1. Legal Ad

    Documents: PB LEGAL AD 2-23-16.PDF

2. Agenda

    Documents: PB AGENDA 2-23-16.PDF

3. Forest Ave., Preble St. Extension And Baxter Boulevard

    3.I. Report And Attachments

    Documents: FOREST AVE. (REPORT AND ATTACHMENTS).PDF

4. Text Amendment - IS-FBC Zone

    4.I. Report And Attachments

    Documents: IS-FBC ZONE JOE DASCO (REPORT AND ATTACH.).PDF

    4.II. Public Comment

    Documents: LIV CHASE.PDF

5. Text Amendment - IS-FBC And Division 20 And 22

    5.I. IS-FBC, Division 20 And 22

    Documents: IS-FBC, DIVISION 20 AND 22 (REPORT AND ATTACHMENTS).PDF

6. Inclusionary Zoning Ordinance

    6.I. Report And Attachments

    Documents: INCLUSIONARY ZONING (REPORT AND ATTACHMENT).PDF

7. Text Amendment To Chapter 14

    7.I. Report And Attachments

    Documents: TEXT AMENDMENTS TO CHAPTER 14 (REPORT AND ATTACH.).PDF

LEGAL ADVERTISEMENT
PORTLAND PLANNING BOARD MEETING

The Portland Planning Board will hold a meeting on Tuesday, February 23, 2016, Council Chambers, 2nd Floor, City Hall, 389 Congress Street. **Public comments will be taken at this meeting.**

Workshop – 4:30 p.m.

i. Zoning Map Amendment from B-2 and R-5 to B-2b; Vicinity Forest Avenue, Preble Street Extension and Baxter Boulevard, City of Portland, Applicant. (4:30 - 6:00 estimated time) The City Council has referred a map amendment to the Planning Board for consideration of rezoning the block bounded by Forest Avenue, Preble Street Extension and Baxter Boulevard from the existing Community Business B-2 and Residential R-5 zones to the Community Business B-2b zone.

Public Hearing – 7:00 p.m.

i. Zoning Text Amendment; IS-FBC zone; Joe Dasco, Applicant. (7:00p.m. - 7:45 p.m. estimated time) The Board will hold a public hearing to consider Land Use Code text amendments to Division 15.2 (IS-FBC India Street Form-based Code Zone) Section 14-275.7 to increase the maximum building height allowed at UA/UN corner parcels to be 50’ for the entire parcel.

ii. Zoning Text Amendments; IS-FBC and Division 20 Parking and Division 22 Sign Ordinance; City of Portland, Applicant. (7:45 p.m. - 8:30 p.m. estimated time) The Board will hold a public hearing to consider Land Use Code text amendments to Division 15.2, 20, and 22 (IS-FBC India Street Form-based Code Zone, Off-Street Parking, and Signs) Section 14-275.7, 14-332.1 and 14.369.5 to add cross-references and to correct a scriveners error associated with the new IS-FBC zone.

iii. Proposed Implementation Details for Section 14-487, Ensuring Workforce Housing; City of Portland, Applicant. (8:30 - 9:30 p.m. estimated time) The Planning Board will hold a hearing to review draft regulations pursuant to Section 14-25(b) for the City's Inclusionary Zoning Ordinance (Section 14-487). On October 19, 2015, the City Council approved amendments to Division 30 of the City's Zoning Ordinance to adopt an inclusionary zoning measure for new residential development projects in Portland. These draft regulations will fulfil the requirements of Section 14-487 (f) to complete implementing regulations including specific methodology for income verification, and guidelines for meeting the requirement that off-site units be 'in the same neighborhood. The Planning Board held a workshop to review the draft regulations on January 12, 2016.

iv. Proposed text amendments to Chapter 14, Land Use Code for creation of Permitting and Inspections Department, City of Portland, Applicant. (9:30 p.m. estimated time)

ELIZABETH BOEPPLE, CHAIR - PORTLAND PLANNING BOARD

CITY OF PORTLAND, MAINE

PLANNING BOARD

Elizabeth Boepple, Chair
Sean Dundon. Vice Chair
Bill Hall
Carol Morrissette
Jack Soley
David Eaton

AGENDA
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PUBLIC HEARING – 7:00 p.m.

1. **ROLL CALL AND DECLARATION OF QUORUM**
2. **COMMUNICATIONS AND REPORTS**
3. **REPORT OF ATTENDANCE AT THE MEETING HELD ON FEBRUARY 9, 2016:**
   Workshop and Public Hearing: All members were present.

4. **REPORT OF DECISIONS AT THE MEETING HELD ON FEBRUARY 9, 2016:**

   i. Level III Site Plan and Subdivision; 8 Unit Condominium; 65 Munjoy Street; Adams Apple, LLC., Applicant. The Planning Board voted unanimously 6-0 to approve the application with the following waivers: waive the Technical Manual standard Section 1.14 to allow a 19 foot wide aisle in the parking area, waive the Technical Manual standard Section 1.14 to allow two 2’ x 16’ spaces and one 8’ x 18’ space; waive the site plan standard Section 14-526(b)(iii) to allow for a contribution of $400 to Portland’s tree fund to be substituted for the provision of additional trees on site. The Board voted unanimously 6-0 that the plan is in conformance with the subdivision standards of the Land Use Code subject to (2) two conditions of approval which must be met prior to the signing of the recording plat. The Board voted unanimously 6-0 that the plan is in conformance with the site plan standards of the Land Use Code subject to four (4) conditions of approval which must be met prior to the issuance of a building permit.

5. **NEW BUSINESS**

   i. Zoning Text Amendment; IS-FBC zone; Joe Dasco, Applicant. (7:00p.m. - 7:45 p.m. estimated time) The Board will hold a public hearing to consider Land Use Code text amendments to Division 15.2 (IS-FBC India Street Form-based Code Zone) Section 14-275.7 to increase the maximum building height allowed at UA/UN corner parcels to be 50’ for the entire parcel.

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ELIZABETH BOEPPLE, CHAIR - PORTLAND PLANNING BOARD

Memorandum
Planning and Urban Development Department
Planning Division

To:	Elizabeth Boepple, Chair and Members of the Portland Planning Board
From:	Stuart O'Brien, Planning Division Director Barbara Barhydt, Development Review Services Manager
Date:	February 19, 2016
Re:	Map Amendment for Forest Avenue in the vicinity of Baxter Boulevard, Preble Street Extension and the northerly side of Forest Avenue
Meeting Date:	February 23, 2016

I. INTRODUCTION

On February 1, 2016, Councilor Ray moved to have the Planning Board consider a zoning map amendment from the current Community Business B-2 zone and the Residential R-5 zone to the Community Business B-2b zone. The City Council voted unanimously to refer this item to the Planning Board and for the Board to make a recommendation to the Council by April 1, 2016 (Council Order included as Attachment 1). The City Council is asking the Board to consider whether the B-2b, which promotes a more urban form and prohibits drive-throughs, is a more appropriate zone for this area.

There are no pending development review applications for the properties in this area; however, interest in potential redevelopment has been brought to the attention of the City. Concurrently, several of the buildings had been identified as potentially eligible for designation following a historic preservation analysis recently commissioned by Greater Portland Landmarks entitled *Forest Avenue and Stevens Avenue: Historic Context*. The Historic Preservation Board review and recommendations are included below in Section II.

In addition, the Transforming Forest Avenue report as discussed under the comprehensive plan analysis below, contemplates revisions to the zoning along the corridor to encourage possibilities for the future of land development around Forest Avenue to facilitate opportunities for transit supportive development.

Public notice of the workshop appeared in the Portland Press Herald on February 15 and 16th and 105 notices were sent by mail and by e-mail to property owners and interested citizens.

II. EXISTING CONDITIONS & SITE SELECTION

A. Existing Conditions

The section of Forest Avenue between Baxter Boulevard and Preble Street extension contains a range of uses. The development in this block faces Forest Avenue with parking in the rear, which can be seen from Preble Street Extension. There is one curb cut that serves the parking areas off Preble with all other access points off Forest Avenue. The city's zoning map lists the accessways as Bank and Fenwick Roads. The businesses along Forest Avenue include: office buildings, retail uses, a bar, personal service businesses, and 70 residential units above first floor commercial at 331-337 Forest Avenue.

Pedros Field is a public park and ballfield, which is located at the intersection of Preble Street extension and Baxter Boulevard. This portion of the block is not including within the proposed zone change.

The B-2 zone is located across Forest Avenue from the proposed area for rezoning. The uses include the Oakhurst Dairy and a multiple tenant retail building on the corner of Forest and Bedford (owned by Oakhurst Dairy). An aerial of the area obtained from Google is included as Figure 1. In general, office uses facing Baxter Boulevard are located across from this block, as is an entrance drive to the Hannaford plaza. A residential neighborhood is located on the opposite side of the Preble Street extension and the university credit union is located at the corner of Preble and Forest.

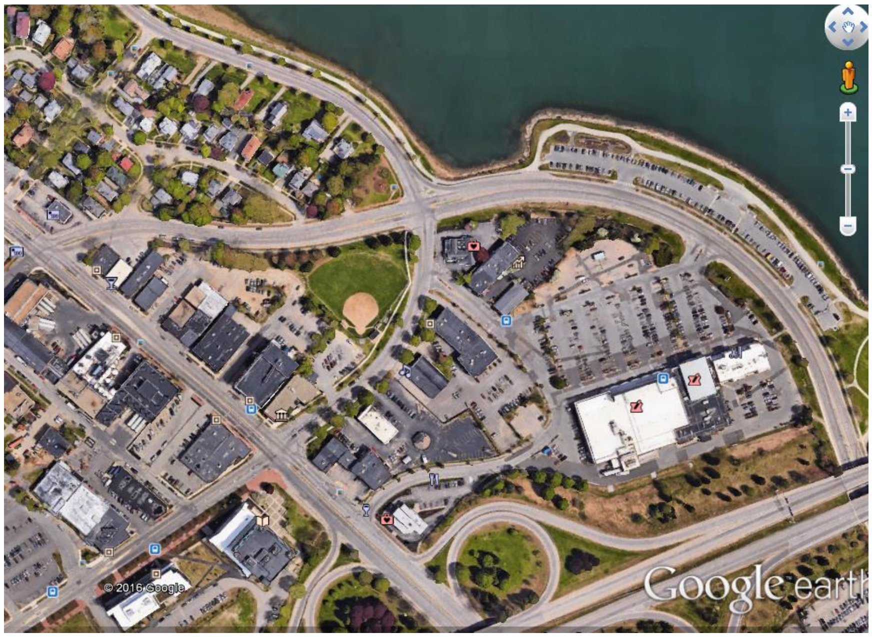


Figure 1: Aerial

On City maps, the block being considered for rezoning shows Fenwick Road and Bank Road, which appear to be former public streets. Fenwick Road was discontinued in 1991 with a public easement retained for the city sewer line; however, a street sign still is located on the corner. A portion of Bank Road was discontinued in 1991 and a section leading to Preble Street was accepted in 1920. It appears that this portion remains a public street. The status of the streets, as shown below (Figure 2), is based upon the City's records at the Department of Public Works. This is preliminary information that may be revised once a survey of the area is completed.

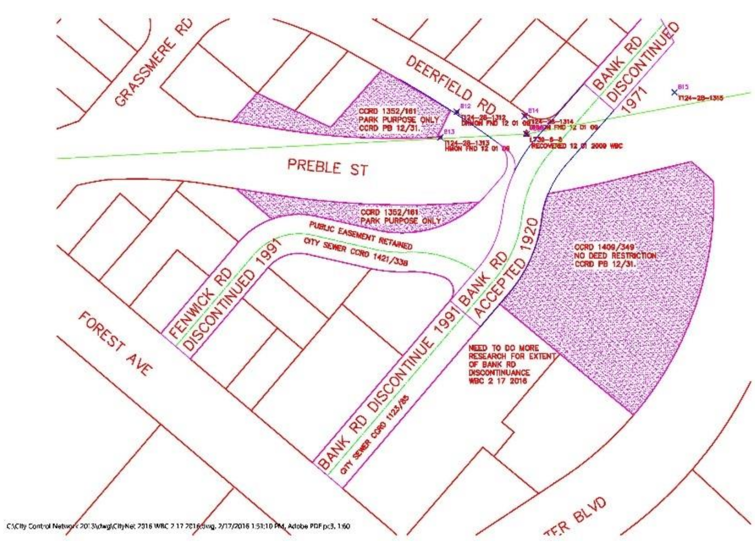


Figure 2: Street Status

B. Historic Preservation Board's Review of Potential Designation of Buildings

On February 3rd, the Historic Preservation Board held a public hearing on the question of eligibility of three Forest Avenue buildings for local landmark designation. The 3 buildings in question are 351-355, 369 and 371-371 Forest Avenue. The request for determination of eligibility was prompted by a letter from legal counsel for CVS indicating CVS' intent to demolish 5 contiguous structures near the intersection of Preble Street Extension. Consistent with the City's demolition permit review process, the letter of intent was reviewed by historic preservation staff to determine whether any or all of the subject structures were eligible for listing in the National Register of Historic Places and/or local historic designation. In this case, the buildings at 355 Forest and 369 Forest had been determined eligible for National Register listing by the Maine Historic Preservation Commission in 2011. As well, all three buildings had been included in a Forest Avenue Historic Resources survey conducted last summer. Accordingly, the question of eligibility was forwarded to the Historic Preservation Board for consideration. Following a lengthy public hearing, the Historic Preservation Board found that 355, 369 and 371-373 Forest meet the designation criteria for individual landmark designation under Portland's Historic Preservation ordinance. The determination of eligibility is expected to be followed by formal designation deliberations. As the buildings are proposed for designation as individual landmarks, the HP Board's recommendation would be forwarded directly to the City Council, as provided in the historic preservation ordinance. No date has yet been set for formal deliberations on the designation. The public hearing report to the Historic Preservation Board regarding the determination of eligibility and attachments A and B are included as Attachment 2 of this report.

III. EXISTING ZONING

The current zoning in the block boundedby Baxter Boulevard, Preble Street Extension and Forest Avenue includes Community Business B-2, Residential R-5 and Recreation and Open Space (ROS) (refer to Figure 3). There is a mix of commercial and residential uses in this area including office buildings, retail uses, a bar, personal service businesses, and 70 residential units above first floor commercial at 331-337 Forest Avenue. Pedros Field is a public ballfield located within the block and is zoned Recreation and Open Space (ROS). This portion of the block is not part of the proposed zoning map amendment.

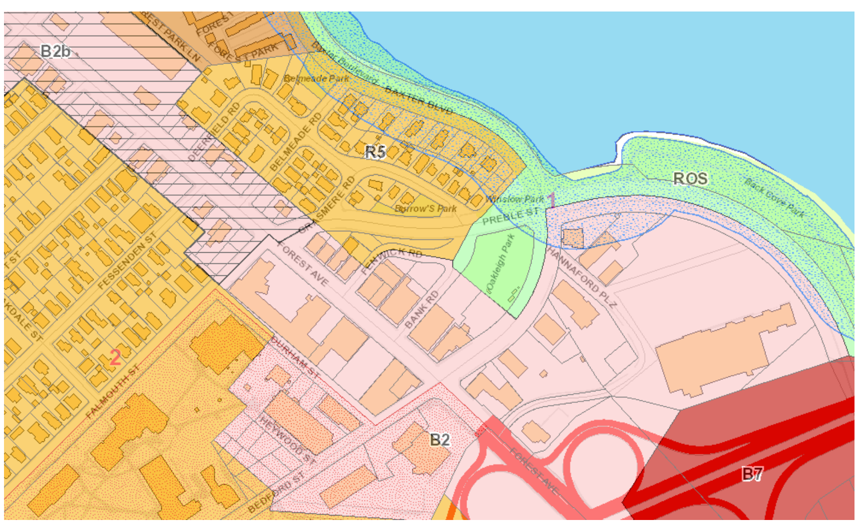


Figure 3: Existing Zoning

The Community Business Zone extends across Forest Avenue to incorporate the Oakhurst dairy and the retail building on the corner. The B-2 zone also extends up Bedford Street and includes a portion of the USM campus. Commercial uses were located in this area at one time, but the area is now owned and occupied by the University of Southern Maine. The USM overlay zone extends over these properties.

The B-2 zone is also located between Baxter Boulevard and I-295 where this is a mix of office and retail uses fronting on Baxter Boulevard. The Hannaford Shopping Center is situated to the rear of the Baxter Boulevard and Forest Avenue lots with frontage on the Preble Street extension. The Community Business B-2b zone runs along either side of Forest Avenue from the intersection of Preble and Forest Avenue through Woodford's Corner.

A portion of the block being studied includes the Residential R-5 Zone, which run along the Preble Street extension. The residential neighborhoods that flank either side of Forest Avenue are generally zone Residential R-5, with the exception of the multifamily complexes at the intersection of Dartmouth Street and Baxter Boulevard, which are zoned the R-6 zone.

The Forest Avenue Corridor between Preble Street Extension and through Woodford's Corner was zoned as Community Business B-2b in 1999. At that time, there was a comprehensive review of the B-2 zone and the B-2b zone was created. Previously, the entire corridor had been zoned B-2. The B-2b zone was considered for section of the corridor from the Preble Street Extension to I-295. A conversion to B-2b would have made Oakhurst Dairy and the auto related uses in this area non-conforming. Thus, the area between I-295 and the Preble Street extension remained within the B-2 zone due to the type and scale of uses in this area at that time.

IV. PROPOSED MAP AMENDMENT

The proposed zoning map amendment is to rezone the B-2 zone and the R-5 zone to B-2b, as shown below.

V. **ZONING COMPARISON**

A. Purpose Statements

The R-5 zone is a medium density residential area that is characterized by single family and low-intensity multi-family development. The B-2 Zone is intended to provide areas for a mix of commercial and residential uses, which have a greater intensity than the business uses permitted in the neighborhood business zone. The types of uses articulated in the purpose statement of the B-2 zone include " grocery stores, shops and services located in major shopping centers and along arterial streets." The vision is that these uses would be readily accessible by all means of transportation (automobile, pedestrians and bicyclists). Generally, the B-2 zone is found along Portland's major transportation corridors with residential neighborhoods adjacent to the zone. Thus the intent of the zone states that development should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. Both the B-2 and B-2b provide for moderate to high density housing development.

The B-2b is part of the B-2 zone and varies in some ways from the zone. The purpose statement highlights that the development should be close to the street and have a more compact urban development pattern. It is recommended for locations "on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character." The purpose statements of the R-5 zone and the B-2, B-2b and B-2c are listed in Table 1 below.

Zone	Purpose
Residential R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially sized parcels. Such PRUD development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.
Community Business B-2	1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community. 2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone. 3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. 4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.
Community Business B-2b	The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern.

B. Permitted and Conditional Uses

Following is a chart of the permitted uses for the R-5, B-2 and B-2b zones. Again, the R-5 zone is a moderate density residential zone, thus the permitted uses include single and two family homes, handicapped family units, planned residential unit developments and multiplexes. The permitted residential uses in the B-2 and B-2b zone allow for many of the same residential uses, but the zones also permits higher density housing, such as multifamily development, combined living/working spaces, and lodging houses.

In the R-5 zone most institutional uses, except for government or municipal uses, are listed as a conditional use. In the B-2 zones, institutional uses, including schools, universities, clinics, long-term or intermediate care facilities and others are listed as permitted uses.

The R-5 zone does not permit business uses. The B-2 and B-2b zones share most of the same permitted and conditional uses. A significant difference is that drive-throughs are not listed as permitted or conditional uses in the B-2b zone, which is a recent change that was adopted on November 17, 2014. Drive-throughs are listed as a permitted use in the B-2 and as a conditional use in the B-2 zone when the site is adjacent to a residential zone. Another differentiation between the two zones is that the B-2b establishes a size limit of 7,000 sf for commercial kitchens (must include a retail component or tasting room) and bakeries in order to encourage smaller scale establishments oriented to pedestrians.

Table 2: Permitted and Conditional Uses

Permitted Uses				
Residential		R-5	B-2	B-2b
	Single-family and two-family dwellings	•	•	•
	Multi-family dwellings		•	•
	Handicapped family units	•	•	•
	Single-family single- or multiple-component manufactured housing	•		
	Combined living/working spaces		•	•
	Lodging houses		•	•
	PRUDs	•		
	Multiplex development	•		
Institutional		R-5	B-2	B-2b
	Schools		•	•
	Clinics		•	•
	Places of assembly		•	•
	Long term, extended and intermediate care facilities		•	•
	Governmental buildings and uses/municipal uses	•	•	•
	College, university or trade schools		•	•
	Nursery schools, kindergartens			
	Day care facilities		•	•
Business		R-5	B-2	B-2b
	General, business, & professional offices		•	•
	Personal services		•	•
	Business services			
	Offices of building tradespeople		•	•
	Retail establishments		•	•
	Restaurants (close at 11)		•	•
	Drinking establishments (not allowed in B-2c)		•	•
	Billiard parlors		•	•
	Mortuaries or funeral homes		•	•
	Miscellaneous repair services, excluding motor vehicle repair		•	•
	Communication studios or broadcast and receiving facilities		•	•
	Health clubs and gymnasiums		•	•
	Veterinary hospitals (excluding outside kennels)		•	•
	Theaters		•	•
	Hotels of less than 150 rooms		•	•
	Dairies and bakeries in existence as of Nov 15, 1999		•	
	Bakeries after 1999, must have a retail component		•	

	Bakeries shall be no greater than 7,000 sf in size			•
	Drive-throughs when accessory to a principal use on the same lot and located on a lot adjacent to any residential use or zone		•	
	Registered medical marijuana dispensaries		•	•
	Commercial kitchens provided it includes retail sales or tasting room. Commercial kitchens shall be no greater than 7,000 sf		•	•
Other		R-5	B-2	B-2b
	Accessory uses	•	•	•
	Municipal uses	•		
	Parks	•		
	Home occupation	•	•	•
	Studios for artists and craftspeople – not to exceed 4000 sf studio space		•	•
	Special needs independent living units	•	•	•
	Bed and breakfasts		•	•
	Hostels		•	•
	Wind energy systems	•	•	•
	Utility substations		•	•
Conditional Uses				
Residential		R-5	B-2	B-2b
	Sheltered care group homes	•		
	Additional accessory dwelling units	•		
	Alteration of non-residential structure to 3+ dwelling units	•		
	Use space existing as of 9-3-08 to accommodate additional dwelling units	•		
	Conversion of multi-family structure to lodging house	•		
Institutional		R-5	B-2	B-2b
	Schools	•		
	Long-term and extended care facilities	•		
	Intermediate care facility	•		
	Places of assembly	•		
	Hospitals	•		
	Nursery schools and kindergartens			
	Day care facilities	•		
	College, university, trade schools	•		
Business		R-5	B-2	B-2b
	Major and minor auto service stations		•	
	Major and minor auto service stations if in existence as of 1999			•
	Car washes		•	•
	Drive-throughs adjacent to residential uses or zones		•	
	Automobile dealerships		•	•
Other		R-5	B-2	B-2b
	Utility substations	•		
	Professional offices			
	Chancellery			
	Off-street parking	•		
	Temporary wind anemometer towers	•	•	•
	Hostels			
	Wind energy systems	•	•	
	Printing and publishing establishments		•	•
	Wholesale distribution establishments		•	
	Research and development and related production establishments		•	

C. Dimensional Standards

The dimensional standards for the R-5 zone focus on the residential form for a moderate density area.

The B-2 and B-2b zone are similar in their lists of permitted and conditional uses, as well as their dimensional standards. A comparison of the dimensional standards is contained in Table 3. Dimensional Standards.

Table 3. Dimensional Standards

Standard	R-5[1]	B-2	B-2b
Minimum Lot area per dwelling unit	3,000 sf, except 3,600- 4,800 sf for special needs independent	none	none
Street Frontage	50 feet	20 ft	20 ft
Minimum Lot Width	60 feet, except 90 for multiplex	none	none
Minimum Front Yard	20, except average depth if less than 20		
Maximum Front Yard	N/A	10 ft, Bd may grant waiver for irregular lots with less than 40 ft of frontage	10 ft, Bd may grant waiver for irregular lots with less than 40 ft of frontage
Minimum Rear Yard	20 feet	10 ft, accessory structures, 5 ft	10 ft, accessory structures, 5 ft
Minimum Side Yard	8-15 feet, depending on building height and location	None, accessory structures, 5 ft	None, accessory structures, 5 ft
Minimum Side Yard on Side St		None	None
Structure Height	35 feet	45 ft, 50 ft if 1st floor commercial is whole or partially commercial use	45 ft, 50 ft if 1st floor commercial is whole or partially commercial use
Structure Stepbacks		Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Maximum Lot Coverage (building coverage)	40%		
Maximum Impervious Surface	N/A	Residential uses – 0% All permitted uses - 80%	Residential uses – 0% All permitted uses - 90%
Minimum Lot Area per Dwelling Unit		a. Off-peninsula locations, as defined in section 14-47: 1,500 SF, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 SF	a. Off-peninsula locations, as defined in section 14-47: 1,500 SF, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 SF.

[1] Additional restrictions on the number of dwelling units apply to the PRUD standards and separate requirements for small residential lot development may apply

VI. COMPREHENSIVE PLAN AND ZONING ANALYSIS

The Planning Board will be asked to make a determination of whether the proposed map amendment is consistent with the Comprehensive Plan and make a recommendation to the City Council. A full analysis will be prepared for a public hearing. The Comprehensive Plan includes policies that support commercial nodes near residential areas and seeks to limit business expansion into residential zones. In addition, the housing element of the Comprehensive Plan includes many policies to support increasing the diversity and density of housing in the city and support a variety of neighborhood businesses and services to be located in proximity of residential areas. The B-2 and B-2b zone provides greater flexibility for housing development and a diverse mix of uses.

More recently, Portland conducted a corridor study of Forest Avenue from Park Avenue through Woodfords Corner. Transforming Forest Avenue was adopted by the City Council on June 4, 2012 and it included recommendations for land use, transportation, and streetscape alternatives based upon a community process and best practices for transit supportive development. The report Transforming Forest Avenue is available on the City's web site: http://www.portlandmaine.gov/documentcenter/view/3388

Transforming Forest Avenue considered land use options for the corridor, including use based zoning, form based code and transit supportive development (TSD). Feedback from the community process indicated satisfaction with the current zoning with enhancements, adjustments and incentives considered to promote TSD principles. Encouraging vibrant and diverse land uses is an important principle of TSD development in order to provide multiple destinations in close proximity within an area. The report notes that while B-2 and B-2b currently support mixed uses, many of those uses have not located along the corridor. It is suggested that other incentives may be needed to encourage the type and density of uses envisioned, such as expedite reviews, financial incentives or other options. The report also points out that the transitions between the commercial and residential areas may require attention in order to achieve adequate buffers without limiting commercial activity. The development pattern should "provide for vibrant loci or activity at a pedestrian scale." Architectural quality, high quality parking, and public spaces are other land use components that are identified as components for creating a high quality transit corridor.

Compact development that increases the concentration of uses and structures in the built environment is identified as a strategy to support TSD. While the B-2 and B-2b zones have similar uses and dimensional standards, the design guidelines between the two zones do differ. The design standards for the B-2b zone are more urban and pedestrian oriented. For example, in B-2b the building entrances shall be oriented toward or directly accessible from a public sidewalk, transparent windows are required along street frontages, and street frontages should create an active presence along the sidewalk. The standards and accompanying guidelines are included as Attachment 3.

The Board will want to advise the staff on the extent of the area to be considered for rezoning. The Board can choose to expand the area for advertising and then refine the boundaries at the public hearing. Once the boundaries of a proposed map amendment are advertised, the boundaries cannot be expanded beyond the advertised area.

VII. NEXT STEPS

- Determine area to be advertised for a map amendment
- Schedule next meeting

VIII. ATTACHMENTS

1. Council Order #157
2. Historic Preservation Memo and attachments
3. B-2 and B-2b Design Guidelines

Order 157-15/16
Motion to Waive the Second Reading: 9-0 on 2/1/2015
Motion (as amended by a vote of 9-0 on 2/1/2016) to refer Order 157 to the Planning Board and to report back to the City Council prior to the Planning Board reviewing a site plan application in the Forest Avenue corridor but in any event no later than April 1: 9-0 on 2/1/2016

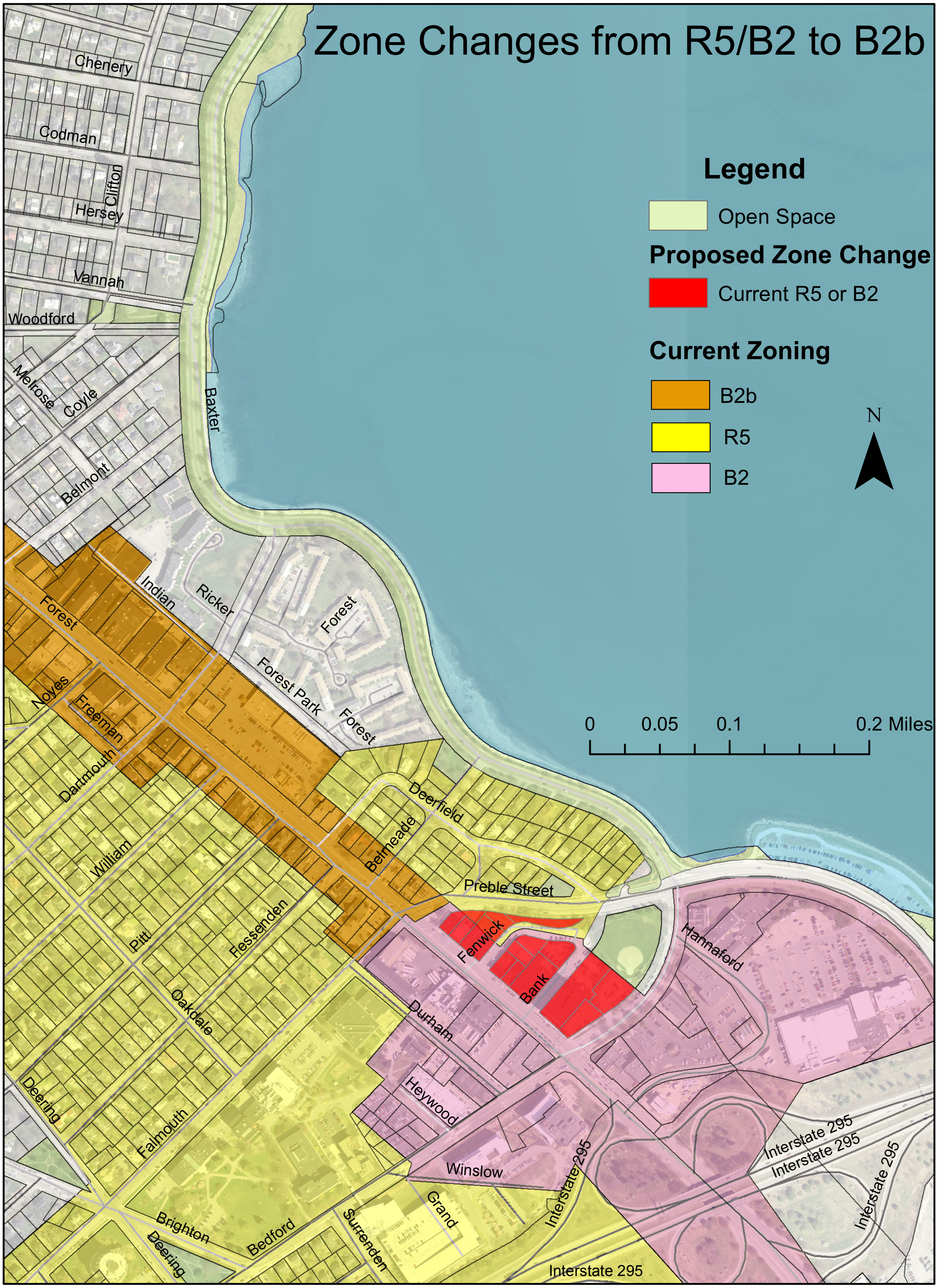
Effective 2/11/2016

CITY OF PORTLAND
IN THE CITY COUNCIL

AMENDMENT TO ZONING MAP
RE: SOUTH OF PREBLE STREET EXTENSION, EAST OF FOREST AVENUE AND NORTH OF BAXTER BOULEVARD CHANGE TO B-2B ZONE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning the B2 Zone and the R5 Zone in the area shown in red in the figure attached hereto to B-2b.



Zone Changes from R5/B2 to B2b
Legend
Open Space
Proposed Zone Change
Current R5 or B2
Current Zoning
B2b
R5
B2
N
0
0.05
0.1
0.2 Miles
Chenery
Codman
Clifton
Hersey
Vannah
Woodford
Melrose
Coyle
Belmont
Baxter
Indian
Ricker
Forest
Forest
Forest Park
Forest
Noyes
Freeman
Dartmouth
Deerfield
Belmeade
William
Preble Street
Fenwick
Bank
Hannaford
Pitt
Fessenden
Oakdale
Durham
Heywood
Deering
Falmouth
Winslow
Interstate 295
Interstate 295
Interstate 295
Interstate 295
Interstate 295
Grand
Brighton
Bedford
Surrenden
Deering

HISTORIC PRESERVATION BOARD
CITY OF PORTLAND, MAINE

PUBLIC HEARING
351-355, 369 and 371-373 FOREST AVENUE

TO: Chair Benson and Members of the Historic Preservation Board

FROM: Deborah Andrews, Historic Preservation Program Manager

DATE: January 27, 2016

RE: February 3, 2016 **PUBLIC HEARING - Determination of Eligibility For Local Landmark Designation**

Addresses: 351-355 Forest Avenue
369 Forest Avenue
371-373 Forest Avenue

Introduction

Following a preliminary workshop on January 13th, the Historic Preservation Board will hold a public hearing on the question of eligibility of three Forest Avenue buildings for local landmark designation. The three buildings in question are 351-355 Forest Avenue (which currently houses Palmer Springs), 369 Forest Avenue (Creative Trails) and 371-373 Forest Avenue (Forest Gardens and David Munster's TV Repair and Service). The request for determination of eligibility for historic designation was prompted by a demolition proposal submitted by legal counsel for CVS. CVS proposes to demolish 5 contiguous buildings on the east side of Forest Avenue near the intersection of Preble Street extension in conjunction with its plans to build a new pharmacy on the site. Consistent with the City's demolition permit review process, the demolition request was reviewed by historic preservation staff to determine whether or not the subject structures may be eligible for local and/or National Register historic designation. Staff elected to forward the matter to the Historic Preservation Board based on available documentation regarding the subject structures and previous findings from the Maine Historic Preservation Commission as to their eligibility for listing in the National Register of Historic Places.

On Wednesday, following a staff presentation and public hearing, the Board will vote on the eligibility of each structure based on the historic preservation ordinance's designation criteria, which address both the question of significance and integrity (Sec. 14-610 and Sec. 14-611).

Included in this report is information on each of the subject structures, including current and historic photos, an architectural description, a brief history of use and a description of the building's relationship to the history and evolution of Forest Avenue, particularly during the first decades of the twentieth century when each of the subject structures was built. The report also identifies the specific designation criteria under Sec. 14-610 (Minimum criteria for designation) that are applicable for each building. Finally, an assessment of each building's level of integrity is provided, as required under Sec. 14-611 (Integrity of Landmarks and Historic Districts). See **ATTACHMENT A**.

Also attached to this report is a historic context statement that describes the history and evolution of Forest Avenue and the development history of structures built along the corridor. See **ATTACHMENT B**. The context statement is important in understanding the role and relative significance of the buildings in question.

This report will also clarify the requirements for designation as a local "landmark" and provide examples of other individually-designated historic structures throughout the city.

In preparation for the public hearing, Sandra Guay, counsel for CVS's developer TMC New England, LLC and Mary Costigan, counsel for the owners of 351-355 and 369 Forest Avenue submitted letters for the Board's consideration—see **ATTACHMENTS D and E**. Ms. Guay has also forwarded with her letter structural evaluation reports for the structures located at 351-355 and 369 Forest. These reports are submitted pursuant to Sec. 14-611 of the ordinance which requires that a historic structure meeting one or more of the minimum criteria for designation "must also have sufficient integrity of location, design, condition,materials and workmanship to make it worthy of preservation or restoration." Structural Engineer Bruce MacLeod, P.E. plans to attend the public hearing to present his findings as to the condition of the buildings.

Background

In a letter dated November 20, 2015, Sandra Guay, counsel for CVS and its developer TMC New England LLC., informed historic preservation staff of the company's intent to demolish five structures on the east side of Forest Avenue, near the intersection of Preble Street Extension. Buildings proposed for removal include 351-355, 365, 369, 371-373 and 375 Forest Avenue—see **ATTACHMENT G1, Figure 1** for aerial view of affected structures. Demolition is proposed in conjunction with CVS' plan to construct a new CVS pharmacy on the five contiguous parcels occupied by the buildings. Ms. Guay's formal letter of intent followed a preliminary meeting between the applicant's representatives and Planning staff, during which the applicant team was informed of the City's demolition approval requirements, which include sign-off by the Historic Preservation office. Consistent with historic preservation ordinance requirements, the demolition request was reviewed by historic preservation staff to determine whether or not the subject structures may be eligible for local and/or National Register historic designation.

In this case, the subject buildings were evaluated for their historic and/or architectural significance, at least on a preliminary basis, in two recent architectural surveys focusing on Forest Avenue. Based on the results of these surveys and staff's own preliminary assessment of the affected structures, staff elected to forward the question of local designation eligibility to the Historic Preservation Board.

Note that two of the five buildings identified in Ms. Guay's letter were previously determined by staff to be clearly *ineligible* for historic designation. These are the buildings at 365 and 375 Forest Avenue. This finding was communicated to Ms. Guay in a 12/7/15 letter from Planning & Urban Development Department Director Jeff Levine. See **ATTACHMENT G2.**

Available Documentation and Assessments from Architectural Surveys

The buildings along Forest Avenue, specifically the section between the I-295 interchange and Woodford's Corner, have been evaluated for their historic and/or architectural significance in two recent architectural surveys.

<u>MDOT survey</u>. In 2011, in conjunction with MDOT's plans for public infrastructure improvements along Forest Avenue, MDOT commissioned an architectural survey of the project area. This survey was mandated by Section 106 of the National Historic Preservation Act, which requires that any project receiving federal funding or licensing should "take into account the effect of the undertaking on any district, site, building, structure or object listed in or eligible for the National Register of Historic Places." MDOT retained architectural historian Martha Burke to conduct a reconnaissance-level survey of the project area and to produce a report on the findings. A copy of survey forms for properties within the applicable area of Forest are enclosed as **ATTACHMENT G5**. A copy of MDOT's report to the Maine Historic Preservation Commission is enclosed as **ATTACHMENT G4.** Finally, a copy of the Maine Historic Preservation Commission's response to MDOT is enclosed as **ATTACHMENT G6.**

The final step in the Sec. 106 review process is for staff of the Maine Historic Preservation Commission (MHPC) to review the findings of MDOT and its consultant and make its own final determination of National Register eligibility for the buildings within the project area. At the bottom of the second page of each survey form, the Commission adds its finding as to eligibility. In this instance, Deputy Historic Preservation Officer Kirk Mohney conducted the final review and his findings appear at the end of each form. Mr. Mohney summarizes MHPC's position as to the status of historic resources within the survey area in an October 3, 2011 letter to MDOT—**ATTACHMENT G6.**

Note that the survey conducted by MDOT was a reconnaissance-level survey, meaning that the survey was based primarily on visual observation and the experience/expertise of the reviewer to identify buildings of potential historic and/or architectural merit. The reviewer also considers the degree of alteration that might affect the building's eligibility for the National Register. No detailed research is conducted on the historic context of the buildings or area in question. Obviously, more detailed research and documentation would be required to pursue formal listing in the National Register.

MDOT concluded in its Architectural Survey Report that "there are no eligible individual or historic districts within the survey area". Note that the Maine Historic Preservation Commission did not agree with the conclusion of MDOT's report. MHPC identified nine (9) buildings as eligible for the National Register "based on the information in the survey, as well as staff knowledge about the historic function and architectural significance of the buildings in the survey – particularly those related to early twentieth century automobile dealerships." MHPC identified another seven (7) buildings that warranted further research to make a final determination.

In his letter to MDOT, Mr. Mohney identifies the buildings at 355 Forest (built for the Gilson Auto Company; known today as the Palmer Spring Company Building) and 369 Forest (built for the State Motor Car Company) as being eligible for listing in the National Register.

Note that MHPC's consideration was limited to the question of eligibility for the National Register of Historic Places, either individual listing or listing as part of a contiguous district. No consideration was given to potential designation at the local level, the criteria for which may differ.

<u>Greater Portland Landmarks Survey.</u> In June, Greater Portland Landmarks Executive Director Hilary Bassett contacted the Planning Department regarding GPL's intention to conduct an architectural survey of Forest Avenue and Stevens Avenue and to conduct general research on the development of these two corridors. As Ms. Bassett noted, Landmarks had been encouraged by members of the Council to be proactive in identifying historic buildings and areas of the City that warrant further study and had secured a private donation to conduct the survey. It was hoped that the information resulting from the survey would inform future planning/revitalization efforts on these two key off-peninsula transportation corridors. For Forest Avenue in particular, the survey work could supplement the City-initiated "Transforming Forest Avenue" plan for public infrastructure improvements. The Planning Department expressed support for the initiative and Historic Preservation Staff consulted on the project.

Landmarks' work included two components: preparation of a "historic context" report documenting the development history of Forest Avenue and Stevens Avenue, and an architectural survey of historic structures along the two corridors. Architectural historian and preservation consultant Scott Hanson was hired to prepare the historic context report and graduate student interns completed the survey. Following the more general survey, approximately 15 buildings from each street were selected for further documentation. As a Landmarks representative explained at the January 13th workshop, the 15 buildings selected for additional documentation were chosen because they represented the range of building types in the study area, *not* because they were determined to be the only or most significant buildings within the study area.

Note that Landmarks' report does not include specific recommendations regarding which buildings should be considered for local and/or National Register designation, nor does it recommend an appropriate type of designation--for example, individual landmark designation, designation as part of a contiguous historic district, or designation as part of a theme-based multiple property designation.

At the January 13th workshop, Hilary Bassett and Julie Larry of Greater Portland Landmarks made a presentation on the survey, describing its purpose of the survey, the methodology used, survey results and the survey's relationship to the previous MDOT survey.

Assessing Eligibility for Historic Designation – Ordinance Criteria

In considering the question of eligibility for designation, the Board is guided by the criteria outlined in Division 3 of the ordinance, specifically Sec. 14-610 "minimum criteria for designation" and Sec. 14-611 "integrity of landmarks and historic districts". See **ATTACHMENT G3** for applicable ordinance excerpts. Under these criteria, the Board must consider not only the historic and/or architectural significance of the structure or potential district, but also its integrity. Under the integrity criterion, the Board needs to consider whether the building exhibits "sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration". Under the requirements of the ordinance, both the designation criteria under Sec. 14-610 and the integrity criterion under Sec. 14-611 must be shown to be met.

Landmark Designation

At the preliminary workshop session, there was some discussion as to whether it was preferable to designate the structures in question, if any or all are determined to meet the designation criteria, as individual landmarks, as contributing structures within a historic district, or, as part of a "multiple property designation" in which individual structures that may or may not be contiguous are designated as representative examples of a significant cultural, historic, architectural or related theme. Although there has been some preliminary discussion of the concept of a Multiple Properties Designation, and although the City may wish to pursue such a designation process vehicle in the future, Historic Preservation and Planning staff are confident that the classifications provided in the ordinance as currently written are adequate and appropriate to designate the buildings in question. Staff recommends that the buildings be considered for individual landmark designation in this instance.

The designation classification "landmark", as it has been applied in Portland and many other communities with a historic preservation ordinance, refers to individual historic buildings that are found to meet the ordinance's designation criteria. Not every designated landmark in Portland rises to the level of significance that the term "landmark" usually connotes—buildings such as Portland City Hall, Portland Observatory and First Parish Church. Local landmark designation has also been conferred to individual historic buildings, usually located outside of contiguous historic districts, that are significant within their specific context, be it a geographic, architectural, historic or thematic context. As an example, the Italianate residential building at 147 Congress Street was recently designated a local landmark by the City Council based on its significance within the context of Munjoy Hill's development, as one of the few buildings to have survived the Great Fire of 1866. The Tracy-Causer Building at 505-507 Fore Street, a mid-19th century commercial block that was part of Portland's Irish neighborhood known as Gorham's Corner is another example. The Abraham Levey commercial block at 78-88 Middle Street, located at the Middle Street gateway to the India Street neighborhood, was also individually designated as a landmark structure. These buildings are not "landmarks" per se, but architecturally and/or historically significant nonetheless, especially in their given context. In short, although "landmark" is the legal term used within the preservation field for an individually designated historic structure, perhaps a more descriptive term would be just that: individually designated historic structure.

Assessment of Integrity

In applying the historic preservation ordinance's integrity standard (Sec. 14-611), Board members are encouraged to consult the attached excerpt from a National Register Bulletin "How to Evaluate the Integrity of a Property" (**ATTACHMENT C**). As the bulletin explains, "integrity is the ability of a property to convey its significance" and describes seven specific aspects of integrity that need to be considered in evaluating whether a structure or site meets this test.

Note that the bulletin addresses all aspects of integrity except for condition, as building condition is not a consideration in National Register designations. Here, the Board should be guided by definitions included in Portland's ordinance that address the question of condition. For example, the definition of a "noncontributing structure", although applicable only for buildings within a historic district, provides the following guidance as regards consideration of condition: "A classification applied to a …structure…that 1)…2)… or 3) where the location, design, setting, materials workmanship and association have been so altered <u>or have so</u>

deteriorated that the overall integrity of the…structure…has been irretrievably lost”. The Board should review the structural reports prepared for CVS' developer (see **ATTACHMENT D)** in considering whether the buildings “have so deteriorated that the overall integrity of the structure has been irretrievably lost.” The Board should also consider whether the information provided is sufficient to answer this question.

Note that the Board may determine that only a portion of an existing building is eligible for landmark designation based on the question of integrity and limit its finding accordingly. For example, 351-355 Forest Avenue, now identified as a single property, is actually comprised of two original 1920's-era buildings plus several subsequent building additions that have created one connected complex. In staff's view, and in MHPC's finding of NR eligibility, only the original Gilson Auto Co. building at 355 Forest is eligible for landmark designation.

Implications of a Determination of Eligibility

If one or more of the three structures identified for Board consideration are determined to meet the criteria for designation, demolition would be possible only if the applicant can meet the test of economic hardship—see Sec. 14-632: Properties eligible for listing on National Register or for local Designation”. Determinations of Economic Hardship are made by the Zoning Board of Appeals. Upon determination of eligibility, the structure shall also be subject to the ordinance's minimum maintenance provisions until a final decision by the Council on designation becomes effective. If the Board elects to pursue designation, the designation process as prescribed in the historic preservation ordinance would commence.

Subject Structures – Building Descriptions, Staff Assessment of Eligibility for Landmark Designation

ATTACHMENT A provides information on each of the subject structures, including current and historic photos, an architectural description, a brief history of use/occupants and a description of the building's relationship to the history and evolution of Forest Avenue. Following each description, staff identifies the specific designation criteria (see Sec. 14-610) that are applicable for the given building. Finally, staff provides an assessment of each building's level of integrity, as required under Sec. 14-611 (Integrity of Landmarks and Historic Districts).

Note: In each of the building descriptions, reference is made to the structure's place in the evolution of Forest Avenue as one of the city's most significant off-peninsula transportation corridors. To appreciate the significance of each of the subject structures, it is necessary to understand the history and development of Forest Avenue. **ATTACHMENT B** is a summary of that history, largely excerpted from a report prepared by architectural historian Scott Hanson entitled *Forest Avenue and Stevens Avenue, Portland Maine: Historic Context.*

Motions for Consideration

On the basis of information and supporting documentation included in the staff report for the February 3, 2016 public hearing, the Board finds that:

1. a) 355 Forest Avenue, excluding the building additions shown in ATTACHMENT 1, Figures 1 and 2) **meets/does not meet** the minimum criteria for designation in Sec. 14-610 of the historic preservation ordinance, **specifically Criteria 1, 4 and 6.;**
   b) 355 Forest Avenue, excluding the building additions shown in ATTACHMENT 1, Figures 1 and 2) **meets/does not meet** the integrity standard for designation in Sec. 14-611 of the historic preservation ordinance;

   c) On the basis of the above findings, the Board finds that 355 Forest Avenue, excluding the building additions shown in ATTACHMENT 1, is **eligible/ineligible** for landmark designation under the provisions of Article IX (Historic Preservation) of the Land Use Code.

2. a) 369 Forest Avenue **meets/does not meet** the minimum criteria for designation in Sec. 14-610 of the historic preservation ordinance, **specifically Criteria 1, 4 and 6.;**

   b) 369 Forest Avenue **meets/does not meet** the integrity standard for designation in Sec. 14-611 of the historic preservation ordinance;

   c) On the basis of the above findings, the Board finds that 369 Forest Avenue is **eligible/ineligible** for landmark designation under the provisions of Article IX (Historic Preservation) of the Land Use Code.

3. a) 371-373 Forest Avenue **meets/does not meet** the minimum criteria for designation in Sec. 14-610 of the historic preservation ordinance, **specifically Criteria 1 and 6;**

   b) 371-371 Forest Avenue **meets/does not meet** the integrity standard for designation in Sec. 14-611 of the historic preservation ordinance;

   c) On the basis of the above findings, the Board finds that 369 Forest Avenue is **eligible/ineligible** for landmark designation under the provisions of Article IX (Historic Preservation) of the Land Use Code.

ATTACHMENTS

A. Descriptions and Analysis of Eligibility for Landmark Designation of 351-355 Forest, 369 Forest and 371-373 Forest

B. Historic Context Statement - *Forest Avenue: Its Early Development & Transportation History (*excerpted from *Forest Avenue and Stevens Avenue, Portland Maine by Scott Hanson)*

C. Excerpt from National Register Bulletin, "How to Evaluate the Integrity of a Property"

D. January 27, 2016 letter with attachments from Sandra Guay on behalf of TMC New England, LLC, including structural reports for 351, 355, and 369 Forest Avenue prepared by MacLeod Structural Engineers.

E. January 27, 2016 letter with attachments from Mary Costigan on behalf of Palmer Spring Co., owner of 351-355 Forest, and D & J Weeks Properties, owner of 369 Forest

F. Compilation of written public comment to date, in chronological order

G. ATTACHMENTS from 1/13/16 Workshop

1. 11/20/15 letter from Sandra Guay, representing CVS, with attachments
2. 12/7/15 letter to Ms. Guay from Jeff Levine, Director of Planning & Urban Development
3. Applicable ordinance provisions
4. MDOT survey report
5. MDOT survey forms with MHPC notation
6. 10/3/2011 memorandum from MHPC to MDOT
7. *Forest Avenue and Stevens Avenue: Portland Maine Historic Context*, Report and Survey Findings

H. January 28, 2016 Letter from Michael Kaplan, owner of 371-373 Forest Avenue
Received after preparation and scanning of report

Attachment A

351-355 FOREST AVENUE

351-355 Forest Avenue, now identified as a single property, is actually comprised of two 1920's-era buildings plus several subsequent building additions that have created one connected building complex. The structure at 351 Forest, although built during the same period as 355 Forest, is not a noteworthy example of its type, is not an auto-related structure and most of its original character-defining architectural features have been removed or altered. Similarly, later building additions (see plan) have no historic or architectural significance. For purposes of designation, staff recommends that only the Gilson Auto Company Building at 355 Forest be considered for landmark designation.

See following page for description and analysis of 355 Forest Avenue.

Fig. 1

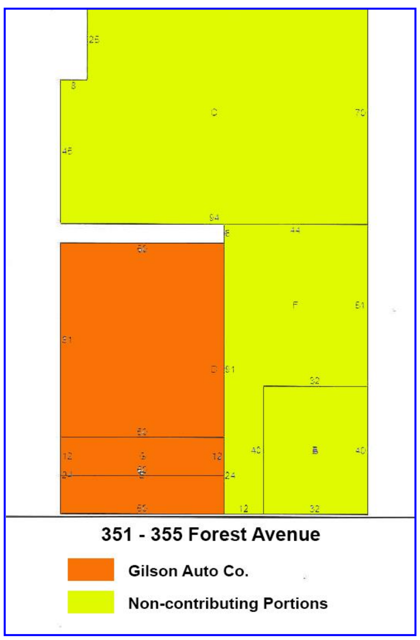
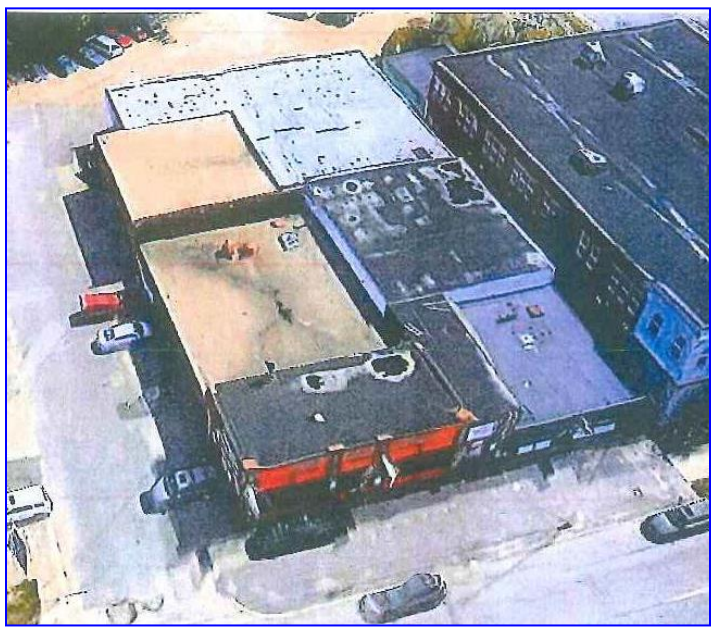


Fig. 2



351 Forest

355 FOREST AVENUE

Historic Name: Gilson Auto Company Building
Construction Dates: 1922, rear addition 1981
Style: Vernacular & Art Deco/Moderne

Originally occupied by the L. C. Gilson Automobile Company, the building at 355 Forest Avenue was built as an auto showroom in February 1922. Gilson had already established an automobile dealership at 881-891 Congress Street by 1906, selling cars from Ford, Reo and Stanley in what the Portland's Board of Trade Journal called, "one of the largest, most modern [garages] in New England." By 1924, the Congress Street block had been converted into apartments and the Gilson Automobile Company had relocated to 355 Forest Avenue.
Since its construction, the building has always been utilized for automobile sales or servicing purposes. It was occupied by Brewster Tire Stores Inc. in 1927. In 1929, Forest City Tire Company shared the building with Firestone Tire Stores Incorporated, which continued as the property's sole occupant in 1930-31.

The building is best known as Palmer Spring Company building, given the company's presence at this address since 1932. Palmer Spring Company was established in 1849 and is thought to be the oldest spring company in the United States. Joseph Benjamin Palmer founded the company in Boston after bringing his trade from England and served as its first blacksmith. The company's Conestoga wagon logo is a reminder of the vehicles originally serviced by Palmer Spring Company.

Building Description
Typical of early auto showroom structures, the building is one story, has three wide bays and a flat roof. Ornamentation is provided through the use of contrasting brick on the façade piers and Art-Deco-inspired architectural details. In addition to the front showroom facing Forest Avenue, the building has included a connected multi-bay garage at the rear since its construction. Over time, in response to a growing business several additions have been added and a connector was built to adjoin the once-separate commercial structure at 351.

National Register Eligibility: 355 Forest was determined to be eligible for National Register by Maine Historic Preservation Commission in 2011.

Applicable Designation Criteria under Sec. 14-610:

Criterion 1: Its value as a significant example of the cultural, historic, architectural, archaeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.

The building is a significant example of the impact of the automobile on Portland's suburban development along Forest Avenue in the early 20th century and on commercial architecture specifically designed for this new product type.

Criterion 4: Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials and craftsmanship.

The building is a noteworthy example of an early auto showroom/service structure, a building type introduced with advent of automobile sales.

Criterion 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.

The building is one in a cluster of auto-related structures constructed in the early 20th century that formed Portland's "Auto Row". Additionally, the building is part of a larger group of specific building types that were introduced with the advent of the automobile: auto showrooms, gas stations, commercial and residential garages, etc. Just as automobiles changed the landscape of the city, so too did the structures that were purpose-built to serve them.

Integrity Criterion under Sec. 14-610

Comparing historic and current views of the building, it is clear that the Gilson Auto Company (Palmer Springs) Building still retains its essential character-defining physical features. The building remains relatively unaltered and the alterations are readily reversible. As such, the building continues to convey its significance.

With respect to the question of condition, which is included as a relevant factor in determining integrity, the Board is encouraged to review the structural report prepared by MacLeod Structural Engineers, PA.

369 FOREST AVENUE

Historic Name: Franklin Service and Sales Company Building
Construction Date: 1922-1923
Style: Classical Revival

Originally occupied by Franklin Service and Sales Company of Portland, the one-story building at 369 Forest Avenue was built between1922 and 1926 as the location of the Portland distributor of Franklin Motor Cars. It is one of several early automobile related businesses on the length of Forest Avenue that would become known as Portland's Auto Row.

Franklin Motor Cars were designed by Herbert H. Franklin and manufactured in Syracuse, New York between 1902 and 1934 by the Franklin Automobile Company. Franklin Motor Cars were a luxury brand of cars and 150,000 autos were sold in the company's thirty years of existence. Like many of its luxury brand competitors, the Franklin Automobile Company fell victim to the Great Depression. The Franklin Service and Sales Company of Portland was owned by Percy Frost of Fessenden Street. The Forest Avenue location closed in 1934 when manufacturing of the Franklin Motor Cars ceased.

After the closure of Franklin Service and Sales Company of Portland the building was occupied by State Motor Company, a used car dealership in the 1940s. In the 1950s and 1960s the building was occupied by Arthur F Briggs' Commercial Refrigerator and Stove Equipment store. In the late 20th century it was occupied by Portland Tinware and is currently occupied by Creative Trails

Building Description

The brick structure is composed of a one-story front section, formerly the car showroom, and a one-story rear section, formerly the service area, that extends toward the rear of the lot bounded by Preble Street Extension. Both sections of the building share a contiguous flat roof.

Character defining details of its architectural style (Classical Revival) include the classical door surround, the keystone and brick arch above the transom window, the projecting cornice, and the recessed brickworks panels and concrete accents. Character defining details of its building type are the location of a sales area in the front portion of the building with large display windows and a pedestrian entrance along the primary street façade, as well as a rear service facility. The front section is three bays wide, with a central entrance at sidewalk level flanked by large tripartite display windows. The multi-pane transom windows above each display window have been covered over or removed. A brick pier with recessed panels and concrete accents separates each bay of the front elevation. The rear section of the building rests on a high foundation. Windows on the rear section are located on all three elevations, although some windows on the north and east elevations have been filled. The showroom windows on the east and west elevations of the front building have also been filled. A former garage door on the rear section of the building but visible from Forest Avenue has also been filled.

National Register Eligibility

369 Forest was determined to be eligible for National Register by Maine Historic Preservation Commission in 2011.

Applicable Designation Criteria under Sec. 14-610:

Criterion 1: Its value as a significant example of the cultural, historic, architectural, archaeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.

The building is a significant example of the impact of the automobile on Portland's suburban development along Forest Avenue in the early 20th century and on commercial architecture specifically designed for this new product type.

Criterior 4: Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials and craftsmanship.

The building is a noteworthy example of an early auto showroom/service structure, a building type introduced with advent of automobile sales.

Criterion 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.

> *The building is one in a cluster of auto-related structures built in the early 20th century that formed Portland's "Auto Row". Additionally, the building is part of a larger group of specific building types that were introduced with the advent of the automobile: auto showrooms, gas stations, commercial and residential garages, etc. Just as automobiles changed the landscape of the city, so too did the structures that were purpose-built to serve them.*

Integrity Criterion under Sec. 14-611

Although the building has undergone exterior changes, it retains the key character-defining details of its style and building type. The pattern of the fenestration remains largely intact and although some replacement is evident the original openings are apparent, the changes are readily reversible and the modifications do not limit the ability of the building to convey its significance.

With respect to the question of condition, which is included as a relevant factor in determining integrity, the Board is encouraged to review the structural report prepared by MacLeod Structural Engineers, PA.

371-373 FOREST AVENUE

Building Name: The Boulevard Apartment Building
Construction Date: 1922-1923
Style: Classical Revival and Art Deco styles

Originally known as the Boulevard Apartments, the building at 371-373 Forest Avenue was built 1922-1923 as a mixed-use building with two commercial bays on the first floor and four residential units above. It is a unique example on this portion of Forest Avenue of the transition from single use buildings, either residential or commercial, to a more urban development style of a mixed use, multistory building with a commercial use at the street level and residences above. Upper floor occupants in the early and mid-20th century were generally single working men and women, employed in nearby businesses.

The commercial spaces below the apartments were initially vacant, as the building was likely built on speculation. Early tenants in the building reveal that both of the ground floor commercial spaces were tied directly to Forest Avenue's emerging role as Portland's "Auto Row". 373 Forest Avenue was first occupied by Mohawk Tire Sales of Portland. 371 Forest Avenue was first occupied by Forest City Auto Top Company. The company moved to 373 Forest Avenue in the late 1920s. That company was succeeded in the 1950s by Vigue's Auto Top Company, which remained at 373 Forest Avenue into the mid-1970s.

Forest Gardens Restaurant opened at 371 Forest Avenue in 1936. Forest Gardens Restaurant, later Forest Garden Lunch and The Garden, had a succession of owners and eventually became the current Forest Gardens establishment. Since its establishment, Forest Gardens has played a significant role in the social history of the surrounding

Oakdale neighborhood and larger community, including a long association with local sports teams, faculty and students of USM, and alumni of Deering High and Portland High.

Building Description

The two-story brick structure has three bays, a flat roof with a projecting overhang and a deep cornice band, a pair of second story bay windows, and elaborate brick patterns on each pier. Typical of urban multi-use buildings, the commercial storefront has been altered from its original appearance, but the upper story retains its original window

openings and bay patterns, although the 2/1 sash window units themselves have been replaced. The building reflects several building styles. The projecting bays with their recessed wood paneling and the deep cornice at the level of the apartments relates to the prevailing residential style of the period, Classical Revival. The lower commercial level's simplified Art Deco style relates to the style and details of the nearby automobile showrooms and service stations. Although its large storefront windows are gone, the Art Deco character of the masonry detailing remains. Like many of the neighboring automobile showroom buildings, each bay of the building front is divided by wide brick piers that are articulated by flush geometric brickwork on the upper and lower level.

National Register Eligibility

371-373 Forest was not identified by the Maine Historic Preservation Commission as eligible for listing in the National Register during its assessment of the Forest Avenue corridor in 2011. According to MHPC staff, the Commission's consideration of eligibility in 2011 was limited to architectural significance and readily apparent association with Forest Avenue's history as Auto Row. The Commission did not have information about the building's history of use in making its preliminary determination.

Applicable Designation Criteria

Criterion 1: Its value as a significant example of the cultural, historic, architectural, archaeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.

In evaluating whether 371-373 Forest meets this criterion, it is appropriate that the Board consider the role the building has played in the social and cultural history of the Oakdale neighborhood and the larger Portland community since the opening of Forest Gardens 1936. Also, as a mixed use building, 371-373 illustrates the period of transition of this portion of Forest Avenue from a largely residential corridor to an increasingly commercial, specifically auto-related commercial corridor.

Criterion 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.

Along with the purpose-built auto showrooms in its immediate vicinity, this mixed-use building was part of the cluster of buildings occupied by commercial tenants that provided automobile-related goods and services during the early 20th century

Integrity Criterion under Sec. 14-611

Although the ground floor commercial bays have been altered considerably, the upper floor remains largely intact from the building's original construction. Storefront alterations on historic commercial structures are typical and do not preclude meeting the ordinance's integrity standard if the building is still able to convey its significance. The original mixed use nature of the building is still clear and the alterations to the storefront bays are reversible.

No structural report has been provided for this building.

Attachment B

Forest Avenue: Its Early Development & Transportation History

January 2016

Woodford's Corner in the 1940s

This document is largely excerpted from the historic context statement prepared for *Forest Avenue and Stevens Avenue, Portland, Maine* prepared by Scott T. Hanson of Sutherland Conservation and Consulting in August of 2015. Additional details can be found in that report. Copies of *Forest Avenue and Stevens Avenue, Portland, Maine* are available from the City of Portland and Greater Portland Landmarks.

Introduction

Forest Avenue is one of Portland's oldest and most important transportation corridors. It serves as a vital connector between the peninsula and the suburban neighborhoods of Deering as well as adjacent communities to the west. A significant number of historic buildings remain along Forest Avenue that represents the social, cultural, economic, commercial and residential history of Portland's suburban development. Forest Avenue retains a number of automobile showrooms and auto-related businesses built in the early 20th century in a concentrated area between Baxter Boulevard and Belmont Street that served as Portland's Automobile Row.

Early Development along Forest Avenue

With the settlement of inland areas away from Portland's coast in the mid-eighteenth century came early roads connecting the peninsula town to these sparsely settled towns. Among the earliest roads was Forest Avenue. The route of present day Forest Avenue was completed in 1805 when a new bridge was constructed over a portion of Back Cove connecting Deering to the Parkside neighborhood. Forest Avenue was the primary road to the lakes and mountains and on to northern New Hampshire and Vermont. Over time, homes, farms, and shops were constructed along the road, generally developing from the peninsula outward. As inland settlement increased, this became a major route for farmers bringing produce to market in Portland.

Dense development occurred in the late 18th century where early roads intersected, particularly at Woodford's and Morrill's corners. These intersections were natural locations for the development of commercial establishments as well as taverns to serve stage coach travelers.

Railroad & Horse Car Suburban Development

Following the stage coach, railroads established suburban railroad stations at these major road crossings. The first railroad traversed Woodford's Corner in 1847 and a depot was built just to the north of the current intersection. Away from these commercial centers, residential development along Forest Avenue consisted of sizable estates for wealthy businessmen who commuted by private carriage from Deering to downtown Portland.

In 1864 a horse car line extended from the peninsula to Forest Avenue. The affordability of the new transportation method as well as demand for housing following the Great Fire of 1866 spurred suburban development for the middle class, especially near the growing business and neighborhood centers at Woodford's and Morrill's corners. The large estates nearest the corners were the first to be subdivided for this new residential development. "Separate from the city, these new subdivisions were designed as residential landscapes, combining open space, fresh air, and greenery of the country with an efficient arrangement of houses."[1] One of the first subdivisions was Dr. Eliphet Clark's plat in 1866 along Pleasant Avenue between Forest and Stevens Avenues. Other subdivisions were Warren Sparrow's along Arlington Street, Arlington Place, and Clifton Street in the 1870s and the Oakdale subdivision in 1881.

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[1] Ames, David L. and McClelland, Linda Flint. Historic Residential Suburbs: Guidelines for the Evaluation and Documentation for the National Register of Historic Places, US Department of the Interior, National Park Service, 2002.

Street Car Suburban Development

The horse car lines were electrified in 1895, extending the transportation lines outward and expanding the availability of land for residential development. Following national trends, the suburban development in Deering attracted a wide range of people from the working to the upper middle class, with a large portion of the new residents being middle class. Suburban residential developments from this era include the Coyle Park development in 1899 and the Boulevard Park subdivision along Deerfield Road in the early 20th century. The houses built in all of these subdivisions reflected the architectural styles of the periods in which they were developed. While the earlier 19th century subdivisions featured primarily Italianate and Queen Ann style houses, the later ones were built in the Colonial Revival, Classical Revival, and Arts and Crafts styles.

At Woodford's the village center at the corner was substantially altered by the construction of the Odd Fellows Hall in 1897. The four story building with its clock tower was urban in scale and character. For a few years before the annexation of Deering by Portland, the Deering city offices were located in the new block. Additional commercial, social, and civic development built near the corner includes the new fire station on Deering Avenue in 1907, the Woodford's Club in 1913, and Albion Chapman's three story brick "flat iron" building of 1916 in the angle between Deering and Forest Avenues. Woodford's Corner continued to serve as an important neighborhood center for goods and services through the middle part of the twentieth century.

The Automobile and Its Impact on Development along Forest Avenue

In the first decade of the 20th century, the impact of the auto was minimal along Forest Avenue. Most residents of the area could work and shop in the area or they could quickly and affordably travel into the downtown via street cars. As the number of residents living along Forest Avenue increased due to the affordability of commuting into Portland, new residential forms appeared along the street to accommodate a diversity of housing needs. New residential buildings on Forest Avenue tended to be multi-family homes after 1900. Several two-family homes, a few triple decker apartment houses, and a couple of mixed use buildings constructed in the early part of the century remain. Mixed use buildings generally had a commercial use at the street level and residential apartments above.

The introduction of the personal automobile had an enormous impact on suburban development along Forest Avenue, reflecting a larger trend in the city, state and nation. In 1901 there were only 27 automobiles in Portland[2] and they were primarily toys for the wealthy businessmen. Nationwide and in Portland automobile ownership increased exponentially between 1910 and 1930. In 1915 the national average was one car for every forty-three citizens. By 1923, fifty percent of American households owned an automobile. The rise in auto ownership negatively impacted the ridership on the area's street cars, but it also created new businesses to fuel, service, and detail automobiles and generated new building types.

In the residential neighborhoods on either side of Forest Avenue, the impact of the automobile is represented by the small single car garage. Initially carriage barns were converted for use as garages, but in the 1920s one-story, single bay garages were often constructed to the side and rear of homes to accommodate vehicle storage. Several examples remain on streets like Deerfield Road, Belmont Street, Coyle Street, and Longfellow Street.

[2] Barnes, Albert F. Greater Portland Celebration 350. Portland, Maine 1984, 128.

Portland's Auto Row

Another new building type, the automobile showroom was generated by the success of the auto industry. Automobile companies built model showrooms that were emulated in small cities and towns across the country. In Portland, auto sales and services were initially incorporated into existing businesses and located in the downtown. As demand increased, Portland's auto dealer's emulated national developments and moved their showrooms outward along Forest Avenue, creating a concentrated area of dealerships known as an automobile row. Dealers congregated their dealerships along Forest Avenue between Baxter Boulevard and Bedford Street between 1915 and 1930 in an area occupied by large estates in the late 19th century.

These new car dealership buildings had a large footprint with significant enclosed interior space for displaying and servicing autos. Primarily one or two story buildings built of masonry construction with wood or steel truss roofs, these dealerships were among the first architectural building types developed in response to the automobile. The automobile showroom was located at the street where large plate glass windows gave ample view to passers-by of the autos for sale inside. The rear of the building was the service facilities, often with access from alleys or side streets. The buildings were designed in a variety of styles, with most of the architectural ornamentation concentrated on the showrooms.

In 1910 there were six automobile dealerships in Portland, all on the peninsula.[3] The first auto showroom on Forest Avenue was built in 1915 with three more built in the following two years. By 1924 there were seventeen buildings devoted to auto sales and service on Forest Avenue. These include tire and battery stores as well as another new building type, the filling station. Portland's auto row expanded west to Belmont Street several years later with the subdivision of the Ricker estate for four new auto dealerships and the Ricker Park apartments.

In 1910 there were three hundred companies producing automobiles in the United States. In Portland, many of the manufacturer names we recognize today, Ford, Chevrolet, Oldsmobile, and Chrysler were joined by lesser known manufacturers like Grant, Franklin, Peerless, and Hudson. Many of the smaller manufacturers succumbed to fierce competition or were consolidated into larger companies in the mid 1920s. Some manufacturers that survived until the late 1920s closed during the Great Depression.

The last great estate along Forest Avenue was redeveloped in the 1940s when the Forest Park development was built along Baxter Boulevard to house World War II shipyard workers. On the Forest Avenue portion of the development parcel a Howard Johnson's and A& P Grocery store were constructed.

Post World War II and the Impact of Interstate and Arterial Highways

Following national trends, Portland's suburban development after World War II was concentrated in bedroom communities further from the downtown than the earlier street car suburbs. The development of interstate and arterial highways, like I-295 and the Maine Turnpike following the Federal Aid Highway Act of 1956 fueled suburban development away from the historic core of the city. Many of the residents in these suburban communities still worked and shopped in Portland and Forest Avenue became a primary commuter arterial. The trolley system was abandoned before the war and although it was replaced by bus service, most of the suburbanites traveled by car. Automobile traffic through Morrill's and Woodford's Corners increased

[3] Barry, William David and Anderson, Patricia McGraw. *Deering*. Portland, Maine, 2010, 50.

dramatically in the 1950s and changes were made to accommodate the increased traffic. These changes decreased pedestrian access and safety and the resulting reduction in pedestrian activity made it challenging to sustain the scale and type of businesses that had historically been located in the neighborhood.

Eventually the increasing number of people living beyond the traditional urban and suburban core triggered commercial development of modern shopping centers further out. The Pine Tree Shopping Center was built off Brighton Avenue in 1959. Other modern shopping centers were built at Westgate in Libbytown, Northgate in North Deering, and near Riverside in Westbrook. Additional commercial development sprang up around the Exit 8 interchange of the Main Turnpike. This development impacted the auto dealerships along Forest Avenue as new larger car dealerships with large lots were built near the turnpike exit. Howard Johnson's built a new hotel and restaurant on Riverside near Exit 8 and demolished their 1940s building on Forest Avenue. A new modern shopping plaza, Forest Avenue Plaza, with a large front parking lot was built on the site of the former Howard Johnson's and the A&P grocery. Valle's Steakhouse built a new restaurant on Brighton Avenue near Exit 8, demolished their 1940s building at Woodford's Street and Forest Avenue, and built a new sandwich shop at that corner in 1964, in a building now occupied by the Woodford Food and Beverage.

Since the mid 20^{th} century, Forest Avenue has increasingly become a street lined with commercial properties. Forest Avenue's residential history has nearly disappeared in the section between I-295 and Woodford's Corner. Only four homes and one mixed use building with apartments remain on Forest Avenue between I-295 and Coyle Street. All of the homes have been converted to commercial uses. Seven residential buildings remain between Coyle Street and Woodford's Corner, and all are located on the east side of the street.

The historic buildings that remain to represent Forest Avenue's social, cultural, residential, and commercial history are significant to an understanding of the development of Portland's off-peninsula suburbs in the 19^{th} and early 20^{th} centuries. The remaining buildings represent a range of styles and building types that are representative of a broad period in the historical development of Forest Avenue. Forest Avenue is also significant as the location of Portland's Automobile Row. The remaining automobile showrooms and auto-related businesses built in the early 20^{th} century in a concentrated area between Baxter Boulevard and Belmont Street are representative of Forest Avenue's significance as a transportation corridor. The automobile dealerships, filling stations, and automotive related commercial buildings are also significant as examples of the commercial impact of the automobile industry in early 20^{th} century Portland.

Attachment 3

of and comfort within existing and proposed pedestrian seating areas and other adverse impacts upon the surrounding area;

h. Setbacks from existing structures: The location and design of proposed structures shall not create a detrimental impact on the structural integrity or the safety of adjacent structures or the occupants thereof;

i. Building tops: Buildings or structures which exceed one hundred fifty (150) feet in height shall be designed so as to provide a distinctive top to the building which visually conveys a sense of interest and vertical termination to the building, as described and illustrated in the *Downtown Urban Design Guidelines* (Appendix 1);

GUIDELINES.

Please refer to Appendix 1 of this manual, the Downtown Urban Design Guidelines, for applicable guidelines relating to how development in the B3 Downtown Business Zone may adequately comply with the above listed standards.

(c) B-5 AND B5-B URBAN COMMERCIAL BUSINESS ZONES:

(1) **STANDARDS.** Development located in the B-5 and B-5b zones shall meet the following additional standards:

a. Shared infrastructure: Shared circulation, parking, and transportation infrastructure shall be provided to the extent practicable, with utilization of joint curb cuts, walkways, service alleys, bus pull-out areas, and related infrastructure shared with abutting lots and roadways. Easements for access for abutting properties and shared internal access points at property lines shall be provided where possible to facilitate present or future sharing of access and infrastructure.

b. Buildings and uses shall be located close to the street where practicable. Corner lots shall fill into the corner and shall provide an architectural presence and focus to mark the corner.

c. Buildings shall be oriented toward the street and shall include prominent facades with windows and entrances oriented toward the street. Uses that include public access to a building or commercial/office uses in mixed-use developments shall be oriented toward major streets whenever possible.

d. Parking lots shall be located to the maximum extent practicable toward the rear of the property and shall be located along property lines where joint use or combined parking areas with abutting properties are proposed or anticipated.

(d) B-1 AND B-1B NEIGHBORHOOD BUSINESS AND B-2 AND B-2B COMMERCIAL BUSINESS ZONES:

(1) **STANDARDS.** Development located in the B-1, B-1b, B-2, and B-2b zones shall meet the

Attachment 3

following additional standards.

a. Urban Street Wall: In the B-1, B-1b, and B-2b zone it shall be required that buildings shall be located to create and preserve an urban street wall.

b. Mixed Uses: In B-1b zone buildings shall be multi-storied with mixed uses.

c. Building Entrances: In the B-1 and B-2b zone building entrances shall be oriented toward, located adjacent to, and directly accessible from, a sidewalk in a public right-of-way.

d. Windows: In the B-1, B-1b, B-2, and B-2b zones windows shall be required along the street frontage of a building. Windows shall be transparent (with a visible transmittance (VT) of .7 or greater) and installed at a height to allow views into the building by passersby.

e. Facade Character: In the B-1, B-1b, B-2, B-2b zones, active and public portions of buildings (e.g. doors, windows, entries, retail displays) shall be oriented to and, where possible, be located adjacent to the public sidewalk to create an active presence along the sidewalk.

1. Where building facades situated along a public way have no interactive use or function, such facades shall be designed to provide sufficient architectural and graphic amenities to provide visual interest along the street and relate the building, and its use, to passersby.

f. Building Design: B-1, B-1b, B-2, and B-2b commercial buildings shall be designed to be compatible with their residential and commercial neighbors. In the B-1 and B-1b zones building scale, roof pitch, and fenestration shall be designed to complement surrounding residential structures.

g. Building Materials: Facade materials of buildings located in the B-1, B-1b, B-2, and B-2b zones shall be compatible with those materials of surrounding residential and commercial uses.

h. Building Scale: In the B-1 and B-1b zones building scale must relate and be compatible with surrounding residential structures.

i. Landscaping and buffers: In the B-1, B- 1b, B-2 and B-2b zones buildings and associated parking areas must be screened to buffer abutting properties. A densely planted landscape buffer and/or fencing will be required to protect neighboring properties from the impacts associated with the development, including lighting, parking, traffic, noise, odor, smoke, or other incompatible uses. Where buildings are setback from the street, a landscaped area must be planted along the front yard street line.

GUIDELINES.

Please refer to Appendix 2 of this manual, The B-1, B-1b, B-2, B-2b Design Guidelines, for applicable design guidelines for the B-1 and B-2 zones. In addition, the following design guidelines shall also apply:

1) Buildings located in the B-2 zone are specifically encouraged to adhere to the design guidelines contained in *the B-1, B-1b, B-2, B-2b Design Guidelines* (Appendix 2) of this section concerning the creation and preservation of an urban street wall.
2) In the B-1b and B-2 zones, buildings are specifically encouraged to adhere to the guidelines contained in *the B-1, B-1b, B-2, B-2b Design Guidelines* (Appendix 2) of this section concerning building entrances.

Attachment 3

Appendix 2

City of Portland
Technical Standards and Design Guidelines

Development in the B-1, B-1b, B-2, B-2b shall meet the following guidelines in order to meet the Site Plan Standards

1. Building Location and Form

Buildings shall be located near the street so as to create an urban street wall.
An urban street wall is created by a pattern of buildings which line the street in a consistent manner, thereby establishing a desirable spatial relationship between the building in the commercial district and the major object. Location is one of several related factors defining the street environment.

Building Form, including height, bulk, and massing, contribute to the development of a street wall.
The desired condition is to have the building frame and enclose the street, which is achieved by providing building height that is proportionate to the width of the adjoining major street. A ratio of building height to street width of one-to-two creates a strong "room-like" street, while a one-to-three ratio provides good street definition and proportion. Shorter buildings of one story facing broad streets will not achieve the desired relationship.

In the B-2b zone, buildings adjacent to streets should approach 1:2 height to street width, with a minimum of 1:3.
For a fifty-foot street right-of-way, therefore, a minimum height of 15' is required, with 25' height preferred. An eighty-foot right-of-way requires about 27' to achieve the 1:3 proportion., with 40'-height preferred. Obviously, buildings located as close as possible to the street right-of-way will provide better definition and proportion than buildings set further back.

2. Building Function

An urban street and business district requires a substantial intensity and variety of uses.
It is beneficial to have mixed uses within portions of buildings situated near the street. For example, a retail first floor might have office or residential on the second or third floors. This provides both the scale of building height desired, as well as the economic vitality of the business district.

3. Orientation of Buildings and their Entrances to the Street

Major building entries shall be designed and located to provide the primary building access oriented to the public street and sidewalk.
Doorways should be prominent and obvious in appearance, so as to attract the users toward the entry. Major entry features should primarily address the street, with entry courts, display windows, signage, lights, walkways, and vestibules, as appropriate. Major entries should be adjacent to, or very close to, the street and public sidewalk.

4. Windows

Windows shall be located in all building facades visible from the public way, especially on building facades along the major public street.
Retail uses with store fronts are the most desirable feature for locations adjacent to the public sidewalk; and active, transparent (minimum visible transmittance (VT) of .7 or greater), and interesting windows contribute the maximum value. Limitations on transparency, such as dark or reflective glass, or interior coverings, should be avoided. Where uses (such as office) are not conducive to transparent viewing from the public way, windows can still convey a sense of activity and presence along the street. Even these more private windows can convey occupancy and habitation when lighted from within, as during evening hours, even if the interior is screened from view.

5. Building Character, Detail, Scale, and Graphic Qualities

Building design will include various architectural and graphic amenities to provide a strong presence along a street and relate a building to its community.
Awnings, canopies, and flags may be utilized to highlight entryways and to further identify the activity and identity of a use.
Facade lighting may be used to highlight entryways or to provide visual interest along an otherwise blank facade
Building scale, roof pitch, architectural detail, and fenestration shall be designed to complement and be compatible with surrounding residential and commercial buildings.

6. Signage and Building Entrances

Building entrances and building signage in the B-1, B-1b, and B-2b zones will be designed and constructed at the pedestrian scale.
*We may need to revise the Sign Ordinance for allowed height and dimension of signs.

7. Development Relationship to Street

Building facades and site amenities shall form a cohesive wall of enclosure along a street.
Where buildings are not located at the street line, site amenities, including masonry walls, fences, and landscaping, shall be placed along the street to provide a sense of enclosure or definition.

8. Parking Lots

Parking Lots shall be screened from view of the public way.
Landscaping or fencing shall be used to screen parking lots from public ways and residential neighbors. Where parking is located within the front yard (or side yard of a corner lot), a landscaped buffer or fence shall be placed along the street line to distinguish the private space from the public space and to help define the street wall.

Parking lots shall be screened from neighboring properties.
A densely planted landscape buffer or fencing shall be installed to protect neighboring properties from the impacts associated with the parking lot and the use it serves.

Crosswalks shall be provided within parking lots and across entrance driveways, directing pedestrians to building entrances.

Street trees shall be planted along property street frontage 25ft. on center.

9. Transit Connections

Development proposed along established transit corridors must design uninterrupted access from the proposed development to the transit stop.
An easement to place a transit shelter may be requested for development located along a transit corridor.

PLANNING BOARD REPORT
PORTLAND, MAINE

IS-FBC Zoning Text Amendment
Zone-wide amendment; Section 14-275.7: Corner
Joe Dasco, Applicant
62 India Street

Submitted to: Portland Planning Board	Prepared by: Caitlin Cameron, Urban Designer
Public Hearing Date: February 23rd, 2016	Date: February 18th, 2016

I. INTRODUCTION

The applicant Joe Dasco has requested a text amendment for the IS-FBC zone. The requested change to *Section 14-275.7 Corner* would be a zone-wide text amendment that applies to parcels at UA/UN subdistrict intersections which affects 20 parcels in the zone. The amendment would increase the maximum height allowed for buildings built on parcels with an UA/UN intersection condition. Currently, the IS-FBC allows for 50' maximum height for only a portion of the parcel fronting on a UA street. The proposed change would allow a 50' maximum height for the entire parcel.

The request follows an architectural study for the site at 62 India Street where the applicant found it was not feasible to design a building that meets the code as written. The proposed zoning amendment would enable a building in the UA/UN situation to have a consistent building height of 50' for the entire building rather than having to step down to 45'. The applicant's submittal (Attachments A-C) includes the details about the request and addresses the construction and economic feasibility constraints of the zone as written.

II. PUBLIC COMMENT SUMMARY

A notice of this Hearing appeared in the February 15th and February 16th, 2016 editions of the *Portland Press-Herald*. A Neighborhood Meeting is not required. No written comments have been received at the time this report was prepared.

III. EXISTING ZONING

The India Street Form-based Code (IS-FBC) zone is a recently-created new zone covering the India Street neighborhood which is east of Franklin Street. Within the IS-FBC zone are three subdistricts – Urban Active, Urban Neighborhood, and Urban Transitional (hereafter referred to as UA, UN, and UT) (see Figure 1). The IS-FBC includes dimensional requirements for parcels at an intersection of two subdistricts. For example, the existing zoning requirements for a UA/UN intersection allows 50' maximum height at a UA street but requires the building height step down to 45' after the first 35' feet of building depth. Buildings on UA streets are also required to provide a ground floor with 12’ clear height and a high level of transparency – this is all to achieve active commercial ground floors and mixed-use buildings (see Figure 2).

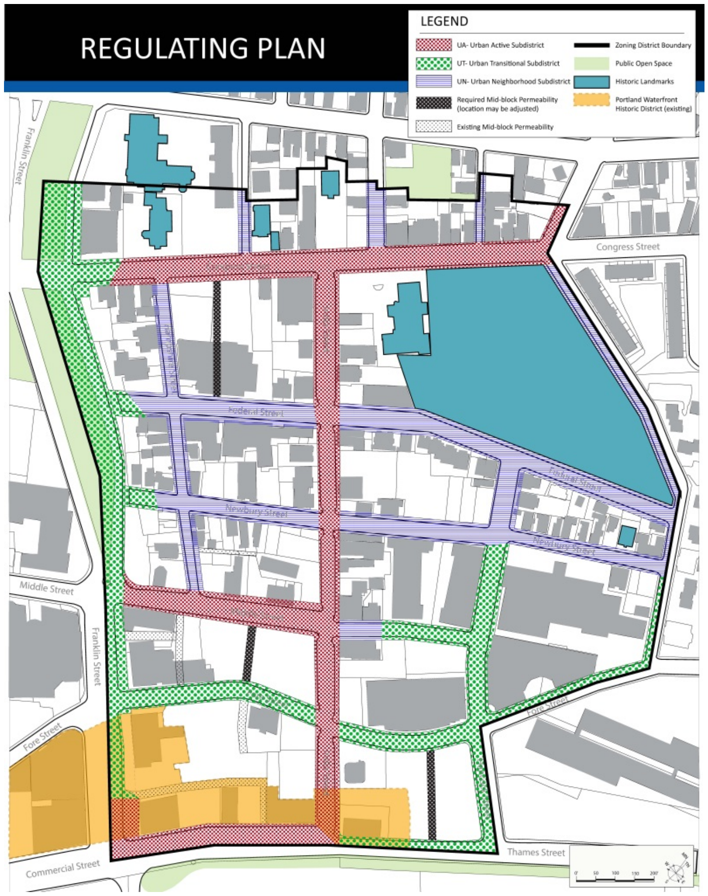


Figure 1: IS-FBC Zone Boundary and Subdistrict Locations

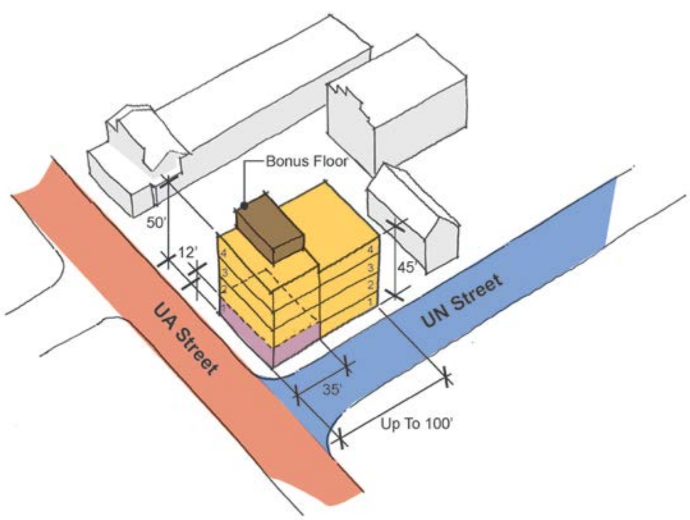


Figure 2: Existing Zoning UA/UN Intersection

IV. PROPOSED ZONING AMENDMENT

The applicant requested one IS-FBC text amendment to make future development feasible at UA/UN intersections. Following is a summary of the text amendment as revised by the staff along with summary statements that highlight the purpose of the proposed text amendment and specific points for the Board's consideration. The full text amendment is included in Attachment 1.

Staff Summary: This amendment was requested by the applicant in the application (Attachment A); the Planning staff recommended the specific changes to the IS-FBC code to achieve the request (Attachment 1). The proposed edits for *Section 14-275.7: Corner* include:

1) To the section *UA Intersects UN*, adding the line: Building Height (for entire parcel) = 50' max.

2) Revision of diagram *UA INTERSECTS UN (example only)* to illustrate the intended change

The rezone request is to allow a 50' maximum building height across an entire UA/UN parcel. The current zoning allows 50' maximum building height at UA only for a depth of 35' into the parcel. After that 35' the building must step down to 45' which is the maximum height allowed on UN subdistrict streets.

The IS-FBC zone seeks to promote context-sensitive new construction as well as mixed-use, urban buildings. The text amendment seeks to address a conflict that is created by these two goals. The UA subdistrict requires a mixed-use building facing the UA streets. The dimensional requirements stipulate a 12' and highly transparent ground floor to achieve this goal but subsequently allows for 50' in height to make four stories feasible. The UN subdistrict is characterized by smaller-scale, private buildings and has a lower maximum height allowed than in the UA. The applicant is making the argument that these two dimensional requirements are in conflict at the UA/UN corner condition and preclude feasible building design.

The text amendment seeks to directly address the conflicting policy within the IS-FBC.

UA/UN Corner Locations affected by text amendment

There are 20 parcels at UA/UN intersections in the IS-FBC that would be affected by this text amendment:

- Eleven (11) of those 20 parcels are vacant or have non-contributing/non-landmark buildings and are subject to new development (see map below with circled locations).
    - Seven (7) of those 11 parcels are vacant or have development opportunities without demolition.
- Nine (9) of those 20 parcels are in the India Street Historic District; new construction, additions, or alterations would be reviewed by Historic Preservation but the maximum height allowed by zoning could not be reduced.
- Nine (9) of those 20 parcels have historic landmarks or contributing buildings which are unlikely to be demolished and replaced with new construction.
- Eight (8) of those 20 parcels could qualify for a height bonus resulting in a 62' maximum height.

The text amendment would likely have immediate impact on one or two properties in the zone where development proposals are being considered, 62 India Street being one of those upcoming applications.

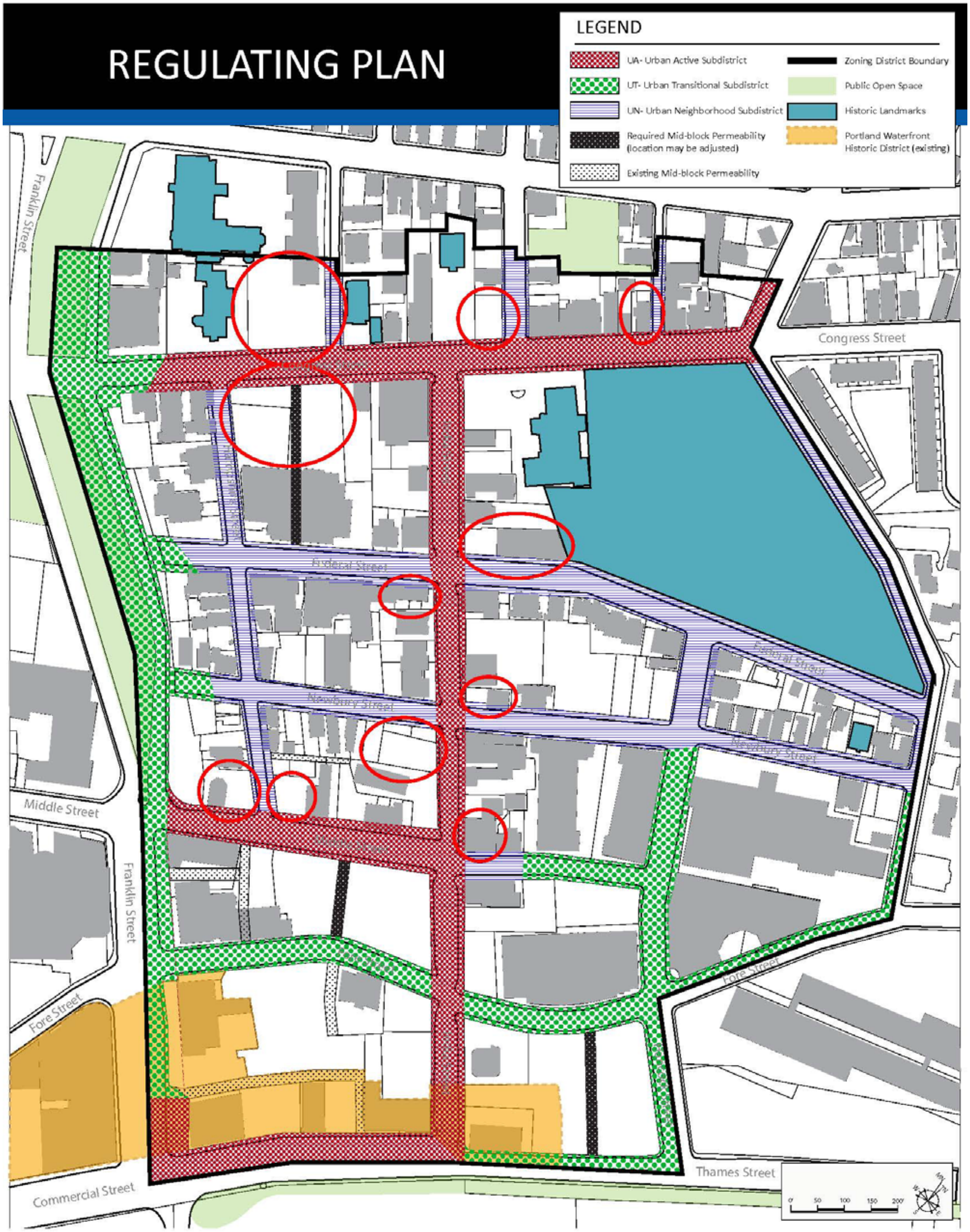


Figure 3: Parcels at UA/UN Intersections (excluding Historic Landmarks and Contributing Buildings)

Board Considerations:

- Does the current zoning height requirement at UA/UN intersections make development infeasible?
- Does the height increase to 50’ at UA/UN intersections comply with the intent of the UN subdistrict?
- What is the impact of the text amendment height change on the existing context?
- Does the text amendment comply with Comprehensive Plan goals?
    - Compatible new development with existing scale
    - Varying building scale
    - Small infill development
    - Allowable height
    - View corridor protection
- Does the text amendment further enable Comprehensive Plan goals?
    - Mixed-use development
    - Develop vacant land

V. STAFF ANALYSIS

A. Zoning Intent

UN Subdistrict: Because the rezoning will most affect the height of buildings on UN subdistrict streets it is important to consider the fundamental characteristics of UN streets and whether that 5’ height increase is contrary to the intent, scale, and character of UN streetscapes. The UN emphasizes small-scale buildings and that the existing UN context is predominantly two and three-story buildings. The UN subdistrict already allows 4 story buildings; staff does not believe an additional 5’ story of height will compromise the intent of UN for small-scale buildings.

The intent statement for IS-FBC Subdistrict UN is as follows:

> *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 tend to be narrow.*

UA Subdistrict: The other zoning constraint is the UA dimensional requirements. The zoning intent of the UA subdistrict is to generate mixed-use building types. The UA subdistrict currently requires the following:

- 12’ clear ground story
- Principal entrance facing a UA street
- Principal entrance no more than one step above sidewalk grade
- 3 story minimum, 4 story maximum
- 50’ maximum height allowed to accommodate the 12’ ground story clearance required

The intent statement for IS-FBC Subdistrict UA is as follows:

> *The intent of this subdistrict is to maintain and promote a 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.

The applicant argues that these requirements in the UA make it difficult from a construction and design perspective to build a building that steps down to 45' mid-block. This is especially driven by the 12' required ground story clearance – that commercial story height makes it infeasible to achieve 4 stories in 45' height on the UN portion of the building. It is for that reason the applicant and staff agree the exception allowed under the previous zone, B-2b would be a logical solution to this situation.

The text amendment, therefore, is based on existing text/dimensions currently in the B-2b zone. Fourteen (14) of the parcels affected by the text amendment were previously zoned B-2b and would have been subject to this exception:

Height maximum: 45 feet except as provided for below:

a. *50 feet if first floor is partially or wholly occupied by a commercial use.*

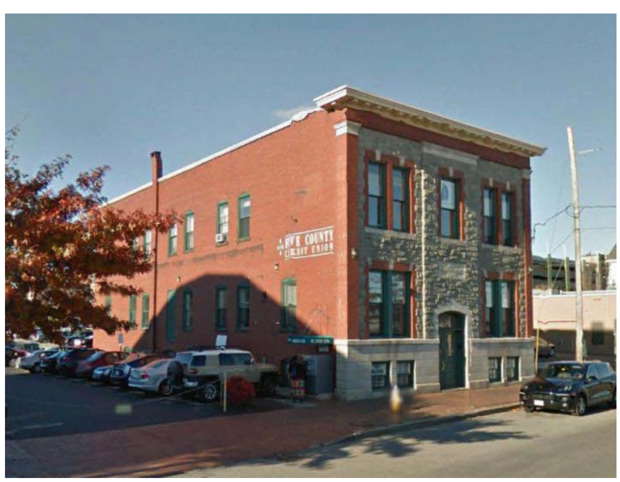
B. <u>Height and Massing – Individual Building Design</u>

The applicant makes the argument that the resulting roof form created by the required UA/UN stepdown is awkward in the detailing of fascias, soffits, and roof construction details. In consideration of construction feasibility, the building height requirements should match the story requirement. This means either the whole building should be allowed to be four stories at 50' or that the required step down should be for a full story (resulting in a 3-story maximum on the UN street).

The applicant is proposing the former solution which would be to allow the building to have a consistent roof form that carries for 50' across the UN façade.

An alternative solution to the proposed text amendment would be to require a full story stepdown. This option would keep the 50' and 4 story maximum facing UA street but require a step down to 3 stories to occur after 35' on the UN street. This alternative would provide a more appropriate scale transition from the 4-story mixed-use buildings to the smaller scale, residential fabric – typically two, two and a half, or three stories.

Another strategy that is employed in historic buildings is a roof line that has a monopitch slope with the highest height at the street and a slope down to the rear of the building. This strategy, however, does not usually have height change as much as 5'.



The diagrams below demonstrate the proposed text amendment compared with the current zoning and how it would impact height and massing outcomes.

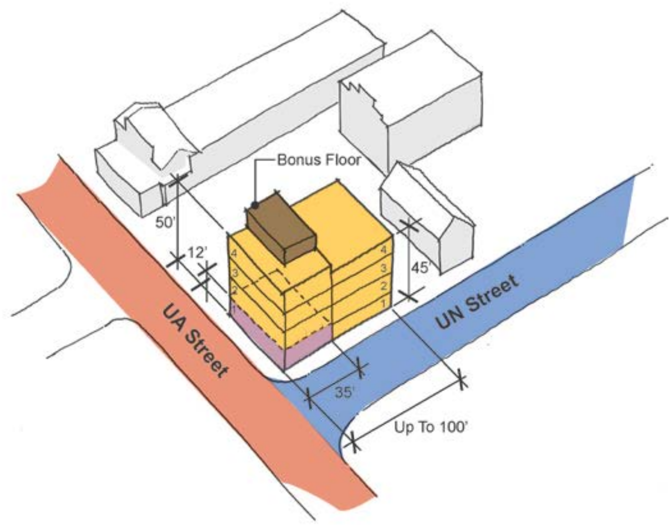


Figure 4: Current IS-FBC zoning (requires height reduction to 45' after 35' depth)

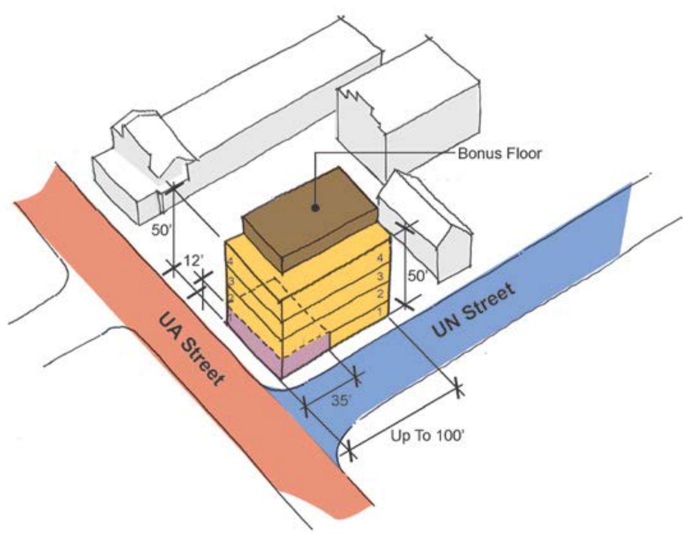


Figure 5: Proposed IS-FBC height change (would allow 50' height throughout lot)

C. Height and Massing – Neighborhood and Streetscape Context

The proposed height change will impact building height and massing for new construction (including building additions) in relationship to existing buildings on UN streetscapes. Although up to 5' of additional height would be allowed on the UN streets, the maximum number of stories will remain the same (4 stories maximum). The prevailing scale of existing buildings on UN streets is two or three-story height (see Image 6). The UN subdistrict current allows up to 45' in building height (4 stories); the text amendment would increase this to 5' only in those cases where the building is at a UA/UN corner.

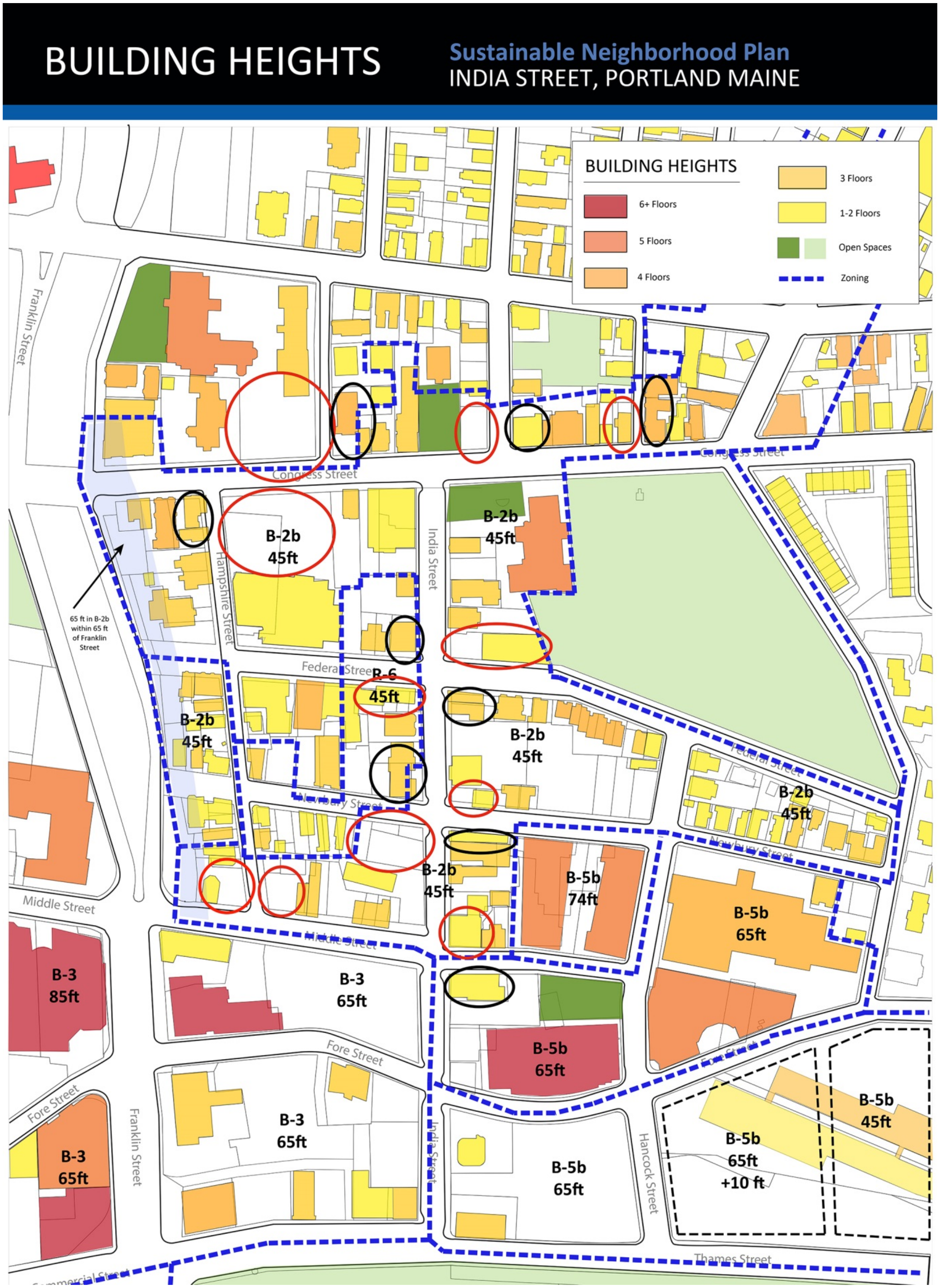


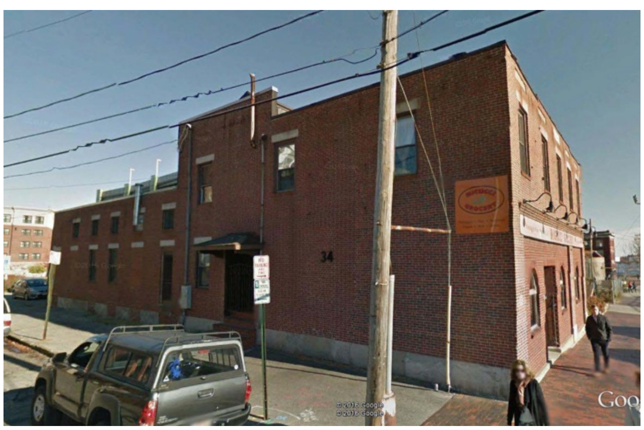
Figure 6: Existing Building Heights and Previous Zoning (circles indicate those parcels affected)

In reviewing the potential impacts of the text amendment request, staff discussed the height change with Deb Andrews, Historic Preservation Program Manager, who was also involved with the creation of the India Street Historic District and the India Street Form-based Code zone as it relates to historic fabric of the neighborhood. She raised the concern that the 50’ height creates the potential for more abrupt transitions from the smaller-scale residential buildings on UN streets than had been the original intent of the code. The setback requirement between one of these 50’ buildings and a neighboring parcel would be 5’ minimum. Even in the case of those nine (9) affected parcels within the India Street Historic District, the code has been written to not allow historic preservation review reduce the allowable height of new construction. Therefore, the IS-FBC is the only regulation on building heights when considering building design in context with historic buildings and streetscapes.

The applicant makes the argument (Attachment C) that stepping down the roof from 50’ to 45’ mid-building creates an unusual roof line that is not found in the neighborhood building context and not a typical roof form found in the historic buildings:

> *Inventorying neighboring structures, we note that the existing historic buildings do not include offsetting roofs in their designs. The text amendment requested will allow buildings on corner lots to reflect those structures in India Street neighborhood that are considered significant.*

Staff finds this assessment by the applicant is not categorically true – some existing buildings have roofs that step down from a taller retail street to a smaller scale on the residential streets. Examples on India Street include Micucci’s and the Tackle Shop. However, stepped roof forms are typically found in commercial or industrial buildings and not in the case of a mixed-use building. In the case of The Tackle Shop, the building was originally a residential building but now houses a commercial use.



VI. COMPREHENSIVE PLAN ANALYSIS

Goals and policies relevant to the proposed text amendment have been included below:

India Street Sustainable Neighborhood Plan (ISSNP): The ISSNP addresses three topics related to this text amendment for mixed-use building heights:

1. Mixed-use: The neighborhood plan calls for development and policies that continue the mixed-use nature of the neighborhood. The text amendment would make the desired mixed-use forms on UA more achievable and feasible.

Goal: Enhance Mixed-use Nature of Neighborhood – New development and the built environment should continue to support and enhance mixed uses.

Principle 4: Mixed-Use Neighborhood – The neighborhood plan should allow the mixed-use nature of this neighborhood to continue and expand, . . . Real estate developments, policies, and economic development plans that maintain or grow the level of service and amenities for the neighborhood will be encouraged.

2. Varying building scales: The plan acknowledges that the existing built context includes diverse building types and scales and allows for this to continue to be the case in the neighborhood with new development proposals.

   Goal: Diversity – The built environment of the neighborhood is diverse; a dynamic urban neighborhood keeps a diverse mix of building types by including contemporary and historic buildings, and at varying building scales.

3. Compatibility with existing context: Compatibility with the existing context, especially the historic context, is a key component of the ISSNP. The goal of compatibility of building scale is mentioned in both the Goals and Principles sections of the plan. The question to consider with the proposed text amendment is whether a 50' tall building can be considered compatible with the neighboring UN building fabric.

   Goal: Good Quality Design – Compatibility, especially in terms of building scale, is essential in a historic and mixed-use neighborhood such as this one.

   Principle 7: Guided Growth – Smaller infill developments will be strongly encouraged as a way to expand the capacity for neighborhood growth and test prospective housing unit types.

   Principle 8: 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. . . . 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.

Eastern Waterfront Master Plan and Building Height Study: The proposal does not contradict the findings or recommendations of the Eastern Waterfront Building Height Study or Master Plan (which overlaps with part of the IS-FBC zone).

1. Alignments and Views: India, Hancock, Mountfort, and Franklin Streets are identified as view corridors to be protected – the text amendment does not propose a change that would impact any view corridor. The text amendment affects parcels facing India Street but not any of the other view corridors.

2. Allowable Heights: The height study recommends buildings be 4 to 6 stories, the zone change complies with this recommendation. The proposed height amendment does not change the maximum story height which is 4 stories in both the UA and UN subdistricts.

   Conclusions: It is the fining of this study that a four to six story building fabric will be compatible with the policies of the Eastern Waterfront Master Plan while protecting the views and character of the surrounding neighborhoods. . . . The recommendations of this report encourage varied rooflines within blocks, protected view corridors, moderately scaled development.

3. Vacant, Underutilized Land: Both the India Street and Eastern Waterfront Master Plans encourage infill development and hold the view that built land is preferable to vacant land. If the Board finds the current IS-FBC zoning prevents building from being feasible in UA/UN intersections, then the proposed text amendment would also support these Comprehensive Plan documents in enabling development on vacant land (in some cases).

   Vacant, Underutilized Land: The development history of the Study Area has resulted in a largely underutilized portion of urban waterfront currently dominated by empty pavement and surface parking. . . . Given its location and proximate attractions, significant potential for redevelopment exists within the Eastern Waterfront.

   India Street Corridor Development Considerations: Promote sensitive infill development

VII. STAFF RECOMMENDATION

Although staff considers the scale of UN streets to be an important issue, the fact that the previous B-2b zone allowed for the 50' max. height in mixed-use buildings was a compelling argument to support the applicant's request. The staff recommends the proposed Zoning Text amendment to the IS-FBC zone as presented in Attachment 1.

VIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant, the policies of the IS-FBC Zone, Portland's Comprehensive Plan, public comment, the information provided in public hearing on February 23, 2016 and/or other findings as follows:

1. **Text Amendments to 14-275.7: Corner, IS-FBC Zone**
   The Planning Board finds that the proposed text amendment to Section 14-275.7 Subdistrict Dimensional Requirements: Corner presented in Attachment 1 of this report, [**is or is 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 amendment to Section 14-275.7 Subdistrict Dimensional Requirements: Corner.

ATTACHMENTS:

Report Attachments

1. Proposed Ordinance Text Amendment IS-FBC

Applicant's Submittal

A. Application
B. Narrative explaining text amendment rationale
C. Letter from project architect Mark Mueller, AIA

(d) Corner conditions.

For corner lots where two 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 feet 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 the subdistrict onto which the building FAÇADE faces.

CORNER

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.~~
Building Height (for entire parcel)	50' 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

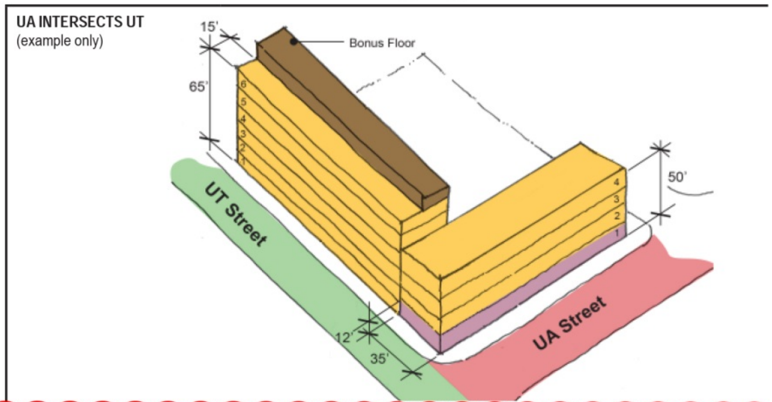
Dominant Subdistrict (35' deep)	UN
Orientation - Principal Frontage	determined by applicant
• Corner lots shall be treated as having street frontage on all streets regardless of building orientation	

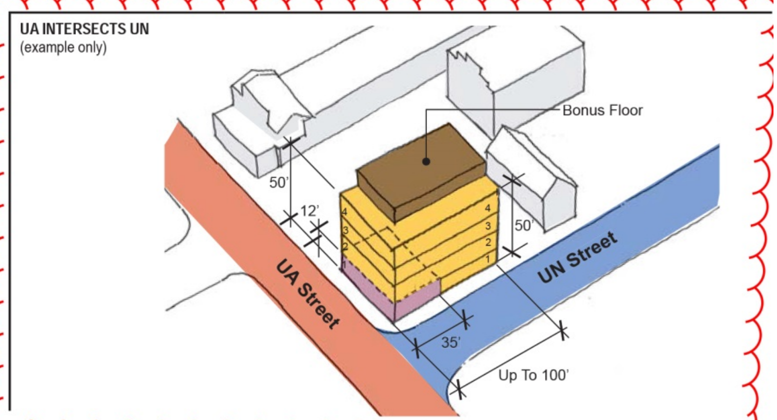
UN INTERSECTS UN

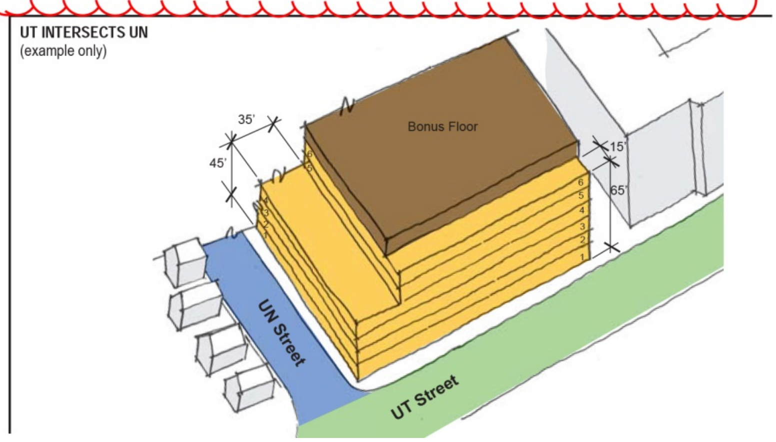
Building Length maximums:	
Principal Frontage	30' max.
Secondary Frontage	50' max.

Notes and Exceptions

* Does not have to correspond to legal building address







Att. A

PROJECT NAME: INDIA FORM BASED CODE - TEXT AMENDMENT

PROPOSED DEVELOPMENT ADDRESS:

TEXT AMENDMENT - 62 INDIA - ZONEWIDE AMENDMENT

PROJECT DESCRIPTION:

AMENDMENT TO HEIGHT STANDARDS -

SECTION 14-275.7; CORNER

CHART/BLOCK/LOT: INDIA STREET FORM BASED CODE ZONE

CONTACT INFORMATION:

Applicant – must be owner, Lessee or Buyer Name: JOE DASCO Business Name, if applicable: INDIA NEWBURY RESIDENCE / REGER DASCO PROPERTIES Address: 15 MIDDLE ST., SUITE A2 City/State : PORTLAND, ME Zip Code: 04101	**Applicant Contact Information** Work # — Home# — Cell # 413-244-9092 Fax# — e-mail: joedasco@comcast.net
Owner – (if different from Applicant) Name: Address: City/State : Zip Code:	**Owner Contact Information** SAME Work # Home# Cell # Fax# e-mail:
Agent/ Representative Name: ALI MALONE Address: 15 MIDDLE ST., SUITE A2 City/State : PORTLAND, ME Zip Code: 04101	**Agent/Representative Contact information** Work # Cell # 207-653-7750 e-mail: ali.malone@gmail.com
Billing Information SAME Name: Address: City/State : Zip Code:	**Billing Information** SAME Work # Cell # Fax# e-mail:

Engineer	Engineer Contact Information
Name: N/A Address: City/State : Zip Code:	Work # N/A Cell # Fax# e-mail:
Surveyor SEBAGO TECHNICS Name: WILL CONWAY Address: City/State : Zip Code:	**Surveyor Contact Information** Work # Cell # Fax# e-mail:
Architect Name: MARK MUELLER ARCHITECTS Address: 100 COMMERCIAL ST. City/State : Zip Code: PORTLAND, ME 04101	**Architect Contact Information** Work # 774-9057 Cell # Fax# e-mail: mark@muellerarchitects.com
Attorney Name: N/A Address: City/State : Zip Code:	**Attorney Contact Information** Work # N/A Cell # Fax# e-mail:

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

N/A - ZONE WIDE TEXT AMENDMENT

OWNERS OF 62 INDIA (CURRENTLY PARKING LOT)

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

N/A - ZONE WIDE AMENDMENT

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

~~**Existing Use:** Describe the existing use of the subject property:~~ EXISTING ZONING LANGUAGE:

CURRENT ZONE STIPULATES THAT: "WHERE TWO SUBDISTRICTS INTERSECT AT A STREET CORNER, THE DIMENSIONAL REQUIREMENT [...] OF THE "DOMINANT" SUBDISTRICT SHALL APPLY FROM 1ST THROUGH 3RD LOT LAYER (35' DEEP INTO LOT MEASURED FROM THE DOMINANT LOT LINE) [...]

IN THE CASE OF A UN AND UA DISTRICT INTERSECTING AT A CORNER, THE UA HEIGHT OF 50' (EXCEPT ON CONGRESS) CAN ONLY CARRY 35' FEET DEEP BEFORE STEPPING TO 45'

Current Zoning Designation(s): INDIA STREET FORM BASED CODE ZONE

Proposed LANGUAGE ~~**Use of Property:** Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.~~

PLEASE SEE ATTACHED EDITS TO SEC 14-275.7 - SUBDISTRICT DIMENSIONAL REQUIREMENTS - CORNER. CHANGE WOULD ELIMINATE 5' STEP DOWN 35' INTO PARCEL WHERE A V.N AND VA LOT INTERSECT - 50' HEIGHT FOR ENITRE PARCEL

Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1' = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

APPLICATION FEES:

Check all reviews that apply. (Payment may be made by Credit Card, Cash or Check payable to the City of Portland.)

Zoning Map Amendment ___ $2,000.00 (from ______ zone to ______ zone) **Zoning Text Amendment** X $2,000.00 (to Section 14-275.7) **Combination Zoning Text Amendment and Zoning Map Amendment** ___ $3,000.00 **Conditional or Contract Zone** ___ $3,000.00 (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	The City invoices separately for the following: • Notices ($.75 each) • Legal Ad (% of total Ad) • Planning Review ($40.00 hour) • Legal Review ($75.00 hour) • Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.

APPLICATION SUBMISSION:

1. All site plans and written application materials <u>must be submitted electronically on a CD or thumb drive with each plan and each document submitted as separate files.</u> Naming conventions for the individual files can be found on the **Electronic Plan and Document Submittal** page of the City's website at <u>http://me-portland.civicplus.com/764/Electronic-Plan-and-Document-Submittal</u>

2. **The submission shall include the following materials:**
   a. One (1) paper set of the zoning amendment application, concept plan and written narrative.
   b. ~~Contract and conditional rezoning applications must include site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations~~ and ~~compatible with the surrounding neighborhood.~~

* LETTER FROM MARK MUELLER ARCHITECTS ATTACHED
* SEC. 14-275.7 EDITS ATTACHED
* WRITTEN NARRATIVE ATTACHED

APPLICANT SIGNATURE:

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant:	Date:
[signature]	1/25/2016

<u>India Street Form Based Code Text Amendment:</u> Zoning Language Change Narrative

Section 14-275.7: Subdistrict Dimensional Requirements--Corner

Over the past few months we have been closely watching the creation and approval of the new India Street Form Based Code. We own and are working to develop a lot at 62 India Street, on the corner of India and Newbury. The lot is currently a surface parking area and glass company. We are planning to create a mixed-use building with first floor retail space facing India Street on the Urban Active Subdistrict (UA). There will be a residential lobby entrance and concealed parking area entrance on the Newbury Street (Urban Neighborhood-UN) side, to service the three upper floors of residential condominium units.

Through the process of reviewing the new zone and related materials, as it relates to our parcel, we have come up with a zone-wide text amendment that we feel would improve the quality of new development in the neighborhood while still meeting the objectives and design standards of the Form Based Code and India Street Neighborhood Sustainable Neighborhood Plan.

The Form Based Code currently states that:

For corner lots where two 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 the subdistrict onto which the building FACADE faces.

As we have begun to design our building it has become clear that this stipulation, especially when coupled with the requirement for a 12' ground floor, creates several practical challenges. By **eliminating a need for corner lots (where UA and UN subdistricts intersect) to step down by 5 feet, 35 feet into the lot,** we believe the intent of the zone will be better met for the following reasons:

- The current Form Based Code, as well as the old B2B zoning, recognizes India (as well as Congress, Commercial and Middle Street) as being areas of 'concentrated commercial activity.' The height maximum had previously been 50' under the B2B and, under the FBC it is 50' for the entire site IF there is no frontage on the corner of a different subdistrict, regardless of site depth.
- The current language defines the 'dominant' subdistrict but the corner lot language often creates a dynamic where the non-dominant subdistrict dictates the majority of the site.
- The 12' first floor requirement makes creating appealing living space above more challenging when the height limit is 45'. Additionally, stepping a building down can be logistically impractical and can detract from other more impactful design expenditures. The intersection of the UA and UN zones is currently the only intersection in the whole India Street Form Based Code Zone that requires a 5' (half story or less) step down.
- Adjusting the height limit to that of the 'dominant' zone for the entire site will *not* inhibit smart, 'human-scale' design or prohibit the protection of street view corridors or varied and permeable block faces.

We believe that making a small change to the current language will result in construction that will still meet the carefully thought out objectives and create better designed living space and more feasible and cohesive construction.

Att. C

M A R K
MUELLER
ARCHITECTS

January 21, 2016

Caitlin Cameron
Portland Planning Office
389 Congress St.
Portland, Maine 04101

RE: New India Street Form-Based Zone
62 India Street Text Amendment

To the Portland Planning Staff,

In reference to the new India Street zone, I am writing a narrative as a supplement to a text amendment proposal presented by Reger/ Dasco Properties.

On corner lots where the dominant 'UA' and 'UN' zone intersect, the intent of this amendment request is to initiate a height increase in the Urban Neighborhood zone. Thus, equating with what is current in the adjacent Urban Active zone. Currently, the two zones height limits vary by a total of 5'. The variation of allowable building height relates to our project, whereas the two maximum heights bisect the proposed building.

We seek to create a level maximum building height of 50' over the entire property.

The reasoning for this request are initiated by the requirement of a 12' minimum ceiling height in the 'UA" zone. When added to the depth of structure, this additional first floor height translated into the building within the neighborhood zone will not allow continuity of floor heights and still meet the lower height limitations. This in-turn means the heights of important architectural features, windows/doors and roof elements will not create horizontal alignment.

Our amendment to the new zone will permit alignment of these key architectural features. It is our opinion, with this variance request it will allow projects on corner lots to further increase probability of compliance with the new Historic Preservation overlay zone.

100 Commercial St
Suite 205
Portland, Maine 04101
Phone: 207.774.9057
Fax: 207.773.3851
E-Mail:
rfi@muellerarchitects.com
Member AIA

MARK
MUELLER
ARCHITECTS

Regarding construction feasibility of the current wording, the 5' height difference in the roofs will create elements of curious offsetting fascias and soffits. The additional height, in this case does not afford space for better living, but in essence will most likely be un-occupiable. Not to mention additional constructions costs that do not realize benefits to the residents. Where step down are desirable, our opinion is to specify offsets that are in full story increments.

Inventorying neighboring structures, we note that the existing historic buildings do not include offsetting roofs in their designs. The text amendment requested will allow buildings on corner lots to reflect those structures in India Street neighborhood that are considered significant.

With the minor adjustment to new ordinance on corner lots, we support the recent efforts of your office in the new means and implementation of master planning Portland's neighborhoods.

Sincerely,

Mark Mueller AIA

C.C. Reger/ Dasco Properties

100 Commercial St
Suite 205
Portland, Maine 04101
Phone: 207.774.9057
Fax: 207.773.3851
E-Mail:
rfi@muellerarchitects.com
Member AIA

Subject: Response to IS-FBC Zoning Text Amendment
Applicant: Joe Dasco
Location: 62 India St.

This is a response to the request for IS-FBC text amendment. The IS-FBC was written based on over 2 years of research and recommendations for the India Street Neighborhood. The purpose of having a UN district that has a maximum height of 45' and a UA district that has a maximum height of 50' was to reduce the heights of buildings in neighborhoods which would directly relate to the scale of that residential area.

Questions to the Planning Board:

Over the last 2 years, the applicant had every opportunity to attend any of the various meetings that helped the City define the IS-FBC. Why should the City grant this text amendment to the IS-FBC at this time after it was recently adopted?

Would you agree that granting a text amendment in regards to height for UA/UN will set an example for other property owners to also request higher height maximums in the future?

The applicant's main argument is that it is not feasible to design a building under the current UN/UA code guidelines. The term feasible is defined as possible to do easily or conveniently. Adding an additional 5' of height to the UN portion of UN/UA corner lots does not make it anymore feasible to complete construction. See notes below. Would you agree with this statement?

The applicant's preliminary design (attached) as submitted to the Historic Preservation Board, shows 4 stories and 50'. The floor to ceiling height in the upper 3 floors is 9'-7". The average height of a floor to ceiling is 8'-0". The applicant shows structural members that are over 24" for the 3rd and 4th floors and structural members that are over 36" for the 2nd floor. Most likely these are trusses. The applicant could in fact reduce the height of the building by using engineered lumber or by reducing the floor to ceiling height in the upper floors. This is not any less feasible. Would you agree?

Lastly, below are a series of 6 statements. Would you agree that these are all true?

The applicant claims that it is not feasible to design a building that meets the code as written and I would strongly disagree. The following are a list of reasons why it is in fact feasible to build a structure at a UA/UN intersection under the current code.

1) Assuming structural framing of 18" or less (the use of engineered lumber or similar can accommodate large spans within this dimension), the attached sectional diagrams provide 4 options for new construction that have floor to ceiling heights of no less than 9' and meet all of the requirements in the IS-FBC.
2) Just because a 12' minimum clearance is required on the first floor for UA frontage of the lot, it does not mean that the applicant couldn't reduce the height of the first floor for the remaining part of the UN frontage (65') See option #1.

3) The applicant claims that it is not feasible to have 4 stories in 45' if the first floor is 12' minimum clearance. This is simply not the case. See option #3 which makes the entire building 45' in height.
4) Under section A (Zoning Intent), the applicant makes the case that a 5' increase for corner lots will not have that much of an impact. He tells us that there are 20 of these lots in the IS-FBC district. The intent of lots that are on a corner between 2 different designations in the IS-FBC is to define these lots, so that they either step up or step down in height according to the adjacent zone. I believe this is a fair guideline. As a similar example, in the land use code, chapter 14-51 (Extension of Zone Lines), the code allows properties which are between 2 zones to choose the less restrictive zone, but the dimensional requirements for the more restrictive zone must be met (this includes the height).If the planning board is in agreement with allowing the applicant to make this text amendment for UA/UN corner lots, then the board should also discuss changing the text for the entire UN zone to allow for 50' as the maximum height.
5) Under section B, the applicant claims that the step down of the roof is "awkward" and that the entire height should be increased to 50' to allow for 4 stories. Yet, again, option #3 would allow for a roof that does not step down and is 4 stories.
6) Under section B, the applicant offers 2 solutions, 1) a total building height of 50' or 2) a step down of 1 story to only allow 3 stories on the UN portion of the building. The second option is already an option under the current IS-FBC. The code does not state that you can only step down 5'. It says you can step down as much as you would like as long as the height in the UN is at least 2 stories or 25' and no more than 4 stories and 45'. See option #4

Board Consideration Questions:

1) Does the current zoning height requirement at UA/UN intersections make development feasible? As clearly explained above, the answer is yes.
2) Does the height increase to 50' at UA/UN intersection comply with the intent of the UN subdistrict? If the 50' complies with the UN subdistrict then all properties in the UN district should have a maximum height of 50'.
3) What is the impact of the text amendment height change on the existing context? The existing context is small scale residential homes that are 2.5-3 stories in height. Although the applicant is only requesting an additional 5' in height, that additional 5' could be the difference between an adjacent home that has sunlight and a home that is always in shadow. The height change could drastically impact neighboring structures. Under IS-FBC, this corner lot (UN/UA) is already granted a 100' run along the UN frontage (in contrast to other UN structures that are only allowed to have 50'). Adding height to this structure begins to create a larger massing that would be completely out of context with the existing infrastructure and out of scale with the current neighborhood.
4) Does the text amendment comply with the Comprehensive Plan goals?
   1) Compatible new development with existing scale No
   2) Varying building scale No, the applicant is proposing a change to the code that would not encourage variation. He is only creating a large massive block and the change in the code would allow other parcels with the UN/UA designation to do the same.
   3) Small infill development No, this is not a small project
   4) Allowable height The current height is already tall enough for 4 stories. The applicant can also add a 5th floor if he meets the density requirements

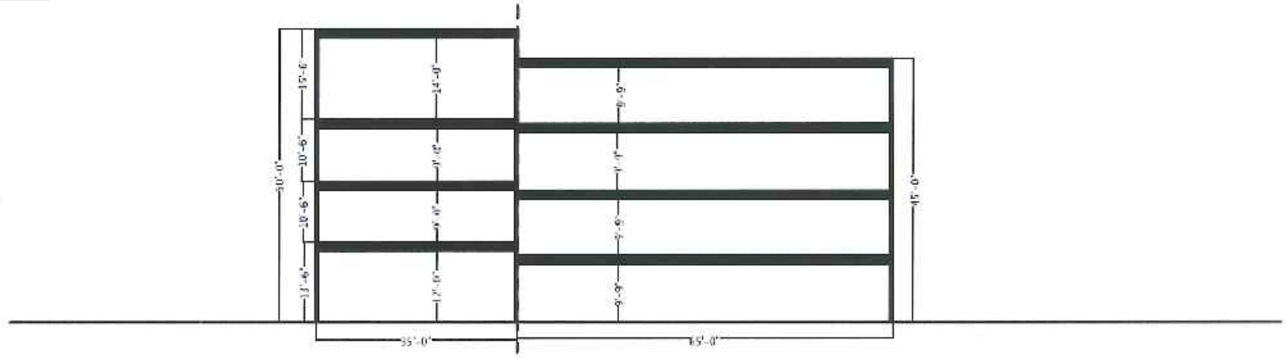
5) View corridor protection No. The India St view corridor would be impacted by this request for properties which lie on the opposite side of Newbury St. from this parcel.

5) Does the text amendment further enable Comprehensive Plan goals?

1)Mixed use development N/A it does not impact this type of development

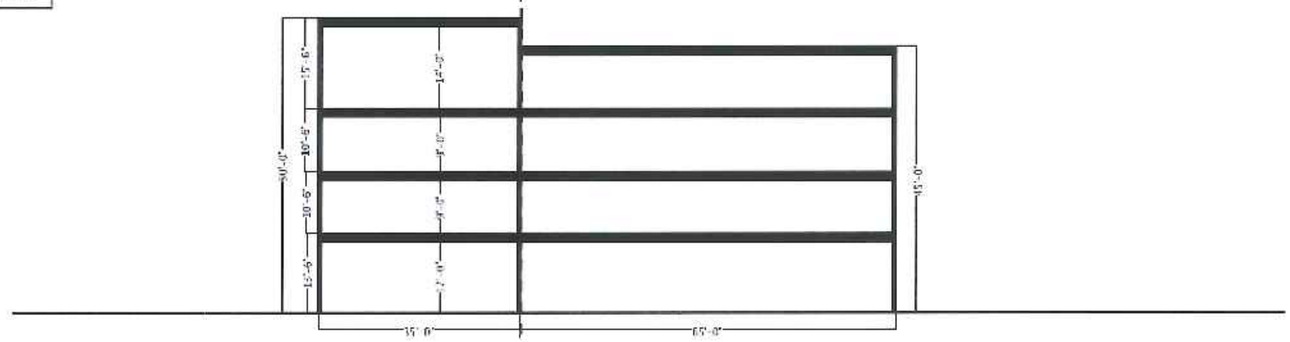
2) Develop vacant land N/A land will still have as much value for developers under the current IS-FBC height for UA/UN.

OPTION #1



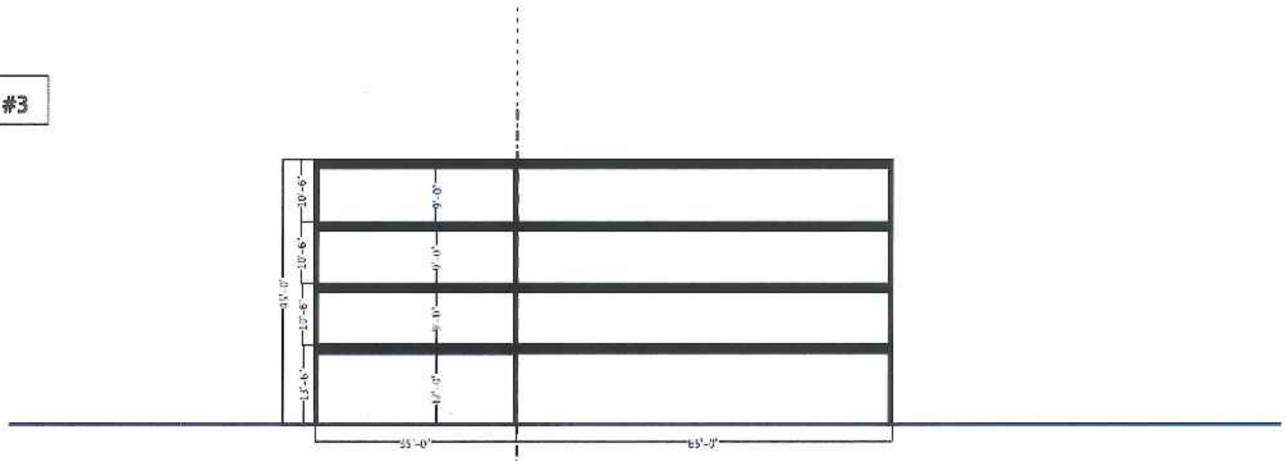
UN STREET FRONT (Newbury Street)

OPTION #2



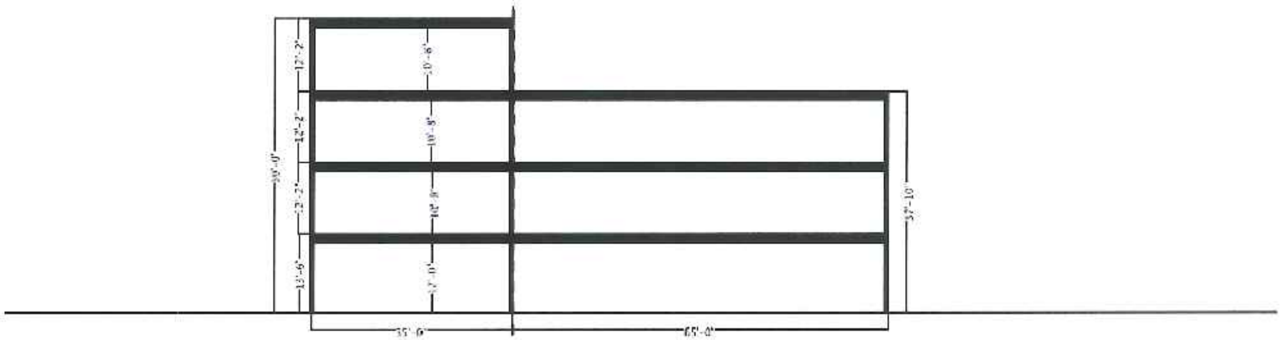
UN STREET FRONT (Newbury Street)

OPTION #3



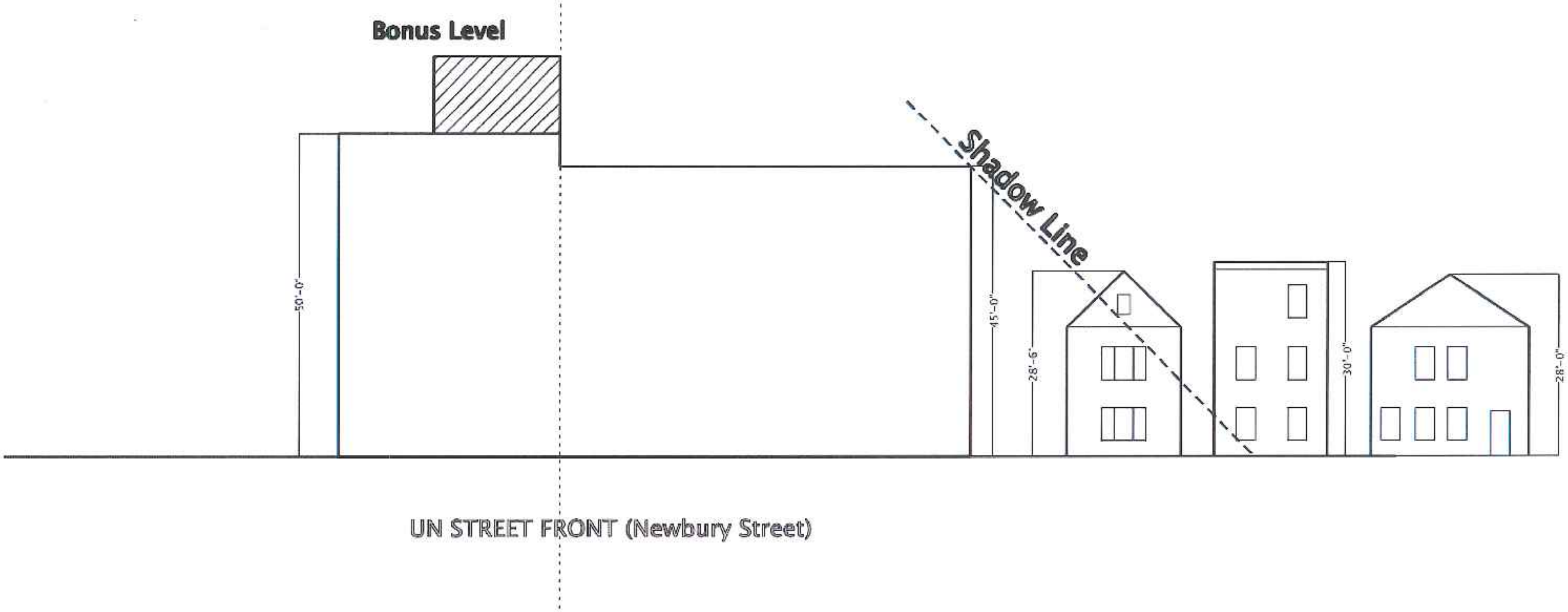
UN STREET FRONT (Newbury Street)

OPTION #4

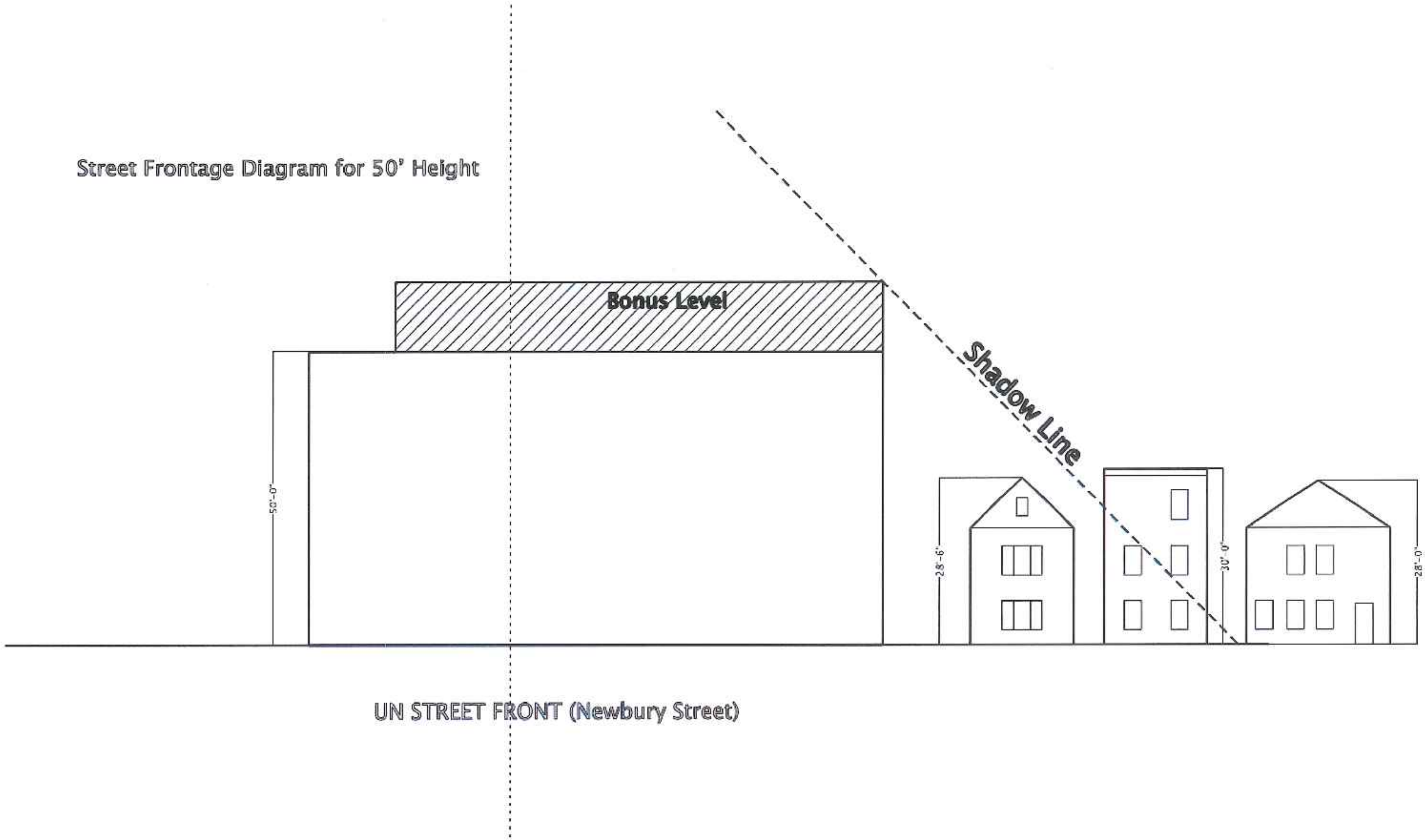


UN STREET FRONT (Newbury Street)

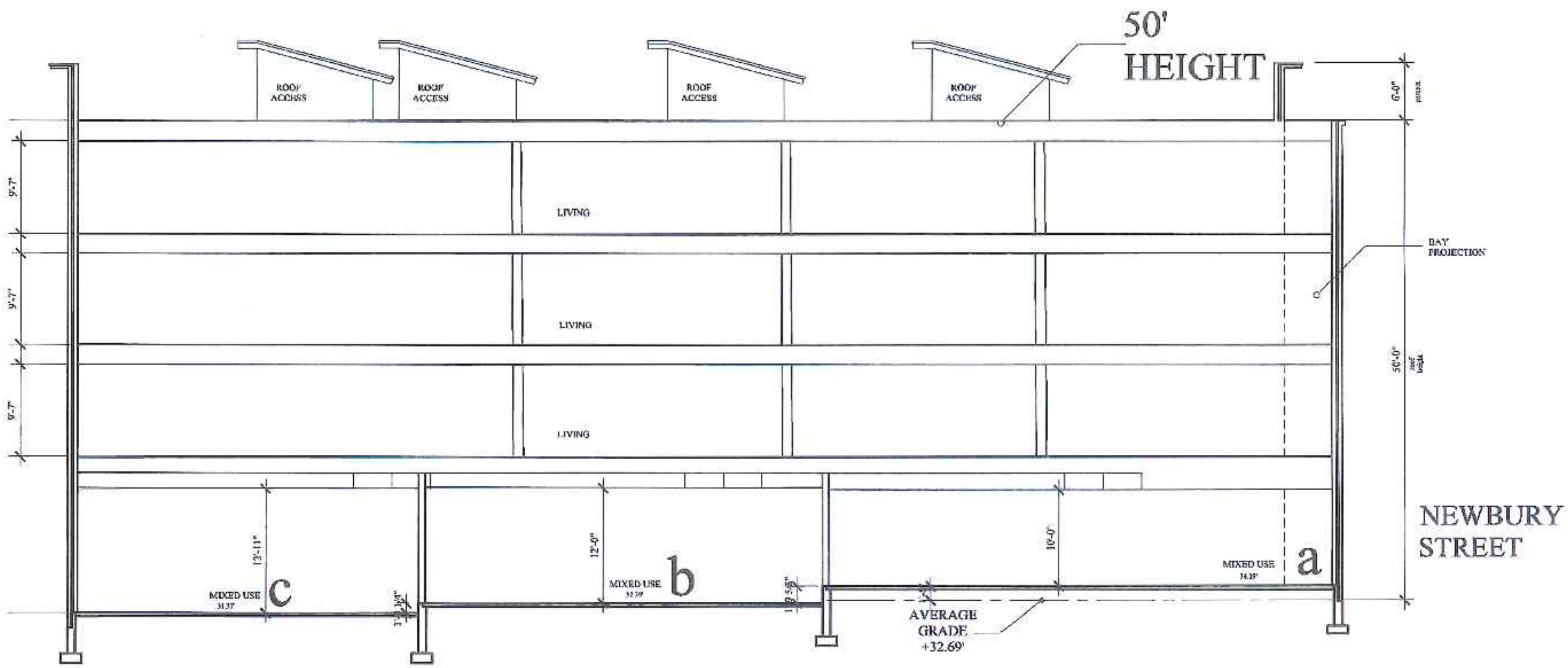
Street Frontage Diagram for 45' Height



Street Frontage Diagram for 50' Height



UN STREET FRONT (Newbury Street)



BUILDING SECTION DIAGRAM
SCALE: 3/32"=1'-0"

PROPOSED

HP-3.0

MARK MUELLER ARCHITECTS

HISTORIC PRESERVATION

FEBRUARY 16, 2016

62 INDIA STREET

PLANNING BOARD REPORT

PORTLAND, MAINE

IS-FBC Zoning Text Amendments
Division 15.2 IS-FBC Zone, Division 20 Off-Street Parking, and Division 22 Signs
City of Portland, Applicant

Submitted to: Portland Planning Board Public Hearing Date: February 23rd, 2016	Prepared by: Caitlin Cameron, Urban Designer Date: February 18th, 2016

I. INTRODUCTION

The City is seeking text amendments to three divisions of Chapter 14 Land Use Code in relation to the newly adopted IS-FBC zone. The text amendments proposed are to add cross-references and to correct a scriveners error associated with the new IS-FBC zone.

The request follows the discovery of three errors or omissions in the course of implementing the new code. These amendments seek to correct the one error and the two cross-references missing. The amendments can be found as Attachments 1-3.

II. PUBLIC COMMENT SUMMARY

A notice of this Hearing appeared in the February 15th and February 16th, 2016 editions of the *Portland Press-Herald*. A Neighborhood Meeting is not required. No public comments have been received at the time this report was prepared.

III. EXISTING ZONING

The India Street Form-based Code (IS-FBC) zone is a recently-created new zone covering the India Street neighborhood which is east of Franklin Street. The IS-FBC zone references other divisions within the Chapter 14 Land Use Code including Division 20 Off-Street Parking and Division 22 Signs. Each of those divisions have zone-specific sections or exceptions. When the IS-FBC zone was created some of the cross-references to these other divisions were missed and now are being corrected.

IV. PROPOSED ZONING AMENDMENTS

The city as applicant is requesting text amendments directly related to corrections and cross-references as they relate to the new zone, India Street Form-based Code zone. Following is a summary of the text amendments as proposed by staff along with summary statements that highlight the purpose of the proposed text amendment and specific points for the Board's consideration. The full text amendments are included in Attachments 1-3.

These amendments are requested by the Planning staff to address some immediate needs in the neighborhood. There is some immediacy to making these changes because there are several projects in the community that are affected by the omissions. Staff is seeking to make these changes to clarify the zoning interpretations for these projects.

Staff Summary: The requested amendments are as follows:

Division 15 IS-FBC zone (Attachment 1)
When the City Council adopted the new India Street Form-based Code, an amendment was made to increase the building length on UN streets from 30' to 50'. That adopted change was altered throughout the IS-FBC text except for in *Section 14-275.7: Corner* where the section UN INTERSECTS UN, which is no longer relevant because of the amendment to allow 50' in building length, was inadvertently left in the text. This amendment seeks to correct that error by deleting those four lines highlighted (see Attachment 1).

Division 20 Off-Street Parking (Attachment 2)
Division 20 covers off-street parking requirements and exceptions. When the IS-FBC zone was first created, some cross-references were added to this section, for example, developments in the IS-FBC zone are eligible for the Fee-in-Lieu of Parking provision in Division 20, as well as an off-street parking exemption for the first three dwelling units, same as the R-6 zone.

One additional exception for the B-2b zone had intended to be extended to the IS-FBC but the reference was omitted. The exception is for a change of use of 10,000 square feet or less is not required to provide parking for non-residential uses (Attachment 2):

> *(d) Change of use in the B-2b or IS-FBC zone: 1. A change of use of 10,000 sf. ft. or less of floor area of a building or a portion of a building need not provide parking for non-residential uses, provided that if the number of existing parking spaces serving the site is less than the requirements of this division, that number of parking spaces may not be reduced lower than the required amount prior to the change of use . . .*

Many blocks of the IS-FBC zone were previously zoned B-2b and the neighborhood, a small-scale, mixed-use, historic urban neighborhood, has many small-scale retail establishments in historic buildings that were built before parking was required. Commercial and retail spaces in this neighborhood, like many places on the peninsula, are site constrained, often built right up to the street line without parking areas. In addition to the feasibility challenges of adding parking to these existing properties, there is also a potential economic hardship for property and business owners to have this additional burden of providing more parking. This exception only applies to non-residential uses. For these reasons, staff believes it is appropriate to extend the same exception for change of use under 10,000sf that was previously available to many of these properties under the B-2b to the IS-FBC zone.

Division 22 Signs (Attachment 3)
Division 22 covers sign requirements and exceptions. The IS-FBC zone does not create new requirements for signs within the zoning. Division 22 is organized according to zone – what signs are allowed or prohibited is based on zone. However, the IS-FBC was not added to this division when the zone was created. To correct this omission, the IS-FBC has been inserted in the existing regulations as follows (also Attachment 3):

- IS-FBC UN subdistrict has the same sign regulations as the residential zones (R-1, R-6, IR-1, IR-3)
- IS-FBC UA and UT subdistricts has the same sign regulations as the business zones (B-1, B-2, B-3)

These designations primarily follow the previous zoning which was predominantly R-6 residential and B-2b, B-3, and B-5, B-6. Staff intends for the sign regulations align with the types of streetscapes intended to be created and maintained. The UN subdistrict is primarily small, private streets and is assigned the same sign regulations as residential streets. The UA and UT streets are intended to be commercial, active, and mixed-use streets where businesses already exists and are encouraged to continue to locate, therefore making the B-2 sign regulations the most appropriate for these two subdistricts.

V. COMPREHENSIVE PLAN ANALYSIS

Division 15 IS-FBC zone

The text amendment proposed for Division 15.2 is to correct a scriveners error associated with the new IS-FBC zone. Because the amendment corrects for errors and does not alter the content or intent of the Chapter 14, a Comprehensive Plan analysis is not required.

Division 20 Off-Street Parking

India Street Sustainable Neighborhood Plan (ISSNP): The ISSNP places priority for mixed-uses, urban building forms, and providing economic development opportunities, especially in the interest of providing goods and services to improve the quality of life for the neighborhood. Granting the requested parking exception would further these Comprehensive Plan goals.

> **Goal: Enhance Mixed-use Nature of Neighborhood –** New development and the built environment should continue to support and enhance mixed uses.
>
> **Principle 4: Mixed-Use Neighborhood –** The neighborhood plan should allow the mixed-use nature of this neighborhood to continue and expand, . . . Real estate developments, policies, and economic development plans that maintain or grow the level of service and amenities for the neighborhood will be encouraged.
>
> **Principle 5: Vibrant Local Economy** – Businesses are important to the success of a mixed-use neighborhood, and the vitality of the India Street Neighborhood economy impacts the city as a whole.
>
> **Principle 6: Retail Corridors** – The neighborhood's vitality will be heightened with more concentrated commercial activity – particularly restaurants and retail – along India and on Congress, Commercial, and Middle streets.
>
> **Principle 11: Quality Infrastructure** – Vehicle parking, especially surface parking lots, will be de-emphasized. On-street parking, reduced off-street parking requirements, modest off-street lots, structured parking, and car-sharking services will all be needed to satisfy demand.

Division 22 Signs

India Street Sustainable Neighborhood Plan (ISSNP): The ISSNP places priority for mixed-uses, urban building forms, and providing economic development opportunities, especially in the interest of providing goods and services to improve the quality of life for the neighborhood. The sign regulations assigned to the IS-FBC subdistricts correspond to the Comprehensive Plan goals of a mixed-use neighborhood but also of concentrated retail corridors.

> **Goal: Enhance Mixed-use Nature of Neighborhood –** New development and the built environment should continue to support and enhance mixed uses.

Principle 6: Retail Corridors – The neighborhood's vitality will be heightened with more concentrated commercial activity – particularly restaurants and retail – along India and on Congress, Commercial, and Middle streets.

VI. STAFF RECOMMENDATION

The staff recommends the proposed Zoning Text amendments to the Division 15.2 IS-FBC zone, Division 20 Off-street Parking, and Division 22 Signs as presented in Attachments 1, 2, and 3.

VII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant, the policies of the IS-FBC Zone, Comprehensive Plan analysis, public comment, the information provided in public hearing on February 23, 2016 and/or other findings as follows:

1. Text Amendments to 14-275.7: Corner, IS-FBC Zone
The Planning Board finds that the proposed text amendment to *Section 14-275.7 Subdistrict Dimensional Requirements: Corner* presented in Attachment 1 of this report, [**is or is 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 amendment to Section 14-275.7 Subdistrict Dimensional Requirements: Corner.

2. Text Amendments to 14-332.1 Zone specific off-street parking exceptions and modifications.
The Planning Board finds that the proposed text amendment to *Division 20 Off-Street Parking, Section 14-332.1 Zone specific off-street parking exceptions and modifications* presented in Attachment 2 of this report, [**is or is 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 20 Off-Street Parking, Section 14-332.1 Zone specific off-street parking exceptions and modifications.*

3. Text Amendments to 14-369.5 Tables.
The Planning Board finds that the proposed text amendment to *Division 22 Signs, Section 14-369.5 Tables* presented in Attachment 3 of this report, [**is or is 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 22 Signs, Section 14-369.5 Tables.*

ATTACHMENTS:

Report Attachments

1. Proposed Text Amendment IS-FBC Section 14-275.7 Corner
2. Proposed Text Amendment Division 20 Off-Street Parking
3. Proposed Text Amendment Division 22 Signs

(d) Corner conditions.

For corner lots where two 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 feet 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 the subdistrict onto which the building FAÇADE faces.

CORNER

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.
Building Height (for entire parcel)	50' 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

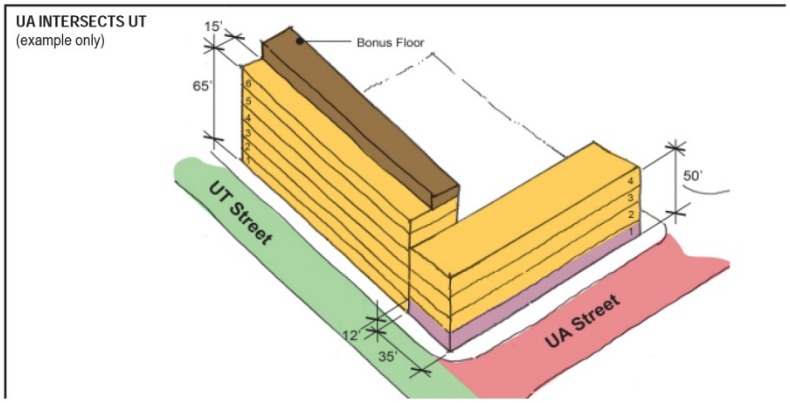
- Corner lots shall be treated as having street frontage on all streets regardless of building orientation

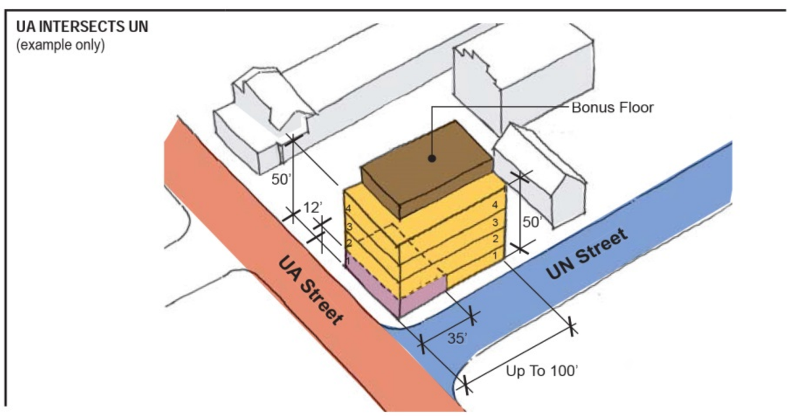
~~UN INTERSECTS UN~~

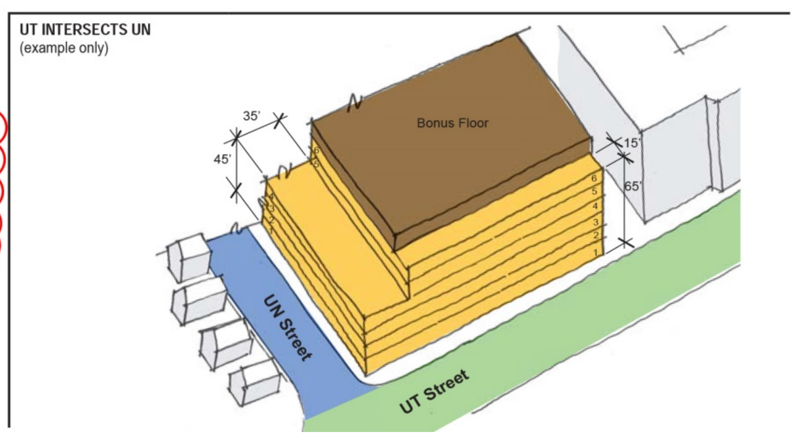
~~Building Length maximums:~~	
~~Principal Frontage~~	~~30' max.~~
~~Secondary Frontage~~	~~50' max.~~

Notes and Exceptions

* Does not have to correspond to legal building address







DIVISION 20. OFF-STREET PARKING

Sec. 14-332.1. Zone specific off-street parking exceptions and modifications.

The off-street parking requirements established for uses, established above in section 14-332 of this division, are hereby modified for the following zones according to the provisions described below.

(a) *IR-3, Island Residential Zone, Off-street parking:* Off-street parking shall not be required irrespective of the requirements of division 20 (off-street parking) of this article.

(b) *USM Overlay Zone, parking:* The parking requirements of section 14-332 (division 2) shall not apply to university buildings. Instead, the amount of parking required for any university building or building addition shall be determined by the planning board during site plan review, based on an analysis of campus-wide parking demand and supply, pursuant to a comprehensive university parking management plan, and treating all contiguous land (including land on opposite sides of the street) owned by the university as one lot. In determining the amount of parking required for any university building, the planning board may take into account such factors as:

1. The availability of off-campus parking and shuttle transportation to and from such off-campus facilities.

2. The ratio of commuter students to resident students.

3. The use of centrally located on-campus parking facilities so situated that students, faculty, staff and visitors arriving on campus can reasonably be expected to park in the central facilities and walk to their various on-campus destinations during the course of a school day.

4. Shared use of a single parking facility by two or more buildings when the peak parking demand period for such buildings do not overlap.

5. Development and implementation of a parking management plan which discourages on-street parking. On-street parking shall not be used to satisfy the university's parking demand.

6. Development and implementation of programs designed to reduce the number of automobiles parking on campus, such as ride share programs and incentives for use of bicycles and public transportation.

(c) *Recreation open space zone:* Off-street parking adequate to serve projected employee and visitor needs shall be provided. Parking needs projections provided by the applicant or the planning department should be considered in the review.

(d) *Change of use in the B-2b or IS-FBC zone:*

1. A change of use of 10,000 sq. ft. or less of floor area of a building or a portion of a building need not provide parking for non-residential uses, provided that if the number of existing parking spaces serving the site is less than the requirements of this division, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except:

   a. To the extent necessary to meet the requirements of the Americans with Disability Act; or

   b. To the extent it is a requirement or a condition of site plan review; or

   c. To the extent the change of use requires less parking than the previous use and the total number of parking spaces serving the site exceeds the parking requirements of this division for all uses on the site including the change of use.

2. A newly constructed building, a building addition or a change of the use of a building exceeding 10,000 sq. ft. of floor area, shall provide the parking required by this division.

(e) *B-3 Zone*: No off-street parking is required for changes of use.

(f) *I-R1, Island Business Zone:* Off-street parking shall be required at twenty-five (25%) percent of the required number of parking spaces for specified uses as provided in division 20 (off-street parking) of this article, except that residential uses shall meet the full parking requirement.

(g) *B-5 Zone:* No off-street parking shall be required.

(h) *B-6 Eastern Waterfront Mixed Use Zone:* Off-street parking for all projects regardless of size shall be governed by 14-332.2(c) of this article.

(i) *B-7, Mixed Development District Zone:* Off-street parking for all projects regardless of size, shall be governed by 14-332.2(c) of this article.

(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~~ or 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 as of June 3, 2015. This exemption may be utilized one time.

(Ord. No. 240-09/10, 6-21-10; Ord. 209-14/15, 5/4/2015; (Ord. 83-15/16, 11-2-2015)

DIVISION 22. SIGNS*

Sec. 14-369.5. Tables.

(a) *Table 1. Permitted sign types by zone.*
Note: The following legend applies for Table 1 below:

A. Allowed, no permit required;
B. Allowed, permit required;
C. Allowed, subject to licensing and permit required;
D. Prohibited;
E. Not Applicable

Parenthetical letters, i.e. (a), refer to the notes provided at the end of Table 1.

	R-1/R-6 IR-1/IR-3 Residential	*Institutional Uses in Residential Zones (a)*	*RP Residence Zones*	*ROS/RPZ Open Space*	*B-1 Neighborhood Business*	*B-2/IS-FBC Regional Business*
Freestanding In general(b)	D	B	B	B	B	B
Residential	A	A	A	E	A	A
Residential(d)	D	A	A	A	A	A
Temporary/ Portable (b)	D	D	D	D	D	B
Building Commercial Banner	D	D	D	B	B	B
Building Marker(f)	A	A	A	A	A	A
Awning	D	D	D	B	B	B
Identification(e)	A	A	A	A	A	A
Incidental(d)	A	A	A	A	A	A
Marquee(g)	D	D	D	D	D	B
Projecting	A	D	D	B	B	B
Residential(b)	A	D	A	E	A	A
Roof	D	D	D	D	D	D
Roof Integral	D	D	D	D	D	D
Suspended(g)	A	D	D	B	B	B
Temporary(h)	D	D	D	B	B	B
Wall	A	B	D	B	B	B
Window(I)	D	D	A	A	A	A
Miscellaneous Community, Cultural Banner	D	A	A	A	A	A
Directory(j)	D	A	A	D	A	A
Flag(k)	A	A	A	A	A	A
Pennant	D	D	D	D	D	D
Portable-in City right-of-way (A-frame)	D	D	D	D	C	C

	AB Airport Business	***Mixed-use Urban B-6/B-7*** *Downtown Business(B-3) & Urban Commercial(B-5)*	*I-B Island Business*	*B-4 Commercial Corridor*	*O-P Office Park*	*I-L,I-Lb Industrial*
Freestanding In general(b)	B	B	D	B	B	B
ResidentialI	A	A	A	A	E	A
Residential(d)	A	A	A	A	A	A
Temporary/ Portable (b)	D	D	D	B	D	D
Building Commercial Banner	B	B	B	B	D	B
Building Marker(f)	A	A	A	A	A	A
Awning	B	B	B	B	B	B
Identification(e)	A	A	A	A	A	A
Incidental(d)	A	A	A	A	A	A
Marquee(g)	B	B	D	B	B	B
Projecting	B	B	B	B	B	B
Residential(b)	A	A	A	A	E	A
Roof	D	D	D	D	D	D
Roof Integral	D	D	D	D	D	D
Suspended(g)	B	B	B	B	B	B
Temporary(h)	B	B	B	B	D	B
Wall	B	B	B	B	B	B
Window(I)	A	A	A	A	A	A
Miscellaneous Community, Cultural Banner	A	A	A	A	A	A
Directory(j)	A	A	A	A	A	A
Flag(k)	A	A	A	A	A	A
Pennant	D	D	D	D	D	D
Portable-in City right-of-way (A-frame)	C	C	C	C	D	D

	I-M,I-Ma, I-Mb Industrial	*I-H,I-Hb Industrial*	*Eastern Waterfront Port Waterfront Central Waterfront Special Use*	*Waterfront Port Development*
Freestanding In general(b)	B	B	B	B
ResidentialI	A	A	A	A
Residential(d)	A	A	A	A
Temporary/ Portable (b)	D/D	B/D	D	D
Building Commercial Banner	B	B	B	B
Building Marker(f)	A	A	A	A

Awning	B	B	B	B
Identification(e)	A	A	A	A
Incidental(d)	A	A	A	A
Marquee(g)	B	B	B	B
Projecting	B	B	B	B
Residential(b)	A	A	A	A
Roof	D	D	D	D
Roof Integral	D	D	D	D
Suspended(g)	B	B	B	B
Temporary(h)	B	B	B	B
Wall	B	B	B	B
Window(I)	A	A	A	A
Miscellaneous	A	A	A	A
Community, Cultural Banner				
Directory(j)	A	A	A	A
Flag(k)	A	A	A	A
Pennant	D	D	D	D
Portable-in City right-of-way (A-frame)	D	D	C	D

Notes for Table 1 (Permitted Sign Types by Zone).

(a) This column does not represent a zoning district. It applies to institutional uses permitted under the zoning ordinance in residential zoning districts. Such uses may include, but are not necessarily limited to, churches, schools and hospitals.

(b) The following limiting provision shall apply to freestanding signs in the B-1, B-2, ~~and ~~B-3, and IS-FBC zones on the Portland Peninsula (except for the B-2 zone in the vicinity of St. John Street): Such signs shall be allowed only if the front facade of the building (or individual tenant's/tenants' frontage in the case of a multi-tenant building) is set back a distance of at least twenty (20) feet from either of the front facades of the abutting buildings (or other tenants' frontage in the same multi-tenant building). Notwithstanding the limitations of this section, freestanding signs shall be permitted for gas stations provided that all signage for such gas stations conform to the requirements of this division.

(c) No commercial message allowed on sign, except for a commercial message drawing attention to an activity legally offered on premises.

(d) No commercial message of any kind allowed on a sign if such message is legible from any location off the zone lot on which the sign is located.

(e) Only address and name of occupant allowed on sign.

(f) May include only building name, date of construction, or historical data on historical site.

(g) If such a sign is suspended or projects above a public right-of-way, the issuance and continuation of a sign permit shall be conditioned on the sign owner obtaining and maintaining in force liability insurance for such a sign.

(h) The provisions governing portable/temporary signs shall apply. See section 14-370.

(i) Window signs shall be allowed without a permit and shall not be included when calculating cumulative sign area. However, in no event shall more than fifty (50) percent of window area be obscured.

(j) Directory signs, freestanding or on buildings, shall be allowed without a permit and shall not be included when calculating cumulative sign area, provided the sign area for each tenant does not exceed one and one-half (1.5) square feet.

(k) Flags used as a symbol of a government, political subdivision or other entity. Any flag not meeting this description shall be considered a banner sign or pennant and shall be subject to regulation as such.

(b) *Table 2. Sign regulations by zone.* Table 2 is comprised of fourteen (14) individual charts outlining sign regulations for each zone in the city. Regulations are for permanent freestanding and building signs and shall not apply to portable/temporary signs, special sign types, incidental signs, directory signs or exempt signs. See applicable sections of this division for regulations governing such signs.

Other applicable regulations:

* Signs in historic districts, in historic landscape districts, or on individual landmark properties shall also be subject to the provisions of article IX of this chapter.

Where the regulations of article IX are more stringent than those set forth in this division, the more stringent standard shall apply.

* Signs associated with projects otherwise subject to site plan review shall also be subject to the provisions of article V of this chapter.

* Signs located in the Pedestrian Activities District (PAD) overlay zone and in PAD Encouragement Areas within the B-3 zone shall also be subject to the standards set forth in the Downtown Urban Design Guidelines.

Contents of Table 2:

2.1 Sign Regulations for R-1—R-7, IR-1—IR-3, IS-FBC UN Residential Zones

2.2 Sign Regulations for Institutional Uses in Residential Zones

2.3 Sign Regulations for RP Residence-Professional Zone

2.4 Sign Regulations for ROS/RPZ Open Space Zones & Signs in all Municipal Parks

2.5 Sign Regulations for B-1 Neighborhood Business Zone — Single Tenant Lots

2.6 Sign Regulations for B-2 Regional Business Zone, IS-FBC UT or UA zone — Single Tenant Lots

2.7 Sign Regulations for AB Airport Business Zone — Single Tenant Lots

2.8 Sign Regulations for B-3 Downtown Business, B-5 Urban Commercial, B-6 and B-7 Mixed Use Urban, WC Waterfront Central, and EWP, Eastern Waterfront Port Zones

2.9 Sign Regulations for IB Island Business Zone — Single Tenant Lots

2.10 Sign Regulations for B-4 Commercial Corridor Zone — Single Tenant Lots

2.11 Sign Regulations for OP Office Park Zones

2.12 Sign Regulations for I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb Industrial and WPD Waterfront Port Development Zones

2.13 Sign Regulations for B-1, B-2, AB, IB, and B-4 Business Zones, and IS-FBC zone UT or UA — Multi-Tenant Lots

2.14 Sign Regulations for Gas Stations — All Zones Where Permitted

TABLE 2.1 R1 — R6, IR1 — IR3, IS-FBC UN: RESIDENTIAL AND ISLAND RESIDENTIAL ZONES

Freestanding Signs

	Single-Family Lots	PRUDs, Single-Family Subdivisions & Multifamily Developments — Development Identification Signs
Area	2 sq. ft.	15 sq. ft.
Height	5 feet	5 feet
Setback	5 feet	5 feet
Number freestanding signs per lot	1(a)	1 per major entrance

(a) A maximum of one (1) sign is allowed per lot. Such sign may be either a freestanding or a building sign.

Building Signs

	Single-Family Lots	*PRUDs, Single-Family Subdivisions & Multifamily*

		Developments – Development Identification Signs
Maximum permitted sign area	2 sq. ft.	10 sq. ft.
Number building signs permitted per lot	1(a)	1(b)

(a) A maximum of one (1) sign is allowed per lot. Such sign may be either a freestanding or a building sign.

(b) One (1) allowed per street frontage, provided there are no freestanding signs on the lot or development.

TABLE 2.6 REGIONAL BUSINESS (B-2) ZONE, IS-FBC UT or UA ZONE – SINGLE TENANT LOTS

Freestanding Signs

	Facing Street Frontage < 200'	*Facing Street Frontage > 200'*
Area	65 sq. ft.	100 sq. ft.
Height	18 feet	18 feet
Setback	5 feet	5 feet
Number permitted per lot	1(a)	1(a)

(a) If lot fronts on more than one (1) street, one (1) freestanding sign is permitted for each additional frontage, but at one-half the maximum allowable area for the original, except in those instances where the freestanding signs are not concurrently visible. In such an instance, additional freestanding signs shall be permitted the full area allowance.

Building Signs

	Building Face < 150 Linear Feet	*Building Face > 150 Linear Feet*
Maximum cumulative area of all building signs (b)	150 square feet (a)	225 (a)
Square feet per linear foot of building facade on which sign will be placed	2 feet	Same
Number of building signs permitted per lot	1 per building facade facing an abutting street + 1 additional	Same

(a) If any one (1) building face on which a sign is to be placed exceeds one hundred fifty (150) linear feet, then the maximum allowable sign area for the building as a whole is increased to two hundred twenty-five (225) square feet. However, the limit of two (2) square feet per linear foot of building frontage still applies for purposes of calculating maximum sign area for each building face.

(b) Where a building features two (2) principal entry facades facing parallel streets, each such entry facade shall be eligible for the full amount of signage relative to its frontage, notwithstanding the maximum cumulative sign area.

TABLE 2.13 MULTI-TENANT LOTS — B-1, B-2, AB, B-4, ~~AND~~ IB, AND IS-FBC UT or UA ZONES

Freestanding Signs (a)

	B-1, B-2, AB, B-4, IB, IS-FBC UT/UA Zones		
	Land Area		
	< 1 acre	1–2.5 acres	☎☐☽2.5 acres

Area	Same as single	100	140
Height	Tenant	Same as for single tenant lots in applicable zones	
Number permitted per lot (b)	lots	1	1

(a) Freestanding signs shall be for purposes of joint identification. Individual tenants shall not be permitted their own freestanding sign. Such sign may identify name of center and may also include names of individual tenants.

(b) Lots fronting on two (2) or more streets are allowed an additional freestanding sign of one-half the area of the first for each frontage which includes a vehicular entry point, provided signs are not readily concurrently visible. Such signage cannot be accumulated and used on one (1) street in excess of that allowed for lots with only one (1) street frontage.

Building Signs

a. *Joint identification sign (a):*

	B-1, IB	*B-2, AB, B-4, I, IS-FBC UT/UA*
Maximum area	na	250 sq. ft. I
Number permitted per lot (b)	not allowed	1 (b)

(a) Sign identifying name of building or shopping center only. Unused sign area cannot be applied to area allowances for other freestanding or individual tenant signs. Where name of shopping center is the same as or incorporates name of one (1) or more of the businesses located within the center, such business(es) shall elect between a joint identification sign and an individual business sign and shall not be allowed both.

(b) See (a) above.

(c) Allowed only on shopping centers featuring four (4) or more tenants and occupying a land area in excess of two and one-half (2.5) acres.

TABLE 2.13, CONTINUED

b. *Individual business signs:*

Alternative 1

	B-1, B-2, AB, B-4, IB, IS-FBC UT/UA Zones	
	Tenant's Frontage < 150 linear ft.	*Tenant's Frontage 150 linear ft.*
Maximum area	150 sq. ft.	Na
Square feet per linear feet of building front	1.5 sq. ft.	na
Maximum percent of wall area on which sign(s) is(are) to be placed	na	5%
Number permitted per business (a)	1	1

(a) If individual tenant fronts on more than one (1) street, one (1) additional building sign is permitted for each additional frontage, but at one-half the maximum allowable area of the first.

Alternative 2

Note: Alternative 2 is available as an option to proprietors of multi-tenant lots needing greater flexibility in allocating signs to tenants. This option requires the submission of a signage plan as described in section 14-368(d) as evidence that all building signs on the subject lot comply with the provisions of this division, including the size and number limits of this table. All nonconforming building signs must be brought into compliance to be eligible for the Alternative 2 option.

<table>
<tr><td>Maximum permitted sign area</td><td colspan="2">na</td></tr>
<tr><td>Maximum percent of wall area on which signs are to be placed</td><td>Principal facade(s)
5%</td><td>All other facade(s)
2%</td></tr>
<tr><td>Number of building signs permitted per lot</td><td colspan="2">1 per tenant plus 1 additional per building face</td></tr>
</table>

CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

Proposed Implementation Details for Section 14-487, Ensuring Workforce Housing; City of Portland, Applicant

Submitted to: Portland City Council First Reading: January 12, 2016 Second Reading: February 23, 2016	Prepared by: Tyler Norod, Housing Planner and Jeff Levine, Director, Department of Planning & Urban Development Date: February 18, 2016

I. Introduction

A public hearing has been scheduled to consider a proposal initiated by City staff as part of the amendments to Section 14-487 of the City's zoning ordinance governing inclusionary zoning approved by the City Council on October 19, 2015.

In addition to legal ads appearing in the February 15th and 16th editions of the Portland Press Herald and a workshop was held by the Planning Board on January 12, 2016. Notices for the workshop appeared in the Portland Press Herald on January 4th and 5th, 2016.

II. Staff Proposal

For the Planning Board's consideration, the Department of Planning and Urban Development prepared a set of five (5) documents delineating potential inclusionary zoning implementation regulations as outlined in Section 14-487(f) of Division 30. At the Planning Board Workshop on January 12, 2016, Planning Board Members asked staff to examine several areas as they relate to the proposed implementation regulations including input from the lending community, off-site standards, and the definition of a project's ownership. The proposed implementation regulations available for further review in Attachment A incorporate revisions associated with these issues raised by the Board and are noted in redline. The documents in Attachment A are as follows:

- Inclusionary Zoning Implementation Regulations Background & Definitions
- Inclusionary Zoning Implementation Regulations for Developers of Homeownership Housing
- Inclusionary Zoning Implementation Regulations for Developers of Rental Housing
- Regulations for Owners & Tenants of Workforce Rental Units
- Regulations for Owners of Workforce Homeownership Units

Section 14-487 (f) of Division 30 states that implementation regulations to further specify the details of inclusionary zoning shall be developed including, but not limited to the following:

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

The final version of the regulations will be available on the City's website and by request. The intent is to provide greater clarity as to the expectations and procedures for workforce housing created through Portland's inclusionary zoning ordinance. The five documents contain some overlapping information but were divided to help filter necessary information to the relevant parties.

III. Background

On April 22, 2015, the Housing & Community Development Committee (HCDC) recommended to the Planning Board several zoning revisions including the inclusionary zoning ordinance as part of an "Encourage & Ensure" housing package.

On May 19, 2015 the Planning Board held a workshop to consider the "Encourage & Ensure" housing package. On September 15, 2015, the Planning Board held a hearing to take action on these items. The Board voted 6-1 against recommending approval of the inclusionary zoning provision to the City Council.

The City Council held a first reading of the "Encourage & Ensure" housing package on October 5, 2015. On October 19, 2015, the City Council voted 7-2 to approve revisions to Division 30 of Portland's zoning ordinance to mandate inclusionary zoning for all residential development projects of ten (10) or more units. The revisions went into effect on November 19, 2015. Portland's inclusionary zoning ordinance will require affected projects to provide 10% of the units proposed as affordable to eligible workforce households. Rental workforce units will be reserved for households earning up to 100% of area median income (AMI), while workforce home ownership units will be reserved for households earning up to 120% of AMI. The inclusionary zoning language included provisions for a density bonus of 25%, a fee-in lieu option instead of providing on-site units, and other criteria to help ensure the creation of workforce housing in all new projects that meet the established thresholds.

As noted above, the Planning Board held a workshop on January 12, 2016 to review the proposed inclusionary zoning implementation regulations.

IV. Land Use Policy and Comprehensive Plan Considerations

The Comprehensive Plan, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the City, and clearly advocates an "adequate and diverse supply of housing for all" as one of its six (6) primary housing policy goals. In order to do so, the plan suggests "promot[ing] through city policies a mix of housing types…of appropriate size, scale, and type within neighborhoods." The proposed implementation regulations allow the inclusionary zoning provision within Division 30 to better accomplish the City's goals particularly as they relate to the creation of housing that is affordable to a diverse range of households. In this, the implementation regulations comport with the city's Comprehensive Plan.

As noted above, the ordinance amendments passed by the City Council clearly call for the development of regulations detailing the implementation of the inclusionary zoning ordinance**.** Section 14-487 (f) of Division 30 states that implementation regulations to further specify the details of inclusionary zoning shall be developed including, but not limited to the following:

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

V. Draft of Proposed Implementation Regulations

A draft of the proposed implementation regulations are included in Attachment A as outlined below. The drafts contain both redline and clean versions in order to help clarify the revisions made in response to Planning Board feedback given at the workshop.

VI. Motions for the Board to Consider

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on February 23, 2016 and on the basis of the testimony presented at the public hearing, the Planning Board finds that the proposed inclusionary zoning implementation regulations **[is or is not]** consistent with Portland's Comprehensive Plan and **[adopts or does not adopt]** adoption of the inclusionary zoning implementation regulations.

VII. Attachments

Attachment A: Proposed Implementation Regulation Documents (both redline & clean versions)

- A1 – Inclusionary Zoning Implementation Regulations Background & Definitions
- A2 – Inclusionary Zoning Implementation Regulations for Developers of Homeownership Housing
- A3 – Inclusionary Zoning Implementation Regulations for Developers of Rental Housing
- A4 – Regulations for Owners & Tenants of Workforce Rental Units
- A5 – Regulations for Owners of Workforce Homeownership Units

Attachment A

Inclusionary Zoning Implementation Regulation Documents

A1 – Inclusionary Zoning Implementation Regulations Background & Definitions

Inclusionary Zoning Implementation Regulations Background & Definitions

In accordance with Section 14-487 - Ensuring Workforce Housing

Background

Based on the city's Comprehensive Plan and the housing study completed in 2015, 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 the inclusionary zoning policy in Portland is to ensure that housing developments over a certain size provide a portion of workforce housing units and, by doing so, promote the health, safety, and welfare of Portland citizens.

This policy shall apply to development projects that create ten (10) 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 policy shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015. Notwithstanding any language to the contrary in Chapter 14, all developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of Section, 14-487 of Portland's zoning ordinance.

Definitions

Unless otherwise expressly provided herein, the following terms shall have the respective meanings set forth below for all purposes of the associated inclusionary zoning guidelines:

<u>Affordable</u>: 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, HOA fees, and taxes), does not exceed 30% of a household's gross income, or other amount established in city regulations that does not vary significantly from this amount.

<u>Affordable Housing Agreement</u>: Means an agreement detailing the affordable housing conditions associated with the approval of a project in accordance with Division 30 of the City's Code. The Affordable Housing Agreement (AHA) will be recorded at the Registry of Deeds or in the Land Court in the chain of title for the project. If an off-site property is used to satisfy any of the Owner's requirements in the AHA, the Owner must make a marginal reference in the chain of title of the title for that property that triggered the requirement to create these income restricted units.

<u>Applicant</u>: A Household that is applying, recertifying, or offering to purchase a Workforce Unit.

City: The City of Portland or its agent.

Development Fees:

(a) The following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; and administrative fees;
(b) 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; and
(c) Development Fees does not include the "fee-in lieu" option for providing cash in place of on-site workforce units.

Developer: Means the owner of the project.

Dwelling Unit: Has the same meaning as defined in Section 14-47 of the Code.

Eligible Household: Means a household (1) which qualifies, at the time of the mortgage or rental application, with regard to household income as per the U.S. Department of Housing and Urban Development's (HUD) Metropolitan Statistical Area (MSA) for Portland, or for a subsequent metric as approved by the City of Portland; and (2) the members of which do not, at the time of the mortgage or rental application, own residential real estate. Eligible Households may consist of a single individual of at least 18 years of age or a family. However, households headed by students or other individuals whose principal sources of financial support are from family members and/or are listed as dependents by others are not eligible; (4) Heads of household must be U.S. citizens or permanent resident aliens.

Gifted – Cash and/or other assets made available by another party for your use, with no obligation – expressed or implied – either in form of cash or future services, to repay this sum at any time.

Project: means a real estate development project:

(a) That is permissible under the provisions of this chapter in the zone in which it is proposed;
(b) 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.

Household: Meaning one or more persons who will live regularly in the unit as their principal residence. If a household is comprised of more than one person, they shall be related by blood, marriage, domestic partnership, or by operation of law. This may include qualified unrelated applicants who apply together for a lease or mortgage. Legal custody is required for households including one or more minor children.

Market Rent: Rent which already is being charged to the general public for similar units in a project.

Owner: Means all legal and equitable owners (including, but not limited to, any person, persons, firm, partnership, association, joint venture, corporation, or any public or private entity or entities or the owner's agent) of a building or project during the term of the permit and any heir, successor, or assign of any person holding an ownership interest in the project or building.

Recertification: The updating of documentation related to household income and size to determine continued household eligibility for a Workforce Rental Unit.

Workforce Rental Unit: Means a dwelling unit which is affordable to a household earning up to 100% of HUD AMI. Annual rent increases for that unit are limited by deed restriction, lease agreement, or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Workforce Homeownership Unit: Means a dwelling unit for which the purchase price is affordable to a household earning up to 120% of HUD AMI. 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.

Workforce Unit: A designated unit that is affordable to Eligible Households earning up to 100% - 120% AMI depending on the units use as a rental property or home ownership.

Inclusionary Zoning Implementation Regulations Background & Definitions

In accordance with Section 14-487 - Ensuring Workforce Housing

Background

Based on the city's Comprehensive Plan and the housing study completed in 2015, 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 the inclusionary zoning policy in Portland is to ensure that housing developments over a certain size provide a portion of workforce housing units and, by doing so, promote the health, safety, and welfare of Portland citizens.

This policy shall apply to development projects that create ten (10) 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 policy shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015. Notwithstanding any language to the contrary in Chapter 14, all developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of Section, 14-487 of Portland's zoning ordinance.

Definitions

Unless otherwise expressly provided herein, the following terms shall have the respective meanings set forth below for all purposes of the associated inclusionary zoning guidelines:

<u>Affordable</u>: 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, HOA fees, and taxes), does not exceed 30% of a household's gross income, or other amount established in city regulations that does not vary significantly from this amount.

<u>Affordable Housing Agreement</u>: Means an agreement detailing the affordable housing conditions associated with the approval of a project in accordance with Division 30 of the City's Code. The Affordable Housing Agreement (AHA) will be recorded at the Registry of Deeds or in the Land Court in the chain of title for the project. If an off-site property is used to satisfy any of the Owner's requirements in the AHA, the Owner must make a marginal reference in the chain of title of the title for that property that triggered the requirement to create these income restricted units.

<u>Applicant</u>: A Household that is applying, recertifying, or offering to purchase a Workforce Unit.

City: The City of Portland or its agent.

Development Fees:

(a) The following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; and administrative fees;
(b) 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; and
(c) Development Fees does not include the "fee-in lieu" option for providing cash in place of on-site workforce units.

Developer: Means the owner of the project.

Dwelling Unit: Has the same meaning as defined in Section 14-47 of the Code.

Eligible Household: Means a household (1) which qualifies, at the time of the mortgage or rental application, with regard to household income as per the U.S. Department of Housing and Urban Development's (HUD) Metropolitan Statistical Area (MSA) for Portland, or for a subsequent metric as approved by the City of Portland; and (2) the members of which do not, at the time of the mortgage or rental application, own residential real estate. Eligible Households may consist of a single individual of at least 18 years of age or a family. However, households headed by students or other individuals whose principal sources of financial support are from family members and/or are listed as dependents by others are not eligible; (4) Heads of household must be U.S. citizens or permanent resident aliens.

Gifted – Cash and/or other assets made available by another party for your use, with no obligation – expressed or implied – either in form of cash or future services, to repay this sum at any time.

Project: means a real estate development project:

(a) That is permissible under the provisions of this chapter in the zone in which it is proposed;
(b) 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.

Household: Meaning one or more persons who will live regularly in the unit as their principal residence. If a household is comprised of more than one person, they shall be related by blood, marriage, domestic partnership, or by operation of law. This may include qualified unrelated applicants who apply together for a lease or mortgage. Legal custody is required for households including one or more minor children.

Market Rent: Rent which already is being charged to the general public for similar units in a project.

Owner: Means all legal and equitable owners (including, but not limited to, any person, persons, firm, partnership, association, joint venture, corporation, or any public or private entity or entities or the owner's agent) of a building or project during the term of the permit and any heir, successor, or assign of any person holding an ownership interest in the project or building.

Recertification: The updating of documentation related to household income and size to determine continued household eligibility for a Workforce Rental Unit.

Workforce Rental Unit: Means a dwelling unit which is affordable to a household earning up to 100% of HUD AMI. Annual rent increases for that unit are limited by deed restriction, lease agreement, or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Workforce Homeownership Unit: Means a dwelling unit for which the purchase price is affordable to a household earning up to 120% of HUD AMI. 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.

Workforce Unit: A designated unit that is affordable to Eligible Households earning up to 100% - 120% AMI depending on the units use as a rental property or home ownership.

A2 – Inclusionary Zoning Implementation Regulations for Developers of Homeownership Housing

Portland, Maine Yes. Life's good here.

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing

Applicability/Conditional Use Requirement

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) 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 set aside a portion of the project as Workforce Housing. This provision does not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

Workforce Housing Minimum

At least ten percent (10%) 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 the Workforce Units are provided on- or off-site. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, as outlined in greater detail below, than the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) units of on-site as Workforce Units. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the sale of Workforce Units will be restricted to households at or below 120% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligible Households for Workforce Homeownership Units

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Regulations.

Maximum Allowable Sale Price

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Max Sale Price Basis -Household Size	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 120% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
    - (Household's 120% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
    - ((Household's 120% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, and insurance.
    - Mortgage insurance will be estimated similar to current rates utilized by the Federal

Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than $625,000 with Loan to Value (LTV) ratios equal or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

~~3)~~4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment.
- It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale price of a Workforce Unit.

~~4)~~5) Interest rates for the calculation will be the average national mortgage rate over the past ~~six~~ thirteen ~~months~~years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.

Condominium/HOA Fees

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support

Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

Phasing

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

Integration of Units

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.

Size and Bedroom Count

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 ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, 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.

Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

Kitchen

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)

Washer Dryer (if provided in market rate units)
Countertop: Minimum Counter Space not including sink and stove
Studio – 4 linear feet
1BR – 6 linear feet
2BR – 8 linear feet
3BR – 10 linear feet

Bathroom

Sink
Shower
Toilet
Shower Curtain Rod or Shower Door
Medicine Cabinet with Mirror or other storage space with a separate mirror

Flooring

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

Closets

All units shall have adequate storage (including common space storage if provided to the market rate units)
All bedrooms shall have at least one closet including at least one closet for a studio
All closets shall have a shelf and pole

Public Funding Sources

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

Tax Increment Financing Eligibility

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

Affordable Housing Agreement

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement is encouraged to be referenced directly in the property's deed. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

Minimum Term of Affordability

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

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

For Workforce Homeownership Units the reduced terms of affordability will apply to the minimum 10% of units required. The additional Workforce Units proposed above 10% shall be affordable at the initial sale with no restrictions placed on subsequent sales of the unit. For example, if a homeownership project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than four (4) units would have a 30 year term of affordability while the remaining six (6) Workforce Units would be restricted only for the initial sale. Sales must be made through an arms length arrangement as discussed in greater detail under the Non-Eligibility/Disqualification section below.

Reduction of Fees & Priority Review

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce 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

Household Preference

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) First time homebuyer
2) Current residents of the City who have lived in Portland as their primary residence for the past two years
3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
~~4) Persons who graduated from Portland Public High Schools~~
~~5)~~4) Persons employed full time by the City
~~6)~~5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.

In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and sale price are subject to review and final approval by the City.

First Time Homebuyers

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any exemption made must be approved by the City.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

Cash Payment In Lieu of Affordable Units

All projects including ten (10) or more residential units created 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 must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e)4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be $100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one tenth of a fractional unit. For example, if a project is proposing 25 units and wants to pay the fee for all units it would be required to pay for 2.5 units or $250,000 at today's rates.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

Off-Site Units

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;

2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units to be sufficient that are run down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring and fixtures, kitchen/bath countertops, fixtures, and cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities such as central air, dishwasher or washer and dryer are provided for in the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. -All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

The total required number of Workforce Units off-site will be based on the total number of market rate units created within a project. Similar to the calculation for providing on-site Workforce Units the requirement will round down to the nearest whole number. For example, a project with 26 market rate units choosing to provide all Workforce Units off-site will be required to provide two (2) off-site units.

Developers of condominium projects providing off-site Workforce Units may choose to provide the off-site Workforce Units for rent at 100% AMI with City approval. The City will only grant approval if there is a management plan in place that provides for stable and capable long term management of the Workforce Units by the developer or agreed upon third party. These units will have the same restrictions typical of Workforce Rental Units.

Financing

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

Appeals

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning ~~Department~~ Authority will not be eligible for a Workforce Unit in the City.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning ~~Department~~Authority. Owners may appeal the Planning ~~Department's~~ Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing

Applicability/Conditional Use Requirement

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) 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 set aside a portion of the project as Workforce Housing. This provision does not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

Workforce Housing Minimum

At least ten percent (10%) 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 the Workforce Units are provided on- or off-site. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, as outlined in greater detail below, than the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) units of on-site as Workforce Units. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the sale of Workforce Units will be restricted to households at or below 120% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligible Households for Workforce Homeownership Units

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Regulations.

Maximum Allowable Sale Price

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Max Sale Price Basis -Household Size	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 120% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
   - (Household's 120% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
   - ((Household's 120% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, and insurance.
   - Mortgage insurance will be estimated similar to current rates utilized by the Federal

Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than $625,000 with Loan to Value (LTV) ratios equal or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment.
    - It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale price of a Workforce Unit.

5) Interest rates for the calculation will be the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.

Condominium/HOA Fees

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support

Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

Phasing

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

Integration of Units

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.

Size and Bedroom Count

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 ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, 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.

Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

<u>Kitchen</u>

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)

Washer Dryer (if provided in market rate units)
Countertop: Minimum Counter Space not including sink and stove
Studio – 4 linear feet
1BR – 6 linear feet
2BR – 8 linear feet
3BR – 10 linear feet

Bathroom

Sink
Shower
Toilet
Shower Curtain Rod or Shower Door
Medicine Cabinet with Mirror or other storage space with a separate mirror

Flooring

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

Closets

All units shall have adequate storage (including common space storage if provided to the market rate units)
All bedrooms shall have at least one closet including at least one closet for a studio
All closets shall have a shelf and pole

Public Funding Sources

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

Tax Increment Financing Eligibility

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

Affordable Housing Agreement

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement is encouraged to be referenced directly in the property's deed. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

Minimum Term of Affordability

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

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

For Workforce Homeownership Units the reduced terms of affordability will apply to the minimum 10% of units required. The additional Workforce Units proposed above 10% shall be affordable at the initial sale with no restrictions placed on subsequent sales of the unit. For example, if a homeownership project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than four (4) units would have a 30 year term of affordability while the remaining six (6) Workforce Units would be restricted only for the initial sale. Sales must be made through an arms length arrangement as discussed in greater detail under the Non-Eligibility/Disqualification section below.

Reduction of Fees & Priority Review

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce 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

Household Preference

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) First time homebuyer
2) Current residents of the City who have lived in Portland as their primary residence for the past two years
3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
4) Persons employed full time by the City
5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.

In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and sale price are subject to review and final approval by the City.

First Time Homebuyers

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any exemption made must be approved by the City.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;

- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

Cash Payment In Lieu of Affordable Units

All projects including ten (10) or more residential units created 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 must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e)4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be $100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one tenth of a fractional unit. For example, if a project is proposing 25 units and wants to pay the fee for all units it would be required to pay for 2.5 units or $250,000 at today's rates.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

Off-Site Units

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;

2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units to be sufficient that are run down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring and fixtures, kitchen/bath countertops, fixtures, and cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities such as central air, dishwasher or washer and dryer are provided for in the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

The total required number of Workforce Units off-site will be based on the total number of market rate units created within a project. Similar to the calculation for providing on-site Workforce Units the requirement will round down to the nearest whole number. For example, a project with 26 market rate units choosing to provide all Workforce Units off-site will be required to provide two (2) off-site units.

Developers of condominium projects providing off-site Workforce Units may choose to provide the off-site Workforce Units for rent at 100% AMI with City approval. The City will only grant approval if there is a management plan in place that provides for stable and capable long term management of the Workforce Units by the developer or agreed upon third party. These units will have the same restrictions typical of Workforce Rental Units.

Financing

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

Appeals

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

A3 – Inclusionary Zoning Implementation Regulations for Developers of Rental Housing

Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing

Applicability/Conditional Use Requirement

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) 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 set aside a portion of the project as Workforce Housing. This provision does not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

Workforce Housing Minimum

At least ten percent (10%) 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 the Workforce Units are provided on- or off-site. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, as outlined in greater detail below, than the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) units of on-site as Workforce Units. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligibility of Households for Workforce Rental Units

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence.

Household size/composition upon the unit's rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts.
The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by work obligations, or~~a~~ health reasons or other emergency, the City may require verification of the ~~health or other emergency~~reasons for the tenants' absence. Households must comply with such requests for verification ~~of~~ work, health, or emergency reasons or their lease will not be renewed. For the purposes of this section, incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four

(4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities = Workforce Studio Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

Phasing

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

Integration of Units

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.

Size and Bedroom Count

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 ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, 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.

Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

<u>Kitchen</u>

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)
- Washer Dryer (if provided in market rate units)
- Countertop: Minimum Counter Space not including sink and stove
    - Studio – 4 linear feet
    - 1BR – 6 linear feet
    - 2BR – 8 linear feet
    - 3BR – 10 linear feet

<u>Bathroom</u>

- Sink
- Shower
- Toilet
- Shower Curtain Rod or Shower Door
- Medicine Cabinet with Mirror or other storage space with a separate mirror

<u>Flooring</u>

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

Closets

All units shall have adequate storage (including common space storage if provided to the market rate units)

All bedrooms shall have at least one closet including at least one closet for a studio
All closets shall have a shelf and pole

Public Funding Sources

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

Tax Increment Financing Eligibility

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

Affordable Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). . The Affordable Housing Agreement is encouraged to be referenced directly in the property's deed. In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Minimum Term of Affordability

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

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

For Workforce Rental Units the reduced terms of affordability will apply to all proposed Workforce Units including those in excess of the required minimum 10% of units. For example, if a rental project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than all 10 Workforce Units would have a 30 year term of affordability.

Dwelling units created or redeveloped by non-profit educational institutions for use as housing exclusively for enrolled students of educational institutions shall not be subject to the set aside requirement of Division 30. If the units are no longer used exclusively by enrolled students the building will be required to meet the workforce housing standards set forth in Division 30.

Reduction of Fees & Priority Review

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce 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

Household Preference

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) Current residents of the City who have lived in Portland as their primary residence for the past two years
2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
~~3) Persons who graduated from Portland public high schools~~
~~4)~~3) Persons employed full time by the City
~~5)~~4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 60 days for initial occupancy and 30 days for subsequent rentals during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.

Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

"Floating" Workforce Units

Prior to the Project's approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be "floating" i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

Recertification of Workforce Units

Prior to the renewal of a Workforce Unit's lease the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.

If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible Households. The Owner shall cooperate with the City and with any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Cash Payment In Lieu of Affordable Units

All projects including ten (10) or more residential units created 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 must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e)4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be $100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one tenth of a fractional unit. For example, if a project is proposing 25 units and wants to pay the fee for all units it would be required to pay for 2.5 units or $250,000 at today's rates.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

Off-Site Units

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;
2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units to be sufficient that are run down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring, and fixtures, kitchen/bath countertops, fixtures, cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities, such as central air, dishwasher or washer and dryer are provided for in the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

The total required number of Workforce Units off-site will be based on the total number of market rate units created within a project. Similar to the calculation for providing on-site Workforce Units the requirement will round down to the nearest whole number. For example, a project with 26 market rate units choosing to provide all Workforce Units off-site will be required to provide two (2) off-site units.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Department will not be eligible for a Workforce Unit in the City.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Department. Owners may appeal the Planning Department's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing

Applicability/Conditional Use Requirement

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) 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 set aside a portion of the project as Workforce Housing. This provision does not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

Workforce Housing Minimum

At least ten percent (10%) 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 the Workforce Units are provided on- or off-site. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, as outlined in greater detail below, than the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) units of on-site as Workforce Units. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligibility of Households for Workforce Rental Units

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence.

Household size/composition upon the unit's rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	**Two-Bed**	**Three-Bed**	**Four-Bed**
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by work obligations, or health reasons or other emergency, the City may require verification of the reasons for the tenants' absence. Households must comply with such requests for verification work, health, or emergency reasons or their lease will not be renewed. For the purposes of this section, incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four

(4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities = Workforce Studio Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

Phasing

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

Integration of Units

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.

Size and Bedroom Count

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 ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, 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.

Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

<u>Kitchen</u>

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)
- Washer Dryer (if provided in market rate units)
- Countertop: Minimum Counter Space not including sink and stove
  - Studio – 4 linear feet
  - 1BR – 6 linear feet
  - 2BR – 8 linear feet
  - 3BR – 10 linear feet

<u>Bathroom</u>

- Sink
- Shower
- Toilet
- Shower Curtain Rod or Shower Door
- Medicine Cabinet with Mirror or other storage space with a separate mirror

<u>Flooring</u>

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

Closets

All units shall have adequate storage (including common space storage if provided to the market rate units)

All bedrooms shall have at least one closet including at least one closet for a studio
All closets shall have a shelf and pole

Public Funding Sources

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

Tax Increment Financing Eligibility

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

Affordable Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). . The Affordable Housing Agreement is encouraged to be referenced directly in the property's deed. In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Minimum Term of Affordability

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

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

For Workforce Rental Units the reduced terms of affordability will apply to all proposed Workforce Units including those in excess of the required minimum 10% of units. For example, if a rental project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than all 10 Workforce Units would have a 30 year term of affordability.

Dwelling units created or redeveloped by non-profit educational institutions for use as housing exclusively for enrolled students of educational institutions shall not be subject to the set aside requirement of Division 30. If the units are no longer used exclusively by enrolled students the building will be required to meet the workforce housing standards set forth in Division 30.

Reduction of Fees & Priority Review

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce 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

Household Preference

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) Current residents of the City who have lived in Portland as their primary residence for the past two years
2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
3) Persons employed full time by the City
4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 60 days for initial occupancy and 30 days for subsequent rentals during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.

Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

"Floating" Workforce Units

Prior to the Project's approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be "floating" i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

Recertification of Workforce Units

Prior to the renewal of a Workforce Unit's lease the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.

If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible Households. The Owner shall cooperate with the City and with any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Cash Payment In Lieu of Affordable Units

All projects including ten (10) or more residential units created 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 must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e)4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be $100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one tenth of a fractional unit. For example, if a project is proposing 25 units and wants to pay the fee for all units it would be required to pay for 2.5 units or $250,000 at today's rates.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

Off-Site Units

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;
2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units to be sufficient that are run down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring, and fixtures, kitchen/bath countertops, fixtures, cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities, such as central air, dishwasher or washer and dryer are provided for in the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

The total required number of Workforce Units off-site will be based on the total number of market rate units created within a project. Similar to the calculation for providing on-site Workforce Units the requirement will round down to the nearest whole number. For example, a project with 26 market rate units choosing to provide all Workforce Units off-site will be required to provide two (2) off-site units.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Department will not be eligible for a Workforce Unit in the City.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Department. Owners may appeal the Planning Department's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

A4 –Regulations for Owners & Tenants of Workforce Rental Units

Regulations for Owners & Tenants of Workforce Rental Units

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligibility of Households for Workforce Rental Units

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence. Household size/composition upon the unit's rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertifications. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by ~~a~~ work obligations, or health reasons or other emergency, the City may require verification ~~of the health or other emergency~~of the reasons for the tenants' absence. Households must comply with such requests for verification of health or emergency reasons or their lease will not be renewed. For the purposes of this section, Incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities = Workforce Studio Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

Affordable Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Household Preference

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) Current residents of the City who have lived in Portland as their primary residence for the past two years
2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
~~3) Persons who graduated from Portland public high schools~~
~~4)~~3) Persons employed full time by the City
~~5)~~4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 30 days during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.

Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

"Floating" Workforce Units

Prior to the Project's approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be "floating" i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

Recertification of Workforce Units

Prior to the renewal of a Workforce Unit's lease the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.

If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible

Households. The Owner shall cooperate with the City and provide any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Department will not be eligible for a Workforce Unit in the City.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the

Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Department. Owners may appeal the Planning Department's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Regulations for Owners & Tenants of Workforce Rental Units

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligibility of Households for Workforce Rental Units

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence. Household size/composition upon the unit's rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertifications. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by ~~a~~ work obligations, or health reasons or other emergency, the City may require verification ~~of the health or other emergency~~of the reasons for the tenants' absence. Households must comply with such requests for verification of health or emergency reasons or their lease will not be renewed. For the purposes of this section, Incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities = Workforce Studio Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

Affordable Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Household Preference

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) Current residents of the City who have lived in Portland as their primary residence for the past two years
2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available

~~3) Persons who graduated from Portland public high schools~~

~~4)~~3) Persons employed full time by the City

~~5)~~4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 30 days during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.

Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

"Floating" Workforce Units

Prior to the Project's approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be "floating" i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

Recertification of Workforce Units

Prior to the renewal of a Workforce Unit's lease the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.

If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible

Households. The Owner shall cooperate with the City and provide any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Department will not be eligible for a Workforce Unit in the City.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the

Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Department. Owners may appeal the Planning Department's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

A5 –Regulations for Owners of Workforce Homeownership Units

Regulations for Owners of Workforce Homeownership Units

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the maximum allowable sale prices for Workforce Units will be restricted to households at or below 120% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligible Households for Workforce Homeownership Units

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be comprised of permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Guidelines.

Maximum Allowable Sale Price

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Max Sale Price Basis -Household Size	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 120% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
    - (Household's 120% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
    - ((Household's 120% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, and insurance.
    - Mortgage insurance will be estimated similar to current rates utilized by the Federal Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than $625,000 with Loan to Value (LTV) ratios equal to or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

~~3)~~4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment.
    - It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale

price of a Workforce Unit.

~~4)~~5) Interest rates for the calculation will be the average national mortgage rate over the past ~~six months~~thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.

Condominium/HOA Fees

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

Alterations to a Workforce Unit's Floorplan

The basic floor plan of a Workforce Unit may not be altered without the written approval of the City. Workforce Units shall not decrease in size or total number of bedrooms.

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

Resale of Workforce Units

Once an Owner decides that they would like to sell a Workforce Unit they will need to notify the City in writing. The City will then confirm the Unit's maximum allowable sales price. The City shall have the opportunity to list the property on its website for a minimum of 30 days during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their representative.

If multiple offers are received during the marketing process the preferred households identified by the City will be given preference to purchase the Workforce Unit. The Owner and/or their agent shall keep records of all interested parties, the parties' eligibility, preference status, offers received, and any subsequent negotiations. The Owner and/or agent will provide these records to the City as requested.

In the event that the Owner is unable to find a ready, willing, and able Eligible Household for the property after reasonable efforts have been made to market the property for at least 180 days, then the Owner may notify the City in writing that it wants to market the unit to non-eligible households. The City will be given the option to purchase the Property after the 180 day period on the terms set forth below:

1) The Owner must establish, to the City's reasonable satisfaction that the Owner made good faith efforts to market the Property for the entire 180 day period for sale to Eligible Households at a price not in excess of the maximum allowable sales price but did not receive any reasonable offers from Eligible Households. The City shall determine if reasonable efforts have been made within ten (10) working days after the last day of the 180 day period and once the City has received to its satisfaction all relative information from the Owner related to its marketing efforts and interaction with interested parties.
2) Upon a determination by the City of such marketing efforts, the City has thirty (60) days

to decide if it will exercise its option to purchase the Property for the maximum allowable sales price.

3) If the City decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the "Notice to Exercise") to the Owner. Failure to provide a Notice to Exercise within thirty (60) days of the determination that good faith efforts have been made to market the Property to Eligible Households shall cause the City's option to purchase to expire.
4) The City shall consummate its purchase of the Property within sixty (90) days of the date of service of the Notice to Exercise (the "City Closing Period"). The Owner shall cooperate fully with the City in the City's efforts to acquire the Property and shall take all reasonable steps necessary to clear any title defects. If the City fails to close on the Property within the City Closing Period for a reason other than liens voluntarily placed on the Property by the Owner, then the Owner shall immediately be free to sell the Property to a non-Eligible Household.

If the City decides not to exercise its option to purchase (including as a result of a failure to give a Notice of Exercise), the Owner shall be free to sell the Property to a non-Eligible Household at any such agreed sale price **provided however**, that to the extent the agree sale price exceeds the maximum allowable sale price, as determined by the City, then any amount between the actual sale price and the maximum allowable sale price (the "Excess") shall be paid to the City at the time of the closing on the sale of the Property, and such Excess is to be paid into the City's Housing Trust. Upon payment of the Excess, if any, the Owner and the Owner's heirs, successors and assigns, shall thereafter be free to sell the Property free of the terms and conditions of the AHA, which shall be deemed terminated.

If the Owner is able and willing to sell their Workforce Unit to a non-Eligible Household the sale must be made through an arm's length arrangement. ~~t~~The Owner may not sell the Unit to an employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law.

At the request of the Owner, and provided there has been full compliance by the Owner with the terms of the AHA, the City shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of the Property which results in the release of the Owner and the Property from the terms of the AHA.

Household Preference

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) First time homebuyer

2) Current residents of the City who have lived in Portland as their primary residence for the past two years
3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
~~4) Persons who graduated from Portland Public High Schools~~
~~5)~~4) Persons employed full time by the City
~~6)~~5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.

In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, then prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. The City will provide final approval of whether or not a household meets the eligibility requirements.

First Time Homebuyers

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any exemption made must be approved by the City.

Affordable Housing Agreement

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement is encouraged to be referenced directly in the property's deed. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning ~~Department~~ Authority will not be eligible for a Workforce Unit in the City.

Financing

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

Refinancing

The Owner must get the City's approval to refinance the first mortgage or get an additional mortgage for a Workforce Unit. Refinancing must follow the same limitations outlined above for Financing. Owners may not refinance their unit for a value greater than 95% of the maximum allowable sale price at the time of refinancing as determined by the City. Under no conditions will the long term affordability or City's right of first refusal be compromised as a result of refinancing.

Transfer to Owner's Heirs

If the Owner should die still owning the Workforce Unit, then upon receipt of notice from the personal representative of the decedent's estate given within ninety (90) days of the death of such Owner (or the last surviving co-owner if the Property was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Property to one or more of the following:

1. The spouse of the deceased Owner (in cases where the spouse was not a joint tenant with the Owner); or
2. The child or children of the deceased Owner; or
3. Member(s) of the deceased Owner's household who have resided in the Property for at least three years prior to the Owner's death.

Any subsequent transfer by a transferee under 1, 2, or 3, above, shall be subject to the terms of this Agreement.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

Appeals

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning ~~Department~~Authority. Owners may appeal the Planning ~~Department's~~ Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Regulations for Owners of Workforce Homeownership Units

Household Income Limits

In accordance with Division 30 of the City's Zoning Ordinance, the maximum allowable sale prices for Workforce Units will be restricted to households at or below 120% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

Eligible Households for Workforce Homeownership Units

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be comprised of permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their adjusted gross income. The City will use a process similar to what HUD recommends for the HOME program to determine adjusted gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility. Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Minimum Household Size By Bedroom	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Maximum Household Size By Bedroom	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Guidelines.

Maximum Allowable Sale Price

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	Studio/One-Bed	Two-Bed	Three-Bed	Four-Bed
Max Sale Price Basis -Household Size	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

1) Begin by calculating 30% of the gross monthly income for a household earning 120% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
   - (Household's 120% AMI x 0.30)/12 = monthly income available for housing expenses.

2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
   - ((Household's 120% AMI x 0.30) x 0.85)/12 = monthly income available for housing expenses of a studio unit.

3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, and insurance.
   - Mortgage insurance will be estimated similar to current rates utilized by the Federal Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than $625,000 with Loan to Value (LTV) ratios equal to or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment.
   - It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale

price of a Workforce Unit.

5) Interest rates for the calculation will be the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.

Condominium/HOA Fees

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

Alterations to a Workforce Unit's Floorplan

The basic floor plan of a Workforce Unit may not be altered without the written approval of the City. Workforce Units shall not decrease in size or total number of bedrooms.

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

Resale of Workforce Units

Once an Owner decides that they would like to sell a Workforce Unit they will need to notify the City in writing. The City will then confirm the Unit's maximum allowable sales price. The City shall have the opportunity to list the property on its website for a minimum of 30 days during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their representative.

If multiple offers are received during the marketing process the preferred households identified by the City will be given preference to purchase the Workforce Unit. The Owner and/or their agent shall keep records of all interested parties, the parties' eligibility, preference status, offers received, and any subsequent negotiations. The Owner and/or agent will provide these records to the City as requested.

In the event that the Owner is unable to find a ready, willing, and able Eligible Household for the property after reasonable efforts have been made to market the property for at least 180 days, then the Owner may notify the City in writing that it wants to market the unit to non-eligible households. The City will be given the option to purchase the Property after the 180 day period on the terms set forth below:

1) The Owner must establish, to the City's reasonable satisfaction that the Owner made good faith efforts to market the Property for the entire 180 day period for sale to Eligible Households at a price not in excess of the maximum allowable sales price but did not receive any reasonable offers from Eligible Households. The City shall determine if reasonable efforts have been made within ten (10) working days after the last day of the 180 day period and once the City has received to its satisfaction all relative information from the Owner related to its marketing efforts and interaction with interested parties.
2) Upon a determination by the City of such marketing efforts, the City has thirty (60) days

to decide if it will exercise its option to purchase the Property for the maximum allowable sales price.

3) If the City decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the "Notice to Exercise") to the Owner. Failure to provide a Notice to Exercise within thirty (60) days of the determination that good faith efforts have been made to market the Property to Eligible Households shall cause the City's option to purchase to expire.
4) The City shall consummate its purchase of the Property within sixty (90) days of the date of service of the Notice to Exercise (the "City Closing Period"). The Owner shall cooperate fully with the City in the City's efforts to acquire the Property and shall take all reasonable steps necessary to clear any title defects. If the City fails to close on the Property within the City Closing Period for a reason other than liens voluntarily placed on the Property by the Owner, then the Owner shall immediately be free to sell the Property to a non-Eligible Household.

If the City decides not to exercise its option to purchase (including as a result of a failure to give a Notice of Exercise), the Owner shall be free to sell the Property to a non-Eligible Household at any such agreed sale price **provided however**, that to the extent the agree sale price exceeds the maximum allowable sale price, as determined by the City, then any amount between the actual sale price and the maximum allowable sale price (the "Excess") shall be paid to the City at the time of the closing on the sale of the Property, and such Excess is to be paid into the City's Housing Trust. Upon payment of the Excess, if any, the Owner and the Owner's heirs, successors and assigns, shall thereafter be free to sell the Property free of the terms and conditions of the AHA, which shall be deemed terminated.

If the Owner is able and willing to sell their Workforce Unit to a non-Eligible Household the sale must be made through an arm's length arrangement. The Owner may not sell the Unit to an employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law.

At the request of the Owner, and provided there has been full compliance by the Owner with the terms of the AHA, the City shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of the Property which results in the release of the Owner and the Property from the terms of the AHA.

Household Preference

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

1) First time homebuyer

2) Current residents of the City who have lived in Portland as their primary residence for the past two years
3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
4) Persons employed full time by the City
5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

Marketing / Selection Process

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.
In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, then prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner

shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. The City will provide final approval of whether or not a household meets the eligibility requirements.

First Time Homebuyers

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any exemption made must be approved by the City.

Affordable Housing Agreement

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement is encouraged to be referenced directly in the property's deed. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

Non-Eligibility/Disqualification

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

Financing

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

Refinancing

The Owner must get the City's approval to refinance the first mortgage or get an additional mortgage for a Workforce Unit. Refinancing must follow the same limitations outlined above for Financing. Owners may not refinance their unit for a value greater than 95% of the maximum allowable sale price at the time of refinancing as determined by the City. Under no conditions will the long term affordability or City's right of first refusal be compromised as a result of refinancing.

Transfer to Owner's Heirs

If the Owner should die still owning the Workforce Unit, then upon receipt of notice from the personal representative of the decedent's estate given within ninety (90) days of the death of such Owner (or the last surviving co-owner if the Property was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Property to one or more of the following:

1. The spouse of the deceased Owner (in cases where the spouse was not a joint tenant with the Owner); or
2. The child or children of the deceased Owner; or
3. Member(s) of the deceased Owner's household who have resided in the Property for at least three years prior to the Owner's death.

Any subsequent transfer by a transferee under 1, 2, or 3, above, shall be subject to the terms of this Agreement.

Enforcement

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

Appeals

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

Waiver

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

PLANNING BOARD REPORT

PORTLAND, MAINE

Text Amendments to the Land Use Code related to the establishment of the Department of Permitting and Inspections

City Manager, City of Portland, Applicant

Submitted to: Portland Planning Board Public Hearing Date: February 23, 2016	Prepared by: Barbara Barhydt, Development Review Services Manager Date: February 19, 2016

I. INTRODUCTION

Mr. Jon Jennings, City Manager, is proposing a reorganization of the Planning and Urban Development Department, which will separate the Inspection Division from the department and combine it with other divisions to create a new department called the Department of Permitting and Inspections. Mr. Jennings' presented the proposal at a City Council workshop on February 8, 2016. The draft council order is included as Attachment 1 and the explanatory memorandum, prepared by Julianne Sullivan, Acting Chief of Staff, dated October 25, 2015, is included as Attachment 2. Please refer to Ms. Sullivan's memo for the background and implementation measures proposed for the reorganization. The Planning Board is being asked for their recommendation to City Council regarding the proposed amendments to the Chapter 14, Land Use Code. The other proposed amendments are not within the jurisdiction of the Planning Board.

The legal ad appeared in the Portland Press Herald on February 15th and Feb. 16. The notice was posted on the City's web site and sent to interested citizens by e-mail on Feb. 10th. No public comment has been received.

II. PROPOSED TEXT AMENDMENTS TO CHAPTER 14.

The proposed text amendments to create the Department of Permitting and Inspections are contained in the draft Council Order, Attachment 1. The proposed amendments to the City Code include revisions to the following chapters: Chapter 2 Administration; Chapter 3 Alcoholic Beverages; Chapter 4 Amusements; Chapter 6 Buildings and Building Regulations; Chapter 11 Food and Food Handlers; Chapter 12 Garbage, Wastes and Junk; Chapter 15 Licenses and Permits; Chapter 16 Massage Establishments; Chapter 19 Peddlers and Solicitors; Chapter 23 Secondhand Goods; and Chapter 28 Traffic and Motor Vehicles. The proposed amendments to these chapters are not within the purview of the Planning Board.

There are amendments proposed in Chapter 14, Land Use Code. The Planning Board is being asked for their recommendation to City Council regarding the adoption of the amendments. In general, the proposed amendments clarify the responsibilities between the Department of Planning and Urban

Development and the proposed Department of Permitting and Inspections. The Land Use Code amendments are summarized below:

a. **Section 14-145.5. Dimensional requirements (contained within the IR-1 Island Residential Zone): Pages 11-12 of Attachment 1**
The amendment deletes the title building authority and substitutes the Planning Authority to allow the Planning Authority to accept conservation easements on behalf of the city for in order for lots to meet the IR-1 dimensional standards.
b. **Section 14-145.11. Dimensional requirements (contained within the IR-2 Residential Zone): Pages 12-13 of Attachment 1**
As above, the title Planning Authority is substituted for the building authority in order to accept conservation easements on behalf of the city.
c. **Section 14-145.17. Dimensional requirements (contained within the IR-4 Residential Zone): Pages 13-14 of Attachment 1**
As above, the title Planning Authority is substituted for the building authority in order to accept conservation easements on behalf of the city.
d. **Section 14-226. Dimensional requirements (contained within the I-B Island Business Zone): Pages 14-15 of Attachment 1**
As above, the title Planning Authority is substituted for the building authority in order to accept conservation easements on behalf of the city.
e. **Section 14-299 Performance Standards (contained with the B-7 Mixed Development District zone): Pages 15-16.**
In the B-7 zone, there is a performance standard for storage of materials and dumpsters. Approval of the screening was listed as the planning department and it is being updated to state planning and urban development department.
f. **Section 14-449 Land use standards. (contained within the Shoreland Regulations) pages 16-17 Attachment 1**
Under the standards for Archaeological sites and agriculture, the Planning Authority is substituted for the building authority when the city's review must incorporate the review of the Historic Preservation Commission or a conservation easement is needed.
g. **Section 14-450.5 Definitions. (contained within the Flood Plain Management Regulations) pages 17 of Attachment 1.**
The Building Authority is defined as the Department of Inspections and Permitting.
h. **Section 14-486. Reduction of Fees. (contained with Division 30. Affordable Housing): Pages 17-18 of Attachment 1.**
The term planning division is changed to planning and urban development department within this section regarding expedited reviews and the reduction of fees.
i. **Section 14-522. Definitions. (contained within the Site Plan Ordinance): Pages 18 of Attachment 1.**
The definition of building authority is proposed as the Director of the Department of Permitting and Inspections or his or her designee, rather than the current definition as the Director of the Planning and Urban Development Department.

III. COMPREHENSIVE PLAN ANALYSIS

As stated in Julie Sullivan's memorandum, a new one-stop department is proposed with the goal of "radically improving the City's many permitting and inspections functions…" Portland's Comprehensive Plan includes the following provisions from the Industry and Commerce Plan and Housing: Sustaining

Portland's Future, which support streamlining the permitting and review process for business, industry and residential initiatives.

Portland Industry and Commerce Plan 1994

Revise Zoning

- Create a process that provides a quick response on development permitting

Create Financial Incentives

- Simplify programs and minimize red tape

Adopt Overall Goals for Economic Development

- Reduce costs of doing business in Portland
  - Regulation (others include worker's compensation, transportation, taxes, energy)

Housing: Sustaining Portland's Future - 2002

Goal: ensure the construction of a diverse mix of housing types that offers a continuum of options across all income levels for both renter and owner-occupied

- Evaluate and update, as needed, the building code with reasonable and flexible provisions to encourage a variety of housing types that are well built and safe.

Goal: Maintain, rehabilitate, and restore the existing housing stock as a safe and important physical, economic and architectural resource for the community.

- Foster safe and high quality housing through appropriate building codes and financial assistance.

IV. PROPOSED MOTION

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on February 23, 2016 and on the basis of the testimony presented at the public hearing, the Planning Board finds that the proposed zoning text amendments **[are or are not]** consistent with Portland's Comprehensive Plan and **[recommends or does not recommend]** adoption of the amendments to the City Council.

Attachments:

1. City Council Order
2. Julie Sullivan memo to Jon Jennings, dated October 26, 2015

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
Re: REORGANIZING PLANNING AND OTHER DEPARTMENT DIVISIONS INTO A NEW DEPARTMENT OF PERMITTING AND INSPECTIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Section 2-17 is hereby amended to read as follows:

Sec. 2-17. Additional duties assigned.

In addition to the duties imposed on them by the Charter, state law and ordinance of the city, the City Council or the City Manager, the following officers shall perform the additional duties list below:

(a) *City Clerk:*

...

(h) *Director of Planning and Urban Development/Director of Permitting and Inspections:*

1. Unless otherwise designated, ~~The Director of Planning and Urban Development and~~the Director of Permitting and Inspections~~ the Department of Planning and Urban Development ~~shall be considered as the Building Authority.~~ and~~

2. The Director of Planning and Urban Development shall be the Planning Authority of the City.~~.~~

~~2. The Director of Planning and Urban Development shall supervise, manage and control the Department of Planning and Urban Development. Such department shall consist of the following divisions: Planning, Building Inspection, Housing Inspection, Relocation and Housing Rehabilitation.~~

3. The Director of Planning and Urban Development

shall be secretary to the Planning Board~~ and shall perform and be responsible for all other duties previously performed or required to be performed by the Planning Director or the Planning Department~~.

4. T~~hrough the Division of Housing Inspection, the~~ Director of Permitting and Inspections or his or her designees shall exercise such authority and enforce such laws, ordinances and regulations pertaining to residential dwellings as the agent of the Director of Health and Social Services.

5. ~~Through the Division of Neighborhood Rehabilitation, t~~The Director of Planning and Urban Development or his/her designee shall approve and negotiate housing rehabilitation loans and grants and manage all loan and grant activities concerning residential units, including the repayment thereof to the City through the Finance Department, and he or she shall be responsible for contract administration and disbursement of all funds to housing rehabilitation agencies from whatever source such funds are derived.

6. ~~Through the Division of Neighborhood Rehabilitation, t~~The Director of Planning and Urban Development or his/her designee shall be responsible for administrative oversight of public improvement programs implemented by other City departments in neighborhood conservation areas and shall advise and assist such departments in the development of such programs, and he or she shall also advise and assist the Planning Director in the delineation of new neighborhood conservation areas.

~~7. Through the Division of Building Inspection, the Director shall exercise such authority and perform such duties as were formerly exercised or performed by the Building Inspector or the former Department of Building Inspection Services. Wherever in this Code there appear the terms "Building Inspector," "Department of Building Inspection Services," etc., they shall be construed to mean the Director of Planning and~~

~~Urban Development.~~

~~8.~~ ~~Through the Division of Relocation, the Director shall furnish relocation assistance to occupants of real property acquired by the City to the extent such assistance is required by law.~~

7~~9~~. In addition to the aforesaid, the Director of Planning and Urban Development shall undertake such duties or responsibilities with respect to the Community Development Program as the City Manager may from time to time direct, and with the approval of the City Manager, he or she may employ additional assistants to administer grants obtained as part of the community development program whose salaries shall be paid for out of the grant budget.

8~~10~~. The Director of Permitting and Inspections ~~of Planning and Urban Development~~ is hereby designated an agent of the health officer to exercise such authority and enforce such laws, ordinances and regulations pertaining to potential health hazards in residential, industrial, and commercial buildings and including but not limited to the following: investigation and oversight of local food service establishments, control of rabies, control of insects and rodents, control of refuse and its disposal, and investigation of lead paint.

2. *That Section 3-27 is hereby amended to read as follows:*

Sec. 3-27. Application.

Application for a bottle club license shall be filed in accordance with chapter 15. In addition to the requirements of that chapter, an applicant for a bottle club shall furnish the Department of Permitting and Inspections~~clerk~~ with the following:

(a) An affidavit which identifies all principal officers, their places of residence at the present time, and for the immediately preceding three (3) years;

(b) A description of the premises for which a license is desired which shall set forth such other material information, description, or plan of that part of the premises where it is proposed to consume or keep liquor as the clerk or the city council may require.

3. That Sections 4-27, 4-51, and 4-81 are hereby amended to read as follows:

Sec. 4-27. Notice and hearing.

The Department of Permitting and Inspections~~city clerk~~ shall conduct a public hearing with respect to the grant of any original license issued under this division.

...

Sec. 4-51. Required.

(a) No person licensed by the state to sell liquor to be consumed on the premises, and no bottle club licensed by the city, shall permit on the premises any music except that produced by radio or mechanical device, any dancing, or entertainment of any sort without an entertainment license from the city. The license required by this subsection and state law authorizes entertainment only during the hours when state law permits the sale of alcohol for consumption on the premises.

(b) After-hours entertainment shall require a separate license as provided in this division subject to the following restrictions and requirements:

(1) Operations under such separate license shall end at 3:00 a.m.

...

(5) In addition to the after-hours license, at least seven (7) days in advance of each event, the license holder shall deliver a written notice to the Department of Permitting and Inspections~~clerk's office~~ during normal business hours specifying the date upon which the event will be held. The Department of Permitting and Inspections~~city clerk~~ will forward the notice immediately to the police department, track the number and frequency of events per licensee per calendar month and inform a licensee if an event is not allowed.

...

Sec. 4-81. Applications and fees.

Applications for a state license to conduct beano or a game of chance shall be deemed sufficient applications for the purpose of chapter 15 if accompanied by the fees prescribed therein. Upon compliance with this article and chapter 15, Department of Permitting and Inspections~~the clerk~~ shall signify the consent of the city council to such application.

4. That Sections 6-1, 6-17, 6-51, 6-68, 6-115 and 6-132 are hereby amended to read as follows:

Sec. 6-1. Penalties.

Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who violates any of the provisions set forth in Chapter 6 is liable for the penalties set forth in this section. For purposes of this Chapter, the Director of Permitting and Inspections is the *building authority.*

(a) *Penalties.* Except for paragraph g., monetary penalties shall be assessed on a per-day basis for each day on which a violation exists:

...

Sec. 6-17. Fee Schedule.

The applicant shall submit the cost of work in order to determine the permit fee. If the construction cost submitted is less than that as indicated by national standards such as BOCA International or the R.S. Means Company, Inc., the City of Portland reserves the right to reevaluate the proposed project cost based on the referenced national standard and assess the larger of the fees. All building permit applications shall be accompanied by the appropriate fee as established below:

(a) Construction work:

(1) Cost of work fees:

Up to $1,000.00 . . . .$25.00
$1,000.00 or more . . . . .$25.00 + $~~-~~16~~1~~.00 per $1,000.00 above $1,000.00

(2) Belated fees:

Below $25.00 permit fee . .$50.00 additional
Above $25.00 permit fee . .$100.00 additional

(3) Amendments to application:

Up to $1,000.00 . . . . . .$25.00
$1,000.00 or more . . . . .$25.00 + $16~~1~~.00 per $1,000.00 above $1,000.00

...

Sec. 6-51. Required.

(a) A permit must be procured from the ~~electrical division of the~~ building authority before commencing work upon the installation of wires for the purpose of conducting electric current for power, heating, illuminating or signaling purposes, or for electrical appliances and apparatus in or upon public or private buildings, structures or premises, either new or existing.

(b) A permit must ~~be procured~~ also be procured~~from the division~~ before commencing work upon the alteration or the addition to, or both, of wires already installed and approved by the electrical inspector.

...

Sec. 6-68. Right of access and inspection.

The electrical inspector shall have access at all reasonable times to all wiring devices, appliances and apparatus in or upon any public or private premises, which carry or are intended to carry an electrical light or power current, and no person shall arrange, fix or change any such wiring, devices, appliances, or apparatus without giving the building authority ~~electrical division~~ reasonable notice and opportunity to inspect and approve such alterations or changes.

...

Sec. 6-115. Lead-based paint hazard.

(a) This provision is intended to supplement the Lead Poisoning Control Act (22 M.R.S.A. Sections 1314 et seq.) and the regulations adopted pursuant thereto including, but not limited to, the Rules for Environmental Lead Inspections and the Rules for Abatement of Environmental Lead Hazards.

(b) When either the city's health authority, as defined in section 2-17(h), or the city's director of permitting and inspections~~planning and urban development~~, as defined in section 2-17(h~~i~~)(10) of this Code as amended, determines that an environmental lead hazard exists in any dwelling or premises (as those terms are defined in Section 216.03-7 and Section 216.03-31 of the Rules for Abatement of Environmental Lead Hazards), he or she shall issue an order in writing to the owner (as defined in Section 216.03-28 of the Rules for Abatement of Environmental Lead Hazards), describing the environmental lead hazards and establishing a time within which such hazards shall be abated.

...

Sec. 6-132. Licensed lodging.

(a) *Statement of policy.* The intent of this section is to provide tenant-at-will status to residents of licensed lodging, as defined in section 6-106, after they have resided in a unit for thirty (30) days or more. Such licensed lodging offers sleeping accommodations but few other amenities, and residents of such housing in the past have been subjected to summary eviction procedures by landlords who purposefully characterize their rentals as "lodging houses" and thereby purport to act under state law in ejecting occupants without any recourse, regardless of the length of residency.

...

(g) *Termination of owner's interest.*

(1) Upon termination of an owner's interest in any building or structure providing licensed lodging, whether by sale, assignment, death, appointment of a receiver or otherwise, the owner shall advise the successor in title, the City of Portland and all occupants of licensed lodging who have qualified under subsection (f) above of the status of such occupants, which shall be binding upon the successor in title as though it were the owner when the status was achieved.

(2) Notice to the City of Portland shall be addressed to:

Housing Safety Office~~Chief of Inspection Services~~
Portland City Hall
389 Congress Street
Portland, ME 04101

...

5. That Section 10-3 is hereby amended to read as follows:

Sec. 10-3. Amendments.

The NFPA 101: Life Safety Code adopted by section 10-1 is amended, modified and deleted in the following respects:

(a) Section 3.3.32.8 shall be amended to read as follows:

Historic Building: A building designated a Landmark or Contributing Building within a local or National Register historic district, pursuant to Article IX of the Portland City Code.

(b) Section 3.3.97 shall be amended to include the following:

"In the case of structures posing significant life safety risks that may result in the displacement of person(s), a fire watch not to exceed seven days, with specifications and criteria to be set by the authority having jurisdiction, may be instituted if said watch is approved by the authority having jurisdiction, the City Manager, Corporation Counsel, and the Director of Permitting and Inspections~~Planning & Urban Development~~."

...

(d) Section 3.3.114 shall be amended to include the following:

"In the case of structures posing significant life safety risks that may result in the displacement of person(s) a fire watch, not to exceed seven (7) days, with specifications and criteria to be set forth by the authority having jurisdiction, may be instituted if said watch is approved by the authority having jurisdiction, the City Manager, Corporation Counsel, and the Director of ~~ ~~Permitting and Inspections~~Planning & Urban Development~~."

...

6. That Sections 11-2, 11-10, 11-11, 11-12, 11-13 and 11-25 are hereby amended to read as follows:

Sec. 11-2. Copies on file with the~~ ~~ Department of Permitting and Inspections~~Clerk~~.

Pursuant to Title 30-A M.R.S.A. §3003, at least three (3) copies of the Maine State Food Code as adopted by reference by

Section 11-1 above, have been and shall be on file in the office of the Department of Permitting and Inspections~~City Clerk~~ for public inspection and use.

...

Sec. 11-10. Certified Food Protection Managers.

(a) A food service establishment must have at least one employee granted supervisory and management responsibility designated a Certified Food Protection Manager (CFPM) as defined in Section 1.201.10.B of Maine State Food Code 2013: Food Code adopted in Section 11-1, above. Proof of CFPM certification is required as follows:

...

(b) Proof of compliance with the requirements of this section shall be provided to the City Food Inspector. Prior to the issuance of any license required by Chapter 15, the City Food Inspector must certify to the Department of Permitting and Inspections~~City Clerk's Office~~ that the requirements of this Section have been met. Failure to provide proof of compliance with the requirements of this Section will be subject to a denial, suspension or revocation of a license in accordance with the provisions of Chapter 15. In addition to license suspension or revocation, violations of subsection 11-10(a)(3)& (4), above, shall result in a penalty to the violator of $150.00.

...

Sec. 11-11. Ice cream trucks.

All ice cream trucks shall comply with the following:

(a) *General regulations.* All ice cream trucks shall comply with all requirements of section 11-35, including the requirements for a base station, and all other requirements of this article except those relating to toilet facilities, in addition to the requirements set forth in this section.

...

(g) *License, insurance required.* Each ice cream truck shall be required to be separately licensed under this article and to provide to the Department of Permitting and Inspections~~City Clerk~~ evidence of public liability insurance in an amount of not less than four hundred thousand dollars ($400,000.00) as amended, with the city named as an additional insured on the policy.

...

Sec. 11-12. Stationary food vending unit.

A stationary food vending unit shall be subject to the following regulations:

(a) Only nonalcoholic beverages and prepackaged foods shall be sold from a stationary food vending unit, and there shall be no cooking in or near the unit.

(b) An applicant for a stationary food vending unit license shall provide the Department of Permitting and Inspections~~City Clerk~~, in addition to any other information required by chapter 15, with acceptable proof of ownership or control of the property upon which the unit will be located. Such proof shall consist of a deed, lease or other written agreement.

...

Sec. 11-13. Community kitchens.

(a) A community kitchen shall mean a kitchen, licensed pursuant to this chapter, that is utilized by two or more entities at differing times for preparation of food to serve to the public off-site.

...

(d) License required: Each entity utilizing a community kitchen shall procure a community kitchen license from the Department of Permitting and Inspections~~City Clerk's office~~.

...

Sec. 11-25. Suspensions and revocations.

Licenses shall be suspended or revoked pursuant to chapter 15, except that a license which has been suspended may be reinstated by the Department of Permitting and Inspections~~clerk~~ upon application, in writing, from the holder if the health inspector certifies to the Department of Permitting and Inspections~~clerk~~ that he or she has reinspected the premises and the condition for which the suspension was imposed has been corrected.

7. That Sections 12-109 and 12-202 are hereby amended to read as follows:

Sec. 12-109. Licensing of commercial refuse collectors and refuse transporters.

No person shall collect or transport Portland waste within the corporate limits of the City of Portland without obtaining a license from the public works authority upon payment of such fees as the council may prescribe by order or without being a party to a waste hauling agreement with RWS, or the City, or paying the tonnage fee imposed by section 12-109.1, for disposal of Portland waste collected or transported by the person. Such license shall be issued for the fiscal year and shall be subject to the provisions of chapter 15 of this Code, except that the public works authority shall be substituted for the Department of Permitting and Inspections~~clerk~~ in all instances.

...

Sec. 12-202. Conditions precedent to issuance.

Prior to the issuance of any license to construct or operate a rendering facility, and in addition to any other requirements of this article or chapter 15, the applicant shall file with the Department of Permitting and Inspections~~city clerk~~ a performance bond, a clear letter of credit, or deposit the cash equivalent thereof, in an amount not less than twenty-five thousand dollars ($25,000.00) or such amount as the council at the time of licensing may determine, payable to the City of Portland, to cover the reasonable costs and expenses incurred by the city in cleaning any rendering facility upon the facility's temporary or permanent closure, said bond or cash equivalent to remain in effect throughout the period for which the license is issued.

8. That Sections 14-145.5, 14-145.11, 14-145-17, 14-226, 14-299, 14-449, 14-450.5, 14-486 and 14-522 are hereby amended to read as follows:

Sec. 14-145.5. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the IR-1 zone shall meet the following minimum requirements:

(a) *Minimum lot size*

1. Residential: Forty thousand (40,000) square feet

for lots with public water; sixty thousand (60,000) square feet for lots without public water; except as provided in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and section 14-145.3(a)1 of this article.

...

7. Excluding Peaks Island from this subsection h., any property owner whose lot does not meet the minimum lot size requirements outlined in subsection g. of this section may, for purposes of this section only, merge two (2) or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The ~~building authority~~Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the ~~building authority~~Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

...

Sec. 14-145.11. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in an IR-2 zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Twenty thousand (20,000) square feet, except as provided in section 14-433 (lots of record and accessory structure setbacks for existing buildings) and section 14-145.9(a)1 of this article.

...

6. [Excluding Peaks Island from this subsection 7.,] any property owner whose lot does not meet the minimum lot size requirements outlined in subsection f. of this section may, for purposes of this section only, merge two (2) or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The ~~building authority~~Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the ~~building authority~~Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

...

Sec. 14-145.17. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the IR-3 zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Forty-two thousand five hundred (42,500) square feet per dwelling unit, except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of thirty-five thousand (35,000) square feet per dwelling unit, provided that the Planning Board finds that the development meets the following criteria:

...

9. [Excluding Peaks Island from this subsection i.,]

any property owner whose lot does not meet the minimum lot size requirements outlined in subsection h. of this section may, for purposes of this section only, merge two (2) or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The ~~building authority~~Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the ~~building authority~~Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

...

Sec. 14-226. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulation and exceptions) of this article, lots in the I-B zone shall meet the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Lot size shall be determined by the most restrictive abutting residential zone, except for those lots which are served by public water and sewer, where lot size shall be determined by the least restrictive abutting residential zone. If no residential zone is abutting, density shall be determined by the nearest residential zone. Residential uses shall meet the requirements of such abutting or nearest residential zone.

...

12. [Excluding Peaks Island from this subsection 12,]

any property owner whose lot does not meet the minimum lot size requirements outlined in subsection 11 of this section may, for purposes of this section only, merge two (2) or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The ~~building authority~~Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the ~~building authority~~Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

...

Sec. 14-299. Performance standards.

All uses in the B-7 mixed development district zone shall comply with the following standards. Standards 14-299(a),(f),(j),(m),(n) and (o) below shall be reviewed by the Planning Authority.

(a) *Storage:* Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting properties by a solid fence at least six feet in height. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container. All food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within forty-eight (48) hours of its generation. All enclosed and exterior areas shall be cleaned and sanitized on a regular basis. Outdoor storage of refuse or debris shall be in an appropriate container or located within a designated, screened area. All dumpsters shall be screened on all four (4) sides by a minimum six (6) foot high solid fence or shall otherwise be fully enclosed as approved by the planning board or the planning and urban development department.

...

Sec. 14-449. Land use standards.

All land uses and land use activities subject to this division shall conform to the following standards and regulations, as applicable:

(a) *Principal and accessory structures:*

...

(g) *Archaeological sites:* Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the department of planning and urban development, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) days prior to action being taken by the ~~building authority~~ Planning Authority. The ~~building authority~~Planning Authority shall consider comments received from the commission prior to rendering a decision on the application. Such sites shall also comply with all applicable provisions of article IX of this chapter.

...

(n) *Agriculture:*

1. All spreading or disposal of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. §§ 4201-4209).

...

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the shoreland zone shall require a conservation plan to be filed with the ~~building authority~~Planning Authority.

...

5. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of water bodies and coastal wetlands or within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities and which are not in conformance with the above setback provisions may continue, provided such grazing is conducted in accordance with a soil and water conservation plan filed with the ~~building authority~~Planning Authority.

...

Sec. 14-450.5. Definitions.

For the purpose of this division, the following terms and words shall have the meanings given herein:

Area of special flood hazard: The land in the flood plain having a one (1) percent or greater chance of flooding in any given year as specifically identified in the Flood Insurance Study cited in section 14-450.3.

Base flood: The flood having a one (1) percent chance of being 17hereof or exceeded in any given year (i.e., a one-hundred-year storm).

~~Building authority~~Building Authority: The Department of Permitting and Inspections.~~division of inspection services within the department of planning and urban development~~.

...

Sec. 14-486. Reduction of fees.

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:

...

The planning ~~division~~ and urban development department shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The planning and urban development department~~division~~ may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

...

Sec. 14-522. Definitions.

For the purposes of this article all terms and words shall have their ordinary meanings, except as defined herein.

Approval by any board or department under this article shall include any approval with conditions.

Building addition: Any attached structure which increases the total floor area of the structure.

~~*Building Authority*~~*Building Authority:* The Director of the Department of Permitting and Inspections or his or her designee.~~Planning and Urban Development or his/her designee~~.

...

9. That Sections 15-1 to 15-11, 15-12.1, 15-13 and 15-14 are hereby amended to read as follows:

Sec. 15-1. Definitions.

Words used in this chapter shall have their common meanings except that, as used in this chapter or in chapters related to this chapter, the following terms shall have the meanings set forth in this section, unless the particular licensing provision, or the context in which the term appears, clearly establishes that a different meaning was intended:

...

Person aggrieved shall mean and include any person whose license is suspended or revoked or whose license application is denied by ~~the clerk or~~ any ~~other~~ administrative official charged with responsibility for the granting or supervision of any license.

...

Sec. 15-2. Applicability.

(a) It is the sense of the city council that, to the extent practical, licensing procedures within the city should be uniform, and should be conducted at all times so as to give the maximum degree of protection to the licensee consistent with protection of the public health, safety and welfare. To that end, this chapter shall apply to all licenses and permits issuable by the city through the Department of Permitting and Inspections~~city clerk~~, and all licenses and permits issued by the state to which the city council have a right or duty to offer recommendations, comments, or to consent, set forth in this Code. Notwithstanding the aforesaid, any more stringent licensing or other requirement of this Code which is not inconsistent with this chapter, shall be deemed to be an additional requirement of this chapter.

(b) Notwithstanding the foregoing, the director of waterfront and transportation facilities, or his or her authorized designee, shall be responsible for licensing of taxicabs and liveries under article II of chapter 30, and all references herein to the Department of Permitting and Inspections~~city clerk~~ shall be to the said director in regard to such licensing under article II of chapter 30.

...

Sec. 15-3. License required.

(a) No person shall engage in, operate any business, or use or permit the use of any device for which one (1) or more licenses are required by this Code or permit others operating under such licenses to act, without having obtained each and every such license required therein and shall not operate or use such license or device during any time that the applicable license has been suspended or after revocation as provided herein.

(b) A license may be issued pending receipt of the criminal history report from the State Bureau of Identification for pawnbrokers, junk dealers, secondhand dealers and flea markets as defined in Section 23-16, provided that the Department of Permitting and Inspections~~City Clerk~~ has received all other documentation required for the issuance of such license and a copy of the applicant's criminal history record from the Portland Police Department, which criminal history record does not contain a disqualifying criminal conviction. If, after issuance of the license, the Department of Permitting and

Inspections~~City Clerk~~ receives a criminal history report form the State Bureau of Identification that contains disqualifying information, the Department of Permitting and Inspections~~City Clerk~~ shall immediately move to suspend or revoke the license pursuant to Chapter 15 Section 15-8(a)(6) of the City Code.

...

Sec. 15-4. Licensing authority.

(a) All licenses shall be issued, denied, suspended or revoked and all hearings shall be held by the Department of Permitting and Inspections~~city clerk~~ except as expressly provided in this Code. The Department of Permitting and Inspections~~clerk~~ is authorized to notify the state licensing division of bureau of alcoholic beverages that the city council consent to the extension of existing state liquor licenses to city licensees pending the next meeting of the city council.

Sec. 15-5. Applications.

(a) All applications shall be made in writing on a form provided by the Department of Permitting and Inspections~~clerk~~. Each application submitted to the Department of Permitting and Inspections~~clerk~~ shall state the name and business address of each applicant, the license desired, location to be used, if any, the date of the application, and such additional information as may be deemed necessary or useful by the Department of Permitting and Inspections~~clerk~~ in determining whether such permit or license applied for should be issued.

(b) Other papers:

(1) Any application for a license for which a criminal conviction is a disqualification under this Code shall be accompanied by a written waiver of the applicant's right to privacy or confidentiality under the State Criminal History Records Act [16 M.R.S.A. § 611 et seq.] and otherwise to the extent necessary for the Department of Permitting and Inspections~~city clerk~~, acting through the chief of police, to determine whether or not such disqualification exists.

(2) If the applicant is other than a natural person, the names of all principal officers shall accompany the original application.

(3) A statement to the fact that no employee or officer of the city is beneficially interested in the license or licenses, or in lieu thereof, a statement of the names of such employees or officers as are beneficially interested.

(4) In the case of a renewal, the licensee shall submit to the Department of Permitting and Inspections~~clerk~~ on a form provided by the Department of Permitting and Inspections~~clerk~~, a certified ownership report for the previous twelve (12) month period. Such report, among other things, shall list the names of all persons, or groups of persons acting in concert who at any time during the period had an actual ownership interest.

...

Sec. 15-6. Fees.

(a) *Application fees.* Except as expressly provided, all applications for original licenses or for the consent of the city council, other than a flea market seller, temporary FSE or auction license, shall be accompanied by an administrative fee of thirty-five dollars ($35.00) to defray the cost of processing the application. All applications for renewal of licenses shall be accompanied by the fees for issuance and an administrative fee of twenty-five dollars ($25.00), except for a flea market seller to defray the cost of processing the application. The latter shall be refundable if the application is denied. In any case where notice by publication or mail is required, the applicant shall pay the cost of publication and postage in advance.

(b) *Appeals fee.* Appeals from determinations of the Department of Permitting and Inspections~~clerk~~ shall be accompanied by a filing fee of twenty-five dollars ($25.00) and the appellant shall also pay the full cost of publication and postage in advance, if such notice is required. For the purposes of this subsection, notice by publication shall be deemed to apply to the hearing on appeal whenever the requirement of publication would exist in the first instance.

(c) *Filing fees.* Whenever any document, other than an application for any license, is required or permitted to be filed with the Department of Permitting and Inspections~~clerk~~ in connection with any license, and no fee for such filing is otherwise prescribed, the fee for filing such document shall be two dollars ($2.00) for the first page, and one dollar ($1.00) for each page thereafter.

...

(g) *Fees to be cumulative.* Fees provided for in this section shall be deemed cumulative and shall be in addition to any other fee or fees required for the issuance of any permit under section 15-12. Except as specifically provided, such fees shall not be waived, refunded or prorated, except that upon a successful appeal, the Department of Permitting and Inspections~~clerk~~ shall credit the appeal fee toward the fee for issuance and shall refund any excess; and further, except that if, during the unexpired term of the license, a licensed activity is subsequently prohibited by amendment to this Code, the Department of Permitting and Inspections~~clerk~~ shall refund to the licensee a portion of the license fee in accordance with the formula for proration of fees set forth in section 15-6(f). Where a maximum license fee is established by the state, the fees set by this chapter shall be deemed cumulative to the extent of such maximum fee.

Sec. 15-7. Investigation of applicant.

(a) Upon receipt of an application for any license or permit, other than a renewal application substantially identical to the original application, the Department of Permitting and Inspections~~clerk~~ shall inquire of other city departments, as appropriate, for comments as to whether a license may be granted consistently with the provisions of the laws and ordinances enforced by such departments. In all appropriate cases, the building authority shall verify that the premises to be used for the proposed activity comply with the building code, electrical code, plumbing code and zoning ordinance, and if applicable, state junkyard screening law; the health authority shall cause inspections to be made of the proposed location of any premises dispensing food or liquor; the fire chief shall cause inspection to be made for the purpose of determining if city ordinances, a state law, or state regulations concerning fire and safety have been complied with; and if the license is not issuable to any class of persons, the police chief shall cause an investigation to be made of the principal officers or persons to be licensed. All such persons shall report to the Department of Permitting and Inspections~~clerk~~ in writing, and copies of any such report shall be deemed a public record.

...

Sec. 15-8. Standards for denial, suspension or revocation.

(a) *Grounds.* In addition to any other specific provision of this Code authorizing such action, a license or permit may be denied, suspended or revoked upon a determination of the existence of one (1) or more of the following grounds:

...

(b) *Hearings.*

(1) Except as expressly provided in this Code, no license to which this chapter applies may be revoked or suspended without prior notice to the licensee, and after a hearing.

...

(3) Upon a determination that immediate and irreparable harm will be suffered by the public prior to the time that a hearing on suspension or revocation of a license can be scheduled and a finding of probable cause for such suspension or revocation, the Department of Permitting and Inspections~~city clerk~~ may suspend a license, pending hearing, effective upon the giving of actual notice to the licensee; provided that the Department of Permitting and Inspections~~clerk~~ shall give an opportunity to be heard as soon as practicable thereafter. At any hearing, the licensee shall be given the opportunity to answer the complaint and to present evidence. The complainant shall also be notified of the hearing and given the opportunity to be heard.

...

(c) *Abandoned licenses.* The applicant shall pay the issuance fee and obtain any license from the Department of Permitting and Inspections~~clerk~~ within thirty (30) days after it has been approved by the Department of Permitting and Inspections~~city clerk~~. Upon failure to pay the issuance fee and obtain the license within said thirty-day period, the approval shall be void and the application deemed abandoned. For good cause shown, the Department of Permitting and Inspections~~clerk~~ may extend the thirty-day period provided such extension does not result in the issuance of the license being delayed more than one hundred eighty (180) days from its approval by the Department of Permitting and Inspections~~city clerk~~.

...

Sec. 15-9. Appeals.

(a) *Procedure.* An appeal to the city manager may be taken by any person aggrieved by the denial, suspension or revocation of a license by the Department of Permitting and Inspections~~clerk~~ by filing a notice of appeal and the prescribed fee with the city manager within thirty (30) days of the decision appealed from, and not thereafter. Every appeal should be in writing and shall state the basis for the appeal. Within two (2) business days of the filing of an appeal, the city manager shall designate himself or any agent or employee to act as hearing designee in the appeal. The hearing designee shall hear the appeal within ten (10) business days after the filing of the appeal and may affirm, reverse or modify the decision appealed from. The taking of an appeal shall not stay a decision appealed from, except that at the request of the licensee, the Department of Permitting and Inspections~~clerk~~ may stay the effective date of a suspension, revocation or denial of a renewal license upon a finding that the public is not likely to suffer any harm during the pendency of the appeal. In such case, the Department of Permitting and Inspections~~clerk~~ shall make a written finding of his or her decision in this regard and shall notify the appellant.

(b) *Scope of review.* On appeal, the hearing officer shall review the decision of the Department of Permitting and Inspections~~clerk~~ and any disciplinary action taken pursuant thereto to determine whether the decision was based upon substantial evidence and the disciplinary action taken was proportionate to the violation. The hearing officer may take additional evidence with respect to such decision or action and if additional testimony or evidence is taken shall determine the appeal upon all of the evidence, except as provided in this section.

...

Sec. 15-10. Notices of hearing.

(a) *Content.* Whenever a public hearing is required, the Department of Permitting and Inspections~~clerk~~ shall give notice of the time and place of the hearing, the type of license involved, and the nature of the hearing, and the address or location of the property involved.

(b) *Service.* Except as expressly provided, whenever notice by mail is required, such notice shall be mailed by regular United States mail at least ten (10) days in advance of the hearing date. When notice by publication is required, such notice shall be published in a newspaper of general circulation in the city at least once, not more than thirty (30), nor less than seven (7) days before the date of the hearing. Where notice to abutters is required, all owners or occupants of property within five hundred (500) feet of such parcel or tract shall be deemed to be abutters, and service shall be made by ordinary mail at least seven (7) days before the date of the hearing. In the case of abutters, the owners and occupants of property listed in the assessor's records on the last tax date prior thereto, shall be deemed to be the persons to whom notice is to be given. The Department of Permitting and Inspections~~clerk~~ shall take reasonable measures to notify renters in close proximity.

...

Sec. 15-11. License not to be transferable.

(a) No license shall be transferred to any person, to any location, or to any other vehicle or device, and no license fee shall be refunded if the licensed activity is ceased prior to the expiration of the license. All purported transfers not in accordance with this section are void. A license shall be deemed the subject of an attempted transfer whenever there is a sale of the business, vehicle or device, or where there is a change in actual ownership interest. Upon any such event, the licensee shall immediately surrender the license to the Department of Permitting and Inspections~~clerk~~; except that, in the case of death, bankruptcy or receivership of any licensee, the duly appointed executor or administrator of the deceased licensee or the duly appointed trustee or receiver of the bankrupted licensee or licensee receivership may retain the license and operate under the same for the benefit of the estate with the written permission and approval of the Department of Permitting and Inspections~~clerk~~ until such time as such operation is no longer needed to benefit the estate. Thereafter, such personal representatives, receivers, or trustees shall either return the license to the Department of Permitting and Inspections~~clerk~~ or transfer same to any other person, under order of the court having jurisdiction and upon written notice to the Department of Permitting and Inspections~~clerk~~. In the interim, between the death of the licensee and the appointment of an executor or administrator, or in cases where no administration of the estate of a deceased licensee is contemplated, the widow or widower or person designated by all of the heirs of the deceased licensee may take over the license upon written notice to the Department of Permitting and Inspections~~clerk~~. Duly appointed and qualified guardians and conservators of the estate of a licensee may retain the license of their ward during the term of office upon written notice to the Department of Permitting and Inspections~~clerk~~.

(b) In all cases arising out of this section in which the Department of Permitting and Inspections~~clerk~~ is required to determine the identity or composition of or ownership interests in an applicant or licensee, or to determine whether a transfer of an ownership interest in an applicant or licensee has taken place, he shall look to the substance rather than the form of transactions and any person aggrieved may appeal the Department of Permitting and Inspections~~clerk~~'~~s~~ determination to the city manager.

...

Sec. 15-12.1. Waiver of fees.

The city council may, in its discretion, waive or reduce any fee required of any nonprofit organization where the council determines that the purpose of the licensed activity or the funds to be raised by the activity are of direct benefit to the citizens of the city. Additionally, the Department of Permitting and Inspections~~clerk~~ may waive or reduce the fee required of the nonprofit organization for a temporary food service establishment license when the organization demonstrates that it will retain 100 percent of the proceeds of the temporary sale of food.

Sec. 15-13. Supplementation of applications.

Whenever a license is in effect, the licensee shall be responsible for notifying the Department of Permitting and Inspections~~clerk~~ in writing of any material change in facts set forth in the application for any license held from the city within seven (7) days thereafter. Failure to comply with this requirement shall be a violation of this chapter.

Sec. 15-14. Violations.

In addition to any action which may be taken by the Department of Permitting and Inspections~~clerk~~ or the city council with respect to the suspension or revocation of a license, violation of this chapter, or of any licensing provisions of the city governed by this chapter, or of any rule made pursuant thereto shall be a civil violation subject to the penalties of section 1-15.

10. That Sections 16-10 and 16-13 to 16-15 are hereby amended to read as follows:

Sec. 16-10. List of employees.

The therapeutic massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the chief of police, his or her authorized deputy, the Department of Permitting and Inspections~~city clerk or her representative~~ upon request.

...

Sec. 16-13. Standards for denial.

In addition to the provisions of chapter 15, a license under this article shall be denied to the following persons:

...

The Department of Permitting and Inspections~~clerk~~ shall make and keep a written record of every decision to deny an application for any license hereunder.

...

Sec. 16-14. Grounds for suspension or revocation.

(a) *All licenses.* In addition to the grounds for revocation or suspension set forth in chapter 15 and section 16-13, any license may be suspended or revoked upon a determination that the licensee:

(1) Failed to notify the Department of Permitting and Inspections ~~clerk~~ of any change in material fact set forth in the application for such license; or

...

Sec. 16-15. Application for therapeutic massage establishment, combined massage establishment/massage therapist and massage therapist licenses.

Any person desiring a license pursuant to this chapter shall file a written, signed application with the Department of Permitting and Inspections~~city clerk~~ on a form to be furnished by the ~~—~~Department of Permitting and Inspections~~clerk~~. An application for a combined massage establishment/massage therapist license, a massage therapist license or a conditional massage therapist license shall be accompanied by two (2) front face photographs of the applicant taken within thirty (30) days of application, of such size as the Department of Permitting and Inspections ~~clerk~~ may specify.

...

11. That Sections 19-17 to 19-19 are hereby amended to read as follows:

Sec. 19-17. License required.

(a) All street vendors conducting business on any street, way or public place must have a license issued by the Department of Permitting and Inspections~~City Clerk~~ as provided in this Article.

...

(c) A street goods vendor or a street artist shall only be permitted on a street, way or public place during festivals or special events declared by the City Council pursuant to Section 19-22, with the approval of the sponsoring business or organization or the Parks and Recreation Department. All street goods vendors shall be required to obtain a license issued by the Department of Permitting and Inspections~~City Clerk~~ and pay the fee prescribed by Section 25-27(e) of this Code.

...

Sec. 19-18. Application.

(a) In addition to the information required by section 15-5, each application for a street vendor's or street goods vendor's license shall include a specific description of the business, the goods or services to be sold, and the equipment, if any, to be used, including a reasonable estimate of the value thereof.

(b) No street vendor's license shall be issued without the applicant first filing with the Department of Permitting and Inspections~~clerk~~ a certificate, in a form satisfactory to the corporation counsel, evidencing public liability insurance coverage in an amount not less than the maximum liability under applicable law and naming the city as an additional insured. The certificate shall also provide for notice to the Department of Permitting and Inspections~~clerk~~ not less than thirty (30) days prior to any cancellation of insurance, which insurance the licensee shall maintain at all times while engaged in street vending.

Sec. 19-19. Special conditions of operation.

(a) Area of operation: A licensed street vendor may operate:

(1) In any zone of the city where such use is* a permitted or conditional use as defined in chapter 14 of the City Code;

(2) At Hadlock Field subject to the following conditions:

On the north side of Park Avenue between High Street and I-295, except when there is a game or event at Hadlock Field in which case food trucks are limited to Park Avenue along Deering Oaks Park until two (2) hours before a game or event and starting again two (2) hours after the game or event.

Within the vicinity of Hadlock Field, as defined by separate council order, four (4) pushcart licensed street vendors may operate upon the following terms:

a. One (1) at each of the four (4) sites to be designated by the Department of Permitting and Inspections~~city clerk~~, said sites to be located approximately as follows:

i. Deering Avenue sidewalk at the entrance to Fitzpatrick Stadium parking lot, or at the vendor's choice, at a site in said parking lot which is approved by the Department of Permitting and Inspections~~city clerk~~;

...

d. Any approved street vendor shall comply with all of the applicable provisions of this Code, including without limitation the provision of this subsection, and of city rules promulgated for such street vendors by the ~~ ~~Department of Permitting and Inspections~~city clerk~~; and

e. The Department of Permitting and Inspections~~city clerk~~ is hereby authorized to promulgate rules consistent with this Code for the form of the Hadlock Field street vendor license and application; advertisement and conduct of the lottery and approved street vending operations, including without limitation, selection of replacement vendors if needed; vendor sales practices; vendor litter control; and cleanup both during and after close of sales. Said rules shall be subject to the approval of the city manager and shall be posted in the Department of Permitting and Inspections~~city clerk's office~~.

(b) *Conduct of operations:*

(1) Every licensed street vendor shall wear a numbered badge issued by the Department of Permitting and Inspections~~clerk~~.

...

12. That Sections 23-27 and 23-29 are hereby amended to read as follows:

Sec. 23-27. Application.

Application for a license required by this chapter shall be made to the Department of Permitting and Inspections~~city clerk~~, with payment of the fees and in accordance with the procedures set forth in chapter 15.

...

Sec. 23-29. Flea markets.

Any person who provides tables, space, or otherwise operates a flea market shall obtain a license from the Department of Permitting and Inspections~~city clerk~~.

...

An operator or seller who is determined by the Department of Permitting and Inspections~~clerk~~ to have violated any provision of this section may have their license revoked and not renewed for a period not to exceed one (1) year. Any person so charged shall be afforded notice and an opportunity to be heard prior to the revocation of the license.

13. That Sections 28-112, 28-136, 28-137, 28-138, 28-141, 28-270 to 28-273, 28-275, 28-276, 28-280 to 28-283 are hereby amended to read as follows:

Sec. 28-112. Permit to use.

Any person seeking the privilege of using any taxicab stand shall make application in writing to the Chapter 30 Licensing Authority~~city clerk~~, and the Chapter 30 Licensing Authority~~city clerk~~ shall grant such permits as it approves.

...

Sec. 28-136. Required.

(a) No towing or wrecking service shall tow any vehicle within the city without the express knowledge or consent of the vehicle owner or his or her authorized representative, unless such towing or wrecking service is currently licensed.

(b) All licenses issued pursuant to this division shall be granted, denied, suspended or revoked by the Department of Permitting and Inspections~~city clerk~~.

(c) Licensees may request that they be placed on the towing list, which shall subject them to additional regulations promulgated by the chief of police pursuant to section 28-124.

...

Sec. 28-137. Investigation; issuance or denial.

(a) Within thirty (30) days after receipt of an application under this division, the Department of Permitting and Inspections~~city clerk~~, in conjunction with the chief of police, shall conduct an investigation to determine: The truth, accuracy and adequacy of the information contained in the application; the ability of the applicant to furnish the required service and to abide by the regulations and provisions set forth herein or established pursuant to section 28-124; the applicant's past record of performance in wrecker or towing business and the adequacy of the applicant's equipment and storage facilities. Upon completion of the investigation, the Department of Permitting and Inspections~~clerk~~ shall either grant or deny the license and notify the applicant in writing of such decision and the findings and reasons, if any, for denial of the license. Upon issuance of the license, the Department of Permitting and Inspections~~clerk~~ shall forward to the licensee a copy of this article and any regulations adopted pursuant thereto.

(b) The following must be submitted prior to commencement of the investigation:

...

(6) Such other information as the Department of Permitting and Inspections~~clerk~~ may require on the license application.

...

Sec. 28-138. Insurance required.

(a) No wrecker shall be issued a license until the applicant has deposited with the Department of Permitting and Inspections~~clerk~~ a certified copy of the following policies:

...

Sec. 28-141. Grounds for revocation, suspension or denial.

In addition to the grounds for revocation, suspension or denial found in chapter 15, a license issued under this division may be suspended or revoked or denied by the Department of Permitting and Inspections~~city clerk~~ upon a determination that the licensee, or applicant, or wrecker operator:

...

Sec. 28-270. Purpose; permit and license required.

(a) The purpose of this article is to:

...

(b) No person, establishment or entity shall conduct valet parking service within the City of Portland without first obtaining a permit from the Department of Permitting and Inspections ~~city clerk's~~ office and paying the fee therefor.

...

Sec. 28-271. Definitions.

Terms used in this article shall have their common meanings except that, the definitions used in this Article or in chapters or articles related to this Article shall have the following meanings:

...

Valet parking permit means the permit issued by the Department of Permitting and Inspections~~city clerk's~~ office to the valet permit operator allowing it to conduct a valet parking operation in an approved valet parking zone.

...

Sec. 28-272. Applications.

Applications under this division except for a one-day special event permit, shall be filed thirty (30) days in advance of issuance of a permit in the Department of Permitting and Inspections~~clerk's~~ office. Such application shall include the following information:

(1) Name and address of the proposed permittee/operator. If incorporated, permittee/operator must provide copies of their articles of incorporation and bylaws.

...

(5) An appropriate form of statement over the signature of each person signing the application, giving all persons and governmental agencies having information relevant to the above items permission to release the same to the Department of Permitting and Inspections~~clerk's office~~.

...

(9) Applications shall be forwarded by the Department of Permitting and Inspections~~clerk's office~~ to all city departments which may be affected by the granting of the permit, including but not limited to, public works, planning, police and parking.

...

Sec. 28-273. Fees; exceptions.

(a) *Issuance fees.* Applications for yearly valet permits shall be accompanied by an annual nonrefundable fee of two hundred and sixty dollars ($260.00) per location. Each location shall only include two (2) parking spaces approved by the Transportation Systems Engineer, whose decision shall be final.

(b) *Special event fee.* Application for a special event permit shall be accompanied by a nonrefundable fee of sixty dollars ($60.00) provided that the Department of Permitting and Inspections~~clerk's office~~ has received ten (10) days' notice prior to such event.

...

Sec. 28-275. Required.

(a) *Driver's license.* No person shall valet park a vehicle within the city unless such valet driver is currently licensed to operate a vehicle.

...

(c) *Insurance.* The applicant must file with the Department of Permitting and Inspections~~clerk's~~ office a copy of the applicant's insurance certificate evidencing public liability insurance coverage and automobile insurance coverage in amounts not less than Four Hundred Thousand Dollars ($400,000) combined single limit, or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time, covering claims for bodily injury, death and property damage, and naming the City as an additional insured, and also provide worker's **compensation insurance coverage as required by law.**

Sec. 28-276. Standards and criteria for application review.

The standards and criteria used in reviewing the application required in section 28-273 shall be in accordance with the Valet Parking Rules and Regulations on file with the Department of Permitting and Inspections~~clerk's office~~.

...

Sec. 28-280. Denial, revocation, or suspension of permit; removal of equipment or personal property of the permittee/operator and storage fees.

(a) The Department of Permitting and Inspections~~Clerk's Office~~ may deny, revoke, or suspend a permit for any valet parking service authorized in the City if it is found that:

...

Sec. 28-281. Appeals of permit denial or revocation.

(a) *Procedure.* An appeal to the City Manager may be taken by any person aggrieved by the denial, suspension or revocation of a license by the Department of Permitting and Inspections ~~clerk's office~~ by filing a notice of appeal within thirty (30) days of the decision appealed from, and not thereafter. Every appeal should be in writing and shall state the basis for the appeal. The City Manager or his or her designee shall hear the appeal and may affirm, reverse or modify the decision appealed from.

...

Sec. 28-283 Special Events.

Valet services operating for a special event may apply for a permit at the Department of Permitting and Inspections~~clerk's office~~ as long as it does not reduce the number of parking spaces needed to serve the general public in the area of the request.

Special events shall be restricted to any event occurring no more than twice per year. The hours for parking of vehicles shall be approved by the City. A special event application shall be filed with the Department of Permitting and Inspections~~Clerk's Office~~ at least ten (10) days prior to the scheduled event.

BE IT FURTHER ORDAINED that these amendments are enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter.

Portland, Maine | Yes. Life's good here.

M E M O R A N D U M

TO: Jon Jennings, City Manager
FROM: Julie Sullivan, Chief of Staff
DATE: October 26, 2015
RE: Proposed Permitting and Inspections Department

With the goal of radically improving the City's many permitting and inspections functions, I reviewed current positions, processes and structures, and am proposing a new one-stop department. To that end, I conducted approximately 40 interviews including several external partners; reviewed the two 2013 studies, one from the University of Southern Maine and the other from the Government Consulting Group; and looked at best practices from Boston, Burlington, VT and Lowell, MA.

The Planning and Urban Development Department has made concerted efforts over the past few years to strengthen these functions and many improvements can be attributed to their hard work. We are now poised to build on these initial improvements and restructure to fully realize the goal of an effective, efficient permitting and inspections department that provides excellent customer service.

Key areas of emphasis from internal and external interviewees are:

- Need to greatly improve customer service focus
- Information and application materials are far too complex
- Need more detailed web-based interface regarding application status
- Need online application capability which feeds directly into the City software system(s) to avoid staff data entry and simplify the process for applicants
- Applications must be triaged so are not all in one queue, but separated by complexity
- Clear, consistent evaluative measures and processes need to be put in place
- Ordinances need to be rewritten for clarity, consistency and brevity

Summary

The interviews and research indicate that there are clear efficiencies and improvements to be gained by co-locating Inspections, Housing Safety, Zoning, and Business Licensing. Adding Food Service Inspections in the future also makes sense, given the overlapping involvement with overall inspections and business licensing processes.

Currently, all building permit applications go into the same queue. There is some fast-tracking based on application completeness. Staff stated that at least 60% of application volume is small, residential rehab projects. I suggest re-tooling the front-end processes to triage applications so that simple projects can move quickly and perhaps have permits issued on the spot, with front-end staff able to work with customers needing assistance instead of entering data and uploading documents. It will also be critical to change the threshold for which projects require a zoning review and which do not. Currently, all projects are subject to a zoning review.

For Events, there are efficiencies and improvements to be made by co-locating all event-related staff within one office in Recreation and Facilities Management, adding contract staff to allow the City to more effectively manage the increasing volume and scope of events, and including all event-related permits and fees into one overarching contract.

Although Planning Department staff are extremely wary of any software changes, it is evident that the current programs and processes maintain a patchwork, band-aid approach and do not allow for cost-savings, efficiencies and good customer service. The IT Department is considering a City-wide software solution that could better link the many departments while providing a seamless experience for our customers.

Recommendations are organized into five areas:

1. Structure and Staffing
2. Processes
3. Ordinances
4. IT
5. Budgetary Impact

Recommendations

1. Structure and Staffing

The departments involved in permitting and inspections are: City Clerk, Fire, Health & Human Services/Public Health, IT, Planning and Urban Development, Parking, Police, Public Services, and Recreation and Facilities. In general, permitting and inspections functions are as follows:

Department	Function	Name	Title
Planning	Plan Review	Tammy Munson Jon Rioux Jeannie Bourke Laurie Leader	Inspections Division Director Inspections Division Deputy Director Plan Reviewer Plan Reviewer
	Front desk – Inspections	Doreen Christ	Office Assistant
		Brad Saucier	Admin Assistant
		Vacant	Office Assistant (half time with Inspections, half time with Planning)
	New construction/rehab inspections	Tammy Munson Jon Rioux Doug Morin	Inspections Division Director Inspections Division Deputy Director Code Enforcement Officer

Department	Function	Name	Title
		Brian Laflamme Duane Hanson	Code Enf Off (electrical) Code Enforcement Officer
	Housing complaint inspections/sidewalk issues including outdoor dining, street artists, accessibility issues, etc.	Chuck Fagone	Code Enforcement Officer
	Zoning Review	Ann Machado Christine Stacy	Zoning Administrator Zoning Specialist
	Historic preservation	Deb Andrews Rob Wiener	Historic Preservation Manager Preservation Compliance Officer
	Planning/development	Tuck O'Brien Barbara Barhydt Rick Knowland Christine Grimando Caitlin Cameron Shukria Wiar Jean Fraser Nell Donaldson Phil DiPierro Jennifer Munson Vacant	Planning Division Director Development Review Manager Senior Planner Senior Planner Urban Designer Planner Planner Planner (PT) Development Review Coordinator Office Manager Office Assistant (half time with Inspections, half time with Planning)
City Clerk	Business licensing	Janice Gardner	Business License Administrator
	Event permits	Janice Gardner	Business License Administrator
HHS	Food service inspections	Mike Russell Eric Cobb Tom Williams	Program Manager Inspector Inspector
Fire	Plan review	Keith Gautreau Craig Messinger David Petrucelli	Asst Fire Chief, Fire Prevention Lieutenant Captain
Public Services	Events	Ted Musgrave Rusty Groh	Event Coordinator Event Assistant
	Street opening permits	Carol Merritt	Account Clerk
	On-street parking permits	Gretchen Gagnon	Office Assistant
	FOG/Water Resources	Ben Pearson	Assistant Engineer
	Plan review	Kathy Earley	Director of Engineer Services
		David Margolis-Pineo	Deputy Engineer
		Jeff Tarling	City Arborist
		Jeremiah Bartlett	Transportation Engineer
		Rhonda Zazzara	Inspection Coordinator
IT	Urban Insight, Civic Plus, ePlan	Dan Boutilier Vicki Bourret	IT Dept Director Deputy IT Director
Rec & Facilities	Events	Sally DeLuca Andy Downs	Rec & Facilities Dept Director Director of Public Assembly Facilities
Parking	Events	John Peverada	Parking Manager

Department	Function	Name	Title
Police	Events	Sgt. Mike Rand	Traffic
Housing Safety Office	Rental housing inspections	Art Howe	Administrator
		Ian Houseal	Program Coordinator
		TBH – 3 positions	Code Enforcement and Life Safety Inspector(s)

Initially, the following components were considered for inclusion in the new one-stop department:

- Inspections
- Business Licensing
- Events
- Parking Permits
- Zoning
- Food Service Inspections
- Housing Safety

These components were presumed to stay under Planning:

- Housing and Community Development
- Transportation
- Planning and Historic Preservation

Because the Housing Safety Office (HSO) is just starting up, I believe it is best to allow the HSO to achieve its own short-term deliverables without having to be caught up in the trials and tribulations of a new, combined department. I suggest bringing the HSO into the new one-stop 3 to 6 months after implementation. The Food Service Inspections program in the Public Health Division is functioning well and also can be brought into the new one-stop at a later date.

On the other hand, I do not recommend bringing Events into this one-stop. There is enough complexity in combining all building-related permitting and inspections as well as business licensing functions; the best practices review did not yield any other municipalities who combine these functions with events; and interviews with Events staff indicate several improvements that can be made to streamline event-related permitting within an improved events one-stop:

- Bring Event Coordinator and Event Assistant from Public Services into the Events office under the Director of Public Assembly Facilities.
- Fill the Deputy Director of PAF position, as the Director has too many direct reports.
- Contract with event coordinators to allow the City to respond more efficiently and effectively to the increased volume and scope of events.
- Combine all relevant permits under one event contract, so that customers are paying one fee at one time.

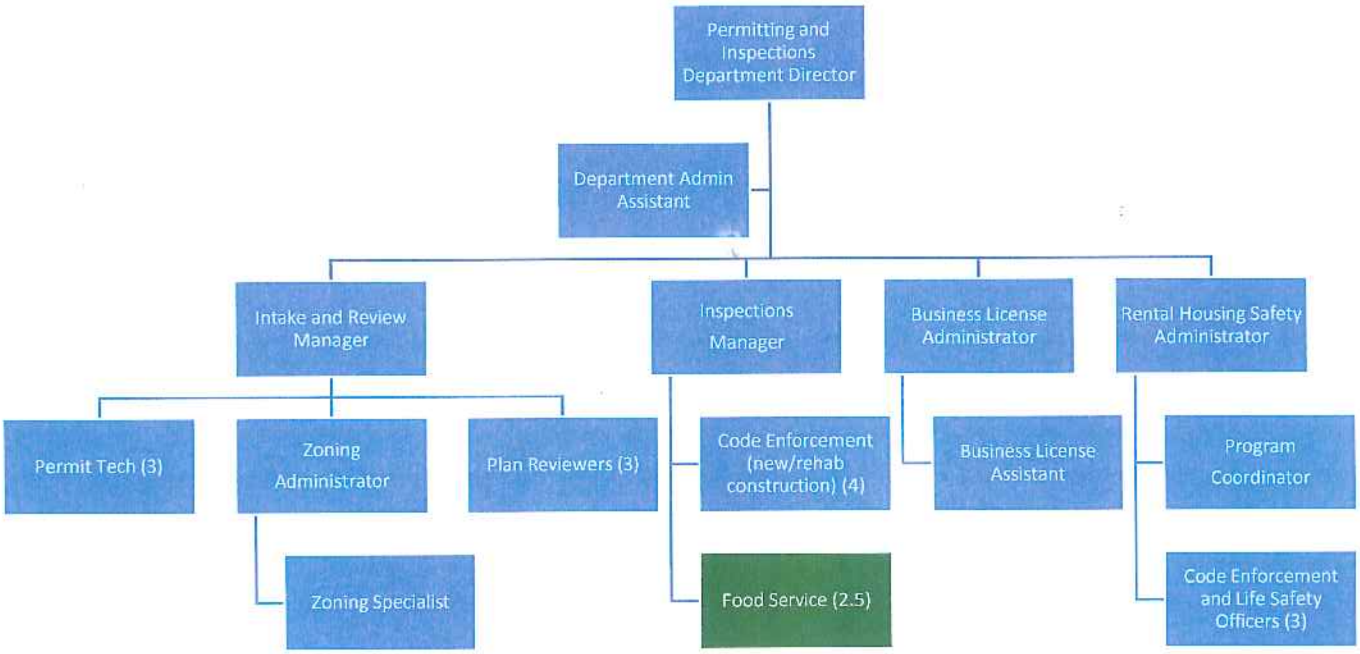
- Set a threshold above which an event needs to have its own organizer or we will charge them for the cost of an organizer.
- Consider enforcing deadlines such that fees increase for late requests.
- Tent permits should go through admin review and not zoning.
- Set a threshold above which an event needs Fire Department involvement.
- Consider a threshold for types of events that should have City Manager approval at the outset.
- Fully utilize City software systems, either Urban Insight or a new software solution.

I also do not recommend bringing Parking into this one-stop. While Parking is involved with events permitting as well as some construction-related permitting, it is a relatively isolated process that works well as it is.

However, there are advantages to moving the street opening and on-street parking permits related to construction from Public Services to the one-stop, and either the Department Admin Assistant or the Planning Techs could issue those permits. In addition, it make sense to incorporate the Fats, Oils and Grease permits into the one-stop, as they are a significant challenge for the food service industry and part of the building review process.

The new Permitting and Inspections Department would incorporate the following changes:

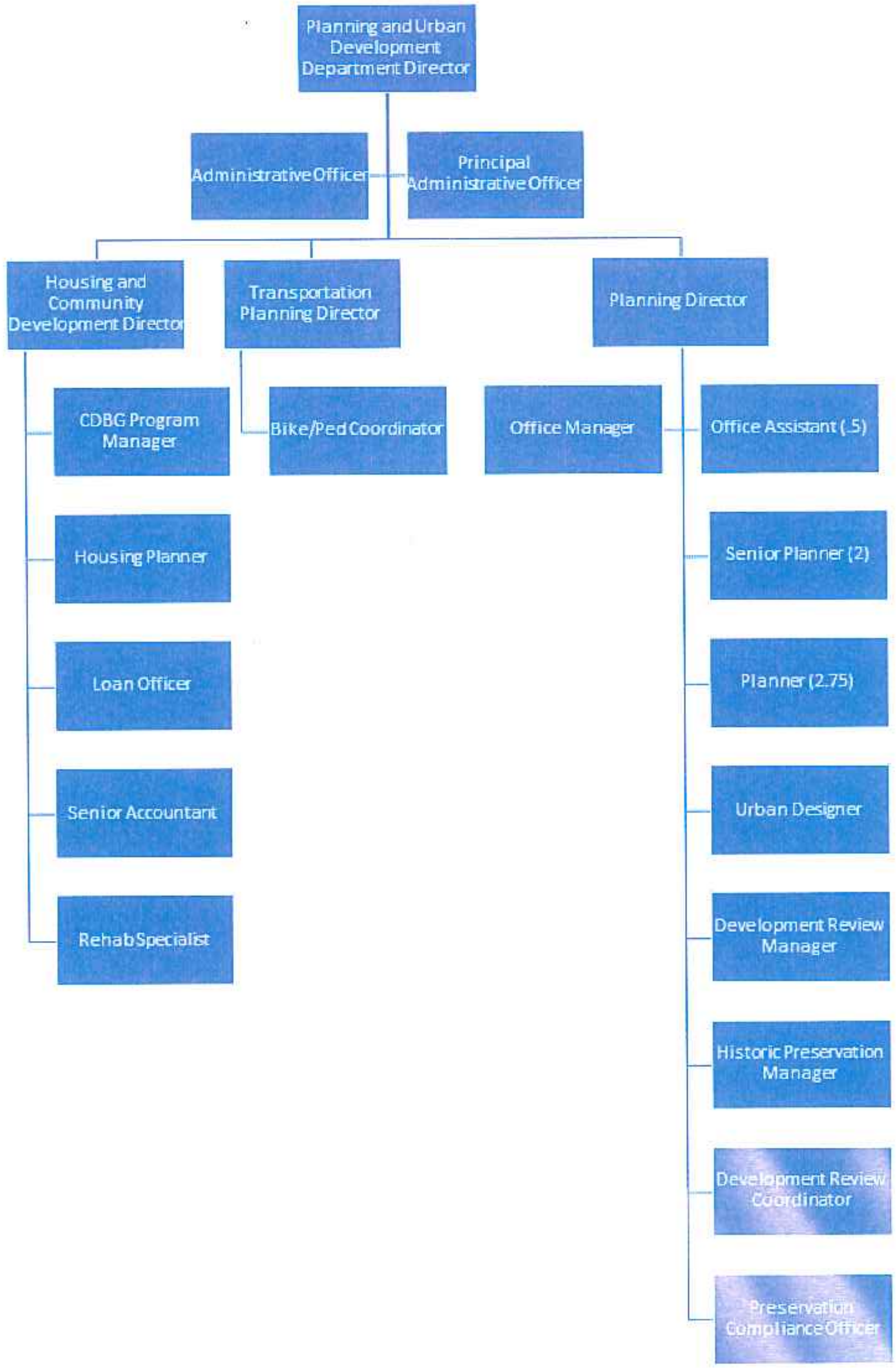
- New department head
- New front-end position: Planning Tech - Quickly reviews all incoming applications, works directly with applicants on completeness and accuracy, issues same-day permits, queues more complicated projects, serves as point person for applicant questions throughout the process, and ensures an excellent customer service experience.
  - Currently, there are 2.5 front-end positions: 1.5 Office Assistants and one Administrative Assistant
  - I suggest eliminating these positions.
  - Given the volume, I recommend three Planning Tech positions to comprise the front end.
  - I also recommend a senior-level administrative position to report to the Department Director, support the entire department, and answer phones.
- Additional life safety plan reviewer funded by HSO revenues and reporting to the Intake and Review Manager. This position should also conduct ADA reviews; currently, the State Fire Marshal does so, which has not been an effective process.
- New Intake and Review Manager and Inspections Manager positions
- Elimination of Inspections Division Director and Deputy Director positions



This approach allows for management by function for intake, review and inspections. The green shading shows that Food Service Inspections would join the department in the future.

To underscore, the success of this structure relies in large part on the Planning Techs, an effective triage process based on project complexity, and a robust customer service orientation.

The Planning and Urban Development Department would then look like this, assuming no additional changes to current staffing:


Planning and Urban Development Department Director
Administrative Officer
Principal Administrative Officer
Housing and Community Development Director
Transportation Planning Director
Planning Director
CDBG Program Manager
Bike/Ped Coordinator
Office Manager
Office Assistant (.5)
Housing Planner
Senior Planner (2)
Loan Officer
Planner (2.75)
Senior Accountant
Urban Designer
Rehab Specialist
Development Review Manager
Historic Preservation Manager
Development Review Coordinator
Preservation Compliance Officer

To summarize, proposed staffing changes entail:

- Planning and Urban Development
  - Inspections Division moves to proposed Permitting and Inspections Department (PID)
  - Zoning moves to PID
  - Housing and Community Development, Transportation Planning, and Planning
- City Clerk
  - Business License Administrator (and possibly part-time assistant) move to PID
- Housing Safety Office
  - Moves to PID
- Health & Human Services, Public Health Division
  - Food Service Inspections moves to PID in the future
- Public Services
  - Event Coordinator and Event Assistant move to Rec and Facilities
  - Determine how best to handle FOG permits in the new department
- Recreation and Facilities Management
  - Consider adding Deputy Director of Public Assembly Facilities to ensure Director is positioned to handle the ever-increasing scope and volume of events
  - Add Event Coordinator and Event Assistant from Public Services
  - Consider adding contract Event Coordinators to help meet demand

2. Processes

Perhaps the clearest priority heard from nearly all interviewees was the need to revamp the front-end processes for all application types. Currently, the process is supposed to entail:

1. Applicant completes PDF form and sends it via email as an attachment, along with drawings
2. Staff review materials for completion, legibility and accuracy
3. Staff enter all the data into Urban Insight and upload plans to Archive and ePlan plan review software
4. Invoice is created and sent to applicant to pay online
5. When payment is posted, plan review begins
6. Permit issued and final approved plans are stamped

I recommend the following front-end process changes:

- Ideally, an effective software solution eliminates the need for staff to enter data, upload documents, scan documents, save them to multiple places, etc. I address this issue more fully in the IT section.

- Without having to enter data and upload documents to different places, and direct phone calls, we can eliminate the 1.5 Office Assistant positions (.5 is currently vacant) and replace with three Planning Techs.
    - Move the Admin Assistant to report to the new Department Director, support the entire department, and answer phones. This allows the Planning Techs to focus on customers and applications.
    - The Planning Techs would work with walk-in applicants and review electronic submissions.
        - They would follow up with applicants to ensure that all needed materials are submitted, serve as a single point of contact for applicants, and eliminate the need for Zoning or Plan Review to have to chase down applicants for missing information.
        - They would triage applications based on complexity and strive to issue same-day permits for simple projects with all information submitted.
    - The Planning Techs would have enough knowledge to work effectively with applicants and would be required to use solid customer service skills to ensure positive, productive interactions with all applicants at all times.
- The invoicing process should be reconsidered so that all fees are clear and simple, known to applicants up front, combined from the many different possible departments that could be involved, and due at an appropriate point in the process.
    - I suggest a full review of our fee structure, especially given prior recommendations to use Burlington, VT and Lowell, MA as key comparables. Fee amounts have already been reviewed; I believe the number of separate fees currently assessed should be considered now, with the goal of simplifying.
    - Some interviewees suggested we consider providing credits for any required third-party reviews against building/permit fees. It is my understanding that such reviews were primarily if not entirely life safety reviews. Thus, with the addition of a dedicated life safety plan reviewer, there should no longer be a need for such reviews on a regular basis.
- A new software package should allow us to more easily create simple, clear, streamlined information and application materials. Currently there are far too many kinds of forms and they are extremely difficult to understand. Prior studies have recommended looking at Burlington as an example here as well. Regardless of software implementation, this information and materials needs to be revamped entirely.

Other process changes should include:

- Develop training and evaluative measures to ensure consistency across reviewers and inspectors. Numerous interviewees cited issues with inconsistent approaches.
- Continue the pre-application and pre-development meetings, and consider how to streamline them so they are less of a time commitment for staff.
    - Implement a brief evaluative process for applicants to garner ideas for improvements

- Perhaps with the role of the Planning Techs these meetings may be less critical than they are now
- Consider increasing the threshold for projects required to have a Planning Board review. There are too many items going before them, such that simpler projects are delayed and the Board has perhaps an untenable workload.
- Consider increasing the threshold and clarifying the requirements for projects to have a Zoning review. It appears that all projects get a zoning review now, and it is likely that is unnecessary for a large portion.
- Building (and housing safety) inspections staff need to follow same summons practice as Fire has begun using, as a result of the Fire/Code Task Force recommendations.

3. Ordinances

The many sections of the City Code of Ordinances pertaining to permitting, licensing and inspections fall under numerous chapters, are in PDF form, and often are confusing or contradictory. The Planning and Urban Development Department Director is well aware of these challenges and the need for a full rewrite. He has already set priorities for the Zoning code in case a full rewrite is not able to happen in the short term.

I would also suggest that the code be presented in a user-friendly, online format which would allow users to search quickly and easily for relevant topics, and find cross-references and definitions. Many municipalities use Municode for this.

4. IT

The Planning and Urban Development (PUD) Department has worked hard to implement recommendations from prior studies, especially in this area. PUD leadership have collaborated closely with IT leadership to improve Urban Insight and ePlan, as well as to move toward a more paperless system. PUD staff and leadership were, understandably, very frustrated by the time wasted and data lost during the City's efforts to implement One Solution a few years ago.

While software packages are not a magic bullet, all interviewees and best practices research indicate that there are significant improvements and efficiencies to be gained by moving away from the current system. It is critical that internal stakeholders are involved in a collaborative decision-making process around a possible new software solution.

- We lack IT capacity to continue to improve the homegrown software in a timely fashion. Even contracting for programming support continues a piecemeal, band-aid approach.
- While submitting electronic versions of application materials reduces paper, it has not led to a significant process improvement or elimination of backlog, and interviewees commented that they were still required to provide multiple sets of paper plans.

- We need a robust web-based interface for applicants, including information, forms, and detailed information on status tracking and reviewer conditions/requests for additional information.
- We must strive for simplicity and clarity in all information and materials. There are too many forms which are too difficult to understand. A new software solution may take care of this for us; if not, and perhaps regardless, it would be productive to have a cross-section of applicant types review new forms and materials and provide feedback before implementation.
- Inspectors' time must be used as effectively as possible. While tablets were purchased for all of them, they are not using tablets in the field because they find the process far too slow and has too many steps. They choose to return to office for all data entry. There are significant concerns regarding this process; their notes must be timely, detailed, and accurate and contain only professional language.
- I suggest moving away from using a general email inbox, or at least requiring staff responding from that inbox to insert their name and contact information. Customers need to know who they're hearing from.
- Finally, I am optimistic regarding the possibility of a new City-wide software package which would integrate efficiently across departments, require far less IT staff programming time, and allow for a simple, effective, transparent process for applicants. It is critical that decisions regarding new software be reached by a collaborative process involving internal stakeholders.

5. Budgetary Impact

- Inspections revenues, conservatively, should be between $1.2 and $1.7 million for this fiscal year.
  - Current Inspections expenses are approximately $690,000.
  - It is possible that revenues will cover the additional costs of the PID Dept Head salary, the Planning Tech positions plus the salary differential from Office Asst/Admin Asst to Planning Techs, and any additional expenses associated with this new one-stop department.
  - Estimated personnel costs are:

Current Position	Union	FTE	Salary	Proposed	Union	FTE	Salary	Difference
Inspections Office Asst	CEBA 9	1.5	$ 51,509	Planning Technician	TBD	3	$ 150,000	$ 98,492
Admin Assistant	CEBA 8	1	$ 34,105	Executive Assistant	NU 4	1	$ 40,833	$ 6,728
				Department Director	NU	1	$ 104,000	$ 104,000
								$ 209,220

- There is possibly a need for new space. The current Inspections offices on the third floor of City Hall can likely absorb most, but maybe not all, of the staff for the one-stop.

Facilities staff will need to be consulted to determine the best way to handle physical space needs for the new department.

Conclusion

The Planning and Urban Development Department staff and those performing permitting, licensing and inspections functions throughout the City are to be praised for their commitment to process improvement, and for working under stressful conditions for a long time. Creating a new department encompassing these many functions will allow for an invigorated approach focusing on streamlining processes, managing by functional area, and ensuring excellent customer service.

Interviewees

Internal

Who	Dept	Role
Andrews, Deb	Plng	Historic Preservation
Barhydt, Barbara	Plng	Development Review Services Manager
Bourque, Jeanie	Plng/Inspex	Plan Reviewer
Bourret, Vicki	IT	Deputy Director
Boutilier, Dan	IT	Department Director
Cameron, Caitlin	Plng	Urban Designer
Christ, Doreen	Plng/Inspex	Office Assistant
DeLuca, Sally	Rec & Facil	Department Director
Dobson, Lannie	Plng/Inspex	Office Assistant (former)
Downs, Andy	Rec & Facil	Director of Public Assembly Facilities
Fagone, Chuck	Plng/Inspex	Code Enforcement Officer
Gardner, Janice	City Clerk	Business License Administrator
Gautreau, Keith	Fire	Asst Chief, Fire Prevention
Grimando, Christine	Plng	Senior Planner
Hanig, Nelle	Eco Dev	Business Programs Manager
Kelly, Desiree	Plng	Principal Admin Officer
Knowland, Rick	Plng	Senior Planner
LaFlamme, Brian	Plng/Inspex	Electrical Inspector
Leader, Laurie	Plng/Inspex	Plan Reviewer
Levine, Jeff	Plng	Department Director
Machado, Ann	Plng/Inspex	Zoning Administrator
Merritt, Carol	Pub Serv	Account clerk (Street openings)
Meserve, Tori	Fire	Fire Prevention admin
Messinger, Craig	Fire	Lieutenant, Fire Prevention
Mitchell, Greg	Eco Dev	Department Director
Moon, Troy	Pub Serv	Environmental Programs and Open Space Manager
Munson, Tammy	Plng/Inspex	Inspections Division Director
Munson, Jennifer	Planning	Office Manager
Musgrave, Ted	Pub Serv	Event Coordinator
Needelman, Bill	Eco Dev	Waterfront Coordinator
Pearson, Ben	Pub Serv	Wastewater Engineer (FOG)
Petrucelli, David	Fire	Captain, Fire Prevention
Peverada, John	Parking	Parking Manager
Rand, Sgt Mike	PD	Traffic
Rioux, Jon	Plng/Inspex	Inspections Deputy Director

External

South Portland Planning staff	
Veroneau, Vin	JB Brown
Munroe, Tom	CAP Services
Sanborn, Heather	Rising Tide
Ghanekar, Gillian	JB Brown

Russell, Mike	HHS/PH	Program Manager, Food Service Inspections
Saucier, Brad	Plng/Inspex	Admin Assistant
Soma, Toho	HHS/PH	Public Health Division Director
Stacy, Christine	Plng/Inspex	Zoning Specialist

Proposed Building Permit Fee Change

Current Fee	Proposed Fee
$25 per first $1,000 of construction costs then 1.1% above that	$25 per first $1,000 of construction costs then 1.6% above that

Expected Revenue Increase		Current Fee	Current Exp Revenue	Proposed Fee	Est CY 16 Revenue	Est Increase
Est CY 15 Total Construction Costs	$116,163,549	1.1%	$1,277,813	1.6%	$1,858,626	$580,813

Additional Costs for New Department

Staffing Changes (salary difference plus fringe)	$	276,756
Technology Improvements	$	295,557
Training Budget (3 Permit Techs, continuing ed for others)	$	8,500

Building Permit Fees - Comparisons

Portland - current	$25 for first $1,000; 1.1% above
Portland - proposed	$25 for first $1,000; 1.6% above
Bangor, ME	$38-55 minimum plus $7 per $1,000 of construction costs (.7%)
Burlington, VT	$30 min plus $8.50 per $1,000 of cost of work (.85%)
Lewiston, ME	$25 min plus $6 per $1,000 of cost of work (.6%)
Manchester, NH	$30 min plus 1% of cost of work plus $.02 per square foot plan review fee
Portsmouth, NH	$50 min plus $.25 per gross square foot of floor area for new construction; $7 per 1,000 of residential renovation cost (.7%); $10 per $1,000 of commercial renovation cost (1%)
South Portland, ME	1.5% per $1,000 of construction costs