change will result in for-sale housing units transitioning out of the city's affordable housing stock, but new affordable units will continue to come on line through new developments – and that ebb and flow can be healthy for both the city's overall housing market and middle income homeowners/buyers of these units. The state recognized this issue when crafting the Affordable Housing TIF program and addressed it by limiting deed restrictions for affordable for-sale units to 10 years.

2. **Projects that provide a percentage of affordable units that exceeds a higher threshold – for example, 50% of the project -- are exempt from recording any restrictive covenant on the affordable units after initial sale**. The definition of an affordable for-sale units is 120% AMI—which for certain housing types in certain locations, may be close to the true market value of the housing unit. For example, the value/sales price of a new 1-bedroom condo in East Bayside might currently meet the city's definition of affordable. If a housing developer proposes a 10-unit project in East Bayside and prices 100% of the units at or below 120% AMI, it seems unreasonable that he/she should be burdened with a deed restriction on one unit the same as a 10-unit high-end condo development on the top of Munjoy Hill. This provision would eliminate a back-door punishment applied to projects that are otherwise delivering the type of housing units that the city is encouraging—and, it will provide an added incentive to provide a higher percentage of affordable units. Perhaps, this provision could be coupled with 'bonus' density boost – *if 50% of the units are affordable, then the project is exempt from any restrictive covenants AND it is eligible for 33% density boost.*

Thank you in advance for considering these suggestions.

Respectfully,
Todd

Todd M. Alexander
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