

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL FOURNIER (A/L)
ROBERTO RODRÍGUEZ (A/L)



ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

CITY COUNCIL MEETING - DECEMBER 18, 2023 AT 5:00 PM

The Portland City Council will hold a City Council Meeting in Council Chambers. The Honorable Mark Dion, Mayor, will preside.

To submit written public comment on an agenda item, email publiccomment@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Council meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the order number (see below).

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. Public comments may only be submitted in person or in writing.

To view this meeting remotely, please visit the live-stream at <https://portlandme.portal.civicclerk.com/event/6495/media>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

ANNOUNCEMENTS:

RECOGNITIONS:

Recognizing Portland Police Officer David Shertz, Fire Lieutenant Michael Casey, firefighters Jacob Garrison, Ronald Giroux and Dan Verrill, fire boat members Lieutenant David Crowley and firefighters Torin Hultz and Patrick Hourihane, and civilian Manny Kourinos - Mark Dion, Mayor

Recognizing Apex Racket and Fitness for 50 Years in Business - Mark Dion, Mayor

Recognizing the life and contributions of Lado Lodoka - Pious Ali, Councilor and Regina Phillips, Councilor

PRESENTATIONS:

State of the Schools - Portland Board of Public Education, Sarah Lentz, Chair

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Inaugural City Council Meeting - December 4, 2023 6:00PM

Special City Council Meeting - December 4, 2023 6:30PM

APPOINTMENTS:

Order 88-23/24 Appointing Constables for 2024 - Sponsored by Danielle P. West, City Manager

This order appoints constables from multiple City Departments, SP Plus Corporation staff at the Jetport Parking Garage, and the Portland Housing Authority for the 2024 calendar year:

- Fire Department constables are responsible for the issuance of citations authorized by the City Code of Ordinances Chapter 10 and Fire Prevention Laws.
- Permitting and Inspections Department constables enforce City Code provisions for business licensing, rental housing, building, electrical and plumbing codes.
- Department of Parks, Recreation, and Facilities constables enforce dogs at large violations in parks, playgrounds and cemeteries, as well as failure to dispose of animal waste (Chapter 5 of City Code).
- Police Department constables issue citations for violations of various City ordinances, including, for example, harboring a dangerous dog and smoking in city parks.
- Portland Housing Authority property managers are responsible for lease enforcement, including serving legal documents in eviction cases. In accordance with Maine law, certain documents can only be served by a Constable or Sheriff.
- Parking Control Officers are made constables to be allowed to issue parking tickets and court summons for contested parking tickets.

These appointments are effective from 12:01 a.m. on January 1, 2024 until 12:00 midnight, December 31, 2024, and are made pursuant to Portland City Code, Sections 2019 and 2019.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests or issue parking tickets, except for the constables listed who work for the Parking Division and issue parking tickets as part of their job.

Five affirmative votes are required for passage after public comment.

Order 89-23/24 Authorizing Special Council and Outside Board and Commission Appointments for 2024 - Sponsored by Mark Dion, Mayor

This order appoints City Councilors and City staff to various boards and commissions for 2024.

Five affirmative votes are required for passage after public comment.

COMMUNICATIONS:

Communication 20-23/24 Calendar Year 2023 Accomplishments of the Housing & Economic Development Committee - Housing & Economic Development Committee, Pious Ali, Chair

This item is a communication for the Mayor and City Council on a report of the Housing and Economic Development Committee's (HEDC) accomplishments during calendar year 2023. HEDC reviewed this report at its November 14, 2023, meeting and voted 4-0 to forward it as a communication to the City Council.

As a communication this item requires no public comment or formal Council action.

Communication 21-23/24 Regarding the City of Portland Administrative Banner Policy - Jessica Grondin, Director of Communications and Digital Services

As a communication this item requires no public comment or formal Council action.

Communication 22-23/24 Regarding the 2024 Council Common Goals - Mark Dion, Mayor

As a communication this item requires no public comment or formal Council action.

Communication 23-23/24 Statement by the Land Bank Commission regarding encampments - Mark Dion, Mayor

As a communication this item requires no public comment or formal Council action.

Communication 24-23/24 Statement by the Portland Parks Commission regarding encampments - Mark Dion, Mayor

As a communication this item requires no public comment or formal Council action.

UNFINISHED BUSINESS:

Order 61-23/24 Zoning Map Amendment to B-2b Community Business for the area of land around the intersection of Washington Avenue, Bates Street and Veranda Street - Sponsored by the Planning Board, Brandon Mazer, Chair

On September 12, 2023, the Planning Board unanimously voted (6-0; Barker absent) to recommend a zoning map amendment from RP Residence Professional to B-2b Community Business for the applicant's parcels at CBL's 429 J01101 and 429 J006001 and 25 adjacent parcels zoned RP Residence Professional, B-2 Community Business and R-5 Residential including CBLs 429 I001001, 429 I005001, 429 I006001, 429 I007001, 429 J004001, 429 J003001, 429 J002001, 166 G015001, 166 G011001, 166 F003001, 429 C004001, 429 C006001, 429 C007001, 429 H030001, 429 H031001, 429 H047001, 429 H046001, 429 H029001, 429 H028001, 166 F006001, 166 F005001, 429 J010001, 429 J007001, 429 J005001, 429 C006001. The Planning Board found the proposed zoning map amendment to be consistent with the Comprehensive Plan for the City of Portland.

The proposed zoning map amendment application was submitted by Troy Huynh to facilitate the development of a mixed-use building with ground floor retail and residential units above at 17 and 25 Bates Street. The expanded zoning boundary would bring several parcels currently legally nonconforming into conformity with zoning. In addition, the B-2b zone would allow uses and densities more compatible with the applicant's site and surrounding neighborhood and will create opportunities for significant amounts of housing and space for job growth.

This item must be read on two separate days. It received its first reading on October 16, 2023, and was postponed at the request of staff to December 18, 2023. Five affirmative votes are required for passage after public comment.

Order 80-23/24 Approving the First Amendment and Restated Purchase and Sale Agreement with Lambert Woods North LLC Re: 622 Auburn Street, Portland, and 0 Gray Road, Falmouth - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

On October 24, 2023, the Housing and Economic Development Committee voted (4-0) to recommend the City Council enter into the First Amendment and Restate Purchase and Sale Agreement for City-owned property at 622 Auburn Street, and 0 Gray Road, Falmouth.

On May 10, 2022, the City entered into a Purchase and Sale Agreement with Maine Cooperative Development Partners for a limited equity cooperative affordable housing development at 622 Auburn Street, and 0 Gray Road, Falmouth.

Originally, Maine Cooperative Development Partners proposed creating limited equity cooperative housing units (“Co-ops”) at the 622 Auburn and 0 Gray Road site. All of the homes would have been permanently affordable for households earning at or up to 100% AMI. The scope of the project has changed. Maine Cooperative Development Partners (MCDP) has assigned its rights under the Original Purchase and Sale Agreement to Lambert Woods North LLC (the Buyer). The LLC is comprised of Maine Cooperative Development Partners, and Preservation of Affordable Housing in a 50/50 partnership. Lambert Woods North LLC is now proposing to create 72 units of Low Income Housing Tax Credit (LIHTC) rental housing affordable at 60% of the area median income.

At the request of staff, this item was postponed on December 4, 2023 so that it may be considered with the following companion items. Five affirmative votes are required for passage after public comment.

Order 81-23/24 Designating the Lambert Woods North Affordable Housing Development and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

During a meeting held on October 24, 2023, the Housing and Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage conditioned upon the final underwriting recommendation and evidence of site control.

Lambert Woods North, LLC is proposing construction of six buildings composed of two three-story flats consisting of 10 units each, and four three-story rowhouses (two rowhouses would have 16 units, one rowhouse would have 12 units, and the final rowhouse would have 8 units) for low-income households at 622 Auburn Street. Lambert Woods North LLC is requesting financial assistance from the City in the form of Affordable Housing Tax Increment Financing (AHTIF) to assist with the cost of the project. If approved, the AHTIF financing would be provided through a Credit Enhancement Agreement at 75% of the increased taxable value currently estimated at an average of \$123,504 annually over 30 years.

The project would include 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom units. All of the units would be reserved for households earning at or below 60 AMI (i.e. \$56,800 for two people). The property would integrate bus shelters for the 9A and 9B buses, lighted sidewalks, community space, a playground, and community gardens. The building would meet or exceed Portland's Green Building Ordinance.

This is a companion order to the above.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

Order 82-23/24 Approving the Lambert Woods North Affordable Housing Credit Enhancement Agreement with Lambert Woods North LLC - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

During a meeting held on October 24, 2023, the Housing and Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

This is a companion order to the above.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

Order 83-23/24 Appropriating \$1,500,000 from the Jill C. Duson Housing Trust Fund to Maine Cooperative Development Partners LLC RE: Dougherty Commons Condominiums - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

During a meeting held on November 14, 2023, the Housing & Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Maine Cooperative Development Partners LLC (MCDP) is proposing to construct a two-story, four-unit condominium townhouse building, and a three-story 16 unit condominium rowhouse building (for a total of 20 condominiums) on the city-owned property located at 43 & 91 Douglass Street. The City Council approved the amended Purchase and Sale Agreement for the city-owned property during their 11-13-23 Council meeting. This housing proposal is one part of a three-part residential housing development at 43 & 91 Douglass Street.

The Dougherty Commons Condominium project would include 20 units affordable for households earning up to 100% AMI. The total bedroom count is; 8 one-bedroom and 12 three-bedroom condominium units.

The chart below shows the maximum income allowable for each unit type and household size based on a maximum sale price of \$260,000 for a one-bedroom unit, and \$325,000 for a three-bedroom unit.

One Bedroom Condo	Maximum Household Income
1 person	\$83,650
2 person	\$95,500
Three Bedroom Condo	Maximum Household Income
3 person	\$107,550
4 person	\$119,500
5 person	\$127,750
6 person	\$137,187

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

Order 84-23/24 Amendment to Zoning Map Re: B-2 Community Business for 182 Woodford Street Rear and 186 Woodford Street - Sponsored by the Planning Board, Brandon Mazer, Chair

On October 10, 2023, the Planning Board unanimously voted (4-0; Smith & Murphy Absent; Silk Recused) to recommend a zoning map amendment changing 186 Woodford Street (Parcel: CBL 124 J005001) from an existing R-5 Residential zone, B-1 Neighborhood Business zone, and B-2 Community Business zone to a B-2 Community Business zone. In addition, the Planning Board is recommending to change the zoning at 182 Woodford Street Rear (Parcel: CBL 124 J021001) from an R-5 Residential zone to B-2 Community Business zone. The Planning Board found the proposed zoning map amendment to be consistent with the Comprehensive Plan for the City of Portland.

The proposed zoning map amendment application was submitted by Community Housing of Maine (CHOM) to facilitate the redevelopment of the former Woodfords Church Parish building and the construction of a new building, which would create 80 affordable housing units within Woodford's Corner, a priority node identified in the Comprehensive Plan.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

Order 85-23/24 Amendment to Portland City Code Chapter 14 Re: Conformance with LD 2003 - Sponsored by the Planning Board, Brandon Mazer, Chair

On October 24, 2023, the Planning Board unanimously recommended a set of zoning text amendments to the City Council (7-0) to comply with the requirements of LD 2003.

LD 2003, or *An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, was signed into law in April 2022. The law's intent is to remove local regulatory barriers to housing production in Maine by requiring that municipalities adopt standards around affordable housing, residential uses, and accessory dwelling units within their local codes of ordinances. State rule-making was published in April 2023, and the law was amended in June 2023 to provide additional clarity around certain provisions.

The implementation deadline for communities in which ordinances may be enacted by municipal officers is January 1, 2024. The proposed amendments as recommended by the Planning Board include changes to Articles 3, 6, 7, 18, and 19 of the city's land use code.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 86-23/24 Accepting and Appropriating an Anonymous \$5,000 Donation for Those In Need - Sponsored by Danielle P. West, City Manager

This item accepts and appropriates an anonymous donation of \$5,000 from a family in Falmouth, Maine, to be used as a Secret Santa giveaway by the Police Department to those in need.

This donation has been given to and accepted by the City for this purpose since 2020.

This item must be read on two separate days. Staff is requesting that the second reading be waived, which requires seven affirmative votes, so that the funds can be distributed during the holiday season. Staff also requests that this item be passed as an emergency. Seven votes are required for passage as an emergency following public comment.

AMENDMENTS:

Order 87-23/24 Amendment to Zoning Map Re: R-5 Residential for 921 Ocean Avenue, 410, 422 & 426 Presumpscot Street - Sponsored by the Planning Board, Brandon Mazer, Chair

On October 24, 2023, the Planning Board unanimously voted (7-0) to recommend a zoning map amendment changing 921 Ocean Avenue (CBL 418A A005001), 410, 422 & 426 Presumpscot Street (CBLs 418A A004001, 418A A008001 & 418A A007001) and Parcel 418A A006 from an R-3 Residential zone to a R-5 Residential zone. The Planning Board found the proposed zoning map amendment to be consistent with the Comprehensive Plan for the City of Portland.

The proposed zoning map amendment application was submitted by Christopher Lee of Backyard ADUs to facilitate the development of a Planned Residential Unit Development (PRUD) on 921 Ocean Avenue, 422 & 426 Presumpscot Street, and Parcel 418A A006 with approximately 40 to 50 dwelling units.

This item must be read on two separate days. This is its first reading.

Order 45-23/24 Amendment to the Portland City Code Chapter 2 Re: Qualification for Land Bank Commission Members and Addition of North Deering Park - Sponsored by Ashley Rand, City Clerk

The various boards and committees struggle to fill vacant spots. Amending the Land Bank Commission rules will help with recruitment efforts to fill vacancies. Vacancies are posted in the paper as well as online, but we still are not receiving enough applications to fill spots. Right now the Land Bank Commission requires a member from each district as well as At-Large members to be on the board. This vacancy was advertised, but no one from a district that was needed applied. Amending this would allow for positions to be advertised for each district, but when no applicants apply from the vacant district seat, candidates from the same district may be appointed.

This amendment also adds North Deering Park to the list of Land Bank parcels, after it was placed in the Land Bank by Order 98-22/23 approved on November 14, 2023.

On October 16, 2023 this item was referred to the Legislative and Nominating Committee for review.

On November 21, 2023, the Legislative and Nominating Committee meeting and voted 3-0 (Ali Absent) to refer this item back to City Council for approval.

This item must be read on two separate days. This is its first reading.

EXECUTIVE SESSION:

ADJOURNMENT:

Portland Fire Department
Portland Police Department
Keith Gautreau Mark Dubois
Fire Chief *Police Chief*

December 6, 2023

Re: November 16, 2023 Boat Launch Rescue



On November 16, 2023, just after noon, police and fire personnel from the City of Portland responded to the report of a car in the water off of the East End Beach commercial boat launch.

Upon arrival of public safety personnel, a car could be seen floating in Casco Bay several yards from shore. A lone person could be seen in the car as the car floated further from shore. The fire boat was summoned to the location with reports of a person trapped in a sinking car and floating away from shore.

Portland Police Officer David Shertz, Fire Lieutenant Michael Casey, Firefighters Jacob Garrison, Ronald Giroux and Dan Verrill went into the ocean to save the car's occupant. Fireboat members LT. David Crowley and Firefighters Torin Hultz and Patrick Hourihane also had a pivotal role in this rescue.

As the car floated to about 75 yards from shore, it was obvious that it was about to become fully submerged. A few moments after the car fell below the surface of the water, fire personnel from Marine One arrived on the scene along with a commercial fishing vessel owned and skippered by Manny Kourinos.

Responders initiated a coordinated approach at the scene of the submerged car, with all efforts in place to save the occupant. Fire Department Lt. Phil LaRou broke the driver's side window of the car as Manny Kourinos entered the water after quickly donning scuba gear with the assistance of deckhand Michael Green.

Manny Kourinos went to the bottom of the bay without hesitation as the car sat in about 15 feet of water. He was able to pull the victim from the car through the driver's side window to the surface, where public safety personnel immediately started life-saving resuscitation to the unconscious and not breathing victim. It is estimated that the patient was without oxygen for about eight minutes.

As paramedics and fire personnel continued with CPR, Manny Kourinos went back to the submerged car and confirmed that no other people were trapped in the car and that the car was unoccupied; this second effort also provided police with valuable investigative information related to the car. Police learned that the submerged car had recently been stolen from a South Portland home. Investigative information was forwarded to the South Portland Police Department as recovery efforts were put in place to remove the car from Casco Bay.

Actions like this bring credit to all involved who risked their lives to save another.

ZOOM INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. Public comments may only be submitted in person or in writing.

To view this meeting remotely, please visit the live-stream at <https://portlandme.portal.civicclerk.com/event/6483/media>.

PLEDGE OF ALLEGIANCE:

Mayor Snyder lead all present in the Pledge of Allegiance.

ROLL CALL:

Mayor Snyder called the meeting to order at 6:05pm.

City Councilors Present: Councilor Fournier, Councilor Rodriguez, Councilor Dion, Councilor Ali, Councilor Zarrow, Councilor Pelletier, Councilor Phillips, Mayor Snyder

Councilors Absent: Councilor Trevorrow

INVOCATION:

By State Senator Craig Hickman, Senate District 14

State Senator Craig Hickman delivered Invocation.

ANNOUNCEMENTS:

Councilor Andrew Zarro will give departing remarks.

Councilor Zarro gave departing remarks.

Mayor Kate Snyder will give departing remarks.

Mayor Snyder gave departing remarks.

ELECTION RETURNS AND OATHS OF OFFICE:

On November 9, 2023, election returns for the November 7, 2023 elections were certified and the following were declared elected:

City Clerk Ashley Rand read the election returns for November 7, 2023 for City Council At-Large, City Council District 4, City Council District 5, and Mayor.

SWEARING-IN CEREMONY:

The City Clerk will administer the Oath of Office first to the newly-elected City Councilors, then to the newly-elected Mayor. After the administration of the Oath of Office, inaugurated officials will sign their oath cards so that the City Clerk may witness their signatures.

City Clerk Ashley Rand administered the Oath of Office for the following:

April Fournier (City Council At-Large)

Anna Bullett (City Council District 4)

Kate Sykes (City Council District 5)

Mark Dion (Mayor)

REMARKS BY MARK DION, MAYOR:

Mayor Mark Dion gave opening remarks.

ADJOURNMENT:

Motion was made by Councilor Ali and seconded by Councilor Rodriguez to adjourn Inaugural City Council meeting with current City Council members. Passage 8-0-1.

Councilor Trevorrow absent

ROLL CALL:

City Clerk Ashley Rand read the roll call of the new 2023-2024 City Council.

City Councilors Present: Councilor Fournier, Councilor Rodriguez, Councilor Sykes, Councilor Ali, Councilor Bullett, Councilor Pelletier, Councilor Phillips, Mayor Dion.

Councilors Absent: Councilor Trevorrow

BUSINESS MEETING:

Order 73-23/24 Appointing Councilor Pious Ali as Mayor Pro Tempore - Sponsored by Mark Dion, Mayor

Motion was made by Councilor Ali and seconded by Councilor Phillips for passage. Passage 8-0-1 Councilor Trevorrow was absent.

Order 74-23/24 Establishing the City Council Rules Committee - Sponsored by Mark Dion, Mayor

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage. Passage 8-0-1 Councilor Trevorrow was absent.

Order 75-23/24 Appointing City Council Standing Committees and Library Trustee - Sponsored by Mark Dion, Mayor

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage. Passage 8-0-1 Councilor Trevorrow was absent.

RESOLUTIONS:

Resolve 5-23/24 Adopting Council Rules of Procedure for 2023-2024 - Sponsored by Mark Dion, Mayor

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage. Passage 8-0-1 Councilor Trevorrow was absent.

Mayor Dion opened the floor for public comment. The following individuals spoke: George Rheault (Hanover Street

COMMUNICATIONS:

Communication 19-23/24 Appointing Councilor Anna Bullett, Councilor Roberto Rodriguez, and Mayor Mark Dion (as Chair) to the newly established Ad Hoc Rules Committee - Mark Dion, Mayor

Mayor Dion provided communication 19-23-24 Appointing Councilor Bullett, Councilor Rodriguez, and Mayor Dion to the newly established Ad Hoc Rules Committee. As a communication, no public comment or no formal action is required.

BENEDICTION:

By Reverend Jeffrey McIlwain / Chaplain, Cumberland County Sheriff's Office

Reverend Jeffrey McIlwain / Chaplain, Cumberland County Sheriff's Office gave the Benediction.

ADJOURNMENT:

Motion was made by Councilor Ali and seconded by Councilor Rodriguez to adjourn. Passage 8-0-1 at 7:00pm. Councilor Trevorrow was absent.

A TRUE RECORD

Ashley Rand, City Clerk

ZOOM INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. Public comments may only be submitted in person or in writing.

To view this meeting remotely, please visit the live-stream at <https://portlandme.portal.civicclerk.com/event/6765/media>.

PLEDGE OF ALLEGIANCE:

Mayor Dion lead all present in the Pledge of Allegiance.

ROLL CALL:

Mayor Dion called the meeting to order at 7:05pm.

City Councilors Present: Councilor Fournier, Councilor Rodriguez, Councilor Sykes, Councilor Ali, Councilor Bullett, Councilor Pelletier, Councilor Phillips, Mayor Dion

Councilors Absent: Councilor Trevorow

6:30 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Motion was made by Councilor Rodriguez and seconded by Councilor Ali to suspend Council rules to take public comment on non-agenda items at a time other than 5:00pm. Passage 8-0-1 (Councilor Trevorow absent)

Mayor Dion opened the floor for public comment. The following individuals spoke:

Jim Devine (Advocate for Homeless Voices for Justice), Michael Stockmeyer (Danforth Street), George Rheault (Hanover Street)

ANNOUNCEMENTS:

Mayor Dion opened the floor for Council Announcements. The following individuals had an announcement: Councilor Ali

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

City Council Meeting- November 20, 2023

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage. Passage 8-0-1 (Councilor Trevorow absent)

CONSENT ITEMS:

Order 76-23/24 Approving Transfer of Funds under 15 M.R.S. §§5824(3) and 5826(6) Re: Sarah Hartley - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage. Passage 8-0-1 (Councilor Trevorow absent)

Mayor Dion opened the floor for public comment. No one spoke.

APPOINTMENTS:

Order 77-23/24 Appointing Members to Various Boards & Commissions - Sponsored by the Legislative/Nominating Committee, April Fournier, Chair

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage. Passage 8-0-1 (Councilor Trevorow absent)

Mayor Dion opened the floor for public comment. The following individuals spoke:
Councilor Sykes, Ashley Rand (City Clerk), Michael Goldman (Corporation Counsel),
Councilor Fournier

LICENSES:

Order 78-23/24 Granting Municipal Officers' Approval of Rebel Enterprises, dba Rebel Munchies and Libations. Application for Class XI Restaurant/Lounge at 649 Congress Street - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Sykes and seconded by Councilor Rodriguez for passage.
Passage 8-0-1 (Councilor Trevorow absent)

Mayor Dion opened the floor for public comment.No one spoke.

Order 79-23/24 Granting Municipal Officers' Approval of Sacred Profane LLC, dba Sacred Profane. Application for Class XI Restaurant/Lounge at 28 Resurgam Pl - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Rodriguez and seconded by Councilor Sykes for passage.
Passage 8-0-1 (Councilor Trevorow absent)

Mayor Dion opened the floor for public comment.No one spoke.

ORDERS:

Order 80-23/24 Approving the First Amended and Restated Purchase and Sale Agreement with Lambert Woods North LLC Re: 622 Auburn Street, Portland, and 0 Gray Road, Falmouth - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

Motion was made by Councilor Ali and seconded by Councilor Rodriguez to postpone until December 18, 2023. Passage 8-0-1 (Councilor Trevorow absent)

Mayor Dion opened the floor for public comment.No one spoke.

*Item postponed until December 18, 2023

Order 81-23/24 Designating the Lambert Woods North Affordable Housing Development and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

This item is a first read.

Order 82-23/24 Approving the Lambert Woods North Affordable Housing Credit Enhancement Agreement with Lambert Woods North LLC - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

This item is a first read.

Order 83-23/24 Appropriating \$1,500,000 from the Jill C. Duson Housing Trust Fund to Maine Cooperative Development Partners LLC RE: Dougherty Commons Condominiums - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

This item is a first read.

AMENDMENTS:

Order 84-23/24 Amendment to Zoning Map Re: B-2 Community Business for 182 Woodford Street Rear and 186 Woodford Street - Sponsored by the Planning Board, Brandon Mazer, Chair

This item is a first read.

Order 85-23/24 Amendment to Portland City Code Chapter 14 Re: Conformance with LD 2003 - Sponsored by the Planning Board, Brandon Mazer, Chair

This item is a first read.

EXECUTIVE SESSION:

ADJOURNMENT:

Motion was made by Councilor Bullett and seconded by Councilor Fournier to adjourn. Passage 8-0-1 at 7:29pm.(Councilor Trevorrow absent)

A TRUE RECORD

Ashley Rand, City Clerk

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 4, 2023

SUBJECT: Order 88-23/24 Appointing Constables for 2024 - Sponsored by Danielle P. West, City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: n/a

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This order appoints constables from multiple City Departments, SP Plus Corporation staff at the Jetport Parking Garage, and the Portland Housing Authority for the 2024 calendar year:

- Fire Department constables are responsible for the issuance of citations authorized by the City Code of Ordinances Chapter 10 and Fire Prevention Laws.
- Permitting and Inspections Department constables enforce City Code provisions for business licensing, rental housing, building, electrical and plumbing codes.
- Department of Parks, Recreation, and Facilities constables enforce dogs at large violations in parks, playgrounds and cemeteries, as well as failure to dispose of animal waste (Chapter 5 of City Code).
- Police Department constables issue citations for violations of various City ordinances, including, for example, harboring a dangerous dog and smoking in city parks.
- Portland Housing Authority property managers are responsible for lease enforcement, including serving legal documents in eviction cases. In accordance with Maine law, certain documents can only be served by a Constable or Sheriff.
- Parking Control Officers are made constables to be allowed to issue parking tickets and court summons for contested parking tickets.

These appointments are effective from 12:01 a.m. on January 1, 2024 until 12:00 midnight, December 31, 2024, and are made pursuant to Portland City Code, Sections 2019 and 2019.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrests or issue parking tickets, except for the constables listed who work for the Parking Division and issue parking tickets as part of their job.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Order Appointing Constables 2024 12.18.2023

Prepared by:

Date: 12/04/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

ORDER APPOINTING CONSTABLES FOR 2024

ORDERED, that the individuals listed below are hereby appointed as constables for calendar year 2024;

BE IT FURTHER ORDERED, that these appointments shall be effective from 12:01 a.m. January 1, 2024, until 12:00 midnight, December 31, 2024;

BE IT FURTHER ORDERED, that these appointments are pursuant to Sections 20-19 and 20-19.5, Portland City Code, and none are allowed to carry a firearm, concealed or unconcealed, in the performance of their duties, or to make arrest.

**PERMITTING AND
INSPECTIONS
DEPARTMENT**

Jessica Hanscombe
Zachary Lenhert
Chuck Fagone
Matt Sarapas
Kevin Hanscombe
Michael Budischewsky
Tom Williams
Eric Cobb
Katlyn Sawyer
Chris Beaumont
Ann Machado
Matthew Caldwell
Christina Stacey
Greg Gilbert
Brian Stephens
Michele DeFrance
Darren Commerford
Charles Jarrett
Thomas Hohn
Peter Googins
Doug Morin
Evan Dunkle
Michael Gould
Duane Cote
Dylan Orr

William Valentine
Dimitri Baumann
Adam O'Connor

**DEPARTMENT OF
PUBLIC WORKS**

Bill Patnaude
Juliane McLellan
Dawn Davidson
Larry Goodson
Rhonda Zazzara
Ben Pearson
Kevin Thomas

**PARKS, RECREATION,
AND FACILITIES**

Robert Weyer
Keith Forest
Chris Peterson
Ryan Scott
Alex Marshall
Patrick Farrell
Liz Deletetsky
Pat Ferraiolo
Rusty Groh
Wesley Brumbaugh
Rob Marena
Elizabeth Collado

Thomas Burns
Ekaterina Clarke
Jennifer DeRice

PARKING CONTROL

Erik Carlstrom
Harold Carter
Jason Haigh
Ann Rand
Kahlil Brown
Kelcy Engstrom
Mathew Ouellette
John Peverada
Andy Martin
Wes Vosmos
Michael Lipka
Ben Martin
Yashraj Airen
Alexis Torres-Pagan

**POLICE
DEPARTMENT**

Kelly Watters
Ruthann Weist
Daniel LaPointe

FIRE DEPARTMENT

Keith Gautreau
Aaron Bridges
Christopher Goodall
Jon Belanger
Jason Grant
Curt Magnuson
Robert McPartlan
Dean Berry
Adam Behnke

**PORTLAND HOUSING
AUTHORITY**

Michael Mills
Cora Lanclos
Clayton Williams
Shannon Rafferty-Roy
Marcia Yeaton
Michelle Dunham

**PORTLAND JETPORT
SP PLUS
CORPORATION**

Dominic Costello
James Rogan
John Taylor
Timothy Welch
Justin Renaud
Michael Collins

**EXECUTIVE
DEPARTMENT**

Troy Moon

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 4, 2023

SUBJECT: Order 89-23/24 Authorizing Special Council and Outside Board and Commission Appointments for 2024 - Sponsored by Mark Dion, Mayor

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: n/a

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This order appoints City Councilors and City staff to various boards and commissions for 2024.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Order Authorizing Special Council and Outside Board and Commission Appointments 2024
2. Order Authorizing Special Council and Outside Board and Commission Appointments 2024 AMENDED

Prepared by:

Date: 12/04/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER AUTHORIZING SPECIAL COUNCIL AND
OUTSIDE BOARD AND COMMISSION APPOINTMENTS FOR 2024**

ORDERED, that the individuals identified in Attachment A to this order are hereby appointed as members of the boards and commissions listed in Attachment A for the calendar year 2024.

ATTACHMENT A

**Casco Bay Island Transit
District Board of Directors**
Staff: Bill Needelman

**Greater Portland Transit
District/ METRO**
Councilor: Pious Ali
Councilor: Roberto
Rodriguez
Community Member:
Edward Suslovic
Community Member: Jeff
Levine
Staff: Paul Bradbury

Creative Portland
Councilor: Anna Bullett
Staff: Greg Watson

**Greater Portland Council
of Governments
(GPCOG) General
Assembly**
Officer: Mark Dion
Delegate: Pious Ali
Delegate: Jessica Grondin
Delegate: Danielle West
Delegate: Elisa Marr
Delegate: Dena Libner

ConnectED
Greg Watson

**Cumberland County
Finance Committee**
Mayor: Mark Dion
Councilor: Anna Trevorow

ECOMaine
Delegate: Anne Bilodeau
Delegate: Mike Murray
Delegate: Troy Moon

Fish Exchange
Councilor: Anna Bullett

Fish Pier Authority
Councilor: Regina Phillips
Staff: Brendan O'Connell

Island Advisory
Staff: Bill Patnaude

**Jetport Noise Advisory
Committee**
Councilor: Regina Phillips

Land Bank Commission
Councilor: Anna Trevorow

**Maine Municipal
Association Legislative
Policy Committee**
Delegate: Mark Dion
Delegate: Anna Trevorow
Delegate: Danielle West

**Metro Regional Coalition
at GPCOG**
Mayor: Mark Dion
Manager/delegate: Danielle
West

**Portland Area
Comprehensive
Transportation System
(PACTS) Policy
Committee**
Staff: Kevin Kraft
Staff: Keith Gray

Parks Commission
Councilor: Victoria Pelletier

**Portland Regional
Chamber of Commerce,
Portland Community and
City Affairs Committee**
Staff: Danielle West

**Portland Development
Corporation**
Councilor: April Fournier
City Manager: Danielle
West

Portland Downtown
Staff: Keith Gray

**Portland Public Art
Committee**
Councilor: Victoria
Pelletier

Waterfront Alliance
Councilor: April Fournier

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER AUTHORIZING SPECIAL COUNCIL AND
OUTSIDE BOARD AND COMMISSION APPOINTMENTS FOR 2024**

ORDERED, that the individuals identified in Attachment A to this order are hereby appointed as members of the boards and commissions listed in Attachment A for the calendar year 2024.

ATTACHMENT A

**Casco Bay Island Transit
District Board of Directors**
Staff: Bill Needelman

**Greater Portland Transit
District/ METRO**
Councilor: Pious Ali
Councilor: Roberto
Rodriguez
Community Member:
Edward Suslovic
Community Member: Jeff
Levine
Staff: Paul Bradbury

Creative Portland
Councilor: Anna Bullett
Staff: Greg Watson

**Greater Portland Council
of Governments
(GPCOG) General
Assembly**
Officer: Mark Dion
Delegate: Pious Ali
Delegate: Kate Sykes
Delegate: Jessica Grondin
Delegate: Danielle West
Delegate: Elisa Marr
Delegate: Dena Libner

ConnectED
Greg Watson

**Cumberland County
Finance Committee**
Mayor: Mark Dion
Councilor: Anna Trevorrow

ECOMaine
Delegate: Anne Bilodeau
Delegate: Mike Murray
Delegate: Troy Moon

Fish Exchange
Councilor: Anna Bullett

Fish Pier Authority
Councilor: Regina Phillips
Staff: Brendan O'Connell

**Island Advisory
Staff: Bill Patnaude**

**Jetport Noise Advisory
Committee**
Councilor: Regina Phillips

Land Bank Commission
Councilor: Anna Trevorrow

**Maine Municipal
Association Legislative
Policy Committee**
Delegate: Mark Dion
Delegate: Anna Trevorrow
Delegate: Danielle West

**Metro Regional Coalition
at GPCOG**
Mayor: Mark Dion
Manager/delegate: Danielle
West

**Portland Area
Comprehensive
Transportation System
(PACTS) Policy
Committee**
Staff: Kevin Kraft
Staff: Keith Gray

Parks Commission
Councilor: Victoria Pelletier

**Portland Regional
Chamber of Commerce,
Portland Community and
City Affairs Committee**
Staff: Danielle West

**Portland Development
Corporation**
Councilor: April Fournier
City Manager: Danielle
West

Portland Downtown
Staff: Keith Gray

**Portland Public Art
Committee**
Councilor: Victoria
Pelletier

Waterfront Alliance
Councilor: April Fournier

MEMORANDUM
City Council Agenda Item

FROM: Greg Watson
DATE: November 28, 2023
SUBJECT: Communication 20-23/24 Calendar Year 2023 Accomplishments of the Housing & Economic Development Committee - Housing & Economic Development Committee, Pious Ali, Chair
SPONSOR: Councilor Pious Ali, Chair/Housing and Economic Development, meeting held November 14, 2023, and vote was 4-0 to forward this item to the City Council as a Communication.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 12/18/2023

Final Action 12/18/2023

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: No.

PRESENTATION: Greg Watson will answer questions if needed.

I. SUMMARY

City staff is recommending the City Council accept, as a communication item, the annual report of the Housing and Economic Development Committee's accomplishments for calendar year 2023.

II. AGENDA DESCRIPTION

This item is a communication for the Mayor and City Council on a report of the Housing and Economic Development Committee's (HEDC) accomplishments during calendar year 2023. HEDC reviewed this report at its November 14, 2023, meeting and voted 4-0 to forward it as a communication to the City Council.

As a communication this item requires no public comment or formal Council action.

III. BACKGROUND

Annually, a report is presented to the Mayor and Council on the HEDC's accomplishments each calendar year. This is the report of calendar year 2023.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to keep the Mayor and City Council apprised of the Committee's accomplishments each calendar year.

V. FINANCIAL IMPACT

None.

VI. STAFF ANALYSIS AND BACKGROUND

N/A

VII. RECOMMENDATION

At its November 14, 2023, meeting, the HEDC voted 4-0 to forward this item to the City Council as a communication.

VIII. LIST ATTACHMENTS

1. 11-14-2023 Memo HEDC Accompl Fnl

Prepared by:
Greg Watson
Date: 11/28/2023



MEMORANDUM

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee

FROM: Victoria Volent, Housing Program Manager
Housing and Economic Development Department

DATE: November 8, 2023

SUBJECT: HEDC 2023 Accomplishments

The following will provide you with the Housing and Economic Development Committee accomplishments, by subject area, during calendar year 2023:

Real Estate Transactions

Review and Recommendation of the Amendment to the City-owned property at 622 Auburn Street and 0 Gray Road, Falmouth Purchase and Sale Agreement.

The Committee voted (4-0) during its October 24, 2023 meeting in favor of the recommendation to the City Council to approved the amendment to the Purchase and Sale Agreement for the City-owned property at 622 Auburn Street and 0 Gray Road, which approval is anticipated to occur at the December 18, 2023 Council meeting.

Review and Recommendation of the Amendment to the Dougherty Commons (43 & 91 Douglass Street) Purchase and Sale Agreement.

The Committee voted (4-0) during its October 24, 2023 meeting in favor of the recommendation to the City Council to approved the amendment to the Purchase and Sale Agreement for the City-owned property at Dougherty Commons (43 & 91 Douglass Street), which approval is anticipated to occur at the November 13, 2023 Council meeting.

Review and Recommendation of the Thames Street Purchase and Sale Agreement.

The Committee voted (4-0) during its February 21, 2023 meeting in favor of the recommendation to the City Council to approve the Purchase and Sale Agreement for the sale of the remaining portion of the City-owned land on Thames Street, which approval occurred at the March 6, 2023 Council meeting.

Development Districts and Affordable Housing TIF Districts

Review and Recommendation of the proposed amendments to the Tax Increment Financing Policy.

The Committee voted (3-1) during its April 25, 2023 meeting in favor of amending the language in Section B (3) (iii) of the TIF policy to include the following: if a project is required to use Davis-Bacon wage rates as a result of another funding source, Davis-Bacon wage rates will suffice to meet this requirement, provided the minimum wage for each job is greater than the Portland City Ordinance Ch.33, §33-1 to 33-12. The City Council voted (6-1) during its June 26, 2023 meeting to refer this item back to the Housing and Economic Development Committee for reconsideration. The Committee held a discussion during its August 15, 2023 meeting regarding the proposed revision to the Tax Increment Financing policy. Committee members suggested holding workshops with Councilors, developers, and labors. Workshop specifics would be coordinated by staff who will present a draft proposal during a future meeting of the Housing and Economic Development Committee.

Review and Recommend of the proposed Affordable Housing TIF/Credit Enhancement Agreement for 25 Casco Street.

The Committee voted (3-0) during its June 20, 2023 meeting in favor of the recommendation to the City Council to approve the Affordable Housing TIF proposal at 25 Casco Street at no higher than 55% for 30 years, conditioned upon the final underwriting recommendation and evidence of site control. During the August 14, 2023 meeting of the Council, the recommendation for proposal was amended to approve the Affordable Housing TIF proposal at 75% for 30 years, which amended approval occurred at the August 14, 2023 Council meeting.

Review and Recommendation of the proposed Affordable Housing TIF/Credit Enhancement Agreement and Affordable Housing Development Subsidy for Riverton Park.

The Committee voted (3-0) during its September 19, 2023 meeting in favor of the recommendation to the City Council to approve the proposed Affordable Housing Tax Increment Financing, Credit Enhancement Agreement, and funding subsidy for the Riverton Park Affordable Housing Development project, which approval is anticipated to occur at the November 13, 2023 Council meeting.

Review of the Fiscal Year End 2023 Annual Tax Increment Financing Report and vote to forward as a communication item.

The Committee voted (4-0) during its October 10, 2023 meeting in favor of the recommendation to the City Council to forward this item to the Council as a communication item which is anticipated to occur at the November 13, 2023 Council meeting.

Review and Recommendation of the proposed Affordable Housing TIF/Credit Enhancement Agreement for Lambert Woods North (622 Auburn Street).

The Committee voted (4-0) during its October 24, 2023 meeting in favor of the recommendation to the City Council to approve the proposed Affordable Housing Tax Increment Financing and Credit Enhancement Agreement for the Lambert Woods North Affordable Housing Development project, which approval is anticipated to occur at the December 18, 2023 Council meeting.

Review and Recommendation of the establishment of a Tourism Improvement District.

The Committee voted (3-1) during its April 25, 2023 meeting in favor of the recommendation to the City Council to establish a Tourism Improvement District which approval occurred at the September 18, 2023 Council meeting. The Committee originally received a presentation on March 22, 2022, from Visit Portland (i.e. Greater Portland's destination marketing organization) regarding adoption of a Tourism Development District to raise funds to generate visitation to Greater Portland through marketing. This item was brought back to the Committee with the proposed assessment formula of 1.5% with the City receiving 10% of that assessment for administrative purposes and other allowable uses.

Housing**Review and Recommendation of the FY24 Housing and Community Development Annual Action Plan including appropriation for the Community Block Grant, HOME, and Emergency Solutions Grant Programs and Certifications.**

The Committee voted (4-0) during its February 21, 2023 meeting in favor of the recommendation to the City Council to approve the FY23-24 Housing and Community Development Annual Action plan, which approval occurred at the April 10, 2023 Council meeting.

Review and Recommendation of the HOME- American Rescue Plan Program.

The Committee voted (4-0) during its February 21, 2023 meeting, in favor of the recommendation to the City Council to approve the *HOME- American Rescue Plan Program*, which approval occurred at the March 20, 2023 Council meeting.

Review and Recommendation of the 2023 Jill C. Duson Housing Trust Fund Annual Plan.

The Committee voted (4-0) during its March 21, 2023 meeting in favor of the recommendation to the City Council to approve the 2023 Jill C. Duson Housing Trust Fund Annual Plan, which approval occurred at the April 10, 2023 Council meeting.

Review and Recommendation of the 2023 Affordable Housing Development and Tax Increment Financing Application.

The Committee voted (4-0) during its March 21, 2023 meeting in favor of the recommendation to the City Council to approve the 2023 Affordable Housing Development and Tax Increment Financing Application, which approval occurred at the April 10, 2023 Council meeting.

Review and Recommendation of the continued participation in the Cumberland County HOME Consortium.

The Committee voted (4-0) during its March 21, 2023 meeting in favor of the recommendation to the City Council to approve renewal of Portland's participation in the Cumberland County HOME Consortium, which approval occurred at the April 24, 2023 Council meeting.

Review and Recommendation of the Cumberland County and City of Portland Analysis on Impediments to Fair Housing.

The Committee voted (4-0) during its April 25, 2023 meeting in favor of the recommendation to the City Council to approve the *Analysis of Impediments to Fair Housing* report, which approval occurred at the June 5, 2023 Council meeting.

Review and Recommendation to forward the 2022 Housing Report as a communication item.

The Committee voted (3-0) during its June 20, 2023 meeting in favor of the recommendation to forward the *2022 Housing Report* as a communication item to the Council, which communication occurred at the August 14, 2023 Council meeting.

Preview of the June 28, 2023 City Council Affordable Housing Workshop Agenda.

During the June 20, 2023 meeting the Committee received a high level overview from the Interim Housing and Economic Development Department Director of the information that would be provided to the full Council during their June 28, 2023 Affordable Housing Workshop. Topics to be discussed include: funding resources (HOME, CDBG, Jill C. Dusen Housing Trust Fund, Affordable Housing Tax Increment, and City-owned property) and how they work.

Review and recommendation regarding a proposed Affordable Rental Housing Incentive Program.

The Committee voted (3-0) during its August 15, 2023 meeting in favor of the recommendation to support the proposed Affordable Rental Housing Incentive Program, which recommendation did not move forward. Subsequent to the Committee action, staff conducted a survey of short-term rental license holders to gauge their interest in this program. The survey was sent to 687 STR license holders, 58 responded. Overwhelmingly, 82.8% of those who responded indicated they would not be interested in participating in this program. Based on this response, the decision was made not to pursue this program.

Presentation from the Maine Cooperative Development Partners Update.

During the September 19, 2023 meeting, the Committee receive an update from Liz Trice and Matthew Peters of Maine Cooperative Development Partners regarding the housing proposal known as Dougherty Commons, Lambert Woods North, and Lambert Woods South.

Executive Session to review and provide direction on negotiations with Maine Cooperative Development Partners Affordable Housing Development Funding requests.

The Committee voted (4-0) during its October 24, 2023 meetings in favor of entering into Executive Session to review and provide direction on negotiations with Maine Cooperative Development Partners Affordable Housing Development Funding requests.

Economic Development

Executive Session to review and provide direction on negotiations with USL Soccer for the proposal at Fitzpatrick Stadium.

The Committee voted (4-0) during its March 21, 2023, August 15, 2023, and October 10, 2023 meetings in favor of entering into Executive Session to review and provide direction on negotiations with USL Soccer for the proposal at Fitzpatrick Stadium.

Review and recommendation of the Portland United LLC (USL Soccer) Stadium Use Agreement for use and occupancy of Fitzpatrick Stadium.

The Committee voted (4-0) during its October 10, 2023 meeting in favor of the recommendation to the City Council to approve the Portland United LLC (USL Soccer) Stadium Use Agreement for use and occupancy of Fitzpatrick Stadium, which approval is anticipated to occur at the November 13, 2023 Council meeting.

Review and recommendation to the Finance Committee to update the Portland Adult Ed's (PAE) FY2023 TIF-funded Workforce Development Programs and FY2024 TIF funding request to continue those programs.

The Committee voted (4-0) during its April 25, 2023 meeting in favor of the recommendation to the Finance Committee to approve the FY2024 request for continued TIF funding of \$200,000 to support the workforce training programs, which approval occurred at the July 17, 2023 Finance Council meeting.

Review, consideration, and feedback on proposed revisions to the Outdoor Dining on Public Property Program (sidewalks only).

During the August 15, 2023 meeting, the Committee received the survey results on the proposal to extend the Outdoor Dining on Public Property Program to November 30 from the Interim Housing and Economic Development Director, and Permitting and Inspections Director. There would be no additional fees to extend the program nor is Council approval required. The Committee expressed its support

Other

Housing and Economic Development Committee Proposed Work Plan.

During the January 17, 2023 meeting, the Committee agreed to draft a 2023 work plan and incorporate a racial equity and social justice lens as they consider goals. Topics discussed included; housing sustainability; homelessness; affordable housing; housing for the disabled community; equitable access to housing; ensuring processes are inclusive and that elements of the process have not created barriers to meaningful participation; involving stakeholders who are also members of the communities affected by the strategic investment or resource allocations; and review of the Affordable Housing Development and AHTIF Application.

Presentation of the Responsibilities of the Housing and Economic Development Department

During the February 21, 2023 meeting, the Committee received a communication item from the Interim Housing and Economic Development Department Director concerning the responsibilities of the Housing and Economic Development Department.

Presentation of the Rental Housing Advisory Committee (RHAC) charge and duties.

During the February 21, 2023 meeting, the Committee received a communication item from Regan Sweeney, the Vice-Chair of the Rental Housing Advisory Committee regarding the request from the RHAC for a restatement/clarification of the charge and duties of the committee. Absent such revised guidance, the Committee feels it is unable to take any meaningful action, and would recommend that the City Council disband the RHAC. The impetus for the request is in light of the recent expansion of the Rent Board's authority. The HEDC and RHAC considered and discussed maintaining the RHAC with the charge of adopting policies that promotes solutions and enhances tenant safety (which is not under the Rent Board purview). The HEDC will incorporate suggestions and feedback received during the discussion to formulate next steps

Presentation of the Annual Report from the Permitting and Inspections Department regarding Short/Long Term Rental Registration Program and Housing Safety.

During the April 4, 2023 meeting, the Committee received a presentation from the Director of Permitting and Inspections regarding the Licensing and Housing Safety Division.

Presentation of the Franklin Street Redesign Plan.

During the April 4, 2023 meeting, the Committee received a presentation from the Director of Planning and Urban Development regarding the Franklin Street corridor redesign plan.

Presentation of the January 2023 Housing Supply Boot Camp.

During the April 4, 2023 meeting, the Committee received a presentation from the Director of Special Projects (within the Planning and Urban Development Department) regarding the "housing supply boot camp" held by the New York University Housing Solutions Lab to gain a broader understanding of challenges and opportunities around housing creation in Portland.

Presentation of the City-owned property at 0 Marginal Way parking lot.

During the April 4, 2023 meeting, the Committee received a preliminary analysis as to possible scenarios for use of the City-owned parking lot located at 0 Marginal Way. A next first step is a City Department-wide survey, then a review by the City-Owned and Tax-Acquired Property Committee (COTAPC). Concurrently, the City will be installing four EV charging stations on the lot.

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City of Portland | Executive Department

Jessica Grondin, Director of Communications & Digital Services



To: Mayor Dion and Members of the Portland City Council

From: Jessica Grondin, Director of Communications & Digital Services

Date: December 6, 2023

Re: New Administrative Banner Policy

This memo is intended to inform the Mayor and Council of a new administrative policy recently adopted by City Manager Danielle West. City staff created a banner policy to govern requests related to the installation of temporary banners on street poles located in the downtown, Old Port, and waterfront areas as well as banners placed over the street on Congress Street outside of City Hall and in the Back Cove area over Baxter Boulevard. In the past, only over the street banners have been permitted and street pole banners were typically installed at the request of City staff and Portland Downtown. As City staff began to receive external requests to install street pole banners by its non-profit partners, staff wanted to have a policy in place to properly manage and permit these requests.

The City shall permit the posting of banners on street poles for the purpose of describing and notifying citizens of local community services; announcing cultural, educational, public health, and civic events, including City sponsored and co-sponsored events; banners that celebrate civic pride; and banners that provide information concerning available public and educational services or programs. Banners may only convey a noncommercial message and promote community activities, celebrations or events.

The City Manager's ability to promulgate this policy is pursuant to Chapter 25 of the City Code, specifically Sections 25-26 and 25-28. In addition, the City Council's order, Order 212-22/23, authorizes the Parks, Recreation & Facilities Department to set the fee amounts.

BANNER POLICY
City of Portland, Maine
December 2023

This administrative policy applies to temporary banners on street poles located in the downtown, Old Port, and waterfront areas as well as banners placed over the street on Congress Street outside of City Hall and in the Back Cove area over Baxter Boulevard. Additional street poles may be considered at the discretion of the Department of Public Works. Banners can only be hung in locations approved by the Department of Public Works as safety and the condition of street poles is the City's first priority.

PURPOSE

The City shall permit the posting of banners on street poles for the purpose of describing and notifying citizens of local community services; announcing cultural, educational, public health, and civic events, including City sponsored and co-sponsored events; banners that celebrate civic pride; and banners that provide information concerning available public and educational services or programs. Banners may only convey a noncommercial message and promote community activities, celebrations or events.

In approving the posting of banners on street poles, the City is not intending to create a forum for free expression by the public. Banners displayed on street poles are selected as an expression of the City's official sentiments.

ELIGIBILITY

Only Portland-based non-profit organizations are permitted to apply.

Business logos will not be permitted except for businesses that are sponsoring community activities, celebrations, or events.

Banners will not include campaign messages that endorse or oppose a candidate for election to public office or that endorse or oppose any ballot issue.

Banners will not have a primary purpose of endorsing or promoting specific commercial interests, including commercial offers, solicitations, products, and other materials, the primary purpose of which is to promote economic interests.

Banners will not have the purpose or effect of endorsing specific religious beliefs.

At no time will the City display banners deemed to be inappropriate or offensive in nature or those supporting discrimination or prejudice.

PERMITTING & APPROVAL

Street Pole Banners

- Permits are issued by the Department of Public Works on a first come, first serve basis in conjunction with the priority order listed below.
- Maximum hang time allowed for street pole banners is 6 months. Minimum hang time is 1 month. Content is intended to be evergreen or seasonal in nature and not specific to a one-time event. Applicant may re-apply to have banner(s) displayed beyond the 6 months, but new permit fee(s) would apply. Approval will be determined by City Staff, pending review and availability. There will be no new installation fee associated with permit renewal for banners that are already up.

- Permits for street pole banners should be applied for at least 3 months prior to the preferred installation date. The application fee is \$50. Installation costs are paid to the City Department performing the installation work, unless a private contractor has been requested and approved by the City.
- Banner designs must be approved by the City's Director of Communications in order to receive a permit.
- Portland Downtown street pole banners are subject to approval as outlined in the City's Master Agreement with Portland Downtown and are not subject to permit fees. City of Portland banners are also not subject to permit fees, but their design must be approved by the City's Director of Communications.

Over-the-Street Banners

- Permits are issued by the City's Parks, Recreation & Facilities Department.
- Maximum time allowed for over-the-street banners is two (2) weeks. Banners are only installed and uninstalled on Mondays. For banners that are related to a specific event, removal will be the Monday after the event has concluded.
- Permits for over the street banners must be [applied for](#) at least 30 days prior to the preferred installation date. The permit fee is \$75 per week. The City will install over-the-street banners for City events that are hosted by a City Department. For banners requested by non-profits, the organizer/requester is responsible for paying a contractor, approved by the City of Portland, for installation.

Proposals outside of the parameters stated above may be considered and reviewed by the City on an individual basis.

INSTALLATION & REMOVAL

- Following approval of the permit application, banners may be hung at the approved locations.
- Pole banners will be installed by the Public Works Department's Traffic Operations Division unless a private contractor has been requested and approved by the City.
- Installation and removal dates are not guaranteed. City crews will install banners when staff availability and weather conditions allow.
- For non-City-sponsored pole banners, the Public Works Department will charge a rate of \$165 per hour to cover the costs of the necessary staff and equipment required to install banners. It typically takes one hour per banner for installation. Banners must be dropped off at 212 Canco Road with a copy of the permit at least 7 days prior to the first day of permitted hang time.
- If a banner becomes twisted or undone, or becomes unsafe in its hanging, and is no longer usable, it will be removed and disposed of. Refunds of permit and/or installation fees will not be provided. All banners must be picked up within 7 days after the last day of permitted hanging unless arrangements have been made with the City or its designee to inventory it for the following year. Any banners not picked up may be disposed of.
- If street pole banners are requested in an area in which the street poles do not contain the proper brackets, the applicant will be required to purchase the brackets and pay for the associated installation time.

SIZE AND MATERIAL REQUIREMENTS

Street Pole Banners:

- **DIMENSIONS:** Banners must be sized 98" H x 29" W with 3" pockets, top and

bottom. Any text at the top or bottom of the banner needs to be 3" clear from where the pocket will be or the stitching will run right through the text.

- **GROMMETS:** All banners must have two grommets on the mounting side.
- **MATERIAL:** Banner will be made of tear-resistant reinforced 18 oz. vinyl.
- Banner must be a single unit, printed on the front and back. At no time will two banners be hung together to make one unit. (It is unsafe during windy conditions.)
- If the banner includes an event sponsor, the sponsor's logo(s) shall not exceed 10% of the banner area.

Over the Street Banners:

- Banners Must Be Double-Sided (printed on both sides).
- Banners Must Measure 3 Feet in Height x 30 Feet in Length.
- Banners Must Be a Minimum 18 oz. Vinyl.
- Banners Must Have 3/8" Center Hole Metal Grommets every 2 Feet on Top & Bottom Edges.
- Banners Must Have Metal Grommets at All 4 Corners.
- Banners must have wind flaps cut into them every 3 ft, approximately 5" in height and width.

The City of Portland reserves the right to deny any banner that does not meet these standards or is otherwise deemed unsafe by the City.

PRIORITY ORDER OF BANNER POLE USE

The City will approve banners in the following order of priority, with 1 being the highest priority:

1. City of Portland sponsored or hosted events, City-approved community messaging, or City-approved public service announcements.
2. Portland Public Schools sponsored events.
3. Portland Downtown sponsored events.
4. Approved non-profit, non-religious organizations that complete the event permitting process and have paid the appropriate fees.
5. When banner poles are not in use, the City's and Portland Downtown's non-event specific banners will remain installed.

Danielle P. West
City Manager

Date



2024 Council Goals

The Portland City Council developed four goals as part of a workshop on December 11, 2023. These goals are intended to guide the Council's policy work over the course of the next year:

1. The Council will work to improve diversity, equity, and inclusion (DEI) by 1) researching and exploring an equity analysis protocol, which could be pursued by the Rules Committee and/or by the DEI Committee, 2) exploring the feasibility of a living wage for City Councilors, and 3) acting on the recommendations of the Racial Equity Steering Committee.
2. The Council will significantly impact the housing affordability crisis in the short term and long term by working on regulations, financing, and coordination.
 - a. Short-term ideas
 - i. Working with partners on coordinated entry
 - ii. Providing immediate resources to unhoused individuals at encampments
 - iii. Establishing Council unity of what to do
 - b. Long-term ideas
 - i. Exploring a Social Housing Revenue Bond
 - ii. Reforming short-term rental policies
 - iii. Aligning the permitting process
 - iv. Improving use of the Housing Trust Fund
3. The Council will act on the recommendations of One Climate Future.
4. The Council will explore the establishment of an Office of Community Engagement.

Additional information related to these goals can be found in the final section of this document.

Next Steps

The Mayor will work with Council committee chairs to determine which priorities to go to which committee.

Best Ways to Work Together

- Have an open and facilitated conversation on what DEI means for us.
- Be honest, transparent, over-communicate, support best intentions, support speaking in first draft.
- Recognize that we are all working towards the common good. Separate minds working towards a shared consciousness.
- Recognize our power.
- Do not do things the same way we always have.
- Allow history to inform our plans without letting it impede our faith in possibility.
- Recognize that it is important that we do our work. Come prepared.
- Have a sense of where we're going.
- Recognize the importance of consistency and predictability.
- Appreciate direct communication.
- Always maintain a sense of humor.
- Communicate effectively by actively listening and being honest with each other.
- Don't let the work control our lives – allow ourselves to chill.
- Be respectful of each other.
- Trust each other.
- Stay open to the possibility of agreeing to disagree.
- Create a system of accountability for our employees.
- Remember: limitations are a mindset, not a reality.
- Do not make assumptions; try to withhold judgement.

Additional Information

Additional information regarding the goals established by the Council is below, including tactics by which the Council discussed accomplishing these goals.

- **Goal 1: Diversity, Equity, and Inclusion**
 - Tactic: Include an equity analysis for each Council agenda item
 - Tactic: Pursue living wages for councilors
 - Tactic: Advance Racial Equity Steering Committee recommendations
 - Tactic: Advance DEI-related policy/practices internally and externally
 - Tactic: Fund a DEI Department
- **Goal 2: Housing**
 - Tactic: Coordinated entry / Provide additional resources for unhoused community, including trash bags, public restrooms, containers, and mobile showers / Improve data collection
 - Tactic: Social housing developer funded by revenue bond
 - Tactic: Reform short-term-rental policies
 - Tactic: Resource-tolerant and value-based discussion to inform approach to homelessness
 - Tactic: Identify tangible short-term and long-term solutions to bring those currently unhoused into a place that is sustainable, safe, and creates wellness

- **Goal 3: One Climate**
 - Tactic: One Climate Change
 - Tactic: Establish a Sustainability Fund
 - Tactic: Create more non-car-focused transit solutions (e.g. expanded hours for service industry workers, holiday hours, expanded routes, free passes to ride)
 - Tactic: Commercial Street sea-level-rise analysis
 - Tactic: Install more benches in Downtown Portland
- **Goal 4: Public Engagement**
 - Tactic: Create an Office of Resident Engagement
 - Tactic: Evaluate Council committees' structural effectiveness
 - Tactic: Participatory Budgeting

LAND BANK STATEMENT REGARDING ENCAMPMENTS (Approved on 12/13/2023)

Portland City Council:

As our City continues to grapple with the homelessness crisis, the Land Bank Commission would like to reiterate its role and express opposition to any broad suspension of public camping restrictions in our public park system.

The Land Bank Commission is charged with the “conservation and preservation of limited open space with important wildlife, ecological, environmental, scenic or outdoor recreational values” (Portland, Me., Code § 2-42). The Commission is required to maintain Land Bank properties “predominantly in [their] natural, scenic or open condition.” Inconsistent uses, including uses that may arise from large-scale encampments, including but not limited to accumulation of trash, destruction of vegetation, and loss of cultural or recreational values, require the Commission’s approval. (§ 2-43(b).)

The Commission recognizes the need to support community members experiencing homelessness and the need to center policy decisions around their well-being and dignity. However, our charter is clear and relates exclusively to the protection of Land Bank properties. The Commission must therefore draw the Council’s attention to the potential risks of a public camping allowance to our public parks, especially one that is not narrowly tailored:

- **Allocation of limited parks department resources.** Existing encampments strain our Parks Department. Authorization of additional, scattered campsites risks exacerbating this problem and further endangerment of staff.
- **The burden on the natural environment.** Long-term camping can have significant ecological impacts, including degradation and loss of natural habitats. Restoration after damage can be costly and result in inaccessibility to the public for long periods.
- **Deprivation of use.** Portland’s public park system and protected open spaces are the result of the vision, dedication, stewardship, and generosity of many. Expanded allowances for public camping risk further deprivation of use for all of us, but especially children, and citizens without private outdoor spaces.

The Land Bank Commission is committed to being a part of this vital conversation and to finding solutions that respect the needs of our community members experiencing homelessness while preserving the integrity and accessibility of our parks and open spaces for future generations.

Respectfully,

Pat Bailey (Chair), Baxter Miatke, Robert Foster, Daniel Herzlinger, Simon Rucker, Jon Kachmar, Brian Wasser, Alaina Chormann

This statement was approved by vote of the Land Bank Commission on 12/13/23

A Statement from the Portland Parks Commission On The Protection of Parks and Open Spaces in Encampment Policy Decision-Making

The City of Portland Parks Commission, representing a diverse group of community volunteers dedicated to the stewardship of our parks and Open spaces, acknowledges the pressing need to address the city's growing housing crisis and its impact on people experiencing homelessness. We are deeply committed to fostering accessible, enjoyable, and sustainable public spaces.

First, we recognize the critical need to provide support and solutions for our community members experiencing homelessness. Their well-being and dignity are paramount in any policy decisions. We do not believe it is our role to recommend specific approaches or policies for addressing the complexity and challenges of this issue. In addition to being nonexperts with less proximity to those working on the ground, we represent diverse viewpoints on solutions to be pursued. We urge those with more expertise and proximity to continue to bring forward and adopt solutions that can urgently address these needs of our community members experiencing homelessness in ways that prioritize their humanity and safety above all.

As members of the Commission, and bound to our chartered mandate, we want to shine a light more narrowly on two factors we believe need to be part of Council deliberations on proposed solutions and ways to budgetarily resource them:

First, impact on people charged with protecting our parks and open spaces. We are aware of the ways addressing long-term encampments is affecting our front-line Parks and Recreation employees, who are charged with ensuring the health of these spaces. We have asked them to manage increased workload and emotional stress, personal safety risks (including exposure to hazardous materials), and diversion of already very limited resources to address an incredibly complex challenge for which we have offered little training or support. The staff's work matters, deeply, and if we are to ask this we must acknowledge and resource it at levels commensurate with the challenge.

Second, long-term impact on community spaces. Portland's parks and open spaces are a treasure - an important element of who we are and our commitment to equitable access to nature, exercise, well-being, and recreation for the broader community, including our children, citizens without private outdoor spaces, and visitors. These spaces' existence is the result of the vision, dedication, stewardship, and generosity of many residents and friends in the past and with intent for the future. We know they are valued by a broad range of community members.

Long-term camping in our public parks and open spaces can have significant long-term ecological and social impacts, ranging from degradation and needed restoration of natural resources and habitats to public health concerns and making open spaces less available to other users in need of access. These impacts and the cost of resolution and rehabilitation must be a factor in decisions while at the same time recognizing the urgent needs for action in the present.

As the City Council deliberates on future proposals regarding the uses of our parks and open spaces, we urge a balanced and thoughtful approach that considers the multifaceted implications of such policies. The Portland Parks Commission is committed to being a part of this vital conversation and to finding solutions that respect the needs of our community members experiencing homelessness while preserving the integrity and accessibility of our parks and open spaces for future generations.

Respectfully,

Jaime Parker, Chair, Portland Trails

Beth Rabbitt, Vice Chair, at-large

And, Appointed Members of the Portland Parks Commission

MEMORANDUM
City Council Agenda Item

FROM:

DATE: November 14, 2023

SUBJECT: Order 61-23/24 Zoning Map Amendment to B-2b Community Business for the area of land around the intersection of Washington Avenue, Bates Street and Veranda Street - Sponsored by the Planning Board, Brandon Mazer, Chair

SPONSOR: Brandon Mazer, Chair, City of Portland Planning Board

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 10/16/2023

Final

Action 11/6/2023

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Brandon Mazer, Chair Planning Board; Christine Grimando, Director Planning & Urban Development; Kevin Kraft, Deputy Director Planning & Urban Development (5 minutes)

I. SUMMARY

The Planning Board recommends a zoning map amendment for 27 parcels currently zoned RP Residence Professional, B-2 Community Business, and R-5 Residential to B-2b Community Business. This rezoning is being sought to facilitate the development of a mixed-use building with ground floor commercial and residential units on the upper floors at 17 and 25 Bates Street and would bring several parcels currently legally nonconforming into conformity with zoning.

II. AGENDA DESCRIPTION

On September 12, 2023, the Planning Board unanimously voted (6-0; Barker absent) to recommend a zoning map amendment from RP Residence Professional to B-2b Community Business for the applicant's parcels at CBL's 429 J01101 and 429 J006001 and 25 adjacent parcels zoned RP Residence Professional, B-2 Community Business and R-5 Residential including CBLs 429 I001001, 429 I005001, 429 I006001, 429 I007001, 429 J004001, 429 J003001, 429 J002001, 166 G015001, 166 G011001, 166 F003001, 429 C004001, 429 C006001, 429 C007001, 429 H030001, 429 H031001, 429 H047001, 429 H046001, 429 H029001, 429 H028001, 166 F006001, 166 F005001, 429 J010001, 429 J007001, 429 J005001, 429 C006001. The Planning Board found the proposed zoning map amendment to be consistent with the Comprehensive Plan for the City of Portland.

The proposed zoning map amendment application was submitted by Troy Huynh to facilitate the development of a mixed-use building with ground floor retail and residential units above at 17 and 25 Bates Street. The expanded zoning boundary would bring several parcels currently legally nonconforming into conformity with zoning. In addition, the B-2b zone would allow uses and densities more compatible with the applicant's site and surrounding neighborhood and will create opportunities for significant amounts of housing and space for job growth.

This item must be read on two separate days. It received its first reading on October 16, 2023, and was

postponed at the request of staff to December 18, 2023. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Troy Huynh, owner of 17 and 25 Bates Street, sought this zoning map amendment to rezone two parcels in the RP Residence Professional zone at 17 and 25 Bates Street to B-2 to facilitate a mixed-use development with a restaurant on the ground floor and residential units above. The existing RP Residence Professional zone restricts the development of multi-family dwellings and does not allow retail, or restaurant uses. During the review, in an effort to alleviate housing and job insecurity while combating climate change, Planning Staff recommended that the Planning Board consider expanding the proposed zoning map amendment boundary to encompass the applicant's two parcels as well as 25 additional parcels. Planning Staff further recommended that the parcels be rezoned to B-2b Community Business, as opposed to B-2, though both zones, B-2 and B-2b, were found by staff to be appropriate and consistent with Portland's Comprehensive Plan. Staff's recommendation to consider B-2b was due to slight differences between dimensional and use standards between the two zones, with those of the B-2b being better aligned with the Comprehensive Plan's Future Land Use vision for this prominent City node. In addition, the B-2b zone would allow uses and densities more compatible with the applicant's site and surrounding neighborhood and will create opportunities for significant amounts of housing and space for job growth.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intent of the proposed zoning map amendment is to facilitate the development of a mixed-use building at 17 and 25 Bates Street and to rezone a priority node to encourage additional contextually appropriate housing density and uses in an existing neighborhood center, with excellent access to services, public transit, and trail networks, a key priority identified in Portland's Comprehensive Plan.

The zoning map amendment supports many of the goals expressed in Portland's Comprehensive Plan, *Portland's Plan 2030* and the City's Climate Action Plan, *One Climate Future*. Additionally, the proposed zoning map amendment addresses several City Council goals, including the City Council's 2023 Common goals, which include always using a lens that prioritizes housing, homelessness, and climate & sustainability. The proposed zoning map amendment will support these goals by:

- Increasing, preserving, and modifying the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents;
- Encouraging additionally contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes as a means of supporting complete neighborhoods;
- Creating opportunities for the construction of new housing including multi-family housing on lots that are constrained by the current zoning, which only allows limited types of residential units and some commercial uses;
- Supporting complete neighborhoods, where all residents have access to the necessities of daily life within a walkable, bikeable distance by allowing for housing, commercial, and light-industrial uses to co-exist within a priority node along a priority corridor;
- Supporting job growth and local business retention and recruitment by allowing a range of commercial and light-industrial uses;
- Supporting climate resilience and carbon reduction goals by placing housing opportunities along a priority corridor with excellent access to public transit, trails, as well as jobs and services, which supports connectivity, walkable neighborhoods, and multi-modal transportation and thus reduces the need to rely on single-occupancy vehicles;
- Reduces sprawl by reinforcing a mixed-use typology within an existing neighborhood center identified as a priority node and corridor;

The existing RP Residence Professional zone, is intended for the development and operation of low-intensity business uses, including offices. The current RP and R-5 zoning does not include incentives or requirements for affordable housing and only allows single-family and two-family dwellings and multi-family dwellings in structures existing and not in residential use as of 1984. Furthermore, the RP zone allows a limited number of commercial uses, such as general offices and funeral homes, but restricts uses such as restaurants and retail. Given the restrictions on uses, and low allowable densities along an existing major transit corridor, without zoning changes, future development within the proposed boundary will preclude the community from realizing its vision as expressed in the City's Comprehensive Plan.

V. FINANCIAL IMPACT

The land in question is privately owned. The proposed map amendment will have no financial impact to the City.

VI. STAFF ANALYSIS AND BACKGROUND

A City Council Report is included as part of the City Council packet.

VII. RECOMMENDATION

At a public hearing held on September 12, 2023, the Planning Board voted unanimously (6-0; Barker absent) to find that the proposed zoning map amendment from B-2 Community Business, RP Residence Professional and R-5 Residential to B-2b Community Business is consistent with the Comprehensive Plan for the City of Portland and recommends to the City Council adoption of the Zoning Map amendment for the area of land that parcels including CBLs 429 I001001, 429 I005001, 429 I006001, 429 I007001, 429 J004001, 429 J003001, 429 J002001, 166 G015001, 166 G011001, 166 F003001, 429 C004001, 429 C006001, 429 C007001, 429 H030001, 429 H031001, 429 H047001, 429 H046001, 429 H029001, 429 H028001, 166 F006001, 166 F005001, 429 J010001, 429 J007001, 429 J011001, 429 J006001, 429 J005001, 429 C006001.

VIII. LIST ATTACHMENTS

1. Amendment to Zoning Map B-2b on Bates Street 10.16.2023 (ORIGINAL)
2. Bates St. - 17 and 25 (City Council Report)
3. Attachment A - Rezoning Boundary
4. Attachment B - Planning Board Report
5. Amendment to Order 61 re Zoning Map B-2b on Bates Street 10.16.2023

Prepared by:

Date: 11/14/2023

KATE SNYDER (MAYOR)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

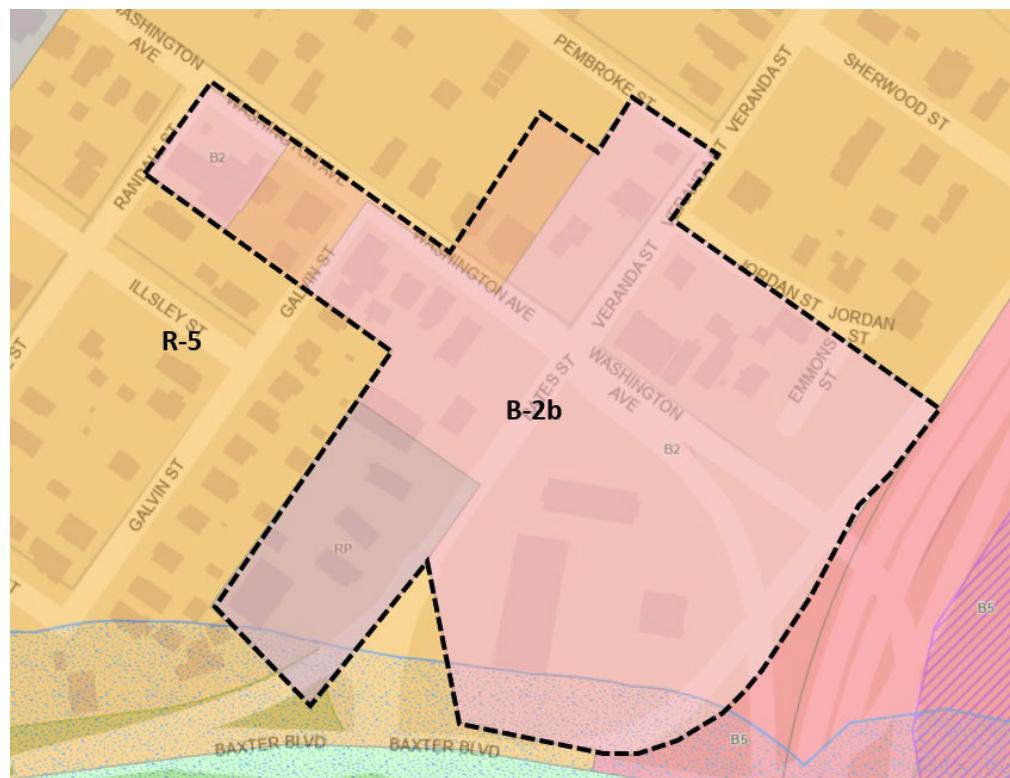
**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANDREW ZARRO (4)
MARK DION (5)

**AMENDMENT TO ZONING MAP
RE: B-2b COMMUNITY BUSINESS FOR LAND AROUND
INTERSECTIONS OF WASHINGTON AVENUE,
BATES AND VERANDA STREETS**

**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 Portland City Code Chapter 14, the Zoning Ordinance, by §1.2, be and hereby is amended pursuant to §1.10.1 by adopting the attached map amendment and specifically rezoning property around the intersections of Washington Avenue, Bates and Veranda Streets from RP Residence Professional, B-2 Community Business and R-5 Residential to B-2b Community Business, as depicted in the map below.





PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

17 & 25 Bates Street
ZN-002413-2023
Troy Huynh, Applicant

Submitted to:	Mayor and City Councilors	Prepared By:	Maya Balassa, Planner
Council 1st Read:	October 16, 2023	Date:	September 18, 2023
Council Hearing Date:	November 6, 2023		

I. INTRODUCTION

On September 12, 2023, the Planning Board unanimously voted (6-0; Barker absent) to recommend to the City Council adoption of a zoning map amendment from RP Residence Professional to B-2b Community Business for the applicant owned parcels at 17 and 25 Bates Street (CBLs 429 Jo1101 and 429 Jo06001) as well as 25 adjacent parcels currently zoned RP Residence Professional, B-2 Community Business, and R-5 Residential (Attachment A).



Figure 1: Existing zoning map (left) and proposed zoning map amendment boundary to B-2b (right)

The objective for the proposed zoning map amendment is to allow for the redevelopment of the applicant owned parcels into a mixed-use building with commercial space on the ground floor and residential units on the upper floors, which is currently prohibited under the existing RP zone. The purpose for the expanded zoning boundary is to bring several parcels that are currently legally nonconforming into conformity with zoning. In addition, the B-2b zone would allow a broader range of uses, including commercial and multi-family dwellings, densities, and a built form that are more compatible with the applicant's site and surrounding neighborhood and would create opportunities for significant amounts of housing and space for job growth along a priority corridor and node as identified in the Comprehensive Plan, *Portland's Plan 2030*.

II. PLANNING BOARD DELIBERATION

At the Planning Board's June 27th workshop, staff recommended that the Board consider rezoning the applicant's parcels and extend the proposed zoning map amendment boundary to encompass 25 additional parcels, as shown in Figure 1 (27 total, including the applicant's two parcels). The City further recommended that these parcels be rezoned to B-2b Community Business, as opposed to the applicant's original request to change the zoning to B-2, though both zones, B-2 and B-2b, were found by staff to be appropriate and generally consistent with Portland's Plan 2030. The City's recommendation is due to slight differences between the dimensional and use standards for the two zones, with those of the B-2b being better aligned with the Future Land Use Plan's vision for this prominent City node, specifically with respect to urban form. The Planning Board was supportive of the expanded rezoning and both the applicant and Board expressed their support for B-2b. After deliberation, and on the basis of staff reports, public testimony, and review of applicable policies, at a Public Hearing held on September 12, 2023, the Planning Board voted unanimously 6-0 (Barker absent) to recommend to the City Council adoption of the zoning map amendment to B-2b Community Business for 27 parcels currently zoned RP Residence Professional, B-2 Community Business, and R-5 Residential.

Over the course of two public meetings, Board members expressed support for the expanded zoning boundary and the proposed B-2b zone but questioned whether the existing low-impact industrial building with retail component, formerly Botto's Bakery, would be impacted by the proposed rezoning. In response, Planning Staff informed the Board that the B-2b zone would still allow low-impact industrial uses less than 10,000 square feet with a retail component, and therefore any future tenant would at 550 Washington Avenue not be prohibited from utilizing the existing warehouse space on site, which is below the 10,000 square foot threshold. The Board, also requested that Planning Staff confirm that the proposed changes would not impact the existing Auto Service Station located at 5 Bates Street. Planning Staff responded by informing the Board that expansion of auto service stations in existence as of 11/15/1999 are permitted as a conditional use in the B-2b zone. According to assessor's data, 5 Bates Street is occupied by an auto service garage (Chip's Service Center), which was constructed in 1985. Therefore, the existing auto service station would be permitted to expand as a conditional use under the B-2b zone provisions as specified in Table 6-C footnote 4 of the Land Use Code. Planning staff also informed the Board and public that as part of the [Planning & Urban Development Department's Better Bikeways Initiative](#), the City is proposing to transform Baxter Boulevard, Washington Avenue, and Veranda Street by creating safer biking and walking crossings at and across Baxter Boulevard and Washington Avenue, and adding bike lanes on Bates and Veranda streets.

Ultimately, the Planning Board found the proposed Zoning Map Amendment to be consistent with the Comprehensive Plan, *Portland's Plan 2030*. The rezoning area is located near the confluence of Washington Avenue, a wide priority corridor listed in the Comprehensive Plan (pg. 84), Bates Street, Veranda Street, and the I-295 interchange. According to the Comprehensive Plan (pg. 84) the intersection of these streets constitutes a priority node in East Deering. Priority corridors, are corridors that connect major nodes and neighborhoods and therefore serve as major commuter routes. Moreover, priority corridors are major arterials that often see higher vehicular travel, but have the capacity to improve mobility by capitalizing on their potential for increased walking, bicycling, and transit use. Additionally, priority corridors can serve as areas of additional mixed use, and higher density growth to take advantage of transit benefits and services. Priority nodes, are areas with concentrated mixed-use activity. Nodes occur in varying scale and serve varying catchment areas and can be large, such as Portland's downtown, or at smaller convergences and intersections throughout the city.

The Board noted that the rezoning area is located along and within a priority corridor and node, respectively. Additionally, the Board noted that the area is well served by public transit and is within proximity to several bus stops and METRO routes 9A, 9B, and 7. The Board noted that the zone change would permit housing at a greater density than currently permitted under the existing RP and R-5 zones, which restrict multi-family dwellings except when in structures existing and not in residential use as of 1984. Additionally, the RP zone allows a limited number of commercial uses, such as commercial office and funeral homes, but restricts uses such as retail and restaurants. Given the current limitation on uses and low allowable densities along an existing major transit corridor the Board believed that the B-2b zone was appropriate for the proposed area because it would allow a greater range of uses including commercial uses such as restaurants, retail, and low-impact industrial uses less than 10,000 square feet and would allow multi-family housing. Additionally, the Board noted that this area contains a variety of uses including residential (single to 20+ family), retail, restaurant, office businesses, auto dealership, and auto service station with buildings ranging from one- to three-stories. The proposed B-2b would also provide additional flexibility for businesses and non-residential uses to expand due to a 10 percent increase in the maximum allowable impervious surface ratio for non-residential uses.

The Board noted that the expansion of permitted uses and permitting housing at a greater density in this area would support several City Council goals, including the [City Council's 2023 Common goals](#), which include always using a lens that prioritizes housing, homelessness, and climate & sustainability, and would support the shared goals expressed in the Comprehensive Plan. These include community priorities for adopting sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation as well as removing housing barriers to increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preference and financial capabilities of all Portland residents. Furthermore, the zone change would support climate resilience and carbon reduction goals by placing housing opportunities along a priority corridor with excellent access to public transit, trails, as well as jobs and services thus reducing the need to rely on single-occupancy vehicles. The proposed rezoning would also bring properties that are currently legally non-conforming into conformity with zoning.

III. BACKGROUND AND EXISTING CONDITONS

The two applicant owned parcels at 17 and 25 Bates Street (CBLs 429 Jo1101 and 429 Joo6001), are approximately 20,300 square feet (0.47 acres) combined and zoned R-P Residence Professional. The property is currently improved with two, one-story residential apartment buildings. The site is bounded by Bates Street to the east, an auto service center to the north, and residential uses to the west and south. Immediately east of the site is a three-story retail plaza and commercial office complex.



Figure 2: View of applicant's parcels | 17 and 25 Bates Street

The applicant's parcels are bordered by the R-5 Residential zone to the west and south and B-5 Business zone to the southeast, beyond I-295. A Recreation Open Space (ROS) zone is mapped to the south along Baxter Blvd. The intersection of Washington Avenue, Bates Street, and Veranda Street is zoned B-2; the cluster of parcels in B-2 at this node contains a variety of uses including, residential (single to 20+ family), retail, restaurant, office business, auto dealership and auto service station.



Figure 3: Existing Zoning Map and applicant's parcels outlined in red

The B-5 Business zone southeast of the collection of parcels along Washington Avenue beyond I-295, went to a public hearing with the Planning Board to be rezoned to B-5 from the I-M Moderate Impact Industrial zone on November 22, 2022 to facilitate the construction of a mixed-use campus development for The Roux Institute. The zoning map amendment was adopted by the City Council on February 6, 2023, Order 126-22/23.

As part of the [City's Better Bikeways Initiative](#), the City is proposing to transform Baxter Boulevard, Washington Avenue and Veranda Street by creating safer biking and walking crossings at and across Baxter Boulevard and Washington Avenue, and adding bike lanes on Bates and Veranda streets. The City held a public meeting on the proposed changes on May 24th. Based on feedback received at that meeting the city is conducting additional analysis to inform final layouts.

The area is accessible to public transit. There are five METRO bus stops within a quarter mile of 17 and 25 Bates Street. Route 9B runs along Washington Avenue, which runs from downtown Portland to North Deering, and route 7 runs along Veranda Street, which runs from Portland to Falmouth.

IV. PROPOSED MAP AMENDMENT

The proposed zoning map amendment before the City Council is to change 27 parcels currently zoned RP Residence Professional Zone, R-5 Residential Zone, and B-2 Community Business zone to B-2b Community Business zone as shown in Figure 3 below:

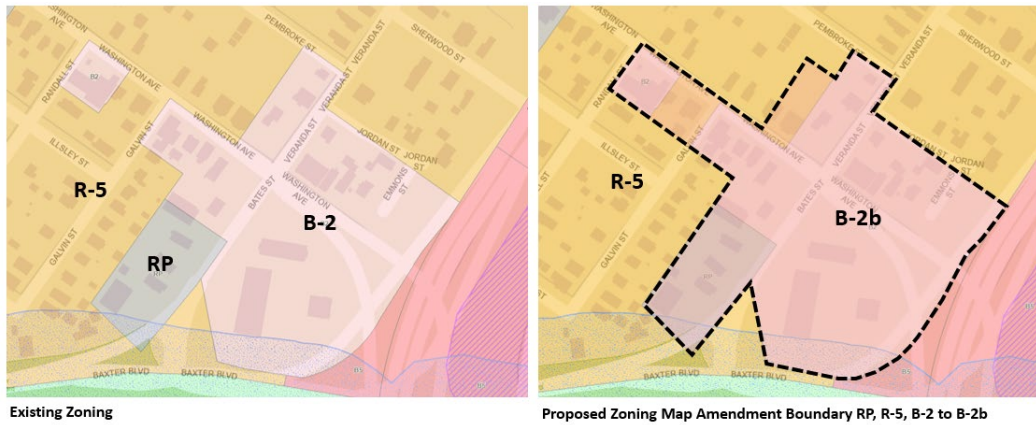


Figure 4: Existing Zoning (left) Proposed Zoning Map Amendment Boundary (Right)

An analysis of each parcel is provided in Table 1. The proposed rezoning to B-2b would not bring any existing properties within the boundary into non-conformity and would result in 523 and 521 Washington Avenue being brought into conformance with zoning. The B-2b zone is more permissive in regards to lot area, lot area per dwelling unit, height, and impervious surface ratio than the R-P and R-5 zones and would allow single-family, two-family, and multi-family dwellings as a permitted use.

Table 1 provides the addresses, CBL, zone, and use for the parcels proposed by Planning staff to be rezoned to B-2b.

TABLE 1: PROPOSED PARCELS TO BE REZONED TO B-2b					
Address	CBL	Zone	Use	Permitted in existing zone	Permitted in B-2b
970 Baxter Blvd	429 1001001	B-2	Office Business	Yes	Yes
476 Washington Ave	429 1005001	B-2	5 to 10 Family	Yes	Yes
484 Washington Ave	429 1006001	B-2	Accessory Parking	Yes	Yes
500 Washington Ave	429 1007001	B-2	Office Business/Retail	Yes	Yes
5 Bates St	429 J004001	B-2	Auto service station	Conditional Use	Conditional Use
522 Washington Ave	429 J003001	B-2	Office Business	Yes	Yes
526 Washington Ave	429 J002001	B-2	Multi-Use Residential	Yes	Yes
532 Washington Ave	166 G015001	B-2	Two Family	Yes	Yes

536 Washington Ave	166 G011001	B-2	Retail Services	Yes	Yes
550 Washington Ave	166 F003001	B-2	Retail Services	Yes	Yes
513 Washington Ave	429 C004001	B-2	Auto dealership	Conditional Use	Conditional Use
14 Veranda St	429 C006001	B-2	Retail Services	Yes	Yes
18 Veranda St	429 C007001	B-2	Retail Services	Yes	Yes
9 Veranda St	429 H030001	B-2	Retail Services	Yes	Yes
505 Washington Ave	429 H031001	B-2	11 to 20 Family (12)	Yes	Yes
501 Washington Ave	429 H047001	B-2	Retail Services	Yes	Yes
9 Jordan St	429 H046001	B-2	Four Family	Yes	Yes
10 Emmons St	429 H029001	B-2	Single Family	Yes	Yes
14 Emmons St	429 H028001	B-2	Two Family	Yes	Yes
542 Washington Ave	166 F006001 166 F007001	R-5	Four Family	Yes	Yes
548 Washington Ave	166 F005001	R-5	Two Family	Yes	Yes
523 and 521 Washington St	429 C0010001	R-5	11 to 20 Family	No	Yes
41 Bates St	429 J010001	RP	Office Business	Yes	Yes
29 Bates St	429 J007001	RP	Three Family	Yes	Yes
25 Bates St	429 J011001	RP	Two Family	Yes	Yes
17 Bates St	429 J006001	RP	Two Family	Yes	Yes
13 Bates St	429 J005001	RP/B-2	Vacant Land	Yes	Yes

V. ZONING ANALYSIS

A. Overview of Zoning Purpose Statements Existing Versus Proposed Zoning

The area proposed to be rezoned includes property in the R-P Residence Professional Zone, the R-5 Residential zone and the B-2 Community Business zone. The purpose statement for each zone is listed below:

Existing zones:

R-P Residence Professional: “to provide appropriate location for the development and operation of low-intensity business uses, including offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or to serve as a transition or buffer zone between residential and more intensive nonresidential zones.”

B-2 Community Business: *“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. 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/B-1b zones. The zone provides a broad range of goods and services 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. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.”*

R-5 Residential: *“to provide appropriate areas of the city for medium-density residential development characterized by single-family, two-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.”*

Proposed Zone:

B-2b Community Business: *“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 or 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. The B-2b should provide locations for moderate to high-density housing in urban neighborhoods along arterials.”*

B. Discussion of Zoning Amendments

Use Analysis

R-P Residence Professional to B-2b Community Business

Even though the parcels zoned R-P abut R-5 residential along the rear of their properties, the context along Bates Street and at the intersection of Washington Avenue and Bates Street does not match the intention of the RP. Across the street from the line of RP zoned parcels is a multi-use multi-story building containing offices and retail. The intersection of Bates Street, Veranda Street, and Washington Avenue exhibits a pedestrian scale and character with an existing urban and neighborhood-building pattern. Buildings are generally oriented towards the street and built close to the lot lines with larger commercial, mixed-use, and residential buildings fronting onto Bates Street, Veranda Street and Washington Avenue. The connection and proximity to Washington Avenue, an identified priority corridor in Portland’s Plan 2030, and utilized as a major commuter road into Portland’s downtown with excellent access to public transit and nearby trail connections, makes it better suited for the B-2b Community Business zone, which is targeted to not only support neighborhood retail, business and services, but is dimensioned to support a neighborhood scale and encourage walkability.

Permitted uses in the RP zone are specified in Table 6-D of the Land Use Code. The RP zone allows any residential use permitted in the nearest residential zone. In this instance the nearest residential zone is the R-5 Residential Zone. The R-5 zone allows single- and two-family dwellings, multiplexes, and allows multi-family as a conditional use only within a non-residential structure existing as of January 1, 1984 and requires 3,000 square feet of land area per dwelling unit. Additionally, the RP zone allows a limited number of non-

residential uses including funeral homes, general offices, studios for artists and craftspeople, parks and open space, solar energy systems, and utility substations. The R-P zone does not allow a number of neighborhood and community retail and business establishments such as retail or restaurants. Whereas, the B-2b zone is intended provide opportunities for mixed-use development and neighborhood and community-oriented business establishments. The B-2b allows single and two-family dwellings as well as multi-family dwellings. In addition, the B-2b zone allows a number of commercial uses outlined in Table 2 below.

R-5 Residential to B-2b Community Business

The three parcels currently zoned as R-5, that are recommended to be rezoned to B-2b by Planning staff, are four-family, two-family, and multi-family residential buildings. Two family residential is permitted in both the R-5 and B-2b zones. However, multi-family residential is a conditional use in the R-5 zone and only permitted when adaptively reusing a non-residential building existing as of 1984. Whereas multi-family residential buildings are permitted in the B-2b. These parcels are also located and oriented towards Washington Avenue, immediately abutting a METRO bus stop for route 9A and, if rezoned, would connect two existing B-2 zoned parcels with the larger contiguous grouping of B-2 zoned parcels located to the south along Washington Avenue. These two isolated B-2 parcels are occupied by the now vacant Botto's Bakery building, which consists of a retail storefront and commercial kitchen, which is considered a low-impact industrial use.



Figure 5: 550 Washington Avenue | Botto's Bakery Site

Differences Between the B-2 and B-2b Community Business Zones

There are several differences between the B-2 and B-2b zones. In regards to use, the B-2b zone is less permissive. The B-2b zone does not permit adult business establishments or low impact industrial uses greater than 10,000 square feet, whereas these uses are permitted within the B-2 zone. However, the B-2b zone does allow low-impact industrial uses less than 10,000 square feet with a retail component only. Registered marijuana dispensary and marijuana retail stores are a conditional use in the B-2b, but are permitted in the B-2. Auto service stations are a conditional use in the B-2 zone and prohibited in the B-2b zone, though the B-2b zone does permit the expansion of auto service stations that were in existence as of 11/15/1999 as a conditional use.

Table 2 provides a comparison of the permitted uses between existing and proposed zone. Uses marked with a 'P', are permitted uses in the zone. A 'C' indicates a conditional use, otherwise uses are not permitted. The differences between B-2 and B-2b are highlighted in blue.

TABLE 2: PERMITTED AND CONDITIONAL USES IN B-2 and B-2b		B-2	B-2b
Residential	Single-family dwellings	P	P
	Two-family dwellings	P	P
	Multi-family dwellings	P	P
	Combined Living/working spaces	P	P
	Lodging houses	P	P
	Clinics	P	P
	Lodging houses	P	P
Institutional	Elementary, middle, and secondary schools	P	P
	Governmental uses	P	P
	Long-term and extended care facilities	P	P
	Intermediate care facilities	P	P
	Places of assembly (<10,000 SF)	P	P
	Places of assembly (>10,000 SF)	P	P
	Preschool facilities	P	P
	Post-secondary schools	P	P
Commercial & Other	Adult business establishments	P	
	Auto, boat, related dealerships	C	C
	Auto service stations	C	C
	Bars	P	P
	Bed and breakfasts	P	P
	Funeral homes	P	P
	General offices (all square feet)	P	P
	Hostels	P	P
	Marijuana retail stores	P	C
	Registered marijuana dispensary	P	C
	Restaurants	P	P
	Retail (all square feet)	P	P
	Small-scale marijuana caregiver	P	P
	Theater and performance halls	P	P
	Veterinary services	P	P
	Communication studios	P	P
	Dairies	P	P
	Laboratory and research facilities	C	C
	Low-impact industrial (<10,000 square feet)	P	P
	Low-impact industrial (>10,000 square feet)	P	
	Printing and publishing	P	P
	Repair services	P	P

	Studios for artists and craftspeople	P	P
	Warehousing, storage, and distribution	C	C
	Parks and open space	P	P
	Solar energy systems (minor)	P	P
	Utility substations	P	P
	Wind energy systems (minor)	C	C

Dimensional Analysis

RP – Residence Professional

The existing R-P Residence Professional zone requires that residential uses meet the dimensional requirements of the nearest residential zone. In this instance, the nearest residential zone is the R-5 Residential Zone. The R-5 zone limits residential density by requiring a minimum of 3,000 square feet of lot area per dwelling unit and further requires a minimum lot area of 6,000 square feet for all residential uses. Maximum height in the R-5 zone is 35 feet. For non-residential uses, the R-P zone requires a minimum lot area of 6,000 square feet, and 60 feet of street frontage. Front setbacks are required to be 20 feet or the average depth of adjacent front yards. Rear setbacks are required to be 20 feet, and side setbacks are required to be 10 feet for one-story buildings, 12 feet for two-story buildings, and 14 feet for buildings greater than two stories. The maximum permitted building height is 45 feet and the maximum impervious surface ratio is 70%. In comparing the RP and B-2b zones' maximum heights, the only differences are the B-2b zone allows buildings up to 45 feet or 50 feet if the first floor is in commercial use, a difference of five feet. It should be noted that affordable housing density and dimensional bonuses as described in Section 18.2.4 of the Land Use Code are applicable in both the RP and B-2b zones.

B-2 versus B-2b

In comparing the B-2 and B-2b Community Business zones' dimensional requirements, the only differences are in the maximum height allowed and impervious surface ratio. The maximum height for both zones is 45 feet, or 50 feet if the first floor is in commercial use, however in the B-2 zone, lots larger than five acres are permitted to increase height up to 65 feet in exchange for increasing the building's setbacks. As there are no lots larger than five acres in this proposed rezoning area, the only relevant difference is the impervious surface ratio for non-residential uses. The B-2 zone permits a maximum of 80% impervious area for non-residential uses, while the B-2b permits up to 90% impervious surface for non-residential uses. Both, the B-2 and B-2b zones have no maximum impervious surface ratio for residential uses.

Both of these zones would permit the conceptual development at 17 & 25 Bates Street, and the requested zoning amendment would not result in any new non-conformity, as both the B-2 and B-2b zones are more permissive than both the R-P and R-5 zones.

Table 3 provides a comparison of the dimensional requirements between the B-2 and B-2b zones

TABLE 3: Zoning Requirements by Use	B-2	B-2b
Lot area (min.)	None	None
Lo area per dwelling unit off-peninsula (min.)	1,000 SF, except 435 if active street frontage	1,000 SF, except 435 if active street frontage
Lot area per rooming unit off-peninsula (min)	350 SF	350 SF

Street frontage (min)	20 ft.	20 ft.
Front setback (max)	10 ft.	10 ft.
Structure height – off-peninsula (max.)	45 ft., except 50 ft if first floor is in commercial use, or 65 ft. on lots >5 ac. If required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft.	45 ft., except 50 ft if first floor is in commercial use
Rear setback – principal (min)	10 ft.	10 ft.
Rear setback – accessory (min)	5ft.	5 ft.
Side setback – principal (min)	None	None
Side setback – accessory (min)	5 ft.	5 ft.
Stepbacks (above 35 ft when property abuts a residential zone) (min)	Side: 5 ft. Rear: 15 ft.	Side: 5 ft. Rear: 15 ft.
Floor area	Laboratory and research facilities, warehousing, 10,000 SF	Laboratory and research facilities, warehousing, 10,000 SF
Impervious surface ratio (max)	Residential: None Other uses: 80%	Residential: None Other uses: 90%

VI. COMPREHENSIVE PLAN CONSISTENCY

Portland's Plan 2030

Comprehensive Plan goals and policies relevant to the proposed zoning map amendment are included below.

Several aspects of the proposed map amendment are consistent with the goals and objectives of Portland's Plan 2030. The Comprehensive Plan highlights the importance of increasing housing opportunities and for supporting interspersed nodes around the city for concentrated mixed-use activity as a way to support complete neighborhoods. In Portland's Plan 2030, this area is highlighted as a priority node for further evaluation and potential investment to serve neighborhood needs.

The proposed map amendment would allow for the development of a mixed-use project that would provide additional housing and commercial activity within a key City node, that is convenient to a range of services and amenities, as well as public transportation.



Figure 6: Visions of Portland's Plan 2030

Relevant Comprehensive Plan goals have been excerpted below:

Housing:

- Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.
- Pursue policies to enable people who work in Portland to have the option to live in Portland.
- State Goal: To encourage and promote affordable decent, housing opportunities for all Maine citizens.
- Evaluate whether current zoning allows for new development consistent with historic patterns of form, density, and/or use, as whether it allows for priority in growth areas.
- Future Land Use – Evaluate Nodes: Evaluate the area near the Washington Avenue, Veranda/Bates Street intersection as an area to be assessed for its ability to address neighborhood needs and serve as centers for complete neighborhoods (pg. 84)

Economic

- Create economic prosperity by growing Portland's tax and employment base.
- Respect that our unique quality of place is key to our current and future economic success.
- Value and nurture Portland-based businesses.

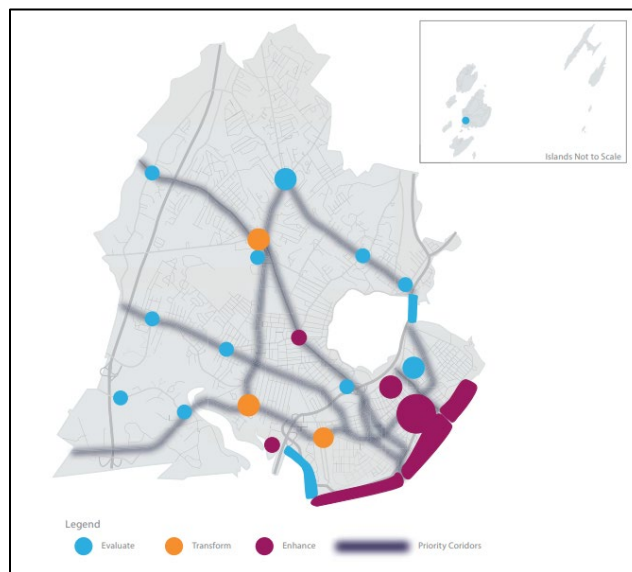


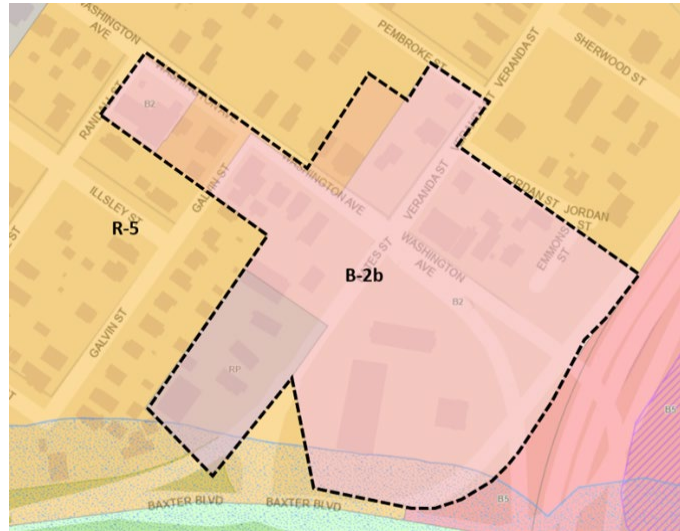
Figure 7: Portland's Plan 2030 Priority Nodes and Corridors Map

VII. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed Zoning Map Amendment at a hearing on September 12, 2023. After deliberation, and on the basis of staff reports, public testimony, and review of applicable policies, the Planning Board voted unanimously 6-0 (Barker absent) to find that the following zoning map amendment is consistent with the Comprehensive Plan and recommends adoption to the City Council:

1. Zoning map amendment for the area of land as shown on the map below and that includes parcels CBLs 429 1001001, 429 1005001, 429 1006001, 429 1007001, 429 J004001, 429 J003001, 429 J002001, 166 G015001, 166 G011001, 166 F003001, 429 C004001, 429 C006001, 429 C007001, 429 H030001, 429 H031001, 429 H047001, 429 H046001, 429 H029001, 429 H028001, 166 F006001,

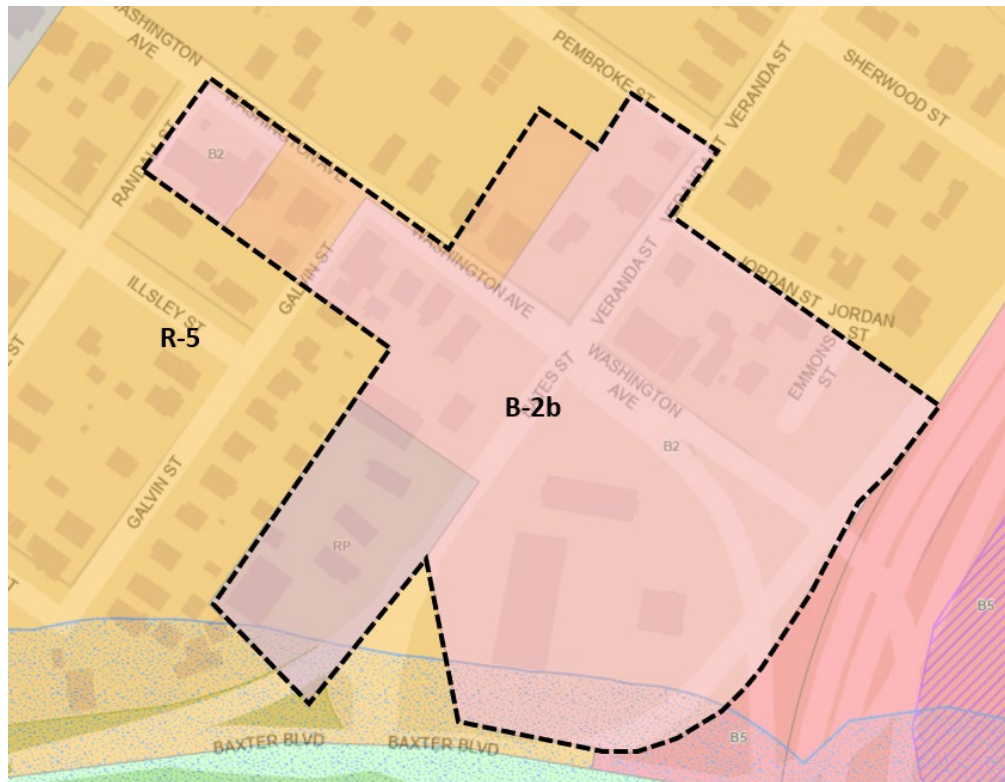
166 Foo5001, 429 Jo10001, 429 Joo7001, 429 Jo11001, 429 Joo6001, 429 Joo5001, 429 Coo1001, to be rezoned to B-2b.



VIII. ATTACHMENTS

- A. Zone Map Amendment – R-5, B-2, and RP to B-2b
- B. Planning Board Report –September 8, 2023

Attachment A – Proposed area to be rezoned



 Rezoning Boundary

Bates Street Rezoning to B-2b
17 and 25 Bates Street
Map Amendment
ZN-002413-2023
Troy Huynh, Applicant

Submitted to:	Portland Planning Board	Prepared By:	Maya Balassa
Public Hearing Date:	September 12, 2023	Date:	September 8, 2023

I. INTRODUCTION

Troy Huynh is seeking a zoning map amendment to change the zoning at 17 and 25 Bates Street from R-P Residence Professional zone to B-2 Community Business zone (Figure 1). The action is being sought to facilitate the development of a mixed-use building with ground floor commercial and residential units on the upper floors. The proposed zoning map amendment aims to allow a broader range of uses, including commercial and higher density residential, than is currently allowed in the R-P zone, which aligns more closely with the City's vision for this area, identified as a priority node in *Portland's Plan 2030*.

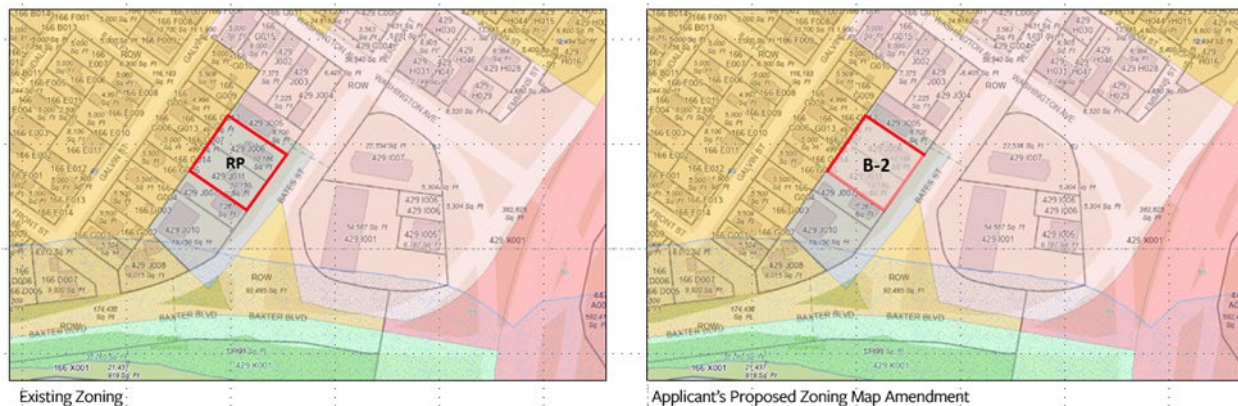


Figure 1: Existing zoning map (left) and applicant's proposed zoning map amendment to B-2 (right)

At the Planning Board's June 27th workshop, staff recommended that the Board consider rezoning the applicant's parcels and extend the proposed zoning map amendment boundary to encompass 25 additional parcels, as shown in Figure 2 below (27 total, including the applicant's two parcels). The City further recommended that these parcels be rezoned to B-2b Community Business, as opposed to B-2, though both zones, B-2 and B-2b, were found by staff to be appropriate and generally consistent with Portland's Plan 2030. The City's recommendation is due to slight differences between the dimensional and use standards for the two zones, with those of the B-2b being better aligned with the Future Land Use Plan's vision for this prominent City node, specifically with respect to urban form. The Planning Board was supportive of the expansion as proposed by staff. As a result, this report will focus on the extended zoning map amendment boundary to B-2b and its compatibility with the City's Comprehensive Plan.

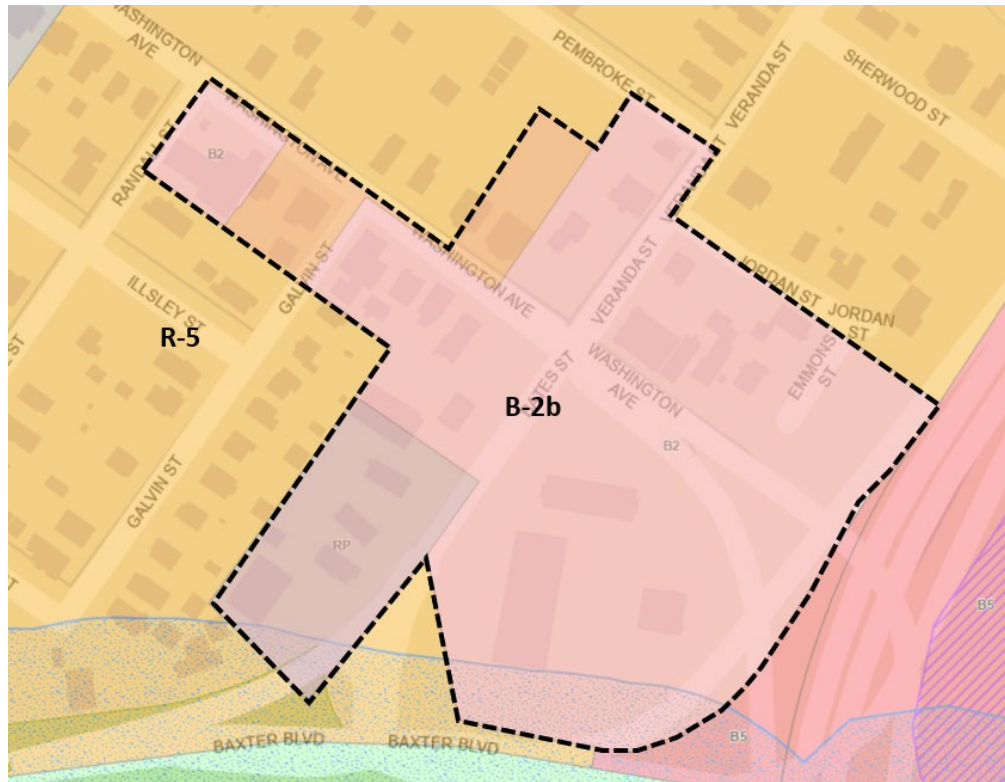


Figure 2: Proposed zoning map amendment for consideration

The Planning and Urban Development Department mailed 153 notices advertising this meeting to property owners within 500 feet of the City-recommended proposed zoning map amendment boundary. A legal advertisement ran in the August 31 and September 5, 2023 editions of the *Portland Press Herald*.

Applicant: Troy Huynh
Applicant Sam Lebel; Acorn Engineering
Representatives:

II. REQUIRED REVIEWS

<i>Review</i>	<i>Applicable Standards</i>
Consistency with Portland's Comprehensive Plan	Portland's Plan 2030

III. PROJECT DATA

Existing Zoning	RP Residence Professional
Proposed Zoning	B-2b Community Business

IV. BACKGROUND & EXISTING CONDITIONS



Figure 3: View of 17 and 25 Bates Street

The two applicant owned parcels are (429 Jo11 and 429 Jo06), are approximately 20,300 square feet (0.47 acres) combined and zoned R-P Residence Professional. Today, the property is in residential use, with two, one-story residential apartment buildings occupying the site. The site is bounded by Bates Street to the east, an auto service center to the north, and residential uses to the west and south. Immediately east of the site is a three-story retail plaza and commercial office complex.

The applicant's parcels are bordered by the R-5 Residential zone to the west and south and B-5 Business zone to the southeast, beyond I-295. A Recreation Open Space (ROS) zone is mapped to the south along Baxter Blvd. The intersection of Washington Avenue, Bates Street, and Veranda Street is zoned B-2; the cluster of parcels in B-2 at this node contains a variety of uses including, residential (single to 20+ family), retail, restaurant, office business, auto dealership and auto service station.

The B-5 Business zone southeast of the collection of parcels along Washington Avenue beyond I-295, went to a public hearing with the Planning Board to be rezoned to B-5 from the I-M Moderate Impact Industrial zone on November 22, 2022 to facilitate the construction of a mixed-use campus development for The Roux Institute. The zoning map amendment was adopted by the City Council on February 6, 2023, Order 126-22/23.

As part of the [City's Better Bikeways Initiative](#), the City is proposing to transform Baxter Boulevard, Washington Avenue and Veranda Street by creating safer biking and walking crossings at and across Baxter Boulevard and Washington Avenue, and adding bike lanes on Bates and Veranda streets. The City held a public meeting on the proposed changes on May 24th. Based on feedback received at that meeting the city is conducting additional analysis to inform final layouts.

The area is accessible to public transit. There are five METRO bus stops within a quarter mile of 17 and 25 Bates Street. Route 9B runs along Washington Avenue, which runs from downtown Portland to North Deering, and route 7 runs along Veranda Street, which runs from Portland to Falmouth.

V. PREVIOUS WORKSHOPS

A Planning Board workshop was held on June 27, 2023 for this project. At the workshop Planning Staff provided the Board and public with an overview of the applicant's proposed zoning map amendment. Additionally, staff recommended that the Board consider expanding the zoning boundary and rezoning all property within the boundary, including the applicant's two parcels, to B-2b as opposed to B-2. The Board was supportive of this recommendation by staff. Board members questioned whether the existing low-impact industrial building with retail component, formerly occupied by Botto's Bakery, would be impacted by the proposed rezoning. In response, staff confirmed that the B-2b zone allows low-impact industrial uses less than 10,000 square feet with a retail component, and therefore any future tenant would not be prohibited from utilizing the existing warehousing space, which is below the 10,000 square foot threshold. Additionally, the Board requested that staff confirm that the proposed zoning map amendment would not impact the existing Auto Service Station located at 5 Bates Street. Expansion of auto service stations in existence as of 11/15/1999 are permitted as a conditional use in the B-2b zone. According to assessor's data, 5 Bates Street is occupied by an auto service garage (Chip's Service Center), which was constructed in 1985. Therefore, the existing auto service station would be permitted to expand as a conditional use under the B-2b zone provisions as specified in Table 6-C footnote 4.

There were several members of the public who commented at the workshop and expressed concerns around the uses and dimensional standards allowed in the B-2 and B-2b. Abutters raised concerns regarding the introduction of big box stores and other larger-scale commercial uses along a street that abuts a residential neighborhood. One resident expressed an interest in seeing more neighborhood-oriented businesses, similar to the existing restaurants along Veranda Street. Residents also requested additional justification for staff's proposed expansion. In response, staff informed the Board and public that the existing R-P zone is not a residential zone and noted that the change to B-2b would bring several non-conforming uses into compliance with zoning. Further, staff also noted that Washington Avenue features direct public transit access, and contains a variety of different commercial uses that support the surrounding neighborhoods. The B-2b zone is intended to support walkability and neighborhood compatible business.

VI. APPLICANT'S CONCEPTUAL DEVELOPMENT PROPOSAL

The proposed rezoning of 17 Bates Street and 25 Bates Street to B-2b would facilitate the development of a mixed-use commercial and residential development as shown in Figure 3 below. The development contemplated at 17 and 25 Bates Street in this application is conceptual at this stage and no site plan application has yet been submitted. Should the proposed rezoning be approved by the City Council, a site plan application, addressing all applicable land use standards, would be required to be submitted by the applicant to facilitate the development of this project.

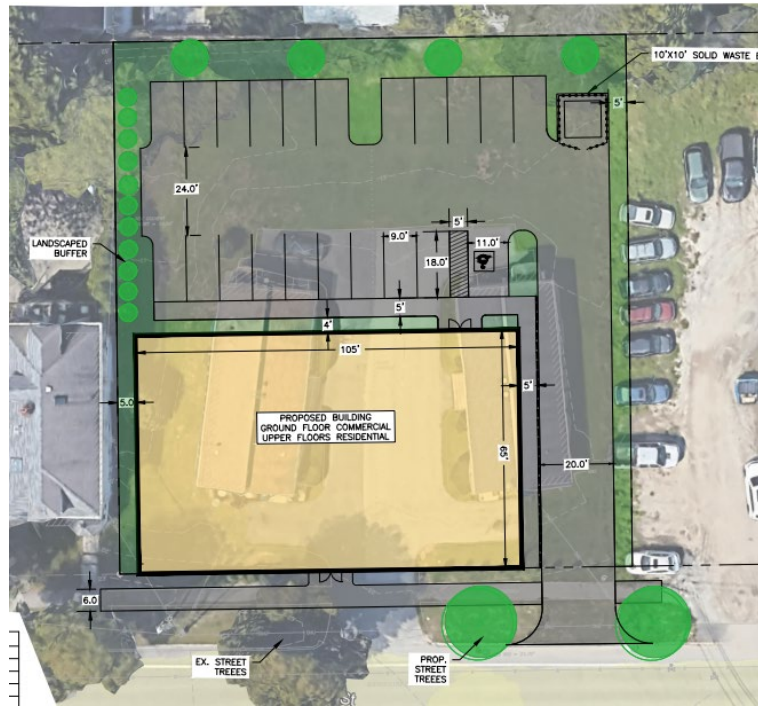


Figure 4: Conceptual proposal for the redevelopment of 17 and 25 Bates Street

VII. PROPOSED ZONING MAP AMENDMENT

The proposed zoning map amendment before the Planning Board is to change an existing RP Residence Professional Zone, R-5 Residential Zone, and B-2 Community Business zone to a B-2b Community Business zone as shown in Figure 3 below:

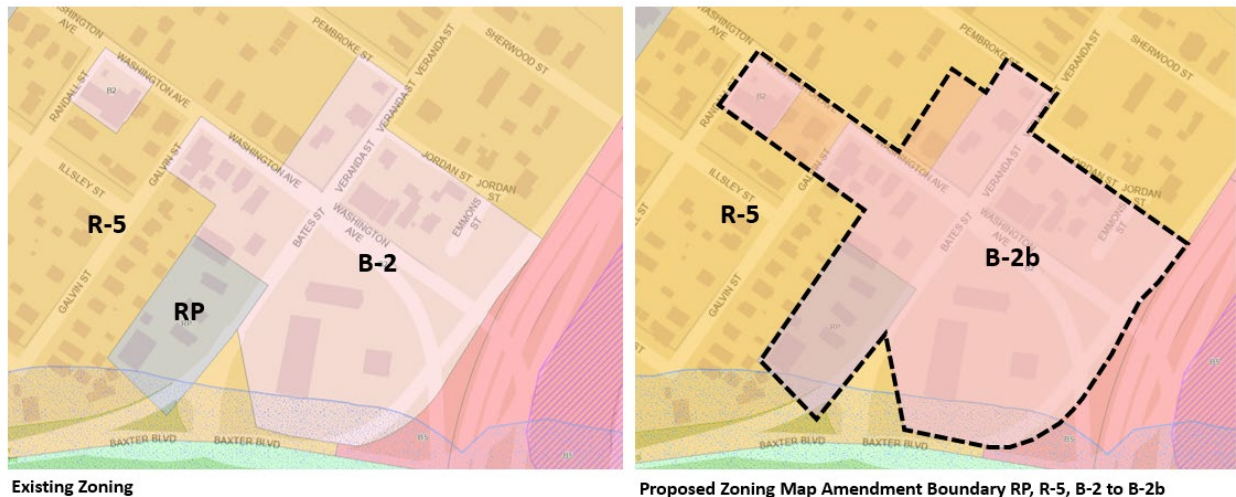


Figure 5: Existing Zoning (left) Proposed Zoning Map Amendment Boundary (Right)

In addition to the applicant's parcels (429 J006001, 429 J011001) the expanded zoning map amendment boundary would include 25 additional contiguous parcels (27 total). An analysis of each parcel is provided in Table 1. The proposed rezoning to B-2b would not bring any existing properties within the boundary into non-conformity and would result in 523 and 521 Washington Avenue being brought into conformance with zoning. The B-2b zone is more permissive in regards to lot area, lot area per dwelling unit, height, and

impervious surface ratio than the R-P and R-5 zones and would allow single-family, two-family, and multi-family dwellings as a permitted use.

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9 Veranda St	429 H030001	B-2	Retail Services	Yes	Yes
505 Washington Ave	429 H031001	B-2	11 to 20 Family (12)	Yes	Yes

501 Washington Ave	429 Ho47001	B-2	Retail Services	Yes	Yes
9 Jordan St	429 Ho46001	B-2	Four Family	Yes	Yes
10 Emmons St	429 Ho29001	B-2	Single Family	Yes	Yes
14 Emmons St	429 Ho28001	B-2	Two Family	Yes	Yes
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548 Washington Ave	166 Foo5001	R-5	Two Family	Yes	Yes
523 and 521 Washington St	429 Coo6001	R-5	11 to 20 Family	No	Yes
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29 Bates St	429 Joo7001	RP	Three Family	Conditional Use	Yes
25 Bates St	429 Jo11001	RP	Two Family	Yes	Yes
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ZONING ANALYSIS

A. Overview of Zoning Purpose Statements Existing Versus Proposed Zoning

The area proposed to be rezoned includes property in the R-P Residence Professional Zone, the R-5 Residential zone and the B-2 Community Business zone. The purpose statement for each zone is listed below:

Existing zones:

R-P Residence Professional: *“to provide appropriate location for the development and operation of low-intensity business uses, including offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or to serve as a transition or buffer zone between residential and more intensive nonresidential zones.”*

B-2 Community Business: *“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. 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/B-1b zones. The zone provides a broad range of goods and services 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. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.”*

R-5 Residential: *“to provide appropriate areas of the city for medium-density residential development characterized by single-family, two-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.”

Proposed Zone:

B-2b Community Business: *“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 or 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. The B-2b should provide locations for moderate to high-density housing in urban neighborhoods along arterials.”*

B. Discussion of Zoning Amendments

Use Analysis

R-P Residence Professional to B-2b Community Business

Even though the parcels zoned R-P abut R-5 residential along the rear of their properties, the context along Bates Street and at the intersection of Washington Avenue and Bates Street does not match the intention of the RP. Across the street from the line of RP zoned parcels is a multi-use multi-story building containing offices and retail. The intersection of Bates Street Veranda Street, and Washington Avenue exhibits a pedestrian scale and character with an existing urban and neighborhood-building pattern. Buildings are generally oriented towards the street and built close to the lot lines with larger commercial, mixed-use, and residential buildings fronting onto Bates Street, Veranda Street and Washington Avenue. The connection and proximity to Washington Avenue, an identified priority corridor in Portland’s Plan 2030, and utilized as a major commuter road into Portland’s downtown with excellent access to public transit and nearby trail connections, makes it better suited for the B-2b Community Business zone, which is targeted to not only support neighborhood retail, business and services, but is dimensioned to support a neighborhood scale and encourage walkability.

Permitted uses in the RP zone are specified in Table 6-D of the Land Use Code. The RP zone allows any residential use permitted in the nearest residential zone. In this instance the nearest residential zone is the R-5 Residential Zone. The R-5 zone allows single- and two-family dwellings and allows multi-family as a conditional use only within a non-residential structure existing as of January 1, 1984 and requires 3,000 square feet of land area per dwelling unit. Additionally, the RP zone allows funeral homes, general offices, studios for artists and craftspeople, parks and open, solar energy system, and utility substations. The R-P zone does not allow a number of neighborhood and community retail and business establishments such as retail or restaurants. Whereas, the B-2b zone is intended provide opportunities for mixed-use development and neighborhood and community-oriented business establishments. The B-2b allows single and two-family dwellings as well as multi-family dwellings. In addition, the B-2b zone allows a number of commercial uses outlined in Table 2 below.

R-5 Residential to B-2b Community Business

The three parcels currently zoned as R-5, that are recommended to be rezoned to B-2b by Planning staff, are four-family, two-family, and multi-family residential buildings. Two family residential is permitted in both the R-5 and B-2b zones. However, multi-family residential is a conditional use in the R-5. Multi-family residential buildings are permitted in the B-2b. These parcels are also located along Washington Avenue, immediately abutting a METRO bus stop for route 9A and, if rezoned, would connect two existing B-2 zoned parcels with the larger contiguous grouping of B-2 zoned parcels located to the south along Washington

Avenue. These two isolated B-2 parcels are occupied by the now vacant Botto's Bakery building, which consists of a retail storefront and commercial kitchen, which is considered a low-impact industrial use.

Differences Between the B-2 and B-2b Community Business Zones

There are several differences between the B-2 and B-2b zones. In regards to use, the B-2b zone is less permissive. The B-2b zone does not permit adult business establishments or low impact industrial uses greater than 10,000 square feet, whereas these uses are permitted within the B-2 zone. However, the B-2b zone does allow low-impact industrial uses less than 10,000 square feet with a retail component only. Registered marijuana dispensary and marijuana retail stores are a conditional use in the B-2b, but are permitted in the B-2. Auto service stations are a conditional use in the B-2 zone and prohibited in the B-2b zone, though the B-2b zone does permit the expansion of auto service stations that were in existence as of 11/15/1999 as a conditional use.

Table 2 provides a comparison of the permitted uses between existing and proposed zone. Uses marked with a 'P', are permitted uses in the zone. A 'C' indicates a conditional use, otherwise uses are not permitted. The differences between B-2 and B-2b are highlighted in blue.

TABLE 2: PERMITTED AND CONDITIONAL USES IN B-2 and B-2b		B-2	B-2b
Residential	Single-family dwellings	P	P
	Two-family dwellings	P	P
	Multi-family dwellings	P	P
	Combined Living/working spaces	P	P
	Lodging houses	P	P
	Clinics	P	P
	Lodging houses	P	P
Institutional	Elementary, middle, and secondary schools	P	P
	Governmental uses	P	P
	Long-term and extended care facilities	P	P
	Intermediate care facilities	P	P
	Places of assembly (<10,000 SF)	P	P
	Places of assembly (>10,000 SF)	P	P
	Preschool facilities	P	P
	Post-secondary schools	P	P
Commercial & Other	Adult business establishments	P	
	Auto, boat, related dealerships	C	C
	Auto service stations	C	C
	Bars	P	P
	Bed and breakfasts	P	P
	Funeral homes	P	P
	General offices (all square feet)	P	P
	Hostels	P	P
	Marijuana retail stores	P	C
	Registered marijuana dispensary	P	C

	Restaurants	P	P
	Retail (all square feet)	P	P
	Small-scale marijuana caregiver	P	P
	Theater and performance halls	P	P
	Veterinary services	P	P
	Communication studios	P	P
	Dairies	P	P
	Laboratory and research facilities	C	C
	Low-impact industrial (<10,000 square feet)	P	P
	Low-impact industrial (>10,000 square feet)	P	P
	Printing and publishing	P	P
	Repair services	P	P
	Studios for artists and craftspeople	P	P
	Warehousing, storage, and distribution	C	C
	Parks and open space	P	P
	Solar energy systems (minor)	P	P
	Utility substations	P	P
	Wind energy systems (minor)	C	C

Dimensional Analysis

RP

The existing R-P Residence Professional zone requires that residential uses meet the dimensional requirements of the nearest residential zone. In this instance, the nearest residential zone is the R-5 Residential Zone. The R-5 zone limits residential density by requiring a minimum of 3,000 square feet of lot area per dwelling unit and further requires a minimum lot area of 6,000 square feet for all residential uses. Maximum height in the R-5 zone is 35 feet. For non-residential uses, the R-P zone requires a minimum lot area of 6,000 square feet, and 60 feet of street frontage. Front setbacks are required to be 20 feet or the average depth of adjacent front yards. Rear setbacks are required to be 20 feet, and side setbacks are required to be 10 feet for one-story buildings, 12 feet for two-story buildings, and 14 feet for buildings greater than two stories. The maximum permitted building height is 45 feet and the maximum impervious surface ratio is 70%. In comparing the RP and B-2b zones' maximum heights, the only differences are the B-2b zone allows buildings up to 45 feet or 50 feet if the first floor is in commercial use, a difference of five feet. It should be noted that affordable housing density and dimensional bonus as described in Section 18.2.4 of the Land Use Code are applicable in both the RP and B-2b zones.

B-2 versus B-2b

In comparing the B-2 and B-2b Community Business zones' dimensional requirements, the only differences are in the maximum height allowed and impervious surface ratio. The maximum height for both zones is 45 ft, or 50 feet if the first floor is in commercial use, however in the B-2 zone, lots larger than five acres are permitted to increase height up to 65 feet in exchange for increasing the building's setbacks. As there are no lots larger than five acres in this proposed rezoning area, the only relevant difference is the impervious surface ratio. The B-2 zone permits a maximum of 80% impervious area, while the B-2b permits up to 90% impervious surface.

Both of these zones would permit the conceptual development at 17 & 25 Bates Street, and the requested zoning amendment would not result in any new non-conformity, as both the B-2 and B-2b zones are more permissive than both the R-P and R-5 zones.

Table 3 provides a comparison of the dimensional requirements between the B-2 and B-2b zones

TABLE 3: Zoning Requirements by Use	B-2	B-2b
Lot area (min.)	None	None
Lo area per dwelling unit off-peninsula (min.)	1,000 SF, except 435 if active street frontage	1,000 SF, except 435 if active street frontage
Lot area per rooming unit off-peninsula (min)	350 SF	350 SF
Street frontage (min)	20 ft.	20 ft.
Front setback (max)	10 ft.	10 ft.
Structure height – off-peninsula (max.)	45 ft., except 50 ft if first floor is in commercial use, or 65 ft. on lots >5 ac. If required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft.	45 ft., except 50 ft if first floor is in commercial use
Rear setback – principal (min)	10 ft.	10 ft.
Rear setback – accessory (min)	5ft.	5 ft.
Side setback – principal (min)	None	None
Side setback – accessory (min)	5 ft.	5 ft.
Stepbacks (above 35 ft when property abuts a residential zone) (min)	Side: 5 ft. Rear: 15 ft.	Side: 5 ft. Rear: 15 ft.
Floor area	Laboratory and research facilities, warehousing, 10,000 SF	Laboratory and research facilities, warehousing, 10,000 SF
Impervious surface ratio (max)	Residential: None Other uses: 80%	Residential: None Other uses: 90%

VIII. COMPREHENSIVE PLAN ANALYSIS

Portland's Plan 2030

Comprehensive Plan goals and policies relevant to the proposed zoning map amendment are included below.

Several aspects of the proposed map amendment are consistent with the goals and objectives of Portland's Plan 2030. The Comprehensive Plan highlights the importance of increasing housing opportunities and for supporting interspersed nodes around the city for concentrated mixed-use activity as a way to support complete neighborhoods. In Portland's Plan 2030, this area is highlighted as a priority node for further evaluation and potential investment to serve neighborhood needs.



Figure 1: Visions of Portland's Plan 2030

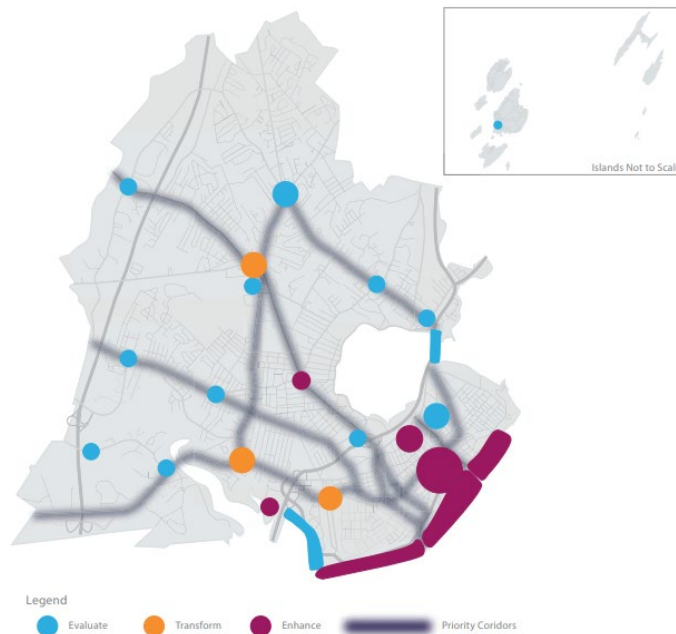


Figure 2 Portland's Plan 2030 Priority Nodes and Corridors

The proposed map amendment would allow for the development of a mixed-use project that would provide additional housing and commercial activity within a key City node, that is convenient to a range of services and amenities, as well as public transportation.

Relevant Comprehensive Plan goals have been excerpted below:

Housing:

- Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.
- Pursue policies to enable people who work in Portland to have the option to live in Portland.
- State Goal: To encourage and promote affordable decent, housing opportunities for all Maine citizens.
- Evaluate whether current zoning allows for new development consistent with historic patterns of form, density, and/or use, as whether it allows for priority in growth areas.
- Future Land Use – Evaluate Nodes: Evaluate the area near the Washington Avenue, Veranda/Bates Street intersection as an area to be assessed for its ability to address neighborhood needs and serve as centers for complete neighborhoods (pg. 84)

Economic

- Create economic prosperity by growing Portland's tax and employment base.
- Respect that our unique quality of place is key to our current and future economic success.
- Value and nurture Portland-based businesses.

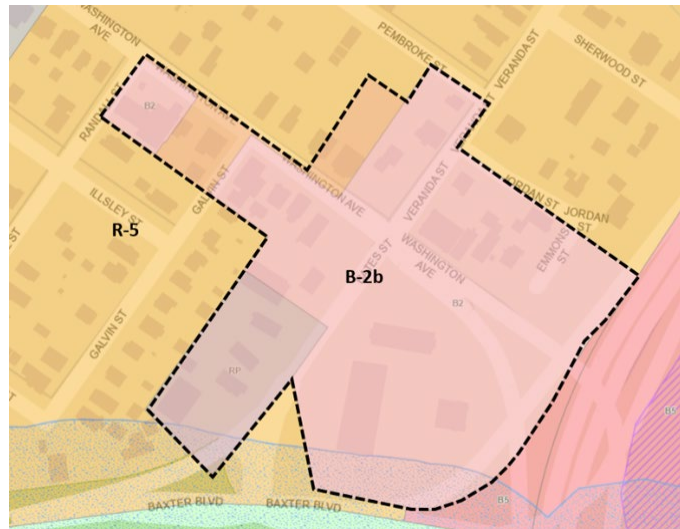
IX. PUBLIC COMMENT

No written public comments have been received as of September 6, 2023.

A neighborhood meeting was held by the applicant on May 2, 2023, at GPCOG 970 Baxter Blvd., suite 201 at 5pm. There were five attendees, who raised concerns around potential parking and stormwater impacts that may result from the requested zoning amendment.

X. PROPOSED MOTIONS

1. On the basis of materials submitted by the applicant, the City of Portland Land Use Code, Portland's Comprehensive Plan, public comment, and the information provided in the public hearing on September 12, 2023 for the application ZN-002413-2022, and/or other findings, the Planning Board finds that the proposed zoning map amendment **[is/is not]** consistent with the Comprehensive Plan for the city of Portland; therefore, the Planning Board **[recommends/does not recommend]** to the City Council adoption of the Zoning Map Amendment as shown in the map below and include lots CBLs 429 1001001, 429 1005001, 429 1006001, 429 1007001, 429 1004001, 429 1003001, 429 1002001, 166 G015001, 166 G011001, 166 F003001, 429 C004001, 429 C006001, 429 C007001, 429 H030001, 429 H031001, 429 H047001, 429 H046001, 429 H029001, 429 H028001, 166 F006001, 166 F005001, 429 J010001, 429 1007001, 429 J011001, 429 1006001, 429 1005001, 429 C006001 to be rezoned to B-2b.



XI. ATTACHMENTS

APPLICANT'S SUBMITTAL

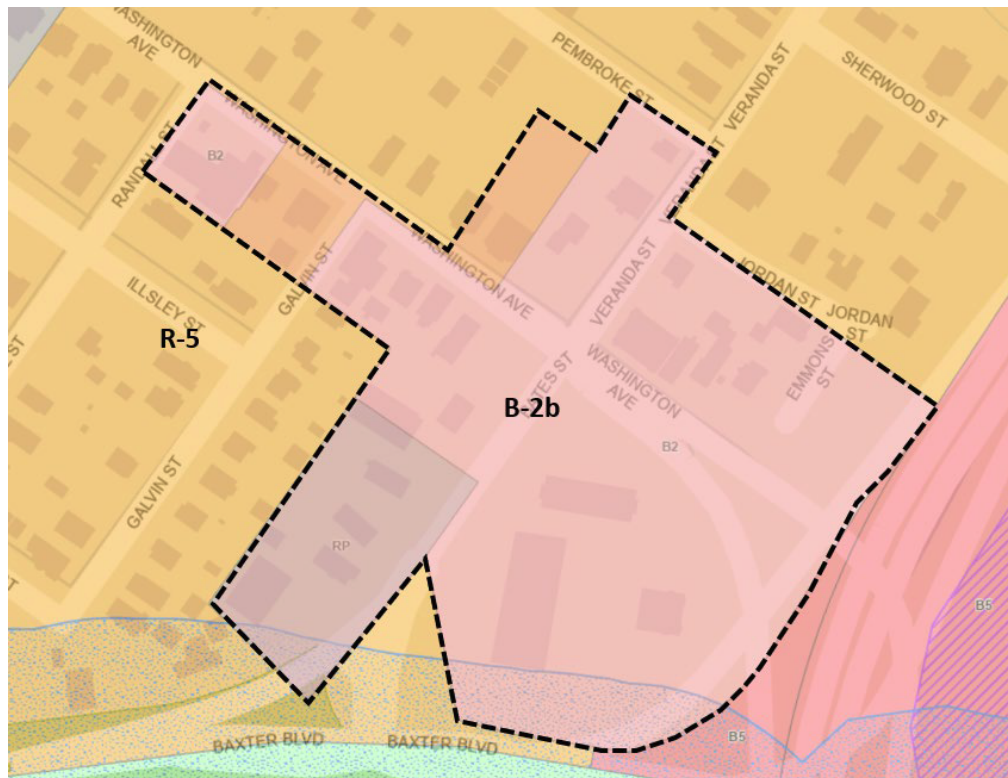
- A. Cover Letter
- B. Vicinity Map
- C. Zoning Map
- D. Amendment Checklist
- E. Deed
- F. Concept Site Plan
- G. Neighborhood Meeting
- H. Use Map

AMENDMENT TO ORDER 61-23/24
PREPARED BY CORPORATION COUNSEL
RE: B-2b COMMUNITY BUSINESS FOR LAND AROUND INTERSECTIONS OF
WASHINGTON AVENUE, BATES AND VERANDA STREETS

WHEREAS, based on the information provided to the City Council in the September 18, 2023 Planning Board Report to City Council, numbered ZN-002413-2023, the testimony, comment and other information submitted to the City Council, as well as the findings, conclusions and recommendations contained in the Planning Board Report for the public hearing held on December 18, 2023, which is attached hereto and incorporated herein by reference, the City Council adopts the findings and conclusions in the Planning Board Report and finds that the below-referenced zoning amendment is pursuant to and consistent with the City's Comprehensive Plan;

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 Portland City Code Chapter 14, the Zoning Ordinance, by §1.2, be and hereby is amended pursuant to §1.10.1 by adopting the attached map amendment and specifically rezoning property around the intersections of Washington Avenue, Bates and Veranda Streets from RP Residence Professional, B-2 Community Business and R-5 Residential to B-2b Community Business, as depicted in the map below.



MEMORANDUM
City Council Agenda Item

FROM: Victoria Volent, Housing Program Manager

DATE: November 30, 2023

SUBJECT: Order 80-23/24 Approving the First Amendment and Restated Purchase and Sale Agreement with Lambert Woods North LLC Re: 622 Auburn Street, Portland, and 0 Gray Road, Falmouth - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Councilor Pious Ali, Chair of the Housing and Economic Development Committee. On October 24, 2023, the Committee voted 4-0 to recommend approval by the City Council.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 12/4/2023

Final

Action 12/18/2023

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: Corporation Counsel has reviewed and approved the First Amendment and Restated Purchase and Sale Agreement for City-owned property at 622 Auburn Street, and 0 Gray Road, Falmouth.

PRESENTATION: Mary Davis will be available to answer questions.

I. SUMMARY

Vote to authorize the City Manager to enter into a First Amendment and Restatement to the Purchase and Sale Agreement to sell City-owned property located at 622 Auburn Street, and 0 Gray Road, Falmouth to Lambert Woods North LLC.

II. AGENDA DESCRIPTION

On October 24, 2023, the Housing and Economic Development Committee voted (4-0) to recommend the City Council enter into the First Amendment and Restate Purchase and Sale Agreement for City-owned property at 622 Auburn Street, and 0 Gray Road, Falmouth.

On May 10, 2022, the City entered into a Purchase and Sale Agreement with Maine Cooperative Development Partners for a limited equity cooperative affordable housing development at 622 Auburn Street, and 0 Gray Road, Falmouth.

Originally, Maine Cooperative Development Partners proposed creating limited equity cooperative housing units (“Co-ops”) at the 622 Auburn and 0 Gray Road site. All of the homes would have been permanently affordable for households earning at or up to 100% AMI. The scope of the project has changed. Maine Cooperative Development Partners (MCDP) has assigned its rights under the Original Purchase and Sale Agreement to Lambert Woods North LLC (the Buyer). The LLC is comprised of Maine Cooperative Development Partners, and Preservation of Affordable Housing in a 50/50 partnership. Lambert Woods North LLC is now proposing to create 72 units of Low Income Housing Tax Credit (LIHTC) rental housing affordable at 60% of the area median income.

At the request of staff, this item was postponed on December 4, 2023 so that it may be considered with the following companion items. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

On October 24, 2023, the Housing and Economic Development Committee voted (4-0) to recommend the City Council enter into the First Amendment and Restate Purchase and Sale Agreement with Lambert Woods North LLC for City-owned property at 622 Auburn Street, and 0 Gray Road, Falmouth.

On May 10, 2022, the City entered into a Purchase and Sale Agreement with Maine Cooperative Development Partners for a limited equity cooperative affordable housing development at 622 Auburn Street, and 0 Gray Road, Falmouth.

Originally, Maine Cooperative Development Partners proposed creating limited equity housing cooperative units (“Co-ops”) at the 622 Auburn and 0 Gray Road site. All of the homes would have been permanently affordable for households earning at or up to 100% AMI. The scope of the project has changed. Maine Cooperative Development Partners (MCDP) has assigned its rights under the Original Agreement to Lambert Woods North LLC (the Buyer). The LLC is comprised of Maine Cooperative Development Partners, and Preservation of Affordable Housing in a 50/50 partnership. Lambert Woods North LLC is now proposing to create 72 units of Low Income Housing Tax Credit (LIHTC) rental housing affordable at 60% of the area median income.

Below are the amendments to the Terms of the Purchase and Sale Agreement:

- a) Due Diligence Period: Originally the Buyer had “twenty-five (25) months after May 10, 2022” (i.e. June 10, 2024) to complete their due diligence. The wording has been changed to “June 10, 2024” for simplicity and clarity.
- b) Closing: Originally the Buyer agreed to close “on or before the day that is twenty-seven (27) months after May 10, 2022” (i.e. August 10, 2024). The wording has been changed to “on or before August 10, 2024” for simplicity and clarity.
- c) Buyer’s Post Closing Obligations: Originally the Buyer proposed to create cooperative ownership units. The wording has been changed to acknowledge the proposed project is now a low-income rental development that would include “approximately seventy-two (72) dwelling units, including approximately 34 one-bedroom units, 10 two-bedroom units, and 28 three-bedroom units” to reflect the change in the scope of the project.
- d) Rent Restriction: Section 12 b has been added to restrict rents at 60% of the area median income for 99 years after the project has been completed. The definition of “affordable” has been added, as well as the minimum household size allowed per unit. These changes reflect the change in scope of the project.
- e) Exhibit C: Originally, Exhibit C provided examples of rent limits based on 2020 area median income limits. Exhibit C has been updated and amended to provide rent limits based on 2023 area median income limits.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Amending the scope of the proposed project from limited equity cooperative housing units to low-income rental units with Lambert Woods North LLC.

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Approval of the proposed First Amendment and Restatement to the Purchase and Sale Agreement in substantially the same form as included in the backup.

VIII. LIST ATTACHMENTS

1. Amended and Restated P&S to Lambert Woods North LLC for 622 Auburn Street 12.04.2023
2. LWN memo re First Amend to PSA for 622 Auburn and 0 Gray

Prepared by:

Victoria Volent, Housing Program Manager

Date: 11/30/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

**ORDER APPROVING THE FIRST AMENDED AND
RESTATED PURCHASE AND SALE AGREEMENT WITH
LAMBERT WOODS NORTH LLC
RE: 622 AUBURN STREET, PORTLAND AND 0 GRAY ROAD, FALMOUTH**

ORDERED, that the First Amended and Restated Purchase and Sale Agreement for 622 Auburn Street, Portland and 0 Gray Road, Falmouth, as hereby amended and restated in substantially the form attached hereto, with Lambert Woods North LLC is hereby approved; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the First Amended and Restated Purchase and Sale Agreement and whatever other documents are necessary to effect the intent and purpose of this order.

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee

FROM: Victoria Volent
Housing and Economic Development Department

DATE: October 24, 2023

SUBJECT: Review and Approval of First Amended and Restated Purchase and Sale Agreement for City-Owned Property at 622 Auburn Street, and 0 Gray Road, Falmouth

Staff is requesting that the members of the Housing and Economic Development Committee vote to recommend to the City Council amendments to the Purchase and Sale Agreement, for the sale of city-owned property located at 622 Auburn Street, and 0 Gray Road, Falmouth.

On May 10, 2022, the City entered into a Purchase and Sale Agreement with Maine Cooperative Development Partners for an affordable housing development at 622 Auburn Street, and 0 Gray Road, Falmouth.

Originally, Maine Cooperative Development Partners proposed creating limited equity housing cooperative units (“Co-ops”) at the 622 Auburn and 0 Gray Road site. All of the homes would have been permanently affordable to households earning at or up to 100% AMI. The scope of the project has changed. Maine Cooperative Development Partners (MCDP), in a 50/50 partnership with Preservation of Affordable Housing (POAH) will form a new entity which will be the eventual property owner of the property. Lambert Woods North LLC is proposing to create 72 units of Low Income Housing Tax Credit (LIHTC) rental housing affordable at 60% of the area median income.

Amendment to the Terms of the Purchase and Sale Agreement

- a) **Due Diligence Period:** Originally the Buyer had “twenty-five (25) months after May 10, 2022” (i.e. June 10, 2024) to complete their due diligence. The wording has been changed to “June 10, 2024” for simplicity and clarity.
- b) **Closing:** Originally the Buyer agreed to close “on or before the day that is twenty-seven (27) months after May 10, 2022” (i.e. August 10, 2024). The wording has been changed to “on or before August 10, 2024” for simplicity and clarity.
- c) **Buyer’s Post Closing Obligations:** Originally the Buyer proposed to create cooperative ownership units. The wording has been changed to acknowledge the proposed project

would include “approximately seventy-two (72) dwelling units, including approximately 34 one-bedroom units, 10 two-bedroom units, and 28 three-bedroom units” to reflect the change in scope of the project.

- d) Rent Restriction: Section 12 b has been added to restrict rents at 60% of the area median income for 99 years after the project has been completed. The definition of “affordable” has been added as well as the minimum household size allowed per unit. These changes reflect the change in scope of the project.
- e) Exhibit C: Originally, Exhibit C provided example of rent limits based on 2020 area median income limits. Exhibit C has been updated and amended to provide rent limits based on 2023 area median income limits.

Attachments:

Amended and Restated PSA LWN redlined

Amended and Restated PSA LWN clean

Purchase and Sale Agreement for 622 Auburn and 0 Gray Road

FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

THIS **FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT** IS made this ~~10th~~ ~~th~~ day of ~~May, 2022~~August, 2023 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and **LAMBERT WOODS NORTH LLC, a Maine limited liability company, care of Preservation of Affordable Housing, a Massachusetts nonprofit corporation with a mailing address of 2 Oliver Street, Suite 500 Boston, Massachusetts 02109 (hereinafter referred to as “Buyer”), as assignee of** MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 ~~(hereinafter referred to as “Buyer(“MCDP”)~~).

RECITALS

 WHEREAS, **MCDP and the City is entered into a Purchase and Sale Agreement dated May 10, 2022 (the owner of “Original Agreement”); and**

WHEREAS, the Original Agreement relates to certain property owned by the City, specifically, approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the “Portland Premises”) and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the “Falmouth Premises”) (the Portland Premises and the Falmouth Premises are referred to herein collectively as the “Premises”); and

WHEREAS, the City did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the “Request for Proposals”) (the Portland Premises is identified in the City of Portland’s tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth’s tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, ~~Buyer~~**MCDP** submitted a proposal dated May 2, 2021 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit B and incorporated herein (the “Proposal”); and

WHEREAS, MDCP has assigned its rights under the Original Agreement to Buyer pursuant to an Assignment and Assumption Agreement of near or even date herewith; and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer, ~~subject to the terms and conditions set forth herein; and~~

WHEREAS, Buyer and the City wish to amend the Original Agreement and to replace the Original Agreement with this Amended and Restated Agreement (this Amended and Restated Purchase and Sale Agreement is referred to hereinafter as the “Agreement”);

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **AMENDMENT AND RESTATEMENT.** This Amended and Restated Purchase and Sale Agreement amends and restates the Original Agreement in its entirety.

2. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

3. **CONSIDERATION.** The purchase price for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").

4. **TITLE AND DUE DILIGENCE.**

a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is twenty-five (25) months after ~~the date of this Agreement~~ May 10, 2022 (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.

c. ~~Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to maximize residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing.~~

d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following: ~~(i) permanent financing for the Coop in the form of a HUD Section 213 loan; and (ii) an~~ affordable housing tax increment financing from the City.

- e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.
- f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
- g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and its attachments,; (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.
- h. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development ~~for purposes other than passive recreation~~ within the wetland areas located on the Portland Premises for purposes other than passive recreation; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.

- i. **Development Restrictions on the Falmouth Premises.** The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.
- j. **Buyer's Right to Assign.** The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.
- k. **Buyer's Right to Terminate.** The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case neither party shall have any further obligations to the other.
- l. **Zoning.** The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

5. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, in its sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney

fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
 - e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
 - f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
6. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
7. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to

pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.

8. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
9. **PROPERTY SOLD “AS IS, WHERE IS.”** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.
10. **ENVIRONMENTAL INDEMNIFICATION.** Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys’, consultants’, and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City’s release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer’s successors, assigns, and transferees.
11. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer’s counsel at a time agreeable to the parties on or before the day that is twenty-seven (27) months after ~~the date of this Agreement~~ May 10, 2022 (the “Closing Date”). At the Closing:

- a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the Purchase Price to the City.
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

- a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project, as the Project ~~is on the Portland Premises as~~ generally described in the Proposal. The Project shall include no less than forty-four (44) dwelling units, no less than 25% of which shall be three-bedroom units or larger. The Project shall utilize Low Income Housing Tax Credits to be awarded by the Maine State Housing Authority ("Maine Mousing"). City acknowledges that this scope of the Project differs from the scope set forth in the Proposal with the elimination of the cooperative ownership aspect of the Proposal, which Buyer has deemed unfeasible.
-
- b. ~~Upon the issuance of a certificate of occupancy for all or a portion of the first phase of the Project or at such earlier time as the Buyer, in its discretion, may determine, the Buyer shall convey the Project or provide a master lease of the Project with a right to purchase to a Cooperative Affordable Housing Corporation (the "Coop") organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended (the "Act").~~
-
- c. ~~Rent Restrictions. For a period of 99 years after the Project has been transferred to the Coop, all units and cooperative interests in the Project shall be affordable to low and moderate income households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under the Act. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income. Minimum household size allowed per unit and the formula for~~

~~calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof.~~

- ~~d. Income Restrictions. In order to purchase a cooperative membership interest in, and reside in a unit owned by the limited equity cooperative, a household must not earn more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD"). Household income is defined as adjusted gross income used by the IRS. This income test will be used only at the time of the household's purchase, and excludes transfers to family members or an estate beneficiary. At the time of initial sale of cooperative membership interests in the Coop, up to 20% of the cooperative membership interests may be sold to households earning up to 120% of AMI. All other sales and all subsequent sales of cooperative membership interests must be to households earning no more than 100% of AMI.~~
~~-~~
- e. Rent Restrictions. When the Project is complete, Buyer shall cause a restrictive covenant to be recorded encumbering the Project for a period of forty five (45) years, complying with the terms and requirements of Section 42 of the United States Internal Revenue Code and on such terms and conditions as Maine Housing customarily requires for developments such as the Project (the "Extended Use Agreement"). The Extended Use Agreement shall provide that all units in the Project shall be affordable to qualifying tenants under the Low Income Housing Tax Credit program.
- f. Option to Repurchase. ~~Unless the Project has been transferred to the Coop as set forth above, if~~ If Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.
- ~~g. The articles of organization for the Coop shall provide that in the event the Coop shall be dissolved, its assets will be distributed in accordance with § 1754(6) of the Act to the City or, at the City's option, to another organization permitted under § 1754(6) of the Act reasonably acceptable to the City.~~
- h. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

13. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.
14. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
18. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to : The Office of the Corporation Counsel at the
same address.

FOR Buyer:
Affordable Housing

~~Maine Cooperative Development Partners,~~Preservation of

~~6 City Center, Fl. 3~~

~~Portland, ME 04101~~2

Oliver Street

Suite 500

Boston, Massachusetts 02109

With a copy to:

~~David C. Pierson~~Edward J. Kelleher, Esq.

~~Eaton Peabody~~

~~P.O. Box 15235~~

Drummond Woodsum

84 Marginal Way, Suite 600

Portland, ME 04112-523504101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The ~~CITY~~City and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

~~City~~CITY OF PORTLAND

Witness

~~By:~~ Danielle West
Its ~~Interim:~~ City Manager

~~COOPERATIVE~~PRESERVATION OF

~~BUYER: MAINE-~~

~~DEVELOPMENT PARTNERS, LLC~~
AFFORDABLE HOUSING

Witness

~~Brian Eng~~~~By:~~
Its ~~Principal:~~

Approved as to Form:

Corporation Counsel's Office

FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT IS made this ____th day of October, 2023 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and LAMBERT WOODS NORTH LLC, a Maine limited liability company, care of Preservation of Affordable Housing, a Massachusetts nonprofit corporation with a mailing address of 2 Oliver Street, Suite 500 Boston, Massachusetts 02109 (hereinafter referred to as “Buyer”), as assignee of MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 (“MCDP”).

RECITALS

WHEREAS, MCDP and the City entered into a Purchase and Sale Agreement dated May 10, 2022 (the “Original Agreement”); and

WHEREAS, the Original Agreement relates to certain property owned by the City, specifically, approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the “Portland Premises”) and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the “Falmouth Premises”) (the Portland Premises and the Falmouth Premises are referred to herein collectively as the “Premises”); and

WHEREAS, the City did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the “Request for Proposals”) (the Portland Premises is identified in the City of Portland’s tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth’s tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, MCDP submitted a proposal dated May 2, 2021 in response to the Request for Proposals, as revised by a Third Revised Project Narrative dated May 2, 2023, copies of which are attached hereto collectively as Exhibit B and incorporated herein (the “Proposal”); and

WHEREAS, MDCP has assigned its rights under the Original Agreement to Buyer pursuant to an Assignment and Assumption Agreement of near or even date herewith; and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer; and.

WHEREAS, Buyer and the City wish to amend the Original Agreement and to replace the Original Agreement with this Amended and Restated Agreement (this Amended and Restated Purchase and Sale Agreement is referred to hereinafter as the “Agreement”);

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **AMENDMENT AND RESTATEMENT.** This Amended and Restated Purchase and Sale Agreement amends and restates the Original Agreement in its entirety.
2. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION.** The purchase price for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE AND DUE DILIGENCE.**
 - a. **Due Diligence Period.** Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on June 10, 2024 (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.
 - b. **Property Description.** The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.
 - c. **Financing Contingency.** The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following an affordable housing tax increment financing from the City.
 - d. **Title and Survey Objections.** Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

- e. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
- f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and its attachments, (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.
- g. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development within the wetland areas located on the Portland Premises for purposes other than passive recreation; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.
- h. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth

Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.

- i. **Buyer's Right to Assign.** The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.
- j. **Buyer's Right to Terminate.** The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case neither party shall have any further obligations to the other.
- k. **Zoning.** The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

5. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, in its sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred

Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
 - f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
6. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
7. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.
8. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further

obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

9. **PROPERTY SOLD “AS IS, WHERE IS.”** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.
10. **ENVIRONMENTAL INDEMNIFICATION.** Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys’, consultants’, and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City’s release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer’s successors, assigns, and transferees.
11. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer’s counsel at a time agreeable to the parties on or before August 10, 2024 (the “Closing Date”). At the Closing:
- a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
 - b. Buyer shall deliver the Purchase Price to the City.
 - c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

- a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project on the Portland Premises as generally described in the Proposal, as amended by the Third Revised Project Narrative. The Project shall include approximately seventy-two (72) dwelling units, including approximately 34 one-bedroom units, 10 two-bedroom units, and 28 three-bedroom units. Contrary to the terms of the Proposal, the parties acknowledge and agree that the Project will not be a cooperative affordable housing corporation and instead shall utilize Low Income Housing Tax Credits to be awarded by the Maine State Housing Authority ("Maine Housing").
- b. Rent Restrictions. For a period of 99 years after the Project has been completed, all units in the Project shall be affordable to households earning less than or equal to 60% of the area median income (AMI), adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area. 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. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in rent and other housing expenses including utilities, shall not exceed 30% of the household's gross monthly income, except as provided below if the Project is financed with the LIHTC program. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof. However, if the Rental Housing Project is financed under the Federal Low Income Housing Tax Credit (LIHTC) Program, maximum allowable rent shall be the maximum allowable rent under the Federal LIHTC Program during the applicable time period for that Program. Upon expiration of any affordability restrictions recorded in the Cumberland County Registry of Deeds under the Federal LIHTC Program, the provisions of Exhibit C shall apply to the Rental Housing Project for the remainder of the 99-year period.
- c. Option to Repurchase. If Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right

to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.

- d. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. TIME. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to : The Office of the Corporation Counsel at the
same address.

FOR Buyer: Preservation of Affordable Housing
2 Oliver Street
Suite 500
Boston, Massachusetts 02109

With a copy to: Edward J. Kelleher, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The City and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

CITY OF PORTLAND

Witness

By: Danielle P. West
Its: City Manager

**PRESERVATION OF
AFFORDABLE HOUSING**

Witness

By:
Its:

Approved as to Form:

Corporation Counsel's Office

EXHIBIT C

Minimum Household Size and Maximum Allowable Monthly Rent Calculation

The Minimum household size for a unit is based on the number of bedrooms in the unit, as set forth in the table below. The maximum allowable monthly rent for a unit is 1/12 of 30% of the Area Median Income, based on the minimum household size for a unit, less the occupant's costs for utilities.

	Studio/One-Bedroom Unit	Two-Bedroom Unit	Three-Bedroom Unit	Four-Bedroom Unit
Minimum Household Size	1	2	3	4

For Example, utilizing 2023 AMI levels, and assuming no out of pocket utility costs, the maximum allowable monthly rent would be as follows:

Studio/One Bedroom Unit: $1/12(0.30 \times \$49,700) = \$1,242$

Two Bedroom Unit: $1/12(0.30 \times \$56,800) = \$1,420$

Three Bedroom Unit: $1/12(0.30 \times \$63,900) = \$1,597$

In the event that the occupant has out of pocket utility expenses, the maximum allowable monthly rent would be decreased by the amount of those utility expenses. For example, for a two bedroom unit with \$300 in monthly utility expenses, the maximum allowable monthly rent would be $\$1,420.00 - \$300 = \$1,120.00$.

Utility allowance will be calculated in one of two ways: (1) using the utility allowance established by the Portland Housing Authority or (2) based on actual documented utility usage at the property.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 10th day of May, 2022 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 (hereinafter referred to as “Buyer”).

RECITALS

WHEREAS, the City is the owner of approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the “Portland Premises”) and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the “Falmouth Premises”) (the Portland Premises and the Falmouth Premises are referred to herein collectively as the “Premises”) and did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the “Request for Proposals”) (the Portland Premises is identified in the City of Portland’s tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth’s tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, Buyer submitted a proposal dated May 2, 2021 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit B and incorporated herein (the “Proposal”); and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
2. **CONSIDERATION.** The purchase price for the Premises shall be One Dollar (\$1.00) (the “Purchase Price”).
3. **TITLE AND DUE DILIGENCE.**
 - a. **Due Diligence Period.** Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is twenty-five (25) months after the date of this Agreement (the “Due Diligence Period”) to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

- b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.
- c. Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to maximize residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing.
- d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following: (i) permanent financing for the Coop in the form of a HUD Section 213 loan; and (ii) affordable housing tax increment financing from the City.
- e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.
- f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

- g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and its attachments;; (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.
- h. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development for purposes other than passive recreation within the wetland areas located on the Portland Premises; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.
- i. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.
- j. Buyer's Right to Assign. The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.
- k. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written

notice of termination to the City in which case neither party shall have any further obligations to the other.

- l. Zoning. The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such

inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.
7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
8. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full

performance and discharge by the City of every agreement and obligation contained herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. CLOSING. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is twenty-seven (27) months after the date of this Agreement (the "Closing Date"). At the Closing:

- a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the Purchase Price to the City.
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

11. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

- a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project, as the Project is generally described in the Proposal. The Project shall include no less than forty-four (44) dwelling units, no less than 25% of which shall be three-bedroom units or larger.
- b. Upon the issuance of a certificate of occupancy for all or a portion of the first phase of the Project or at such earlier time as the Buyer, in its

discretion, may determine, the Buyer shall convey the Project or provide a master lease of the Project with a right to purchase to a Cooperative Affordable Housing Corporation (the "Coop") organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended (the "Act").

- c. Rent Restrictions. For a period of 99 years after the Project has been transferred to the Coop, all units and cooperative interests in the Project shall be affordable to low- and moderate-income households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under the Act. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof.
- d. Income Restrictions. In order to purchase a cooperative membership interest in, and reside in a unit owned by the limited equity cooperative, a household must not earn more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD"). Household income is defined as adjusted gross income used by the IRS. This income test will be used only at the time of the household's purchase, and excludes transfers to family members or an estate beneficiary. At the time of initial sale of cooperative membership interests in the Coop, up to 20% of the cooperative membership interests may be sold to households earning up to 120% of AMI. All other sales and all subsequent sales of cooperative membership interests must be to households earning no more than 100% of AMI.
- e. Option to Repurchase. Unless the Project has been transferred to the Coop as set forth above, if Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.
- f. The articles of organization for the Coop shall provide that in the event the Coop shall be dissolved, its assets will be distributed in accordance with § 1754(6) of the Act to the City or, at the City's option, to another organization permitted under § 1754(6) of the Act reasonably acceptable to the City.

- g. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

- 12. ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.
- 13. NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
- 14. HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
- 15. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
- 16. TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 17. GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
- 18. NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:

City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR Buyer: Maine Cooperative Development Partners,
6 City Center, Fl. 3
Portland, ME 04101

With a copy to: David C. Pierson, Esq.
Eaton Peabody
P.O. Box 15235
Portland, ME 04112-5235

19. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

20. BROKERS. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

21. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

WITNESS

City OF PORTLAND

DocuSigned by:
Danielle P. West
AGFE17285727428
Danielle West
Its Interim City Manager

WITNESS

**BUYER: MAINE COOPERATIVE
DEVELOPMENT PARTNERS, LLC**

DocuSigned by:
Brian Eng
Printed Name: Brian Eng
Its Principal

Approved as to Form:
Michael Goldman
Corporation Counsel's Office

MEMORANDUM
City Council Agenda Item

FROM: Victoria Volent, Housing Program Manager

DATE: November 30, 2023

SUBJECT: Order 81-23/24 Designating the Lambert Woods North Affordable Housing Development and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Pious Ali, Chair of the Housing and Economic Development Committee. On October 24, 2023, the Committee voted 4-0 to recommend approval by the City Council.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 12/4/2023

Final Action 12/18/2023

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: Corporation Counsel will review all Agreements associated with the Affordable Housing TIF and Credit Enhancement Agreement prior to signing.

PRESENTATION: Mary Davis, will be available for questions.

I. SUMMARY

Lambert Woods North LLC is requesting financial assistance from the City in the form of Affordable Housing Tax Increment Financing (AHTIF) to assist with the proposed creation of 72 units of low income rental housing at 622 Auburn Street. If approved, the AHTIF financing would be provided through a Credit Enhancement Agreement at 75% of the increased taxable value currently estimated at an average of \$123,504 annually over 30 years.

II. AGENDA DESCRIPTION

During a meeting held on October 24, 2023, the Housing and Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage conditioned upon the final underwriting recommendation and evidence of site control.

Lambert Woods North, LLC is proposing construction of six buildings composed of two three-story flats consisting of 10 units each, and four three-story rowhouses (two rowhouses would have 16 units, one rowhouse would have 12 units, and the final rowhouse would have 8 units) for low-income households at 622 Auburn Street. Lambert Woods North LLC is requesting financial assistance from the City in the form of Affordable Housing Tax Increment Financing (AHTIF) to assist with the cost of the project. If approved, the AHTIF financing would be provided through a Credit Enhancement Agreement at 75% of the increased taxable value currently estimated at an average of \$123,504 annually over 30 years.

The project would include 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom units. All of the units would be reserved for households earning at or below 60 AMI (i.e. \$56,800 for two people). The property would integrate bus shelters for the 9A and 9B buses, lighted sidewalks, community space, a playground, and community gardens. The building would meet or exceed Portland's Green Building Ordinance.

This is a companion order to the above.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Approval of this AHTIF request is key to making the project financially feasible.

The City Council must:

- (1) authorize the creation of the Affordable Housing Tax Increment Financing District; and
- (2) approve the Credit Enhancement Agreement

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Establishing an Affordable Housing Tax Increment Financing District to support the construction of 72 rental units of low-income housing within six buildings located at 622 Auburn Street.

Increase access to rental housing that is safe and affordable for low-income households.

V. FINANCIAL IMPACT

When completed, this project's new-building assessed value is estimated at \$8,771,960, which would yield \$121,775 in annual revenue at the current FY23 millage rate. Seventy-five percent of the increased tax revenue (approximately \$3,705,106 over 30 years) would be captured revenue returned to the developer. The remaining 25% (approximately \$1,235,035 over 30 years) would be retained by the City as general revenue fund.

A Credit Enhancement Agreement would return approximately \$3,705,106 in captured revenue to the developer (averaged at \$123,504 annually over 30 years) to off-set project operating costs, and approximately \$1,235,035 in general fund revenue to the City (averaged at \$41,168 annually over 30 years). The proposed project would be taxable.

Total development costs are estimated at \$28,941,850. At full build out, the development is projected to pay an average of \$123,504 in projected new taxes captured annually for 30 years. Non-captured general fund revenues are estimated at an average of \$41,168 annually for 30 years. In addition, with the tax sheltering benefits of the TIF District, overall savings to the City during the term of the district average an estimated annual amount of \$57,749+, or \$1,732,468+ over the life of the district.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of requests for all City funding requests. The underwriting analysis is attached and supports this request.

TIF projections are included in the backup to this memo.

VI. STAFF ANALYSIS AND BACKGROUND

In reviewing the affordable housing TIF request, staff notes the public benefit associated with the TIF District of 72 units of rental housing reserved for households earning at or below 60% of the area median income (AMI).

Additionally, the TIF would create tax sheltering benefits estimated at an average of \$57,749+ per year, or \$1,732,468+ over the life of the district.

VII. RECOMMENDATION

Staff is recommending the City Council (1) approve the establishment of the Lambert Woods North Affordable Housing Development and Tax Increment Financing District; (2) approve the Credit Enhancement Agreement

with Lambert Woods North LLC; and (3) authorize the City Manager to sign and submit to MaineHousing for approval the documents to establish the district, in substantially the form as enclosed conditioned upon the final underwriting recommendations.

VIII. LIST ATTACHMENTS

1. Order Designating Affordable Housing Lambert Woods North LLC 12.4.2023
2. LWN TIF Memo
3. LWN Dec of Cov
4. LWN Dev Prog

Prepared by:

Victoria Volent, Housing Program Manager

Date: 11/30/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

**ORDER DESIGNATING THE LAMBERT WOODS NORTH AFFORDABLE
HOUSING DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development and Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Lambert Woods North LLC intends to construct certain improvements within the Lambert Woods North Affordable Housing Development and Tax Increment Financing (“TIF”) District, including 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom rental units for a total of 72 units of affordable housing; and

WHEREAS, the developer will utilize 75% of the tax revenues generated in the District for 30 years; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the Lambert Woods North Affordable Housing Development and TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and

broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the Lambert Woods North Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the Lambert Woods North Affordable Housing Development and TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the Lambert Woods North Affordable Housing Development and TIF District Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “Lambert Woods North Affordable Housing Development and Tax Increment Financing District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and

determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “Lambert Woods North Affordable Housing Development District” as more particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “Lambert Woods North Affordable Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. Chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City’s Housing and Economic Development Director is authorized to submit annual reports on the status of the “Lambert Woods North Affordable Housing Development and Tax Increment Financing District” on behalf of the municipal legislative body.

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee
FROM: Victoria Volent, Housing Program Manager, Housing and Community
Development Division
MEETING DATE: October 24, 2023
SUBJECT: 2023 Affordable Housing TIF Request

Introduction

Preservation of Affordable Housing (POAH) and Maine Cooperative Development Partners (MCDP) have submitted for review and a recommendation by the Housing and Economic Development Committee to the City Council, a request for Affordable Housing Tax Increment Financing in response to the release of the *2023 Affordable Housing Development and Tax Increment Financing Application*.

Lambert Woods North

Preservation of Affordable Housing (POAH) and Maine Cooperative Development Partners (MCDP) are seeking an Affordable Housing TIF (75% for 30 years) for the proposed development of 6 residential buildings with a total of 72 apartments consisting of 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom units. The homes would be a mix of townhouses (four, three-story buildings) and flats (two, three-story buildings) affordable at up to 60% of the Area Median Income (AMI), which is \$56,800 for two people. The target population is an all-ages demographic with a mix of household sizes. POAH Communities would manage the apartments.

The Lambert Woods North is located on City-owned property located at 622 Auburn Street, and 0 Gray Road in Falmouth. Currently the site is under an agreement via a Purchase and Sale Agreement between the City and Maine Cooperative Development Partners (see attached). The developers have requested an amendment to the Purchase and Sale Agreement to; eliminate the cooperative ownership aspect of the proposal and instead create a LIHTC rental housing development; to revise the rent and income affordability level from 100% of the Area Median Income (AMI) to up to 60% AMI. The developer also requested to eliminate the rent restriction from a period of 99 years to 45 years, however staff is recommending that the affordability period remain at 99 years. The Purchase and Sale Agreement still requires development of no less than 44 units of which no less than 25% shall be three-bedroom units or larger.

The development would integrate bus shelters for the 9A and 9B buses, lighted sidewalks, a playground, community gardens, community space with the flats, and a laundry room with seven washers and dryers.

The project will meet the City's Green Building Ordinance by certifying under the Department of Energy's Zero Energy Ready Program and achieving a Home Energy Rating System (HERS) of 52 or less.

This project is seeking a 4% Low Income Housing Tax Credit with Maine Housing.

The applicant received Planning Board approval during their February 28, 2022 public hearing.

According to the developer's application:

Lambert Woods North will accommodate households with incomes below 60% Area Median Income (AMI) or less. Following the expiration of the use restrictions and regulatory compliance periods associated with the Low Income Housing Tax Credit (LIHTC) program and loan financing from the Maine Housing Finance Authority (MSHA), the residents will have the option to purchase the property collectively through a limited-equity housing cooperative to achieve the goal of residents owning their housing. All these homes would be priced at an affordable level targeted for households earning up to 60% AMI. There will be 4 accessible units and 68 adaptable units

The property will not use any fossil fuels for building operations. Good ventilation and products with low toxicity will be selected for improved resident health. Parking and street design will use a minimal amount of pavement to reduce runoff and to preserve more habitat. Building rooflines will be oriented for solar panels, and parking will integrate EV chargers for electric cars. The buildings are organized around a park and a children's playground.

Revenue from the AHTIF would be used to pay operating costs at Lambert Woods North, such as maintenance and utilities. The funds received over the lifetime of the AHTIF will support the project in providing high quality, new, affordable apartments to the North Deering neighborhood of Portland. Without these funds, the development of 72 apartments for low- and moderate income Portland residents would not be able to move forward.

Requested Amount of Affordable Housing Development Funding

Lambert Woods North is requesting a 75% Affordable Housing Tax Increment Financing for 30 years. Based on the underwriting review, the recommendation is to not finalize the Affordable Housing TIF until a final review of the operating budget substantiates the appropriate level of funding, consistent with the standard of "Financial Necessity".

Affordable Housing Tax Increment Financing

If approved as proposed (75% for 30 years), the Affordable Housing TIF financing would be provided through a Credit Enhancement Agreement at 75% of the increased assessed value tax revenue, currently estimated at a 30-year annual average of \$123,504, with an

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estimated total of \$3,705,106 in captured increased assessed value tax revenue returned to the project/developer to off-set project operating costs. The proposed project would be taxable, with an estimated annual assessment of \$9,230,483 and estimated annual tax of \$8,771,960 at the current 23FY millage rate of .01361. The estimated increased assessed value is \$8,771,960 or \$263,158,800 over the 30 year term of the district based on an Original Assessed Value of \$0.00. The increased taxable value, currently estimated at a 30-year annual average of \$123,504 with an estimated total of \$3,705,106 will be non-captured general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

Financial Impact

Seventy-five percent (75%) of the increased assessed value tax revenue would be captured increased assessed value tax revenue returned to the project/developer through a Credit Enhancement Agreement. The remaining non-captured revenue from the increased assessed value of twenty-five percent (25%) will be general fund revenue. The Credit Enhancement Agreement would return approximately \$3,705,106 in captured increased assessed value tax revenue to the project/developer (averaged at \$123,504 annually over thirty years) to support the cashflow of the project. Non-captured general fund revenues are estimated at \$1,235,035 (average at \$41,168 annually over thirty years).

	Captured Revenue to Developer (assumes 2% increase/year to mill rate) (Tax Dollars returned to the Developer's District Account)	Captured Revenue Returned to City (assumes 2% increase/year to mill rate) (Tax Dollars returned to the City's District Account)	Non -Captured General Fund Revenue (Tax Dollars in General Fund)
30 Year TIF Total	\$3,705,106	\$0	\$1,235,035
30 Year Average	\$123,504	\$0	\$41,168

With the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$57,749 +, or \$1,732,468 + over the life of the district.

	1. Sheltered Valuation (same as Captured Valuation)	2. Avoided Loss of State Aid for Education	3. Avoided Loss of State Municipal Revenue Sharing	4. Avoided Increase in County Tax	5. Total Avoided Impacts (2+3+4)
30 Year TIF Total	\$197,369,100	\$1,351,320	\$284,125	\$97,023	\$1,732,468
30 Year Average	\$6,578,970	\$45,044	\$9,471	\$3,234	\$57,749

Finally, prior to TIF finalization, underwriting recommends the satisfactory review of:

- 30 year operating budget with utility costs documentation, preferably utility modeling;
- Purchase and Sale amendment by City Council to allow this use;
- Review of Joint Venture agreement;
- Updated organizational financial statements, including most recent quarterly financials, from POAH and MCDP;

- Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Attachments:

Lambert Woods North: Underwriting Memo
Lambert Woods North: Project Summary
Lambert Woods North: Development Schedule
Lambert Woods North: TIF Projection Table
Lambert Woods North: Tax Shifts – Avoided Formula Impacts
Lambert Woods North: Purchase and Sale Agreement
Lambert Woods North: map

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: Lambert Woods North, POAH
Date: 10/13/23

POAH (Preservation of Affordable Housing) and MCDP (Maine Cooperative Development Partners), for their proposed Joint Venture (JV), request an Affordable Housing TIF for a proposed new construction 72 unit rental housing development serving households at 60% AMI on the Lambert Woods North site. This undeveloped parcel of 17.95 acres was awarded to Maine Cooperative Development Partners (MCDP) in 2021 for a proposed limited equity cooperative development. MCDP now proposes to divide the property into two components: “Lambert North” (the project analyzed here) and “Lambert South,” a proposed limited equity cooperative which will be discussed in a separate memo.

MCDP proposes a Joint Venture with POAH to develop the “North” property with units which will be rental for 45 years, with an option to convert to cooperative ownership at the end of that term. The parcel is north of Washington Street extension, on the border with the Town of Falmouth

The JV entity and its controlling documents have not been created. The terms described in this memo are based on a “Joint Venture Term Sheet” which will be replaced by the actual JV documents. The term sheet proposes ownership interests of 60% POAH, 40% MCDP.

In addition to the City subsidy by transfer of the land, the requested TIF terms are 75% 30 year, a subsidy of \$3,705,106 or \$51,460 per unit. However, given recent increases in the operating budget, it is not recommended that the TIF be finalized till a final review of the operating budget substantiates the appropriate level of funding, consistent with the standard of “Financial Necessity.” See “30 Year Cashflow” and “Recommendations” sections for additional details about TIF sizing.

Sources and Uses

Sources:		Uses:	
Maine Housing Must Pay	\$9,675,544	Acquisition	\$5
Maine Housing 0% Deferred	\$8,496,000	Construction hard costs	\$21,586,314
Net Syndication Equity	\$10,742,118	Hard & Soft Contingency	\$1,731,419
Deferred Developer Fee:	\$3,000,000	Soft costs	\$4,372,787
Solar Credits	<u>\$258,275</u>	Capitalized Reserves	\$939,640
		Developer Fee	<u>\$3,750,000</u>
Total Sources:	\$32,171,937	Total Uses:	\$32,171,937

The JV has submitted an application for 4% LIHTC and first mortgage financing to Maine Housing and received a Notice to Proceed. While neither POAH nor MCDP have a track record with Maine Housing, combined, the two entities have extensive relevant experience. POAH is a national non-profit whose mission is, “to preserve, create, and sustain affordable, healthy homes that support economic security, racial equity, and access to opportunity for all.” POAH was founded in 2001, and now has more than 130 properties with over 13,000 units in 12 states and District of Columbia. Their properties are concentrated in Chicago and Massachusetts, with several in coastal New Hampshire. Entry into the Portland area is part of POAH’s strategic plan. Cory Fellows, a Senior Vice President of Real Estate

Development for POAH, lives in Scarborough, Maine. The principals of MCDP are Matthew Peters, Liz Trice and Brian Eng. Matthew Peters worked for Avesta for 8 years and is now also Executive Director of the Freeport Housing Trust. Brian and Liz bring complementary development and public sector experience.

The Letter of Interest from the syndicator included in the application materials is stale – over a year old and prior to the involvement of POAH. The budget assumes a price of \$.89 per credit. POAH reports they have received significant interest from potential syndicators when floating this concept. Considering POAH's depth of relationship with syndicators, and available balance sheet to support syndicator required guarantees, securing a reasonable deal with a syndicator is not expected to be a problem.

The proposed deferred developer fee has more than doubled in the last iteration of the budgets, from \$1,370,000 to \$3,000,000. This increase generates additional LIHTC basis which helps cover recent increases in construction and soft costs. Construction and soft cost increases of \$1,600,000 were paired with a developer fee increase of an additional \$1,630,000 in the budget update the City received October 2nd. The developer fee is now projected to be 13.65% of Total Development Costs (less developer fee and reserves). This approaches the maximum of what is nationally considered "industry standard" of 15%, and is much higher than is typical of affordable projects in the City of Portland. Since the 2020 round, developer fee has averaged 6% across 19 projects requesting funding, and has ranged from a low of 2% to a high of 9%. The developer fee per unit proposed here is over \$52,000 per unit, 90% higher than the next highest fee per unit of \$27,473.

With a deferred fee of this magnitude, the cashflow projections project that it will take the full 15 year syndication period to repay the debt. While historically, syndicators have required the deferred developer fee be payable out of cashflow in 12 or 13 years, POAH states and Maine Housing confirms that some syndicators have become more willing to consider deferred developer fees that are projected to require the full 15 year syndication period to be repaid.

While POAH writes, "The inclusion of this addition \$1.8M in fee allows us to raise an estimated \$640,000 in additional tax credit equity with no additional soft subsidy," what POAH means is no additional CAPITAL subsidy is required. Instead, POAH requests the City of Portland cover almost the entire burden of the most recent cost increases through additional TIF funding, while POAH and MCDP receive an additional \$1,630,000 in fee income.

For analysis of "Uses," see Development Budget.

Development Budget

Construction Costs:

Construction costs are estimated by Penobscot based on drawings at the 50% Design Stage and dated 9/24/23. This estimate includes provision for prevailing wage requirements. Total construction cost divided among the 72 residential units is \$299,010, all in including site work. While this cost per unit would have been considered high prior to COVID, it is a moderate cost in the current construction cost environment. The unit only construction cost varies by type of unit (size, townhouse or apartment style) from a low of \$215,825 to a high of \$246,578 (excludes site costs, overhead, required right of way work).

Penobscot includes a 2% construction contingency in their contract which is reflected in the contingency line above.

Soft Costs:

Soft costs, though high in a few areas such as accounting, are within industry standard.

Paid developer fee is \$750,000, the Maine Housing cap for funded developer fee, with an additional deferred developer fee of \$3,000,000. Where the prior request was on the high end of reasonable at 8.1%, the current request of 13.65% is extraordinary for affordable housing development in Portland. Developer fee is proposed to be split between POAH (60%) and MCDE (40%).

Contingency:

Hard cost contingency is carried in the development budget at 5%, the industry standard for new construction. The Penobscot estimate also includes a 2% contingency. Considering the continued high level of economic uncertainty, and persistent inflationary pressures in the construction industry, this is the bare minimum contingency.

Soft cost contingency is \$208,228, which is 5% of soft costs. This is industry standard, and should be adequate, as the soft cost budget has already gone through several rounds of (primarily upward) adjustments.

Acquisition:

The site is owned by the City, which awarded it to Maine Cooperative Development Partners for the development of a limited equity cooperative. When that did not appear viable within a reasonable period of time, MCDP brought in POAH as a Joint Venture partner to develop affordable rental housing on the “North” portion of the site. MCDP is contributing the land to the JV for \$5, clearly below the market value of the land.

The donation of the land is an important part of the subsidy package which keeps the rents affordable. There is no current appraisal of the land, but for some insight on how important the land subsidy is, there are currently 4 single family lots listed for sale in north Portland on Zillow (10/1/23), ranging in size from .14 acres to 1.36 acres and ranging in price from \$119,000 to \$186,500. MCDP plans to develop about 4 acres of the almost 18 acre total parcel, preserving substantial green space and wetlands.

Operating Budget & 20 Year Cashflow Projection

Project Income:

The operating budget anticipates the maximum allowable LIHTC rents at each income level.

A market study has been provided dated May 25, 2023. Unfortunately, it is based on 2022 LIHTC rents, so is dated, even though the report is not very old. With these assumptions, the study finds the units have a 20% rent advantage to market units for 1 & 2 bedroom units and a 28% market advantage for 3 bedroom units. Compared to 5 other area LIHTC properties, projected rents were just slightly above the average LIHTC rent, 101% of average area LIHTC rents for 1 & 2 bedroom units and 109% of average area LIHTC rents for 3 bedroom units. The weighted average capture rate of 6% suggests plenty of

demand for these units. The market study also finds that 39.5% of Portland renters are rent burdened, adding evidence to pent up demand for affordable units.

Residential vacancy is budgeted at the industry standard of 5%, which is slightly above Portland's recent vacancy rates. The market study found market rate properties operating at 98.7% occupancy, and LIHTC projects at 96.1% occupancy. This property is an experiment, with 26 dedicated parking spots for 72 units in a car dependent location (.36 dedicated spots per unit). There will also be 57 on street spots (subject to snow restrictions), which will be free and available to both Lambert North and Lambert South residents. In total, there will be 65 off street parking spots and 57 on street spots for 122 parking spaces for 162 units between the two proposed developments (.74 parking spaces/unit). The bus line stops at the site and will be improved with a bus shelter. The bus system has suggested that service along the route may be increased, however, there is no commitment to increase service nor is there a proposed revised bus schedule. The site's walk score of 13 (considered "car dependent"), transit score of 31 ("some transit"), and bike score of 41 ("somewhat bike-able") suggest this location will be a challenge for those without a car.

Operating Expense

The pro forma reflects a per unit operating cost of \$9,375, which is high. Of that, \$1,691 per unit is real estate taxes. The "all in" projected utility expense, combining renter utility allowance and owner paid utilities, totals \$218,464 per year, or an average per unit utility expense of \$253 per month. This seems high for brand new construction with solar installed, though the unit mix includes 38 larger (two- and three bedroom) units, 26 of which are in townhouse construction style, which generates more walls exposed to the elements. Hence the recommendation is final TIF sizing be deferred until better utility cost data is available, as part of a final review of the projected operating budget. Administrative costs are under Maine Housing's ceiling. Grounds costs appear very high, but there are significant exterior amenities to maintain, including interior roadways and parking.

30 Year Cashflow & Debt Service Coverage Ratio (DSCR)

75% 30 Year TIF: Based on the recent increases in utility expense, a 75% TIF generates a year 1 DSCR of 1.14, which is just below the Maine Housing 1.15 DSCR requirement. POAH will need to find \$1,000 per year in cost savings in order to fit their request to Maine Housing's underwriting. This will not be difficult. Using the City's TIF Model spreadsheets, the year one value of a 75% TIF would be \$91,331 and the 30 year value of the TIF would be \$3,705,106. The total TIF subsidy is projected to be \$51,460 per unit over the 30 year term.

65% 20 Year TIF: As demonstration of how sensitive TIF sizing is to operating expenses, if the recent utility expense increase is 50% too high, resulting in cost savings to the project of \$16,576 per year, a 65% TIF would generate a year one DSCR of 1.15, an exact fit for the Maine Housing underwriting standard of 1.15. A 65% TIF has an estimated year one value of \$79,154, and the 20 year value of the TIF would be \$1,972,839. This would provide a \$27,401 subsidy per affordable unit, while saving \$1,732,267 for the General Fund.

Because TIF sizing is so sensitive to projected operating costs, it is recommended that the final TIF sizing be deferred until there is additional information to evaluate the overall operating budget, including the utility projections.

Developer Financials

Though the Joint Venture has not been formed, it is currently anticipated that POAH will be the majority partner (60%) and will have responsibility for predevelopment expenses, construction period supervision, and property management during operations. Hence, POAH's financial situation is more relevant to the success of the Lambert North project than MCDP's financial situation.

Consistent with the scale of POAH's operations (over 13,000 units), POAH is a financially mature organization with assets of over \$1.7 billion. POAH's consolidated audit combines the development functions, property management, and all "controlled property" operations. These layers make it challenging to take a close look at core operational profitability. Audits from 2018-2022 reflect steady, incremental growth in net assets – from \$264,750,620 in 2018 to \$280,601,088 in 2022, a gain of \$15,850,468 (6%) over 4 years. Cash and cash equivalents of \$83.5 million as of 12/31/22 provide a significant safety net and have more than doubled over 4 years, up 141%. POAH's current ratio dipped very low at the end of 2021 (1.09) but trended back up in 2022 to a still-lean 1.29. While rental income has grown steadily over the period, up 41%, expenses have risen even faster -- personnel up 44% and property operations up 52% since 2018. The pandemic, including federal pandemic related supports and the dismantling of these supports, and pandemic ignited inflation all play a role in all of this, but it is not a long-term sustainable trend.

In January 2022, POAH received a bond issuer credit rating from Standard & Poor's rating of A+, which S&P describes as "Strong capacity to meet financial commitments, but somewhat susceptible to economic conditions and changes in circumstances." In April 2022, POAH issued \$75 million in 10 year sustainability bonds at 4.479%.

MCDP is anticipated to be the minority partner (40%) with limited responsibilities for the development and operations of the Lambert North project. MCDP is a young organization and relies on ____ to produce their management statements. has not yet had an audit. Their 2022 Income/Expense shows no operating income and \$9,824 in expenses. However, that dramatically understates their activity. Consistent with GAAP, their project related predevelopment expenditures are accounted for on their balance sheet, in 3 project pre-development accounts. The chart below shows MCDP's predevelopment investments by property by year, including 2023 through September. Subsequently, POAH has reimbursed MCDP for Lambert North related predevelopment expenses and there have been some additional adjustments to the accounting of investments. While MCDP is young, its financial transactions are increasingly complicated and it will lay important groundwork for future financial stability to get an audit for operations through end of 2023.

	2021	2022	2023	Cumulative Total to Sept 2023	Adjusted Values 10/2/23
Douglas Commons	\$ 37,452	\$ 92,561	\$ 77,355	\$ 207,368	\$157,498
Lambert North	\$ 9,634	\$ 162,146	\$ 36,218	\$ 207,998	-\$63,251
Lambert South	\$ 263,824	\$ 352,436	\$ 194,561	\$ 810,821	\$800,753
Investment By Year:	\$ 310,910	\$ 607,143	\$ 308,134	\$ 1,226,187	\$893,000

MCDP ended 2022 with \$26,298 in current assets (cash holdings) and current term liabilities of \$636,926, for a current ratio of .041.

2023 through October 2, 2023, the Profit and Loss statement again reflects no income and limited (\$5,000) in expenses. The action, again, is reflected on the Balance Sheet, where MCDP shows current (cash & equivalents) assets of \$222,441, and other current liabilities of \$800,734. The resulting current ratio is .278.

A substantial portion of MCDP's predevelopment funding has come from a subsidiary of UHAB, which lent the young organization up to \$1,235,000 at 1.5% interest. The current balance on that loan is \$781,845. The two year term of the predevelopment loan came due in May of this year and an extension agreement extends the term through 11/11/23. According to Matt, a longer extension is currently under negotiation.

Recommendations

The developer must at minimum meet three primary criteria for an AHTIF approval:

1. Community Need: "...site specific AHTIF designations must address an identified community need."

The prospective JV proposes 72 units of housing for households at 60% AMI. Affordable housing is identified as a community need in Portland's Plan 2030 and the City Council's 2020 Common Goals

2. Financial Necessity: "The applicant must demonstrate the City's participation is financially necessary in order for the project to proceed."

The financial projections demonstrate that a TIF will be necessary for the project to proceed. The TIF functions to support the cashflow of the project and demonstrates a cashflow cushion to the mortgage lender to meet the lender's underwriting standards, in this case Maine Housing's requirement of 1.15 DSCR. Given recent increases in the operating budget, it is not recommended that the TIF be finalized till a final review of the operating budget substantiates the appropriate level of funding, consistent with the standard of "Financial Necessity."

TIF Terms	Year 1 DSCR	TIF value
75%, 30 years	1.14	\$3,705,106

Financial Capacity: "The applicant must demonstrate financial capacity to support their project."

POAH's financial statements demonstrate the financial capacity to support their project through their organizational financials (see Developer Financials above) which show POAH has the resources to attract LIHTC investors and to address unanticipated cost increases. In addition, Maine Housing "Notice to Proceed" suggests Maine Housing will likely move forward with the project.

I recommend a TIF of no more than 75% for no more than a 30 year term, with final sizing to be determined, conditioned upon satisfactory review of the following prior to execution of the TIF:

- 30 year operating budget with utility costs documentation, preferably utility modeling;
- Purchase and Sale amendment by City Council to allow this use;
- Review of Joint Venture agreement;
- Updated organizational financial statements, including most recent quarterly financials, from POAH and MCDP;
- Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.



Project Narrative – Lambert Woods North

Affordable Housing Tax Increment Financing Application

Project Goals

The goal for **Lambert Woods North** is to partner with the City of Portland and MaineHousing to create an **affordable, green, walkable community**.

Affordable: The development will accommodate households with incomes below 60% Area Median Income (AMI) or less. Following the expiration of the use restrictions and regulatory compliance periods associated with the Low Income Housing Tax Credit (LIHTC) program and loan financing from the Maine Housing Finance Authority (MSHA), the residents will have the option to purchase the property collectively through a limited-equity housing cooperative to achieve the goal of residents owning their housing. All these homes would be priced at an affordable level targeted for households earning up to 60% AMI.

Green: The homes will be designed to meet the City of Portland's Green Building Ordinance by certifying under the Department of Energy's Zero Energy Ready Program and achieving a HERS rating of 52 or less. In addition, the property will not use any fossil fuels for building operations. Good ventilation and products with low toxicity will be selected for improved resident health. Parking and street design will use a minimal amount of pavement to reduce runoff and to preserve more habitat. Building rooflines will be oriented for solar panels, and parking will integrate EV chargers for electric cars.

Walkable: To encourage neighbor interactions and create a safe environment for children and others to play across the property, any road access through the site will be designed with pedestrians aequal users and will be slow, narrow, and safe. Easements will be provided to Portland Trails to build trail connections through the site.

Amenities: The development will integrate bus shelters for the 9A and 9B buses, lighted sidewalks, community spaces, a playground, and community gardens.

Property Information

Address: 622 Auburn Street, Portland, Maine

Parcel ID: 385 D008001

Block / Lot: 385-D-8 386-B-12-15

Size: 223,466 SF / 5.13 acres

Zoning District: R3

The zoning district R-3 allows for low-density residential development characterized by single-family homes on individual lots and PRUDs containing multifamily housing in outlying areas of the

city.

Proposed Development

The proposed development contains 6 residential buildings with a total of 72 homes consisting of 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom units. The homes will be a mix of townhouses and flats. There will be 4 accessible units and 68 adaptable units. The buildings are organized around a park and a children's playground. Two of the buildings with flat-style apartments upstairs will include common area spaces on the ground floor, for the residents to gather, enjoy recreational activities, or do laundry, alongside property management offices.

The whole site is 5.13 acres. Nearby amenities include a new city park to the south, connections to the Sebago to the Sea trail, a shopping plaza and grocery store up Auburn St, nearby jobs in Riverside, and a highway access point. The target population is an all-ages demographic with a mix of household sizes.

Unit Mix Summary

Unit Type	# Units	Income Targeting
1BR	34	60% AMI
2BR	10	60% AMI
3BR	28	60% AMI
Total	72	

Proposed Program

Unit Size	Area (SF)	# Units	Location
1BR	511	26	Buildings 3, 5, 6, 7 – Flats - 1 st Floor
1BR	573	8	Buildings 1, 2 – Flats – Upper Floors
2BR	710	2	Buildings 1 and 2 – Flats – 1 st Floor
2BR	753	8	Buildings 1 and 2 – Flats – Upper Floors
3BR	995	2	Buildings 1 and 2 – Flats – 1 st Floor
3BR	1,130	26	Buildings 3, 5, 6, 7 – Rowhomes

Building Program

Building ID	Style	1BR	2BR	3BR	Total
1	Flats	4	5	1	10
2	Flats	4	5	1	10
3	Rowhomes	8		8	16
5	Rowhomes	8		8	16
6	Rowhomes	6		6	12
7	Rowhomes	4		4	8
Total		34	10	28	72



Maine Cooperative Development Partners (MCDP) creates neighborhoods for people of all ages, backgrounds, and incomes to live in harmony with nature and their neighbors. Our neighborhoods aim to provide a balance of green space, walkability, community, privacy, and affordability. We believe members of our community deserve to live in places that support connection with family, neighbors and nature, and more time to develop purposeful lives. Grounding principles for this work are creating equitable communities and walkable neighborhoods; building healthy buildings; and celebrating beauty, art, and the natural environment.

Maine Cooperative Development Partners consists of Brian Eng, Liz Trice, and Matthew Peters. The partners collectively provide a large range of experience in legal, financial, residential, and commercial real estate development, community engagement, sustainable building, urban planning, and business development and management. All three partners live in Portland and are passionate in making their communities better places for all people.

Preservation of Affordable Housing (POAH) is a national nonprofit organization whose mission is to preserve, create, and sustain affordable, healthy homes that support economic security, racial equity, and access to opportunity for all. POAH revitalizes at-risk affordable housing communities as vibrant, healthy homes for low- and moderate-income residents. Since 2001, the POAH team has advanced its mission with a blend of expertise and creativity, solving complex problems that others have seen as insurmountable. We have secured long-term affordability for residents while addressing the interests of owners, funders, public agencies, and other stakeholders. The result is the preservation or creation of nearly 12,000 affordable rental apartments through transactions

that guarantee that rents will remain affordable for the long-term (30+ years). POAH has also successfully influenced a range of public policies that address the vulnerability of our nation's subsidized rental housing. POAH's policy interests include regulatory and preservation efforts nationwide, incentives to empower nonprofit owners seeking to preserve long term affordability, energy efficiency, and the promotion of housing as a platform for resident success.

Site Control

Currently, the site is under agreement via a Purchase and Sale Agreement between the City of Portland and Maine Cooperative Development Partners. In the near future, MCDP will assign this agreement to the eventual property owner, Lambert Woods North LLC. This LLC will be comprised of a General Partner which consists 50/50 of MCDP and POAH. Please see the Organizational Chart under Exhibit 7 for the relationships between the property owner, MCDP, and POAH.

Municipal Housing Need

The development of 72 units of affordable housing at Lambert Woods North will be well received in Portland, Maine, which is facing an increasingly burdensome underproduction of housing.

According to the National Low Income Housing Coalition's [latest reporting](#), there are only fifty-one affordable and available homes per 100 extremely low income renter households in the state of Maine. The NLIHC goes on [to report](#) that the Fair Market Rent for a 2-bedroom apartment in the Portland metropolitan area is \$1,721. This means a family must earn \$33.10 as an hourly wage to afford this apartment. However, the estimated hourly mean renter wage is only \$19.07, which speaks to the lack of affordability in housing. These 72 units of affordable housing at Lambert Woods North will be important homes to families seeking a place to live.

The 2022 Housing Underproduction [report](#), posted by Up For Growth, examines the State of Maine's housing shortage is 9,000 units short of meeting workforce demand. Close to 90% of this shortage is concentrated in the Portland-South Portland Metropolitan Statistical Area (MSA). In other words, 90% of the state's housing issue affects only 40% of the state's residents in the southern portion of the state.

Requested Affordable Housing Development Funding and its Necessity

Lambert Woods North is seeking a 75% AHTIF from the City of Portland. Other project capital funds will come from MaineHousing in the form of 4% Low-Income Housing Tax Credit (LIHTC) equity, debt, and 0% subsidy funds. MaineHousing approved our pre-application in October 2022 and invited us to submit a full application, which we did in November 2022. MaineHousing has informed us that they are reviewing our application and we anticipate a Notice to Proceed in the coming weeks.

Neighboring Land Uses

The property is surrounded by primarily single-family homes, which support the low-density residential program as proposed in this project. To the south along Auburn St or Lambert St there are several multifamily housing complexes.

Accessory Uses

In addition to the 72 individual homes, the two flat-style buildings will have community gathering space, along with storage and common laundry facilities. The buildings are organized around a common lawn and an outdoor play area for children.

Consistency with Comprehensive Plan

Lambert Woods North will provide 72 apartments that will be 100% Affordable for the future, which directly contributes to Portland's goal of increasing the overall supply of housing City-wide to meet the needs, preferences, and financial capabilities of all Portland households. With its plan to meet DOE Zero Energy Ready requirements, the project will have high quality and sustainable design standards. Specifically, the project aligns with the Comprehensive Plan's strategy of leveraging underused properties, as the current site is owned by the City and wooded.

Operations Plan

POAH Communities will manage all apartments at Lambert Woods North for the near and long-term future. Part of the POAH family since 2001, POAH Communities oversees the leasing and operations of properties in 11 states and the District of Columbia. POAH Communities provides high-quality property management and customer service to our residents, connecting them with the opportunities and partnerships that improve their quality of life. POAH Communities manages 145 apartment communities which vary in size, age, geography, and program type, 121 of which are owned by POAH.

Description of Planned Uses of Tax Increment Revenues

Revenue from the AHTIF will be used to pay operating costs at Lambert Woods North, such as maintenance and utilities. The funds received over the lifetime of the AHTIF will support the project in providing high quality, new, affordable apartments to the North Deering neighborhood of Portland. Without these funds, the development of 72 apartments for low- and moderate-income Portland residents would not be able to move forward.



Lambert Woods North – Schedule

February 2023	Planning Approvals
February 2023	MaineHousing Notice to Proceed
June 2023	Out to Bid
September 2023	Construction Loan Closing
September 2023	Construction Start
January 2025	Leasing Start
March 2025	Substantial Completion / Opening
June 2025	Stabilization

City of Portland - TIF Model
 Lambert Woods North
OAV as of 3/31/2023: \$0, Assessor Chart, Block, & Lot No. 385-D008001
 28-Jul-23

City of Portland- TIF Projection Table - Lambert Woods North										
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues	OAV Taxes General Fund Revenue
1	2024	\$8,771,960	75.00%	\$6,578,970	13.88	\$91,331	\$91,331	\$0	\$30,444	\$0
2	2025	\$8,771,960	75.00%	\$6,578,970	14.16	\$93,157	\$93,157	\$0	\$31,052	\$0
3	2026	\$8,771,960	75.00%	\$6,578,970	14.44	\$95,020	\$95,020	\$0	\$31,673	\$0
4	2027	\$8,771,960	75.00%	\$6,578,970	14.73	\$96,921	\$96,921	\$0	\$32,307	\$0
5	2028	\$8,771,960	75.00%	\$6,578,970	15.03	\$98,859	\$98,859	\$0	\$32,953	\$0
6	2029	\$8,771,960	75.00%	\$6,578,970	15.33	\$100,836	\$100,836	\$0	\$33,612	\$0
7	2030	\$8,771,960	75.00%	\$6,578,970	15.63	\$102,853	\$102,853	\$0	\$34,284	\$0
8	2031	\$8,771,960	75.00%	\$6,578,970	15.95	\$104,910	\$104,910	\$0	\$34,970	\$0
9	2032	\$8,771,960	75.00%	\$6,578,970	16.27	\$107,008	\$107,008	\$0	\$35,669	\$0
10	2033	\$8,771,960	75.00%	\$6,578,970	16.59	\$109,148	\$109,148	\$0	\$36,383	\$0
11	2034	\$8,771,960	75.00%	\$6,578,970	16.92	\$111,331	\$111,331	\$0	\$37,110	\$0
12	2035	\$8,771,960	75.00%	\$6,578,970	17.26	\$113,558	\$113,558	\$0	\$37,853	\$0
13	2036	\$8,771,960	75.00%	\$6,578,970	17.61	\$115,829	\$115,829	\$0	\$38,610	\$0
14	2037	\$8,771,960	75.00%	\$6,578,970	17.96	\$118,146	\$118,146	\$0	\$39,382	\$0
15	2038	\$8,771,960	75.00%	\$6,578,970	18.32	\$120,509	\$120,509	\$0	\$40,170	\$0
16	2039	\$8,771,960	75.00%	\$6,578,970	18.68	\$122,919	\$122,919	\$0	\$40,973	\$0
17	2040	\$8,771,960	75.00%	\$6,578,970	19.06	\$125,377	\$125,377	\$0	\$41,792	\$0
18	2041	\$8,771,960	75.00%	\$6,578,970	19.44	\$127,885	\$127,885	\$0	\$42,628	\$0
19	2042	\$8,771,960	75.00%	\$6,578,970	19.83	\$130,443	\$130,443	\$0	\$43,481	\$0
20	2043	\$8,771,960	75.00%	\$6,578,970	20.22	\$133,051	\$133,051	\$0	\$44,350	\$0
21	2044	\$8,771,960	75.00%	\$6,578,970	20.63	\$135,712	\$135,712	\$0	\$45,237	\$0
22	2045	\$8,771,960	75.00%	\$6,578,970	21.04	\$138,427	\$138,427	\$0	\$46,142	\$0
23	2046	\$8,771,960	75.00%	\$6,578,970	21.46	\$141,195	\$141,195	\$0	\$47,065	\$0
24	2047	\$8,771,960	75.00%	\$6,578,970	21.89	\$144,019	\$144,019	\$0	\$48,006	\$0
25	2048	\$8,771,960	75.00%	\$6,578,970	22.33	\$146,900	\$146,900	\$0	\$48,967	\$0
26	2049	\$8,771,960	75.00%	\$6,578,970	22.78	\$149,837	\$149,837	\$0	\$49,946	\$0
27	2050	\$8,771,960	75.00%	\$6,578,970	23.23	\$152,834	\$152,834	\$0	\$50,945	\$0
28	2051	\$8,771,960	75.00%	\$6,578,970	23.70	\$155,891	\$155,891	\$0	\$51,964	\$0
29	2052	\$8,771,960	75.00%	\$6,578,970	24.17	\$159,009	\$159,009	\$0	\$53,003	\$0
30	2053	\$8,771,960	75.00%	\$6,578,970	24.65	\$162,189	\$162,189	\$0	\$54,063	\$0
30 Year TIF Total		\$263,158,800		\$197,369,100		\$3,705,106	\$3,705,106	\$0	\$1,235,035	\$0
30 Year TIF Average		\$8,771,960		\$6,578,970		\$123,504	\$123,504	\$0	\$41,168	\$0

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model - Lambert Woods North							
75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City Development Account							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2023	\$8,771,960	\$6,578,970	\$0	\$9,471	\$3,234	\$12,705
2	2024	\$8,771,960	\$6,578,970	\$0	\$9,471	\$3,234	\$12,705
3	2025	\$8,771,960	\$6,578,970	\$0	\$9,471	\$3,234	\$12,705
4	2026	\$8,771,960	\$6,578,970	\$17,325	\$9,471	\$3,234	\$30,030
5	2027	\$8,771,960	\$6,578,970	\$34,649	\$9,471	\$3,234	\$47,354
6	2028	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
7	2029	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
8	2030	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
9	2031	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
10	2032	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
11	2033	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
12	2034	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
13	2035	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
14	2036	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
15	2037	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
16	2038	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
17	2039	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
18	2040	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
19	2041	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
20	2042	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
21	2043	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
22	2044	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
23	2045	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
24	2046	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
25	2047	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
26	2048	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
27	2049	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
28	2050	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
29	2051	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
30	2052	\$8,771,960	\$6,578,970	\$51,974	\$9,471	\$3,234	\$64,679
30 Year TIF Total		\$263,158,800	\$197,369,100	\$1,351,320	\$284,125	\$97,023	\$1,732,468
30 Year TIF Average		\$8,771,960	\$6,578,970	\$45,044	\$9,471	\$3,234	\$57,749

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 10th day of May, 2022 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as “Seller” or “City”), and MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 (hereinafter referred to as “Buyer”).

RECITALS

WHEREAS, the City is the owner of approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the “Portland Premises”) and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the “Falmouth Premises”) (the Portland Premises and the Falmouth Premises are referred to herein collectively as the “Premises”) and did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the “Request for Proposals”) (the Portland Premises is identified in the City of Portland’s tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth’s tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, Buyer submitted a proposal dated May 2, 2021 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit B and incorporated herein (the “Proposal”); and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
2. **CONSIDERATION.** The purchase price for the Premises shall be One Dollar (\$1.00) (the “Purchase Price”).
3. **TITLE AND DUE DILIGENCE.**
 - a. **Due Diligence Period.** Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is twenty-five (25) months after the date of this Agreement (the “Due Diligence Period”) to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

- b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.
- c. Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to maximize residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing.
- d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following: (i) permanent financing for the Coop in the form of a HUD Section 213 loan; and (ii) affordable housing tax increment financing from the City.
- e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.
- f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

- g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and its attachments;; (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.
- h. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development for purposes other than passive recreation within the wetland areas located on the Portland Premises; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.
- i. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.
- j. Buyer's Right to Assign. The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.
- k. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written

notice of termination to the City in which case neither party shall have any further obligations to the other.

- l. Zoning. The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such

inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.
7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
8. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full

performance and discharge by the City of every agreement and obligation contained herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. CLOSING. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is twenty-seven (27) months after the date of this Agreement (the "Closing Date"). At the Closing:

- a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the Purchase Price to the City.
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

11. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

- a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project, as the Project is generally described in the Proposal. The Project shall include no less than forty-four (44) dwelling units, no less than 25% of which shall be three-bedroom units or larger.
- b. Upon the issuance of a certificate of occupancy for all or a portion of the first phase of the Project or at such earlier time as the Buyer, in its

discretion, may determine, the Buyer shall convey the Project or provide a master lease of the Project with a right to purchase to a Cooperative Affordable Housing Corporation (the "Coop") organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended (the "Act").

- c. Rent Restrictions. For a period of 99 years after the Project has been transferred to the Coop, all units and cooperative interests in the Project shall be affordable to low- and moderate-income households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under the Act. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof.
- d. Income Restrictions. In order to purchase a cooperative membership interest in, and reside in a unit owned by the limited equity cooperative, a household must not earn more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD"). Household income is defined as adjusted gross income used by the IRS. This income test will be used only at the time of the household's purchase, and excludes transfers to family members or an estate beneficiary. At the time of initial sale of cooperative membership interests in the Coop, up to 20% of the cooperative membership interests may be sold to households earning up to 120% of AMI. All other sales and all subsequent sales of cooperative membership interests must be to households earning no more than 100% of AMI.
- e. Option to Repurchase. Unless the Project has been transferred to the Coop as set forth above, if Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.
- f. The articles of organization for the Coop shall provide that in the event the Coop shall be dissolved, its assets will be distributed in accordance with § 1754(6) of the Act to the City or, at the City's option, to another organization permitted under § 1754(6) of the Act reasonably acceptable to the City.

- g. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

- 12. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.
- 13. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
- 14. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
- 15. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
- 16. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 17. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
- 18. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:

City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR Buyer: Maine Cooperative Development Partners,
6 City Center, Fl. 3
Portland, ME 04101

With a copy to: David C. Pierson, Esq.
Eaton Peabody
P.O. Box 15235
Portland, ME 04112-5235

19. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

20. BROKERS. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

21. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

WITNESS

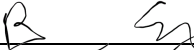
City OF PORTLAND

DocuSigned by:

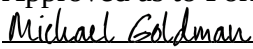

AGFE17285727428
Danielle West
Its Interim City Manager

WITNESS

**BUYER: MAINE COOPERATIVE
DEVELOPMENT PARTNERS, LLC**

DocuSigned by:


Printed Name: Brian Eng
Its Principal

Approved as to Form:


Corporation Counsel's Office

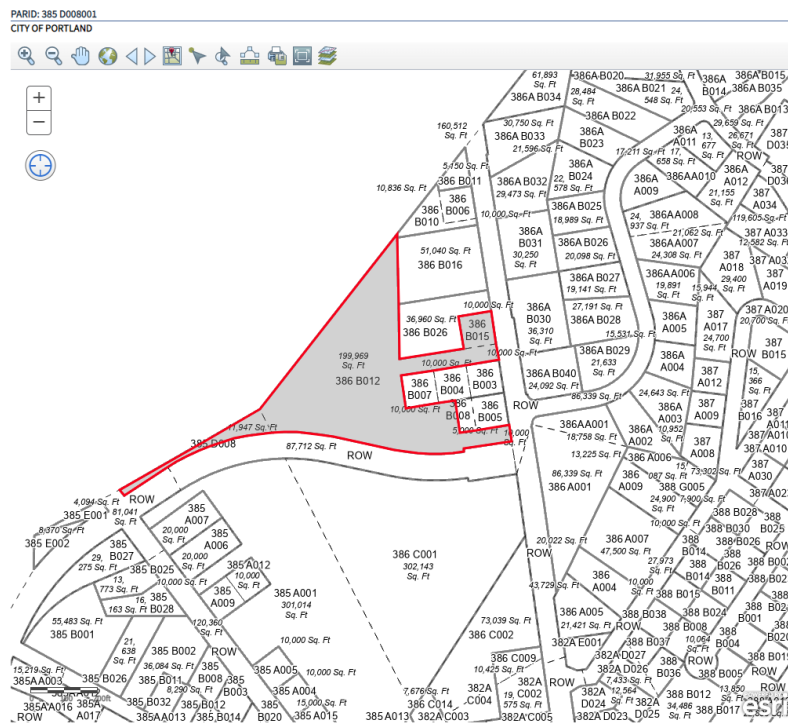
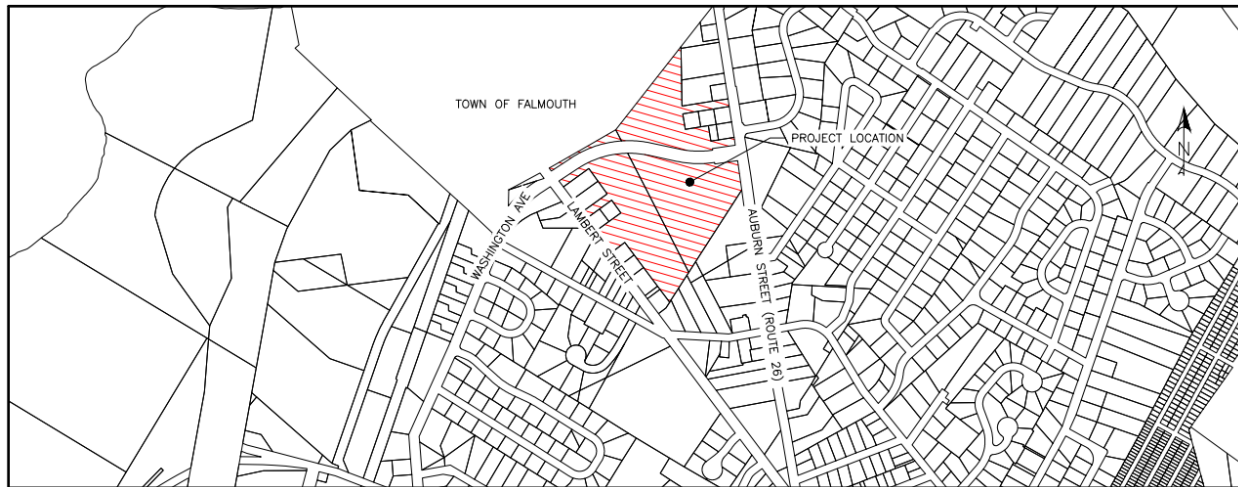


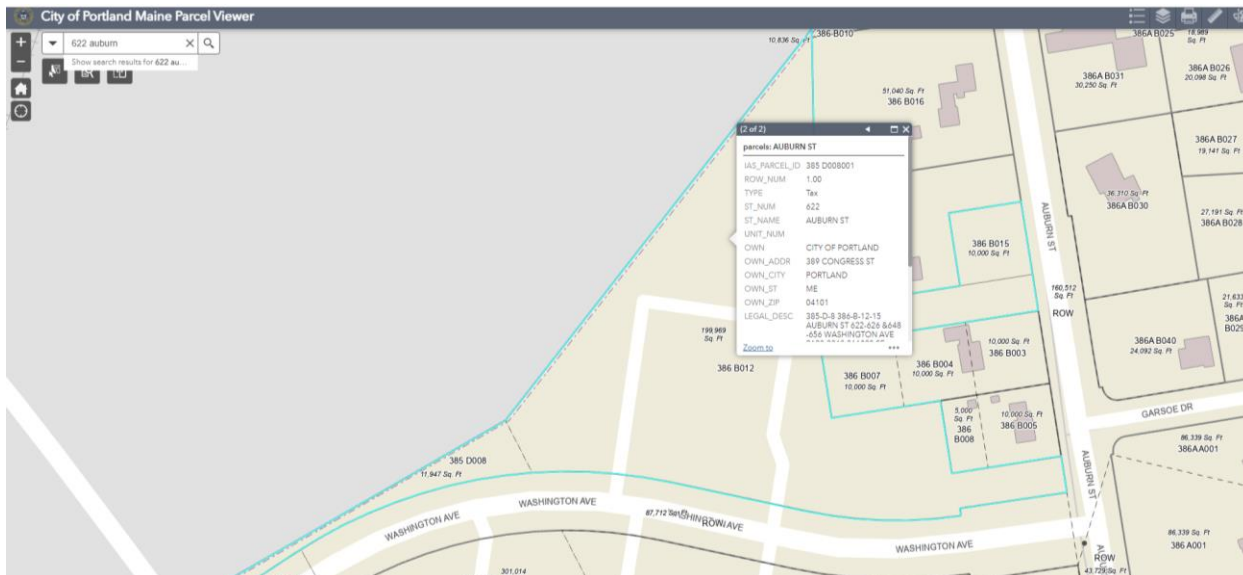
Lambert Woods North - Location / Map

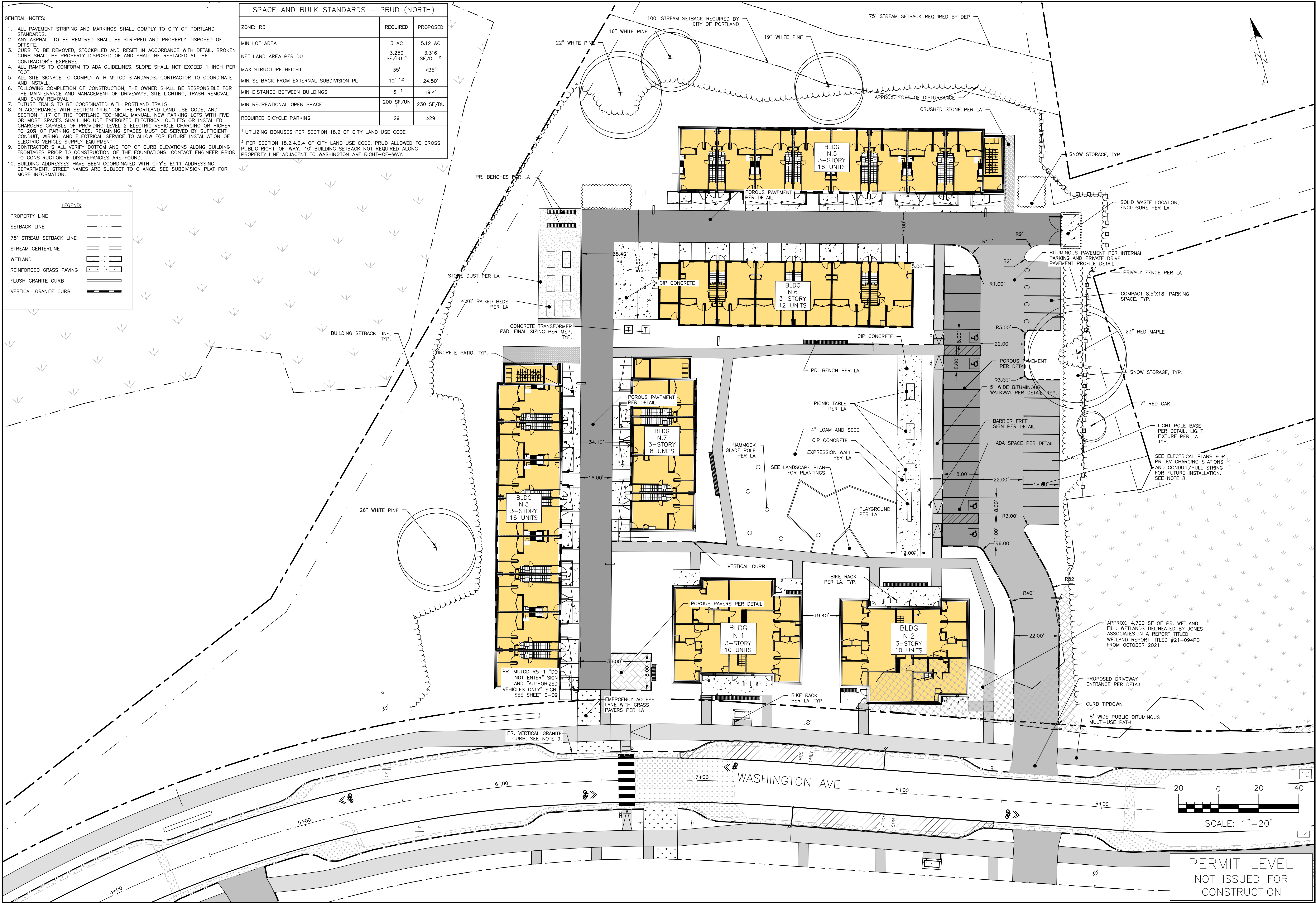
Address: 622 Auburn St, Portland, ME

Parcel ID: 385 D008001 | Zoning District: R2 | Land Area: 223,466 SF / 5.13 acres

*Note – this specific project is referring just to 622 Auburn Street, the lot north of Washington Avenue Extension. The lot south of that road is going to be part of another development.







ISSUED FOR	BY
SITE/SUB	DATE
COMMENT RESPONSE	SJL
COMMENT RESPONSE	12/28/22
COMMENT RESPONSE	12/29/22
COMMENT RESPONSE	1/21/23

SITE PLAN - NORTH

165 LAMBERT ST CO-OP
PORTLAND, MAINE 04103

CLIENT/OWNER OF RECORD:
MAINE COOPERATIVE DEVELOPMENT PARTNERS
PORTLAND, MAINE

DRAWING NAME:
ENGINEERING, INC.

ACORN ENGINEERING, INC.
PO BOX 3372, PORTLAND MAINE 04101
(207) 775-2655

FILE: 1145_CIVIL

JN: 1145

SCALE: AS NOTED

DESIGNED BY: SJL

DRAWN BY: NPH

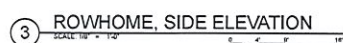
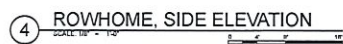
CHECKED BY: WHS

PERMIT LEVEL
NOT ISSUED FOR
CONSTRUCTION

DRAWING NO.
C-10

[illegible]

SIDING KEY			
S1	CEDAR SHIPLAP SIDING	S4B	TRADITIONAL LAP SIDING 5" REVEAL (COLOR B)
S2	BOARD AND BATTEN SIDING	S4C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR B)
S3A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR A)	S5A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR C)
S3B	TRADITIONAL LAP SIDING 5" REVEAL (COLOR A)	S5B	TRADITIONAL LAP SIDING 5" REVEAL (COLOR C)
S3C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR A)	S5C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR C)
S4A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR B)		



MECHANICAL & PLUMBING
Fuss & O'Neill, Inc.
5 Fletcher Street, Suite 1
Kennebunk, ME 04043
Tel: 912 282-4075

ELEVATIONS:
ROWHOMES, 16-
UNIT
A-2.1

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the Lambert Woods North
Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the **City of Portland**, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and **Lambert Woods North LLC**, a Maine Limited Liability Company with a mailing address of c/o Preservation of Affordable Housing, 2 Oliver Street, Suite 500, Boston, MA 02109 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of seventy-two (72) units of rental housing located at 622 Auburn Street, Portland, Maine (the “Development”); and

WHEREAS the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all buildings and improvements, which after completion of the work will contain a total of seventy-two (72) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the number of the units in the Development.
 - b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
 - c. **Low Income Units.** For a period of thirty (30) years seventy-two (72) of the units will be occupied by households with incomes at or below sixty percent (60%) of the area median income (collectively referred to as the “Low Income Units”).
 - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, (“Section 42”) and income limits shall be adjusted for family size.
 - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the “Determination”).
 - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household’s income may exceed the Applicable Income Limit, adjusted for family size, at the time of the most recent Determination, if after such Determination, but before the next

Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

- iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.

- d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12th) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:

- i. For a unit without a separate bedroom, one individual.
- ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.

Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.

- e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
- 4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
 - 5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request

for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
9. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications.** This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability.** The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns.** This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
13. **Governing Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices.** Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer simultaneously to Maine Cooperative Development Partners at 6 City Center, FL 3, Portland, Maine 04101 or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor.** This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, Lambert Wood North LLC, Lambert Woods North MM LLC, Preservation of Affordable Housing, Inc, of near or even date herewith to be recorded in the Cumberland County Registry of Deeds herewith.

Signature pages follow.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2023.

CITY OF PORTLAND, ME

Witness

By: _____
Danielle P. West
Its City Manager

State of Maine
Cumberland, ss.

_____, 2023

Personally appeared the above named Danielle P. West, City Manager to the City of Portland, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Signature page follows.

LAMBERT WOODS NORTH LLC

By: Lambert Woods North MM LLC
Its Managing Member

By: Preservation of Affordable Housing, Inc.
Its Managing Member

Witness

Aaron Gornstein, President & CEO

State of Maine
Cumberland, ss.

_____, 2023

Personally appeared the above named, Aaron Gornstein, President of Lambert Woods North MM LLC, General Partner of Lambert Woods North LLC and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said corporation, and limited liability company.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

CITY OF PORTLAND
LAMBERT WOODS NORTH
AFFORDABLE HOUSING DEVELOPMENT
AND TAX INCREMENT FINANCING DISTRICT
DEVELOPMENT PROGRAM

Date: , 202_

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- Exhibit I Declaration of Covenants, Conditions and Restrictions
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Lambert Woods North
Affordable Housing Development and Tax Increment Financing District
Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 622 Auburn Street in Portland (078 B007 and 078 C002). The area includes approximately 4.84 acres in the R-3 Residential zone. Multifamily is a permitted use in the R-3 zone. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. Seventy-five percent (75%) of the captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the Lambert Woods North Affordable Housing Development and Tax Increment Financing District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax

revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Lambert Woods North LLC, its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E (the “Credit Enhancement Agreement”) from the District available to the Developer pursuant to the Credit Enhancement Agreement. These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of and loans to the Developer, its successors or assigns, and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at Lambert Woods North involves the construction of six buildings on approximately 4.84 acres, into an affordable housing neighborhood. The objective of the project is that 100% of the units in the District will be affordable housing, meaning a

decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of six buildings comprised of two three-story flats containing 10 units each; and four three-story rowhouses (two rowhouses would have 16 units, one rowhouse would have 12 units, and one rowhouse would have 8 units) for a total of 72 (seventy-two) units of rental housing. The 72 units consist of 34 (thirty-four) one-bedroom, 10 (ten) two-bedroom and twenty-eight (28) three-bedroom units with all seventy-two (72) of those units affordable to households at or below 60% of the area median income. The zoning for the project assures that this number of units and this affordability objective will be met.

The Lambert Woods North project is projected to have a total local increased assessed valuation at build out of approximately \$8,771,960 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will generate approximately a thirty year annual average of \$123,504 in tax increment revenues to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a project’s capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$123,504 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay Qualified Reimbursable Costs, as defined in the Credit Enhancement Agreement, for the project at Lambert Woods North. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. No relocation is necessary as a result of this project. The property is currently a wooded lot.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. Portland Housing Authority, its successor or assigns, will as property manager operate the improvements constructed and owned by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility.

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program is approved by the Director of the Maine State Housing Authority. The period from April 1 of each year through March 31 of the next year is referred to herein as a "Tax Year." The first Tax Year of the Development Program begins April 1, 2024 and the last Tax Year of the Development Program begins April 1, 2053.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total municipal acreage is 12,386 acres; the total area of the proposed AHTIF Districts will be approximately 4.84 acres and thus such area represents less than 2% (or 0.0391%) of the total acreage of the City. The total area of the proposed AHTIF Districts (4.84 acres) and the total area of all development districts in the City (877.0175) totals 881.8575 acres which is approximately 7.120% (881.8575/12,386) of total municipal acreage of the City. The 881.8575 acres includes two exempt districts—a Transit Oriented TIF District (30.00 acres) and a Downtown/Transit Oriented TIF District (417.0408 acres)—which, when subtracted from the 881.8575 acres is 434.8167 acres, which is 3.51% (434.8167/12,386) of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area of all existing affordable housing development districts and the proposed AHTIF Districts is 21.0151 acres or .1699% of the total acreage of the City (21.0151/12,386) and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the proposed Affordable Housing TIF Districts (\$0.00) combined with the Original Assessed Value of all existing Affordable Housing TIF Districts within the City

totals \$4,279,961. The aggregate taxable property values as of the April 1st before MaineHousing approval equals \$14,872,866,446. As the aggregate OAV as a percent of taxable value is .0287%, the amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of the April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 (thirty) years, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development in which 100% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the Lambert Woods North Affordable Housing Development and Tax Increment Financing District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2022. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75% (seventy-five percent). Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement, which will be the entire amount of the 75% (seventy-five percent) of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

Under this program and the Credit Enhancement Agreement, Captured Assessed Value will be 75% (seventy-five percent) of the Increased Assessed Value. Accordingly, 75% (seventy-five percent) of the Tax Increment Revenues for each year during the term of the District shall be paid to the Developer each year pursuant to the Credit Enhancement Agreement.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Project Cost Account according to the terms of the Credit Enhancement Agreement 75% (seventy-five percent) of that portion of the payment constituting Tax Increment Revenues. The amounts in the Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The Lambert Woods North project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$13.61/\$1,000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on December _____, 2023, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on XXXXX, 2023. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on XXXXXXXX, 2023 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Danielle P. West City Manager,
City of Portland, ME

MEMORANDUM
City Council Agenda Item

FROM:

DATE: November 30, 2023

SUBJECT: Order 82-23/24 Approving the Lambert Woods North Affordable Housing Credit Enhancement Agreement with Lambert Woods North LLC - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR:

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 12/4/2023

Final

Action 12/18/2023

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: Corporation Counsel will review and approve the Credit Enhancement Agreement prior to signing.

PRESENTATION:

I. SUMMARY

II. AGENDA DESCRIPTION

During a meeting held on October 24, 2023, the Housing and Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

This is a companion order to the above.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Housing and Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

VIII. LIST ATTACHMENTS

1. Lambert Woods North Affordable Housing Credit Enhancement 12.4.2023
2. LWN CEA

Prepared by:

Date: 11/30/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

**ORDER APPROVING THE LAMBERT WOODS NORTH
AFFORDABLE HOUSING CREDIT ENHANCEMENT AGREEMENT
WITH LAMBERT WOODS NORTH LLC**

ORDERED, that the credit enhancement agreement between the City of Portland and Lambert Woods North LLC related to the Lambert Woods North Affordable Housing Development and Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

**LAMBERT WOODS NORTH
LLC**

DATED: _____ 202_

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EXHIBITS

Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of _____, 202_, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and Lambert Woods North LLC, a Maine limited liability company (the “Developer”).

WITNESSETH THAT

WHEREAS, the City designated the *Lambert Woods North Affordable Housing Development and Tax Increment Financing District* (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on November 20, 2023, Order __ - 23/24 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on _____ [Date of District Approval by MaineHousing]; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of the account further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall mean the lot or parcel of land on which the Project is located. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Zero Dollars (\$0.00), which is the taxable assessed real property value of the District as of March 31, 2023 (April 1, 2022).

“Non-Captured Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the difference between the Increased Assessed Value and the Captured Assessed Value.

“Project” means the planned seventy-two (72) unit low-income housing project to be named Lambert Woods North located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* real property taxes levied, charged or assessed against the Project located in the District by the City, or on its behalf.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II

AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “Lambert Woods North Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A(3). The Development Program Fund shall consist of the Project Cost Account which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Project Cost Account is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each Tax Year during the term of this Agreement, commencing with the Tax Year beginning April 1, 2024 and continuing thereafter through the Tax Year beginning April 1, 2053 (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining twenty-five percent (25%) of the Increased Assessed Value shall constitute Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the payment of Property Taxes constituting Tax Increment Revenues. The City shall deposit such seventy-five percent (75%) portion into the Project Cost Account. The remaining twenty-five percent (25%) portion of the property tax payment constituting Tax Increment Revenues, which arise from Non-Captured Increased Assessed Value, shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this

Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3), subject to the payment obligations set forth in Article III below.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in the Project Cost Account shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into the Project Cost Account under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of Developer, subject to the payment obligations set forth in Article III below.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, all amounts then on deposit in the Project Cost Account.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, such property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer's share of the Tax Increment Revenues for the year concerned and deposited into Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real property located in the District remain due to the City from and unpaid by Developer, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer and stormwater fees, ambulance fees, or

assessments, remain unpaid, no payment of Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Project Cost Account until such property taxes assessed against real property located in the District, and other fees, charges, and assessments are paid in full.

(d) Annually, Developer will provide financial statements as back-up documentation of Project costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a monthly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into the Project Cost Account is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to the Project Cost Account and its obligation to make payment out of the Project Cost Account to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into the Project Cost Account in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other city or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Project Cost Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Project Cost Account described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Project Cost Account described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the

fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Project Cost Account.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Account shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to make deposits into the Project Cost Account as and when due;
- (c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If any secured lender of Developer accelerates the indebtedness owed to it;
- (f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;
- (g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.
- (h) Any discontinuance of the District property as "affordable housing," pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements

contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director's unconditional approval of the City's designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program, which is April 1, 2024, and shall expire March 31, 2054 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to Developer in the event that Developer does not receive a certificate of occupancy for the Project by thirty (30) months after closing.

Section 6.2. Termination by City.

Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by

providing Developer with 30 days written notice prior to the effective date of termination, except that in the event that the foreclosing lienholder agrees (for itself, its successors, assigns, and transferees) to be bound by the terms of this Agreement and that the Declaration (as described in Section 8.15 hereof) shall remain in full force and effect, then this Agreement shall remain in full force and effect and City shall have no right to terminate this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution, Maine State Housing Authority, or other public or private lending institutions and organizations to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

If to Developer:

Lambert Woods North, LLC
c/o Preservation of Affordable Housing
2 Oliver Street
Suite 500
Boston, MA 02109

With a copy to:

Maine Cooperative Development Partners
6 City Center
Floor 3
Portland, ME 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, either party may file suit to resolve the dispute in the Superior Court located in Cumberland County, State of Maine, which the parties agree shall have exclusive jurisdiction for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder. This clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the

Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the units in the Project as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____

Name: Danielle P. West

Its: City Manager, Duly Authorized by the City
Council at its meeting on November 20, 2023

WITNESS:

LAMBERT WOODS NORTH LLC

**BY: Lambert Woods North MM LLC
Its: Managing Member**

**BY: Preservation of Affordable Housing, Inc.
Its: Managing Member**

Aaron Gornstein, President & CEO

EXHIBIT 1

Copy of District Map

MEMORANDUM
City Council Agenda Item

FROM: Victoria Volent, Housing Program Manager

DATE: November 30, 2023

SUBJECT: Order 83-23/24 Appropriating \$1,500,000 from the Jill C. Duson Housing Trust Fund to Maine Cooperative Development Partners LLC RE: Dougherty Commons Condominiums - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair.

The Housing and Economic Development Committee met on November 14, 2023 and voted (4-0) to forward this item to the City Council with a recommendation for passage.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 12/4/2023

Final Action 12/18/2023

Can action be taken at a later date: Yes .

Does this item involve a new contract with the City: No.

PRESENTATION: Mary Davis, Housing and Community Development Division Director will be available for questions.

I. SUMMARY

Maine Cooperative Development Partners is requesting \$1,500,000 in funding from the Jill C. Duson Housing Trust Fund. Staff is recommending a loan in the amount of \$1,500,000 at 0% interest, and no payment. Upon sale or resale to an approved purchaser of the condominium units, the investment would be rolled over to the unit purchaser.

II. AGENDA DESCRIPTION

During a meeting held on November 14, 2023, the Housing & Economic Development Committee voted (4-0) to forward this item to the City Council with a recommendation for passage.

Maine Cooperative Development Partners LLC (MCDP) is proposing to construct a two-story, four-unit condominium townhouse building, and a three-story 16 unit condominium rowhouse building (for a total of 20 condominiums) on the city-owned property located at 43 & 91 Douglass Street. The City Council approved the amended Purchase and Sale Agreement for the city-owned property during their 11-13-23 Council meeting. This housing proposal is one part of a three-part residential housing development at 43 & 91 Douglass Street.

The Dougherty Commons Condominium project would include 20 units affordable for households earning up to 100% AMI. The total bedroom count is; 8 one-bedroom and 12 three-bedroom condominium units.

The chart below shows the maximum income allowable for each unit type and household size based on a maximum sale price of \$260,000 for a one-bedroom unit, and \$325,000 for a three-bedroom unit.

One Bedroom Condo	Maximum Household Income
1 person	\$83,650
2 person	\$95,500
Three Bedroom Condo	Maximum Household Income
3 person	\$107,550
4 person	\$119,500
5 person	\$127,750
6 person	\$137,187

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Maine Cooperative Development Partners (MCDP) is proposing to construct a two-story, four-unit condominium townhouse building, and a three-story 16 unit condominium rowhouse building (for a total of 20 condominiums) on the city-owned property located at 43 & 91 Douglass Street to be known as Dougherty Commons Condominiums. The City Council approved the amended Purchase and Sale Agreement for the city-owned property during their 11-13-23 Council meeting. This housing proposal is one-part of a three-part residential housing development at 43 & 91 Douglass Street.

The Dougherty Commons Condo project would include 20 units affordable to households earning 100% AMI. The total bedroom count is; 8 one-bedroom and 12 three-bedroom condominium units.

For a period of 99 years after the Dougherty Commons Condominium project has been completed, the affordable units would only be sold to eligible households who earn less than or equal to 100% of the area median income (AMI), adjusted for family size. Affordable means that the percentage of income a household is charged in connection with its mortgage payment and other housing expenses, excluding utilities, would not exceed 35% of the household's gross income including PMI (if required), taxes, insurance, and condo fees. The condominium units would contain restrictive covenants in their deeds such that future sales would be subject to City approval.

On May 24, 2022, the Planning Board approved Maine Cooperative Development Partners and the Szanton Company's Major Site Plan application to construct eight new buildings for a total of 120 residential units, including 61 affordable units, intended to be builtout over two phases. Phase 1 would involve the construction of a five-story apartment building with 63 residential units, of which 46 would be deed restricted at 60% of the area median income (AMI) by the Szanton Company; phase 1 is to be known as Douglass Commons. Phase 2 would have been the construction of seven multi-family buildings with 57 limited equity cooperative units by MCDP to be known as Dougherty Commons. On April 25, 2023, the Planning Board approved the Major Site Plan Amendment to the previously approved Major Site Plan per the request of Maine Cooperative Development Partners. MCDP restructured their phase of the project by replacing the limited equity cooperative units with condominium and rental units. The new phase 2 project is comprised of one townhouse and one rowhouse building for a total of 20 condominium units. The new phase 3 project is comprised of 42 rental units in four apartment buildings.

Staff is recommending approval by the City Council of the Housing and Economic Development Committee's recommendation of funding in the amount of up to \$1,500,000 from the Jill C. Duson Housing Trust Fund 1 at 0% interest and no payment. Upon sale or resale to an approved purchaser of the condominium units, this investment would be rolled over to the unit purchaser.

This recommendation is conditioned upon satisfactory review of the following:

- Final condominium documents for both landowner ("Dougherty Commons Condominium,") and residential improvement condos;
- Presale to City approved, income eligible purchasers of 75% of one bedroom and 75% three bedroom unit to

match the funding terms of the financial lender;

- Final plans which meet all City and State requirements and include a closet in each residential bedroom;
- Current financials of MCDP, provided within 2 months of closing;
- Amended and Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of the final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Increase access to rental units that are safe, affordable, and accessible for working and low-income households.

V. FINANCIAL IMPACT

The recommendation for funding is for the amount of up to \$1,500,000 in funding from the Jill C. Duson Housing Trust Fund with a term of 0% interest, and no payment. Upon sale or resale to an approved purchaser of the condominium units, the investment would be rolled over to the unit purchaser.

VI. STAFF ANALYSIS AND BACKGROUND

According to Portland's Comprehensive Plan 2030, while Portland has welcomed much needed new housing construction in recent years, both the lack of sufficient housing supply and the affordability of that housing for a healthy socioeconomic cross-section of the population remain urgent challenges.

The City of Portland is actively engaged in efforts to encourage housing preservation and creation for all income levels and household sizes city-wide, both through policy initiatives and through public/nonprofit partnerships with agencies such as Portland Housing Authority, Community Housing of Maine, Avesta Housing, Preble Street, Shalom House, and the Maine Affordable Housing Coalition.

The Comprehensive Plan has set the following goals:

Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.

Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.

Pursue policies to enable people who work in Portland to have the option to live in Portland.

Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.

VII. RECOMMENDATION

Staff is recommending approval by the City Council of the Housing and Economic Development Committee's recommendation of funding in the amount of up to \$1,500,000 from the Jill C. Duson Housing Trust Fund with a term of 0% interest, and no payment. Upon sale or resale to an approved purchaser of the condominium units, the investment would be rolled over to the unit purchaser.

VIII. LIST ATTACHMENTS

1. Appropriating Housing Trust Funds to Maine Cooperative Development Partners for Dougherty Commons 12.4.2023
2. Dougherty Condo Memo Affordable Housing Development Funding Requests mpd

Prepared by:

Victoria Volent, Housing Program Manager

Date: 11/30/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

ORDER APPROPRIATING \$1,500,000
FROM THE JILL C. DUSON HOUSING TRUST FUND
TO MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC
RE: DOUGHERTY COMMONS CONDOMINIUMS

ORDERED, that \$1,500,000 from the Jill C. Duson Housing Trust Fund is hereby appropriated to Maine Cooperative Development Partners LLC for development costs for the project called Dougherty Commons Condominiums at 43 and 91 Douglass Street and

BE IT FURTHER ORDERED, the City Manager or designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the grant, and otherwise carry out the intent of this order.

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee
FROM: Victoria Volent, Housing Program Manager, Housing and Community
Development Division
MEETING DATE: November 14, 2023
SUBJECT: 2023 Affordable Housing and TIF Development Funding Request

Introduction

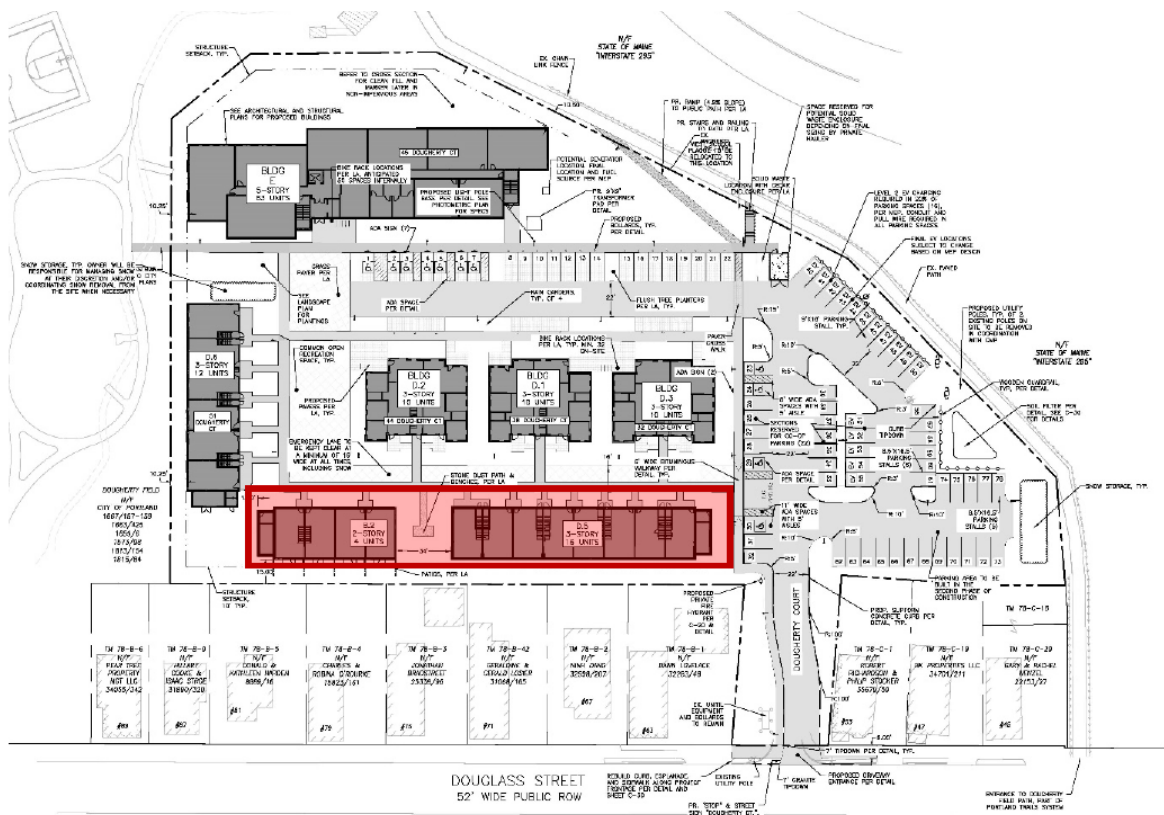
Maine Cooperative Development Partners has submitted for review and a recommendation by the Housing and Economic Development Committee to the City Council, a request for Affordable Housing Development funding in response to the release of the *2023 Affordable Housing Development and Tax Increment Financing Application*.

Dougherty Commons Condo

Maine Cooperative Development Partners (MCDP) is requesting funding in the amount of \$1,500,000 for the construction of a two-story, four unit condominium townhouse building, and a three-story 16 unit condominium rowhouse building (for a total of 20 condominiums) on the city-owned property located at 43 & 91 Douglass Street. During their 10-24-23 meeting, the Committee forwarded a recommendation to the Council to approve the amended Purchase and Sale Agreement for the city-owned property. The recommendation for approval is on the 11-13-23 Council Agenda. This housing proposal is one-part of a three-part residential housing development at 43 & 91 Douglass Street.

On May 24, 2022, the Planning Board approved Maine Cooperative Development Partners and the Szanton Company's Major Site Plan application to construct eight new buildings creating a total of 120 residential units, including 61 affordable units, intended to be built-out over two phases. Phase 1 would involve the construction of a five-story apartment building with 63 residential units of which 46 would be deed restricted at 60% of the area median income (AMI) by the Szanton Company; phase 1 is to be known as Douglass Commons. Phase 2 would have been the construction of seven multi-family buildings with 57 limited equity cooperative units by MCDP to be known as Dougherty Commons.

On April 25, 2023, the Planning Board approved the Major Site Plan Amendment to the previously approved Major Site Plan per the request of Maine Cooperative Development Partners. MCDP restructured their phase of the project by replacing the limited equity cooperative units with condominium and rental units. The new phase 2 project is comprised of one townhouse and one rowhouse building totaling 20 condominium units. The new phase 3 project is comprised of 42 rental units in four apartment buildings.



The buildings highlighted in red are the Phase 2, Dougherty Commons Condominiums. The buildings directly across from and abutting the condominiums are the Phase 3 Dougherty Commons Apartments, and the building at the top of the site plan is Szanton Company's Phase 1 rental building.

The Dougherty Commons Condo project would include 20 units affordable to households earning 100% AMI. The total bedroom count is; 8 one-bedroom and 12 three-bedroom condominium units.

The chart below shows the maximum income allowable for each unit type and household size based on a maximum sale price of \$260,000 for a one-bedroom unit, and \$325,000 for a three-bedroom unit.

One Bedroom Condo	Maximum Household Income
1 person	\$83,650
2 person	\$95,500
Three Bedroom Condo	Maximum Household Income
3 person	\$107,550
4 person	\$119,500
5 person	\$127,750
6 person	\$137,187

For a period of 99 years after the Dougherty Commons Condominium project has been completed, the affordable units would only be sold to eligible households who earn less than or equal to 100% of the area median income (AMI), adjusted for family size. Affordable means that the percentage of income a household is charged in connection with

its mortgage payment and other housing expenses, excluding utilities, would not exceed 35% of the household's gross income including PMI (if required), taxes, insurance, and condo fees. The condominium units would contain restrictive covenants in their deeds such that future sales would be subject to City approval.

According to the developer's application:

Your support will bring to fruition the city's original 2020 RFP goals and result in 20 green, permanently affordable, transit-oriented homes for a broad range of families and household types, and provide a model that can be replicated with less effort and subsidy in the future. Buildings are to be of excellent building and site design and designed to meet the City's Green Building Code. We are excited that this homeownership development will provide permanently affordable workforce housing to households with incomes of 100% of the area median income. The proposed development supports all the goals of the One Portland vision by creating a more equitable, universally designed mix of homes than just single family homes. The diversity of housing combines with the preservation of more natural space to ensure that a broad range of households have equitable access to the city's natural spaces.

Requested Amount of Affordable Housing Development Funding

- MCDP is requesting \$1,500,000 in Housing Trust funding for the Dougherty Commons Condos project (\$75,000 average per unit).
- Based on the underwriting review, staff is recommending a loan in the amount of no more than \$1,500,000, 0% interest, and no payment. The \$1,500,000 request would be comprised of Housing Trust funding. Upon sale or resale to an approved purchaser of the condominium units, this investment would be rolled over to the unit purchaser.

This recommendation is conditioned upon satisfactory review of the following:

- Final condominium documents for both landowner ("Dougherty Commons Condominium,") and residential improvement condos;
- Presale to City approved, income eligible purchasers of 75% of one bedroom units and 75% of 3 bedroom units;
- Final plans which meet all City and State requirements and include a closet in each residential bedroom;
- Current financials of MCDP, provided within 2 months of closing;
- MCDP Audit for 2023 (and prior year financial activity);
- Amended and Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Attachments:

Dougherty Commons Condos: Underwriting memo

Dougherty Commons Condos: Development Schedule

Dougherty Commons Condos: Site and Floor Plans

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: Dougherty Condominium (MCDP)
Date: 11/9/23

Maine Cooperative Development Partners (MCDP) requests \$1.5 million in Housing Trust Funds for a proposed new construction 20 unit condo development serving households at 100% of AMI on the Dougherty site. This is an average \$75,000 per unit capital subsidy. The units will be in two buildings, one building with 4 three bedroom units and one building with 8 one bedrooms on the 1st floor and 8 three bedroom units on the 2nd/3rd floors.

This undeveloped parcel was awarded to Douglass Commons LLC, an LLC comprised of Maine Cooperative Development Partners (MCDP) and Szanton Company. Originally, MCDP proposed a limited equity cooperative development and Szanton a 53 unit LIHTC rental development (which received a 75% TIF in 2022, was awarded tax credits from Maine Housing, and is nearing construction). When it became clear the limited equity cooperative development could not proceed on a timely basis, MCDP divided the development of what had been the “cooperative” parcel into 2 components – these 20 condo units and 42 rental units. The land and related improvements will be owned by “Dougherty Commons Condominium,” a 3 unit condominium (consisting of MCDP owned apartments, Szanton owned apartments, and 20 unit residential condominium) with interior streets, parking, sidewalks, utilities and landscaping shared among the 3 projects. The entire site will total 125 units with 78 parking spaces, 50 bicycles spaces and 16 EV charging stations.

The principals of MCDP are Matthew Peters, Liz Trice and Brian Eng. Matthew Peters worked for Avesta for 8 years and is now also Executive Director of the Freeport Housing Trust. Brian and Liz bring complementary development and public sector experience.

Sources and Uses

For analysis of “Uses,” see Development Budget.

Construction Period Sources:		Construction Period Uses:	
Bank Construction Loan	\$4,485,000	Acquisition	\$100,000
City of Portland HTF	\$1,350,000	Construction hard costs	\$6,307,060
CDFI Construction loan	\$1,267,624	Hard & Soft Contingency	\$335,346
Maine Housing Subdivision	<u>\$ 840,000</u>	Soft costs	\$1,200,219
		Developer Fee	<u>0</u>
Total Construction Sources:	\$7,942,624	Total Construction Uses:	\$7,942,625

MCDP has a letter of interest for the bank construction loan from Gorham Savings Bank. It is fairly detailed in other ways, but does not specify how many presales will be required. Coastal Enterprises, Inc (CEI) has provided a letter of interest in the concept of providing a construction loan, suggesting a conceptual understanding of the project.

The Maine Housing subdivision program has not yet accepted an application. They have a onetime allocation of capital and are taking applications on a first come first serve basis. They will provide up to

\$70,000 per unit in subsidy only for 2+ bedroom units, so MH subsidy is only penciled in for the 3 bedroom units.

Permanent Period Sources:		Permanent Period Uses:	
1 st Mortgage Sales	\$5,980,000	Acquisition	\$100,000
City of Portland HTF	\$ 1,500,000	Construction hard costs	\$6,307,060
CDFI Construction loan	\$ 0	Hard & Soft Contingency	\$335,346
Maine Housing Subdivision	<u>\$ 840,000</u>	Soft costs	\$1,200,219
		Developer Fee	<u>\$377,376</u>
Total Permanent Sources:	\$8,320,000	Total Permanent Uses:	\$8,320,001

Units with a Maine Housing subsidy have a maximum sales price of \$325,000 per unit, after City & State subsidies, for a total of no more than \$3,900,000 in sales from the 3 bedroom units. That means the 1 bedroom units must sell for at least \$260,000 to cover the development costs. It is expected that most buyers will use Maine Housing's mortgage loan program which is currently offering fixed rate loans at 5.95%.

Development Budget

Construction Costs:

Construction costs are estimated by Penobscot based on drawings at the Conceptual Design Stage and dated 7/25/23. This estimate includes provision for prevailing wage requirements. Total construction cost divided among the 20 residential units is \$315,354. This is *roughly* comparable to Betsy Ross Phase II construction cost of \$339,510/unit, which is scheduled to close in December. Betsy Ross II is a LIHTC project with larger 1 bedroom units and more community space. It is also *roughly* comparable to the Lambert North estimate from Penobscot of \$298,080/unit. While this cost per unit would have been considered high prior to COVID, it is a moderate cost in the current construction cost environment Penobscot includes a 2% construction contingency in the price, which provides some modest cushion for price increases prior to the start of construction.

Soft Costs:

Soft costs of \$60,032/unit fall broadly within industry standard. One would expect per unit soft costs to be somewhat higher for a smaller project, such as this 20 unit project, than a larger project with more ability to benefit from economies of scale. For comparison purposes, Betsy Ross II soft costs are \$49,857/unit for its 52 unit project. Lambert North's detailed estimate of soft costs totals \$50,184/unit for its 72 unit project. Total developer fee of \$377,376 is 4.76% of total development costs, excluding reserves and developer fee. This is a reasonable fee by industry standards and is typical for Portland projects requesting City funding.

Contingency:

Hard cost contingency is carried in the development budget at 5%, which is the industry standard for new construction. The Penobscot estimate also includes a 2% contingency. Considering the continued high level of economic uncertainty, and persistent inflationary pressures in the construction industry, this slightly higher contingency will provide some welcome room to adjust to likely price increases.

Soft cost contingency is very thin at \$19,993 , which is 1.67% of soft costs. This is below the industry standard of 5%, and provides very limited margin for unforeseen expenses or delays.

Acquisition:

The 3.4 acre site is owned by the City, which awarded it to Douglass Commons LLC, which is comprised of The Szanton Company and Maine Cooperative Development Partners. The total sales price is \$475,000, and the approved concept was that Szanton would develop affordable rental housing and the MCDP would develop a limited equity cooperative. Although there is no current appraisal of the land, the negotiated sales price is an important part of the subsidy package which keeps the units affordable. For insight on how important the land price is, there were 4 single family lots listed for sale in north Portland on Zillow as of 10/1/23, ranging in size from .14 acres to 1.36 acres and ranging in price from \$119,000 to \$186,500, while two small lots (.12 & .16 acres) on the peninsula were listed at \$895,000 and \$1.1 million.

Douglass Commons LLC has allocated land acquisition costs of \$375,000 to Szanton's LIHTC apartments and \$100,000 to Dougherty CONDOS. No land acquisition cost is allocated to the proposed Dougherty APARTMENT development.

Condominium Sales & Affordability

Maximum sales prices for the condos are limited by:

1. The market value of the physical product offered (value as if unrestricted),
2. The impact of the re-sale restrictions on the market value (the buyer must agree to see the unit to a subsequent buyer who is at or below 100% AMI, and at a price affordable to the buyer);
3. The maximum price affordable to a household at 100% AMI, as defined by City of Portland policy; and finally,
4. The maximum sales price of \$325,000 for the units receiving Maine Housing subsidy.

Unrestricted Market Value and Resale Restricted Value:

Location: Though the development is separated from central Portland by I295, the location will have significant appeal to some buyers. The condo location has a walk score of 71, a bike score of 78, and a transit score of 47. It benefits from co-locating with Dougherty Fields park and is less than a mile from the range of recreation opportunities at Thompsons Point. It is .5 miles from the Amtrak terminal and bus depot. It is a 10 minute bike ride and 23 minute walk from Maine Medical Center.

Unit design:

- The eight 1 bedroom units are single story, ground floor units with private entry. They are 507 or 511 square feet and include a stacked washer/drier hook up. One unit will be accessible for mobility impaired and one unit will be accessible for people with hearing/visual disabilities.
- Eight 3 bedroom units are on the second and third floors, above the eight 1 bedrooms. These units have a private ground floor entry and stairway and are either 1,014 or 1,022 sq feet.
- Four 3 bedroom units have private ground floor entries and are 1134 sq feet.
- All 3 bedroom units include a half bath on the lower floor, a full bath on the upper floor, and a stacked washer/drier hook up on the upper floor.

No additional storage is provided outside of the unit. A total of 12 sheltered bike parking spots will be available for the 20 condos. No parking is reserved for condo residents. A condo resident wishing to park in the complex parking lot will need to rent a parking place from those controlled by the proposed apartment complex.

Market Value & Resale Restricted Value: No market study has been provided, so evaluating the marketability of proposed units, especially as restricted by the resale provisions, is challenging. A broker’s opinion letter dated November 7, 2023, states the 1 bedroom price to be \$280-\$320k and 3 bedrooms to range from \$440-\$520k depending on unit type. No comparable sales are provided. This estimate reflects a hypothetical **unrestricted** market price, not the resale restricted value of the units.

A quick survey based on publicly available sales information does not turn up clear recent comparable sales. With the dramatic rise in interest rates, condo sales in City of Portland have slowed considerably. Two 1 bedroom condos at 1251 Congress, a few blocks from the site, sold for \$255,000 in 2021 - these were larger units (670 sq feet) in an older building converted to condo ownership in 2012, and with a substantially higher condo fee (\$248 vs. \$75 projected for Dougherty). Current market listings for 1 bedroom condos in the West End have higher list prices (\$375,000), higher HOA fees (\$150 and \$462), peninsula locations and significant additional amenities like garage parking or additional square footage. The comparison with the budgeted sales price for the project is difficult due to these different characteristics.

Maximum Sales Price by City Policy

The following constraints define both the sales price and the pool of purchasers for the condo units:

- Buyers income must be at or below 100% of AMI adjusted for household size. This requirement sets the maximum income eligible to purchase;
- Buyers inclusive housing payments, including mortgage, mortgage insurance if required, fire and hazard insurance, taxes, condo fees, and estimated utilities, must not exceed 35% of their income. This requirement sets the minimum income required to purchase the unit.

The chart below shows the “window of affordability” for marketing each unit, based on two possible household sizes for each unit type. The marketing window for a 1 person and a 3 person households is almost impossibly narrow. The window for 2 person and 4+ person households is substantially wider, but it is not clear that larger households will be interested in units of these sizes.

	minimum	maximum	marketing	affordable
	income	income	window	to % AMI
1 Bedroom				
1 person	\$79,238	\$83,650	\$4,412	94.73%
2 person	\$79,238	\$95,500	\$16,262	82.89%
3 Bedroom				
3 person	\$107,488	\$107,550	\$62	99.94%
4 person	\$ 107,488	\$119,500	\$12,012	89.95%

In addition to the income qualifications, each buyer will need sufficient funds to cover downpayment and closing costs.

It is important to note that these “window of affordability” calculations assume the resale restricted appraised value is at least \$310,000 for the 1 bedroom and at least \$390,000 for the 3 bedroom so the purchaser does not have to pay for mortgage insurance.

The absence of information to understand the market price, the impact of the restrictions on the market price, and the narrow income band of eligible buyers necessitate a high level of pre-sales to address the marketing and sales risk.

Condominium Operating Budget

Condominium Fee Income:

MCDP projects a lean condo budget with a 1 bedroom condo fee of \$75/month and fee of \$160/month on the larger units for total condo fee income of \$30,240 per year.

Condominium Operating Expense

The condo expense budget is also lean:

Management fees:	5,500
Insurance:	10,000
Legal:	500
Grounds/Snow	5,000
Repairs	2,500
Trash	1,740
Replacement Reserve	<u>5,000</u>
Total:	30,240

Without condominium documents which define what expenses will be the obligation of the condo association vs. the condo unit owner, it is not possible to tell if this budget will be sufficient to meet the needs of the condo. There is no prefunded capital reserve, but the annual reserve is budgeted at a rate just below industry standard for an apartment complex. This reserve will probably be sufficient for the early years at least, considering owner responsibility for in-unit expenses, and should build up in the early years post construction.

The adequacy of this budget is further obscured by the proposed condo to own the land, which will divide shared grounds costs and upkeep of amenities between the three different projects. Draft documents for “Dougherty Commons Condominium,” the land owning condo, anticipate the residential condo will be responsible for 16% of the costs associated with the shared elements (sidewalks, roads, parking, snow removal, landscaping, utilities) while Szanton’s project will be responsible for 50% of the costs and the proposed Dougherty Apartments will be responsible for 34%.

Developer Financials

MCDP is a young organization and has not yet had an audit. Their 2022 Income/Expense shows no operating income and \$9,824 in expenses. However, that dramatically understates their activity. Consistent with GAAP, their project related predevelopment expenditures are accounted for on their balance sheet, in 3 project pre-development accounts. The chart below shows MCDP’s predevelopment investments by property by year, including 2023 year to date.

	2021	2022	2023	Cumulative Total to Date
Douglas Commons	\$ 37,452	\$ 92,561	\$ 77,355	\$ 207,368
Lambert North	\$ 9,634	\$ 162,146	\$ 36,218	\$ 207,998
Lambert South	\$ 263,824	\$ 352,436	\$ 194,561	\$ 810,821
Investment By Year:	\$ 310,910	\$ 607,143	\$ 308,134	\$ 1,226,187

After the above report of MCDP investment, MCDP transferred ownership of the predevelopment work in Lambert North to POAH for a cash payment which improved MCDP's liquidity.

MCDP ended 2022 with \$26,298 in current assets (cash holdings) and current liabilities of \$636,926, for a current ratio of .041.

2023 year to date Profit and Loss statement again reflects no income and limited (\$5,000) in expenses. The action, again, is reflected on the Balance Sheet, where MCDP shows current assets (cash & equivalents) of \$77,464, accounts payable of \$135,976, and other current liabilities of \$800,734. The resulting current ratio is .083.

MCDP's primary predevelopment funding has come from a subsidiary of UHAB, which lent the young organization up to \$1,235,000 at 1.5% interest. According to MCDP, the two year term of the predevelopment loan came due in May of this year. A short term extension was granted thru November 11, 2023. MCDP provided an email from UHAB stating that a multiyear extension has been agreed to and the paperwork to document the extension is being processed.

Recommendations

I recommend a loan to the "to be created" Dougherty residential condominium (MCDP controlled entity) of \$1,500,000, with zero interest and no payment. Upon sale or resale to an approved purchaser of the condominium units, this investment will be rolled over to the unit purchaser. This recommendation is conditioned upon satisfactory review of the following:

- Revision of the affordability formula included in the 99 year covenant to allow up to **35%** of purchaser income to be used for home ownership expenses, (mortgage, mortgage insurance if required, taxes and insurance, **excluding** estimated utilities), which will increase the marketing window for these units, provide broader access to homeownership opportunities, and better aligned with industry standards for affordable homeownership;
- Final condominium documents for both landowner ("Dougherty Commons Condominium,") and residential improvement condos;
- Presale to City approved, income eligible purchasers of 75% of one bedroom units and 75% of 3 bedroom units;

- Final plans which meet all City and State requirements and include a closet in each residential bedroom;
- Current financials of MCDP, provided within 2 months of closing;
- MCDP Audit for 2023 (and prior year financial activity);
- Amended and Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default on the loan;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Dougherty Commons Condos Timeline

7/25/2023

Receive Planning Board Approval	Complete
Apply for City of Portland HTF	7/2023
City HEDC Committee Review	8/2023
City Council Approval of HTF	9/2023
Finalize Construction Contract	11/2023
Submit City Building Permits	11/2023
Receive City Building Permits	2/2024
Loan Closing / Construction Commencement	2/2024



DOUGHERTY COMMONS
VIEW 6 - PATHWAY



DOUGHERTY COMMONS
VIEW 7 - PATHWAY



DOUGHERTY COMMONS
VIEW 8 - PATHWAY



DOUGHERTY COMMONS
VIEW 9 - VIEW FROM NEIGHBOR'S YARD



DOUGHERTY COMMONS
VIEW 10 - VIEW FROM NEIGHBOR'S YARD

PROJECT

Dougherty
Commons

Portland, ME 04101

CIVIL

Acorn Engineering, Inc.
500 Washington Ave., Suite 202
Portland, ME 04103
p: 207 775-2655

LANDSCAPE ARCHITECTURE

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STRUCTURAL

Trillium Engineering
189 Main Street, Suite 200
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p: 207 307-0872

ELECTRICAL

MEGA Engineering
p: 207 749-4514

MECHANICAL & PLUMBING

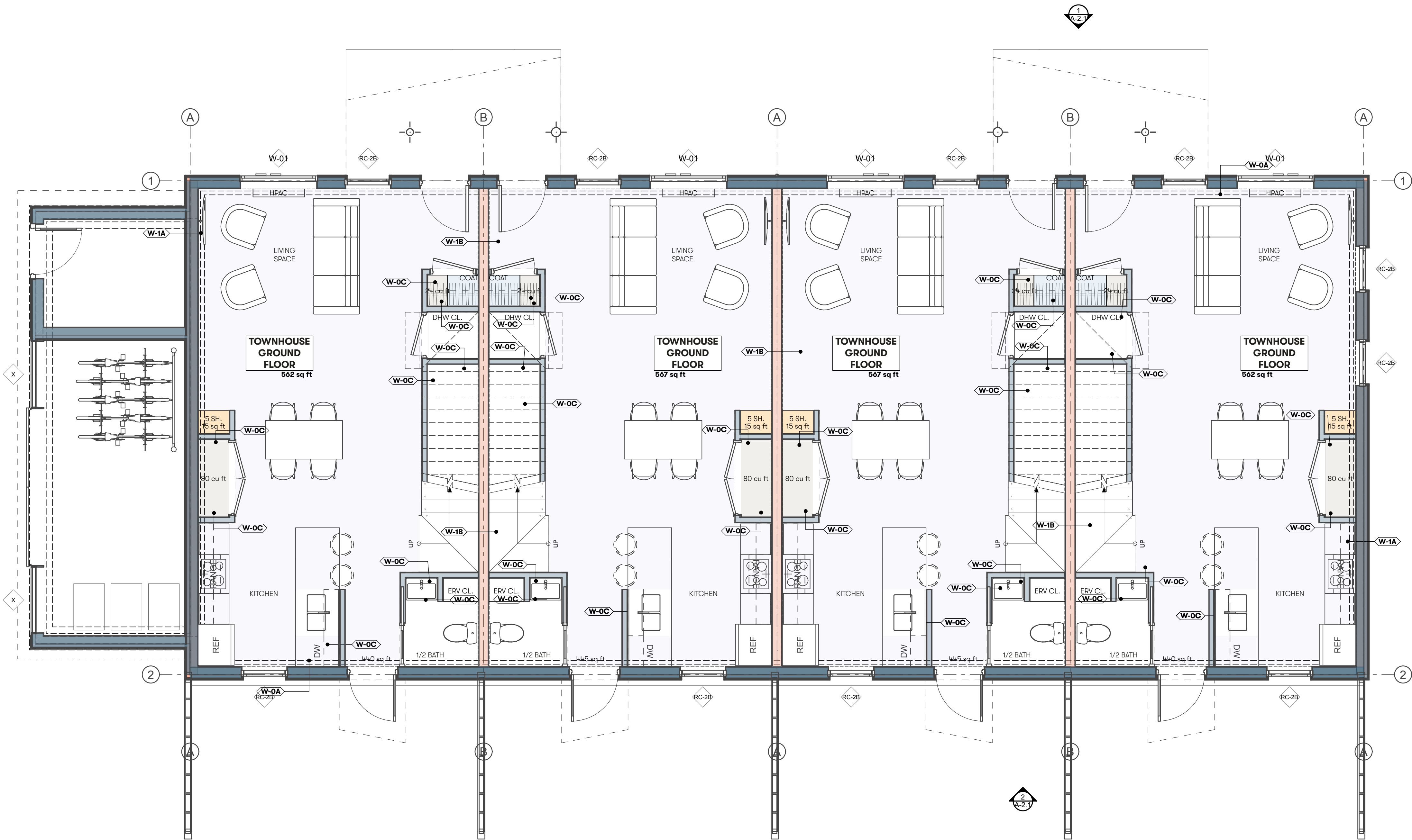
Fuss & O'Neill, Inc.
5 Fletcher Street, Suite 1
Kennebunk, ME 04043
p: 617 282-4675

NOT FOR CONSTRUCTION

PROJECT	MCP
DATE	4/7/23
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REVISED 2	
DRAWN BY	AW, SS, CB, SN, MB
PHASE	Design Development

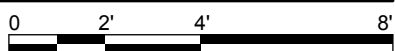
ENLARGED GROUND
FLOOR PLAN:
TOWNHOMES, 4-
UNIT

A-1.2



1 GROUND FLOOR

SCALE: 1/4" = 1'-0"



Dougherty Commons

Portland, ME 04101

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MECHANICAL & PLUMBING

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NOT FOR CONSTRUCTION

PROJECT MCP

DATE 4/7/23

REVISÉ 1

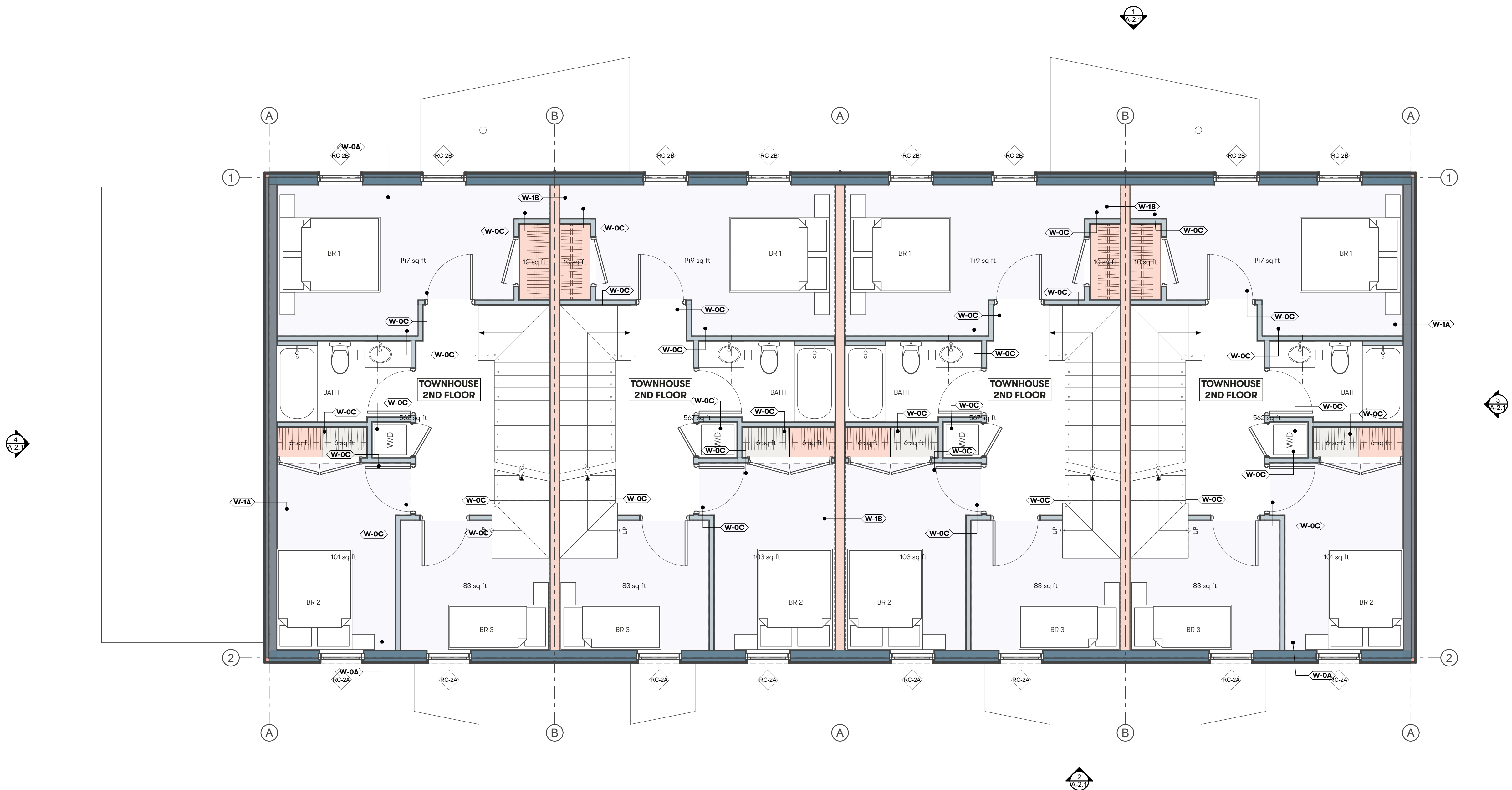
REVISÉ 2

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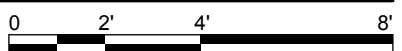
PHASE	Design Development
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ENLARGED 2ND
FLOOR PLAN:
TOWNHOMES, 4-
UNIT

A-1.3



1 2ND FLOOR
SCALE: 1/4" = 1'-0"



SIDING KEY			
S1	CEDAR SHIPLAP SIDING	S4B	TRADITIONAL LAP SIDING 5" REVEAL (COLOR B)
S2	BOARD AND BATTEN SIDING	S4C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR B)
S3A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR A)	S5A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR C)
S3B	TRADITIONAL LAP SIDING 5" REVEAL (COLOR A)	S5B	TRADITIONAL LAP SIDING 5" REVEAL (COLOR C)
S3C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR A)	S5C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR C)
S4A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR B)		

BUILDINGS: B.2

Kaplan
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ELECTRICAL

MEGA Engineering
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MECHANICAL & PLUMBING

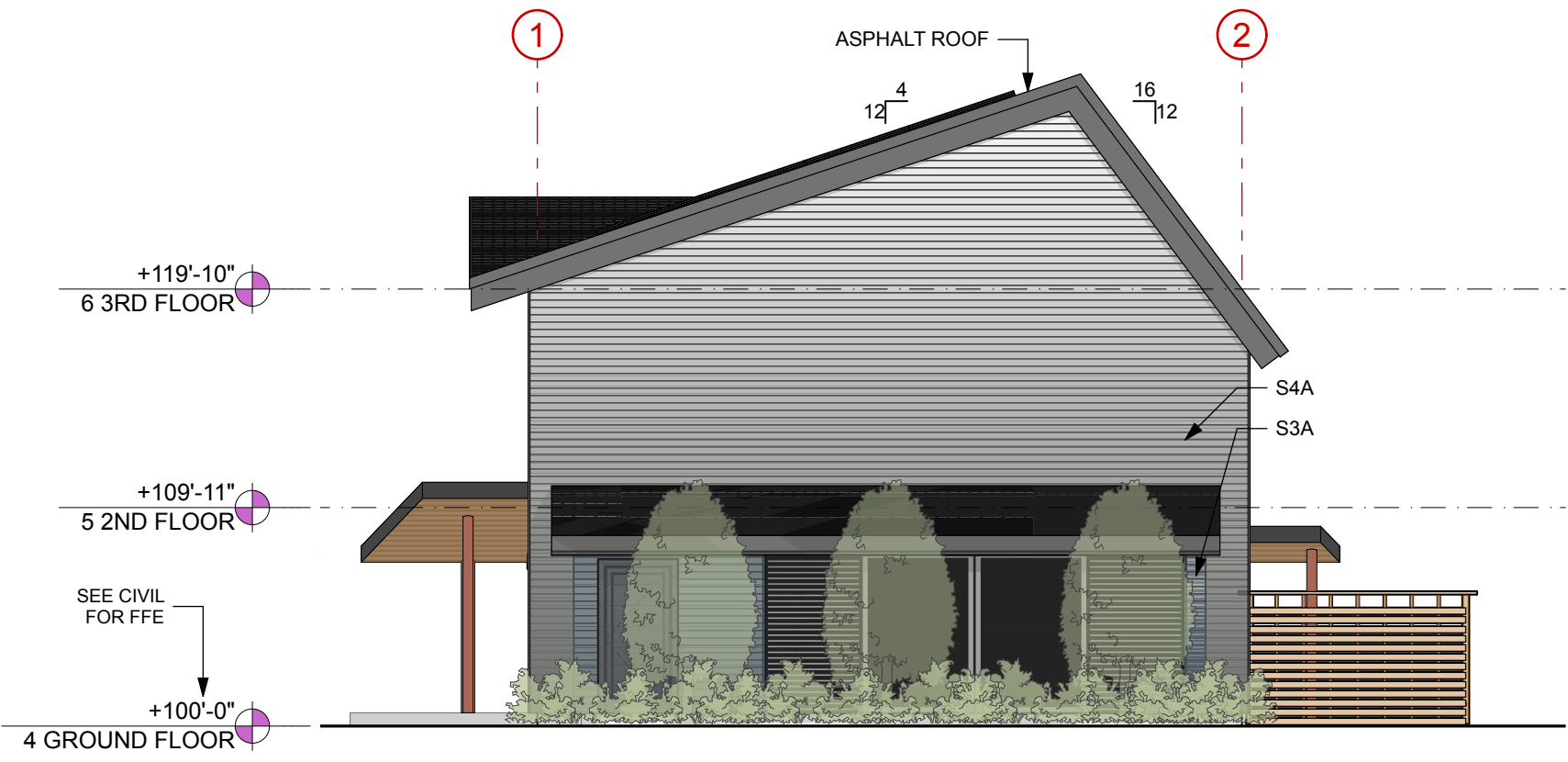
Fuss & O'Neill, Inc.
5 Fletcher Street, Suite 1
Kennebunk, ME 04043
p: 617 282-4675

NOT FOR CONSTRUCTION

PROJECT	MCP
DATE	4/7/23
REVISED 1	
REVISED 2	
DRAWN BY	AW, SS, CB, SN, MB
PHASE	Design Development

ELEVATIONS:
TOWNHOMES, 4-
UNIT

A-2.1



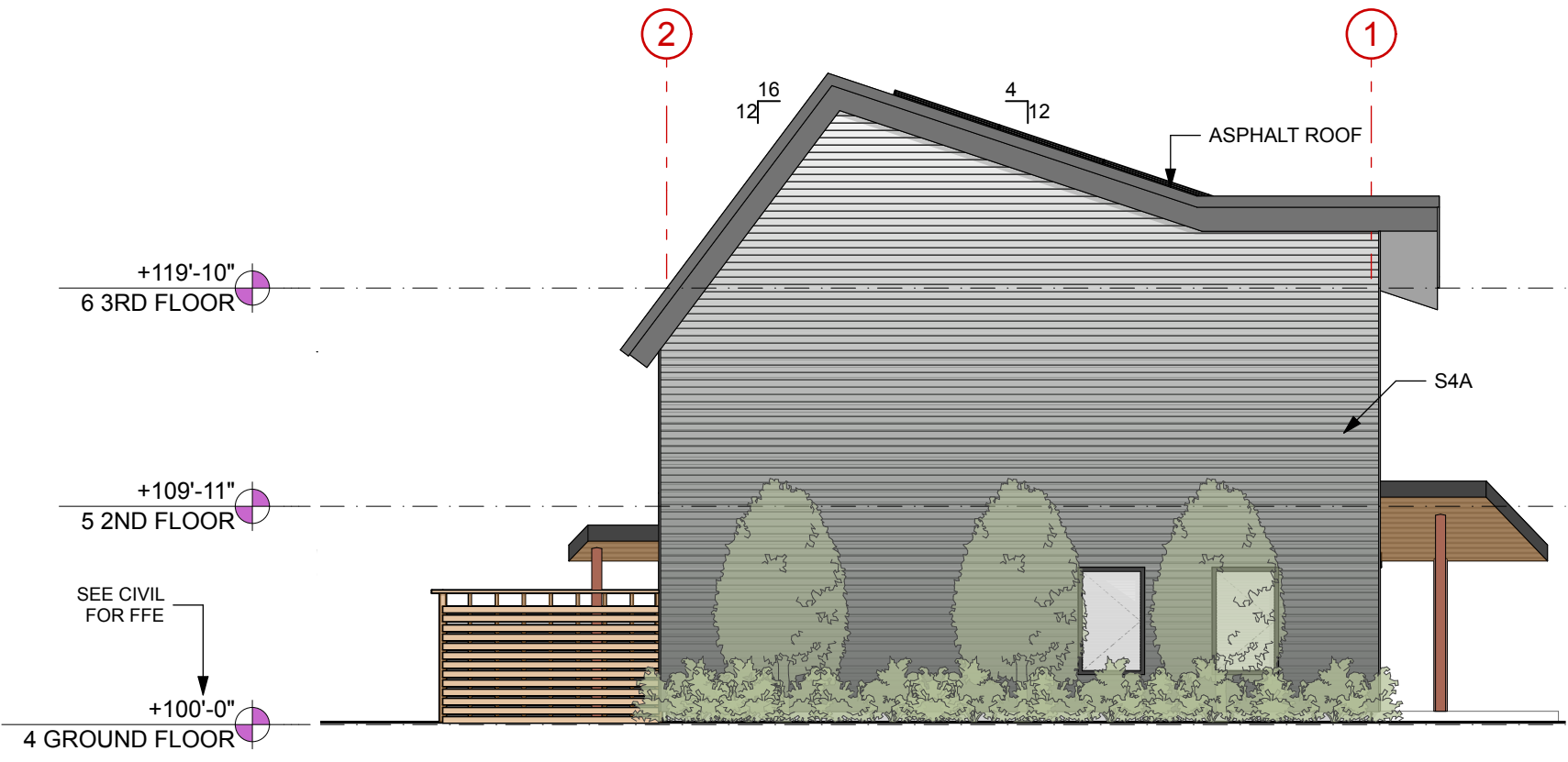
4 TOWNHOME, SIDE ELEVATION

SCALE: 1/8" = 1'-0"



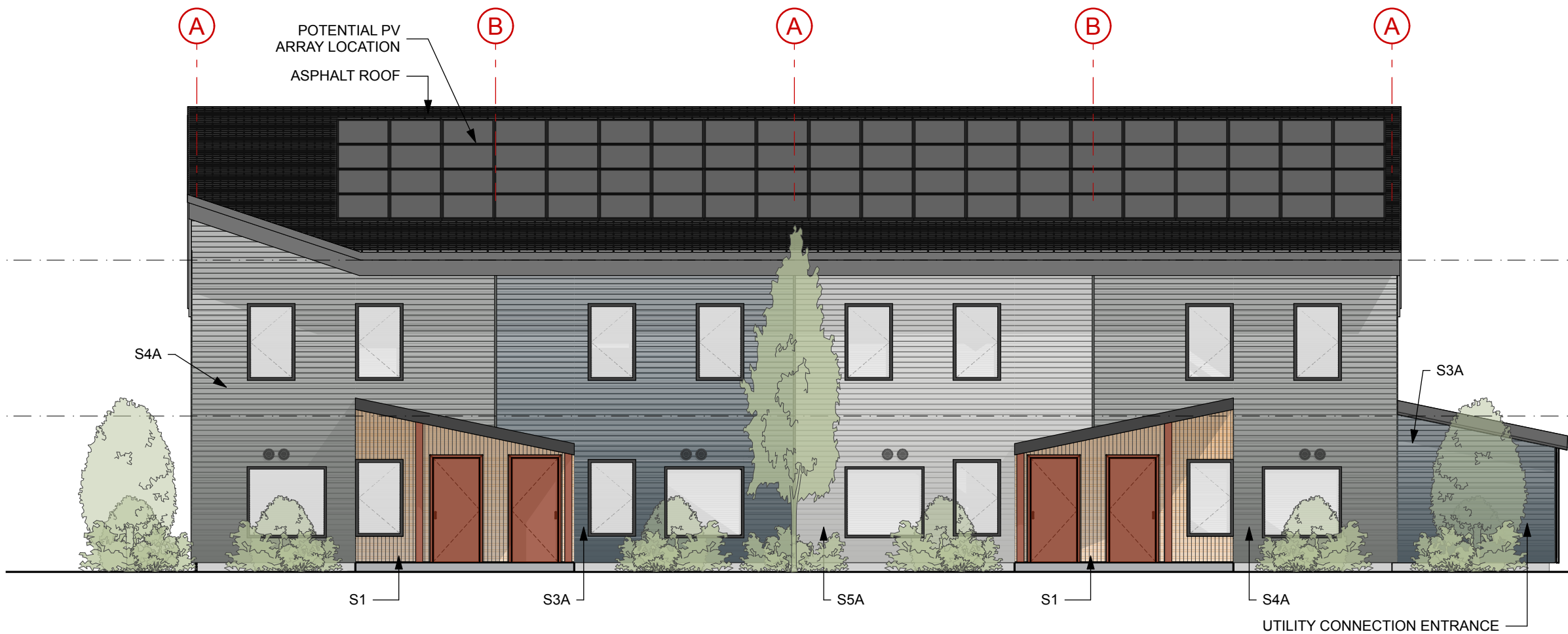
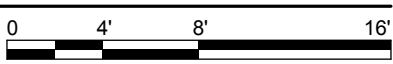
2 TOWNHOME, BACK ELEVATION

SCALE: 1/8" = 1'-0"



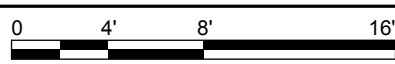
3 TOWNHOME, SIDE ELEVATION

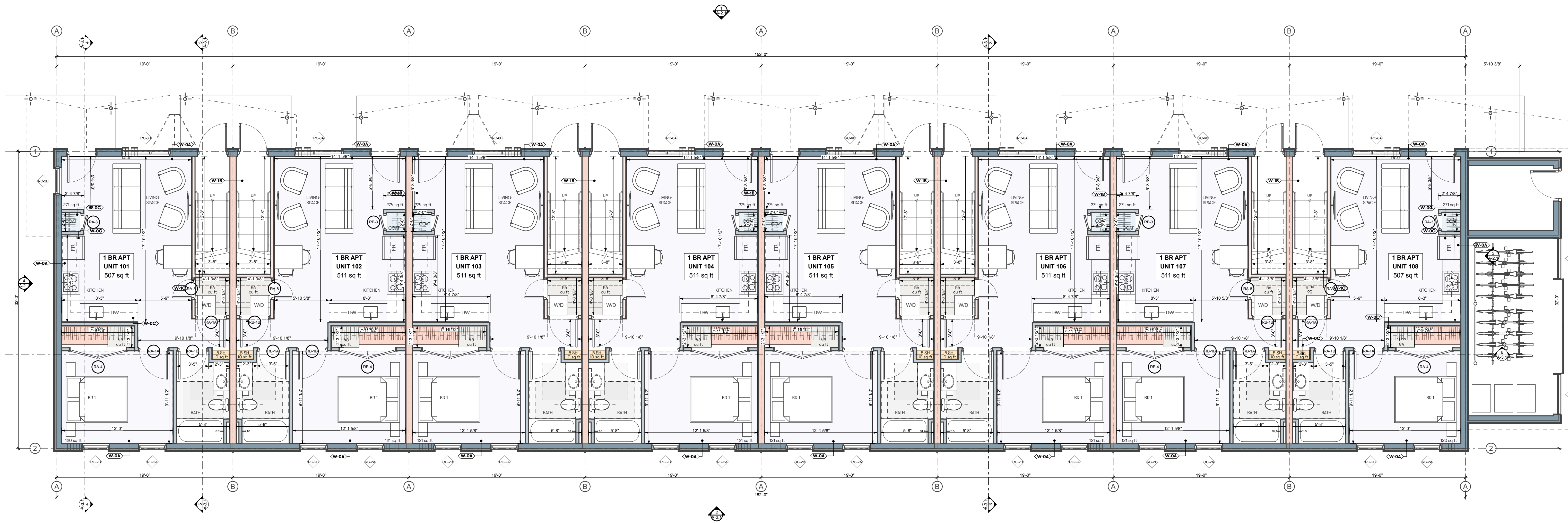
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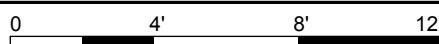
1 TOWNHOME, ENTRY ELEVATION

SCALE: 1/8" = 1'-0"





1 GROUND FLOOR
SCALE: 3/16" = 1'-0"



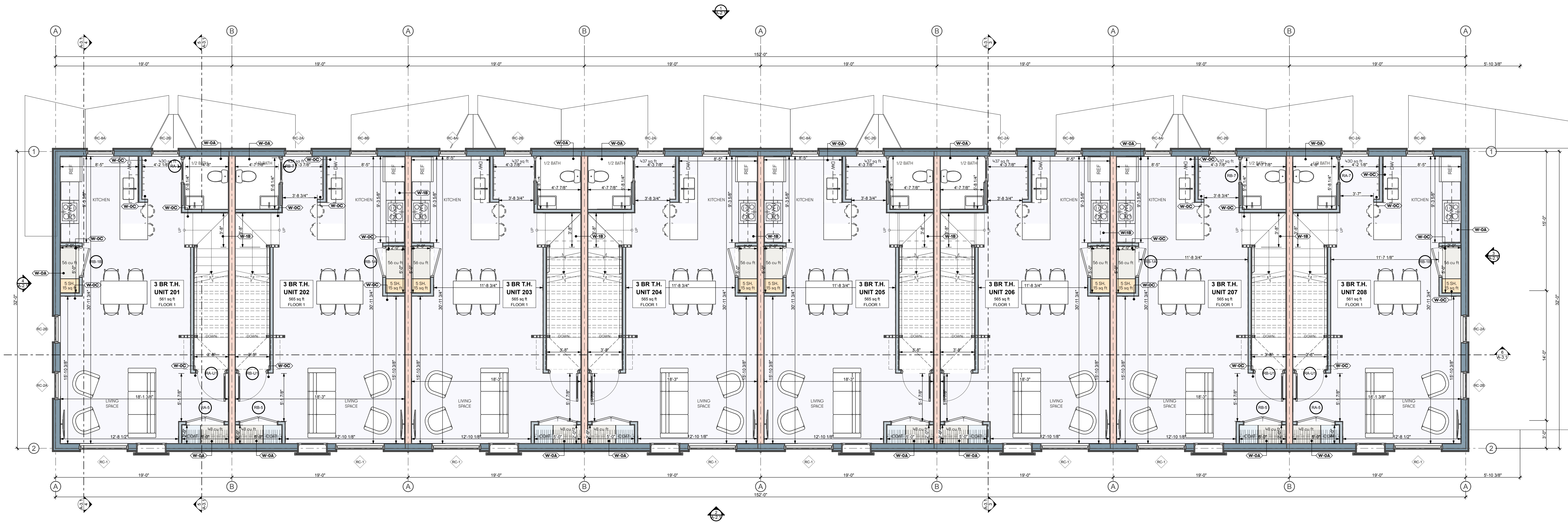
NOT FOR CONSTRUCTION

PROJECT	MCP
DATE	4/7/23
REVISED 1	
REVISED 2	
DRAWN BY	AW, SS, CB, SN, MB
PHASE	Design Development

ENLARGED GROUND
FLOOR PLAN:
ROWHOMES, 16-
UNIT

A-1.3

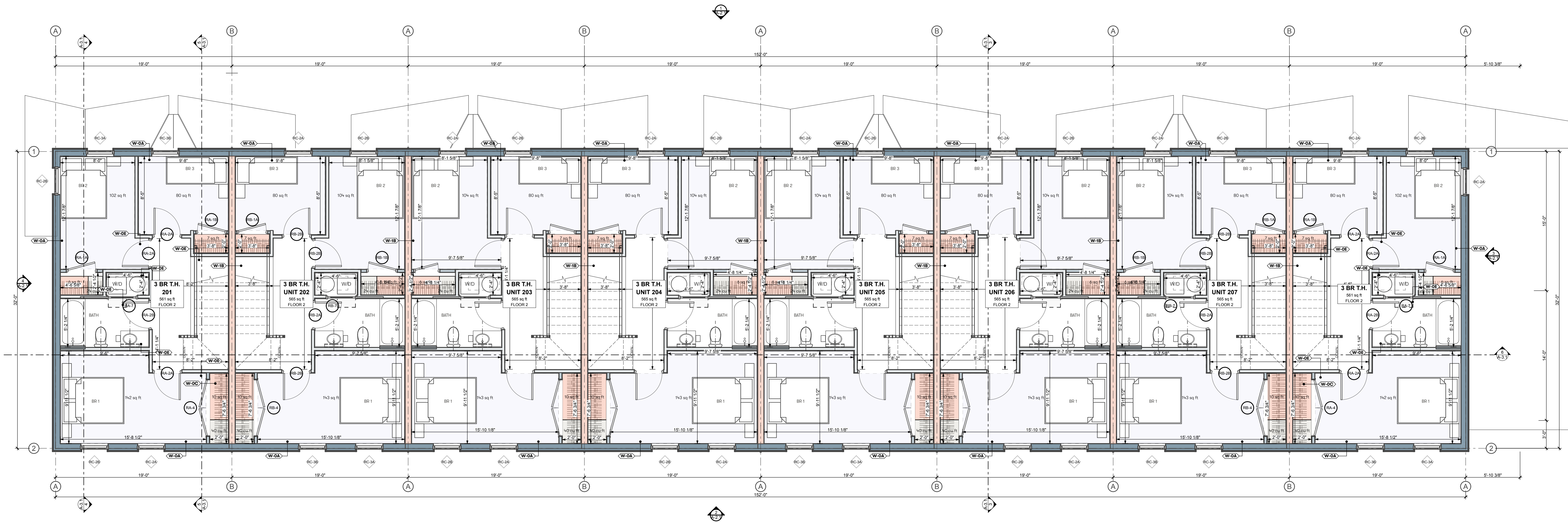
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DATE	4/7/23
REVISED 1	
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DRAWN BY	AW, SS, CB, SN, MB
PHASE	Design Development



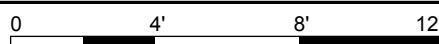
1 2ND FLOOR
SCALE: 3/16" = 1'-0"



PROJECT	MCP
DATE	4/7/23
REVISED 1	
REVISED 2	
DRAWN BY	AW, SS, CB, SN, MB
PHASE	Design Development



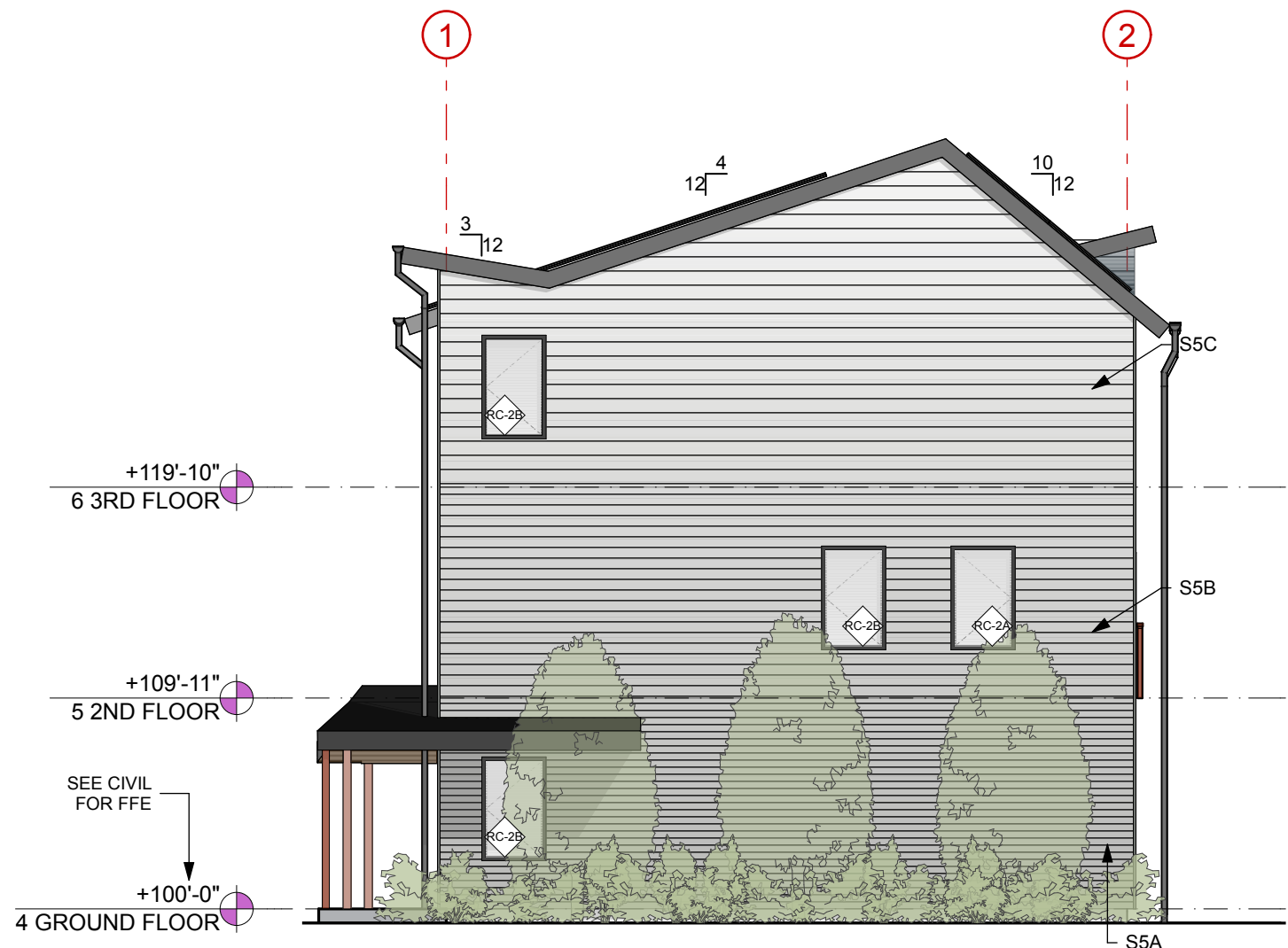
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SCALE: 3/16" = 1'-0"



BUILDINGS: D.5

SIDING KEY

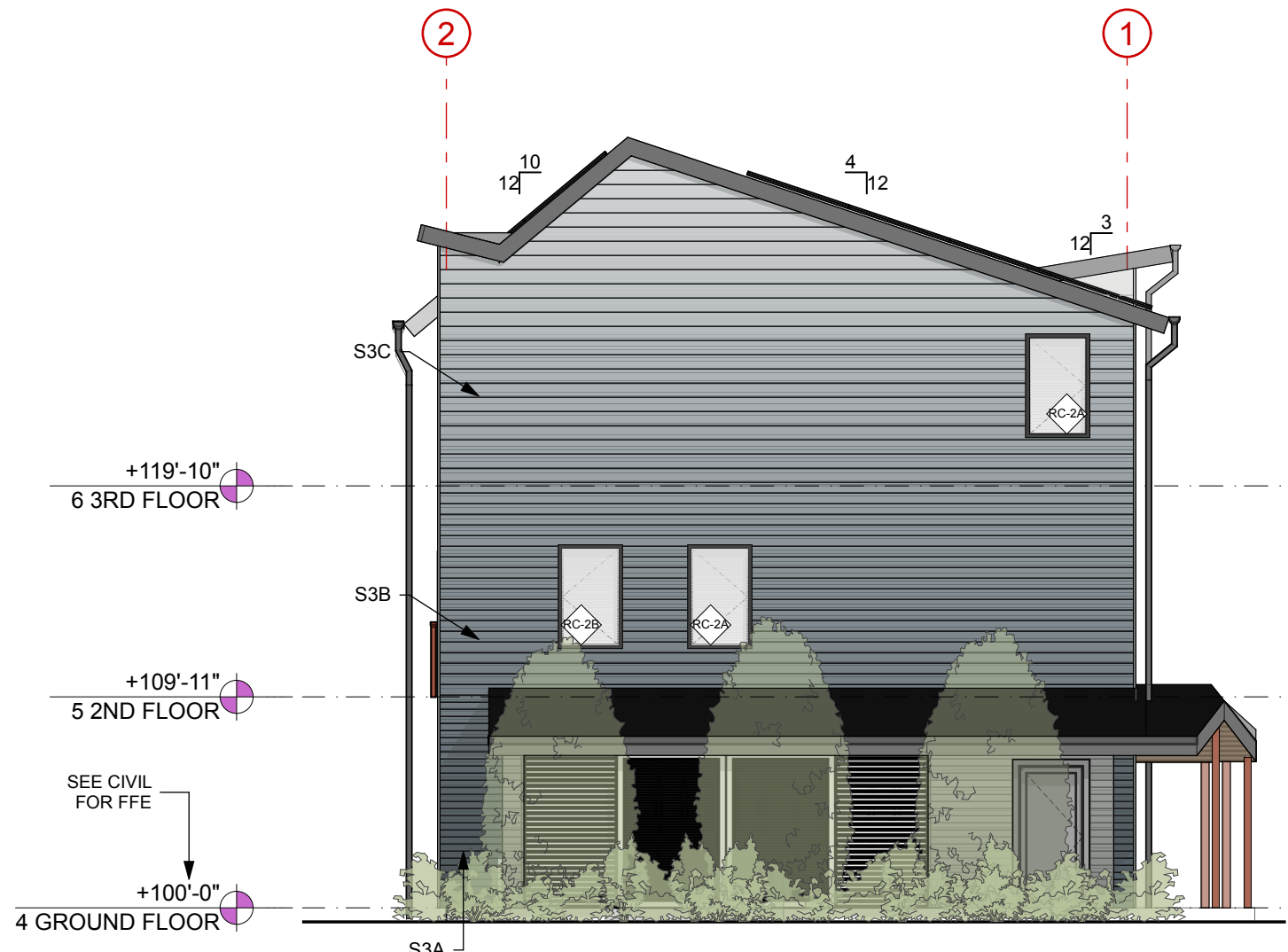
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S3C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR A)	S5C	TRADITIONAL LAP SIDING 8" REVEAL (COLOR C)
S4A	TRADITIONAL LAP SIDING 3" REVEAL (COLOR B)		



4 ROWHOME, SIDE ELEVATION
SCALE: 1/8" = 1'-0"



2 ROWHOME, BACK ELEVATION
SCALE: 1/8" = 1'-0"



3 ROWHOME, SIDE ELEVATION
SCALE: 1/8" = 1'-0"



1 ROWHOME, ENTRY ELEVATION
SCALE: 1/8" = 1'-0"

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PROJECT

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MECHANICAL & PLUMBING

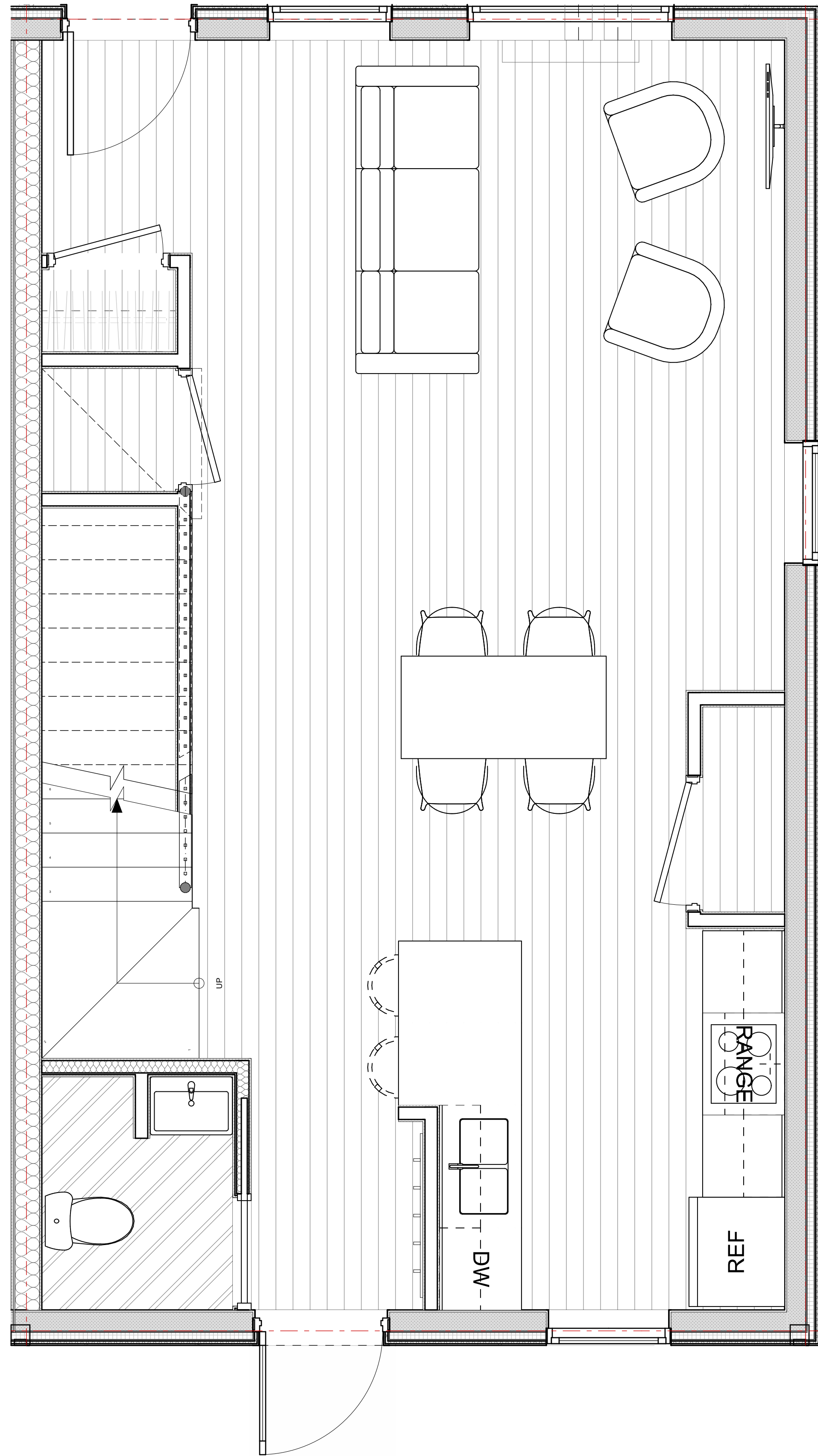
Fuss & O'Neill, Inc.
5 Fletcher Street, Suite 1
Kennebunk, ME 04043
p: 617 282-4675

NOT FOR CONSTRUCTION

PROJECT	MCP
DATE	4/7/23
REVISED 1	
REVISED 2	
DRAWN BY	AW, SS, CB, SN, MB
PHASE	Design Development

ELEVATIONS:
ROWHOMES, 16-
UNIT

A-2.1



1 TOWNHOME - GROUND FLOOR - ENLARGED PLAN
SCALE: 1/2" = 1'-0"

FINISH KEY	
	CARPET
	RESILIENT SHEET VINYL
	LUXURY VINYL TILE (LVT)



2 TOWNHOMES - KITCHEN - VIEW 1
SCALE: 1/84.30



3 TOWNHOMES - KITCHEN - VIEW 2
SCALE: 1/84.30

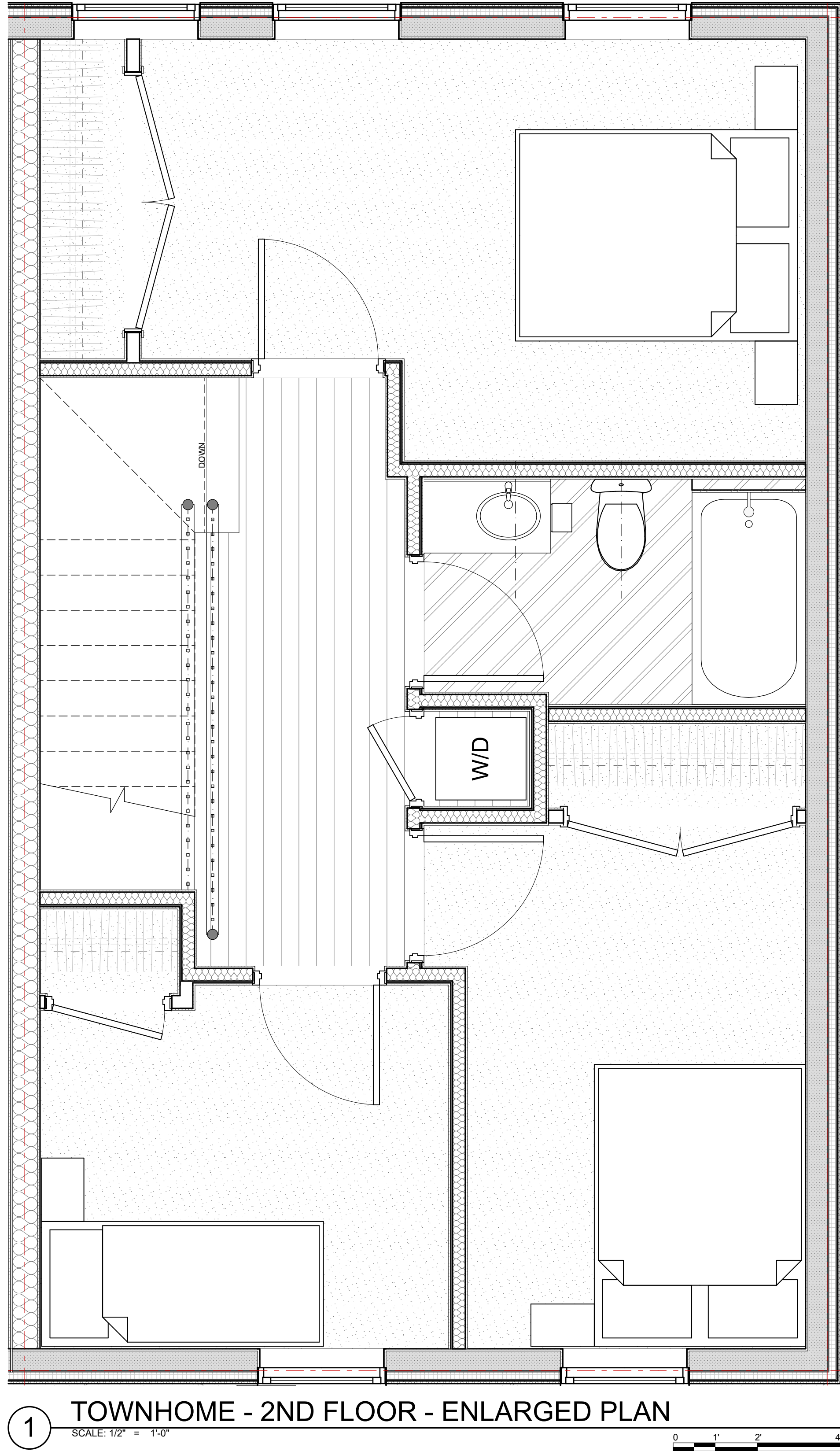
TOWNHOMES - GROUND FLOOR INTERIORS

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Maine Community Development Partners
Portland ME 04101



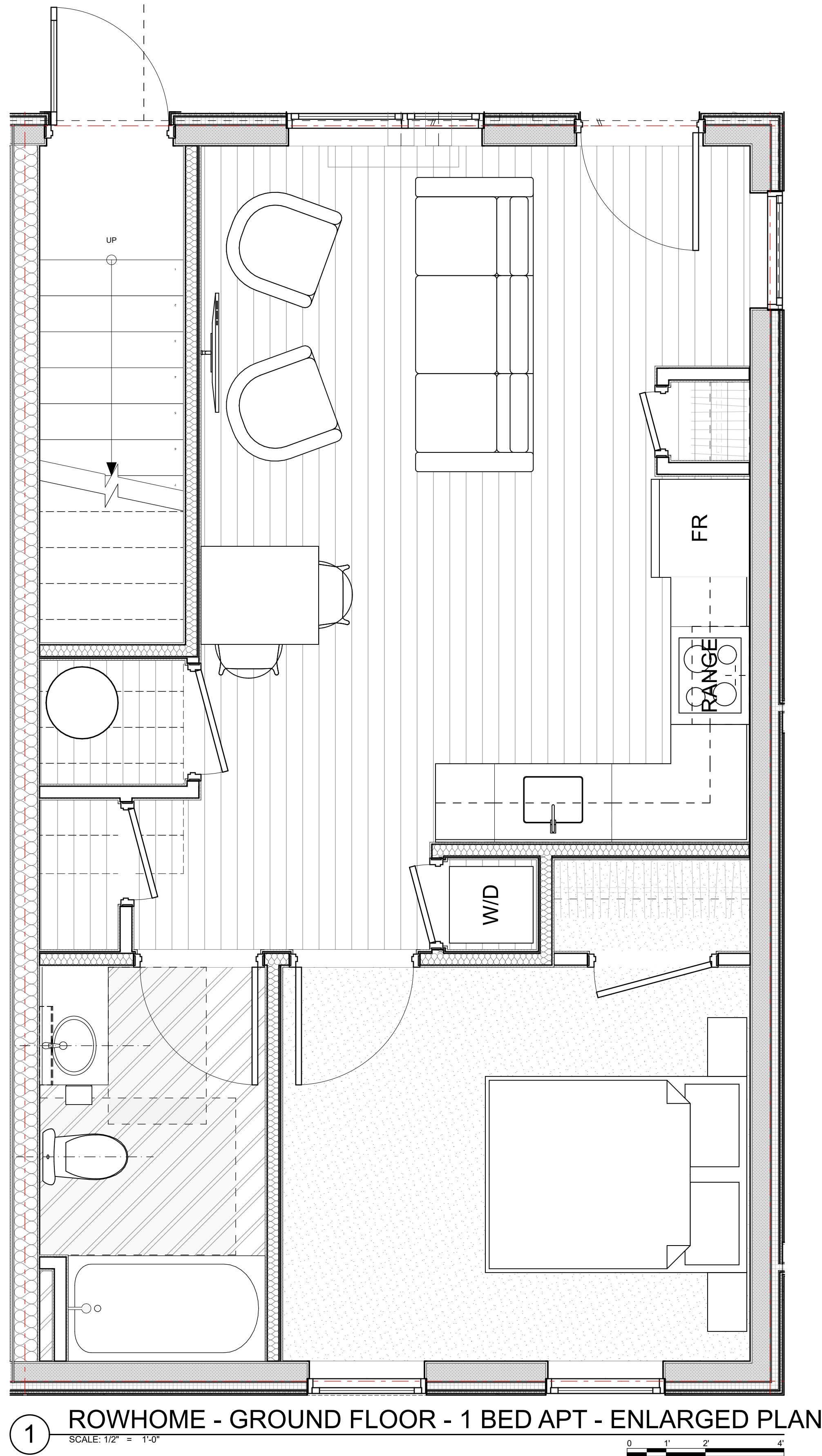
FINISH KEY	
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	RESILIENT SHEET VINYL
	LUXURY VINYL TILE (LVT)



2 TOWNHOMES - BATHROOM
SCALE: 1/84.30

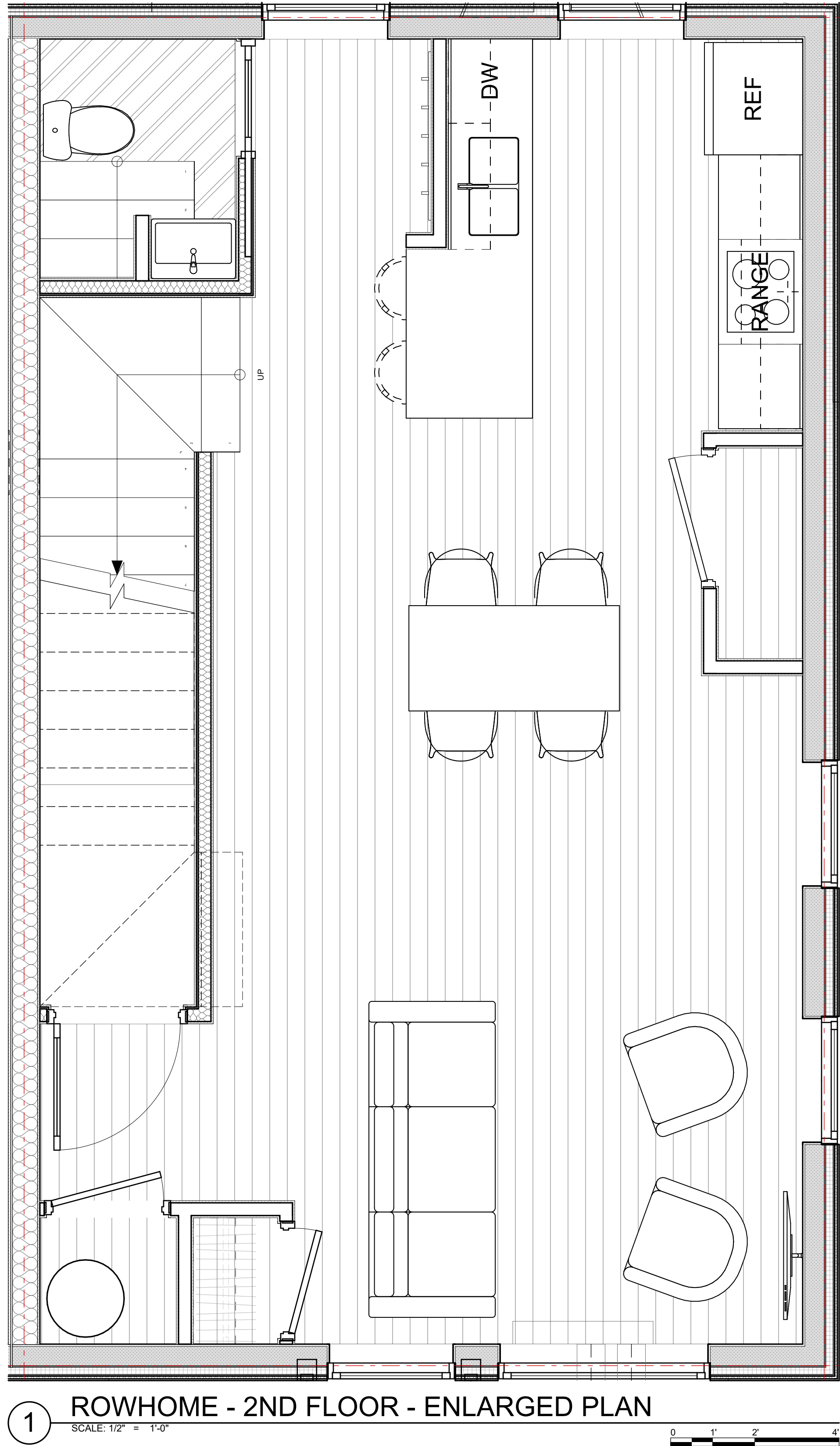


4 TOWNHOMES - BEDROOM
SCALE: 1/84.30



FINISH KEY	
	CARPET
	RESILIENT SHEET VINYL
	LUXURY VINYL TILE (LVT)





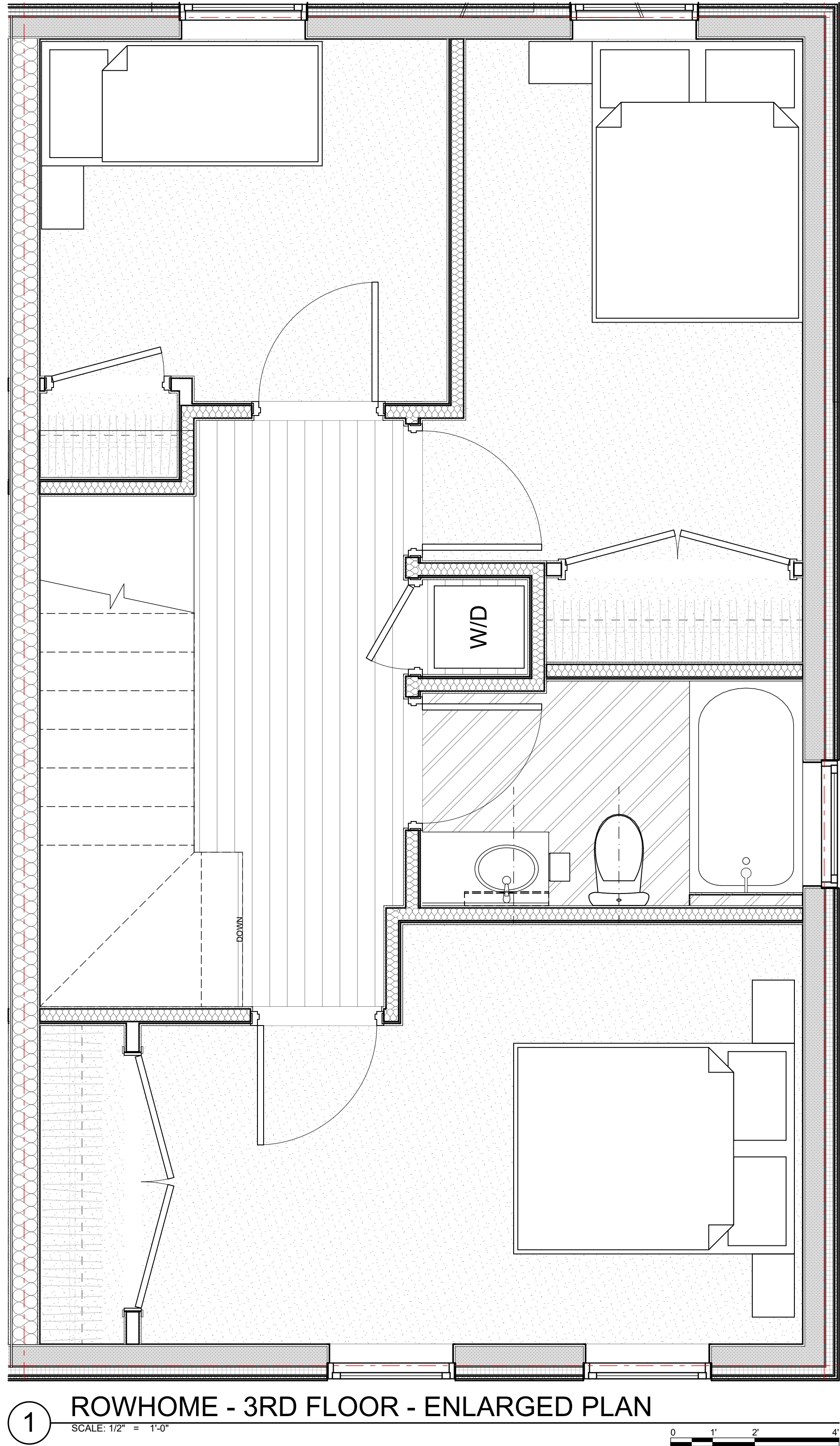
FINISH KEY	
	CARPET
	RESILIENT SHEET VINYL
	LUXURY VINYL TILE (LVT)



2 ROWHOMES - KITCHEN - VIEW 1
SCALE: 1/84.30



3 ROWHOMES - KITCHEN - VIEW 2
SCALE: 1/84.30



1 ROWHOME - 3RD FLOOR - ENLARGED PLAN

FINISH KEY	
	CARPET
	RESILIENT SHEET VINYL
	LUXURY VINYL TILE (LVT)



2 ROWHOMES - BATHROOM

SCALE: 1/84.30



4 ROWHOMES - BEDROOM

SCALE: 1/84.30

MEMORANDUM
City Council Agenda Item

FROM:

DATE: November 30, 2023

SUBJECT: Order 84-23/24 Amendment to Zoning Map Re: B-2 Community Business for 182 Woodford Street Rear and 186 Woodford Street - Sponsored by the Planning Board, Brandon Mazer, Chair

SPONSOR: Brandon Mazer, Chair, Portland Planning Board

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 11/13/2023

**Final
Action 11/20/2023**

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Brandon Mazer, Chair Planning Board; Christine Grimando, Director – Planning & Urban Development; Kevin Kraft, Deputy Director – Planning & Urban Development (5 minutes)

I. SUMMARY

The Planning Board recommends a zoning map amendment submitted by Community Housing of Maine (CHOM) changing 186 Woodford Street from an existing R-5 Residential zone and B-1 Neighborhood Business zone to a B-2 Community Business zone. In addition, the Planning Board is recommending to change the zoning at 182 Woodford Street Rear from an R-5 Residential zone to B-2 Community Business zone. This zoning map amendment application would facilitate the development of 80 affordable housing units for senior citizens located at 186 Woodford Street.

II. AGENDA DESCRIPTION

On October 10, 2023, the Planning Board unanimously voted (4-0; Smith & Murphy Absent; Silk Recused) to recommend a zoning map amendment changing 186 Woodford Street (Parcel: CBL 124 J005001) from an existing R-5 Residential zone, B-1 Neighborhood Business zone, and B-2 Community Business zone to a B-2 Community Business zone. In addition, the Planning Board is recommending to change the zoning at 182 Woodford Street Rear (Parcel: CBL 124 J021001) from an R-5 Residential zone to B-2 Community Business zone. The Planning Board found the proposed zoning map amendment to be consistent with the Comprehensive Plan for the City of Portland.

The proposed zoning map amendment application was submitted by Community Housing of Maine (CHOM) to facilitate the redevelopment of the former Woodfords Church Parish building and the construction of a new building, which would create 80 affordable housing units within Woodford's Corner, a priority node identified in the Comprehensive Plan.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Community Housing of Maine (CHOM), owner of 186 Woodford Street, requested this zoning map amendment to rezone the property, which is currently split between the R-5 Residential, the B-1 Neighborhood Business, and the B-2 Community Business zones to the B-2 Community Business zone. The proposed zoning map amendment would facilitate an affordable housing development that redevelops the former Woodfords Church Parish Building and constructs a new building to create approximately 80 dwelling units. 186 Woodford Street is currently located within three separate zoning district classifications with varying dimensional and use standards. The majority of the site is zoned R-5 which limits the number of dwelling units created within existing non-residential structures and does not allow for the use of affordable housing density and dimensional bonuses. The proposed rezoning would remove a split lot condition, bring the former Parish building into conformity for height, and facilitate affordable housing opportunities through density bonuses.

During the review of this application, Planning Staff identified and recommended the inclusion of 182 Rear Woodford Street as part of the rezoning. While CHOM's development plans do not include development on 182 Rear Woodford Street, Planning Staff and the Planning Board believe that the inclusion of the property would improve the continuity of the B-2 district and align with policy objectives of encouraging density near priority nodes.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intent of the proposed zoning map amendment is to facilitate the development of 186 Woodford Street for affordable housing development and to rezone a priority node to encourage additional contextually appropriate housing density in an existing neighborhood center, with excellent access to services and public transit, a key priority identified in Portland's Comprehensive Plan.

The zoning map amendment supports many of the goals expressed in Portland's Comprehensive Plan *Portland's Plan 2030* and the City's Climate Action Plan *One Climate Future*. Additionally, the proposed zoning map amendment addresses several City Council goals, including the City Council's 2023 Common goals, which include always using a lens that prioritizes housing, homelessness, and climate & sustainability. The proposed zoning map amendment will support these goals by:

- Adopting sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation;
- Stabilizing and enhancing historic areas of the city by ensuring quality investment in existing structures and compatible infill development;
- Increasing, preserving, and modifying the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents;
- Encouraging additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods;
- Pursuing policies to enable people who work in Portland to have the option to live in Portland;
- Evaluating whether current zoning allows for new development consistent with historic patterns of form, density, and/or use, as well as whether it allows for priority growth areas;
- Coordinating linkages between accessible transportation and housing affordability;
- Encouraging rehabilitation of existing historic buildings and materials;
- Creating, promoting, and facilitating safe, affordable, and practical housing solutions that will meet the evolving needs of Portland residents as they age;
- Pursuing new opportunities for increased energy efficiency, increased densities, mixed incomes, and greater connectivity to surrounding neighborhoods.

V. FINANCIAL IMPACT

The land in question is privately owned. The proposed map amendment will have no financial impact on the City.

VI. STAFF ANALYSIS AND BACKGROUND

A City Council Report is included as part of the City Council packet.

VII. RECOMMENDATION

On October 10, 2023, the Planning Board unanimously voted (4-0; Smith & Murphy Absent; Silk Recused) to recommend a zoning map amendment from R-5 Residential, B-1 Neighborhood Business, and B-2 Community Business to B-2Community Business for the applicant's parcel at 186 Woodford Street (CBL 124 J005001) and the adjacent parcel 182 Woodford Street Rear (CBL 124 J021001) from R-5 Residential to B-2 Community Business.

Based on the application materials submitted to the Board and testimony from the Planning Board hearing for this application, the Planning Board has determined that the proposed actions are consistent with the Comprehensive Plan for the City of Portland and recommend to the City Council the adoption of the proposed zoning map amendment.

VIII. LIST ATTACHMENTS

1. Amendment to Zoning Map B-2 Community Business on Woodford Street 12.04.2023
2. Woodford St. - Rear 182 & 186 (City Council Report)
3. Attachment A. Rezoning Boundary
4. Attachment B. Woodford St. - PB Public Hearing (REPORT)
5. Attachment C. Conceptual Site Plan

Prepared by:

Date: 11/30/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

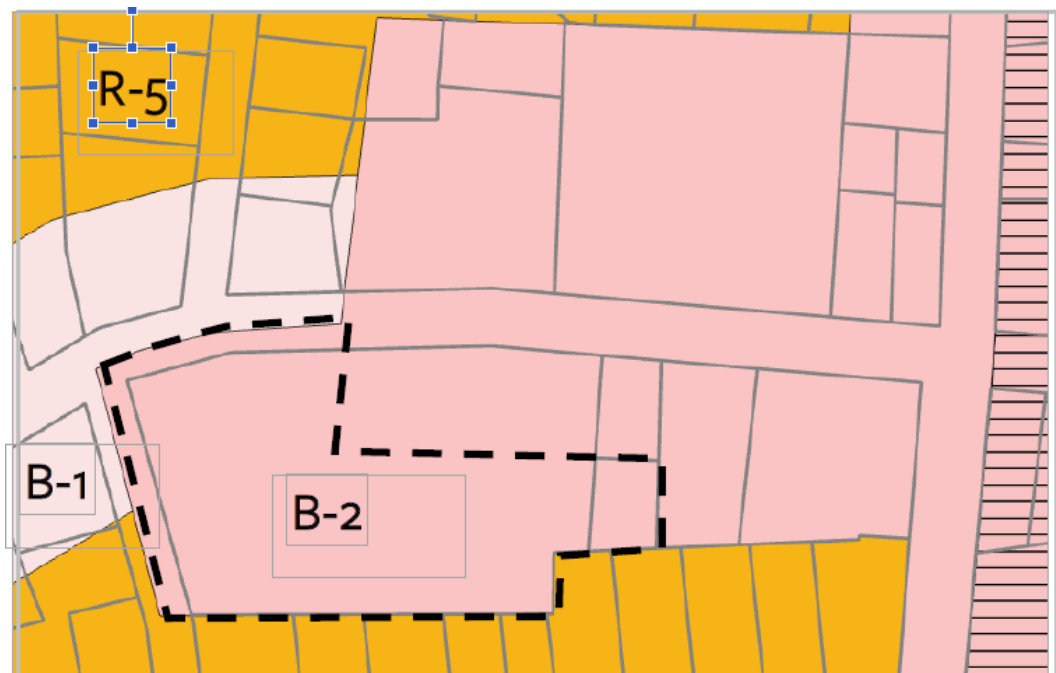
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

**AMENDMENT TO ZONING MAP
RE: B-2 COMMUNITY BUSINESS FOR 182 WOODFORD STREET REAR
AND 186 WOODFORD STREET**

WHEREAS, based on the information provided to the City Council in the October 25, 2023 Planning Board Report to City Council, numbered ZN-002325-2023, the testimony, comment and other information submitted to the City Council, as well as the findings, conclusions and recommendations contained in the Planning Board Report for the public hearing held on December 18, 2023, which is attached hereto and incorporated herein by reference, the City Council adopts the findings and conclusions in the Planning Board Report and finds that the below-referenced zoning amendment is pursuant to and consistent with the City's Comprehensive Plan.

**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 Portland City Code Chapter 14, the Zoning Ordinance, by §1.2, be and hereby is amended pursuant to §1.10.1 by adopting the attached map amendment and specifically rezoning property around 182 Woodford Street Rear and 186 Woodford Street to B-2 Community Business, as depicted in the map below.





PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

182 Rear & 186 Woodford Street

ZN-002325-2023

Community Housing of Maine, Applicant

Submitted to:	Mayor and City Councilors	Prepared By:	Zach Powell, Senior Planner
Council 1st Read:	November 13, 2023	Date:	October 25, 2023
Council Hearing Date:	November 20, 2023		

I. INTRODUCTION

On October 10, 2023, the Planning Board unanimously recommended to the City Council (4-0; Smith & Murphy Absent; Silk recused) a zoning map amendment submitted by Community Housing of Maine (CHOM) changing 186 Woodford Street from an existing R-5 Residential zone, B-1 Neighborhood Business zone, and B-2 Community Business zone to a B-2 Community Business zone. In addition, the Planning Board is recommending to change the zoning at 182 Woodford Street Rear from an R-5 Residential zone to B-2 Community Business zone. Attachment A shows the recommended zoning map amendment boundary.

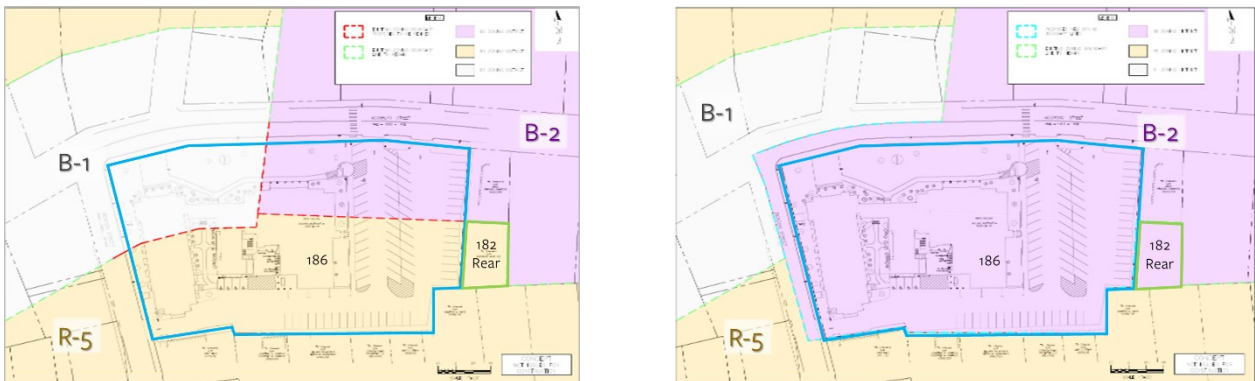


Figure 1: Existing zoning map (left), proposed zoning map amendment boundary (right)

The proposed zoning map amendment application was submitted by CHOM to facilitate the future redevelopment of the former Woodfords Church Parish building and the construction of a new building, which would include 80 affordable housing units for senior citizens on a portion of the site currently improved with a surface parking lot. The B-2 Community Business zone would allow for a broader range of uses, densities, and built form that is more compatible with the applicant's site and surrounding neighborhood. While not included as part of the proposed development, Planning Staff and the Planning Board also recommended the inclusion of 182 Woodford Street Rear (See Figure 1, parcel outlined in green) to create a consistent B-2 Community Business zone boundary along Woodford Street and to enhance mixed-use development opportunities within a walkable, priority node identified in the Comprehensive Plan, *Portland's Plan 2030*.



Figure 2: 186 Woodford Street existing condition | Google Street View

II. BACKGROUND AND EXISTING CONDITIONS

The property at 186 Woodford Street (Chart 124, Block J, Lot 5001) is an 83,934 square foot lot and is the site of Woodfords Congregational Church. The property also leases space to A Company of Girls, Maine Council of Churches, Project Feed, and Stages Youth Theater. The property at 182 Rear Woodford Street (Chart 124, Block J, Lot 021001) is a 4,203 square foot undeveloped lot that is utilized for parking of the adjacent multi-family building at 180 Woodford Street. 186 Woodford Street is bounded by Woodford Street to the north, residential uses to the south and east, and Beacon Street to the west. Rear 182 Woodford Street does not have street frontage and is adjacent to residential uses & surface parking.



Figure 3: Aerial View of 182 Woodford Street Rear (outline in green) and 186 Woodford Street (outlined in blue)

186 Woodford Street is a lot currently split between three different zones. The northeastern portion of the lot is zoned B-2 Community Business, the southern portion of the lot is zoned R-5 residential, and the northwestern portion of the lot is zoned B-1 Neighborhood Business. 182 Woodford Street Rear is zoned R-5 Residential and is adjacent to a B-2 zone to the north.

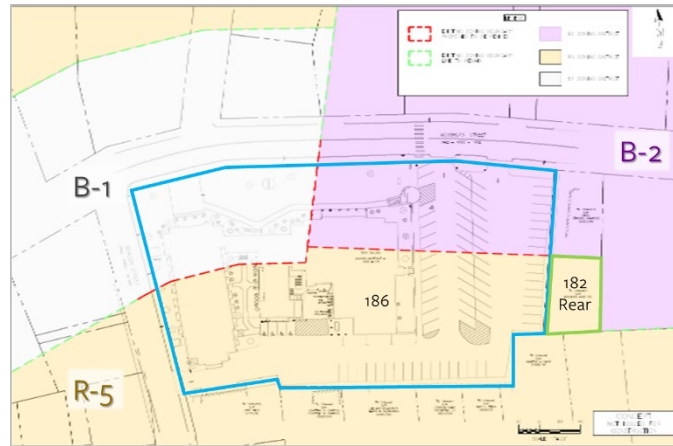


Figure 4: Existing Zoning Map and applicant's parcel outlined in blue.

The surrounding area contains a mixture of residential, commercial, institutional, and light industrial uses. Two blocks to the east sits Woodfords Corner, which serves as a commercial node for the neighboring Back Cove, Rosemont, and Deering neighborhoods along Forest Avenue. Woodford Street includes a mixture of both commercial and residential uses. Lower-density residential uses are primarily located to the west and south whereas a greater mix of low- to mid-density residential, commercial, institutional, and light industrial uses are located to the north and east.

The properties are an approximately one-minute walk from the METRO Route 2 line. The site is near a neighborhood bikeway on Concord & Saunders streets and the Back Cove Shared Use Path (approximately 12-minute walk, 4-minute bike ride). The surrounding area is supported by a strong, connected pedestrian network with sidewalk facilities.

III. PROPOSED MAP AMENDMENT

The proposed zoning map amendment before the City Council is to change the zoning of 186 Woodford Street and 182 Woodford Street Rear to a B-2 Community Business zone as shown in Figure 5 below:

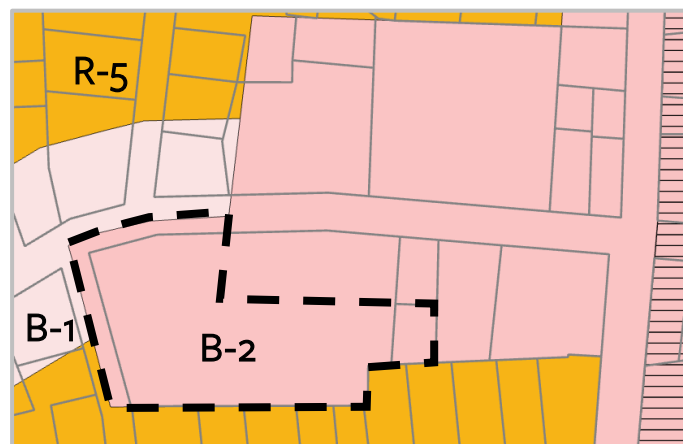


Figure 5: Proposed Zoning Map Amendment Boundary

The proposed rezoning to B-2 would not bring any existing properties into non-conformity and would result in 186 Woodford Street being brought into greater conformance with zoning. The B-2 zone is more permissive in regards to lot area, lot area per dwelling unit, height, and impervious surface ratio than the R-5

and B-1 zones and would allow single-family, two-family, and multi-family dwellings as a permitted use as well as several commercial uses.

IV. ZONING ANALYSIS

A. Overview of Zoning Purpose Statements Existing Versus Proposed Zoning

The area proposed to be rezoned includes property in the R-5 Residential zone, B-1 Neighborhood Business, and the B-2 Community Business zone. The purpose statement for each zone is listed below:

Existing zones:

R-5 Residential: *“to provide appropriate areas of the city for medium-density residential development characterized by single-family, two-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.”*

B-1 Neighborhood Business: *“To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. Uses that are complimentary, quiet, and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment are encouraged, and should be designed for the pedestrian scale and to provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. This zone encourages mixed-use buildings, such as commercial first floor with residential uses above or combined retail/office uses in a multi-story structure. The zone also provides the opportunity for high residential density. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.”*

B-2 Community Business: *“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. 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/B-1b zones. The zone provides a broad range of goods and services 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. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.”*

B. Discussion of Zoning Amendments

Use Analysis

Table 1 provides a comparison of the permitted uses between the existing and proposed zones. Uses marked with a ‘P’, are permitted uses in the zone. A ‘C’ indicates a conditional use, otherwise uses are not permitted. Overall, the proposed rezoning to B-2 would expand the allowance for multi-family dwellings in new and existing structures, provide allowances for intermediate and long-term care facilities, and allow for an increased number of low- to mid-intensity commercial uses. The location of the subject properties in a priority node aligns with the proposed mix and intensity of uses permitted in the B-2 zone.

Table 1 - Permitted Uses		R-5	B-1	B-2
Residential	Single-family dwellings	P	P	P
	Two-family dwellings	P	P	P
	Multi-family dwellings	C	P*	P
	Multiplex	P		
	Congregate care facilities		P	
	Handicapped family units	P		
	Special needs independent dwelling units	P		
	Combined living/working spaces		P	P
Institutional	Lodging houses	C	P	P
	Sheltered care group homes	C		
	Clinics		P	P
	Elementary, middle, and secondary schools	C	P	P
	Governmental uses	P	P	P
	Hospitals	C		
	Intermediate care facilities	C		P
	Long-term and extended care facilities	C		P
	Places of assembly (<10,000 sq. ft.)	C	P	P
	Places of assembly (>10,000 sq. ft.)	C		P
	Preschool facilities	C	P	P
	Post-secondary schools	C		P
Commercial/Service	Bed and breakfasts		P	P
	Adult business establishments			P
	Bars			P
	General offices (<5,000 sq. ft.)		P	P
	General offices (>5,000 sq. ft.)			P
	General services (<5,000 sq. ft.)		P	P
	General services (>5,000 sq. ft.)			P
	Hostels		P	
	Hotels			P
	Marijuana retail store			P
	Registered marijuana dispensary			P
	Restaurants		P	P
	Retail (<5,000 sq. ft.)		P	P
	Retail (5,000 – 25,000 sq. ft.)			P
	Retail (>25,000 sq. ft.)			P
	Small-scale marijuana caregiver			P
	Theaters and performance halls			P
	Veterinary services			P
Industrial	Communication studios			P
	Laboratory and research facilities			C
	Low-impact industrial (<10,000 sq. ft.)			P*
	Low-impact industrial (>10,000 sq. ft.)			P*
	Printing and publishing			C*
	Repair services			P

Other	Studios for artists and craftspeople		P	P
	Warehouse, storage, and distribution			C*
	Off-street parking	C		
	Parks and open spaces	P	P	P
	Solar energy system (minor)	P	P	P
	Utility substations	C	P	P
	Wind energy system (minor)			C

Dimensional Analysis

R-5 – Residential

The entirety of 182 Rear Woodford Street and the southern portion of 186 Woodford Street is zoned R-5 Residential. The R-5 zone limits residential density by requiring a minimum of 3,000 square feet of lot area per dwelling unit and further requires a minimum lot area of 5,000 to 6,000 square feet for residential uses. The maximum height in the R-5 zone is 35 feet and affordable housing height and density bonuses are not permitted. Several categorical exemptions to off-street parking minimums are permitted for development in the R-5 zone (e.g., Affordable housing, Multi-Family housing, Transit proximate development, and uses) and can be found in Table 19-B of the Land Use Code.

B-1 Neighborhood Business

Currently, the northwestern portion of 186 Woodford Street is in the B-1 Neighborhood Business Zone. The B-1 zone limits residential density by requiring a minimum of 1,000 square feet of lot area per dwelling unit, though affordable housing development within the zone is eligible to take advantage of density bonuses, which would allow for a reduction in the minimum lot area per dwelling unit requirement down to a minimum of 400 square feet per unit if 75% or more of the dwelling units were to be low-income units ($\leq 80\%$ of AMI for rental units and $\leq 100\%$ of AMI for ownership units).

Maximum heights in the B-1 zone are 35 feet and again, affordable housing development within the zone is eligible to take advantage of height bonuses up to 15 feet, if $\geq 50\%$ of units are low-income units or if 100% of units are workforce units ($\leq 80\%$ of AMI for rental and ownership units).

B-2 Community Business

Currently, the northeastern portion of 186 Woodford Street is in the B-2 (Neighborhood Business) Zone and the applicant is requesting that this zone be expanded to encompass the entirety of 186 Woodford Street. Additionally, Planning Staff and the Planning Board recommends including the adjacent 182 Woodford Street Rear parcel within the B-2 boundary. The B-2 zone requires a minimum of 1,000 square feet of lot area per dwelling unit or 435 square feet of lot area per dwelling unit if a building has an active street frontage, which is intended to incentivize the development of mixed-use buildings. Similar to the B-1 zone, density bonuses can be utilized to reduce the minimum lot area per dwelling unit requirement down to 400 square feet if 75% of dwelling units are low-income units ($\leq 80\%$ of AMI for rental units and $\leq 100\%$ of AMI for ownership units). Maximum heights in the B-2 zone are 45 feet (50 feet with a commercial ground floor use) though affordable housing height bonuses permit up to 25 feet of additional height if $\geq 50\%$ of units are low-income units, or if 100% of units are workforce units ($\leq 80\%$ of AMI for rental and ownership units). The former Parish Building would come into conformance for height at 50 feet.

Table 2 provides a comparison of the dimensional requirements for zones under consideration.

Table 2 - Dimensional Standards	R-5	B-1	B-2
Lot Size (min)	6,000 sq. ft. to 5 ac. (depending on use)	Place of Assembly: 10,000 sq. ft. School: 20,000 sq. ft.	
Density (lot area per dwelling unit)	3,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft. (435 sq. ft. if active street frontage)
Street Frontage (min)	50 ft.	20 ft.	20 ft.
Front Yard (min)	25 ft. (or average depth of adjacent yards)		
Front Yard (max)		10 ft., or average front yard depth of nearest developed lots if <10 ft.	10 ft.
Rear Yard (min)	20 ft.	10 ft. for principal & 5 ft. for accessory if abutting residential zone	Principal: 10 ft. Accessory: 5 ft.
Side Yard (min)	5-15 ft. (depending on height and location)	5 ft. if abutting residential zone	Accessory: 5 ft.
Stepbacks >35 ft. when abutting residential zone (min)		Side: 10 ft. Rear: 15 ft.	Side: 5 ft. Rear: 15 ft.
Lot Coverage (max)	40%		
Impervious Surface Ratio (max)		90%	Residential: None Other uses: 80%
Lot Width (min)	General: 60 ft. Multiplex: 90 ft.		
Building Height (max)	Principal: 35 ft. Accessory: 18 ft.	35 ft.	45 ft. (50 ft. if first floor is in commercial use)
Floor Area (max)		Restaurants (public area): 2,000 sq. ft. Clinics: 3,000 sq. ft. Non-residential uses on first floor: 10,000 sq. ft. total	Laboratory and research facilities & warehousing: 10,000 sq. ft.

Table 3 provides information from Table 18-C of the Land Use Code on Dimensional Bonuses for Eligible Affordable Housing Projects.

Table 3 - Dimensional Bonuses for Eligible Affordable Housing Projects

% Low-income Units	% Workforce Units	Density Permitted ¹	Additional Height Permitted	Setback Reductions ²
10%	20%	1.1 x base	N/A	N/A
20%	40%	1.2 x base	10 ft.	N/A
30%	60%	1.3 x base	10 ft.	15 ft.
50%	100%	2.0 x base	15 ft.	15 ft.
75%	N/A	2.5 x base	25 ft.	10 ft.

¹“Base” is the number of units allowed under the zoning without this bonus but with any other bonuses applied. If an eligible project is providing both workforce and affordable housing units, the applicant shall have the option of utilizing applicable incentives, but not cumulatively.

²Setback reductions are absolute reductions in front, side, and/or rear setback requirements.

V. COMPREHENSIVE PLAN CONSISTENCY

The intent of the proposed zoning map amendment is to facilitate the development of 186 Woodford Street for affordable housing and to rezone two lots within a priority node to encourage additional contextually appropriate housing density in an existing neighborhood center, with excellent access to services and public transit, a key priority identified in Portland’s Comprehensive Plan.

The zoning map amendment supports many of the goals expressed in Portland’s Comprehensive Plan *Portland’s Plan 2030* and the City’s Climate Action Plan *One Climate Future*. Additionally, the proposed zoning map amendment addresses several City Council goals, including the City Council’s 2023 Common goals, which include always using a lens that prioritizes housing, homelessness, and climate & sustainability.

The proposed zoning map amendment has the opportunity to support these goals by:

- Adopting sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation;
- Stabilizing and enhancing historic areas of the city by ensuring quality investment in existing structures and compatible infill development;
- Increasing, preserving, and modifying the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents;
- Encouraging additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods;
- Pursuing policies to enable people who work in Portland to have the option to live in Portland;
- Evaluating whether current zoning allows for new development consistent with historic patterns of form, density, and/or use, as well as whether it allows for priority growth areas;
- State Goal: To encourage and promote affordable, decent housing opportunities for all Maine citizens;



Figure 6: Portland Comprehensive Plan Vision Statement

- Coordinating linkages between accessible transportation and housing affordability;
- Encouraging rehabilitation of existing historic buildings and materials;
- Creating, promoting, and facilitating safe, affordable, and practical housing solutions that will meet the evolving needs of Portland residents as they age;
- Pursuing new opportunities for increased energy efficiency, increased densities, mixed incomes, and greater connectivity to surrounding neighborhoods;
- Future Land Use: Enhancing nodes. Enhance the area near Woodfords Corner as an area that has been studied and is awaiting or in the midst of plan implementation (pg. 84 comprehensive plan)

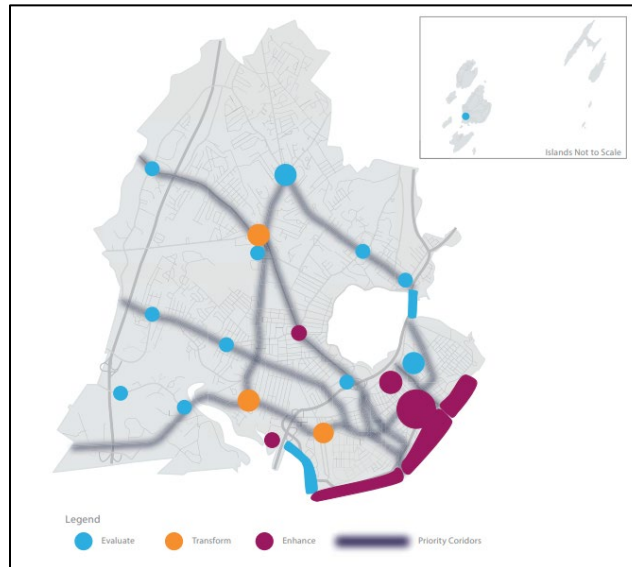
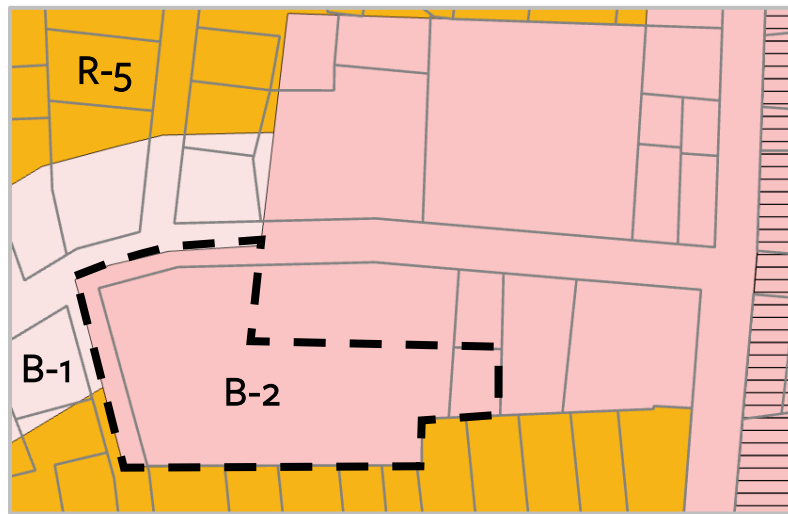


Figure 7: Portland's Plan 2030 Priority Nodes and Corridors Map

VI. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed Zoning Map Amendment at a public hearing on October 10, 2023. After deliberation, and on the basis of the staff report, public testimony, and review of applicable policies, the Planning Board voted unanimously 4-0 (Smith & Murphy Absent; Silk Recused) to find that the following zoning map amendment is consistent with the Comprehensive Plan and recommends adoption to the City Council:

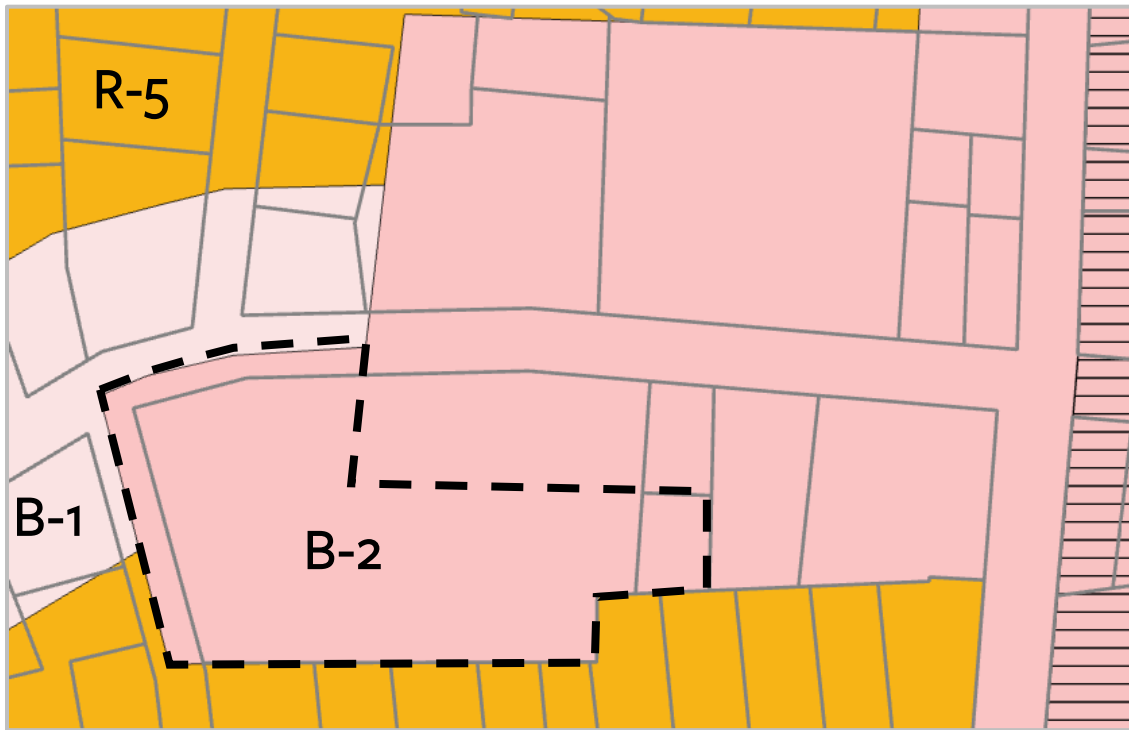
1. Zoning map amendment for the area of land as shown on the map below and that includes parcels CBLs 124 Jo05001 and 124 Jo21001 to be rezoned to B-2 Community Business zone.

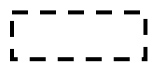


VII. ATTACHMENTS

- A. Zone Map Amendment – R-5, B-1, and B-2 to B-2
- B. Planning Board Report –October 10, 2023
- C. Applicant's Conceptual Site Plan

Attachment A – Proposed Area to be Rezoned | 186 Woodford Street & 182 Woodford Street Rear



 Rezoning Boundary

Planning Board Report

Planning & Urban Development

182 Rear & 186 Woodford Street
Zoning Map Amendment
ZN-002325-2023

Submitted to:	Portland Planning Board	Prepared By:	Zach Powell
Public Hearing Date:	October 10, 2023	Date:	October 6, 2023

I. INTRODUCTION

Community Housing of Maine (CHOM) has submitted a zoning map amendment application requesting to rezone property at 186 Woodford Street from R-5 Residential, B-1 Neighborhood Business & B-2 Community Business, to B-2 Community Business. The zoning map amendment would enable redevelopment of the eastern portion of the site, which is currently occupied by a surface parking lot, to affordable housing. While not under ownership of CHOM or proposed to be included as part of the proposed development, Planning Staff is recommending the inclusion of 182 Rear Woodford Street as part of the rezoning (Figure 1, outlined in green).



Figure 1: Aerial View of 182 Rear (Outlined in Green) and 186 (Outlined in Blue) Woodford Street

This application has been scheduled for a Planning Board Hearing without an initial Workshop. The Planning and Urban Development Department mailed 131 notices advertising this meeting to property owners within 500 feet of the site. A legal advertisement ran in the September 30, 2023 and October 3, 2023 editions of the *Portland Press Herald*.

Applicant: Community Housing of Maine (CHOM)
Authorized Agent: Peter Heil, Acorn Engineering

II. PROJECT DATA

Property Size	182 Rear Woodford Street: 4,203 square feet (0.1 acre) 186 Woodford Street: 83,934 square feet (1.93 acres)
Existing Zones	R-5 (Residential), B-1 (Neighborhood Business), B-2 (Community Business)
Existing Uses	General office (<5,000 sq. ft.), General services (<5,000 sq. ft.), Place of assembly, Surface parking lot
Proposed Zone	B-2 (Community Business)
Proposed Uses	General office (<5,000 sq. ft.), General services (<5,000 sq. ft.), Place of assembly, Residential, Surface parking lot

III. BACKGROUND & PROPOSED PROJECT

The property at 186 Woodford Street is an 83,934 square foot lot, and is the site of Woodfords Congregational Church. The property also leases space to A Company of Girls, Maine Council of Churches, Project Feed, and Stages Youth Theater. The property at 182 Rear Woodford Street is a 4,203 square foot undeveloped lot that is utilized for parking of the adjacent multi-family building at 180 Woodford Street.

The proposed zoning map amendment for 186 Woodford Street would facilitate CHOM's future plans to subdivide the lot into two parcels with the church and cloister remaining under the ownership of the Woodfords Congregation and the Parish House, and surface parking area under the ownership of CHOM. The development on the new parcel by CHOM proposes to retain the existing Parish House (shown in gray), demolish the rear ell, and construct a rear addition with a similar footprint to the current ell that would house 31 residential units. Along with the addition, the project proposes the construction of a new affordable housing building on the eastern portion of the site with 59 units.

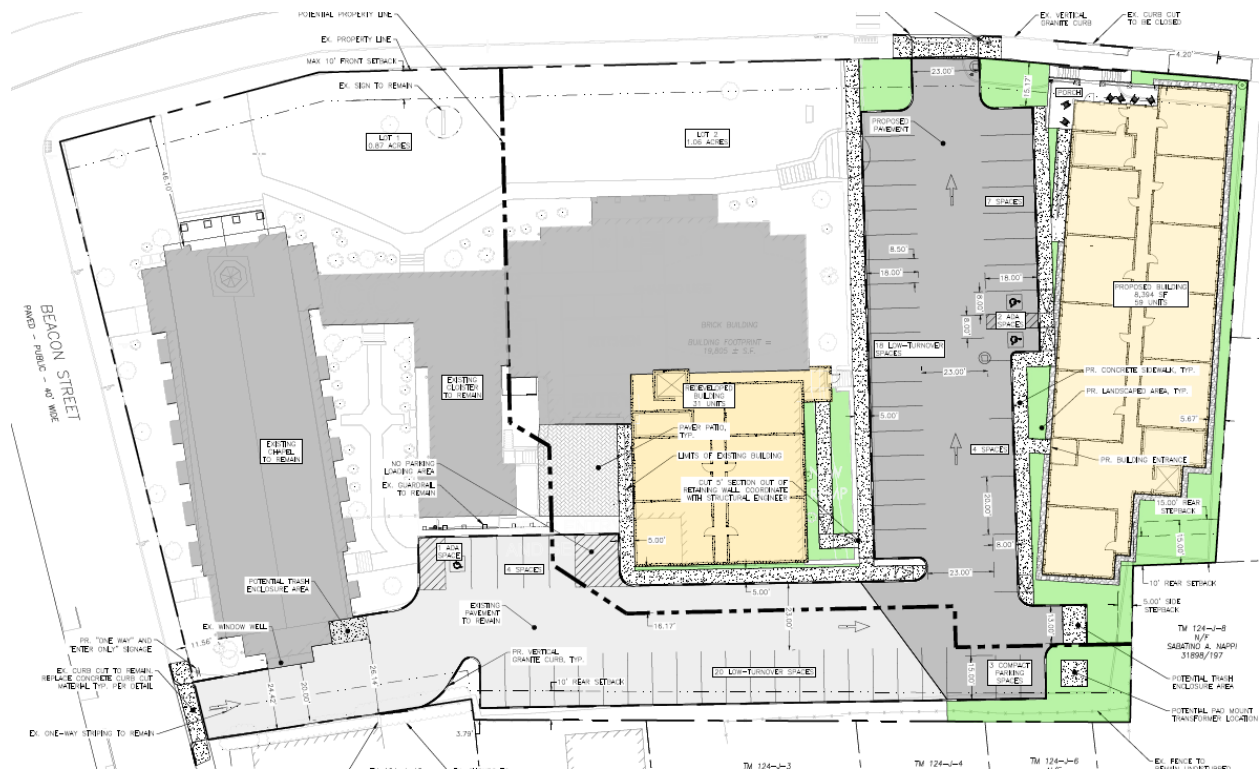


Figure 2: Conceptual Site Plan showing the redevelopment of the Parish building with 31 units (shown in the center) and construction of a new multi-family building with 59 units (shown on the right).

IV. EXISTING CONDITIONS AND SURROUNDING AREA

The proposed zoning map amendments include the Woodfords Congregational Church parcel at 186 Woodford Street (Chart 124, Block J, Lot 5001) and an undeveloped parcel at 182 Rear Woodford Street Cumberland Avenue (Chart 124, Block J, Lot 021001).

The property at 186 Woodford Street is bounded by Woodford Street (State Route 9) to the north and Beacon Street to the west. The site currently includes a General office (<5,000 sq. ft.) use (Maine Council of Churches), General services (<5,000 sq. ft.) use (Project Feed), Place of assembly uses (A Company of Girls, Stages Youth Theater & Woodfords Congregational Church), and an 83-space surface parking lot. The property at 182 Rear Woodford Street does not have street frontage and is an undeveloped parcel, but is

under common ownership with 180 Woodford Street. 180 Woodford Street has frontage along Woodford Street and improved with a multi-family building.

The surrounding area contains a mixture of residential, commercial, institutional, and light industrial uses. Two blocks to the east sits Woodford's Corner, which serves as a commercial node for the neighboring Back Cove, Rosemont, and Deering neighborhoods along Forest Avenue. Woodford Street includes a mixture of both commercial and residential uses. Lower-density residential uses are primarily located to the west and south whereas a greater mix of low- to mid-density residential, commercial, institutional, and light industrial uses are located to the north and east.



Figure 3: Route 2 Map (source: Greater Portland Metro)

The properties are an approximately one-minute walk from the METRO Route 2 line, which stops at Woodford's Corner every 30 minutes. The site is in close proximity to a neighborhood bikeway on Concord & Saunders Street and the Back Cove Shared Use Path (12-minute walk, 4-minute bike ride). The surrounding area is supported by a strong, connected pedestrian network with sidewalk facilities.

The southern portion of 186 & the entirety of 182 Rear Woodford Street are within the R-5 (Residential) zone, which extends south and southwest of the sites. The northeastern portion of 186 Woodford Street is zoned B-2

(Community Business) and northwestern portion is zoned B-1 (Neighborhood Business), with each zone respectively extending to the east and west.

V. PROPOSED MAP AMENDMENT

The applicant proposes a zoning map amendment to rezone 186 Woodford Street from R-5 (Residential), B-1 (Neighborhood Business), and B-2 (Community Business) completely to B-2. The proposed zoning map amendment will remove the existing split lot condition and will bring the Parish building into zoning conformity for height. Currently, the Church and Parish buildings are legally nonconforming in regards to height at 50 feet and 135 feet, respectively. With affordable housing density bonus allowances in the B-2 zone, rezoning this site would allow for renovations and increased density, facilitating affordable housing opportunities near a priority node and corridor identified in the Comprehensive Plan. The applicant's submittal (Plan 2) shows the proposed Zoning Map Amendment.

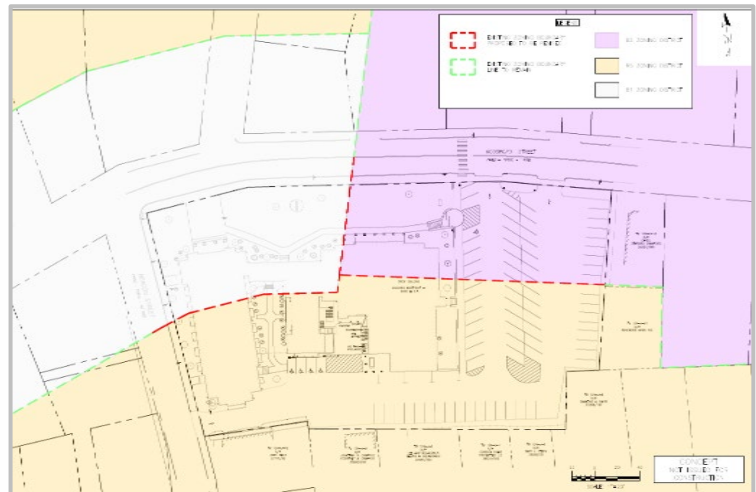


Figure 4: Existing Zoning with R-5 shown in yellow, B-1 in gray, and B-2 in purple.

VI. ZONING ANALYSIS

R-5 (Residential) Zone

The entirety of 182 Rear Woodford Street and the southern portion of 186 Woodford Street is zoned R-5 (Residential). The purpose of the R-5 zone is to:

“provide appropriate areas of the city for medium-density residential development characterized by single-family, two-family, and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversion; and to provide for planned residential unit development on substantially-sized parcels.”

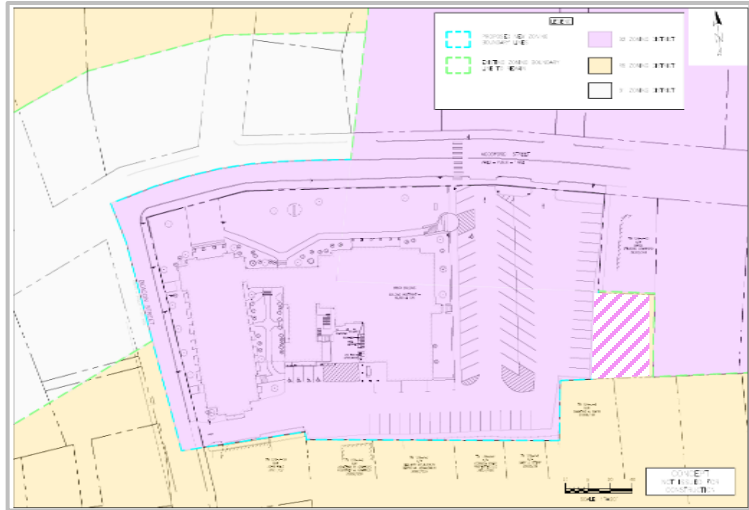


Figure 5: Proposed Zoning Map Amendment, with proposed amendment from Planning Staff to rezone 182 Rear Woodford Street to B-2 (Shown with diagonal stripes).

The R-5 zone limits residential density by requiring a minimum of 3,000 square feet of lot area per dwelling unit and further requires a minimum lot area of 5,000 to 6,000 square feet for residential uses. The maximum height in the R-5 zone is 35 feet and affordable housing height and density bonuses are not permitted. A number of categorical exemptions to off-street parking minimums are permitted for development in the R-5 zone (e.g., Affordable housing, Multi-Family housing, Transit proximate development and uses) and can be found in Table 19-B of the Land Use Code.

B-1 (Neighborhood Business) Zone

Currently, the northwestern portion of 186 Woodford Street is in the B-1 (Neighborhood Business) Zone. The purpose of the B-1 zone is to:

“provide limited areas for the location of small-scale commercial establishments intended to serve a local market. Uses that are complimentary, quiet, and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment are encourage, and should be designed for the pedestrian scale and to provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. This zone encourages mixed-use buildings, such as commercial first floor with residential uses above or combined retail/office uses in a multi-story structure. The zone also provides the opportunity for high residential density. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.”

The B-1 zone limits residential density by requiring a minimum of 1,000 square feet of lot area per dwelling unit, though affordable housing development within the zone is eligible to take advantage of density bonuses, which would allow for a reduction in the minimum lot area per dwelling unit requirement down to a minimum

of 400 square feet per unit, if 75% or more of the dwelling units were to be low-income units ($\leq 80\%$ of AMI for rental units and $\leq 100\%$ of AMI for ownership units).

Maximum heights in the B-1 zone are 35 feet and again, affordable housing development within the zone is eligible to take advantage of height bonuses up to 15 feet, if $\geq 50\%$ of units are low-income units or if 100% of units are workforce units ($\leq 80\%$ of AMI for rental and ownership units).

B-2 (Community Business) Zone

Currently, the northeastern portion of 186 Woodford Street is in the B-2 (Neighborhood Business) Zone and the applicant is requesting that this zone be expanded to encompass the entirety of both 182 Rear & 186 Woodford Street. The purpose of the B-2 zone is 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. 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/B-1b zones. The zone provides a broad range of goods and services 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 related to the surrounding neighborhoods by design, orientation, and circulation patterns. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.”

The B-2 zone requires a minimum of 1,000 square feet of lot area per dwelling unit. Similar to the B-1 zone, density bonuses can be utilized to reduce the minimum lot area per dwelling unit requirement down to 400 square feet if 75% of dwelling units are low-income units ($\leq 80\%$ of AMI for rental units and $\leq 100\%$ of AMI for ownership units). Maximum heights in the B-2 zone are 45 feet (50 feet with a commercial ground floor use) though affordable housing height bonuses permit up to 25 feet of additional height if $\geq 50\%$ of units are low-income units, or if 100% of units are workforce units ($\leq 80\%$ of AMI for rental and ownership units). The Parish Building would come into conformance for height at 50 feet.

Table 1 provides a comparison of the permitted uses for zones under consideration. Uses marked with a ‘P’ are permitted uses in the zone. A ‘C’ indicates a conditional use. Uses with an empty cell are not permitted in the zone. “**” indicates that other restrictions may apply.

Table 1 - Permitted Uses	R-5	B-1	B-2
Single-family dwellings	P	P	P
Two-family dwellings	P	P	P
Multi-family dwellings	C	P*	P
Multiplex	P		
Congregate care facilities		P	
Handicapped family units	P		
Special needs independent dwelling units	P		
Combined living/working spaces		P	P
Lodging houses	C	P	P
Sheltered care group homes	C		
Clinics		P	P

Elementary, middle, and secondary schools	C	P	P
Governmental uses	P	P	P
Hospitals	C		
Intermediate care facilities	C		P
Long-term and extended care facilities	C		P
Places of assembly (<10,000 sq. ft.)	C	P	P
Places of assembly (>10,000 sq. ft.)	C		P
Preschool facilities	C	P	P
Post-secondary schools	C		P
Bed and breakfasts		P	P
Adult business establishments			P
Bars			P
General offices (<5,000 sq. ft.)		P	P
General offices (>5,000 sq. ft.)			P
General services (<5,000 sq. ft.)		P	P
General services (>5,000 sq. ft.)			P
Hostels		P	
Hotels			P
Marijuana retail store			P
Registered marijuana dispensary			P
Restaurants		P	P
Retail (<5,000 sq. ft.)		P	P
Retail (5,000 – 25,000 sq. ft.)			P
Retail (>25,000 sq. ft.)			P
Small-scale marijuana caregiver			P
Theaters and performance halls			P
Veterinary services			P
Communication studios			P
Laboratory and research facilities			C
Low-impact industrial (<10,000 sq. ft.)			P*
Low-impact industrial (>10,000 sq. ft.)			P*
Printing and publishing			C*
Repair services			P
Studios for artists and craftspeople		P	P
Warehouse, storage, and distribution			C*
Off-street parking	C		
Parks and open spaces	P	P	P
Solar energy system (minor)	P	P	P
Utility substations	C	P	P
Wind energy system (minor)			C

Table 2 provides a comparison of the dimensional requirements for zones under consideration.

Table 2 - Dimensional Standards	R-5	B-1	B-2
Lot Size (min)	6,000 sq. ft. to 5 ac. (depending on use)	Place of Assembly: 10,000 sq. ft. School: 20,000 sq. ft.	
Density (lot area per dwelling unit)	3,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft. (435 sq. ft. if active street frontage)
Street Frontage (min)	50 ft.	20 ft.	20 ft.
Front Yard (min)	25 ft. (or average depth of adjacent yards)		
Front Yard (max)		10 ft., or average front yard depth of nearest developed lots if <10 ft.	10 ft.
Rear Yard (min)	20 ft.	10 ft. for principal & 5 ft. for accessory if abutting residential zone	Principal: 10 ft. Accessory: 5 ft.
Side Yard (min)	5-15 ft. (depending on height and location)	5 ft. if abutting residential zone	Accessory: 5 ft.
Stepbacks >35 ft. when abutting residential zone (min)		Side: 10 ft. Rear: 15 ft.	Side: 5 ft. Rear: 15 ft.
Lot Coverage (max)	40%		
Impervious Surface Ratio (max)		90%	Residential: None Other uses: 80%
Lot Width (min)	General: 60 ft. Multiplex: 90 ft.		
Building Height (max)	Principal: 35 ft. Accessory: 18 ft.	35 ft.	45 ft. (50 ft. if first floor is in commercial use)
Floor Area (max)		Restaurants (public area): 2,000 sq. ft. Clinics: 3,000 sq. ft. Non-residential uses on first floor: 10,000 sq. ft. total	Laboratory and research facilities & warehousing: 10,000 sq. ft.

Table 3 provides the information from Table 18-C of the Land Use Code on Dimensional Bonuses for Eligible Affordable Housing Projects.

Table 3 - Dimensional Bonuses for Eligible Affordable Housing Projects				
% Low-income Units	% Workforce Units	Density Permitted ¹	Additional Height Permitted	Setback Reductions ²
10%	20%	1.1 x base	N/A	N/A
20%	40%	1.2 x base	10 ft.	N/A
30%	60%	1.3 x base	10 ft.	15 ft.
50%	100%	2.0 x base	15 ft.	15 ft.
75%	N/A	2.5 x base	25 ft.	10 ft.

¹“Base” is the number of units allowed under the zoning without this bonus but with any other bonuses applied. If an eligible project is providing both workforce and affordable housing units, the applicant shall have the option of utilizing applicable incentives, but not cumulatively.

²Setback reductions are absolute reductions in front, side, and/or rear setback requirements.

VII. COMPREHENSIVE PLAN CONSISTENCY

Staff have identified that the map amendment aligns with Portland’s comprehensive plan, *Portland’s Plan 2030* by enhancing the ability for the applicant to rehabilitate and reuse existing historic structures on-site, facilitate future affordable housing development through infill of a surface parking lot, and provide housing opportunities within a multi-modal urban context. In addition, the map amendment would foster sustainable growth by providing contextually appropriate housing density in and approximate to Woodfords Corner; a priority node for the City with a concentration of services and amenities, and convenient access to transit; attributes which together make Woodfords Corner one of the most complete neighborhoods in Portland.

Relevant Comprehensive Plan goals and objectives include:

Environmental:

Support Sustainable Land Use & Transportation Policies

“Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.”

Historic Resources:

Local Goal

“Stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development.”

Housing:

Local Goals

“Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents”

“Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.”

“Pursue policies to enable people who work in Portland to have the option to live in Portland.”

Strategies

Remove Housing Barriers

“Evaluate whether current zoning allows for new development consistent with historic patterns of form, density, and/or use, as well as whether it allows for priority growth areas.”

“Coordinate linkages between accessible transportation and housing affordability.”

Promote Sustainability

“Encourage rehabilitation of existing historic buildings and materials.”

Support Age-Friendly Housing Options

“Create, promote, and facilitate safe, affordable, and practical housing solutions that will meet the evolving needs of Portland residents as they age.”

Adapt Affordable Housing

“Pursue new opportunities for increased energy efficiency, increased densities, mixed incomes, and greater connectivity to surrounding neighborhoods.”

Future Land Use:

Priority Nodes & Corridors

“Priority nodes and corridors indicate areas that would be appropriate for new development to provide needed housing, businesses, and services proximate to transit, or areas that otherwise warrant some examination of potential for positive change in form and/or function.”

VIII. NEIGHBORHOOD MEETING & PUBLIC COMMENT

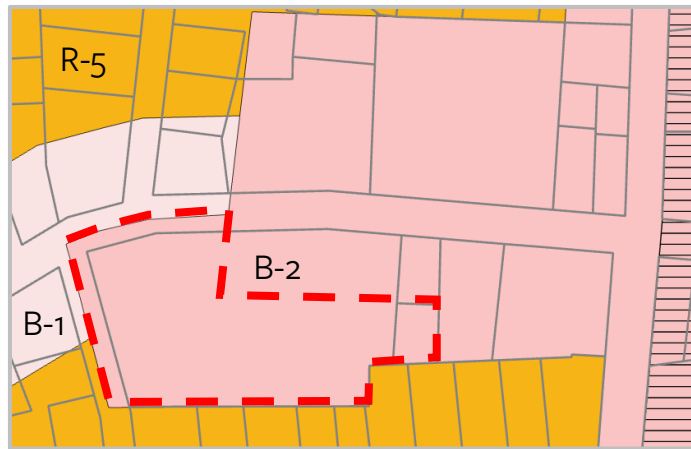
No public comment has been submitted. The Applicant held a neighborhood meeting on September 20, 2023 and was attended by 17 people. Comments at the neighborhood meeting primarily focused on changes to the surface parking, project schedules, and dwelling unit characteristics.

IX. REQUISITE COUNCIL ACTION

Any proposed rezoning, regardless of whether it is recommended by the Planning Board, must be approved by City Council vote in order to take effect.

X. PROPOSED MOTION

1. On the basis of materials submitted by the applicant, the City of Portland Land Use Code, Portland’s Comprehensive Plan, public comment, and the information provided in the public hearing on October 10, 2023 for the application ZN-002325-2023 (182 Rear & 186 Woodford Street), and/or other findings, the Planning Board finds that the proposed zoning map amendment **[is/is not]** consistent with the Comprehensive Plan for the city of Portland; and therefore, the Planning Board **[recommends/does not recommend]** to the City Council adoption of the Zoning Map amendment for the area of land that includes 182 Rear & 186 Woodford Street as shown below:



XI. ATTACHMENTS

APPLICANT SUBMITTAL

- A. Project Summary
- B. Consistency with Comprehensive Plan
- C. Checklist
- D. Right, Title, & Interest
- E. September 20, 2023 Neighborhood Meeting Materials

PLANS

- Plan 1. Vicinity Map
- Plan 2. Existing and Proposed Zoning Maps
- Plan 3. Conceptual Site Plan

	UNITS	SPACES REQUIRED	EXISTING	PROPOSED
MULTIFAMILY	90	1 SPACE PER DWELLING UNIT = 90 SPACES*		—
PLACES OF ASSEMBLY	APPROX. 5,200SF FLOOR AREA	1 SPACE PER 150 SF OF FLOOR AREA = 35 SPACES		
ADA (8'x18')	—	—	5	3
STANDARD (9'x18')	—	—	16	11
LOW TURNOVER (8.5' x 18')	—	—	0	38
COMPACT (8' x 15')	—	—		3
PARALLEL (8' x 20')	—	—	3	4
ANGLED 60° (9' x 18')	—	—	59	0
TOTAL SPACES	—	125*	83	60*

* PER THE CITY OF PORTLAND LAND USE CODE, TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS.

1. NO OFF STREET PARKING SHALL BE REQUIRED FOR NON RESIDENTIAL USES IN THE B-2 ZONE.
2. NO OFF-STREET PARKING SHALL BE REQUIRED WITHIN 1/4 MILE OF FIXED ROUTE TRANSIT SERVICE, NEW USES OR CHANGES OF USE OF MORE THAN 10,000 SF TAKING ADVANTAGE OF THIS EXCEPTION SHALL BE REQUIRED TO PROVIDE A TRANSPORTATION DEMAND MANAGEMENT PLAN IF THEY USE THIS PROVISION IN LIEU OF PARKING REQUIREMENTS.
3. AFFORDABLE HOUSING: THE PLANNING BOARD MAY ESTABLISH A PARKING REQUIREMENT WITHIN THAT IS LESS THAN 1 SPACE PER AFFORDABLE HOUSING UNIT REGARDLESS OF SIZE OF STRUCTURE

-
- WOODFORD STREET AFFORDABLE HOUSING**
- 186 WOODFORD STREET, PORTLAND, ME 04104**
- CLIENT: ONE CITY CENTER, 4TH FLOOR, PORTLAND, ME 04104**
- DRAWING NAME: SITE PLAN**
- PROJECT NAME: WOODFORD STREET AFFORDABLE HOUSING**
- ACORN ENGINEERING, INC.**
- ENGINEERING, INC.**
- FILE: 1200_CIVL**
- JN: 1200**
- SCALE: AS NOTED**
- DESIGNED BY: PFH**
- DRAWN BY: DSH**
- CHECKED BY: WHS**
- DRAWING NO. C-10**
- CONCEPT NOT ISSUED FOR CONSTRUCTION**
- SCALE: 1"=20'**

MEMORANDUM
City Council Agenda Item

FROM:

DATE: November 30, 2023

SUBJECT: Order 85-23/24 Amendment to Portland City Code Chapter 14 Re: Conformance with LD 2003 - Sponsored by the Planning Board, Brandon Mazer, Chair

SPONSOR: Brandon Mazer, Chair, City of Portland Planning Board

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 11/13/2023

Final

Action 11/20/2023

Can action be taken at a later date: No The implementation deadline for LD 2003 is January 1, 2024.

Does this item involve a new contract with the City: No

PRESENTATION: Brandon Mazer, Chair Planning Board; Christine Grimando, Director – Planning & Urban Development; Christine Grimando, Director – Planning & Urban Development (5 minutes)

I. SUMMARY

The Planning Board has unanimously (7-0) recommended a set of zoning text amendments to Articles 3, 6, 7, 18, and 19 of the land use code to the City Council to comply with the requirements of LD 2003, or *An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*.

II. AGENDA DESCRIPTION

On October 24, 2023, the Planning Board unanimously recommended a set of zoning text amendments to the City Council (7-0) to comply with the requirements of LD 2003.

LD 2003, or *An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, was signed into law in April 2022. The law's intent is to remove local regulatory barriers to housing production in Maine by requiring that municipalities adopt standards around affordable housing, residential uses, and accessory dwelling units within their local codes of ordinances. State rule-making was published in April 2023, and the law was amended in June 2023 to provide additional clarity around certain provisions.

The implementation deadline for communities in which ordinances may be enacted by municipal officers is January 1, 2024. The proposed amendments as recommended by the Planning Board include changes to Articles 3, 6, 7, 18, and 19 of the city's land use code.

This item must be read on two separate days. It received its first reading on December 4, 2023. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

In March of this year, the Planning & Urban Development Department provided the City Council with a report on the consistency of the city's existing land use code with LD 2003. This and subsequent analysis has found that in nearly all respects, the city's current policies already comply. Portland, whose comprehensive plan foregrounds the importance of housing affordability, housing production, and the need for diverse housing

types, benefits from a land use code that far exceeds the requirements of LD 2003 in many ways, due to over a decade of housing policy changes in support of housing creation. The city's code currently:

- Offers density bonuses (and dimensional relief) for affordable housing projects,
- Allows up to two ADUs for any lot in residential use, and
- Supports significantly more density than required or contemplated by LD 2003 in many areas of the city.

However, there are instances where the city's code approaches these issues in slightly different ways than contemplated by LD 2003, and guidance published since the spring and summer of this year has provided helpful information about expectations for implementation. Amendments to reconcile inconsistencies between LD 2003 and the city's land use code, where they exist, are presented here as recommended by the Planning Board.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The amendments as recommended by the Planning Board will bring the city into compliance with the requirements of LD 2003.

V. FINANCIAL IMPACT

The recommended amendments will have no immediate financial impact on the City.

VI. STAFF ANALYSIS AND BACKGROUND

A report on the recommended text amendments is included as part of the City Council packet.

VII. RECOMMENDATION

The Planning Board considered the proposed amendments at a public hearing on October 24, 2023. On the basis of the City of Portland Land Use Code, Portland's Comprehensive Plan, public comment, and the information provided in the public hearing on October 24, 2023, the Planning Board voted 7-0 to find that the enclosed text amendments to Chapter 14 of the City Code, Articles 3, 6, 7, 18, and 19 bring the Land Use Code into consistency with the requirements of LD 2003, are in conformance with the City of Portland Comprehensive Plan, and therefore recommends approval of the proposed zoning amendments to the City Council.

VIII. LIST ATTACHMENTS

1. Ch. 14 Chapter 14 Re Conformance to LD 2003 12.04.2023
2. LD 2003 City Council Hearing Report & Attachments
3. LD 2003_Council Presentation_Final
4. Rodriguez Amendment1 Order 85 12.18.2023
5. Rodriguez Amendment 2 Order 85 12.18.2023
6. Rodriguez Amendment 3 Order 85 12.18.2023
7. Rodriguez Amendment 4 Order 85 12.18.2023
8. Public Comment - Order 85

Prepared by:

Date: 11/30/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: CONFORMANCE WITH LD 2003**

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

*That Chapter 14, Sections 3, 6, 7, 18 and 19 are hereby
amended to read as follows, on the following pages:*

3 DEFINITIONS

Accessory dwelling unit. A dwelling unit subordinate in size to the principal residential structure(s) on a lot and located either within the principal residential structure(s) or in an accessory structure.

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S. §§ 2911, 2912.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses (including utilities such as electric, heat, water, sewer, and/or trash that the household pays separately from rent) or must pay in ownership cost (including but not limited to monthly mortgage payments, (including condominium/HOA fees, mortgage insurance, other insurance, and real estate taxes), does not exceed 30% of a household’s income, or other amount

established in City regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. The practice of farming, including the cultivation of the soil for the growing of crops and rearing of animals to provide food and other products. Agriculture may include nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises.

Airport restricted access areas. Runways, taxiways, and other areas of the Jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building.



use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marina. A commercial operation providing floats, slips, and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Military personnel berthing. A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multi-family development. The construction or creation of three or more dwelling units on any parcel of land or the addition of two or more dwelling units cumulatively within a three-year period.

~~**Multiplex.** A residential development consisting of three or more horizontally or vertically attached~~

~~dwelling units, or a series of such attached dwelling units, and the construction of at least one building.~~

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and services, usually owned and operated by a public or nonprofit group or agency. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

6 USE STANDARDS

6.1 APPLICABILITY

The use of buildings, structures, and land are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

6.2 DETERMINATION OF USE

6.2.1 Use tables

Tables 6-A to 6-F shall determine if a use is permitted (●), conditional (◐), or not permitted (◑), as a principal use within a zone. Unless otherwise noted, where a use is listed in terms of square footage, square footage figures shall correspond to the total floor area of the use.

6.2.2 Unlisted uses

- A. Uses not expressly listed as permitted or conditional in Tables 6-A to 6-F are prohibited as principal uses except that a use may be permitted subject to meeting the following performance-based standards:
 - 1. The proposed use is consistent with the purposes of the zone.
 - 2. The proposed use is closely related to a permitted or conditional use in terms of character, scale, and external impacts.
 - 3. The buildings and structures associated with the proposed use are designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of

neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts.

- B. The review authority shall determine whether the uses not listed as permitted or conditional uses meet the above standards. If it is determined that the use does not meet the above criteria, it shall not be permitted.
- C. The review authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a permitted or conditional use.

6.2.3 Multiple uses

A site may contain more than one principal use, so long as each principal use is allowed within the zone.

6.3 CHANGE OF USE

A change of use from one use in these tables to another is governed by the requirements of the new use. The use of any part of any building, structure, or property shall not be changed to any other use, whether principal or accessory and whether alterations in the building, structure, or property are involved or not, until a permit and certificate of occupancy authorizing such change of use has first been secured from the Building Authority in accordance with Chapter 6 of the City of Portland Code of Ordinances.

TABLE 6-A: PERMITTED AND CONDITIONAL USES IN RESIDENTIAL ZONES

		R-1	R-2	R-3	R-4	R-5/R-5a	R-6/R-6a	Use Standards
Residential	Single-family dwellings	●	●	●	●	●	●	
	Two-family dwellings				●	●	●	6.4.2
	Multi-family dwellings			○		○ ¹ /● ²	●	6.4.2, 6.5.6(G)
	Multiplex				○	● ⁺		6.4.12
	Congregate care facilities					● ²		
	Handicapped family units	●	●	●	●	●	●	
	Planned Residential Unit Developments			● ⁴		● ⁴		
	Special needs independent dwelling units				●	● ¹	●	
	Lodging houses					○ ^{1,3}	●	6.4.10 9
	Sheltered care group homes	○	○	○	○	○	○	6.5.6(K)
Institutional	Elementary, middle, and secondary schools	○	○	○	○	○ ¹	○	6.5.6(F)
	Governmental uses	●	●	●	●	●	●	
	Hospitals			○		○ ¹	○	
	Intermediate care facilities	○	○	○		○ ¹ /● ²	○	
	Long-term and extended care facilities	○	○	○		○ ¹ /● ²	○	6.5.6(F)
	Places of assembly (<10,000 SF)	○	○	○	○	○	○	
	Places of assembly (>10,000 SF)	○	○	○	○	○	○	
	Preschool facilities	○	○	○	○	○	○	6.5.6(I)
	Post-secondary schools		○			○ ¹	○	6.5.6(F)
	Bed and breakfasts						●/○ ⁵	6.4.5 4
Comm.	General offices (<5,000 SF)						○	6.5.6(C)
	Hostels						●/○ ⁶	6.4.9 8
	Agriculture	●	●					
Other	Cemeteries	○	○		●		●	
	Off-street parking			○	○	○ ¹	○	6.5.6(H)
	Parks and open spaces	●	●	●	●	●	●	
	Raising of domesticated animals	○						6.5.6(J)
	Solar energy system (minor)	●	●	●	●	●	●	6.4.16
	Utility substations	○	○	○	○	○	○	6.5.6(L)

¹ In the R-5 zone only.

² In the R-5a zone only.

³ Conversions of existing two-family or multiplex structures into lodging houses are permitted as a conditional use, provided that the lodging house shall not be located within 500 ft. of another as measured along street lines.

⁴ Must consist of horizontally or vertically attached dwelling units, or a series of such dwelling units, with all land owned and used in common. PRUDs shall be subject to review and approval by the Planning Board under Article 15.

⁵ Permitted if a conversion of a structure existing as of 3/3/97 to up to four guest rooms and conditional if a conversion of the same to five to nine rooms.

⁶ Permitted if for no more than 10 overnight transient guests and conditional if for between 11 and 20 overnight transient guests. An owner, manager, or operator shall be a permanent resident of the building.

TABLE 6-B: PERMITTED AND CONDITIONAL USES IN ISLAND ZONES

	IR-1	IR-2	IR-3 ¹	I-B	Use Standards
Residential	Single-family dwellings	●	● ²	●	
	Two-family dwellings			○	6.4.2,
	Multi-family dwellings			○	6.5.6(G)
	Handicapped family unit	●	●	●	
	Planned Residential Unit Developments	●	●		
	Lodging houses		○ ³	● ³	
Institutional	Elementary, middle, and secondary schools	○	○	○	
	Educational facilities (including seasonal camps)	○	○		
	Governmental uses	○	○	○	6.5.6(F) ⁶
	Places of assembly (<10,000 SF)	○	○	○	
	Places of assembly (>10,000 SF)	○	○	○	
	Preschool facilities	○	○	○	6.5.6(I)
Commercial/Service	Auto service stations			○	6.5.6(A)
	Bed and breakfasts			● ⁴	
	General services (<5,000 SF)			●	
	Hotels		● ⁵	○ ⁵	
	Restaurants		●	●	
	Retail (<10,000 SF)		●	●	
Other	Studios for artists and craftspeople			●	
	Agriculture	●			
	Boathouses and storehouses for fishing equipment	●	●	●	
	Campgrounds	○	●		6.4.6 5
	Cemeteries	○	○		
	Marinas and yacht clubs		●	●	
	Off-street parking			●	
	Parks and open spaces	●	●	●	
	Raising of domesticated animals	○			6.5.6(J)
	Solar energy system (minor)	●	●	●	6.4.16
	Utility substations	○	○	●	6.5.6(L)
	Wharves, piers, docks, and landing ramps	○	○	●	

¹ All uses within the IR-3 permitted only within a PUD with a minimum total area of 20 acres of contiguous land subject to the standards of Subsection 6.4.14.

² Single-family attached permitted provided that new construction shall be limited to no more than six attached dwellings per building.

³ With greater than two but no more than nine rooming units.

⁴ Permitted on Peaks Island only.

⁵ Maximum 50 rooms.

⁶ The standards of Subsection 6.5.6(F) shall not apply to institutional uses within the I-B zone. In the IR-1 and IR-2 ones, institutional uses are subject to the standards of Subsection 6.5.6(F) only if the total land area of the use is two acres or more.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

	B-1/B-1b	B-2/B-2b/ B-2c	B-3/B-3b/ B-3c ¹¹	B-4	B-5/ B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●		●	●	●	
	Two-family dwellings	●	●		●	●	●	
	Multi-family dwellings	● ¹	●		●	●	●	
	Congregate care facilities		●					
	Handicapped family units		●		●	●	●	
	Combined living/working spaces	●	●		●	●	●	
Institutional	Lodging houses	● ²	●	●	●		●	6.4.109
	Clinics	● ²	●		●		●	
	Cultural facilities			●	●	●	●	
	Elementary, middle, and secondary schools	● ²	●	●	●	●	●	
	Emergency shelters			○	○			6.5.6(B)
	Governmental uses	● ²	●	●	●		●	
	Intermediate care facilities		●	●				
	Long-term and extended care facilities		●					
	Places of assembly (< 10,000 SF)	● ²	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	
	Preschool facilities	● ²	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	
	Adult business establishments		● ³					6.4.32
	Auto, boat, and related dealerships		○	●				6.5.6(A)
Commercial /Service	Auto service stations		○ ⁴	●	●			6.5.6(A)
	Bars		● ⁵	●	●	●	●	6.4.43
	Bed and breakfasts	●	●	●			●	6.4.54
	Exhibition, meeting, and convention halls		●		●	○	●	
	Funeral homes		●	●				
	General offices (<5,000 SF)	● ²	●	●	●	●	●	6.4.76
	General offices (>5,000 SF)		●	●	●	●	●	
	General services (<5,000 SF)	● ²	●	●	●	●	●	6.4.76
	General services (>5,000 SF)		●	●	●	●	●	
	Hostels	●	●		●		●	6.4.76, 6.4.89
	Hotels		●	●	●	● ¹³	●	
	Marijuana retail store	●/○ ⁶	●	●			●	6.4.110
	Recreation and amusement centers			●	●		●	
	Registered marijuana dispensary		●/○ ⁶	●			●	6.4.110
	Restaurants	● ²	●	●	●	●	●	6.4.43, 6.4.76
	Retail (< 5,000 SF)	● ²	●	●	●	●	●	6.4.76, 6.4.15
	Retail (5,000 – 25,000 SF)		●	●	●	●	●	6.4.15

TABLE 6-C (CONT.): PERMITTED AND CONDITIONAL USES IN MIXED USE ZONES

	B-1/B-1b	B-2/B-2b/ B-2c	B-3/B-3b/ B-3c ¹¹	B-4	B-5/ B-5b	B-6	B-7	Use Standards
		●	●	●	●	●	●	6.4.15
		●	●	●			●	6.4.11 ⊖
		●	●	●	●	●	●	
		●		●			●	
		●	●	●	●	●	●	
		● ⁷		●				
							ⓘ	6.5.6(D)
					●	●	●	
		ⓘ		●		ⓘ	●	6.5.6(E)
		● ⁸	ⓘ	●	●	●	● ⁸	6.5.6(E)
		● ⁸		●	ⓘ			
				●				
				●				6.4.11 ⊖
				●				
		ⓘ ⁹	●	●	●	●	ⓘ	
		●	●	●	●	●	●	
	● ²	●	●	●	●	●	●	
				●				6.4.17
		ⓘ ¹⁰	ⓘ ¹⁰	●	● ¹⁰	ⓘ ^{10, 14}	ⓘ ^{10, 14}	6.5.6(E)
					●	●		6.4.12 ⁺
				●				6.4.8 7
			●/ⓘ ¹²		●	ⓘ	ⓘ	6.5.6(H)
	●	●	●	●	●	●	●	
	●	●	●	●	●	●	●	6.4.16
				ⓘ				
	●	●	ⓘ	●	●	●	ⓘ	6.5.6(L)
		ⓘ	ⓘ	ⓘ	ⓘ	ⓘ	ⓘ	6.4.18

¹ Permitted if permitted in the adjacent or nearest residential zone. In other cases, permitted if located above first floor commercial, or on first floor where a minimum depth of 25 ft. along the principal frontage is maintained for commercial use.

² Permitted on the ground floor only in the B-1b zone.

³ Permitted in the B-2 and B-3 zones only.

⁴ Permitted as a conditional use in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in the B-2b and B-2c zones.

⁵ Not permitted in the B-2c and B-3c zones.

⁶ Permitted in the B-2 zone. Conditional in the B-2b and B-2c.

⁷ Permitted only if an expansion of an existing dairy.

⁸ Permitted with a retail component only. Low-impact industrial uses greater than 10,000 SF are permitted in the B-2 only.

⁹ Printing and publishing of 10,000 SF or less, or expansion of printing and publishing establishments greater than 10,000 SF in existence as of 4/4/88, shall be treated as a conditional use.

¹⁰ Permitted in the B-2/B-2b/B-2c as a conditional use if 10,000 SF or less. Self-storage permitted in the B-4 zone. Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage permitted as a conditional use in the B-3 zone in buildings existing as of 1/1/1995; the area of the building dedicated to self-storage shall not exceed 30% of the total building area and may not be located directly adjacent to or facing a public right-of-way. Self-storage not permitted in the B-2/B-2b/B-2c, B-6, and B-7 zones.

¹¹ See PAD Overlay for additional use regulations.

¹² Structured parking shall be permitted. Surface parking shall be treated as a conditional use.

¹³ Hotels shall be limited to no more than 150 rooms.

¹⁴ Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment and occupies less than 15,000 SF.

TABLE 6-D: PERMITTED AND CONDITIONAL USES IN OFFICE PARK & RESIDENCE PROFESSIONAL ZONES

	OP ¹	R-P ²	Use Standards
Any residential use permitted in the nearest residential zone		●	
Preschool facilities	●	①	6.5.6(I)
Funeral homes		●	
General offices	●	●	
High tech manufacturing	①		6.5.6(D)
Laboratory and research facilities	●		
Printing and publishing	●		
Studios for artists and craftspeople		●	
Parks and open space	●	●	
Solar energy system (minor)	●	●	6.4.16
Utility substations		●	
Wind energy system (minor)	①		6.4.18

¹ All permitted and conditional uses in the O-P zone, with the exception of parks and open spaces, solar energy systems, and wind energy systems, shall be allowed only within an office park of at least three acres of contiguous land subject to the standards of Subsection 6.4.13.

² Any conditional use that is permitted as a conditional use in the nearest residential zone shall be permitted as a conditional use in the R-P zone. All conditional use standards of the residential zone shall apply.

TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ⁷	Use Standards
Institutional	Airports				● ⁸	
	Preschool facilities	●	●			
	Emergency shelters	●	●	●		6.5.6(B)
	Intermediate care facilities		● ⁴			
	Places of assembly (<10,000 SF)	●				
Commercial/Services	Bars				●	
	General offices (<5,000 SF)	● ¹	●			
	General offices (>5,000 SF)	● ¹	●			
	General services (<5,000 SF)				●	
	General services (>5,000 SF)				●	
	Hotels				●	
	Recreation and amusement centers	●	●			
	Repair services	●	●	●		
	Restaurants				●	
	Animal-related services	● ²				
	Construction & engineering services	●	●	●		
	Dairies	●	●	●		
	Fish waste processing			●		
	Food & seafood processing, packing, and distribution		●	●		
	High-impact industrial uses			●		
	Intermodal transportation facilities	●	●	●		
	Laboratory and research facilities	●	●	●		
	Low-impact industrial	●	●	●		
	Lumber yards	●	●	●		
	Marijuana cultivation facility (<2,000 SF plant canopy)	●	●	●		
	Marijuana cultivation facility (2,000-7,000 SF plant canopy)		●	●		
Industrial	Marijuana cultivation facility (>7,000 SF plant canopy)			●		6.4.10 ¹¹
	Marijuana manufacturing facility	●	●	●		
	Marijuana testing facility	●	●	●		
	Printing and publishing	●	●	●		
	Recycling and solid waste disposal facilities		● ⁵	● ⁵		
	Studios for artists and craftspeople	●	●			
	Telecommunication towers (ground-mounted)		●	●		
	Tow lots		●	●		6.4.17
	Warehousing, storage, and distribution facilities	● ³	●	●		

TABLE 6-E (CONT.): PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ⁷	Use Standards
	Correctional pre-release facilities		● ⁶	● ⁶		6.4.7 8
	Marinas	●				
	Off-street parking				●	
Other	Solar energy system (minor)	●	●	●	●	6.4.16
	Solar energy system (major)		●	●	ⓘ	
	Utility substations	●	●	●		
	Wind energy system (minor)	ⓘ	●	●	●	6.4.18
	Wind energy system (major)		●	●	ⓘ	

¹ Only back office uses permitted.

² Not including kennel or boarding facilities.

³ Must be less than 10,000 SF in floor area. No outdoor storage permitted. Self-storage not permitted in the I-L/I-Lb zone.

⁴ Permitted in existing structures not designed for industrial, amusement, warehouse or manufacturing uses as of 9/15/14 or later. Such structures may be reused or expanded to establish a facility of no more than 30 persons plus staff.

⁵ Permitted within an enclosed structure only.

⁶ Not permitted in the I-Ma, I-Mb, or I-Hb zones.

⁷ Permitted uses on lots within airport restricted access areas shall be limited to those which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.

⁸ Including airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

TABLE 6-F: PERMITTED AND CONDITIONAL USES IN RECREATION OPEN SPACE ZONE

	R-OS ¹	Use Standards
Cemeteries	●	
Marinas	●	
Parks and open space	● ²	
Solar energy system (minor)	ⓘ	6.4.16, 6.5.7(A)
Solar energy system (major)	ⓘ	
Utility substations	●/ⓘ ³	6.5.6.L, 6.5.7(A)
Wharves, piers, docks, and landing ramps	●	
Wind energy system (minor)	ⓘ	6.4.18, 6.5.7(A)
Wind energy system (major)	ⓘ	

¹ Accessory uses within structures of 2,500 SF or more shall be treated as a conditional use under Subsection 6.5.7(A).

² Including active recreational uses, such as playgrounds, golf courses, fields, pools, courts, community gardens, marinas, and sports complexes and passive uses, such as arboretums and picnic areas.

³ Sewage pumping and treatment facilities shall be permitted. Water pumping stations shall be treated as a conditional use under Subsection 6.5.7.

6.4 SUPPLEMENTAL USE STANDARDS

The following standards shall apply to the following uses as indicated in Tables 6-A to 6-F, whether permitted or conditional.

6.4.1 In general

A. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than 35 feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this subsection. For purposes of this subsection, street shall be as defined in Article 3, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any

lot abutting such street shall, without compensation or claim for damages, and at his or her own cost and expense, first submit to the Building Authority:

1. A deed from the owner of such lot conveying to the City all his or her right, title, and interest in and to such street or any portion thereof.
2. An agreement by such owner forever releasing the City from any and all claims for damages for the laying out and taking of such street and indemnifying the City against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the Corporation Counsel and to encumber and run with the land.

B. For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such

portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the City of Portland *Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority.
2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the City as set forth under Articles 14 and 15. Also as set forth in Articles 14 and 15, a one-year defect bond shall be tendered to the City prior to release of the performance guarantee required hereby. The provisions of this paragraph (2) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her

intention under oath to make the structure his or her personal residence.

- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
 1. Dingley Court.
 2. Morgan Court.

6.4.2 Additional residential use permissions

A. In island zones: Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is demolished and a vacant lot results.

D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:

1. Up to two additional dwelling units are permitted on any lawfully conforming lot containing one existing dwelling unit.
2. Such units may be located:
 - i. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
 - ii. Within or attached to the existing structure, in which case the lot area per dwelling unit standards of Article 7 shall not apply.
3. Units created under this section shall not be considered accessory dwelling units under Section 6.6.2(A).

6-4-26.4.3 Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6-4-36.4.4 Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street.
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 a.m. and 11 p.m. each day and food service and consumption shall be the primary function of the restaurant.

6-4-46.4.5 Bed and breakfasts

- A. In the R-6 and R-6a zones, the minimum gross floor area for bed and breakfasts shall be 2,000 square feet for the first three guest rooms and 500 square feet for each additional guest room.
- B. In all mixed-use zones except the B-1/B-1b zones, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
 1. *In the B-2/B-2b/B-2c zones.* The meeting facility must be less than 4,000 square feet.
 2. *In the B-3/B-3b/B-3c zones.* The building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 square feet in floor area on that date.

6-4-56.4.6 Campgrounds

- A. Campgrounds shall not include recreational vehicles.
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services.
- C. No tent shall be located within 75 feet of the perimeter of site.
- D. The land area of the campground shall not be less than the equivalent of 5,000 square feet of land area per tent site exclusive of the roadway network.

6-4-66.4.7 Commercial uses in the B-1/B-1b zones

- A. Commercial uses shall be permitted provided that such uses generate less than 100 peak hour vehicle trips per 2,000 square feet of

floor area and less than 100 peak hour vehicle trips in total.

- B. Retail and restaurant uses shall not operate between the hours of 11 p.m. and 6 a.m., and shall not accept deliveries or services between the hours of 10 p.m. and 7 a.m. For restaurants, food service and consumption shall be the primary function.
- C. No beverage container redemption centers shall be permitted. Beverage dealers shall be permitted as a retail use provided that the maximum total floor area for redemptions as an accessory use, including the storage of spent containers, shall be no greater than 500 square feet or 10% of the total floor area of the facility, whichever is less.

6.4.76.4.8 Correctional pre-release facilities

- A. No correctional prerelease facility shall be located within 1,000 feet of another, as measured in a radius from the center of the lot.
- B. If a facility requires state or federal licensing, staffing of the facility shall be as required by such license. If a facility does not require state or federal licenses, there shall be a minimum of one staff person for every 10 residents or fraction thereof. The facility shall provide 24-hour supervision of program participants.

6.4.86.4.9 Hostels

An operations plan must be submitted demonstrating that:

- A. No unaccompanied minors under the age of 18 shall be permitted in the facility.
- B. The length of stay for transient guest shall not exceed 15 days within any 60-day period.

- C. In the R-6 zone, for hostels greater than 10 guests, a minimum of 250 square feet of land area shall be required per hostel guest.
- D. In the B-1/B-1b zones, no more than 20 overnight transient guests shall be permitted.

6.4.96.4.10 Lodging houses

- A. Lodging houses, except for lodging houses located in the IR-2, IR-3, and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as a part of the common areas where all meals are provided on a daily basis.
- B. Lodging houses shall provide a minimum of 200 square feet of combined rooming unit and common area per rooming unit.
- C. Each individual rooming unit shall be a minimum of 70 square feet.

6.4.106.4.11 Marijuana-related uses

- A. The following standards apply to the following marijuana-related uses:
 1. Marijuana cultivation facilities.
 2. Marijuana manufacturing facilities.
 3. Marijuana products.
 4. Marijuana retail stores.
 5. Marijuana testing facilities.
 6. Small-scale marijuana caregivers.
 7. Registered dispensaries.
- B. Location criteria
 1. No marijuana cultivation facility, marijuana manufacturing facility, marijuana testing facility, small-scale marijuana caregiver, marijuana store, or registered dispensary may be located within 500 feet of a pre-existing public school, private school, or a public preschool program, as defined by 20-A M.R.S. § 1. Distance shall be measured

- from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.
2. No marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may be located within 300 feet of the following residential zones: R-1, R-2, R-3, R-4, R-5/R-5A, R-6/R-6A, or R-7. Distance shall be measured from the nearest outer wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana-related facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.
- C. Supplemental standards
1. Marijuana-related uses may only be permitted within a fully enclosed building.
 2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
 3. No drive-through service is permitted for marijuana-related uses.
 4. No marijuana or marijuana product shall be smoked, eaten, or otherwise consumed or ingested on the premises where sold.
 5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that, at a minimum, addresses wastewater, disposal of waste, and security at the premises.
 6. A ventilation plan shall be included for marijuana cultivation facilities, marijuana manufacturing facilities, and small-scale marijuana caregivers that provides for adequate ventilation so as to prevent pesticides, insecticides, or other chemicals used in the cultivation or processing of marijuana or marijuana-related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases, and particulate matter from marijuana or its processing or cultivation to be effectively confined to the premises.
 7. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans, or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.
- D. For purposes of this ordinance, any approval issued for a marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility operated pursuant to 22 M.R.S. § 2421 et seq. shall be deemed to constitute approval for the same corresponding marijuana cultivating, manufacturing, or testing facility use operating under 28 M.R.S. § 101 et seq. Notwithstanding the above, no marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may operate without the applicable state and City license.
- ~~6.4.11~~ 6.4.12 Marine uses

- A. In the B-5/B-5b and B-6 zones, marine uses shall include marine products wholesaling and retailing and harbor and marine supplies and services.
- B. In the B-5/B-5b zones, marine uses shall include marine repair services and machine shops; shipbuilding and facilities for the construction, maintenance, and repair of vessels; marine museums and aquariums; boat repair yards; boat storage; and seafood processing, packing, and distribution for human consumption.
- C. In the B-6 zone, marine uses shall include underground marine fuel storage provided that such storage shall be used solely for the purpose of fueling vessels.

6.4.12 Multiplexes

- ~~A. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.~~
- ~~B. In the R-5 zone, the maximum number of units in a multiplex building shall be six.~~
- ~~C.D. No dwelling unit shall have less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic.~~

6.4.13 Office parks in the O-P zone

An office park shall be approved only if the development meets the following development standards:

- A. Office parks shall have a minimum gross area of three acres of contiguous land, consisting of either an Office Park Planned Unit Development (OPPUD) on one lot with one or more buildings and with driveways and open areas to be owned and maintained in common, or an office park subdivision (OPS) on one

parcel with two or more lots intended for separate ownership.

- B. Development proposals shall include a master plan of the office park. The master plan shall include the following:
 1. *For an OPPUD proposal.* The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation, architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this subsection.
 2. *For an OPS proposal.* Delineation of the subdivision of land; infrastructure of the site; identification of common areas, if any; traffic circulation; desired architectural character, including private development restrictions to ensure compatibility of architectural character of future buildings with each other; phasing and timing of the development; private development restrictions; and such other information as necessary and sufficient to ensure compliance with the standards in this subsection.
- C. Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the

minimum 35-foot setback is met along Marginal Way.

4. In the B-7 zone, the substation equipment shall be fully enclosed within a structure.

6.5.7 Supplemental zone-specific conditional use standards

In addition to the general conditional use standards and supplemental use-specific conditional use standards, the following standards shall apply to conditional uses within certain zones:

A. R-OS Zone

1. The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state *Comprehensive Outdoor Recreation Plan*, as such plans may from time to time be created or revised.
2. Buildings and structures shall not obstruct significant scenic views presently enjoyed by nearby residents, passersby, or users of the site.
3. Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

6.6 ACCESSORY USES

6.6.1 In general

- A. Accessory uses shall be permitted in conjunction with permitted or conditional principal uses. Accessory uses must be:
 1. Customarily found in association with the principal uses.

2. Generally consistent with the impacts of the primary use.
3. Secondary in nature, clearly incidental and subordinate to the principal uses in terms of area and function.
4. Located on the same lot as the principal use unless otherwise permitted.
5. Consistent with the intent of the zone.

- B. No accessory use or uses within a building shall occupy more than a combined total of 25% of the floor area of the principal building, with the exception of required off-street parking, unless otherwise provided in Subsection 6.6.2 below.
- C. No accessory use or uses not within a building shall occupy more than a combined total of 25% of the unbuilt lot area, or of the required rear yard area, with the exception of off-street parking or as otherwise provided in Subsection 6.6.2.

6.6.2 Standards for specific accessory uses

A. Accessory Dwelling Units (ADUs)

1. Accessory Dwelling Units (ADUs) shall be permitted on all lawfully conforming and nonconforming lots with legal residential uses. ADUs shall comply with all dimensional standards of the underlying zone unless otherwise provided below.
2. Up to two ADUs shall be permitted per qualifying property.
3. At the time of an ADU's initial construction or legal creation, the owner(s) of the property on which the accessory dwelling unit is created must occupy at least one of the dwelling units, with the exception of legally nonconforming lots on Peaks Island.

~~4. On Peaks Island, neither the accessory unit or principal unit shall be used for short-~~

~~term rentals as defined under Chapter 6, Section 150.1 of the City of Portland Code of Ordinances.~~

- ~~5-4.~~ When an ADU is significantly visible from public ways, the building design shall:
- Be clearly subordinate to the principal structure(s) in scale and position in relationship with the street and principal structure(s).
 - Not include outside stairways or fire escapes above the ground floor.
- ~~6-5.~~ Under circumstances where an existing nonconforming structure is converted to an ADU, the design of the ADU shall take into consideration to the extent practicable the privacy of adjacent properties.
- ~~7-6.~~ The developer of an ADU shall record a deed restriction requiring that the ADU and at least one other non-accessory unit on-site remain under common ownership.
- ~~8-7.~~ ADUs shall comply with all dimensional requirements of the underlying zone except:
- ~~9-8.~~ Lot coverage and lot area per dwelling unit requirements.
- ~~Within the IR-1 zone, the minimum lot area shall be 70,000 square feet, except on Peaks Island where this standard shall not apply.~~
 - ~~Within the IR-2 zone, the minimum lot area shall be 30,000 square feet, except on Peaks Island where this standard shall not apply.~~
- ~~10-9.~~ An ADU shall be limited to a gross floor area of 2/3 of the gross floor area of the principal unit(s). In no circumstance shall the height of detached ADUs on a lot

exceed the height of the primary structure. Additionally, the aggregate square footage of detached ADUs on a lot shall not exceed the gross floor area of the primary structure.

- B. Amusement devices.** Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two such machines or devices on the premises.
- C. Antennas, discs, transmitting and receiving equipment.** Building-mounted antennas, discs, and other transmitting and receiving equipment shall be:
- No taller than 15 feet above the highest structural steel of the building roof.
 - Setback no less than 15 feet from the building perimeter.
 - Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.
- D. Drive-throughs.** Drive-throughs shall be permitted as an accessory use in the B-4 zone. Drive-throughs shall be reviewed as conditional accessory uses in the B-2/B-2b/B-2c zones, B-3/B-3b/B-3c zones, B-6 zone, and B-7 zone. In all other zones, drive-throughs shall be prohibited. Where a conditional use, drive-throughs shall be subject to the provisions of Section 6.5 and the following additional review standards:
- In general*
 - The Planning Board shall be the review authority.

7 DIMENSIONAL STANDARDS

7.1 APPLICABILITY

Construction, alterations, and additions to structures and buildings are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

7.2 RULES OF MEASUREMENT

Building footprint. The lot area contained within the outermost perimeter of the building envelope including cantilevered portions of the building, projections, and porches, decks, and similar attached structures integral to the building and contributing to its mass, but excluding roof overhangs.

Floor area. The total floor space enclosed by exterior or standard fire walls of a building, exclusive of vent shafts and courts.

Grade, pre-development. Average grade, existing on October 1, 2000, at the corners of the foundation of the proposed structure.

Height. The vertical measurement from grade, or the pre-development grade on the islands, to the highest point of a structure. For buildings, height shall be measured to the roof beams in flat roofs, to the highest point of the roof beams or the highest point on the deck of mansard roofs, to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs, or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this

purpose, the level of the eaves shall be taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

Impervious surface ratio. The proportion of a site covered by impervious surfaces, calculated by dividing the total impervious surface area by the lot area. For the purposes of this measurement, impervious surface shall be as defined by the Maine Department of Environmental Protection.

Landscaped open space ratio. The proportion of lot area covered by landscaped open space, calculated by dividing the total landscaped open space area by the lot area. For the purposes of this measurement, landscaped open space shall not include rooftop gardens or structured or engineered surfaces.

Lot area. The area of a lot enclosed within the boundary lines of a lot.

Lot coverage. The proportion of lot area covered by building footprint and the footprint of accessory detached structures.

Lot width. The distance measured between side lot lines through that part of the principal building where the lot is narrowest.

Net land area. The land area arrived at by subtracting from lot area the square footage of the following: a) areas of special flood hazard; b) existing watercourses measured by the area between the top of the banks at the normal high-water mark; c) wetlands; and d) slopes of 25% or greater. Where a slope of 25% or greater was altered to less than 25%

within the two years immediately preceding a development proposal, such slope shall also be subtracted from the lot area.

Setback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure, except as otherwise permitted in this code of ordinances. A setback shall be measured from a line parallel to the lot line drawn through the point of a structure nearest to such lot line. This measurement shall be taken at right angles from such parallel line. When measuring setbacks, setbacks shall be interpreted to include setbacks of structures from property lines and setbacks of principal structures from one another. No principal structure shall occupy the minimum setback of another principal structure. Setbacks shall not apply to fences, flagpoles, raised garden beds, and other similar structures. When setbacks are established in relationship to height, the height in stories or feet of that part of the principal structure adjoining a yard shall be used in determining the required setback.

Setback, front. A setback along the front lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between the front lot line and any structure. In the case of lots with frontages on two or more streets, the orientation of the principal entry to the principal building shall prevail. In the case of lots without frontage on a street, the property line that parallels the nearest developed street shall be considered the front.

Setback, rear. A setback along the rear lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between

the rear lot line and any structure.

Setback, side. A setback along a side lot line extending from the front lot line to the rear lot line, the width of which shall be the shortest horizontal distance between the side lot line and any structure.

Stepback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure that occurs at a prescribed height above the ground. Stepbacks shall apply to all attached accessory structures, including the minimum necessary housing of elevators, stairways, tanks fans, or other building operating equipment not intended for human occupancy.

Story. That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four feet above the floor does not exceed two-thirds of the floor area of the story immediately below it. A story which exceeds 18 feet in height shall be counted as two stories. A basement shall be counted as a story for the purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

Street frontage. The distance for which a lot line adjoins a public street, from one lot line intersecting said street to the furthest distant lot line intersecting the same street.

7.3 DIMENSIONAL STANDARDS

Tables 7-A to 7-H shall establish the dimensional standards for each zone.

TABLE 7-A: RESIDENTIAL ZONE DIMENSIONAL STANDARDS

		R-1	R-2	R-3 ²	R-4	R-5 ^{2,3}	R-5a ⁴	R-6 ^{6,7}	R-6a ¹³
Lot area (min.)	Governmental	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF			
	Hospital			10 ac.		5 ac.		2 ac.	
	Intermediate or long-term, extended care facility	3 ac.	3 ac.	2 ac.		2 ac.	1.5 ac.	1 ac. ⁸	
	Lodging house					9,000 SF		2,000 SF	
	Multiplex				9,000 SF	9,000 SF			
	Place of assembly	<10,000 SF	1 ac.	1 ac.	1 ac.	15,000 SF	.5 ac.	.5 ac.	10,000 SF
		>10,000 SF	2 ac.	2 ac.	2 ac.	30,000 SF	1 ac.	1 ac.	15,000 SF
	Post-secondary school		2 ac.			2 ac.		2,000 SF	
	Elementary, middle, and secondary school	2 ac.	2 ac.	2 ac.	30,000 SF	30,000 SF		30,000 SF	
	Raising of animals	3 ac.							
	Residential	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF ³	6,000 SF / 2 ac. max ⁵	2,000 SF	4 ac.
	All other uses	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF		2,000 SF	
	Lot area per dwelling unit (min.)	15,000 SF	10,000 SF	6,500 SF	3,000 SF	3,000 SF	1,600 SF	725 SF	
	Lot area per rooming unit (min.)					1,000 SF		250 SF ⁹	
	Lot area per multiplex unit (min.)				3,000 SF for first 3; 6,000 SF thereafter	4,500 SF			
	Lot area per SNIDU¹ (min.)				2,400 SF	3,600 SF			
	Street frontage (min.)	75 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	20 ft.	
	Lot width (min.)	100 ft.	80 ft.	65 ft.	60 ft.	60 ft. 90 ft. for multiplex	60 ft.	20 ft.	
	Front setback (min.)	25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	5 ft.	
		Or average depth of adjacent front yards							
Rear setback (min.)		25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	10 ft.	
	Detached accessory (< 250 SF footprint)	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	
Side setback (min.)	<1.5 stories to 1.5 stories	12 ft.	12 ft.	8 ft.	10 ft.	8 ft.	10 ft.		<45 ft. in height; 10 ft.
	2 stories	14 ft.	14 ft.	14 ft.	14 ft.	12 ft.	14 ft.		
	2.5 stories	16 ft.	16 ft.	16 ft.	16 ft.	14 ft.	16 ft.	5 ft. ¹⁰	
	Detached accessory (< 250 SF footprint)	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.		>45 ft. in height; 15 ft.
	On side street (min.)	20 ft.	20 ft.	20 ft.	20 ft.	15 ft.	20 ft.	None	
		Or depth of front yard directly abutting the lot.							

TABLE 7-A (CONT.): RESIDENTIAL ZONE DIMENSIONAL STANDARDS

	R-1	R-2	R-3 ²	R-4	R-5 ^{2,3}	R-5a ⁴	R-6 ^{5,7}	R-6a ¹³
Stepbacks (above 35 ft. when property line abuts a residential zone)(min.)							10 ft. from side property line and 15 ft. from rear property line ¹¹	
Structure height (max.)	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	45 ft. ¹²	65 ft.
Detached accessory	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	
Lot coverage (max.)	20%	20%	35%	30%	40%	30%	60%	
Landscaped open space ratio (min.)							20%	
Width of garage opening on front façade (max.)							9 ft. or 40% of the front facade, whichever is greater, and in no case more than 20 ft.	

¹ Special needs independent dwelling unit.

² See Table 7-B for PRUD standards.

³ Single-family homes may be built on small lots in the R-5 under small residential lot dimensional requirements under certain conditions. See Table 7-C for R-5 Small Residential Lot dimensional requirements.

⁴ For R-5a, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities, unless noted otherwise in the table above. See Table 7-B for additional standards that apply to these uses.

⁵ Applies to 1-, 2-, and 3-family dwellings only.

⁶ Alterations to single-family, two-family, and multi-family dwellings in existence as of 6/15/15 shall not result in the creation of any additional dwelling unit of less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic; and shall not result in any existing dwelling unit being reduced in size to less than 1,000 square feet of floor area, exclusive of common areas and storage in basement and attic.

⁷ Subdivisions consisting of horizontally attached dwellings on individual lots are not required to have side yards between such dwellings where a party wall condition will exist. Horizontally attached dwellings located within a single lot shall be required to meet the applicable side setback requirements at the external lot boundaries of the subdivision and internal lot boundaries between such dwellings that are not attached to each other. No minimum lot size or width shall be required for individual lots underlying townhouse (horizontally attached) dwelling types. The applicable minimum lot area per dwelling shall apply to each lot.

⁸ Except for long-term and extended care facilities: 10,000 SF for the first 9 residents plus 750 SF for each additional resident, up to a total of 2 ac.

⁹ A minimum lot area per intermediate care resident of 250 SF also applies.

¹⁰ Except that a side setback in the R-6 zone may be reduced to zero, provided that the cumulative side yards are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.

¹¹ Does not apply on side streets.

¹² Except as provided under the Fort Sumner Park Height Overlay and the Bayside Height Overlay.

¹³ All R-6 dimensional standards apply in the R-6a unless otherwise indicated.

TABLE 7-B: PRUD DIMENSIONAL STANDARDS

	R-3	R-5	R-5a³
Lot area¹ (min.)	3 ac.	2 ac.	2 ac. ⁴
Net land area per dwelling unit (min.)	6,500 SF	3,000 SF	1,600 SF ^{4,5}
Units per building (max.)	PRUD < 5 ac.: 2 PRUD > 5 ac.: 6	12	
Average number of units per building (max.)	PRUD > 5 ac.: 5		
Structure height (max.)	35 ft.	35 ft.	55 ft.
Building length (max.)	Without garages: 100 ft. With integral garages: 140 ft.	140 ft.	
Length of accessory garage structure (max.)		60 ft.	
Building setback from external subdivision property lines (min.)	3 or fewer D.U. in building: 25 ft. 4 or more D.U. in building: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.
Distance between detached PRUD dwelling units (min.)	16 ft.		
Common recreation open space area² (min.)	300 SF/D.U.	300 SF/D.U.	200 SF/D.U. ⁴
Habitable space elevation	No habitable space in a PRUD shall be below grade, except basements that are a part of and below above-ground units.		

¹ Areas of special flood hazard as defined in Article 12 shall be excluded from lot area calculations.

² Common open space shall be designated on the site. The primary purposes of such open space areas shall be for passive or active recreation. Such spaces may include natural, landscaped or hardscaped elements. At a minimum, a contiguous area of 6,000 SF shall be provided.

³ In the R-5a zone, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities unless otherwise noted.

⁴ Does not apply to intermediate, extended, or long-term care facilities but does apply to PRUDs, congregate care, and multi-family development of 4 or more units.

⁵ Minimum land area per intermediate care facility resident: 8,000 SF lot area for first 35 residents, plus 350 SF for each additional resident.

⁶ For PRUD standards in island zones, see Table 7-D.

TABLE 7-C: R-5 SMALL RESIDENTIAL LOT DEVELOPMENT DIMENSIONAL STANDARDS¹

	Lot area (min.)	5,000 SF
		7 ft. ²
Side setback (min.)	Detached accessory (< 250 SF footprint)	5 ft.
	Side yard on side street	10 ft.
	Lot width (min.)	40 ft.
	Street frontage (min.)	40 ft.
	Lot coverage (max.)	50%

¹ Single-family homes may be built on small lots in the R-5 under small residential lot development dimensional requirements if the lot is: vacant; or used exclusively for parking; or contains structure(s) not used for residential purposes; or is created from a single lot division of a developed lot and results in a lot meeting the small residential lot dimensional requirements with the remaining developed portion meeting the standard dimensional requirements of the R-5 zone.

² The width of one side setback may be reduced 1 ft. for every foot that the other side yard is correspondingly increased, but no side yard shall be less than 4 ft. in width.

TABLE 7-D: ISLAND ZONE DIMENSIONAL STANDARDS

						I-B ¹⁰	
						Served by Public Water & Sewer	Not Served by Public Water & Sewer
Lot area (min.) ¹¹			IR-1	IR-2	IR-3		
	Bed and breakfast					5,000 SF for 3 guest rooms plus 5,000 SF/ additional room	10,000 SF/ guest room
	Campground		10 ac.		5,000 SF/ campsite, but not less than 10 ac.		
	Hotel				10,000 SF/ guest room	5,000 SF for 3 guest rooms plus 5,000 SF/ additional room	10,000 SF/ guest room
	Lodging house			10,000 SF/ rooming unit	10,000 SF/ rooming unit	5,000 SF for 3 rooming units, plus 5,000 SF/ additional rooming unit	10,000 SF/ rooming unit
	Place of assembly	>10,000 SF	30,000 SF	30,000 SF	35,000 SF	20,000 SF	
		<10,000 SF	15,000 SF	15,000 SF			
	PRUD/PUD		5 ac. ¹	5 ac. ¹	20 ac.		
	Raising of animals		3 ac.				
	Residential		40,000 SF ^{2,3}	20,000 SF ³	42,500 SF ⁶	20,000 SF	
	Restaurant				35,000 SF	10,000 SF	20,000 SF
	Retail				35,000	None	20,000 SF
	Seasonal camp		10 ac.		35,000 SF		
	School/educational facility		40,000 SF	20,000 SF	35,000	20,000 SF	
	All other uses				35,000 SF	20,000 SF	
Lot area per dwelling unit (min.)		None ⁴ 40,000 SF ⁴	None ^{20,000} 20,000 SF ⁴	42,500 SF ⁷			
Street frontage (min.)		100 ft. ⁵	70 ft. ⁵	70 ft. ⁸	40 ft.		
Lot width (min.)		100 ft. ⁵	80 ft. ⁵	80 ft.	40 ft.		
Front setback (min.)		30 ft. ⁵	25 ft. or the average of adjacent front yards ⁵	25 ft. ⁹	20 ft. or avg. depth of adjacent front yards		
Rear setback (min.)		30 ft. ⁵	25 ft. ⁵	25 ft. ⁹	10 ft.		
	Detached accessory (< 250 SF footprint)	10 ft. ⁵	10 ft. ⁵	10 ft. ⁹			

TABLE 7-D (CONT.): ISLAND ZONE DIMENSIONAL STANDARDS

					I-B ¹⁰	
					<i>Served by Public Water & Sewer</i>	<i>Not Served by Public Water & Sewer</i>
		IR-1	IR-2	IR-3		
Side setback (min.)		20 ft. ⁵	20 ft. ⁵	20 ft. ⁹	10 ft.	
	Detached accessory (< 250 SF footprint)	15 ft. ⁵	15 ft. ⁵	15 ft. ⁹	10 ft.	
	On side street	20 ft. ⁵	20 ft. ⁵	20 ft. ⁹	10 ft.	
Structure height (max.)		35 ft.	35 ft. For Little Diamond Island: 27 ft.	35 ft.	35 ft.	
	Accessory detached	18 ft.	18 ft.	18 ft.	18 ft.	
	Lot coverage (max.)	20%	20%	20%	50%	

¹ PRUDs shall consist of detached dwellings.

² 60,000 SF if not served by public water.

³ For PRUDs, minimum lot area shall be reduced up to 50% provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.

⁴ ~~In the case of PRUDs, lot area per dwelling unit shall be calculated based on net land area. Except 1 dwelling unit per 40,000 SF of net land area for PRUDs in IR-1 and 20,000 SF of net land area in for PRUDs IR-2.~~

⁵ For PRUDs, standard shall be reduced up to 50%. For accessory structures in the IR-1, IR-2, and I-B zones, side setbacks from principal structures shall be 5 feet.

⁶ Except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of 35,000 SF per dwelling unit, provided that the Planning Board finds that the development meets the following criteria: a. The minimum lot size per dwelling unit shall be reduced by 5,000 SF if a public off-island water source provides 75% of the water needs of the development. b. The minimum lot size per dwelling unit shall be reduced by 2,500 SF if the development provides appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of all private motor vehicles exclusive of construction and common service vehicles.

⁷ The maximum density for a PUD shall be based on the applicable minimum lot size for each use as measured in terms of net area. For purposes of calculating density, if separately described lots exceed the applicable minimum lot size, the excess area shall not be credited toward the minimum lot size for any other use.

⁸ Except where the Planning Board finds that the development has an adequate street network to permit access for pedestrians and emergency service vehicles.

⁹ When adjoining any external property boundary.

¹⁰ All I-B standards apply for lots served by public water and sewer and lots not served by public water and sewer unless otherwise indicated.

¹¹ In the IR-3, the minimum lot area for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two or more residential uses contained in a building, the minimum lot area shall be the larger of the applicable minimum lot sizes.



HOUSING

TABLE 18-B: MINIMUM TERM OF AFFORDABILITY FOR REQUIRED WORKFORCE UNITS

% of Workforce Units Provided	Minimum Term of Affordability
25%	30 years
50%	20 years
100%	10 years

TABLE 18-C: BONUSES FOR ELIGIBLE PROJECTS

% Low-income or Workforce Units	% Workforce Units	Density Permitted ¹	Additional Height Permitted ²	Setback Reductions ³
10-19%	20%	1.1 x base	N/A	N/A
20-29%	40%	1.2 x base	10 ft.	N/A
30-39%	60%	1.3 x base	10 ft.	5 ft.
40-49%	80%	1.5 x base	15 ft.	5 ft.
50-74%	100%	2.5 x base	25 ft.	10 ft.
≥ 75%	N/A	2.5 x base	25 ft.	10 ft.

¹ “Base” is the number of units allowed under the zoning without this bonus but with any other bonuses applied. In R-P zones, multifamily is permitted with a “base” no less than 1 unit per 1,500 SF of land area. ~~If an eligible project is providing both workforce and affordable housing units, the applicant shall have the option of utilizing applicable incentives, but not cumulatively.~~

² The maximum additional height permitted in the B-1/B-1b zones and the R-P zone shall be 15 feet. In addition, the maximum structure height is 50 feet within 750 feet of the Portland Observatory.

³ Setback reductions are absolute reductions in front, side, and/or rear setback requirements. The maximum setback reductions in the B-1/B-1b and R-P zones shall be 5 ft.

D. Implementing regulations. Regulations to further specify the details of this subsection shall be developed, including, but not limited to:

1. Specific methodology for income verification.

2. Situations where less than permanent affordability might be considered.
3. Guidelines for meeting the requirement that off-site units be “in the same neighborhood.”

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

18.2.4 Density and dimensional bonuses and reductions

Notwithstanding any other provision of this Land Use Code to the contrary, in order to encourage low-income and workforce units in designated growth areas, eligible projects as defined under Subsection 18.2.2 may avail themselves of the following options:

A. Density and dimensional bonuses. The maximum number of units that would otherwise be allowed under this Land Use Code shall be increased for an eligible project in the manner described in Table 18-C, applicable where multi-family is allowed as a permitted or conditional use, with the exception of the I-B zone. Other dimensional bonuses related to height and setbacks shall only be applicable in the B-1/B-1b, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-5, R-7, and R-P zones.

B. Planned Residential Unit Developments (PRUDs). ~~In order to promote orderly development of low- and moderate-income development as PRUDs, in the R-3, R-5, and R-5a zones, any project-PRUD in which more than~~

50% of the units are low-income or workforce units for rent or for sale may utilize the following dimensional bonuses and changes:

1. ~~Minimum lot area per dwelling unit is reduced by 50%. The maximum number of units that would otherwise be allowed under this land use code shall be increased by 2.5.~~
2. Maximum number of units and maximum length of buildings do not apply but may be set through site plan review.
3. Minimum building setbacks may be reduced to 10 feet.
4. The PRUD may cross public rights of way provided that the right of way does not count towards minimum lot size nor towards any open space requirements.
5. Minimum recreation open space area is reduced to 200 square feet per dwelling unit of common area designated for recreational purposes by the residents. Minimum contiguous size and setbacks do not apply and shall be set through site plan review.
6. The Planning Board's *Design Manual*, design standards, and guidelines with respect to PRUDs shall apply in full to PRUDs utilizing this subsection.

C. Unit size and term of affordability. In order to be eligible for this subsection, the low-income and workforce housing units must meet Subsections 18.2.3(C)(3), (4), and (5).

~~C.D. Term of affordability.~~ ~~Affordable units under this section shall be deed-restricted to remain and be affordable for 30 years or the longest term permitted under federal, state, and local laws, whichever is longer. Such deed~~

~~restrictions shall be recorded in the Cumberland County Registry of Deeds.~~

D.E. Required public process. The developer of the project must also commit to a good faith effort to communicate openly with affected properties as their process moves forward. At a minimum, no less than 30 days prior to application for site plan review, any project that wishes to take advantage of this subsection must hold a public meeting noticed to all properties within 500 feet of their site and post a sign on the property in question describing the proposed project, intent to submit an application to the City in 30 days (cite anticipated submission date), and contact information for the developer and the Planning Authority. The Planning Board may adopt regulations regarding the content and processes for noticing as part of the *Technical Manual*.

E.F. Projects under 18.2.3. Projects that are subject to Subsection 18.2.3 that choose to provide the required workforce housing units on site are eligible for a 25% increase in total permitted units. If an eligible project as defined under Subsection 18.2.2 is also subject to Subsection 18.2.3, the applicant shall have the option of utilizing either this bonus or any bonuses they are eligible for under Subsections 18.2.4(A) and (B) but not both.

18.2.5 Inclusionary zoning for hotel projects

A. Purpose. This subsection is based on City analysis, most specifically the analysis documented in the Greater Portland Council of Government study *Proposed Hotel Linkage Fee: Supportable Range* dated August 29, 2018, that finds that new hospitality developments create

19 OFF-STREET PARKING & LOADING

19.1 OFF-STREET PARKING

19.1.1 General

Off-street parking, either by means of structured or surface spaces, in addition to being a permitted principal use in certain zones, shall be considered as an accessory use when required or provided to serve principal uses. The provisions of this article shall apply to parking as an accessory use.

19.1.2 Uses requiring off-street parking

Except as provided in Table 19-B and as provided elsewhere in this article, minimum off-street parking requirements shall be as provided in Table 19-A. For any use not listed in Table 19-A, the parking provisions for the most similar use, as determined by the Building Authority or the Planning Authority, shall apply.

19.1.3 Rules of calculation

- A. Floor area.** Unless otherwise stated, all square footage-based off-street parking standards shall be computed on the basis of gross floor area used or intended to be used for service to customers, patrons, clients, or patients. It need not include floors or parts of floors used principally for non-public purposes, such as bulk storage, cellar, or food preparation areas. These provisions notwithstanding, the "floor area" used as the basis for computing off-street parking requirements shall never be less than 80% of the total gross floor area.
- B. Fractions.** Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

- C. Multiple uses.** When two or more principal uses or separate establishments are located within the same lot, off-street parking shall be provided for each principal use or separate establishment according to Table 19-A, unless joint use is approved under Subsection 19.1.5.
- D. Accessory uses.** Off-street parking shall not be calculated separately for accessory uses.
- E. New construction.** In the case of new construction, the minimum off-street parking requirements in Table 19-A shall be met.
- F. Changes of use.** In the case of changes of use, the only additional off-street parking required shall equal the difference between the parking required for the new use and the parking required for the existing use.
- G. Building additions or alterations.** In the case of additions or alterations which increase the number of units or square footage of a given use, the only additional off-street parking required shall equal the difference between the parking required for the use in the post-development condition and the parking required for the use in the pre-development condition.

19.1.4 Shared use vehicles

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

TABLE 19-A: OFF-STREET PARKING MINIMUMS

	Vehicular	Bicycle
Single-, two-, or multi-family units	1 space/ dwelling unit	
Lodging house	1 space/5 rooming units ¹	
Special needs independent dwelling unit	1 space/4 dwelling units, plus 1 space/staff member normally present at any one time	2 spaces/5 units
Sheltered care group home	1 space/2 employees	
Congregate care facilities	1 space/3 dwelling units	
Emergency shelters	1 space/2 employees	
Long-term, extended care, and intermediate care facilities	1 space/5 beds, plus 1 space/employee normally present during weekday morning shift	
Governmental uses	1 space/400 SF of floor area	
Hospitals and clinics	1 space/500 SF of floor area	
Places of assembly	1 space/150 SF of floor area used for assembly purposes ²	
Preschool facilities	1 space/staff member normally present at any one time	
Schools	For students up to 15 years	1 space/room used for instruction purposes
	For students 16 years and older	1 space/10 seats used for instruction purposes or, if no fixed seats, 1 space/100 SF used for instruction purposes
Bed and breakfasts	1 space/2 guest rooms for first 4 guest rooms, plus 1 space/additional room thereafter ³	2 spaces/10 vehicle parking spaces for the first 100 vehicle spaces required, plus 1 space/20 vehicle parking spaces thereafter ⁴
General offices	1 space/400 SF of floor area	
Hostels	1 space/8 beds or, if within ¼ mi. of a transit stop, 1 space/12 beds	
Hotels	1 space/4 guest rooms	
Retail	1 space/200 SF of first floor area in excess of 2,000 SF, plus 1 space/700 SF for each floor above	
Restaurants and bars	1 space/150 SF of floor area	
Theaters, performance halls, funeral homes	1 space/5 seats or, if no fixed seats, 1 space/100 SF of assembly space	
Industrial uses	1 space/1,000 SF of floor area in excess of 3,000 SF not including area catering to retail	

¹ Except in the R-5 zone, where the requirement shall be 1 space/2 rooming units.

² Except for neighborhood centers which primarily serve clientele from the surrounding neighborhood, where the parking requirement shall be 1/1,000 SF of floor area

³ Except in the I-B zone, where no off-street parking shall be required for beds and breakfasts.

⁴ Development with under 10 required vehicular parking spaces shall provide at least two bicycle parking spaces.

TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS

Categorical Vehicular Exceptions		
Major site plans	The Planning Board shall establish the off-street parking requirement based on a parking study.	
Affordable housing	±2 spaces are required for every 3 units, except that the Planning Board may establish a lesser parking requirement that is less than 1 space per workforce or low income housing unit, regardless of the size of the structure.	
Multi-family housing	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 Transportation Demand Management program, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.	
Historic structures	No off-street parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required. ¹	
Accessory Dwelling Units	No off-street parking shall be required.	
Transit proximate development and uses	No off-street parking shall be required within ¼ mile of fixed route transit service. New uses or changes of use of more than 10,000 SF taking advantage of this exception shall be required to provide a Transportation Demand Management Plan if they use this provision in lieu of parking requirements.	
Zone-Based Vehicular Exceptions		
	Residential	Nonresidential
R-6	No off-street parking required for first three dwelling units. ²	
IR-1/I-B		Off-street parking requirements for nonresidential uses shall be reduced by 75%.
IR-3	No off-street parking required.	
R-OS	Off-street parking shall be adequate to serve projected employee and visitor needs.	
B-2/B-2b/B-2c		For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
IS-FBC	No off-street parking required for first three dwelling units.	For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
B-3	No off-street parking required for changes of use.	
B-5	No off-street parking required.	
B-6	Off-street parking requirement shall be determined based on a parking study.	
B-7	Off-street parking requirement shall be determined based on a parking study.	
Waterfront Zones	Off-street parking requirements shall be reduced by 50%. No off-street parking required in the WCZ.	

¹ Exception applies for uses within any contributing structure in a local or national register historic district or locally-designated or national register landmark building under Article 17. However, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

² 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 used one time.

³ If the number of existing parking spaces serving the site is less than the requirements of this article, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except to the extent necessary to meet the requirements of the Americans with Disability Act, to the extent it is a requirement or a condition of site plan review, or 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 article for all uses on the site including the change of use. A newly constructed building, a building addition, or a change of the use of a building exceeding 10,000 SF of floor area, shall provide parking as required by this article.



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

LD 2003 Text Amendments
to Articles 3, 6, 7, 18, & 19 of the Land Use Code
City of Portland, Applicant

Submitted to:	Mayor and City Councilors	Prepared By:	Nell Donaldson, Director of Special Projects, Planning & Urban Development
Council 1st Read:	November 13, 2023	Date:	October 30, 2023
Council Hearing Date:	November 20, 2023		

I. INTRODUCTION

On October 24, 2023, the Planning Board unanimously recommended a set of zoning text amendments to the City Council (7-0) to comply with the requirements of LD 2003. LD 2003, or *An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, was signed into law in April 2022. The law's intent is to remove local regulatory barriers to housing production in Maine by requiring that municipalities adopt standards around affordable housing, residential uses, and accessory dwelling units within their local codes of ordinances. State rule-making was published in April 2023, and the law was amended in June 2023 to provide additional clarity around certain provisions. The implementation deadline for communities in which ordinances may be enacted by municipal officers is January 1, 2024.

In March of this year, the Planning & Urban Development Department provided the City Council with a report on the consistency of the city's existing land use code with LD 2003. This analysis found that in nearly all respects, the city's current policies already comply. Portland, whose comprehensive plan foregrounds the importance of housing affordability, housing production, and the need for diverse housing types, benefits from a land use code that far exceeds the requirements of LD 2003 in many ways, due to over a decade of housing policy changes in support of housing creation. The city's code currently:

- Offers density bonuses (and dimensional relief) for affordable housing projects,
- Allows up to two ADUs for any lot in residential use, and
- Supports significantly more density than required or even contemplated by LD 2003 in many areas of the city.

However, there are instances where the city's code approaches these issues in slightly different ways than contemplated by LD 2003, and guidance published since the spring and summer of this year has provided helpful information about expectations for implementation. Amendments to reconcile inconsistencies between LD 2003 and the city's land use code, where they exist, are presented here as recommended by the Planning Board.

II. RELATIONSHIP TO ONGOING HOUSING WORK & RECODE

The state legislature passed LD 2003 in 2022 and amended it in mid-2023, as part of an effort to increase opportunities for housing across the state. The Department of Planning & Urban Development participated in the process that led to the changes found in LD 2003, and the city offered support for the state work as well.

The LD 2003 effort was designed to apply state-wide, across a variety of different land use contexts, and by its nature had a very different public process than is customary for local zoning and policy development. For many communities in Maine, LD 2003 represents a significant shift, requiring them to establish policies for accessory dwelling units (ADUs), affordable housing, and building typologies that may have never previously been considered. In Portland, LD 2003 isn't so much a housing policy paradigm shift as a difference of approach to the details of existing and ongoing housing policy work.

It is important to note that LD 2003 is but one small facet of a larger initiative underway. It represents one among many in a broad suite of housing- (and other land use-) related policy changes currently under public review as part of ReCode. The need to implement LD 2003 by January 1, 2024 means that these amendments are being considered separately to meet state schedule requirements, rather than as part of the ReCode package, with its significant implications for housing creation. If not for the January 1 deadline, LD 2003 amendments would not have needed to be brought forward on their own, but would have been bundled with the more far-reaching and holistic work of ReCode.

III. PLANNING BOARD DELIBERATION

The Planning Board met twice to review draft LD 2003 amendments. The public comment (*Attachment 5*) and Board discussion during these meetings focused largely on the question of how much to leverage LD 2003 to change basic use permissions within our residential zones, particularly in the context of the ongoing housing work within ReCode. Where this question was raised, it is discussed in more detail below.

IV. LD 2003's LAND USE FRAMEWORK & *PORTLAND'S PLAN*

LD 2003's approach to housing creation is informed by state land use policy that encourages municipal identification of "designated growth areas" within local comprehensive plans. LD 2003's requirements vary depending on location within or outside this growth area. For purposes of LD 2003, all of the city's mainland is considered "growth area," suitable for varying levels of growth.

The Future Land Use section of [Portland's Plan 2030](#) acknowledges not only the capacity of many areas of the city to support development, but also the ways that planned growth in strategic areas can be shaped proactively to meet the city's long-range economic development, fiscal, environmental, transportation, and housing goals. To this end, the plan defines urban areas prioritized for significant growth, urban areas suitable for more moderate incremental growth, and areas suitable for markedly less intensive development and conservation. The plan includes a priority nodes and corridors map that highlights key areas for planning focus and change, "areas that would be appropriate for new development to provide needed housing, business, and services proximate to transit..." (82). The plan also notes that "development may still occur elsewhere in the city, including incremental change and infill in residential neighborhoods, redevelopment of obsolete commercial areas, thoughtful expansion or investment in institutional and industrial sites, and modernization of existing affordable housing" (82). With respect to the islands, the plan acknowledges significant physical, environmental, and transportation constraints, and promotes a more conservative approach to development that emphasizes the islands' unique built context and sensitive natural resources.

V. LD 2003 ELEMENTS AND DRAFT AMENDMENTS TO THE LAND USE CODE

LD 2003 addresses housing production through three basic mechanisms: **affordable housing bonuses**, **residential use permissions on vacant and single-family lots**, and **accessory dwelling units (ADUs)**. A description of each of these components of LD 2003 and the recommended land use code amendments to ensure compliance, shown in redline, follow. Amendments were developed based on state guidance, in collaboration with staff from Corporation Counsel and Zoning, and were informed by a review of peer communities' approaches to the law.

The full text of LD 2003, the June 2023 amendment, and state guidance is included in *Attachments 1-4*. Draft land use code amendments in their entirety are also included in *Attachments 6-10*.

A. Affordable housing density (30-A M.R.S § 4364)

The affordable housing provisions of the law require municipalities to extend density bonuses to qualifying affordable housing projects when those projects are located in areas in which multi-family dwellings are allowed and within a designated growth area. The City of Portland already has a structure for density bonuses for affordable housing in many zones, and the code includes other provisions as contemplated by the state. However, some amendments to Articles 18 and 19 of the land use code are necessary to bring the city into full compliance with these components of the law.

1. Definition of affordable housing

Article 3 of the city's existing land use code defines "affordable housing" and establishes income thresholds for both "low-income" households (at 80% - 100% of area median income, or AMI) and "workforce" households (at 80% of AMI) in both the rental and homeownership context. The income limits for both types of households in both contexts meet or exceed the requirements of LD 2003 (80% and 120% for rental and homeownership housing, respectively). However, the city's definition of "affordable housing" does not contemplate some of the housing costs anticipated in state rule-making, including rental costs associated with utilities. For this reason, staff recommends amending the definition of "affordable housing" in Article 3.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses (including utilities such as electric, heat, water, sewer, and/or trash that the household pays separately from rent) or must pay in ownership cost (including but not limited to ~~monthly~~ mortgage payments, ~~(including~~ condominium/HOA fees, mortgage insurance, other insurance, and real estate taxes), does not exceed 30% of a household's income, or other amount established in City regulations that does not vary significantly from this amount.

2. Density bonus & parking requirements

LD 2003 requires that municipalities extend bonuses of 2.5 times base density to any project in which a majority of units are affordable. The law further states that municipalities may not require more than two off-street parking spaces for every three dwelling units in an affordable housing project.

As noted above, Article 18 of the city's existing land use code offers affordable housing density bonuses, as well as height bonuses and setback reductions, in many zones. However, these bonuses are structured differently than contemplated under LD 2003, starting at 10% and scaling upward depending on the share of affordable units. The city's existing bonuses are not available in every zone that currently permits multi-family housing. And though Portland's code includes broad exceptions from parking requirements for affordable housing, multi-family housing, and uses proximate to fixed-route transit, the code does not explicitly set a standard of two off-street spaces for every three units for an affordable housing project or less. Thus three amendments are proposed to address this portion of the law:

- *Density bonus language.* Amendments to Table 18-C have been drafted such that a 2.5x density bonus is triggered when over 50% of units within a project qualify as affordable. Note that Table 18-C has also been edited to consolidate the bonus structure for "low-income" and "workforce" housing, as the income restrictions for the two are similar under the current ordinance, and this change significantly simplifies implementation. 18.2.4(A) has also been edited to distinguish dimensional bonuses related to height and setbacks from density bonuses, as these types of dimensional relief are not considered in LD 2003.
- *Geographic eligibility for density bonus.* Subsection 18.2.4(A) has been updated to extend density bonuses to areas "where multi-family is allowed as a permitted or conditional use, with the exception of the I-B zone." The I-B zone has been excluded since it falls outside Portland's designated growth area. Note that in conjunction with this change, 18.2.4(B) has been edited to extend the 2.5x bonus to Planned Residential Unit Developments (PRUD)s, as a housing typology that can meet the definition for multi-family under the state's law, in zones where they are permitted within the designated growth area.
- *Long-term affordability.* LD 2003 mandates a municipal mechanism to preserve the affordability of units created under the law. Existing density bonus language from Subsection 18.2.4(C) requires affordability for "the longest term permitted under federal, state, and local laws," but does not technically require 30 years or refer to deed restrictions, as LD 2003 specifies. Staff recommends amending this language for greater consistency with the law.

TABLE 18-C: BONUSES FOR ELIGIBLE PROJECTS

% Low-income or Workforce Units	% Workforce Units	Density Permitted ¹	Additional Height Permitted ²	Setback Reductions ³
10-19%	20%	1.1 x base	N/A	N/A
20-29%	40%	1.2 x base	10 ft.	N/A
30-39%	60%	1.3 x base	10 ft.	5 ft.
50-74%	100%	2.5 x base	15 ft.	5 ft.
> 75%	N/A	2.5 x base	25 ft.	10 ft.

¹ "Base" is the number of units allowed under the zoning without this bonus but with any other bonuses applied. In R-P zones, multifamily is permitted with a "base" no less than 1 unit per 1,500 SF of land area. ~~If an eligible project is providing both workforce and affordable housing units, the applicant shall have the option of utilizing applicable incentives, but not cumulatively.~~

² The maximum additional height permitted in the B-1/B-1b zones and the R-P zone shall be 15 feet. In addition, the maximum structure height is 50 feet within 750 feet of the Portland Observatory.

³ Setback reductions are absolute reductions in front, side, and/or rear setback requirements. The maximum setback reductions in the B-1/B-1b and R-P zones shall be 5 ft.

18.2.4 Density and dimensional bonuses and reductions

Notwithstanding any other provision of this Land Use Code to the contrary, in order to encourage low-income and workforce units in designated growth areas, eligible projects as defined under Subsection 18.2.2 may avail themselves of the following options:

- A. **Density and dimensional bonuses.** The maximum number of units that would otherwise be allowed under this Land Use Code shall be increased for an eligible project in the manner described in Table 18-C, applicable where multi-family is allowed as a permitted or conditional use, with the exception of the I-B zone. Other dimensional bonuses related to height and setbacks shall only be applicable in in the B-1/B-1b, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-5, R-7, and R-P zones.

B. Planned Residential Unit Developments (PRUDs).

~~In order to promote orderly development of low- and moderate income development as PRUDs, in the R-5, R-5, and R-5a zones, any project-PRUD in which more than 50% of the units are low-income or workforce units for rent or for sale may utilize the following dimensional bonuses and changes:~~

- ~~1. Minimum lot area per dwelling unit is reduced by 50%. The maximum number of units that would otherwise be allowed under this Land Use Code shall be increased by 2.5.~~

...

- C. ~~Unit size and term of affordability.~~ In order to be eligible for this subsection, the low-income and workforce housing units must meet Subsections 18.2.3(C)(3), (4), and (5).

- D. **Term of affordability.** Affordable units under this section shall be deed-restricted to remain -and be affordable for 30 years or the longest term permitted under federal, state, and local laws, whichever is longer. Such deed restrictions shall be recorded in the Cumberland County Registry of Deeds.

TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS

Categorical Vehicular Exceptions

...	...
Affordable housing	<u>2 spaces are required for every 3 units, except that the Planning Board may establish a lesser parking requirement that is less than 1 space per workforce or low-income housing unit, regardless of the size of the structure.</u>



Figure 1: Guidance on dwelling unit allowances from Maine Department of Economic and Community Development, LD 2003 Guidance

B. Dwelling unit allowances (30-A M.R.S § 4364-A)

Where residential uses are allowed, LD 2003 requires that municipalities permit two units on undeveloped lots outside of designated growth areas, and four units on undeveloped lots within growth areas. The law further requires that on lots with one existing dwelling unit, two additional dwelling units be allowed. *Figure 1* illustrates the requirements of this portion of the law.

As with affordable housing bonuses, the city's existing land use code already far exceeds these requirements in many of its zones. The city's code allows significant and, in some instances, even unlimited housing density on undeveloped or redeveloped lots in many of the mixed-use zones, and even within the residential zone structure, there are zones that permit significantly more density than required under LD 2003. (In the R-6, for instance, where multi-

family is a permitted use, the median parcel size is approximately 4,400 SF, on which six units could be constructed based on current densities.) It should be noted that the City of Portland also permits up to two ADUs on any lot in residential use and exempts ADUs from density limits, effectively permitting a two-unit bonus for lots in residential use city-wide. Though ADU provisions of the city's ordinance translate to use permissions of at least three units on any lot in residential use on the islands, and at least three or four units on any lot in residential use on the mainland, LD 2003 treats ADU permissions and dwelling unit allowances under these provisions of the law as separate, meaning that amendments are necessary to comply with this portion of the law.

To address the dwelling unit allowances of LD 2003, amendments have been drafted into a new section within Article 6. These amendments are shown here, with a discussion following.

6.4.2 Additional residential use permissions

- A. In island zones: Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:
1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
 2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.
- B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:
1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
 2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.
- C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is demolished and a vacant lot results.
- D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:
1. Up to two additional dwelling units are permitted on any lawfully conforming lot containing one existing dwelling unit.
 2. Such units may be located:
 - i. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
 - ii. Within or attached to the existing structure, in which case the lot area per dwelling unit standards of Article 7 shall not apply.
 3. Units created under this section shall not be considered accessory dwelling units under Section 6.6.2(A).

1. *Permitted uses on vacant lots and lots with one existing unit.* The new language in Section 6.4.2:
 - *Adds residential use permissions for existing vacant lots.* The draft text would permit up to two units on lawfully conforming lots that do not contain an existing dwelling unit in the island zones, or outside of the designated growth area. The new language would also permit up to four units on lawfully conforming lots that do not contain an existing dwelling unit in mainland zones where residential is a permitted or conditional use, or inside the growth area. Following state guidance for the two-unit provision, in both cases the draft language states that such units may be located within a single structure or in multiple structures.
 - *Adds residential use permissions for lots with one existing dwelling unit.* The draft Section 6.4.2 would also allow up to two additional units on lawfully conforming lots with one existing unit in any zone where residential is a permitted or conditional use, as required by the state. Based on discussion with the Planning Board, Section 6.4.2 has been drafted to allow these units within, attached, or separate from the existing structure. Note that this represents a level of flexibility beyond what is technically required under LD 2003.

2. *Vacant lots and the potential for tear downs.* LD 2003 explicitly allows a municipality to speak to the potential for tear downs under the vacant lot provisions of the law. Theoretically, without such provisions, any lot on the mainland, for example, could be made “vacant” and thus be eligible for four units. To address this possibility, Section 6.4.2(C) has been drafted to limit the applicability of the vacant lot allowances to those lots that are vacant as of July 1, 2023, the date identified within the state law. During the Planning Board’s review, a number of commenters advocated for the elimination of this tear down provision (*Attachment 5*) and the Board spent considerable time discussing this aspect of the draft.

There are multiple factors that led to the inclusion of this language:

- If the tear down language was to be eliminated from Section 6.4.2, the vacant lot provisions would effectively become the de facto use permissions for many residential zones, in essence overriding the permitted use tables within Article 6. If there is a wish to increase the number of units allowed in residential zones across the board, there are ReCode drafts under review right now that can accommodate any changes that the Planning Board or Council finds appropriate, with a full public process to inform those deliberations. Staff strongly recommended that any increase in base zone residential density be forthrightly represented in the use tables for all zones.
- Regarding uses more broadly, the current policy direction in ReCode is to allow four-families and greater in *some but not all* residential zones. This approach is based on the *Portland’s Plan* premises that diversity in housing is central to a healthy housing ecosystem, that not all neighborhoods in the City of Portland should have the same dimensional and use permissions, and that more housing density should generally be located closer to goods, services, and supporting infrastructure in order to meet climate, complete neighborhoods, and transportation goals. The public review process for ReCode may lead to different multi-family density conclusions, but the topic of how to tier the maximum development potential across different neighborhoods is one that warrants full consideration as to the implications.
- Public engagement to date has generally supported a varied approach to housing density that takes into account the range of neighborhood types and development patterns that exist within the city.

After significant discussion, the Planning Board elected to maintain Section 6.4.2(C) within the draft text amendments, recommending that the vacant lot provisions not extend to lots on which buildings in existence on July 1, 2023 are torn down.

3. *Relationship to ADUs.* In the final draft before the Council, Section 6.4.2 does not include language prohibiting lots considered under this section from constructing ADUs. Like the prohibition on tear downs for the purposes of making a lot “vacant,” this restriction is explicitly permitted by the state; the law reads that if more than one unit has been constructed on a lot under these allowances, it is not eligible for “any additional increases in density except as allowed by the municipality.” Throughout the Planning Board’s review, members of the public advocated for the lots considered under Section 6.4.2 to be permitted ADUs.

While ADUs are distinct from principal units, it should be acknowledged that, under the city's existing code, they nevertheless represent two additional units permitted on any given lot. Allowing lots to be eligible for ADUs *on top of* the vacant lot and two additional unit allowances effectively increases the number of units permitted in these scenarios to six on vacant lots in all mainland residential zones, four on all vacant lots in island zones, and five on all lots with one existing dwelling unit city-wide.

4. *Relationship to dimensional standards.* LD 2003 states that local ordinances may not establish greater dimensional standards, such as setbacks, for the units allowed under these provisions of the law than those for single family homes. The law is also explicit, however, that lot area per dwelling unit standards may be applied to these units, and state guidance speaks to this matter as well (*Figure 2*). Generally, the city's existing code does not distinguish between dimensional standards for single-family dwellings and multi-family dwellings, with the exception that additional lot area is required for additional units in some zones based on a minimum lot area per dwelling unit, or density, standard. Because these density standards relate directly to the number of units permitted on a lot, they have been addressed in Section 6.4.2.



Figure 2: Guidance on lot size provisions from Maine Department of Economic and Community Development, LD 2003 Guidance

Section 6.4.2 has been drafted such that the density standards of the base zone *would apply* in cases where units are constructed in separate structures, but *would not apply* in cases where units are located within a single structure. This approach is meant to reinforce the existing built context within the city's residential zones, and is generally consistent with the city's existing use and dimensional structure, which encourages multiple units within a single building by increasing density standards as use permissions scale up. It should be noted that lot area per dwelling unit standards for the IR-1 and IR-2 zones have been drafted into Table 7-D, as none previously existed. These standards are based on the existing pattern for other low-density residential zones, where lot area per dwelling unit standards are derived from minimum lot sizes for single-family uses.

In association with multiple requirements of LD 2003, multiplex, a multi-family-like use currently permitted in the R-4 and R-5 zones, has also been struck from the code. This use, which requires greater minimum lot sizes, densities, and lot widths than otherwise required for residential uses in these zones, and in some cases is subject to unit maximums which bear little relationship to lot size or density, has not been widely constructed in the city. In order to make

dimensional provisions consistent with state law and to simplify implementation, references to multiplex have been eliminated from Articles 3, 6, and 7.

5. *Note on Section 6.4.2 in the context of ReCode.* The Planning Board review featured public comment and discussion surrounding various elements of staff's proposal under LD 2003. However, by far the most significant points of discussion were the dwelling unit allowance requirements of LD 2003. To frame the decision-making around these aspects of the draft language, it is useful to compare the housing opportunities created under the draft Section 6.4.2 with those proposed under the context of ReCode.

To provide additional clarity on use provisions, staff has developed a schematic (*Figure 3*) which shows basic use permissions under residential zones within the existing land use code, the proposed use permissions under the first wave of ReCode drafts, and the allowances proposed under LD 2003, which would supplement the use permissions of zoning in either case.

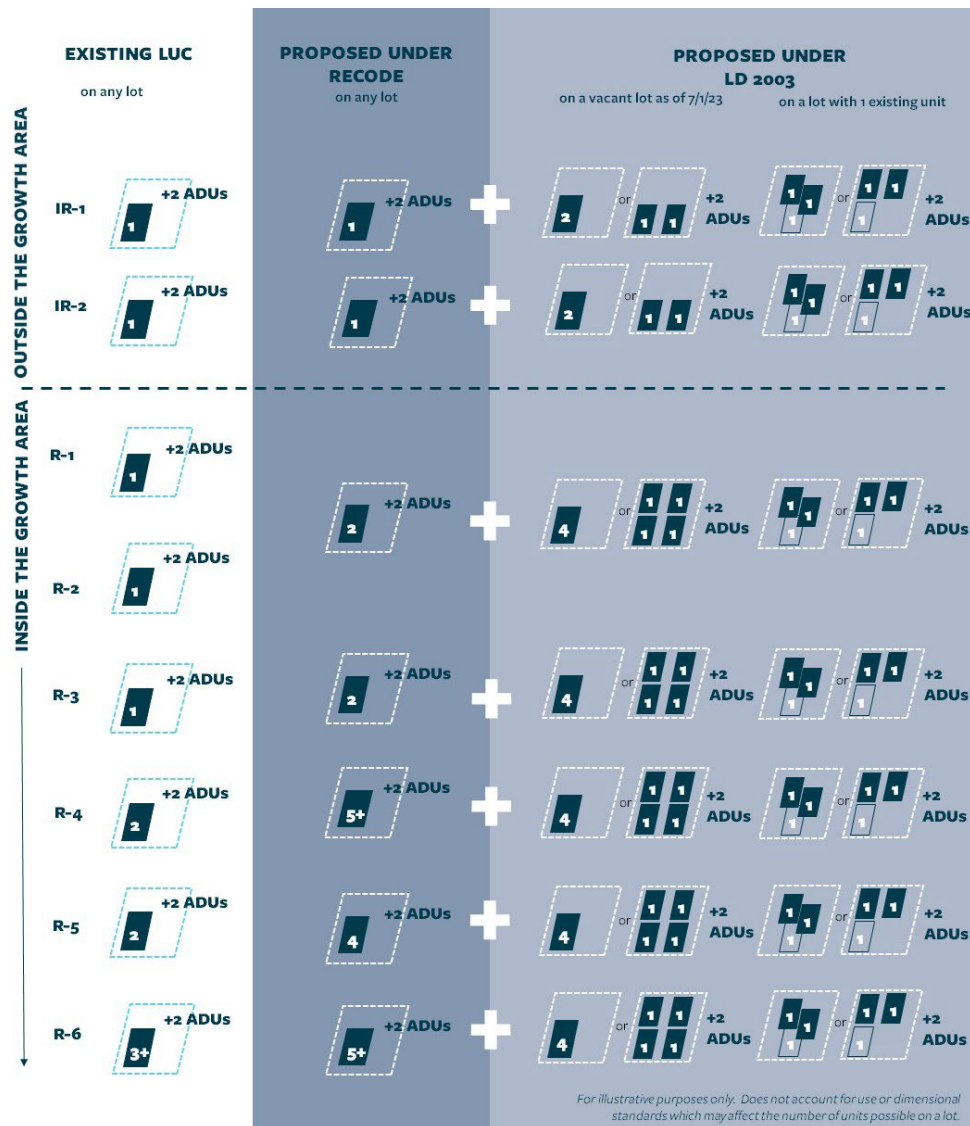


Figure 3: Use permissions under the existing land use code, ReCode as proposed, and Section 6.4.2 as proposed.

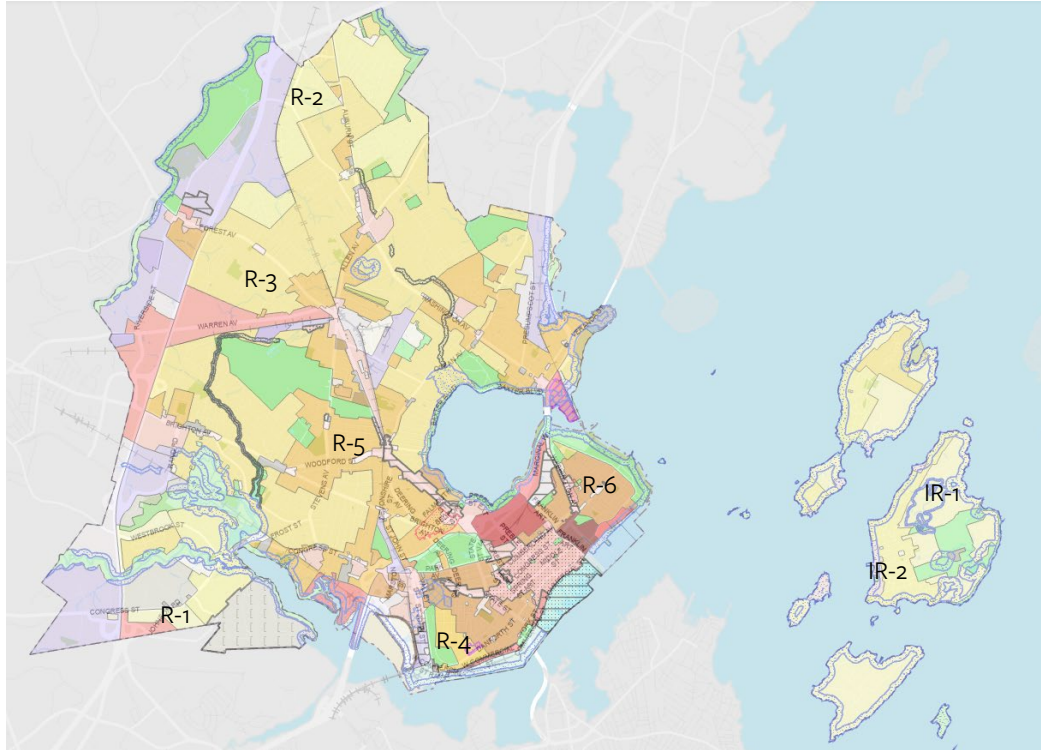


Figure 4: Existing zoning map.

The working draft of Article 6 under ReCode, which identifies the permitted uses in each of the city's base zones, would allow:

Proposed Use Permissions: Base Zoning Under ReCode Drafts

Zones	Permitted uses	+ ADUs
IR-1 and IR-2	1 unit	+2 ADUs
R-1, R-2, and R-3	Up to 2 units	
R-4, R-5/R-5a, R-6/R-6a	Up to 4+ units	

In addition, through Section 6.4.2, LD 2003 adds that all vacant lots in the mainland residential zones would be eligible for four dwelling units, either in a single structure or in separate structures. All vacant island lots would be eligible for two dwelling units. Across the city, all lots with one existing dwelling unit would be eligible for two additional units. And under the draft Section 6.4.2 recommended by the Planning Board, two ADUs would be permitted on each of these lots as well. These allowances are shown in Figure 3 and below:

Comparison of Proposed Use Permissions: Base Zoning + Special Use Provisions of LD 2003

Relationship to designated growth area	Zones	Existing code + Section 6.4.2			ReCode + Section 6.4.2			+ ADUS
		Any lot	Lot with		Any lot	Lot with		
			No existing dwelling units	1 existing dwelling unit		No existing dwelling units	1 existing dwelling unit	
Outside	IR-1 and IR-2	1 unit	2 units	1 + 2 units	1 unit	2 units	1 + 2 units	+2 ADUs
Inside	R-1, R-2, and R-3	1 unit	4 units		2 units	4 units		
	R-4, R-5/a, R-6/a	2+ units			4+ units			

Because the ReCode drafts would allow four or more units by right on any lot in the R-4 zone and up, they meet or exceed LD 2003 density requirements and essentially render the dwelling unit allowance provisions of Section 6.4.2 obsolete. The areas where there is more potential impact from Section 6.4.2, are in the IR-1, IR-2, R-1, R-2, and R-3 zones. In these zones:

- *IR-1 and IR-2:* Under existing zoning, single-family is the only permitted residential use. One unit would continue to be permitted under the base residential zoning proposed under ReCode. Two units would be allowed on vacant lots and 3 units would be allowed on lots with one existing dwelling unit under Section 6.4.2. Two ADUs would also be permitted in any of these scenarios.
- *R-1, R-2, and R-3:* Under existing zoning, single-family is the sole permitted residential use (with some exceptions for adaptive reuse). Two units would be permitted under the base residential zoning proposed under ReCode. Four units would be allowed on vacant lots and three would be allowed on lots with one existing dwelling unit under Section 6.4.2. Two ADUs would also be permitted in any of these scenarios.

C. Accessory Dwelling Units (ADUs) (30-A M.R.S § 4364-B)

The third component of LD 2003 relates to accessory dwelling units, or ADUs. Generally, the law requires that one ADU be permitted on any lot occupied by a single-family home, dictates how that ADU may be constructed, and sets parameters around dimensional and parking requirements. The city's existing ADU ordinance generally meets or exceeds the requirements of LD 2003, as the current land use code allows up to two ADUs on any lot in residential use (including single-family, two-family, or multi-family), exempts ADUs from parking requirements, and exempts ADUs from residential density standards.

The one aspect of LD 2003's ADU provisions that necessitates an amendment to the city's land use code relates to the requirement that dimensional standards for attached or integrated ADUs must be the same as the dimensional standards for single-family homes. This requirement extends to dimensional standards like minimum lot size, which in the city's case varies between single family homes and homes with ADUs in several zones. Amendments have been drafted to Section 6.6.2(A)7 to remove existing minimum lot size provisions for ADUs within the IR-1 and IR-2 zones. Simultaneously, existing short-term rental provisions for Peaks Island in Section 6.6.2(A)4 were also eliminated, based on state guidance regarding the regulation of short-term rentals through LD 2003.

6.6.2 Standards for specific accessory uses

A. Accessory Dwelling Units (ADUs)

1. Accessory Dwelling Units (ADUs) shall be permitted on all lawfully conforming and nonconforming lots with legal residential uses. ADUs shall comply with all dimensional standards of the underlying zone unless otherwise provided below.
2. Up to two ADUs shall be permitted per qualifying property.
3. At the time of an ADU's initial construction or legal creation, the owner(s) of the property on which the accessory dwelling unit is created must occupy at least one of the dwelling units, with the exception of legally nonconforming lots on Peaks Island.
- ~~4. On Peaks Island, neither the accessory unit or principal unit shall be used for short term rentals as defined under Chapter 6, Section 150.1 of the City of Portland Code of Ordinances.~~
- ~~5.4.~~ When an ADU is significantly visible from public ways, the building design shall:
 - a. Be clearly subordinate to the principal structure(s) in scale and position in relationship with the street and principal structure(s).
 - b. Not include outside stairways or fire escapes above the ground floor.
- ~~6.5.~~ Under circumstances where an existing nonconforming structure is converted to an ADU, the design of the ADU shall take into consideration to the extent practicable the privacy of adjacent properties.
- ~~7.6.~~ The developer of an ADU shall record a deed restriction requiring that the ADU and at least one other non-accessory unit on-site remain under common ownership.
- ~~7.~~ ADUs shall comply with all dimensional requirements of the underlying zone except:
 - ~~1.~~ Lot coverage and lot area per dwelling unit requirements.
 - ~~a.~~ Within the IR-1 zone, the minimum lot area shall be 70,000 square feet, except on Peaks Island where this standard shall not apply.
 - ~~b.~~ Within the IR-2 zone, the minimum lot area shall be 30,000 square feet, except on Peaks Island where this standard shall not apply.

VI. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed amendments at a public hearing on October 24, 2023. On the basis of the City of Portland Land Use Code, Portland's Comprehensive Plan, public comment, the information provided in the public hearing on October 24, 2023, the Planning Board voted 7-0 to find that the enclosed text amendments to Chapter 14 of the City Code, Articles 3, 6, 7, 18, and 19 bring the Land Use Code into consistency with the requirements of LD 2003, are in conformance with the City of Portland Comprehensive Plan, and therefore recommends approval of the proposed zoning amendments to the City Council.

VII. ATTACHMENTS

1. HP 1489 – LD 2003: An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions
2. HP 1095 – LD 1706: An Act to Clarify Statewide Laws Regarding Affordable Housing and Accessory Dwelling Units
3. Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule
4. Maine Department of Economic & Community Development, LD 2003 Guidance
5. Public comments
6. Draft Amendments to Chapter 14, Article 3: Definitions
7. Draft Amendments to Chapter 14, Article 6: Use Standards
8. Draft Amendments to Chapter 14, Article 7: Dimensional Standards

9. Draft Amendments to Chapter 14, Article 18: Housing
10. Draft Amendments to Chapter 14, Article 19: Off-Street Parking & Loading

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 1489 - L.D. 2003

**An Act To Implement the Recommendations of the Commission To Increase
Housing Opportunities in Maine by Studying Zoning and Land Use
Restrictions**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §13056, sub-§7, as amended by PL 2003, c. 159, §3, is further amended to read:

7. Contract for services. When contracting for services, to the maximum extent feasible, seek to use the State's private sector resources in conducting studies, providing services and preparing publications; ~~and~~

Sec. 2. 5 MRSA §13056, sub-§8, as enacted by PL 2003, c. 159, §4, is amended to read:

8. Lead agency for business assistance in response to certain events. Be the lead agency for the State to provide information and business assistance to employers and businesses as part of the State's response to an event that causes the Department of Labor to carry out rapid-response activities as described in 29 United States Code, Sections 2801 to 2872 (2002); ~~and~~

Sec. 3. 5 MRSA §13056, sub-§9 is enacted to read:

9. Establish statewide housing production goals. Establish, in coordination with the Maine State Housing Authority, a statewide housing production goal that increases the availability and affordability of all types of housing in all parts of the State. The department shall establish regional housing production goals based on the statewide housing production goal. In establishing these goals, the department shall:

- A. Establish measurable standards and benchmarks for success of the goals;
- B. Consider information submitted to the department from municipalities about current or prospective housing developments and permits issued for the construction of housing; and
- C. Consider any other information as necessary to meet the goals pursuant to this subsection.

Sec. 4. 30-A MRSA §4364 is enacted to read:

§4364. Affordable housing density

For an affordable housing development approved on or after July 1, 2023, a municipality with density requirements shall apply density requirements in accordance with this section.

1. Definition. For the purposes of this section, "affordable housing development" means:

A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

2. Density requirements. A municipality shall allow an affordable housing development where multifamily dwellings are allowed to have a dwelling unit density of at least 2 1/2 times the base density that is otherwise allowed in that location and may not require more than 2 off-street parking spaces for every 3 units. The development must be in a designated growth area of a municipality consistent with section 4349-A, subsection 1, paragraph A or B or the development must be served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system. The development must comply with minimum lot size requirements in accordance with Title 12, chapter 423- A, as applicable.

3. Long-term affordability. Before approving an affordable housing development, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

B. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

4. Shoreland zoning. An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

5. Water and wastewater. The owner of an affordable housing development shall provide written verification to the municipality that each unit of the housing development is connected to adequate water and wastewater services before the municipality may certify the development for occupancy. Written verification under this subsection must include:

A. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

B. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

D. If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

6. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

7. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

8. Rules. The Department of Economic and Community Development shall adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. The rules must include criteria for a municipality to use in calculating housing costs. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 30-A MRSA §4364-A is enacted to read:

§4364-A. Residential areas, generally; up to 4 dwelling units allowed

1. Use allowed. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which housing is allowed, a municipality shall allow structures with up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit and the lot is located in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B or if the lot is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.

A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.

A municipality may allow more units than the number required to be allowed by this subsection.

2. Zoning requirements. With respect to dwelling units allowed under this section, municipal zoning ordinances must comply with the following conditions.

A. If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-B, the lot is not eligible for any additional increases in density except as allowed by the municipality.

B. A municipal zoning ordinance may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023 is torn down and an empty lot results.

3. General requirements. A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed under this section that are greater than dimensional requirements or setback requirements for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

4. Water and wastewater. The owner of a housing structure must provide written verification to the municipality that the structure is connected to adequate water and wastewater services before the municipality may certify the structure for occupancy. Written verification under this subsection must include:

A. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the structure and proof of payment for the connection to the sewer system;

B. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the structure, proof of payment for the connection and the volume and supply of water required for the structure; and

D. If a housing structure is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

5. Municipal implementation. In adopting an ordinance, a municipality may:

A. Establish an application and permitting process for housing structures;

B. Impose fines for violations of building, zoning and utility requirements for housing structures; and

C. Establish alternative criteria that are less restrictive than the requirements of subsection 4 for the approval of a housing structure only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C.

6. Shoreland zoning. A housing structure must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

7. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

8. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

9. Rules. The Department of Economic and Community Development may adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10. Implementation. A municipality is not required to implement the requirements of this section until July 1, 2023.

Sec. 6. 30-A MRSA §4364-B is enacted to read:

§4364-B. Accessory dwelling units

1. Use permitted. Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.

2. Restrictions. An accessory dwelling unit may be constructed only:

A. Within an existing dwelling unit on the lot;

B. Attached to or sharing a wall with a single-family dwelling unit; or

C. As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to July 1, 2023.

3. Zoning requirements. With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions:

A. At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and

B. If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-A, the lot is not eligible for any additional increases in density except as allowed by the municipality.

4. General requirements. With respect to accessory dwelling units, municipalities shall comply with the following conditions.

A. A municipality shall exempt an accessory dwelling unit from any density requirements or calculations related to the area in which the accessory dwelling unit is constructed.

B. For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and set back requirements for an accessory dwelling unit.

C. An accessory dwelling unit may not be subject to any additional parking requirements beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located.

5. Shoreland zoning. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

6. Size requirements. An accessory dwelling unit must meet a minimum size of 190 square feet. If the Technical Building Codes and Standards Board under Title 10, section 9722 adopts a different minimum size, that standard applies. A municipality may impose a maximum size for an accessory dwelling unit.

7. Water and wastewater. The owner of an accessory dwelling unit must provide written verification to the municipality that the accessory dwelling unit is connected to adequate water and wastewater services before the municipality may certify the accessory dwelling unit for occupancy. Written verification under this subsection must include:

A. If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the accessory dwelling unit and proof of payment for the connection to the sewer system;

B. If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the accessory dwelling unit, proof of payment for the connection and the volume and supply of water required for the accessory dwelling unit; and

D. If an accessory dwelling unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

8. Municipal implementation. In adopting an ordinance under this section, a municipality may:

A. Establish an application and permitting process for accessory dwelling units;

B. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and

C. Establish alternative criteria that are less restrictive than the requirements of subsections 4, 5, 6 and 7 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C.

9. Rate of growth ordinance. A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance as described in section 4360.

10. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

11. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid or enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

12. Rules. The Department of Economic and Community Development may adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

13. Implementation. A municipality is not required to implement the requirements of this section until July 1, 2023.

Sec. 7. 30-A MRSA §4364-C is enacted to read:

§4364-C. Municipal role in statewide housing production goals

This section governs the responsibilities and roles of municipalities in achieving the statewide and regional housing production goals set by the Department of Economic and Community Development in Title 5, section 13056, subsection 9.

1. Fair housing and nondiscrimination. A municipality shall ensure that ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act, 42 United States Code, Chapter 45, as amended, and the Maine Human Rights Act to achieve the statewide or regional housing production goal.

2. Municipalities may regulate short-term rentals. A municipality may establish and enforce regulations regarding short-term rental units in order to achieve the statewide or regional housing production goal. For the purposes of this subsection, "short-term rental unit" means living quarters offered for rental through a transient rental platform as defined by Title 36, section 1752, subsection 20-C.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

—
H.P. 1095 - L.D. 1706

**An Act to Clarify Statewide Laws Regarding Affordable Housing and
Accessory Dwelling Units**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law requires, beginning July 1, 2023, all municipalities to allow a certain number of dwelling units under certain circumstances and the construction of accessory dwelling units on the same lot as a single-family dwelling unit and to comply with certain other zoning requirements; and

Whereas, it is the intent of this legislation to extend the implementation date for certain municipalities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4364, first ¶, as enacted by PL 2021, c. 672, §4, is amended to read:

For an affordable housing development approved on or after ~~July 1, 2023~~ the implementation date, a municipality with density requirements shall apply density requirements in accordance with this section.

Sec. 2. 30-A MRSA §4364, sub-§1, as enacted by PL 2021, c. 672, §4, is amended to read:

1. Definition. For the purposes of this section, "affordable housing development" means:

A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority

51% or more of the units that the developer designates as affordable in the development without spending more than 30% of the household's monthly income on housing costs; and

B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford ~~a majority~~ 51% or more of the units that the developer designates as affordable in the development without spending more than 30% of the household's monthly income on housing costs.

Sec. 3. 30-A MRSA §4364, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" means:

A. January 1, 2024 for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality; and

B. July 1, 2024 for all other municipalities.

Sec. 4. 30-A MRSA §4364, sub-§3, as enacted by PL 2021, c. 672, §4, is amended to read:

3. Long-term affordability. Before ~~approving~~ granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

B. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

Sec. 5. 30-A MRSA §4364, sub-§6, as enacted by PL 2021, c. 672, §4, is amended to read:

6. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 6. 30-A MRSA §4364-A, sub-§1, as enacted by PL 2021, c. 672, §5, is amended to read:

1. Use allowed. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which ~~housing is~~ residential uses are allowed, including as a conditional use, a municipality shall allow structures with up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing

dwelling unit and the lot is located in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B or if the lot is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.

A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.

A municipality may allow more units than the number required to be allowed by this subsection.

Sec. 7. 30-A MRSA §4364-A, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" has the same meaning as in section 4364, subsection 1-A.

Sec. 8. 30-A MRSA §4364-A, sub-§2, ¶B, as enacted by PL 2021, c. 672, §5, is amended to read:

B. A municipal zoning ordinance may establish a prohibition or an allowance for lots where a dwelling unit in existence after ~~July 1, 2023~~ the implementation date is torn down and an empty lot results.

Sec. 9. 30-A MRSA §4364-A, sub-§3, as enacted by PL 2021, c. 672, §5, is amended to read:

3. General requirements. A municipal ordinance may not establish dimensional requirements ~~or, including but not limited to~~ setback requirements, for dwelling units allowed under this section that are greater than dimensional requirements ~~or, including but not limited to~~ setback requirements, for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

Sec. 10. 30-A MRSA §4364-A, sub-§7, as enacted by PL 2021, c. 672, §5, is amended to read:

7. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 11. 30-A MRSA §4364-A, sub-§10, as enacted by PL 2021, c. 672, §5, is amended to read:

10. Implementation. A municipality is not required to implement the requirements of this section until ~~July 1, 2023~~ the implementation date.

Sec. 12. 30-A MRSA §4364-B, sub-§1, as enacted by PL 2021, c. 672, §6, is amended to read:

1. Use permitted. Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which ~~housing is~~ residential uses are permitted, including as a conditional use.

Sec. 13. 30-A MRSA §4364-B, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" has the same meaning as in section 4364, subsection 1-A.

Sec. 14. 30-A MRSA §4364-B, sub-§2, as enacted by PL 2021, c. 672, §6, is amended by amending the first blocked paragraph to read:

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to ~~July 1, 2023~~ the implementation date.

Sec. 15. 30-A MRSA §4364-B, sub-§3, as enacted by PL 2021, c. 672, §6, is amended to read:

3. Zoning requirements. With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions:

A. At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; ~~and~~

B. If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this section ~~or section 4364-A~~, the lot is not eligible for any additional increases in density except as allowed by the municipality; ~~and~~

C. An accessory dwelling unit is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory dwelling unit does not further increase the nonconformity.

Sec. 16. 30-A MRSA §4364-B, sub-§4, ¶B, as corrected by RR 2021, c. 2, Pt. A, §110, is amended to read:

B. For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of ~~July 1, 2023~~ the implementation date, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and setback requirements for an accessory dwelling unit.

Sec. 17. 30-A MRSA §4364-B, sub-§4, ¶D is enacted to read:

D. An accessory dwelling unit that was not built with municipal approval must be allowed if the accessory dwelling unit otherwise meets the requirements for accessory dwelling units of the municipality and under this section.

Sec. 18. 30-A MRSA §4364-B, sub-§5, as enacted by PL 2021, c. 672, §6, is amended to read:

5. Shoreland zoning. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances, except that a municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

Sec. 19. 30-A MRSA §4364-B, sub-§8, ¶A, as enacted by PL 2021, c. 672, §6, is amended to read:

A. Establish an application and permitting process for accessory dwelling units that does not require planning board approval;

Sec. 20. 30-A MRSA §4364-B, sub-§10, as enacted by PL 2021, c. 672, §6, is amended to read:

10. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 21. 30-A MRSA §4364-B, sub-§13, as enacted by PL 2021, c. 672, §6, is amended to read:

13. Implementation. A municipality is not required to implement the requirements of this section until ~~July 1, 2023~~ the implementation date.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Chapter 5: HOUSING OPPORTUNITY PROGRAM: MUNICIPAL LAND USE AND ZONING ORDINANCE RULE

Summary: This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

Note: This chapter incorporates by reference certain material. The Appendix lists the material that is incorporated by reference, the date for each reference, and the organization where copies of the material are available.

SECTION 1. PURPOSE AND DEFINITIONS**A. PURPOSE**

1. This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.
2. Municipalities need not adopt this rule language or the statutory language in P.L. 2021 Ch. 672 word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of increasing housing opportunities. If a municipality does not adopt ordinances to comply with P.L. 2021 Ch. 672, this legislation will preempt municipal home rule authority.
3. These rules do not:
 - a) Abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this rule, as long as the agreement does not abrogate rights pursuant to the United States Constitution or the Constitution of Maine;
 - b) Exempt a subdivider from the requirements in Title 30-A Chapter 187 subchapter 4;

- c) Exempt an affordable housing development, a dwelling unit, or accessory dwelling unit from the shoreland zoning requirements established by the Department of Environmental Protection pursuant to Title 38 Chapter 3 and municipal shoreland zoning ordinances; or
- d) Abrogate or annul minimum lot size requirements under Title 12 Chapter 423-A.

B. DEFINITIONS

All terms used but not defined in this chapter shall have the meanings ascribed to those terms in Chapter 187 of Title 30-A of the *Maine Revised Statutes*, as amended. Municipalities need not adopt the terms and definitions outlined below word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities.

Accessory dwelling unit. "Accessory dwelling unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must be a minimum of 190 square feet and municipalities may impose a maximum size.

Affordable housing development. "Affordable housing development" means

1. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and
2. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the *United States Housing Act of 1937*, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.
3. For purposes of this definition, "majority" means more than half of proposed and existing units on the same lot.
4. For purposes of this definition, "housing costs" include, but are not limited to:
 - a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

- b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

Area median income. "Area median income" means the midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

Attached. "Attached" means connected by a shared wall to the principal structure or having physically connected finished spaces.

Base density. "Base density" means the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in a local land use or zoning ordinance. This does not include local density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

Centrally managed water system. "Centrally managed water system" means a water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

Certificate of occupancy. "Certificate of occupancy" means the municipal approval for occupancy granted pursuant to 25 M.R.S. §2357-A or the *Maine Uniform Building and Energy Code* adopted pursuant to Title 10 Chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

Comparable sewer system. "Comparable sewer system" means any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

Comprehensive plan. "Comprehensive plan" means a document or interrelated documents consistent with 30-A M.R.S. §4326(1)-(4), including the strategies for an implementation program which are consistent with the goals and guidelines established pursuant to Title 30-A Chapter 187 Subchapter II.

Density requirements. "Density requirements" mean the maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

Designated growth area. "Designated growth area" means an area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed. Designated growth areas may also be referred to as priority development zones or other terms with a similar intent. If a municipality does not have a comprehensive plan, "designated growth area" means an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial

Census as a census-designated place or a compact area of an urban compact municipality as defined by 23 M.R.S. §754.

Dimensional requirements. “Dimensional requirements” mean requirements which govern the size and placement of structures including, but limited not to, the following requirements: building height, lot area, minimum frontage and lot depth.

Dwelling unit. “Dwelling unit” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

Existing dwelling unit. “Existing dwelling unit” means a residential unit in existence on a lot at the time of submission of a permit application to build additional units on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for additional units on a lot.

Housing. “Housing” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. For purposes of this rule, this does not include dormitories, boarding houses or other similar types of housing units. This also does not include transient housing or short-term rentals, unless these uses are otherwise allowed in local ordinance.

Land use ordinance. “Land use ordinance” means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for those uses.

Lot. “Lot” means a single parcel of developed or undeveloped land.

Multifamily dwelling. “Multifamily dwelling” means a structure containing three (3) or more dwelling units.

Potable. “Potable” means safe for drinking as defined by the U.S. Environmental Protection Agency’s (EPA) Drinking Water Standards and Health Advisories Table and Maine’s interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, *Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Level for Certain Substances and Contaminants*.

Principal structure. “Principal structure” means a structure in which the main or primary use of the structure is conducted. For purposes of this rule, principal structure does not include commercial buildings.

Restrictive covenant. “Restrictive covenant” means a provision in a deed, or other covenant conveying real property, restricting the use of the land.

Setback requirements. “Setback requirements” mean the minimum horizontal distance from a lot line, shoreline, or road to the nearest part of a structure, or other regulated object or area as defined in local ordinance.

Single-family dwelling unit. “Single-family dwelling unit” means a structure containing one (1) dwelling unit.

Structure. “Structure” means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons as defined in 38 M.R.S. §436-A(12).

Zoning ordinance. "Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

SECTION 2. AFFORDABLE HOUSING DENSITY

A. GENERAL

This Section requires municipalities to allow an automatic density bonus for certain affordable housing developments approved on or after July 1, 2023, as outlined below. This section only applies to lots in zoning districts that have adopted density requirements.

B. ELIGIBILITY FOR DENSITY BONUS

1. For purposes of this section, a municipality shall verify that the development:
 - a) Is an affordable housing development as defined in this chapter, which includes the requirement that a majority of the total units on the lot are affordable;
 - b) Is in a designated growth area pursuant to 30-A M.R.S. §4349-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;
 - c) Is located in an area in which multifamily dwellings are allowed per municipal ordinance;
 - d) Complies with minimum lot size requirements in accordance with Title 12 Chapter 423-A; and
 - e) Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
 - i. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

- ii. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.
- iii. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- iv. If a housing unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

2. Long-Term Affordability

Prior to granting a certificate of occupancy or other final approval of an affordable housing development, a municipality must require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the municipality; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction:

- a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and
- b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

C. DENSITY BONUS

If the requirements in Section 2(B)(1) and (2) are met, a municipality must:

- 1. Allow an affordable housing development to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location; and
- 2. Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development.

If fractional results occur when calculating the density bonus in this subsection, the number of units is rounded down to the nearest whole number. Local regulation that chooses to round up shall be considered consistent with and not more restrictive than this

law. The number of motor vehicle parking spaces may be rounded up or down to the nearest whole number.

SECTION 3. DWELLING UNIT ALLOWANCE

A. GENERAL

This section requires municipalities to allow multiple dwelling units on lots where housing is allowed beginning on July 1, 2023, subject to the requirements below. The requirements listed in Section 3 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, lot size, set back, density, septic requirements, minimum lot size, additional parking requirements, growth ordinance permits, shoreland zoning and subdivision law, may also apply to lots.

B. REQUIREMENTS

1. Dwelling Unit Allowance

- a) If a lot does not contain an existing dwelling unit, municipalities must allow up to four (4) dwelling units per lot if the lot is located in an area in which housing is allowed, meets the requirements in 12 M.R.S. Ch. 423-A, and is:
 - i. Located within a designated growth area consistent with 30-A M.R.S. §4349 A(1)(A)-(B); or
 - ii. Served by both a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.
- b) If a lot does not contain an existing dwelling unit and does not meet i. or ii. above, a municipality must allow up to two (2) dwelling units per lot located in an area in which housing is allowed, provided that the requirements in 12 M.R.S. Ch. 423-A are met. The two (2) dwelling units may be (1) within one structure; or (2) separate structures.
- c) If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units:
 - i. One within the existing structure or attached to the existing structure;
 - ii. One detached from the existing structure; or
 - iii. One of each.
- d) If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot unless allowed under local municipal ordinance.

- e) A municipality may allow more units than the minimum number of units required to be allowed on all lots that allow housing.

2. Zoning

With respect to dwelling units allowed under this Section, municipalities with and without zoning ordinances must comply with the following:

- a) If more than one dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.
- b) Municipalities may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023, is torn down and an empty lot results.

3. Dimensional and Setback Requirements

- a) A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to this Section that are more restrictive than the dimensional requirements or setback requirements for single-family housing units.

4. A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit.

Water and Wastewater

- a) The municipality must require an owner of a proposed housing structure to provide written verification that each proposed structure is to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
 - i. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
 - ii. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

- iii. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- iv. If a housing structure is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

C. MUNICIPAL IMPLEMENTATION

In adopting an ordinance, a municipality may:

- 1. Establish an application and permitting process for dwelling units;
- 2. Impose fines for violations of building, site plan, zoning, and utility requirements for dwelling units; and
- 3. Establish alternative criteria that are less restrictive than the requirements of Section 3(B)(4) for the approval of a dwelling units only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

SECTION 4. ACCESSORY DWELLING UNITS

A. GENERAL

- 1. A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, subject to the requirements outlined below. The requirements listed in Section 4 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, set back, density, septic requirements, shoreland zoning and subdivision law may also apply to lots.
- 2. A municipal ordinance that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex and other multi-unit buildings shall be considered consistent with the goals of P.L. 2021 Ch. 672.

B. REQUIREMENTS

- 1. Accessory Dwelling Unit Allowance

An accessory dwelling unit may be constructed only:

- a) Within an existing dwelling unit on the lot;

- b) Attached to a single-family dwelling unit; or
- c) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of Section 4(B)(3)(b)(i) shall apply.

2. Zoning

With respect to accessory dwelling units, municipalities with zoning ordinances and municipalities without zoning must comply with the following conditions:

- (a) At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and
- (b) If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density, except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.

3. Other

With respect to accessory dwelling units, municipalities must comply with the following conditions:

- a) A municipality must exempt an accessory dwelling unit from any density requirements or lot area requirements related to the area in which the accessory dwelling unit is constructed;
- b) For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to a single-family dwelling unit, the dimensional requirements and setback requirements must be the same as the dimensional requirements and setback requirements of the single-family dwelling unit;
 - i. For an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, the required setback requirements in local ordinance of the existing accessory or secondary building apply.
- c) A municipality may establish more permissive dimensional requirements and setback requirements for an accessory dwelling unit.
- d) An accessory dwelling unit may not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the

single-family dwelling unit on the lot where the accessory dwelling unit is located.

4. Size

- a) An accessory dwelling unit must be at least 190 square feet in size, unless the Technical Building Code and Standards Board, pursuant to 10 M.R.S. §9722, adopts a different minimum standard; if so, that standard applies.
- b) Municipalities may set a maximum size for accessory dwelling units in local ordinances, as long as accessory dwelling units are not less than 190 square feet.

5. Water and Wastewater

A municipality must require an owner of an accessory dwelling unit to provide written verification that the proposed accessory dwelling unit is to be connected to adequate water and wastewater services prior to certification of the accessory dwelling unit for occupancy or similar type of approval process. Written verification must include the following:

- a) If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
- b) If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*;
- c) If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- d) If an accessory dwelling unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

C. MUNICIPAL IMPLEMENTATION

In adopting an ordinance under this Section, a municipality may:

- 1. Establish an application and permitting process for accessory dwelling units;

2. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
3. Establish alternative criteria that are less restrictive than the above criteria in Section 4 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

D. RATE OF GROWTH ORDINANCE

A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance pursuant to 30-A M.R.S. §4360.

STATUTORY AUTHORITY:

PL 2021 Ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B.

EFFECTIVE DATE:

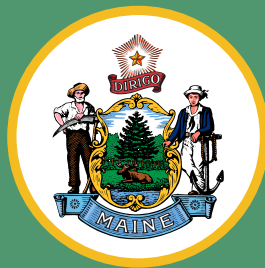
April 18, 2023 – filing 2023-056

APPENDIX

List of Reference Material

Reference Material	Location to Obtain Document
U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table, March 2018.	U.S. Environmental Protection Agency Office of Water Drinking Water Hotline 1-800-426-4791
10-144 C.M.R. Ch. 231, Rules Relating to Drinking Water, May 9, 2016	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016
Resolve 2021, Ch. 82, Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants	Maine State Legislature Legislative Information Office- Document Room 100 State House Station Augusta, ME 04333 207-287-1408 webmaster_house@legislature.maine.gov
01-672 C.M.R. Ch. 10, Land Use Districts and Standards, December 30, 2022	Maine Department of Agriculture, Conservation & Forestry Bureau of Resource Information and Land Use Planning Land Use Planning Commission 22 State House Station Augusta, Maine 04333 207-287-2631
10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules, August 3, 2015	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016

LD 2003 Guidance



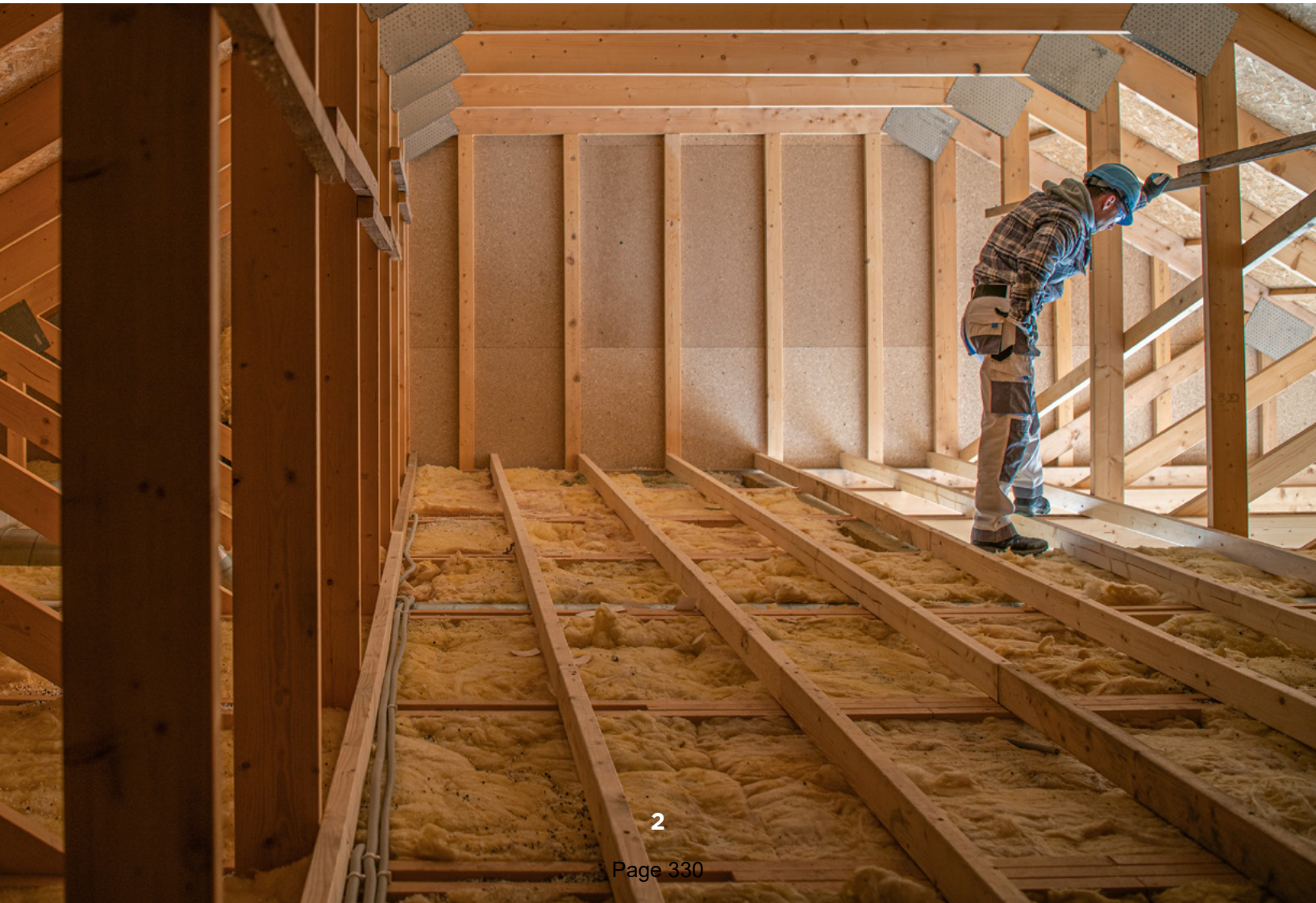
MAINE DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT

LD 2003 Guidance

“An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions,” generally referred to by its legislative tracking name of LD 2003, was signed into law by Governor Mills on April 27, 2022. This law is designed to remove unnecessary

regulatory barriers to housing production in Maine, while preserving local ability to create land use plans and protect sensitive environmental resources. LD 2003 is based on the recommendations of the legislative commission named in the title, though not all those recommendations are included in the enacted legislation.

This guidance is the result of a collaborative effort by the Department of Economic and Community Development, the Governor’s Office of Policy Innovation and the Future, the Department of Agriculture, Conservation and Forestry; legislative staff, and several municipal lawyers and community planners. It is intended to provide information for local authorities to use in determining how LD 2003 affects their local zoning and land use codes, as well as what steps they can take if they wish to tailor their ordinances to avoid conflicts with state laws. This guidance is not legally binding or intended to serve as a substitute for the language of LD 2003 or the rule that will be adopted. It represents the interpretation of LD 2003 and the proposed rule, as well as its requirements by the state agencies that are responsible for its implementation. This guidance may be updated once the rule is adopted.





LD 2003 has the following sections that are relevant to municipal government. The amended sections of state law are shown in the chart below. Among other things:

1. Section 4 allows for additional density for “affordable housing developments” in certain areas.
2. Section 5 generally requires that municipalities allow between two and four housing units per lot where housing is permitted.
3. Section 6 requires that municipalities allow accessory dwelling units to be located on the same lot as a single-family home, under certain conditions.
4. Sections 3 and 7 require that the state establish statewide and regional housing production goals and set forth ways in which local governments can coordinate with that goal.

WHILE LD 2003 WENT INTO EFFECT ON AUGUST 8, 2022, SOME ELEMENTS OF THE LAW ARE NOT REQUIRED TO BE APPLIED UNTIL JULY 1, 2023

LD 2003 in Brief			
Effective Aug. 8, 2022 Statewide Housing Production Goals (5 MRSA §13056, sub-§9)	Effective Aug. 8, 2022 Municipal Role in Fair Housing/ Short Term Rentals (7 30-A MRSA §4364-C)	Effective July 1, 2023 Accessory Dwelling Units (6 30 A MRSA §4364-B)	
Effective July 1, 2023 Affordable Housing Density in Growth Areas Bonus (4 30-A MRSA §4364)		Effective July 1, 2023 Two to Four Units (5 30-A MRSA §4364-A)	

IN GENERAL, AS LONG AS THESE ACTIONS ARE CONSISTENT WITH LD 2003, MUNICIPALITIES MAY:

CONTINUE to develop Growth Management programs, including comprehensive plans and zoning consistent with those plans

ENFORCE local shoreland zoning ordinances consistent with state shoreland zoning law

REGULATE how many square feet of land are needed for each dwelling unit (other than accessory dwelling units)

CONDUCT site plan review, if authorized by local ordinances, of any residential development

REGULATE the maximum size of accessory dwelling units

REGULATE short-term rentals in their community

CREATE rate of growth ordinances so long as they do not limit the number of accessory dwelling units outlined in Section 6

CREATE local ordinances that are more permissive for residential housing development than the requirements of LD 2003

REGULATE housing development based on documented water and wastewater capacity constraints

IN GENERAL, UNDER THIS LAW, LOCAL GOVERNMENTS MAY NOT:

ENACT local ordinances that allow housing but limit it to one unit per lot

PROHIBIT one accessory dwelling unit per lot or count those units towards a rate of growth ordinance

LIMIT the affordable housing density bonuses allowed in LD 2003 in growth areas as defined in state law

Affordable Housing Density Bonus

30-A MRSA §4364

This section creates an automatic density bonus for certain affordable housing developments. To qualify for this bonus, the development must:

1. Be approved after June 30, 2023
2. Include a certain number of rent or sales price restricted affordable housing units
3. Be in a growth area under section 4349-A, subsection 1, paragraph A or B, or served by water and sewer
4. Be in an area in which multifamily dwellings are allowed
5. Meet shoreland zoning requirements, meet minimum lot sizes if using subsurface waste disposal, and verify that water and sewer capacity is adequate for the development

BONUSES FOR AN AFFORDABLE HOUSING DEVELOPMENT

To take advantage of this density bonus, a development must qualify as “affordable” (as defined below). If eligible, the affordable housing development qualifies for the following exceptions to the zoning requirements in the community:

1. The number of units allowed will be 2.5 times the number allowed for a development not designated affordable.
2. The off-street parking requirements may not exceed two spaces for every three units

So, for example, if a developer can build up to six units on a site under local rules, and designates the development as affordable, the developer would be eligible to build 15 units (6×2.5). The local off-street parking requirement for this development could not exceed ten spaces ($15 \times 2/3$). In cases of fractional results, the number of units would generally be rounded down, but the municipality has discretion to round the number of parking spaces either up or down to the nearest whole number.



WHAT REQUIREMENTS DO AFFORDABLE HOUSING DEVELOPMENTS HAVE TO MEET TO RECEIVE THE DENSITY BONUS?

For rentals, a household with an income at no more than 80% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford more than half of the units in the development. That means that rent and certain other housing expenses will not require more than 30% of the household's income.

For homeownership projects, a household with an income at no more than 120% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford more than half of the units in the development. That means that mortgage payments (including mortgage insurance) and certain other housing expenses will not require more than 30% of the household's income.

The units that will be affordable at these levels must be restricted through a restrictive covenant that is enforceable by a party acceptable to the municipality (which could be the municipality) for at least 30 years, and that states that the units must be restricted in rent or sales prices accordingly. Often these developments will be getting funding through MaineHousing, which typically requires a comparable covenant.

Information on Area Median Incomes is updated annually by the U.S. Department of Housing & Urban Development. For reference, MaineHousing maintains updated 80% of area median income and 120% of area median income data on their website.

[View AMI data on MaineHousing.org](#)

QUESTIONS AND ANSWERS ON AFFORDABLE HOUSING DENSITY BONUS

This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.

What is meant by “multifamily dwellings?”

“Multifamily dwellings” is defined in rule.

What is a “base density that is otherwise allowed?”

Under a local zoning code, the “base density that is otherwise allowed” is the maximum number of units allowed based on dimensional requirements, such as lot area per dwelling unit. This is defined in rule.

If lot area per dwelling unit can be used as a measure of number of units permitted, do the limits on lot area per dwelling unit requirements in Section 5 apply?

No, Section 5’s provision about “lot area per dwelling unit,” 30-A M.R.S. § 4364-A(3), does not apply to Section 4. Therefore, municipalities have the discretion to designate lot area per dwelling unit when approving “affordable housing developments.” Municipalities, however, must comply with the minimum lot size requirements stated in Title 12, chapter 423- A, as applicable.

Does LD 2003 apply to municipalities that do not use the term “designated growth area,” but instead use a different term for growth districts in comprehensive plans.

Yes. LD 2003 applies to a municipality that has adopted a different term to mean a “designated growth area” in its comprehensive plan.

What if a household exceeds the maximum income after living in the unit?

LD 2003 specifies that the income eligibility is based on household income “at the time of initial occupancy,” meaning that a household could be allowed to remain in an “affordable” unit if their income goes up after they occupy the unit. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally. The restrictive covenants should outline how this would work.

What happens when a restricted affordable home ownership unit is sold?

The restrictive covenants should outline how this would work. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally.

How does this density bonus interact with any local density bonus that might exist?

A municipality may apply its local density bonus to “affordable housing developments” instead of the density bonus stated in 30-A M.R.S. § 4364, as long as the municipality’s local density bonus is equally or more permissive. More permissive, for purposes of this comparison, means that a local density bonus must be more generous and permissive in regard to each of the requirements described in the LD 2003 density bonus. The density bonus also applies to “affordable housing developments” in municipalities that have not adopted density requirements, as long as the development meets the requirements of 30-A M.R.S. § 4364.



Residential Areas, Generally; Up to 4 Dwelling Units

30-A MRSA §4364-A

This section requires municipalities to allow multiple dwelling units on parcels where housing is allowed, provided evidence of sufficient water and wastewater capacity exists, beginning on July 1, 2023. Municipalities may not apply different dimensional requirements to lots with more than one housing unit on them than they would to a lot with one housing unit, with the exception that they may require a minimum lot area per dwelling unit. However, if the municipality chooses to require a minimum lot area per dwelling unit, the lot area required may not be less for the first unit than for subsequent units.

The number of units allowed under this section depends on a few factors:

- A lot without a dwelling unit already on it can have two units if it is not within a designated growth area under section 4349-A, subsection 1, paragraph A or B, served by water system and sewer in a municipality without a comprehensive plan.
- A lot with an existing dwelling unit may have up to two additional dwelling units, either one additional attached dwelling unit, one additional detached dwelling unit, or one of each.
- A lot without a dwelling unit already on it can have four units if it is either:
 - Within a designated growth area under section 4349-A, subsection 1, paragraph A or B, or
 - Served by water system and sewer in a municipality without a comprehensive plan.

Municipalities may allow more than the minimum number required to be allowed on all lots that allow housing, if they wish. In addition, private parties are permitted to restrict the number of housing units on a lot in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

Finally, a municipality may determine in local ordinance that if a property owner tears down an existing dwelling unit, the lot may be treated under this section as if the dwelling unit were still in existence.



Lot Area per Dwelling Unit

Additional units may not require more land area per unit than the first unit

NOT PERMITTED



One Unit Requires
10,000 sq ft



Two Units Require
30,000 sq ft



Three Units Require
50,000 sq ft

PERMITTED



One Unit
Requires
10,000 sq ft



Two Units
May Require Up
To 20,000 sq ft



Three Units
May Require Up
To 30,000 sq ft

QUESTIONS AND ANSWERS ON RESIDENTIAL AREAS, GENERALLY UP TO 4 DWELLING UNITS

This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.

Subsection 2 (“Zoning Requirements”) says that municipal zoning ordinances “must” comply with certain conditions, but subsection B. says that they “may” regulate how this section applies to a lot where a dwelling unit is torn down. Is this a “must” or a “may”?

Municipalities have the option of taking the actions in subsection B but do not have to do so, in which case a lot where a dwelling unit was torn down would be viewed as a vacant lot.

Subsection 4 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

What if a municipality does not use Certificates of Occupancy?

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing.

Does LD 2003 establish minimum dimensional requirements for dwelling units under this section?

Yes, a municipality cannot establish dimensional requirements for additional dwelling units on a lot that are more restrictive than dimensional requirements for a single-family unit, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

Section 5 requires a municipality to allow up to two dwelling units per lot if that lot contains an “existing dwelling unit.” What does “existing dwelling unit” mean?

“Existing dwelling unit” means a dwelling unit in existence on a lot at the time of submission of a permit application to build additional units on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for additional units on a lot.

What is meant by “potable” water?

This is addressed in rule.

What if housing is allowed in an area but only as a conditional use?

Housing would be considered allowed in that area for the purposes of subsection 1. A conditional use shall be viewed as a permitted use.

What does “attached to an existing structure” mean?

The rule defines the word “attached.” Municipalities are not required to adopt this definition in local ordinance, but must adopt a definition that is consistent with, and no more restrictive, than the definition in rule.

Does the language in subsection 1 mean that if a lot is served by water and sewer in a municipality without a comprehensive plan that it does not need to be vacant to allow up to 4 units?

No, that language still requires the lot not “contain an existing dwelling unit.”

What does “any area which housing is allowed” mean?

This phrase requires municipalities to allow multiple dwelling units on a lot located in any area allowing residential uses, regardless of zoning district designation. This does not include congregate living settings, lodging homes, residence halls, or other similar types of buildings.

Does LD 2003 apply to municipalities with comprehensive plans that have expired findings?

Yes. An expired finding does not invalidate a locally adopted comprehensive plan or invalidate ordinances, but it could provide an opening for a party to challenge the ordinance in court. Consultation with legal counsel is recommended.

Do the provisions of LD 2003 that mention “designated growth areas” apply to a municipality that does not use the term “designated growth area,” but instead uses a related term for growth districts in its comprehensive plan?

Yes. LD 2003’s provisions apply to a municipality that does not use the term “designated growth area” but instead uses a related term to mean growth districts in its comprehensive plan.

Residential Areas

Empty Lot Where Housing Is Already Allowed

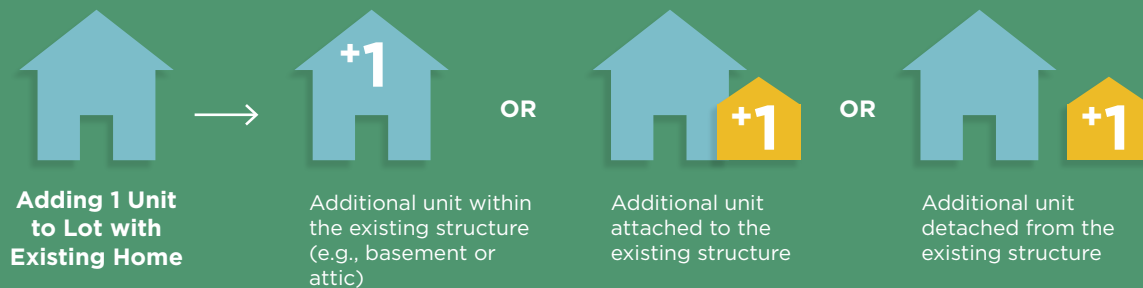


NOTE: The three and four units can be within one structure or multiple structures.

THREE AND FOUR UNITS ALLOWED IF:

- Located in "growth area" consistent with section 4349-A, subsection 1, paragraph A or B.
- Located in area with existing water/sewer capabilities in towns without comprehensive plans.

Existing Home



What Can Be Built On This Lot?

ON LAND WITH **ZERO** EXISTING UNITS

- | | |
|---|--|
| <p>▶ In a growth area consistent with section 4349-A, subsection 1, paragraph A or B, with public water and sewer in municipality without a comprehensive plan</p> <p>↓</p> <p>▶ Up to 4 dwelling units, detached or attached</p> | <p>▶ Outside growth area</p> <p>↓</p> <p>▶ Up to 2 dwelling units, if attached</p> |
|---|--|

PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size, set back, density (not greater than single family)
- Septic requirements
- Minimum Lot Size
- Additional Parking requirement
- Growth ordinance permits
- Shoreland Zoning
- Subdivision Law

ON LAND WITH **ONE** EXISTING UNIT

- | | |
|--|---|
| <p>▶ Up to 2 additional dwelling units</p> <p>↓</p> <p>▶ Choose:</p> <ol style="list-style-type: none"> One unit within or attached One unit detached One of each | <p>▶ 1 accessory dwelling unit</p> <p>↓</p> <p>▶ Exempt from:</p> <ol style="list-style-type: none"> Rate of growth ordinances Additional density area/standards Additional parking requirements |
|--|---|

PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size or set back requirements (not greater than single family/existing accessory structure)
- Septic requirements
- Shoreland Zoning
- Other locally determined ADU standards (e.g. maximum size, rules regarding short term rental, etc.)

ON LAND WITH **TWO** EXISTING UNITS

- ▶ No new structure may be built unless allowed under local ordinance

Accessory Dwelling Units

30-A MRSA §4364-B

This section essentially allows any lot with a single-family dwelling in an area where housing is permitted to have one accessory dwelling unit (ADU) as well, effective July 1, 2023. That ADU can be within the existing home, attached to it, or in a new structure. Municipalities may also allow existing accessory structures to be converted into an ADU

An ADU allowed under this law is exempt from zoning density requirements. In reviewing an ADU, the setback and dimensional requirements for a single-family home continue to apply unless the municipality makes them more permissive for an ADU. For ADUs in an accessory structure, the setback and dimensional requirements for such a structure apply.

ACCESSORY DWELLING UNIT PARKING

Additional parking requirements for the ADU beyond those required for the single-family dwelling are not permitted.

ACCESSORY DWELLING UNIT SIZE

ADUs must be at least 190 square feet in size. Municipalities may set a maximum size for ADUs in local ordinance.

OTHER MUNICIPAL POWERS

Municipalities may establish an application and permitting process for ADUs provided it is consistent with in this section. Municipalities may also define ADUs, as long as the definition is consistent with state law in Title 30-A, §4301. 1-C. In addition, municipalities may establish requirements for ADUs that are less restrictive than those in this section, such as allowing more than one ADU on a lot or allowing an ADU for two-family or multifamily dwellings.

SIMILARITIES AND DIFFERENCES FROM OTHER SECTIONS

LIKE SECTIONS 4 AND 5, shoreland zoning still applies, as do requirements to verify adequate water and wastewater capacity.

LIKE SECTION 5, private parties are permitted to restrict the number of housing units on a lot, including ADUs, in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

UNLIKE SECTION 5, one ADU for each single-family dwelling does not count towards any rate of growth ordinance as described in §4360.

UNLIKE SECTIONS 4 & 5, additional parking cannot be required for an ADU.

UNLIKE SECTION 5, a municipality may not establish requirements for minimum lot area for the addition of an ADU on a lot with an existing single-family home.

QUESTIONS AND ANSWERS ON ACCESSORY DWELLING UNITS

This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.

How is an ADU defined?

LD 2003 does not define ADU. There is a definition in 30-A MRS §4301 and many communities define them in local ordinances. This is addressed in rule.

Can an ADU be larger than a primary structure?

Yes, unless the municipality limits the maximum size of an ADU.

Can a previously illegal ADU be legalized under this section?

Yes, as long as an ADU owner follows the permitting procedures and life safety requirements outlined by their municipality (if applicable).

If a pre-existing single-family dwelling is on a non-conforming lot (with respect to size, frontage, or similar characteristics) can an ADU be built on that lot?

An accessory dwelling unit may be allowed on a lot regardless of whether the lot conforms to existing dimensional requirements of the municipality. Any new structure constructed on the lot as an accessory dwelling unit must meet the existing dimensional requirements as required by the municipality for an accessory structure.

Subsection 7 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

What does “in any area in which housing is permitted” mean?

This phrase requires municipalities to allow one accessory dwelling unit on any lot with a single-family dwelling unit located in an area allowing residential uses, regardless of zoning district designation. This does not include congregate living settings, lodging homes, residence halls, or other similar types of buildings.

If a parcel has an existing two-unit structure, does subsection 1 allow an ADU to be built?

No, though a municipality would have the ability to allow that.

What if a community does not use Certificates of Occupancy?

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing, whether through a formal Certificate of Occupancy or otherwise.

What is meant by “potable” water?

This is addressed in rule.

What if housing is allowed in an area but only as a conditional use?

Housing would be considered allowed in that area for the purposes of subsection 1. A conditional use shall be viewed as a permitted use.

What does “attached to an existing structure” mean?

The rule defines the word “attached.” Municipalities are not required to adopt this definition in local ordinance, but must adopt a definition that is consistent with, and no more restrictive, than the definition in rule.

LD 2003 allows an ADU to be built that is “a new structure on the lot for the primary purpose of creating an accessory dwelling unit.” What does this mean?

This provision allows a new structure to be built on a lot with an existing single-family dwelling unit, as long as the main reason for building the structure is to support human habitation. Local ordinance can define primary purpose further.

Can a municipality require lot area requirements for the addition of an ADU on a lot with an existing single-family home?

No. A municipality must exempt an ADU from density and lot area requirements. The setback and other dimensional requirements, however, continue to apply unless the municipality makes this more permissive for an ADU.

Section 6 allows for the construction of an ADU within an “existing dwelling unit.” What does “existing dwelling unit” mean?

“Existing dwelling unit” means a dwelling unit in existence on a lot at the time of submission of a permit application to build an additional unit on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for an additional unit on a lot.

Parking for ADUs

Example Parking Requirement

NOT PERMITTED



Single Family Home
2 spaces minimum



Single Family Home + ADU
3 spaces minimum



PERMITTED



Single Family Home
2 spaces minimum



Single Family Home + ADU
2 spaces minimum



This example applies to towns with minimum parking requirements.
For towns without parking restrictions, no additional restrictions would be imposed.

Housing Goals & Fair Housing

MRSA §13056, sub-§9 AND 30-A MRSA §4364-C

Section 3 directs the Department of Economic & Community Development, in coordination with Maine-Housing, to develop a statewide housing production goal and regional production goals based on that statewide goal. In doing so, the section instructs the Department to set benchmarks for meeting those goals, as well as to consider information provided by municipalities on current and potential housing development and permits.

Section 7 outlines ways municipalities can play a role in achieving those state and regional goals. It states that municipalities must ensure that local ordinances and regulations are designed to affirmatively further the purposes of the Federal Fair Housing Act, as well as the Maine Human Rights Act, as part of meeting the housing goals. It also explicitly authorizes municipalities to establish and enforce regulations related to short-term rentals to help meet those goals.

QUESTIONS AND ANSWERS ON SECTIONS 3 & 7

This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.

What obligations do the affirmatively furthering fair housing provisions put on municipalities that didn't already exist before LD 2003 passed?

Until recently, the link between land use regulation and fair housing was often not recognized. Section 7 clarifies that municipalities must ensure that zoning and land use ordinances and regulations are designed to affirmatively further the purposes of these state and federal laws.

What happens if local, regional or statewide housing goals are not met?

These sections do not set forth any specific penalties for not meeting these goals.

How does this relate to local Growth Management programs and comprehensive plans?

Local comprehensive plans, while not regulatory documents, should not conflict with these sections. The regulations for comprehensive plans under Chapter 208 state that communities should “[s]eek to achieve a level of at least 10% of new residential development built or placed during the next decade be affordable.”

Do municipalities have to regulate short term rentals?

No.



GENERAL QUESTIONS

This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.

What happens if a municipality does not act to update local ordinances, or tries to act and the updates are not approved by the local legislative body?

LD 2003 is an express preemption on municipal home rule authority. Therefore, any ordinance or regulation that is not consistent with the law may be challenged as invalid. Municipalities are encouraged to contact legal counsel to discuss how the law will affect the enforcement of existing ordinances and regulations.

If a town does not have growth areas as defined by section 4349-A, subsection 1, paragraph A or B, and does not have any areas served by water or sewer, does it need to comply with LD 2003?

These communities would not be subject to the affordable housing density provisions in Section 4, and would not have areas that are required to allow up to four units on a residential lot as per Section 5. Other sections of LD 2003 would apply.

How will LD 2003's requirements be related to municipal comprehensive plans?

Comprehensive plans seeking a finding of consistency under the regulations in Chapter 208 should meet those requirements. Since a comprehensive plan is not a regulatory document, LD 2003 would not create any additional requirements. However, zoning ordinances adopted in a municipality would have to be consistent with both a local comprehensive plan and LD 2003.

Is LD 2003 a model ordinance for use in local zoning?

LD 2003 is not a model ordinance. Communities will be able to seek funding from the Housing Opportunity Program to develop new ordinances.

Can developers “double count” bonuses from various sections?

This issue is outlined in §4364-A Section 2.A. and §4364-B Section 3.B. Developers may only “double count” bonuses from various sections on a lot if this is permitted by the municipality in which the lot is located.

Sections 4, 5, and 6 require written verification of “adequate water and wastewater services.” What about a municipal concern that while a specific housing development may not immediately threaten water quality, the cumulative impact of new development may do so in a way that it did not prior to LD 2003?

As was true prior to the passage of LD 2003, communities are free to take regulatory actions as appropriate for protection of natural resources or existing water systems. These can include changes to zoning districts to limit where housing is permitted; changes to lot size requirements; or the creation of an impact fee system consistent with state law to fund environmental or water quality protection.

What does section 4349-A, subsection 1, paragraph A or B say?

It directs the State to make growth-related capital investments only in:

- A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347A;*
- B. In the absence of a consistent comprehensive plan, an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial Census as a census-designated place or a compact area of an urban compact municipality as defined by Title 23, section 754; or [PL 1999, c. 776, §10 (NEW).]*

Growth areas are defined in section 4301, subsection 6-C as:

An area that is designated in a municipality’s or multi-municipal region’s comprehensive plan as suitable for orderly residential, commercial or industrial development, or any combinations of those types of development, and into which most development projected over 10 years is directed.



RULEMAKING PROCESSES

Sections 4, 5 and 6 authorize rulemaking to be led by the Department of Economic & Community Development, in consultation with the Department of Agriculture, Conservation & Forestry. These rules are considered “routine technical” – meaning they “establish standards of practice or procedure for the conduct of business with or before an agency” and can be approved administratively.

FUNDING FOR TECHNICAL ASSISTANCE

While not part of LD 2003, the supplemental budget for Fiscal Years 2022 and 2023 included Section U-1. 5 MRSA §13056-J, providing funding for a new “Housing Opportunity Program.” That program will “encourage and support the development of additional housing units in Maine, including housing units that are affordable for low and moderate income people and housing units targeted to community workforce housing needs” by supporting “regional approaches, municipal model ordinance development, and ... policy that supports increased housing density where feasible to protect working and natural lands.”

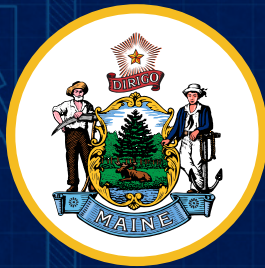
The Housing Opportunity Program will consist of grants to service providers to encourage and support the development of additional housing units in Maine, including housing units that are affordable for low-income and moderate-income individuals and housing targeted to community workforce housing needs. These “Service Provider grants” will be awarded to experienced service providers to support municipal ordinance development, the creation of housing development plans, and public process and community engagement support, and may encourage regional coordination. Additional information regarding the Housing Opportunity Grant Program will be available in Spring of 2023.

Finally, the Housing Opportunity Program will be launching a municipal reimbursement program in the Spring of 2023 to assist municipalities with financial costs incurred from implementing ordinance amendments related to LD 2003. Limited funding is available for qualified expenses. For more information on this program reach out to the Housing Opportunity Program staff.

**Still have questions?
Need more information?**



VISIT: MAINE.GOV/DECD/HOUSINGOPPORTUNITYPROGRAM



**MAINE DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT**



Helen Donaldson <hcd@portlandmaine.gov>

Fwd: Question about LD2003

Kevin Kraft <kkraft@portlandmaine.gov>
To: Helen Donaldson <hcd@portlandmaine.gov>

Tue, Oct 10, 2023 at 12:21 PM

----- Forwarded message -----

From: **Todd Morse** <todd@urbanistportland.me>
Date: Tue, Oct 10, 2023 at 12:20 PM
Subject: Question about LD2003
To: <planning@portlandmaine.gov>

Hello,

I know the discussion about LD2003 is a workshop and not open for public comment. But I found the language in one of the elements of the change is ambiguous and I would appreciate it if the workshop this afternoon cleared up this ambiguity. The language says:

"6.4.2 (E): If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section, the lot is not eligible for any additional units Section 6.6.2(A)"

Take the following scenario: There is a parcel that ordinarily would be allowed one unit, and it had one unit at time of passage. Using the new supplemental use, they add a unit. Would they be allowed to then build an ADU?

Based on one reading, more than one dwelling unit has been constructed on a lot, and this was allowed to happen as a result of the allowance in the section, so they would not be allowed to build an ADU.

Based on a different reading, they only invoked this section to build the second unit, so they have not built more than one unit as a result of the allowance under this section, so they would be allowed to build an ADU.

Bottom line are we looking at 1 additional residential use unit + 2 ADUs or 0 additional residential use units + 2 ADUs?

Thanks,
Todd Morse

--

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A Wasted Opportunity – Portland's LD2003 Response

PUBLISHED OCTOBER 12, 2023 *by* TODD MORSE

The City of Portland is currently in the process of squandering a rare opportunity to allow for much needed new homes. Maine is currently in the midst of an unprecedented housing shortage; a recent study commissioned by MaineHousing, the Governor's Office of Policy Innovation, and the Future and the Maine Department of Economic and Community Development found that we are short around 84,000 units of housing. The state passed LD2003 with the intention of addressing this crisis, but the Portland planning staff's proposed implementation of this law will not even make a dent.

On Tuesday, October 10th, Portland's planning staff presented to the planning board their proposed changes for our zoning code to comply with LD2003. Passed in 2022, LD2003 is a state law that intended to allow for the construction of more housing by updating zoning restrictions across Maine. Zoning restrictions (also referred to as land use restrictions) are local laws set by cities and towns to limit the sorts of buildings that are allowed to be built. The state put together a commission to study how these laws could be updated to encourage the construction of more housing, and LD2003 was built on the recommendations from that committee. Since zoning restrictions are mostly at the discretion of cities and towns, LD2003 sets some minimum standards that cities and towns must meet with their local laws to allow for the construction of more housing.

Cities and towns in Maine have until January 1st, 2024 to bring their local zoning codes into compliance. In order to pass these changes, they must first be read before the planning board, then at a subsequent meeting they must be voted on by the board. The same process must be repeated by the city council, first presented, then voted on. This puts three meetings (at minimum) in between now and the ultimate passage of these changes. Both bodies meet once roughly every 2 weeks, so it may take more than *6 weeks* to pass these changes. This puts us deep into November trying to pass changes with only a month and a half (at most) of wiggle room. And that wiggle room is in the holiday season.

Because LD2003 combines committee recommendations into a single bill, it has several parts that are independent from each other. These recommendations are all important, but I am focused in particular on section 5, titled "Residential areas, generally; up to 4 dwelling units allowed." It's no mystery what the effect of this provision is supposed to be.

Zoning rules can get pretty complicated. Even people who work with these rules every day are often bewildered by the sort of jargon in zoning codes. I will try to keep things simple, but it's important to define a few key terms before we get into it:

Minimum Lot Size: Minimum Lot Size is a per-zone restriction on how large a piece of property needs to be before the city will let someone build on it. The sizes are not based on what is realistic or safe to build, a common misunderstanding, but are intended to shape the character and look of neighborhoods. The minimum varies in different parts of the city. In the West End and Munjoy Hill, which are in the densest residential zone, it is 3,000 square feet, while even in the second most dense residential zone it doubles to 6,000.

Lot Area per Dwelling Unit Minimums: This restriction further demands that each unit of housing require a certain amount of land. For example, in the R-5 zone the minimum lot size is 6,000 ft² and the lot area per dwelling unit minimum is 3,000 ft². If you have a 6,000 ft² lot, you are allowed to build two units on it because each unit needs 3,000 ft² of lot area. To build a third unit your lot would need to be 9,000 ft². These laws limit density directly, so they are often referred to as Density Limits.

Accessory Dwelling Unit (ADU): Accessory dwelling units are extra places to live that can be added alongside the primary structure on a property. They can either be attached to the main building or stand on their own; they are often small additions to the home or cottages for older parents to live in. Cities and towns usually have rules that make them somehow “secondary” to the main building, for example, in Portland you can add up to two ADUs so long as they’re smaller than the main building. ADUs are often perceived as less intrusive than other forms of housing, so cities and towns use them as a way to allow for more housing while preserving neighborhood character.

Use Standards: These rules limit how land can be used. For example, a restaurant is not an allowed “use” in a residential zone. In addition to limits about numbers of units, single-family homes are also a separate “use” from homes with more than one unit. Use standards can also contain more specific requirements you must meet to use land in a certain way. For example, even if you are allowed to build a residence in your zone, that use is not allowed if the lot doesn’t have sufficient street access.

State Requirements

With LD2003 the state has set minimum standards that cities and towns must meet. What are those standards? I am specifically focusing on section 5, “Residential areas, generally; up to 4 dwelling units allowed.” This section requires that:

- Any lot that currently allows housing but does not have a home on it must allow *at least* two units, and *at least* four units if it is in a “growth area.” All of Portland, save for the islands, is considered to be a growth area.
- Any lot with a home on it must allow *at least* one extra attached unit *and* one extra unit that is detached from it, for a total of two potential extra units.

The section gives cities and towns the *choice* over whether lots that have become vacant after July 2023 are eligible for four units or not. If they choose to allow it, a lot with a home that was demolished in 2024 would be treated the same as the existing vacant lots. If they chose to prohibit it, only the existing vacant lots – only those which today, in 2023, are vacant – will *ever* be permitted to build four units by this law.

The section also gives cities and towns the *option* of enforcing density limits on these additional units provided they are the same for the first unit as they are for any additional units. For example, a city or town could say that you need 3,000 ft² per unit, but they could not say the first unit on a lot needs 3,000 ft² and any extra units need 300,000 ft². This prevents cities from nullifying the law by making units beyond the first require way more land than any lot could realistically have, effectively preserving one unit only limits. While the law can’t be fully nullified in this way, density limits still could prevent some lot-

owners from building the full number of units the law would have entitled them to if they are not large enough for the city's tastes.

The Planning Staff Proposal

To comply with these rules, the planning staff could have simply proposed to upgrade the allowed number of units in all residential areas on the mainland. Instead, planning staff have opted to add what's called a "supplemental use standard." This allows the code to permit more units... but with additional restrictions. They are calling this supplemental use: "Additional residential use" (ARU) (See 6.4.2 in the proposed amendments to the land use code.)

If there is already a home on a lot, you would be allowed to add up to two units on that lot. However, staff added the restriction that if you add units in this way, you'd lose the ability to add accessory dwelling units (ADUs), of which you are currently allowed two. This makes the change a purely lateral move in terms of adding new housing units. It is true that adding your two units through this new method may give you more options, for example, your units wouldn't need to be smaller than the main structure. However, it has several new limitations which may make the currently allowed ADUs more attractive.

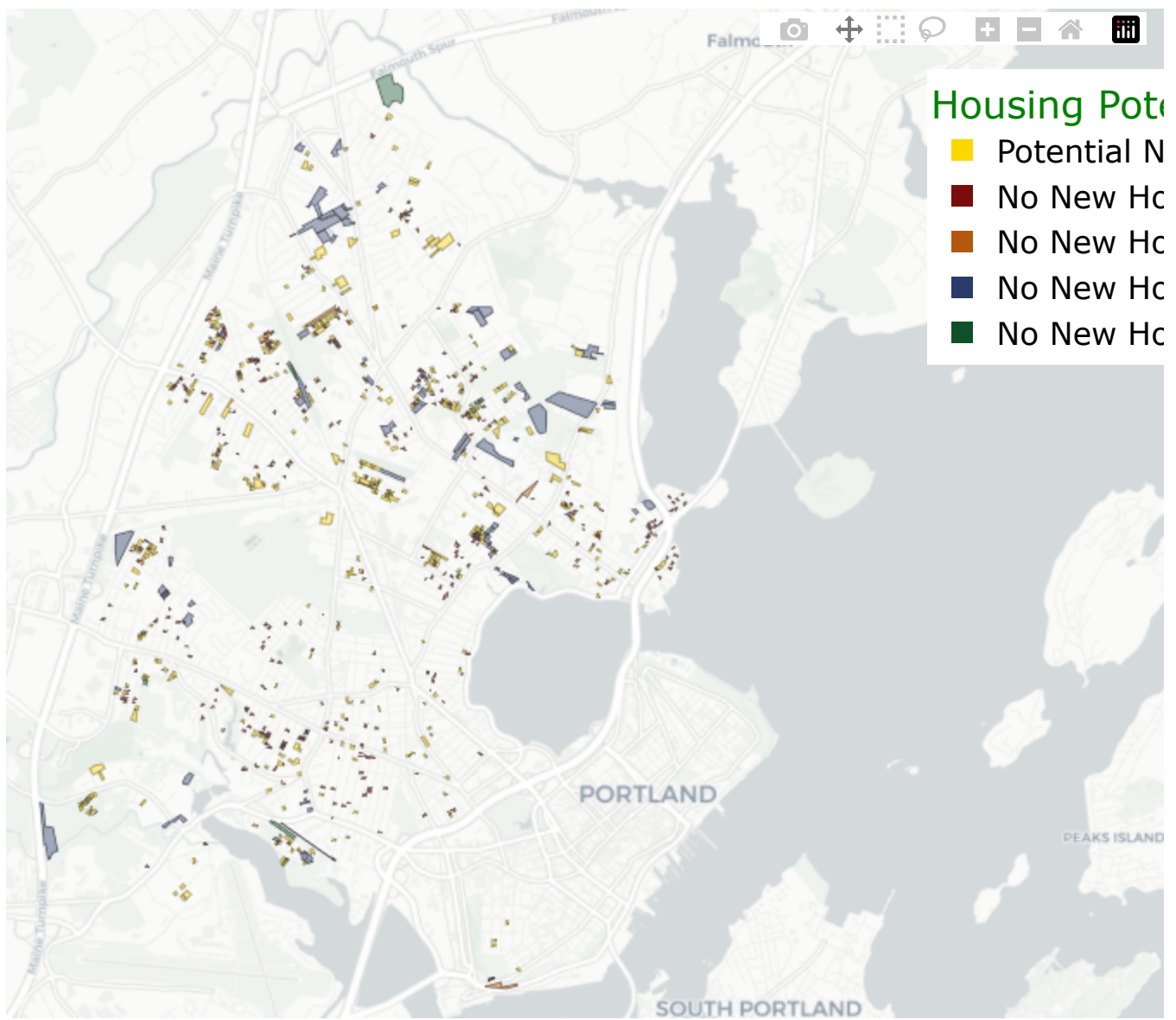
	Additional Residential Use (ARU)	Accessory Dwelling Units (ADU)
Upsides	• Their size is not limited by the size of your main building. • The attached unit doesn't count towards density limits. • You can build them without occupying the main building.	• Don't count towards lot coverage limits. • Don't count towards density limits. • Don't count towards parking minimums. • Can both be built either attached to the main building or separate from it.
Downsides	• You can't add both to your main building or have both as separate buildings. You only get one of each. • The detached unit counts against your density limit. • Counts towards parking minimums.	• Must have no more than $\frac{2}{3}$ the floor area of the main building, and the total floor area for both may not be more than that of the main building. • Must be shorter than the main building • Owner must occupy the main building at time of construction.

For vacant lots that meet the minimum lot size in their zone and allow housing, you would be allowed to build up to four units. There are many lots which are vacant because they are too small to legally be built on, so these will not be included. The only lots that this applies to are lots that are currently legal to build on – but have not been built on for some reason. Usually, it's a very good reason.

Much of this land is unofficially part of a park, or otherwise is unfeasible to build on due to drainage issues, oddly shaped boundaries, or lack of road access. After removing wetlands, lots with trails, and irregular lots, only 396 lots in the entire city will now allow up to four units, less than 1% of our land area. This allows for a theoretical maximum of 1,188 additional units total.

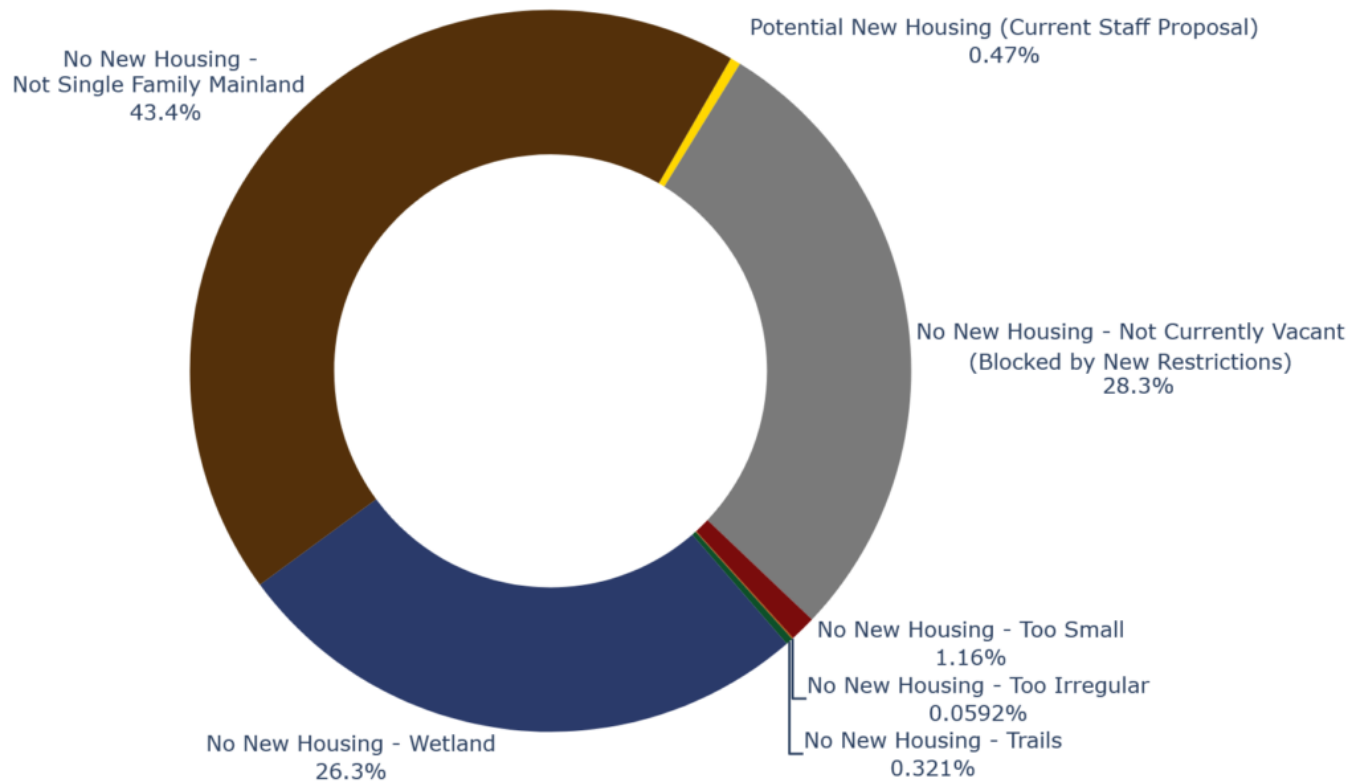
And even this is a generous analysis. In practice it would be surprising if even a handful of these lots were developed; many of these are vacant for reasons not captured in my analysis. For example, some are unofficially used by communities, or others may have deed restrictions which further narrow usage. They also tend to be further from places that are already built up with amenities like shops or transit.

Explore this interactive map to look at all of the examples.



The number of units made possible to build by these changes will not grow over time because planning staff have opted to add that restriction which prevents lots made vacant in the future from qualifying.

That means the lots you see here, right now, are all we are ever going to get. This locks away over 28% of the land in the city from ever qualifying for these additional units.



A Wasted Opportunity

Section 5 of LD2003 is titled “Residential areas, generally; up to 4 dwelling units allowed”, but apparently the city of Portland does not fall under this “generally.” I have little doubt that planning staff’s recommendation follows the letter of the law, but it is clear they are explicitly proposing the minimum amount of change by way of a complex workaround.

LD2003 states that cities and towns *may* place a limit on lots that become vacant after the law is enacted. We don’t have to add this new language to our zoning code, but planning staff have chosen to.

We don’t have to prevent lots that add these units from adding ADUs, but planning staff have chosen to.

To add these limits, planning staff has added new language to our zoning code. Language that was not there before and is not required by the state. While this language only limits the new changes they have been forced to add to comply with LD2003, they are new limits that planning staff have added.

Getting rid of them would be as simple as not adding two bullet points, 6.4.2 C and E to be precise. We don't have to keep these bullet points, but planning staff have chosen to.

We also have the option of adding language to make these new additions more cohesive with the rest of the zoning code. For example we could exempt these additional units from parking minimums and density limits like we currently do for ADUs. We don't have to leave these tight restrictions in place for these units, creating two similar types of units with subtle benefits and drawbacks, but planning staff have chosen to.

Planning staff have also chosen to push for more time throughout this process to make these changes, claiming that complying with the law was very complicated, and that waiting for specific details from state rule-making was necessary. These justifications should not go unexamined. Complying with LD2003 is only complicated if your goal is to use sophisticated legal strategies to prevent change.

The law states that a city or town may allow more units than the number strictly required. There was no need to skate this close to noncompliance. We could have simply allowed people to build four units on any parcel that is large enough to do so, and we would have complied with this section immediately and unambiguously.

Now we are down to the wire to get changes passed. This is the first time the public has even been able to hear the proposal and the city only has a little over two months to pass it. Making these choices is not an apolitical technical decision, they are choices about what we value. Do we want to be a leader in housing in the state, or resist change as much as we possibly can?

The current proposal goes out of its way to do the latter. It makes our zoning code even more complex, during a ReCode process which is supposedly simplifying it. We now have a new subsection, with specific limits that references a specific calendar date. From now on, if anyone wants to know what they can build on a piece of land, they will need to pore through historical records to figure out what was there on that fateful July in 2023. It creates a new category of housing that is largely redundant as regards ADUs, but lacks the thoroughness that went into our original ADU provision. This complexity makes it hard for people to navigate the code, hard to make future changes, and hard to build the housing we desperately need.

How did planning staff present these proposals to the people of Portland?

The Workshop

On October 10th at 4:30, the planning board held their first workshop on these changes. This author provided a public comment that roughly followed my criticisms as laid out in this article. The planning board members were open to removing the prohibition on building ADUs if you build an ARU, and generally to treating all vacant lots the same, regardless of whether or not they had a home on them in July of 2023. However, ultimately, they seemed to be leaning against these ideas, and suggested floating these options directly to the City Council.

I would like to take the time to highlight and push back against a few key points discussed in the meeting.

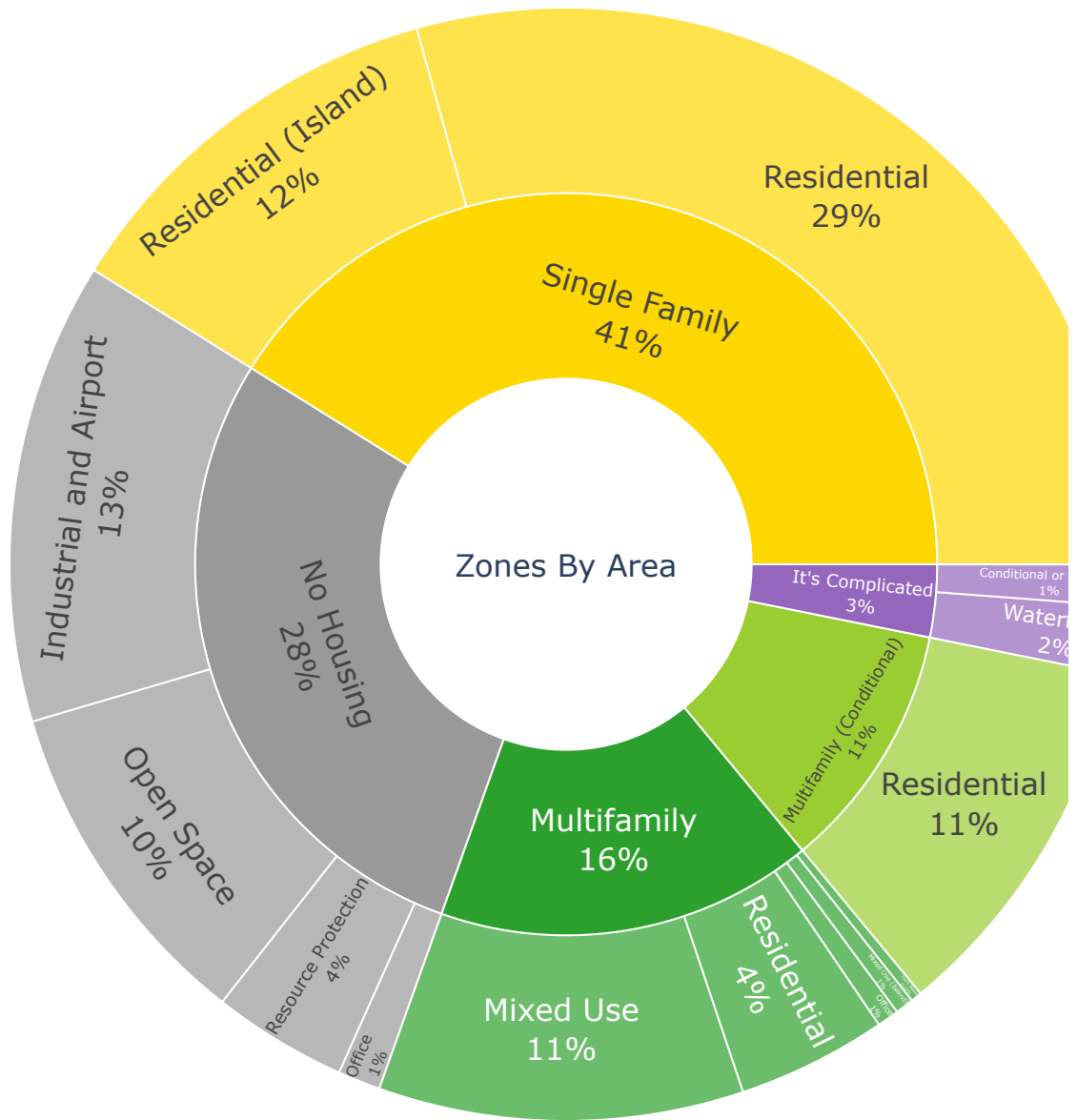
Is LD2003 for Portland?

During the meeting planning staff repeatedly emphasized that this law was not passed with Portland in mind. Christine Grimando, Director of the Department of Planning & Urban Development said, “[I]t is really more focused on lower density areas, and lower scale areas, which again makes perfect sense because it wasn’t written for Maine’s largest city in particular”.

This was immediately followed by a slide of the new proposed downtown height overlay – which is in no way related to LD2003 – but was included to emphasize LD2003’s supposed irrelevance to Portland’s context.

This interpretation seems unlikely, given the fact that this law passed with unanimous support from the representatives of Portland and all of its surrounding towns: Westbrook, South Portland, Scarborough, Gorham, and Falmouth. Not only did they unanimously support this bill, if their votes were reversed it would not have passed. Furthermore, numerous groups in the Greater Portland Area shaped, refined, and advocated for this bill. Portland and its suburbs have been at the core of this process from the beginning.

Christine also stated that compliance with LD2003 would be a relatively small disruption for Portland because “in many cases Portland’s codes meet, or vastly exceed what LD2003 is requiring”. It is true that any city with apartment buildings has probably zoned at least some of their land in a way which vastly exceeds what LD2003 is requiring. However, having tall buildings downtown and proposing to make them even taller doesn’t change the fact that over 41% of the land in the city, which makes up 60% of the land zoned for housing of any type, is zoned for single family homes **only**. These neighborhoods are precisely the sort of areas in Maine which LD2003 was designed to reform.



Even much of the remaining 40% still is bound by restrictions that do not meet LD2003's standards. This law was designed by our elected representatives, with us in mind, and it is intended to make real change in Portland. While the proposed zoning code changes were merely designed with us in mind.

'Let's Get this Passed Quickly and Save Big Changes for ReCode'

Overall, there was a sense of urgency from both the planning board and planning staff around passing these changes. This is understandable because we are very rapidly approaching the deadline to pass them. Planning staff also suggested that it would be simplest to simply pass the minimum changes now and add ideas around new housing to ReCode.

Just because we need to pass changes urgently, doesn't mean we should just pass the first law in the room. Bringing a complex law to the table just weeks before the deadline makes it easy to deflect scrutiny but this law is not the simplest or fastest way to comply with LD2003. As I mentioned before, we could be

just as compliant by removing the complicated additional restrictions from their proposal. We could simply allow four units wherever size and accessibility permits. We could do this without introducing any delay.

It is also risky to postpone these crucial changes for ReCode. It is no accident that LD2003 has coincided with our ReCode efforts. ReCode has been underway in some form since 2017 and there is no chance of it passing until 2024, at the very earliest. Any zoning policy change in a six-year period would coincide with our ReCode efforts. This slow pace of change is what prompted the state to pass LD2003. It is unclear when the ReCode process will be completed and what the changes will look like – if they are even ultimately passed. We should not let the slow and uncertain ReCode process prevent us from seizing an opportunity for change that we have before us right now.

Does one extra unit matter?

At the meeting there was some discussion of removing the limit on lots that currently have a home on them from ever being allowed four units. During this discussion it was repeated that the difference here is small because adding two additional units makes for a total of three units, making the difference only one unit. This arithmetic is, of course, true, but it misses the very important detail that the four units on a vacant lot can all be built at the same time, in one structure, like a small apartment building or in courtyard cottages. The language allowing you to add two units specifies that it can only be used if there is already a building on the lot and that they can't both be in the same structure. This makes a massive difference in how affordably and sustainably one can build.

And besides, in as deep a housing shortage as we are in, every little bit helps.

What Can We Do?

None of this, to be clear, is to say that the planning staff is incompetent or has bad intentions. I suspect they have gone this route because they are wary that allowing more housing will result in backlash. They even said as much in the meeting. It is time to demonstrate that it is *preventing* more housing that will result in public backlash. It is not too late to change this proposal for the better, but the window is quickly closing. The first chance for the public to engage with this process is right around the corner.

There likely will be more time for public comment at their next meeting on October 24th. You can show up to the meeting or email the planning board at planningboard@portlandmaine.gov to submit your comments. You can also reach out to the city council to raise awareness of this issue. The city council has the ultimate say here they may even end up being presented with multiple options. It is important they

are informed as soon as possible so they can make changes before it is too late. You can email public comments to publiccomment@portlandmaine.gov.

The Urbanist Coalition of Portland will be following this situation closely. Sign up to our [mailing list](#) or [follow us on instagram](#) to keep up to date with this process.

Todd Morse ~ *Todd is the founder and President of the Urbanist Coalition of Portland. You can follow their work at urbanistportland.me. He is a Portland resident and builds software for infectious disease research and has experience in data analysis.*

Sources

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- <https://portlandme.portal.civicclerk.com/event/6414/overview>
- https://mainehousing.org/docs/default-source/default-document-library/state-of-maine-housing-production-needs-study_full_final-v2.pdf

CATEGORIES: [Opinion](#)

3 Comments



AB- North Deering

Wow, great read. Thanks for doing the research, writing this up, and adding the sources.

OCTOBER 12, 2023 REPLY



Winston

Another part of LD2003 is a 2.5x density bonus for projects with more than 50% affordable units, which mean the assertion that “it’s just one unit” is even more off than it at first seems. Simply allowing 4 units everywhere would also allow up to 10 units if half are affordable. There are already 10 unit buildings that predate zoning in many of these neighborhoods- they can even be smaller than some single family homes...

City staff seem to be dedicated to protecting single family homeowners from change, and from the more fair property tax bills (single family neighborhoods are more expensive for the city to maintain than multi family neighborhoods, but pay far less in property taxes) that these changes might bring about, vs, say, doing anything to address any of the needs of workers commuting from far away at great personal risk & expense, or tenants, condo owners (yes, some condos were purchased before the boom & are owned by working class people) & landlords dealing with unfair and ridiculous tax bills on the peninsula...

OCTOBER 12, 2023 REPLY



W- prk ave

The interactive map is a great touch, can't wait to read on my lunch break.

OCTOBER 13, 2023 REPLY

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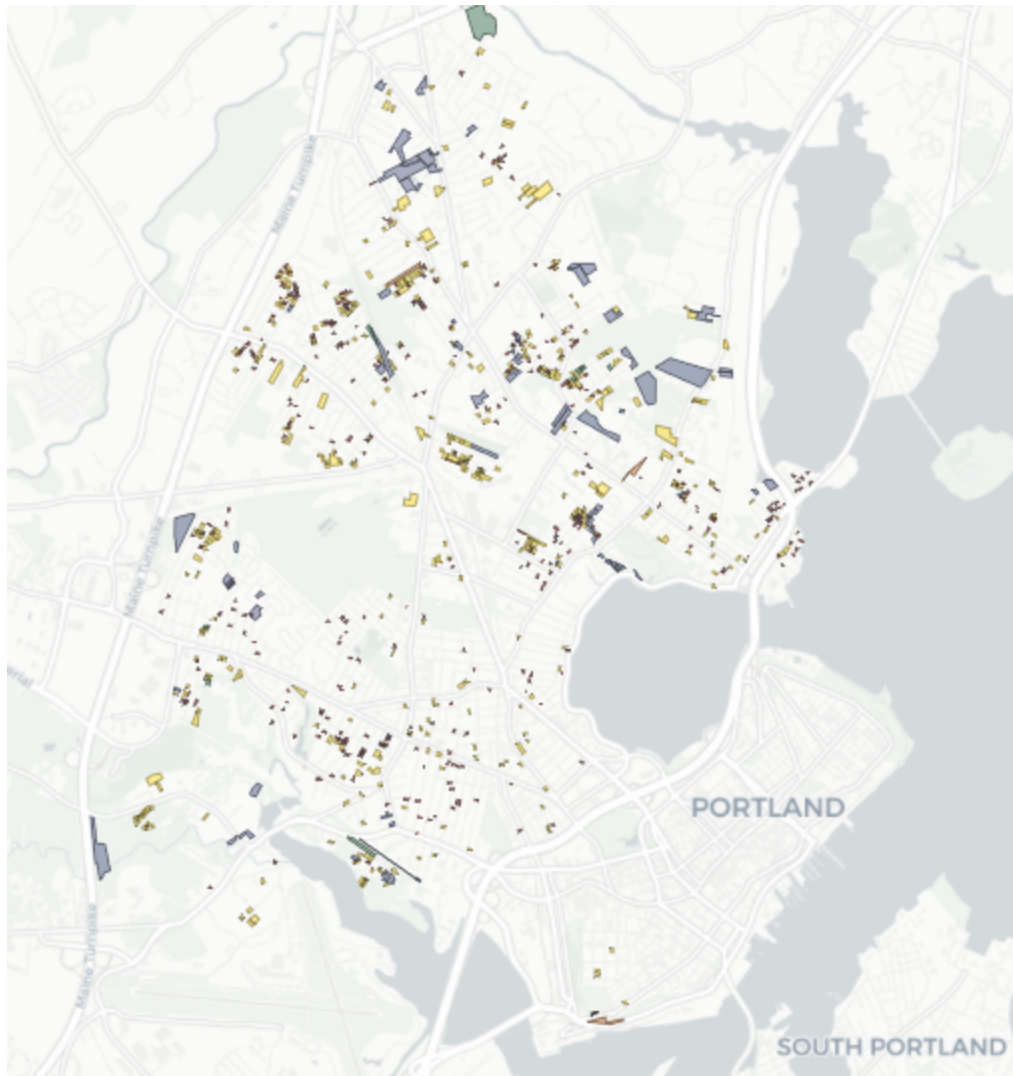
[Contact Us](#)

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Urbanist Coalition of Portland***Comply with the Spirit of
LD2003***

Portland must update our land use code by January 1st 2024 to comply with the state law, LD2003. This law intends to expand housing opportunities but Portland's implementation adds additional restrictions that undermine this goal. We must amend this proposal to ensure it complies with the spirit of the law. You can learn more about LD2003 and the Portland Planning Staff's proposal to comply with it in this [article in the Portland Townsman](#).

LD2003 is intended to generally allow up to four units in all residential areas. This map below shows the the small number of lots that will ever qualify for the full four units under Portland Planning Staff's current proposal:

Urbanist Coalition of Portland

Urbanist Coalition of Portland Amendments

We feel it is critical that we update our land use code in a way that honors the spirit of LD2003, however we acknowledge that our city has limited time to comply. This is why we have put together just four short amendments to the current planning staff proposal. Each of these amendments is brief and leaves code simpler than it would be if we passed the planning staff proposal as written. Three out of four of them are simply not adding limits to the LD2003 allowances. The fourth just replaces the new, more restrictive rules for these units with our existing accessory dwelling unit (ADU) rules. These

Urbanist Coalition of Portland

these minor changes we will unlock the potential for not only more housing opportunities but the housing opportunities that are more affordable, more sustainable, and where we need them.

Portland Planning Staff's proposal is in the form of red changes to our current land use code. Our proposed adjustments to their changes are in blue.

Combined Changes:

- [Combined: 6 – Use Standards](#)
- [Combined: 19 – Off Street Parking & Loading](#)

Amendment 1: Do not add the limit preventing lots that were not vacant on July 1st, 2023 from ever qualifying as vacant for LD2003

The current planning staff proposal adds a restriction to prevent lots that had a home on them on July 1st 2023 from ever being considered vacant for the purposes of LD2003. This restriction prevents these lots from qualifying for up to four units in the same structure. It limits the number of buildable lots that will qualify from about 28% of our city's land to just about half a percent. The lots that would qualify are lots that could be built on today but aren't. Usually this is because there is something about the lot that makes it unsuitable for housing. It also requires people to do historical research just to know what they can or can't build. This restriction is overly complicated and stands in the way of not just a high quantity of housing, but housing in the places we need it. It should not be added to our land use code.

Changes:

- [Amendment 1: 6 – Use Standards](#)

Urbanist Coalition of Portland

units allowed by LD2003

The current planning staff proposal adds a restriction that prevents lots from qualifying to add accessory dwelling units (ADUs) if they have added any of the units that LD2003 entitles them to. This removes a lot of potential housing that could have been allowed by LD2003 because taking advantage of the two LD2003 units you can add to a non-vacant lot disqualifies you from the two ADUs you can already build. ADUs already have restrictions to control their impact, and if you meet them there is no reason you should be prevented from building an ADU.

Changes:

- [Amendment 2: 6 – Use Standards](#)

Amendment 3: Do not add additional restrictions to lots that currently have one home

The current planning staff proposal allows four units of housing in the same structure for vacant lots but only an additional two units, in different structures on lots that have a home on them. While this is the minimum required by LD2003 there is nothing forcing us to add those restrictions to lots that have a structure on them. By allowing units to be built in the same structure they can be built more affordably and sustainably.

Changes:

- [Amendment 3: 6 – Use Standards](#)

Amendment 4: Give the additional units allowed by LD2003 the same benefits as our current ADUs

Our current accessory dwelling units (ADUs) are exempt from parking requirements, lot coverage maximums, and

Urbanist Coalition of Portland

them from density limits if they are in the same structure. While the units allowed by LD2003 are not the same as ADUs, the rules we have in place for ADUs work and there is no reason we can't apply them to these new units as well.

Changes:

- [Amendment 4: 6 - Use Standards](#)
- [Amendment 4: 19 - Off Street Parking & Loading](#)

portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the City of Portland *Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority.
2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the City as set forth under Articles 14 and 15. Also as set forth in Articles 14 and 15, a one-year defect bond shall be tendered to the City prior to release of the performance guarantee required hereby. The provisions of this paragraph (2) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her

intention under oath to make the structure his or her personal residence.

- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
 1. Dingley Court.
 2. Morgan Court.

6.4.2 Additional residential use permissions

A. In island zones: Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

Such units shall comply with all dimensional requirements of the underlying zone except lot coverage and lot area per dwelling unit requirements.

B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

Such units shall comply with all dimensional requirements of the underlying zone except lot coverage and lot area per dwelling unit requirements.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is torn down and a vacant lot results.

D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:

- ~~1. Up to two additional dwelling units are permitted on any lot containing one existing dwelling unit.~~
- ~~2. One of these units may be permitted within or attached to the existing structure, one may be permitted detached from the existing structure, or one may be permitted of each. In all cases, the minimum lot area per dwelling unit standards of Article 7 shall apply.~~
- ~~3. Units created under this section shall not be considered accessory dwelling units under Section 6.6.2(A).~~

~~E. If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section, the lot is not eligible for any additional units Section 6.6.2(A).~~

6.4.26.4.3 Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6.4.36.4.4 Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street.
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 a.m. and 11 p.m. each day and food service and

consumption shall be the primary function of the restaurant.

6.4.46.4.5 Bed and breakfasts

- A. In the R-6 and R-6a zones, the minimum gross floor area for bed and breakfasts shall be 2,000 square feet for the first three guest rooms and 500 square feet for each additional guest room.
- B. In all mixed-use zones except the B-1/B-1b zones, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
 1. *In the B-2/B-2b/B-2c zones.* The meeting facility must be less than 4,000 square feet.
 2. *In the B-3/B-3b/B-3c zones.* The building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 square feet in floor area on that date.

6.4.56.4.6 Campgrounds

- A. Campgrounds shall not include recreational vehicles.
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services.
- C. No tent shall be located within 75 feet of the perimeter of site.
- D. The land area of the campground shall not be less than the equivalent of 5,000 square feet of land area per tent site exclusive of the roadway network.

6.4.66.4.7 Commercial uses in the B-1/B-1b zones

TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS

Categorical Vehicular Exceptions		
Major site plans	The Planning Board shall establish the off-street parking requirement based on a parking study.	
Affordable housing	±2 spaces are required for every 3 units, except that the The Planning Board may establish a <u>lesser</u> parking requirement that is less than 1 space per workforce or low income housing unit, regardless of the size of the structure.	
Multi-family housing	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 Transportation Demand Management program, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.	
Historic structures	No off-street parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required. ¹	
Accessory Dwelling Units	No off-street parking shall be required.	
Transit proximate development and uses	No off-street parking shall be required within ¼ mile of fixed route transit service. New uses or changes of use of more than 10,000 SF taking advantage of this exception shall be required to provide a Transportation Demand Management Plan if they use this provision in lieu of parking requirements.	
Units permitted as a result of additional residential use (6.4.2)		No off-street parking shall be required.
Zone-Based Vehicular Exceptions		
	Residential	Nonresidential
R-6	No off-street parking required for first three dwelling units. ²	
IR-1/I-B		Off-street parking requirements for nonresidential uses shall be reduced by 75%.
IR-3	No off-street parking required.	
R-OS	Off-street parking shall be adequate to serve projected employee and visitor needs.	
B-2/B-2b/B-2c		For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
IS-FBC	No off-street parking required for first three dwelling units.	For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
B-3	No off-street parking required for changes of use.	
B-5	No off-street parking required.	
B-6	Off-street parking requirement shall be determined based on a parking study.	
B-7	Off-street parking requirement shall be determined based on a parking study.	
Waterfront Zones	Off-street parking requirements shall be reduced by 50%. No off-street parking required in the WCZ.	

¹ Exception applies for uses within any contributing structure in a local or national register historic district or locally-designated or national register landmark building under Article 17. However, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

² 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 used one time.

³ If the number of existing parking spaces serving the site is less than the requirements of this article, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except to the extent necessary to meet the requirements of the Americans with Disability Act, to the extent it is a requirement or a condition of site plan review, or 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 article for all uses on the site including the change of use. A newly constructed building, a building addition, or a change of the use of a building exceeding 10,000 SF of floor area, shall provide parking as required by this article.

Amy Oberlin <agoberlin@gmail.com>
to planningboard@portlandmaine.gov

Oct 22, 2023, 7:32:54 PM (13 hours ago)



Planning Board,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003.

The intent of LD 2003 was to generally allow up to four units on every residential lot, a change that would allow additional housing creation on 28% of Portland land. Instead, the City has waited until the eleventh hour to propose a complicated strategy that sidesteps the intent of LD 2003. The language proposed by the City to comply with LD 2003...

- Narrows the area where 4 units could be built from 28% to **just 0.5% of land in Portland**.
- This 0.5% is land that is currently vacant, and often it is **vacant for good reason**. These lots include wetlands, trails, unofficial parks, deed-restricted lots, and nonconforming lots. It is possible that this proposed change will result in the construction of **zero** new 4-unit buildings.
- This narrowing is achieved by treating vacant lots differently from occupied lots, specifying that **only lots that are vacant on July 1, 2023** will allow up to 4 units.
- Occupied lots will allow just 2 new units under the new Additional Residential Use (ARU), for a total of 3 allowed units (not 4). **ARUs are a concept created by the Portland planning staff to denote and limit the required LD2003 allowances**. The definition of ARUs: a) further restricts whether the new units may be attached or detached to the existing structure (you may only have one of each); b) only inconsistently exempts the new units from the density limits that enforce single-family zoning (only the attached unit is exempt); and c) constructing two ARUs removes your right to build the two similar but not identical Accessory Dwelling Units (ADUs), which are already currently allowed everywhere that ARUs will be allowed. These restrictions mean that the majority of single-family lots in Portland will be able to **add just one additional unit of housing** under these changes. The definition creates additional ambiguity as to what is allowed if a structure is demolished or if a lot is split.

These proposed rules are overly complicated at a time when Portland is supposed to be simplifying its code.

Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene to increase housing supply.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing,

Portland's workers are forced into long commutes, Portland's seniors are not able to age in place, Portland's young people are forced to move elsewhere in search of a lower cost of living, our refugees go unhoused, and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must allow 4 units in all mainland residential zones.

I urge the City to adopt the amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- 1. Allow lots that become vacant after July 1, 2023 to build 4 units,**
- 2. Allow ADUs on lots that have built ARUs,**
- 3. Allow 4 units on lots with an existing home without requiring its demolition, and**
- 4. Give ARUs the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits)**

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Nathaniel Ferguson <me@nathanielferg.com>

9:19 AM (3 minutes ago)



to planningboard@portlandmaine.gov

Dear Portland Planning Board,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am very disappointed to see the City's attempt to undermine the impact of LD 2003. The rules proposed by staff are overly complicated at a time when Portland is supposed to be simplifying its code. We must vigorously comply with LD 2003 and amend the proposed changes to allow 4 units in all mainland residential zones.

I urge the Planning Board to recommend the amendments proposed by the Urbanist Coalition of Portland.

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,

Nathaniel Ferguson

Todd Morse <todd@urbanistportland.me>

9:52 AM (1 hour ago)



to planningboard@portlandmaine.gov

Planning Board,

I am Todd Morse, President of the Urbanist Coalition of Portland and Portland Resident. We feel that the proposed changes to our land use code do not implement the spirit of LD2003 and have gone out of their way, by way of additional restrictions, to change as little as possible. This results in a more complicated land use code and much less potential for housing.

I have written an article with my analysis of the changes: <https://thetownsmen.org/awastedopportunity/>. The highlights are:

- By limiting lots that weren't vacant on July 1st 2023 from ever qualifying for four units only a very small number of lots, by definition in the worst locations, will ever qualify.
- By adding a new limit on building ADUs if you take advantage of LD2003 the changes result in no net new units for non-vacant lots.
- Non vacant lots do get 2 additional units for a total of three, which seems close to the goal of four, but these units cannot be in the same structure which is quite limiting and lots that become vacant may or may not be able to build them all at once.
- The unit that must be in a different structure will count towards density limits so only double-sized lots (except in R-4 and R-5) will be able to build both.

Our group has proposed four very small amendments to their changes https://urbanistportland.me/policy/portland_ld2003. 3 out of 4 of them do nothing but remove newly-added limitations from planning staff's changes and the fourth simply replaces some language for LD2003 with pre-existing language from our ADU ordinance. Though LD2003 units are not accessories it still makes for a more coherent code to allow for the same treatment in these cases. These amendments are:

1. Remove the limit on lots that were not vacant on July 1st 2023 from ever being considered vacant.
2. Remove the limit on building ADUs if you built any of the units you are entitled to by LD2003.
3. Remove the vacant/occupied distinction entirely (all lots would get the full four, even if they have an existing structure).
4. Apply the parking, lot coverage, and density exceptions we give to ADUs to LD2003 units.

These amendments are short, realistic, and they can be made without introducing any delay. Our group is promoting our amendments and if they are not adopted at the planning board stage we will be advocating to the city council to adopt them. We have already contacted the city council to begin advocating for this version. Even if you opt not to make these amendments I request at a minimum that you surface a version with them to the city council as an option. The planning staff has made value-based decisions here. If your body does not identify and surface these different options, elected representatives will not have the chance to weigh in on them. It will also ensure that the council meeting goes as smoothly as possible and we can comfortably pass changes to comply with LD2003 before the deadline.

Sincerely,
Todd Morse

portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the City of Portland *Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority.
2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the City as set forth under Articles 14 and 15. Also as set forth in Articles 14 and 15, a one-year defect bond shall be tendered to the City prior to release of the performance guarantee required hereby. The provisions of this paragraph (2) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her

intention under oath to make the structure his or her personal residence.

- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
 1. Dingley Court.
 2. Morgan Court.

6.4.2 Additional residential use permissions

A. In island zones: Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is torn down and a vacant lot results.

D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:

1. Up to two additional dwelling units are permitted on any lot containing one existing dwelling unit.
2. One of these units may be permitted within or attached to the existing structure, one may be permitted detached from the existing structure, or one may be permitted of each. In all cases, the minimum lot area per dwelling unit standards of Article 7 shall apply.
3. Units created under this section shall not be considered accessory dwelling units under Section 6.6.2(A).

E. ~~If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section, the lot is not eligible for any additional units Section 6.6.2(A).~~

~~6.4.26.4.3~~ Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

~~6.4.36.4.4~~ Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street.
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 a.m. and 11 p.m. each day and food service and

consumption shall be the primary function of the restaurant.

~~6.4.46.4.5~~ Bed and breakfasts

- A. In the R-6 and R-6a zones, the minimum gross floor area for bed and breakfasts shall be 2,000 square feet for the first three guest rooms and 500 square feet for each additional guest room.
- B. In all mixed-use zones except the B-1/B-1b zones, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
 1. *In the B-2/B-2b/B-2c zones.* The meeting facility must be less than 4,000 square feet.
 2. *In the B-3/B-3b/B-3c zones.* The building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 square feet in floor area on that date.

~~6.4.56.4.6~~ Campgrounds

- A. Campgrounds shall not include recreational vehicles.
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services.
- C. No tent shall be located within 75 feet of the perimeter of site.
- D. The land area of the campground shall not be less than the equivalent of 5,000 square feet of land area per tent site exclusive of the roadway network.

~~6.4.66.4.7~~ Commercial uses in the B-1/B-1b zones

portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the City of Portland *Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority.
2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the City as set forth under Articles 14 and 15. Also as set forth in Articles 14 and 15, a one-year defect bond shall be tendered to the City prior to release of the performance guarantee required hereby. The provisions of this paragraph (2) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her

intention under oath to make the structure his or her personal residence.

- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
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2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot ~~that does not contain an existing dwelling unit~~. Such units may be located:

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2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is torn down and a vacant lot results.

~~D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:~~

- ~~1. Up to two additional dwelling units are permitted on any lot containing one existing dwelling unit.~~
- ~~2. One of these units may be permitted within or attached to the existing structure, one may be permitted detached from the existing structure, or one may be permitted of each. In all cases, the minimum lot area per dwelling unit standards of Article 7 shall apply.~~
- ~~3. Units created under this section shall not be considered accessory dwelling units under Section 6.6.2(A).~~

~~E. If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section, the lot is not eligible for any additional units Section 6.6.2(A).~~

6.4.26.4.3 Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6.4.36.4.4 Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street.
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 a.m. and 11 p.m. each day and food service and

consumption shall be the primary function of the restaurant.

6.4.46.4.5 Bed and breakfasts

- A. In the R-6 and R-6a zones, the minimum gross floor area for bed and breakfasts shall be 2,000 square feet for the first three guest rooms and 500 square feet for each additional guest room.
- B. In all mixed-use zones except the B-1/B-1b zones, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
 1. *In the B-2/B-2b/B-2c zones.* The meeting facility must be less than 4,000 square feet.
 2. *In the B-3/B-3b/B-3c zones.* The building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 square feet in floor area on that date.

6.4.56.4.6 Campgrounds

- A. Campgrounds shall not include recreational vehicles.
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services.
- C. No tent shall be located within 75 feet of the perimeter of site.
- D. The land area of the campground shall not be less than the equivalent of 5,000 square feet of land area per tent site exclusive of the roadway network.

6.4.66.4.7 Commercial uses in the B-1/B-1b zones

TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS

Categorical Vehicular Exceptions		
Major site plans	The Planning Board shall establish the off-street parking requirement based on a parking study.	
Affordable housing	±2 spaces are required for every 3 units, except that the The Planning Board may establish a <u>lesser</u> parking requirement that is less than 1 space per workforce or low income housing unit, regardless of the size of the structure.	
Multi-family housing	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 Transportation Demand Management program, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.	
Historic structures	No off-street parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required. ¹	
Accessory Dwelling Units	No off-street parking shall be required.	
Transit proximate development and uses	No off-street parking shall be required within ¼ mile of fixed route transit service. New uses or changes of use of more than 10,000 SF taking advantage of this exception shall be required to provide a Transportation Demand Management Plan if they use this provision in lieu of parking requirements.	
Units permitted as a result of additional residential use (6.4.2)		No off-street parking shall be required.
Zone-Based Vehicular Exceptions		
	Residential	Nonresidential
R-6	No off-street parking required for first three dwelling units. ²	
IR-1/I-B		Off-street parking requirements for nonresidential uses shall be reduced by 75%.
IR-3	No off-street parking required.	
R-OS	Off-street parking shall be adequate to serve projected employee and visitor needs.	
B-2/B-2b/B-2c		For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
IS-FBC	No off-street parking required for first three dwelling units.	For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
B-3	No off-street parking required for changes of use.	
B-5	No off-street parking required.	
B-6	Off-street parking requirement shall be determined based on a parking study.	
B-7	Off-street parking requirement shall be determined based on a parking study.	
Waterfront Zones	Off-street parking requirements shall be reduced by 50%. No off-street parking required in the WCZ.	

¹ Exception applies for uses within any contributing structure in a local or national register historic district or locally-designated or national register landmark building under Article 17. However, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

² 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 used one time.

³ If the number of existing parking spaces serving the site is less than the requirements of this article, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except to the extent necessary to meet the requirements of the Americans with Disability Act, to the extent it is a requirement or a condition of site plan review, or 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 article for all uses on the site including the change of use. A newly constructed building, a building addition, or a change of the use of a building exceeding 10,000 SF of floor area, shall provide parking as required by this article.

portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the City of Portland *Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

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intention under oath to make the structure his or her personal residence.

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6.4.2 Additional residential use permissions

A. In island zones: Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. ~~Such units may be located:~~

- ~~1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or~~
- ~~2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.~~

Such units shall comply with all dimensional requirements of the underlying zone except lot coverage and lot area per dwelling unit requirements.

B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. ~~Such units may be located:~~

- ~~1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or~~
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Such units shall comply with all dimensional requirements of the underlying zone except lot coverage and lot area per dwelling unit requirements.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is torn down and a vacant lot results.

D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:

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Categorical Vehicular Exceptions		
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~~E. If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section, the lot is not eligible for any additional units Section 6.6.2(A).~~

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 1. *In the B-2/B-2b/B-2c zones.* The meeting facility must be less than 4,000 square feet.
 2. *In the B-3/B-3b/B-3c zones.* The building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 square feet in floor area on that date.

6.4.56.4.6 Campgrounds

- A. Campgrounds shall not include recreational vehicles.
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- D. The land area of the campground shall not be less than the equivalent of 5,000 square feet of land area per tent site exclusive of the roadway network.

6.4.66.4.7 Commercial uses in the B-1/B-1b zones

Tom Bander <tom.bander@gmail.com>

10:27 AM (1 hour ago)



to planningboard@portlandmaine.gov

Dear Planning Board,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003. We need to be leading the way and allowing 4 units of housing on all lots. I'm a physician at a MaineHealth office on outer Congress, and we've had major issues losing staff and nurses to other cities with lower housing costs. I had a conversation last week with a medical assistant who lived in Portland during college but has been priced out to Buxton despite a strong desire to live and work in Portland. She's even planning to move out of the state after she completes her PA degree due to more affordable and available housing. This is a HUGE problem for our state and city. Our healthcare system cannot meet the needs of our community without more local housing.

The intent of LD 2003 was to generally allow up to four units on every residential lot, a change that would allow additional housing creation on 28% of Portland land. Instead, the City has waited until the eleventh hour to propose a complicated strategy that sidesteps the intent of LD 2003. The language proposed by the City to comply with LD 2003...

- Narrows the area where 4 units could be built from 28% to **just 0.5% of land in Portland**.
- This 0.5% is land that is currently vacant, and often it is **vacant for good reason**. These lots include wetlands, trails, unofficial parks, deed-restricted lots, and nonconforming lots. It is possible that this proposed change will result in the construction of **zero** new 4-unit buildings.
- This narrowing is achieved by treating vacant lots differently from occupied lots, specifying that **only lots that are vacant on July 1, 2023** will allow up to 4 units.
- Occupied lots will allow just 2 new units under the new Additional Residential Use (ARU), for a total of 3 allowed units (not 4). **ARUs are a concept created by the Portland planning staff to denote and limit the required LD2003 allowances**. The definition of ARUs: a) further restricts whether the new units may be attached or detached to the existing structure (you may only have one of each); b) only inconsistently exempts the new units from the density limits that enforce single-family zoning (only the attached unit is exempt); and c) constructing two ARUs removes your right to build the two similar but not identical Accessory Dwelling Units (ADUs), which are already currently allowed everywhere that ARUs will be allowed. These restrictions mean that the majority of single-family lots in Portland will be able to **add just one additional unit of housing** under these changes. The definition creates additional ambiguity as to what is allowed if a structure is demolished or if a lot is split.

These proposed rules are overly complicated at a time when Portland is supposed to be simplifying its code.

Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new

housing on their own property.

Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene to increase housing availability. We should be leading the way on gentle density to allow my staff to live and work in Portland and serve the community. This lessens traffic, improves pollution, minimizes effects on climate change, and helps service industries meet the needs of our citizens.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes, Portland's seniors are not able to age in place, Portland's young people are forced to move elsewhere in search of a lower cost of living, our refugees go unhoused, and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must allow 4 units in all mainland residential zones.

I urge the City to adopt the amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- 1. Allow lots that become vacant after July 1, 2023 to build 4 units,**
- 2. Allow ADUs on lots that have built ARUs,**
- 3. Allow 4 units on lots with an existing home without requiring its demolition, and**
- 4. Give ARUs the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits)**

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,

Tom Bander, MD
108 Eastern Promenade
Apt 3
Portland, ME 04101

Wendy Cherubini <wcherubini@gmail.com>
to planningboard@portlandmaine.gov

10:21 AM (1 hour ago)



Members of the City of Portland Planning Board,

I am disappointed to see the City's attempt to undermine the impact of LD 2003 and write to state my support for the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City. These amendments will bring Portland into compliance with LD 2003 and remain true to the spirit and goals of LD 2003.

The staff proposed rules before you are overly complicated at a time when Portland is supposed to be simplifying its code. Overly complicated rules will suppress housing development and run counter to the stated goals of LD 2003. LD 2003's intent is to allow up to 4 units of housing on every residential lot. In Portland that would allow modest housing creation across the city. However, the rules presented by staff narrow that area to 0.5% of land in the city. In the midst of a housing affordability and availability crisis, this is shameful. Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances. These are the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is a significant cause of the housing affordability crisis we're experiencing today. Indeed it is this same local resistance that forced the state legislature to intervene.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in all mainland residential zones.

I urge the City to adopt the amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- 1. Allow lots that become vacant after July 1, 2023 to build 4 units,**
- 2. Allow ADUs on lots that have built the newly allowed units,**
- 3. Allow 4 units on lots with an existing home without requiring its demolition, and**
- 4. Give the newly allowed units the same exemptions currently given to ADUs**
(exemptions from parking minimums, lot coverage maximums, and density limits)

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at https://urbanistportland.me/policy/portland_ld2003 I hope you will support them.

Sincerely,

Wendy Cherubini

Winston Lumpkins <winston.lumpkins@gmail.com>

11:00 AM (13 minutes ago)



to Planning Board, cc: Planning and Urban Development, City Council

Dear Chair Mazer, Members of the Portland Planning Board,

I commented during the initial workshop on this issue, and I want to reiterate my comments.

LD2003 is intended to make it easier, not more complicated, to build housing in Maine.

Applying it solely to vacant lots is absurd, and doesn't make sense in Portland. It might if most of the build-able land was vacant already, as it is in some towns in Maine, but that's not the case. By now you've probably seen the map the Urbanists Coalition put together: https://urbanistportland.me/policy/portland_ld2003

It's pretty horrifying that we're considering applying LD2003 in such a shamefully limited way. The Town of Gorham already allows 4 units on all lots- ALREADY. I would call into question the idea that this isn't intended for Portland because we allow larger buildings than other towns: **on most of our landmass we don't.**

Some intoned that with the ADU allowances, it's "*only one unit*" that would be disallowed by only applying the 4 unit use to vacant lots. This does not take into account the density bonus for affordable units, also required by LD2003, which would allow up to 10 units if half are affordable: that bonus should be applied everywhere, not just on vacant lots, most of which probably don't meet dimensional standards that would allow 10 units. It also doesn't take into account the long-term nature of these changes: we are in this crisis because we haven't allowed multi units in too much of the city for too long- in the long term, the next 20 years say, this decision will prevent *far more* than 1 unit of housing from being built.

Consider that Portland's members of the State Legislature voted in favor of LD2003- if folks don't like it, they can take it up with them: you should feel free to apply it in a simple, direct way that would allow more housing where we need it: **in Portland**, and not just in towers on the peninsula which no Mainer will ever be able to afford to live in, driving up property value and taxes for apartment dwellers who we all depend on to perform essential work in the city: I am one of those people, and we should never have been excluded from so many of Portland's neighborhoods.

Thank you all for the service to Portland that is serving on the Planning Board,

Sincerely,

~Winston Lumpkins,
District 1, East end, Portland Maine

Winston Lumpkins IV (he/him/his)

Emma Grotto <emgrotto@gmail.com>

10:37 AM (1 hour ago)



to planningboard@portlandmaine.gov

Planning Board,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003.

These proposed rules are overly complicated at a time when Portland is supposed to be simplifying its code.

Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in all mainland residential zones.

I urge the City to adopt the amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

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A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,

Emma Morse

3 DEFINITIONS

Accessory dwelling unit. A dwelling unit subordinate in size to the principal residential structure(s) on a lot and located either within the principal residential structure(s) or in an accessory structure.

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S. §§ 2911, 2912.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses (including utilities such as electric, heat, water, sewer, and/or trash that the household pays separately from rent) or must pay in ownership cost (including but not limited to monthly mortgage payments, (including condominium/HOA fees, mortgage insurance, other insurance, and real estate taxes), does not exceed 30% of a household’s income, or other amount

established in City regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. The practice of farming, including the cultivation of the soil for the growing of crops and rearing of animals to provide food and other products. Agriculture may include nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises.

Airport restricted access areas. Runways, taxiways, and other areas of the Jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building.

Auto service station. A business selling gasoline, diesel, or propane fuel, providing services specific to electric vehicles, or providing motor vehicle repairs including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair, or similar activities. Such businesses may also include car-washes and/or vacuums.

Back office use. An office-related use with minimal public visitation and minimal direct service to the general public, primarily to provide support services to larger organizations such as educational institutions, social service agencies, or business headquarters.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Bed and breakfast. A building that contains between two and nine guest rooms; is used to provide or offer overnight accommodations for transient guests; has an owner, manager, or operator living in the building as a permanent resident; does not provide cooking facilities in any of the guest rooms; and does not provide meals other than breakfast, which shall be offered only to overnight guests.

Blasting operations. The use of explosives for purposes of breaking up and removing soil, rock, and ledge, related to construction and development of real estate within the city.

Building. A roofed and walled structure built for permanent use.

Building, accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint, floor area, or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a building.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Clinics. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists, or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.



Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit, or emergency purposes, but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural

exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development intended to facilitate aging in place that includes individual dwelling units with support services which provide assistance to residents. The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses. A congregate care facility may also accommodate the needs of persons with disabilities and their spouses that are younger than 55 years of age, provided the majority of the residents are 55 years of age or older. Services to be provided shall include the following:

- A. Transportation for essential support activities.
- B. Provision of at least one meal per day.
- C. Programmed social activities which are facilitated by staff.
- D. Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring.
- E. Installation of emergency call buttons or systems in each unit.

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of persons in correctional pre-release programs.

Drive-through. A facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities.

Dwelling, multi-family. A building or portion thereof containing three or more dwelling units.

Dwelling, single-family. A single building containing one dwelling unit.

Dwelling, two-family. A single building containing two dwelling units.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling, or grading of soil, earth, loam, sand, gravel, rock, and other mineral deposits.

Easement. A right, privilege, or liberty which one has in land owned by another for some special and definite purpose.

Emergency operations. Operations conducted for the public health, safety, or general welfare, such as

protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to homeless individuals in a dormitory-style or per-bed arrangement.

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

Esplanade. That portion of a street which is located between the curblin and the edge of the sidewalk closest to the street.

Essential services. The construction, alteration, or maintenance of gas, electrical, or communication facilities; steam, fuel, electric power, or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles, and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection, or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants, and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Explosives. Any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities, or packaging that an ignition by fire, by friction, by compound or mixture

may cause such a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the components for handloading rifle, pistol and shotgun ammunition, or fireworks.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills

and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Freshwater wetland. Freshwater swamps, marshes, bogs, and/or similar areas which are both:

- A. Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning map.
- B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures.

General services. Establishment primarily engaged in rendering services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, employment services, management services, personnel services, or maintenance services.

Handicapped family unit. A dwelling unit which provides living facilities for handicapped persons. A handicapped family unit may also provide counseling and support services. Staff members may also be included in the population.

Helistop. An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common spaces for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A building used for more or less temporary occupancy of individuals who are lodged with or without meals.

Impervious surface. Area covered with low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or

distribution of finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial, and lower-impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: artist studios, bakeries; breweries; distilleries; bottling; coffee roasters; commercial kitchens; pharmaceuticals; machine shops; watchmakers; makers of precision instruments, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry; assembly of electrical components; canteen services; tool and die shops; plant and tree nurseries; and the packaging of foods. Low-impact industrial uses do not include the processing of raw materials or salvaging operations. Low-impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Intermediate care facility. A facility which provides, on a regular basis, health-related care and services for more than 13 individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations



promulgated by the State of Maine Department of Health and Human Services.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Lodging house. A house, building or portion thereof containing two or more rooming units, as well as common areas, and providing such units to individuals on not less than a monthly basis for compensation.

Long-term or extended care facility. An institution or a distinct part of an institution that is licensed or approved to provide full-time convalescent or chronic care, or health care under medical supervision for 24 or more consecutive hours, to nine or more individuals who, by reason of advanced age, illness, or infirmity are unable to care for themselves, and who are not related to the governing authority by marriage, blood, or adoption.

Lot. A parcel or area of land that is designated as an individual unit for use, development, or ownership that is either: a) a parcel or area of land that is separately described in a deed or on a plan recorded in the Cumberland County Registry of Deeds; b) a contiguous combination of such lots under common ownership and designated as one unit for development; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

Lot of record. A nonconforming parcel or area of land that: a) is separately described in a deed or on a plan recorded in the Cumberland County Registry of Deeds as of the date designated in the relevant

provision of this chapter and b) conformed to the requirements of this chapter as of the date designated in the relevant provision of this chapter.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD).
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of Area Median Income (AMI).
- B. The unit is sold to a household earning 100% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

Manufactured housing. A structural unit or units designed for residential occupancy and constructed in a manufacturing facility and then transported by

the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two types of manufactured housing are included. They are:

- A. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein. This term also includes any structure which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and
- B. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state's

Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning, or electrical systems contained therein.

Any unit which does not fall within the definitions of this section and which is legally sited within the city on December 18, 1989, may be relocated to any location in the city in which manufactured housing is allowed.

Manufactured housing park. A parcel of land under unified ownership approved by the Planning Board under 30-A M.R.S. § 4358 for the placement of single-component manufactured housing.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 28-B M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings, and marijuana seeds, for use or sale.

Marijuana manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana product. As defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants, and seedlings to adult

use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marina. A commercial operation providing floats, slips, and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Military personnel berthing. A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multi-family development. The construction or creation of three or more dwelling units on any parcel of land or the addition of two or more dwelling units cumulatively within a three-year period.

~~**Multiplex.** A residential development consisting of three or more horizontally or vertically attached~~

~~dwelling units, or a series of such attached dwelling units, and the construction of at least one building.~~

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and services, usually owned and operated by a public or nonprofit group or agency. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

Office park. Separate office buildings planned, constructed, or managed on an integrated coordinated basis.

Off-peninsula. All land located north of I-295.

On-peninsula. All land located south of I-295.

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

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, permanent. Structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, neighborhood center, private club, or fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, neighborhood center, private and fraternal organization, or place of religious assembly where 15 or fewer people, not including the permanent residents of a single-family dwelling, assemble.

Place of religious assembly. A building or portion of a building used for religious worship or instruction including, but not limited to, churches, synagogues, masjids, mosques, and other places of worship.

Planned residential unit development (PRUD). A residential subdivision consisting of attached or detached dwellings intended for separate ownership and land to be owned and used in common, with open spaces, recreational areas, access ways, and buildings which are designed, built, and managed in accordance with a unified development plan.

Planned unit development (PUD). A development consisting of either detached or attached single-family dwelling units and commercial or other uses, on substantially-sized properties of greater than 20 acres and designed to be compatible with the surrounding built and natural environment.

Plant canopy. As defined by 28-B M.R.S. § 102.

Preschool facility. Facility which provides a regular program of care and protection for children generally younger than those attending elementary school, which may also encompass daycare facilities.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining



room space and kitchen facility are available and are provided within all regulations of this Land Use Code and other applicable codes and ordinances.

Recent flood plain soils. Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, and Winooski.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities, including games of skill or games of chance licensed either by the City of Portland or by the State of Maine. Such facilities may limit admission either to members or to persons paying an entrance fee.

Registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. § 2422.

Registered patient. As defined by 22 M.R.S. § 2422.

Repair services. Establishments primarily engaged in rendering services related to the maintenance or repair of goods. In industrial zones only, repair services shall include motor vehicle repair services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service establishment with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Roadway. That portion of a street between the regularly established curblines, or that part of a street or alley devoted to vehicular traffic.

Rooming unit. One or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes by an individual or a family, but not designed for food preparation. In a suite of rooms, each room that provides sleeping accommodations shall be counted as one rooming unit for the purpose of this chapter.

Self-storage facility. A fully enclosed building with individual, secured units (accessed with or without supervision) used for the exclusive purpose of storage of non-hazardous business or personal materials.

Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A M.R.S. § 251.

Sheltered care group home. A facility which, in addition to providing food and shelter to a defined population of up to 12 individuals, provides guidance or counseling services as a primary function of the facility.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Site. All contiguous land under the same ownership or control, whether proposed for development or

not, except where development is limited to a lot or lots within a subdivision.

Small-scale marijuana caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than: 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems. Solar energy systems shall include the following:

- A. Accessory solar energy system. A system as defined above where power generation is incidental to a principal use, which may take the form of either a building integrated or roof-mounted solar array of any size, or a ground-mounted array occupying less than 1,000 square feet of air-space over ground area.
- B. Minor solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either

a building- or roof-mounted solar array of any size, or a ground-mounted system occupying between 1,000 and 9,999 square feet of ground area.

- C. Major solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building or roof-mounted solar array of any size, or a ground-mounted system occupying greater than 10,000 square feet of ground area.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound

pressure varies essentially as a simple sinusoidal function of time.

Special needs independent dwelling unit. A dwelling unit developed and managed by a nonprofit organization for habitation by persons with special social, physical or mental needs beyond strictly economic needs. Such persons shall be provided required levels of supervision, care and/or counseling services appropriate to their special needs, and the services shall be provided by either the sponsoring nonprofit agency or through another entity with which the agency has entered into a contractual arrangement.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least 6,000 seats.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock, or other mineral deposits upon a site for the purpose of storage, warehousing, or reserving for future use.

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the

body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

Street. A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street line. The line of demarcation between private property and a street.

Street, cul-de-sac or dead end. A street with only one outlet.

Structure. Anything constructed or erected of more than one member having a permanent or semi-permanent location on another structure or in or on the ground, including without limitation buildings, fences, gazebos, signs, antennas, satellite sending or receiving dishes, and swimming pools. Stockpiles shall be considered structures for the purposes of dimensional requirements.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture, or other arts, or the practice of arts such as music or dance, or the production of custom, hand-crafted, or limited production of products such as furniture, wood, clay, and metal products, publications, and similar low-impact arts and crafts activities.

Subdivider. Any individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under

these regulations to effect a subdivision of land hereunder for himself, herself, or for another.

Subdivision. As defined in 30 A.M.R.S. § 4401 and 4402.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

Tenant. Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

Tributary stream. A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four inches in diameter, measured at four and one-half feet above ground level.

Very low-income household. A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Warehousing, storage, and distribution. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May

include wholesale use, but not retail or direct sales to consumers.

Watercourse. Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed, and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands (outside of shoreland zones). Those areas which have two or more of the following:

- A. A water table at or near the surface during the growing season;
- B. Very poorly drained soils, including Sebago mucky peat; or
- C. Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and Wildlife Service publication of Wetland Plants of the State of Maine (1986).

Wind energy system. A wind energy generator and all associated facilities.

Wind energy system, useful life. The period for which the system has been designed by the manufacturer to operate in a safe manner, including

the period during which new parts and refurbishment allow it to continue operating safely.

Wholesale. Sale for resale, not for direct consumption.

Workforce housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less than of AMI.
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale. A dwelling unit for which:

- A. The purchase price is affordable to a household earning 80% or less of AMI.
- B. The unit is sold to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

6 USE STANDARDS

6.1 APPLICABILITY

The use of buildings, structures, and land are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

6.2 DETERMINATION OF USE

6.2.1 Use tables

Tables 6-A to 6-F shall determine if a use is permitted (●), conditional (◐), or not permitted (◑), as a principal use within a zone. Unless otherwise noted, where a use is listed in terms of square footage, square footage figures shall correspond to the total floor area of the use.

6.2.2 Unlisted uses

- A. Uses not expressly listed as permitted or conditional in Tables 6-A to 6-F are prohibited as principal uses except that a use may be permitted subject to meeting the following performance-based standards:
 1. The proposed use is consistent with the purposes of the zone.
 2. The proposed use is closely related to a permitted or conditional use in terms of character, scale, and external impacts.
 3. The buildings and structures associated with the proposed use are designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of

neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts.

- B. The review authority shall determine whether the uses not listed as permitted or conditional uses meet the above standards. If it is determined that the use does not meet the above criteria, it shall not be permitted.
- C. The review authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a permitted or conditional use.

6.2.3 Multiple uses

A site may contain more than one principal use, so long as each principal use is allowed within the zone.

6.3 CHANGE OF USE

A change of use from one use in these tables to another is governed by the requirements of the new use. The use of any part of any building, structure, or property shall not be changed to any other use, whether principal or accessory and whether alterations in the building, structure, or property are involved or not, until a permit and certificate of occupancy authorizing such change of use has first been secured from the Building Authority in accordance with Chapter 6 of the City of Portland Code of Ordinances.

TABLE 6-A: PERMITTED AND CONDITIONAL USES IN RESIDENTIAL ZONES

		R-1	R-2	R-3	R-4	R-5/R-5a	R-6/R-6a	Use Standards
Residential	Single-family dwellings	●	●	●	●	●	●	
	Two-family dwellings				●	●	●	6.4.2
	Multi-family dwellings			○		○ ¹ /● ²	●	6.4.2, 6.5.6(G)
	Multiplex				○	● ⁺		6.4.12
	Congregate care facilities					● ²		
	Handicapped family units	●	●	●	●	●	●	
	Planned Residential Unit Developments			● ⁴		● ⁴		
	Special needs independent dwelling units				●	● ¹	●	
	Lodging houses					○ ^{1,3}	●	6.4.10 9
	Sheltered care group homes	○	○	○	○	○	○	6.5.6(K)
Institutional	Elementary, middle, and secondary schools	○	○	○	○	○ ¹	○	6.5.6(F)
	Governmental uses	●	●	●	●	●	●	
	Hospitals			○		○ ¹	○	
	Intermediate care facilities	○	○	○		○ ¹ /● ²	○	
	Long-term and extended care facilities	○	○	○		○ ¹ /● ²	○	6.5.6(F)
	Places of assembly (<10,000 SF)	○	○	○	○	○	○	
	Places of assembly (>10,000 SF)	○	○	○	○	○	○	
	Preschool facilities	○	○	○	○	○	○	6.5.6(I)
	Post-secondary schools		○			○ ¹	○	6.5.6(F)
	Bed and breakfasts						●/○ ⁵	6.4.5 4
Comm.	General offices (<5,000 SF)						○	6.5.6(C)
	Hostels						●/○ ⁶	6.4.9 8
	Agriculture	●	●					
Other	Cemeteries	○	○		●		●	
	Off-street parking			○	○	○ ¹	○	6.5.6(H)
	Parks and open spaces	●	●	●	●	●	●	
	Raising of domesticated animals	○						6.5.6(J)
	Solar energy system (minor)	●	●	●	●	●	●	6.4.16
	Utility substations	○	○	○	○	○	○	6.5.6(L)

¹ In the R-5 zone only.² In the R-5a zone only.³ Conversions of existing two-family or multiplex structures into lodging houses are permitted as a conditional use, provided that the lodging house shall not be located within 500 ft. of another as measured along street lines.⁴ Must consist of horizontally or vertically attached dwelling units, or a series of such dwelling units, with all land owned and used in common. PRUDs shall be subject to review and approval by the Planning Board under Article 15.⁵ Permitted if a conversion of a structure existing as of 3/3/97 to up to four guest rooms and conditional if a conversion of the same to five to nine rooms.⁶ Permitted if for no more than 10 overnight transient guests and conditional if for between 11 and 20 overnight transient guests. An owner, manager, or operator shall be a permanent resident of the building.

TABLE 6-B: PERMITTED AND CONDITIONAL USES IN ISLAND ZONES

	IR-1	IR-2	IR-3 ¹	I-B	Use Standards
Residential	Single-family dwellings	●	● ²	●	
	Two-family dwellings			○	6.4.2,
	Multi-family dwellings			○	6.5.6(G)
	Handicapped family unit	●	●	●	
	Planned Residential Unit Developments	●	●		
	Lodging houses		○ ³	● ³	
Institutional	Elementary, middle, and secondary schools	○	○	○	
	Educational facilities (including seasonal camps)	○	○		
	Governmental uses	○	○	○	6.5.6(F) ⁶
	Places of assembly (<10,000 SF)	○	○	○	
	Places of assembly (>10,000 SF)	○	○	○	
	Preschool facilities	○	○	○	6.5.6(I)
Commercial/Service	Auto service stations			○	6.5.6(A)
	Bed and breakfasts			● ⁴	
	General services (<5,000 SF)			●	
	Hotels		● ⁵	○ ⁵	
	Restaurants		●	●	
	Retail (<10,000 SF)		●	●	
Other	Studios for artists and craftspeople			●	
	Agriculture	●			
	Boathouses and storehouses for fishing equipment	●	●	●	
	Campgrounds	○	●		6.4.6 5
	Cemeteries	○	○		
	Marinas and yacht clubs		●	●	
	Off-street parking			●	
	Parks and open spaces	●	●	●	
	Raising of domesticated animals	○			6.5.6(J)
	Solar energy system (minor)	●	●	●	6.4.16
	Utility substations	○	○	●	6.5.6(L)
	Wharves, piers, docks, and landing ramps	○	○	●	

¹ All uses within the IR-3 permitted only within a PUD with a minimum total area of 20 acres of contiguous land subject to the standards of Subsection 6.4.14.

² Single-family attached permitted provided that new construction shall be limited to no more than six attached dwellings per building.

³ With greater than two but no more than nine rooming units.

⁴ Permitted on Peaks Island only.

⁵ Maximum 50 rooms.

⁶ The standards of Subsection 6.5.6(F) shall not apply to institutional uses within the I-B zone. In the IR-1 and IR-2 ones, institutional uses are subject to the standards of Subsection 6.5.6(F) only if the total land area of the use is two acres or more.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

	B-1/B-1b	B-2/B-2b/ B-2c	B-3/B-3b/ B-3c ¹¹	B-4	B-5/ B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●		●	●	●	
	Two-family dwellings	●	●		●	●	●	
	Multi-family dwellings	● ¹	●		●	●	●	
	Congregate care facilities		●					
	Handicapped family units		●		●	●	●	
	Combined living/working spaces	●	●		●	●	●	
	Lodging houses	● ²	●	●	●		●	6.4.109
	Clinics	● ²	●		●		●	
	Cultural facilities		●		●	●	●	
	Elementary, middle, and secondary schools	● ²	●		●	●	●	
Institutional	Emergency shelters		○	○	○			6.5.6(B)
	Governmental uses	● ²	●	●	●		●	
	Intermediate care facilities		●	●				
	Long-term and extended care facilities		●					
	Places of assembly (< 10,000 SF)	● ²	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	
	Preschool facilities	● ²	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	
	Adult business establishments		● ³					6.4.32
	Auto, boat, and related dealerships		○	●				6.5.6(A)
Commercial/Service	Auto service stations		○ ⁴	●	●			6.5.6(A)
	Bars		● ⁵	●	●	●	●	6.4.43
	Bed and breakfasts	●	●	●			●	6.4.54
	Exhibition, meeting, and convention halls		●		●	○	●	
	Funeral homes		●	●				
	General offices (<5,000 SF)	● ²	●	●	●	●	●	6.4.76
	General offices (>5,000 SF)		●	●	●	●	●	
	General services (<5,000 SF)	● ²	●	●	●	●	●	6.4.76
	General services (>5,000 SF)		●	●	●	●	●	
	Hostels	●	●		●		●	6.4.76, 6.4.89
Commercial/Service	Hotels		●	●	●	● ¹³	●	
	Marijuana retail store	●/○ ⁶	●	●			●	6.4.110
	Recreation and amusement centers			●	●		●	
	Registered marijuana dispensary	●/○ ⁶	●	●			●	6.4.110
	Restaurants	● ²	●	●	●	●	●	6.4.43, 6.4.76
	Retail (< 5,000 SF)	● ²	●	●	●	●	●	6.4.76, 6.4.15
	Retail (5,000 – 25,000 SF)		●	●	●	●	●	6.4.15

TABLE 6-C (CONT.): PERMITTED AND CONDITIONAL USES IN MIXED USE ZONES

	B-1/B-1b	B-2/B-2b/ B-2c	B-3/B-3b/ B-3c ¹¹	B-4	B-5/ B-5b	B-6	B-7	Use Standards
		●	●	●	●	●	●	6.4.15
		●	●	●			●	6.4.11 ⓔ
		●	●	●	●	●	●	
		●		●			●	
		●	●	●	●	●	●	
		● ⁷		●				
							⓪	6.5.6(D)
					●	●	●	
		⓪		●		⓪	●	6.5.6(E)
		● ⁸	⓪	●	●	●	● ⁸	6.5.6(E)
		● ⁸		●	⓪			
				●				
				●				6.4.11 ⓔ
				●				
		⓪ ⁹	●	●	●	●	⓪	
		●	●	●	●	●	●	
	● ²	●	●	●	●	●	●	
				●				6.4.17
		⓪ ¹⁰	⓪ ¹⁰	●	● ¹⁰	⓪ ^{10, 14}	⓪ ^{10, 14}	6.5.6(E)
					●	●		6.4.12 ⁺
				●				6.4.8 7
			●/⓪ ¹²		●	⓪	⓪	6.5.6(H)
	●	●	●	●	●	●	●	
	●	●	●	●	●	●	●	6.4.16
				⓪				
	●	●	⓪	●	●	●	⓪	6.5.6(L)
		⓪	⓪	⓪	⓪	⓪	⓪	6.4.18

¹ Permitted if permitted in the adjacent or nearest residential zone. In other cases, permitted if located above first floor commercial, or on first floor where a minimum depth of 25 ft. along the principal frontage is maintained for commercial use.

² Permitted on the ground floor only in the B-1b zone.

³ Permitted in the B-2 and B-3 zones only.

⁴ Permitted as a conditional use in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in the B-2b and B-2c zones.

⁵ Not permitted in the B-2c and B-3c zones.

⁶ Permitted in the B-2 zone. Conditional in the B-2b and B-2c.

⁷ Permitted only if an expansion of an existing dairy.

⁸ Permitted with a retail component only. Low-impact industrial uses greater than 10,000 SF are permitted in the B-2 only.

⁹ Printing and publishing of 10,000 SF or less, or expansion of printing and publishing establishments greater than 10,000 SF in existence as of 4/4/88, shall be treated as a conditional use.

¹⁰ Permitted in the B-2/B-2b/B-2c as a conditional use if 10,000 SF or less. Self-storage permitted in the B-4 zone. Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage permitted as a conditional use in the B-3 zone in buildings existing as of 1/1/1995; the area of the building dedicated to self-storage shall not exceed 30% of the total building area and may not be located directly adjacent to or facing a public right-of-way. Self-storage not permitted in the B-2/B-2b/B-2c, B-6, and B-7 zones.

¹¹ See PAD Overlay for additional use regulations.

¹² Structured parking shall be permitted. Surface parking shall be treated as a conditional use.

¹³ Hotels shall be limited to no more than 150 rooms.

¹⁴ Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment and occupies less than 15,000 SF.

TABLE 6-D: PERMITTED AND CONDITIONAL USES IN OFFICE PARK & RESIDENCE PROFESSIONAL ZONES

	OP ¹	R-P ²	Use Standards
Any residential use permitted in the nearest residential zone		●	
Preschool facilities	●	①	6.5.6(I)
Funeral homes		●	
General offices	●	●	
High tech manufacturing	①		6.5.6(D)
Laboratory and research facilities	●		
Printing and publishing	●		
Studios for artists and craftspeople		●	
Parks and open space	●	●	
Solar energy system (minor)	●	●	6.4.16
Utility substations		●	
Wind energy system (minor)	①		6.4.18

¹ All permitted and conditional uses in the O-P zone, with the exception of parks and open spaces, solar energy systems, and wind energy systems, shall be allowed only within an office park of at least three acres of contiguous land subject to the standards of Subsection 6.4.13.

² Any conditional use that is permitted as a conditional use in the nearest residential zone shall be permitted as a conditional use in the R-P zone. All conditional use standards of the residential zone shall apply.

TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ⁷	Use Standards
Institutional	Airports				● ⁸	
	Preschool facilities	●	●			
	Emergency shelters	●	●	●		6.5.6(B)
	Intermediate care facilities		● ⁴			
	Places of assembly (<10,000 SF)	●				
Commercial/Services	Bars				●	
	General offices (<5,000 SF)	● ¹	●			
	General offices (>5,000 SF)	● ¹	●			
	General services (<5,000 SF)				●	
	General services (>5,000 SF)				●	
	Hotels				●	
	Recreation and amusement centers	●	●			
	Repair services	●	●	●		
	Restaurants				●	
	Animal-related services	● ²				
	Construction & engineering services	●	●	●		
	Dairies	●	●	●		
	Fish waste processing			●		
	Food & seafood processing, packing, and distribution		●	●		
	High-impact industrial uses			●		
	Intermodal transportation facilities	●	●	●		
	Laboratory and research facilities	●	●	●		
	Low-impact industrial	●	●	●		
	Lumber yards	●	●	●		
	Marijuana cultivation facility (<2,000 SF plant canopy)	●	●	●		
	Marijuana cultivation facility (2,000-7,000 SF plant canopy)		●	●		
Industrial	Marijuana cultivation facility (>7,000 SF plant canopy)			●		6.4.10 ¹¹
	Marijuana manufacturing facility	●	●	●		
	Marijuana testing facility	●	●	●		
	Printing and publishing	●	●	●		
	Recycling and solid waste disposal facilities		● ⁵	● ⁵		
	Studios for artists and craftspeople	●	●			
	Telecommunication towers (ground-mounted)		●	●		
	Tow lots		●	●		6.4.17
	Warehousing, storage, and distribution facilities	● ³	●	●		

TABLE 6-E (CONT.): PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ⁷	Use Standards
	Correctional pre-release facilities		● ⁶	● ⁶		6.4.7 8
	Marinas	●				
	Off-street parking				●	
Other	Solar energy system (minor)	●	●	●	●	6.4.16
	Solar energy system (major)		●	●	ⓘ	
	Utility substations	●	●	●		
	Wind energy system (minor)	ⓘ	●	●	●	6.4.18
	Wind energy system (major)		●	●	ⓘ	

¹ Only back office uses permitted.

² Not including kennel or boarding facilities.

³ Must be less than 10,000 SF in floor area. No outdoor storage permitted. Self-storage not permitted in the I-L/I-Lb zone.

⁴ Permitted in existing structures not designed for industrial, amusement, warehouse or manufacturing uses as of 9/15/14 or later. Such structures may be reused or expanded to establish a facility of no more than 30 persons plus staff.

⁵ Permitted within an enclosed structure only.

⁶ Not permitted in the I-Ma, I-Mb, or I-Hb zones.

⁷ Permitted uses on lots within airport restricted access areas shall be limited to those which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.

⁸ Including airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

TABLE 6-F: PERMITTED AND CONDITIONAL USES IN RECREATION OPEN SPACE ZONE

	R-OS ¹	Use Standards
Cemeteries	●	
Marinas	●	
Parks and open space	● ²	
Solar energy system (minor)	ⓘ	6.4.16, 6.5.7(A)
Solar energy system (major)	ⓘ	
Utility substations	●/ⓘ ³	6.5.6.L, 6.5.7(A)
Wharves, piers, docks, and landing ramps	●	
Wind energy system (minor)	ⓘ	6.4.18, 6.5.7(A)
Wind energy system (major)	ⓘ	

¹ Accessory uses within structures of 2,500 SF or more shall be treated as a conditional use under Subsection 6.5.7(A).

² Including active recreational uses, such as playgrounds, golf courses, fields, pools, courts, community gardens, marinas, and sports complexes and passive uses, such as arboretums and picnic areas.

³ Sewage pumping and treatment facilities shall be permitted. Water pumping stations shall be treated as a conditional use under Subsection 6.5.7.

6.4 SUPPLEMENTAL USE STANDARDS

The following standards shall apply to the following uses as indicated in Tables 6-A to 6-F, whether permitted or conditional.

6.4.1 In general

A. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than 35 feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this subsection. For purposes of this subsection, street shall be as defined in Article 3, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any

lot abutting such street shall, without compensation or claim for damages, and at his or her own cost and expense, first submit to the Building Authority:

1. A deed from the owner of such lot conveying to the City all his or her right, title, and interest in and to such street or any portion thereof.
2. An agreement by such owner forever releasing the City from any and all claims for damages for the laying out and taking of such street and indemnifying the City against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the Corporation Counsel and to encumber and run with the land.

B. For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such

portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the City of Portland *Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority.
2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the City as set forth under Articles 14 and 15. Also as set forth in Articles 14 and 15, a one-year defect bond shall be tendered to the City prior to release of the performance guarantee required hereby. The provisions of this paragraph (2) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her

intention under oath to make the structure his or her personal residence.

- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
 1. Dingley Court.
 2. Morgan Court.

6.4.2 Additional residential use permissions

A. In island zones: Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

B. In mainland zones where residential is a permitted or conditional use: Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is demolished and a vacant lot results.

D. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:

1. Up to two additional dwelling units are permitted on any lawfully conforming lot containing one existing dwelling unit.
2. Such units may be located:
 - i. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
 - ii. Within or attached to the existing structure, in which case the lot area per dwelling unit standards of Article 7 shall not apply.
3. Units created under this section shall not be considered accessory dwelling units under Section 6.6.2(A).

6-4-26.4.3 Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6-4-36.4.4 Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street.
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 a.m. and 11 p.m. each day and food service and consumption shall be the primary function of the restaurant.

6-4-46.4.5 Bed and breakfasts

- A. In the R-6 and R-6a zones, the minimum gross floor area for bed and breakfasts shall be 2,000 square feet for the first three guest rooms and 500 square feet for each additional guest room.
- B. In all mixed-use zones except the B-1/B-1b zones, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
 1. *In the B-2/B-2b/B-2c zones.* The meeting facility must be less than 4,000 square feet.
 2. *In the B-3/B-3b/B-3c zones.* The building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 square feet in floor area on that date.

6-4-56.4.6 Campgrounds

- A. Campgrounds shall not include recreational vehicles.
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services.
- C. No tent shall be located within 75 feet of the perimeter of site.
- D. The land area of the campground shall not be less than the equivalent of 5,000 square feet of land area per tent site exclusive of the roadway network.

6-4-66.4.7 Commercial uses in the B-1/B-1b zones

- A. Commercial uses shall be permitted provided that such uses generate less than 100 peak hour vehicle trips per 2,000 square feet of

floor area and less than 100 peak hour vehicle trips in total.

- B. Retail and restaurant uses shall not operate between the hours of 11 p.m. and 6 a.m., and shall not accept deliveries or services between the hours of 10 p.m. and 7 a.m. For restaurants, food service and consumption shall be the primary function.
- C. No beverage container redemption centers shall be permitted. Beverage dealers shall be permitted as a retail use provided that the maximum total floor area for redemptions as an accessory use, including the storage of spent containers, shall be no greater than 500 square feet or 10% of the total floor area of the facility, whichever is less.

6.4.76.4.8 Correctional pre-release facilities

- A. No correctional prerelease facility shall be located within 1,000 feet of another, as measured in a radius from the center of the lot.
- B. If a facility requires state or federal licensing, staffing of the facility shall be as required by such license. If a facility does not require state or federal licenses, there shall be a minimum of one staff person for every 10 residents or fraction thereof. The facility shall provide 24-hour supervision of program participants.

6.4.86.4.9 Hostels

An operations plan must be submitted demonstrating that:

- A. No unaccompanied minors under the age of 18 shall be permitted in the facility.
- B. The length of stay for transient guests shall not exceed 15 days within any 60-day period.

- C. In the R-6 zone, for hostels greater than 10 guests, a minimum of 250 square feet of land area shall be required per hostel guest.
- D. In the B-1/B-1b zones, no more than 20 overnight transient guests shall be permitted.

6.4.96.4.10 Lodging houses

- A. Lodging houses, except for lodging houses located in the IR-2, IR-3, and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as a part of the common areas where all meals are provided on a daily basis.
- B. Lodging houses shall provide a minimum of 200 square feet of combined rooming unit and common area per rooming unit.
- C. Each individual rooming unit shall be a minimum of 70 square feet.

6.4.106.4.11 Marijuana-related uses

- A. The following standards apply to the following marijuana-related uses:
 1. Marijuana cultivation facilities.
 2. Marijuana manufacturing facilities.
 3. Marijuana products.
 4. Marijuana retail stores.
 5. Marijuana testing facilities.
 6. Small-scale marijuana caregivers.
 7. Registered dispensaries.
- B. Location criteria
 1. No marijuana cultivation facility, marijuana manufacturing facility, marijuana testing facility, small-scale marijuana caregiver, marijuana store, or registered dispensary may be located within 500 feet of a pre-existing public school, private school, or a public preschool program, as defined by 20-A M.R.S. § 1. Distance shall be measured

- from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.
2. No marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may be located within 300 feet of the following residential zones: R-1, R-2, R-3, R-4, R-5/R-5A, R-6/R-6A, or R-7. Distance shall be measured from the nearest outer wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana-related facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.
- C. Supplemental standards
1. Marijuana-related uses may only be permitted within a fully enclosed building.
 2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
 3. No drive-through service is permitted for marijuana-related uses.
 4. No marijuana or marijuana product shall be smoked, eaten, or otherwise consumed or ingested on the premises where sold.
 5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that, at a minimum, addresses wastewater, disposal of waste, and security at the premises.
 6. A ventilation plan shall be included for marijuana cultivation facilities, marijuana manufacturing facilities, and small-scale marijuana caregivers that provides for adequate ventilation so as to prevent pesticides, insecticides, or other chemicals used in the cultivation or processing of marijuana or marijuana-related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases, and particulate matter from marijuana or its processing or cultivation to be effectively confined to the premises.
 7. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans, or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.
- D. For purposes of this ordinance, any approval issued for a marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility operated pursuant to 22 M.R.S. § 2421 et seq. shall be deemed to constitute approval for the same corresponding marijuana cultivating, manufacturing, or testing facility use operating under 28 M.R.S. § 101 et seq. Notwithstanding the above, no marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may operate without the applicable state and City license.
- ~~6.4.116.4.12~~ **Marine uses**

- A. In the B-5/B-5b and B-6 zones, marine uses shall include marine products wholesaling and retailing and harbor and marine supplies and services.
- B. In the B-5/B-5b zones, marine uses shall include marine repair services and machine shops; shipbuilding and facilities for the construction, maintenance, and repair of vessels; marine museums and aquariums; boat repair yards; boat storage; and seafood processing, packing, and distribution for human consumption.
- C. In the B-6 zone, marine uses shall include underground marine fuel storage provided that such storage shall be used solely for the purpose of fueling vessels.

6.4.12 Multiplexes

- ~~A. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.~~
- ~~B. In the R-5 zone, the maximum number of units in a multiplex building shall be six.~~
- ~~C.D. No dwelling unit shall have less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic.~~

6.4.13 Office parks in the O-P zone

An office park shall be approved only if the development meets the following development standards:

- A. Office parks shall have a minimum gross area of three acres of contiguous land, consisting of either an Office Park Planned Unit Development (OPPUD) on one lot with one or more buildings and with driveways and open areas to be owned and maintained in common, or an office park subdivision (OPS) on one

parcel with two or more lots intended for separate ownership.

- B. Development proposals shall include a master plan of the office park. The master plan shall include the following:
 1. *For an OPPUD proposal.* The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation, architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this subsection.
 2. *For an OPS proposal.* Delineation of the subdivision of land; infrastructure of the site; identification of common areas, if any; traffic circulation; desired architectural character, including private development restrictions to ensure compatibility of architectural character of future buildings with each other; phasing and timing of the development; private development restrictions; and such other information as necessary and sufficient to ensure compliance with the standards in this subsection.
- C. Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the

benefit of users of the site, such as jogging and walking trails, gardens, and benches.

- D. Development proposals shall include a landscape program. All land areas not covered by structures, parking areas, or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by the site plan or subdivision ordinance.
- E. Parking may not be located in the required front setback. If parking is provided in the area between the building and minimum setback line, the parking area must be adequately screened with landscaping materials and permanently maintained.
- F. Development proposals shall include internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site.
- G. Development proposals shall include buffering yard areas abutting a residential zone or residential use and to screen parking lots and driveways from public view, identifying the location, composition, and maintenance of the buffer. The buffer and screening shall be of a dense and continuous nature and shall incorporate trees, shrubs, fencing, berms, and related elements deemed necessary.
- H. Development proposals shall identify the extent to which the developer shall preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such

program shall consider and be sensitive to the need to preserve such natural features.

- I. Development proposals shall identify all proposed traffic controls, parking areas, interior traffic circulation, and demonstrate that additional traffic generated by the project itself can be reasonably accommodated on existing public streets.
- J. All buildings shall be designed or approved by a registered architect in the State of Maine and shall be in conformance with the proposed master plan. The scale, texture, color and massing of the buildings shall be coordinated. The full range of high quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in the private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted.
- K. Development proposals shall identify the location and style of lighting to be used in the development. All light fixtures shall be hooded or shielded so that the light shines downward.
- L. Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building

facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.

6.4.14 Planned unit development in the IR-3 zone

In addition to other applicable reviews, no development shall occur nor shall any new use be established in the IR-3 zone unless the Planning Board finds that the final development plan for the site is in compliance with the following standards:

- A. The development shall demonstrate a reasonably unified response to the design possibilities of the site, by virtue of such elements as the design and layout of buildings and lots, circulation plan, open space, drainage, and orientation to achieve energy conservation or solar access, to form a functionally integrated whole.
- B. The design and layout of the development and buildings shall be reasonably compatible with the surrounding neighborhood by virtue of such features as architectural style, exterior finish, scale, circulation, open space, landscaping, and preservation of natural site amenities.
- C. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as accessibility to residents, recreation, conservation of existing public rights of access to shoreland areas and scenic natural areas, orientation to achieve energy conservation or solar access, preservation of natural site amenities, and use as a buffer between the development and the surrounding neighborhood.
- D. The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.
- E. A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.
- F. The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.
- G. Adequate provision for off island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the project: compaction and reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

- H. All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.
- I. The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.
- J. The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.
- K. The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.
- L. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.
- M. The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.
- N. The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife, botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to

take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

- O. If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this subsection, planned unit development standards, and site plan and subdivision review requirements.
- P. The development shall not place an unreasonable burden on the ability of the City to provide police, fire, and other emergency services.

6.4.15 Retail in the B-3/B-3b/B-3c and B-5/B-5b zones

Retail shall not include wholesale and bulk purchase lumber and construction supply sales.

6.4.16 Solar energy systems

- A. All solar energy systems shall meet the technical, safety, and maintenance standards in the City of Portland *Technical Manual*.
- B. Solar panel placement should minimize or negate any solar glare impacting nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar energy system.
- C. All applicants are encouraged to ensure the maximum solar energy generation from their system by obtaining solar access easements.

Solar access easements may be filed consistent with Maine state law.

- D. Solar energy systems shall be located away from and screened from public ways and nearby residential/institutional uses to the extent possible and shall be designed so as to minimize impacts on significant scenic views.
- E. Layout and fencing shall be integrated with existing landscape and minimize removal of vegetation to the extent possible.
- F. Where any part of the proposed solar energy system (including associated facilities) is within a historic district, such development shall be reviewed and approved by the Planning Authority in accordance with Article 17. Where any part of the proposed solar energy system (including support structures and associated facilities) is within 100 feet of any designated landmark, historic district, or historic landscape district, such development shall meet the standards of Article 14 regarding compatibility with the landmark or historic district.
- G. Solar energy systems shall minimize impacts resulting from construction and maintenance of the solar energy system, including lighting, security measures, traffic, and grid connections.
- H. Where permitted in residential zones, and in the B-1/B-1b, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-7 and waterfront zones, all solar energy systems shall be co-located with other land uses.
- I. Major solar energy systems shall be located on areas already paved or built upon, or where other development is documented to be unlikely due to local conditions.

6.4.17 Tow lots

Tow lots must be at least 300 feet from any residential zone or conforming residential use.

6.4.18 Wind energy systems

- A. All wind energy generation equipment shall be approved under a certification program approved by the U.S. Department of Energy such as the Underwriters Laboratories, Germanishcer Lloyd Wind Energies, or other similar certifying organizations. Experimental, homebuilt, and prototype models shall not be permitted.
- B. Wind energy systems and associated facilities, including foundations and support structures, electrical connections and control equipment, associated site improvements, and construction techniques, shall be designed, engineered, and installed to comply with all applicable local, state, and federal construction and electrical regulations and Federal Aviation Administration regulations. Applicable state and local approvals shall be obtained prior to installation of any wind energy system.
- C. The support structure (e.g. tower, pole) for freestanding wind generating systems shall not be climbable for a minimum height of 12 feet above the surrounding ground level or accessible surface. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- D. All moving components of a wind energy system shall be a minimum of 12 feet from ground level or accessible surface.
- E. All on-site electrical wiring associated with the proposed wind energy system shall be located within the tower/pole/supporting structure and underground. Above ground on-site connections near substations or to the electric grid shall be allowed.
- F. The use of guy wires is discouraged. If required, they shall be located away from pedestrian routes/access points and marked with visible, reflective, colored objects, such as flags, reflectors, or tape, which shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.
- G. No wind energy system shall be located within 250 feet of any significant wildlife habitat, as defined by Maine Department of Environmental Protection/Maine Department of Inland Fisheries and Wildlife under provisions of the Natural Resources Protection Act (38 M.R.S. § 480 et seq.) including wildlife habitat for species appearing on the official state and federal list of endangered or threatened animal species.
- H. For all wind energy systems over 45 feet in height above the ground or over 100kW, evidence shall be provided that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife and the Maine Natural Area Program have been notified of the location, height, and design of the proposed wind energy system at least three weeks prior to any final determination under this subsection. Any comments received therefrom shall be addressed to the satisfaction of these state authorities prior to any final determination under this provision.
- I. Wind energy systems shall be designed to avoid electromagnetic interference with the transmission or reception of radio, telephone, television, microwave, navigational, or similar signals to neighboring areas.
- J. Wind energy systems and associated facilities shall use non-reflective materials and neutral

colors and textures that blend in with the surrounding environment. Ground-mounted systems and associated facilities shall be landscaped to integrate the proposed wind energy system into the existing landscape/streetscape.

- K. No part of the system may be illuminated, except as required by the Federal Aviation Administration (FAA) or other authorities for safety and security purposes. Where lighting is required, it shall be at the lowest intensity allowable with fixtures shielded and directed to minimize glare and visibility from the ground.
- L. There shall be no signs, advertisements, flags, or decorative items on a wind energy system or any associated facilities, except for the manufacturer's/installer's/owner's identification (not exceeding one square foot in size), appropriate warning signs, or lights if required by the FAA.
- M. Wind energy systems shall be prohibited within any historic landscape district, any historic cemetery, any historic district, except the Congress Street Historic District where it coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark, which shall include Portland Observatory, Cathedral of Immaculate Conception, St. Dominic's Cathedral, St. Luke's Cathedral, State Street Church, and City Hall.
- N. Wind energy systems within R-OS zones are allowed only where they are co-located within public industrial or utility facilities.
- O. Systems shall be screened with a vegetated buffer from public areas and residential buildings.

6.5 CONDITIONAL USES

6.5.1 Conditional use review procedure

- A. **Review authority.** The Zoning Board of Appeals shall review all conditional use applications, with the exception that the Planning Board shall review:
 1. All conditional use applications in the B-3/B-3b/B-3c, B-5/B-5b, B-6, and B-7 zones.
 2. All conditional use applications associated with projects that are otherwise before the Planning Board.
 3. Conditional use applications for specific uses for which the Planning Board is identified as the review authority under Subsection 6.5.6.
- B. **Application.** Applications for conditional use review shall be submitted to the Building Authority for all Zoning Board of Appeals reviews and the Planning Authority for all Planning Board reviews. A nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the review authority.
- C. **Public hearing.** A public hearing shall be set, advertised, and conducted by the review authority in accordance with Article 2 of this Land Use Code.
- D. **Action.** Within 30 days following the close of the public hearing, the review authority shall render its decision, in a manner and form specified by Article 2 of this chapter, approving the conditional use, approving the conditional use subject to conditions as specified in Subsection 6.5.3, or denying it. The failure of the review authority to act within 30 days shall

be deemed an approval of the conditional use, unless such time period is mutually extended in writing by the applicant and the review authority. Within five days of such decision or the expiration of such period, the Building Authority or Planning Authority shall mail notice of such decision or failure to act to the applicant and, if a conditional use is authorized, list therein any and all conditions imposed by the review authority.

6.5.2 General conditional use standards

The review authority shall, after review of the application, approve a conditional use upon a finding that the proposed conditional use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zone. The review authority shall find that this standard is satisfied if it finds that:

- A. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.
- B. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter.
- C. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated

with surrounding uses or other allowable uses in the zone.

- D. The proposed use will meet any additional zone or use-specific standards identified in Tables 6-A to 6-F and Subsections 6.5.6 and 6.5.7.

6.5.3 Conditions on conditional use approvals

The review authority may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use. Violation of such conditions shall be a violation of this article.

6.5.4 Effect of issuance of a conditional use approval

The approval of a conditional use shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits or approvals which may be required by the City of Portland Code of Ordinances, including but not limited to a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

6.5.5 Limitations on conditional use approvals

No conditional use approval shall be valid for a period longer than six months from the date of approval, or such other time, not to exceed two years, as may be fixed at the time granted, unless the conditional use has been commenced or a building permit is issued and construction has begun within that period and is thereafter diligently

pursued to completion, provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. A conditional use approval shall be deemed to authorize only the particular use for which it was issued and such approval shall automatically expire and cease to be of any force or effect if such use shall for any reason be discontinued for a period of 12 consecutive months or more.

6.5.6 Supplemental use-specific conditional use standards

In addition to the general conditional use standards, the following standards shall apply to specific conditional uses:

A. Automobile, boat, and related dealerships and auto service stations

1. The Planning Board shall be the review authority.
2. Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed, and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.
3. No ingress and egress driveways shall be located within 30 feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.
4. A landscaped buffer, no less than five feet wide, shall be located along street

frontages (excluding driveways). The, buffer shall consist of a variety of plantings in accordance with the City of Portland *Technical Manual*.

5. Car washes shall be designed to avoid the tracking of residual waters into the street.

B. Emergency shelters

1. The facility shall provide adequate space for conducting security searches and other assessments.
2. The facility shall be designed with a centralized shelter operations office on each level providing sight lines to sleeping areas.
3. A management plan adequately outlining the following areas shall be provided: management responsibilities; process for resolving neighborhood concerns; staffing; access restrictions; on-site surveillance; safety measures; controls for resident behavior and noise levels; and monitoring reports.
4. Adequate access to and from METRO service shall be provided. The facility shall be within a $\frac{1}{4}$ mile of a METRO line, or shall be within $\frac{1}{2}$ mile of a METRO line and provide adequate indoor space to permit all shelter guests day shelter, as well as implement strategies to help residents utilize transit.
5. The facility shall provide on-site services to support residents, such as case management, life skills training, counseling,

- employment and educational services, housing assistance, or other programs.
- 6. Suitable laundry, kitchen, pantry, bicycle storage, and secure storage facilities for shelter stayers shall be provided on-site.
- 7. An outdoor area for guest use shall be provided on-site with adequate screening to protect privacy of guests.

C. General office in the R-6 & R-6a zones

- 1. Offices shall serve a member of a recognized profession and be maintained for the conduct of that profession. Professional office uses do not include veterinary offices.
- 2. For the use of any building designed or constructed for residential use, which was in use as a residence on April 18, 1984, or thereafter:
 - a. A professional office shall not be located within 500 feet of another as measured along the street line to the respective property lines.
 - b. A building with one or more professional offices shall have at least 50% of the total floor area of the building devoted to residential uses.
 - c. The total number of individuals working in a building of professional offices shall not exceed the equivalent of four full time employees.
 - d. Any additions or exterior alterations shall be compatible with the architecture of the building and maintain the residential appearance of the building. Construction of a new

- building shall be compatible with the architectural character of the surrounding area.
- 3. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets.

D. High-tech manufacturing

- 1. A minimum of 1/3 of the total square footage devoted to manufacturing shall be conducted in a laboratory environment, in a controlled environment with specialized air handling systems that exceed levels for pressurization and filtration found in office environments and traditional manufacturing facilities.
- 2. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary.
- 3. In the B-7 zone, accessory warehousing is permitted. Where warehousing cannot be located on the same lot because the land area is too small to accommodate the warehousing on the same lot, one remote warehouse may be located within 600 feet of the principal use referenced above.
- 4. In the O-P zone, truck traffic serving a single manufacturing business or institution shall not exceed, on a regular basis, more than two tractor-trailer truck deliveries per week. No deliveries shall be accepted between 7:00 p.m. and 7:00 a.m.

E. Industrial uses

- 1. *In the B-2/B-2b/B-2c zones*

- a. The Planning Board shall be the review authority.
 - b. The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street.
 - c. The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks, and height shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of Article 14 for screening between land uses and the City of Portland *Technical Manual*.
2. *In the B-3/B-3b/B-3c zones*
- a. The floor area devoted to industrial use shall not exceed 10,000 square feet. For a building in existence on March 11, 1991, the floor area shall not exceed 10,000 square feet or 50 percent of the total floor area, whichever is greater.
 - b. The associated vehicular loading, unloading, parking, circulation, and traffic volumes on the site and on adjacent public streets shall not have a more intensive impact than any use on the site within the last five years.
 - c. Any buildings located in a PAD Overlay Zone shall be subject to the requirements of Section 8.7 in addition to the requirements of this subsection.
- d. For buildings that either were not in existence on March 11, 1991, or were in existence on that date but were either in use for any permitted use in the B-3 zone or were designed or constructed for any such use:
- i. No tractor trailer trucks or longer vehicles shall be associated with the proposal.
 - ii. The proposal shall exclude warehousing and storage as a principal use.
 - iii. The use shall not generate more than six delivery or service trips per day between 7:00 a.m. and 7:00 p.m.
3. *In the B-5/B-5b zones*
- a. Truck loading and access and vehicle parking shall be located in the rear or side yard of the site where possible.
 - b. Street frontage shall be designed for pedestrian scale or interest.
 - c. Shared infrastructure to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities, and driveways, shall be utilized.
4. *In the B-6 zone.* No brew pubs or microbreweries east of Waterville Street shall be permitted within 50 feet of Fore Street.
- F. Institutional uses (excluding preschools)**
1. The Planning Board shall be the review authority.

2. In the case of expansion of existing institutional uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential areas.
3. The proposed use shall not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or July 15, 1985 in the IR-1 and IR-2 zones, or thereafter.
4. In the case of a use or use expansion which constitutes a combination of the conditional institutional uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative.
5. In the case of community halls:
 - a. The structure shall have been in existence as of January 4, 2010.
 - b. The structure shall have been built for institutional or other non-residential uses.
 - c. The structure shall be operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes.
 - d. A parking management plan shall be submitted for review and approval by the Planning Board.
6. In the case of private club or fraternal organizations, any such establishment serving alcoholic beverages or in possession of a license for serving alcoholic beverages shall meet the minimum lot size requirement for places of assembly greater than 10,000 square feet.
7. Post-secondary schools in the R-2 zone shall only be permitted on a collector or arterial road.
8. In the case of a post-secondary school within the R-5 zone and not including the USM Overlay Zone, such school may build principal structures to a height of 55 feet if the following standards can be met:
 - a. Minimum lot size: 10 acres which may include adjacent land owned by the institution on both sides of a public street.
 - b. Minimum setback between buildings on-site: 20 feet.
 - c. Minimum setback from external property boundary: 30 feet, except that parking garages over 35 feet in height must be located 50 feet from external property boundaries when adjacent to an adjoining residential use.
 - d. The area between the structure and adjoining residential uses must be adequately screened with appropriate landscaping or other features to buffer the building and effects thereof (i.e. noise, light, etc.) from abutting properties.

G. Multi-family

1. *In the R-3 and R-5 zones.* Alteration of a structure existing and not in residential use as of January 1, 1984 to three or more dwelling units shall be permitted as a conditional use provided that:
 - a. No open outside stairways or fire escapes above the ground floor shall

- be constructed or have been constructed in the immediately preceding five years.
 - b. 3,000 square feet of land area per dwelling unit shall be required.
 - c. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level.
 - d. Any addition or exterior alteration, such as change in façade materials, building form, or roof pitch, shall be designed to be compatible with the architectural style of the structure.
 - e. In the R-3 zone, any addition or exterior alteration shall be limited to a gross floor area equal to or less than 25% of the total existing floor area as of June 13, 2018.
 - f. Paved areas shall be designed to be compatible in size and scale with neighboring properties in the area and properly screened from adjacent streets.
2. *In the I-B zone*
- a. Multi-family buildings shall have a maximum of four units.
 - b. No open outside stairways or fire escapes above ground floor shall be constructed or have been constructed in the immediately preceding five years.
 - c. A below grade dwelling unit shall be permitted only if access is provided directly to the outside of the building.
 - d. Density shall be determined by the most restrictive abutting residential zone, except for those lots which are served by public water and sewer, where density 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.
- e. Any additions or exterior alterations shall be compatible with the original architecture of the building. The exterior design of new construction, including the architectural style, facade materials, roof pitch, building form, and height shall be compatible with neighboring properties.
 - f. No existing dwelling unit shall be decreased to less than 1,000 square feet of floor area.
 - g. No additional dwelling unit shall have less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic.
 - h. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system, or other method in compliance with all applicable federal, state and local regulations.
 - i. There shall be sufficient water for the needs of the dwellings such that the use does not cause an unreasonable burden on an existing water supply nor adversely affect groundwater resources.
- H. Off-street parking**
- 1. *In the R-3, R-4, and R-5 zones*

- a. Off-street parking must be designed to satisfy the parking requirement of a use located in and conforming with the provisions of a nearby mixed-use or industrial zone.
 - b. The lot on which the parking is proposed must be located wholly within 300 feet, measured along lines of public access, from the use which requires the off-street parking.
 - c. The lot where the off-street parking is proposed shall be under the control of the owner of the use which requires the off-street parking. Evidence of such control by deed or lease shall be required before the certificate of occupancy is issued. If such control should be abrogated, the parking use thus allowed shall automatically revert to a nonconforming use in violation of this article and shall be terminated forthwith.
 - d. Conditions may be imposed to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this Land Use Code. Such conditions may include limits on the period of such use.
2. *In the R-6 zone.* Off-street parking shall be for passenger cars for uses permitted in the R-6 zone.
3. *Structured parking in the B-6 and B-7 zones*
 - a. Parking garages shall incorporate first floor retail space or other non-parking and active use along all street frontages.
 - b. The Planning Board may waive the requirement for first floor mixed-use upon demonstration that the project meets one or more of the following criteria:
 - i. The applicant demonstrates that steepness of grade or the character of the adjacent street will not support retail or first-floor mixed use in the foreseeable future.
 - ii. The first floor of the garage is set back a minimum of 35 feet from the street right-of-way and its design does not provide an impediment for development of such space for mixed-use in the future. Such space (between the garage and the street) shall, in the interim, not be used for surface parking.
 - iii. The applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, provided that the structure of the garage is designed to accommodate retail and or mixed-uses in the future. In these cases, the Planning Board will need to find that, on the street-level deck of a proposed parking garage, a minimum of 20 feet horizontal distance of depth from the street and nine feet finished floor-to-finished ceiling clearance

could house future retail and or mixed use. The applicant will further need to demonstrate that the garage design anticipates the future development of utilities and circulation necessary for non-parking uses. Where a parking garage fronts on more than one public street and where there is an existing change in grade elevation of over 5% across the footprint of the garage, the nine-foot floor-to-ceiling requirement only applies to the street with higher traffic volumes.

- c. Where the Board allows a waiver of first floor mixed use, garages shall display architecture that enhances the pedestrian experience and disguises the parking use to the extent possible. Use of traditional storefront design concepts and traditional building materials is encouraged.
- 4. *Surface parking in the B-3, B-6, and B-7 zones*
 - a. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.
 - b. Surface parking, including parking aisles, shall be located at least 35 feet from a street. The 35-foot setback shall not apply to driveways perpendicular to the street providing access to the site.
 - c. In the B-7 zone, surface parking that does not meet the 35-foot parking

setback may be permitted as a conditional use, provided that:

- i. All or a portion of the 35-foot setback area had a gravel surface on September 29, 2015.
- ii. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015.
- iii. The parking spaces provide parking to a principal building on a contiguous lot.
- iv. One of the buildings described in (iii) above meets the minimum height requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 square feet or greater.
- v. The total number of spaces within 35-foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required.
- vi. The proposed parking spaces meet the landscape and buffer requirements of Subsection 6.8.8.
- vii. Parking spaces within the 35-foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system



approved by the Planning Board shall be provided.

I. Preschool facilities

1. *In all zones*
 - a. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
 - b. Solid waste shall be stored in covered containers. Such containers shall be screened on all sides.
2. *In the R-P zone.* Facilities for more than 12 children shall meet the following additional standards:
 - a. The facility shall provide a minimum of 75 square feet of outdoor play area per child.
 - b. The play area shall be located in the side and rear yards only and shall not be located in front yards.
 - c. Outside play areas shall be separated from abutting properties by a fence at least 48 inches in height.
 - d. A 10-foot-wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's *Technical Manual*.
3. *In residential and island zones*
 - a. The facility shall be located in a structure in which there is one or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory to the principal nonresidential use.
 - b. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory thereto.
 - c. The maximum capacity shall be 12 children for facilities located in residential or existing structures accessory thereto, unless the additional standards in paragraph (d) below are met.
 - d. Preschool facilities located either in structures that have been in residential use within the past five years or in existing accessory structures and that serve between 13 and 24 children shall meet the following additional standards:
 - i. The facility shall provide a minimum of 75 square feet of outdoor play area per child.
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards.
 - iii. Outside play areas shall be separated from abutting properties by a fence at least 48 inches in height.
 - iv. A 10-foot-wide landscaped buffer shall be required outside of the

fenced play area, and shall be established in accordance with the landscaping standards of the City's *Technical Manual*.

- v. The minimum lot size for a preschool located in a residential or existing accessory structure and serving more than 12 children shall be 20,000 square feet.
- vi. The maximum number of children in a preschool facility located in a residential or existing accessory structure shall be 24.
- vii. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

J. Raising of domesticated animals for non-commercial purposes

- 1. No animals shall be kept on any lot less than three acres or closer than 100 feet to any street or lot line, except domesticated chickens as regulated in Chapter 5 of the City of Portland Code of Ordinances.
- 2. This use shall not create any odor, noise, health, or safety hazards, or other nuisance to neighboring properties.
- 3. Raising of pigs or reptiles is not permitted.

K. Sheltered care group homes

- 1. A sheltered care group home shall not be located within 500 feet of another, as measured along street lines to the respective property lines.

- 2. The facility shall make provision for adequate on-site staffing and supervision in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of one staff person for every 10 residents or fraction thereof.
- 3. The Board of Appeals or Planning Board may impose conditions upon a conditional use permit concerning the creation or operation of a sheltered care group home including but not limited to the following: site and building maintenance; lighting, fencing, and other appropriate security measures; screening and buffering of parking areas; compatibility of any additions or alterations with the existing residential structure; compatibility of new structures with the architectural character of the surrounding area; and limitation on the duration of a sheltered care group home permit.

L. Utility substations

- 1. Utility substations shall be as small in size as practicable.
- 2. Substations shall be suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood. The remainder of the lot not consumed by the utility substation and its related access shall be designed and designated for future development.
- 3. If greater than 100 square feet in the B-7 zone, the structure shall be set back at least 35 feet from the street right-of-way except in the case of a lot having frontage on Marginal Way and I-295, provided the

minimum 35-foot setback is met along Marginal Way.

4. In the B-7 zone, the substation equipment shall be fully enclosed within a structure.

6.5.7 Supplemental zone-specific conditional use standards

In addition to the general conditional use standards and supplemental use-specific conditional use standards, the following standards shall apply to conditional uses within certain zones:

A. R-OS Zone

1. The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state *Comprehensive Outdoor Recreation Plan*, as such plans may from time to time be created or revised.
2. Buildings and structures shall not obstruct significant scenic views presently enjoyed by nearby residents, passersby, or users of the site.
3. Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

6.6 ACCESSORY USES

6.6.1 In general

- A. Accessory uses shall be permitted in conjunction with permitted or conditional principal uses. Accessory uses must be:
 1. Customarily found in association with the principal uses.

2. Generally consistent with the impacts of the primary use.
3. Secondary in nature, clearly incidental and subordinate to the principal uses in terms of area and function.
4. Located on the same lot as the principal use unless otherwise permitted.
5. Consistent with the intent of the zone.

- B. No accessory use or uses within a building shall occupy more than a combined total of 25% of the floor area of the principal building, with the exception of required off-street parking, unless otherwise provided in Subsection 6.6.2 below.
- C. No accessory use or uses not within a building shall occupy more than a combined total of 25% of the unbuilt lot area, or of the required rear yard area, with the exception of off-street parking or as otherwise provided in Subsection 6.6.2.

6.6.2 Standards for specific accessory uses

A. Accessory Dwelling Units (ADUs)

1. Accessory Dwelling Units (ADUs) shall be permitted on all lawfully conforming and nonconforming lots with legal residential uses. ADUs shall comply with all dimensional standards of the underlying zone unless otherwise provided below.
2. Up to two ADUs shall be permitted per qualifying property.
3. At the time of an ADU's initial construction or legal creation, the owner(s) of the property on which the accessory dwelling unit is created must occupy at least one of the dwelling units, with the exception of legally nonconforming lots on Peaks Island.

~~4. On Peaks Island, neither the accessory unit or principal unit shall be used for short-~~

~~term rentals as defined under Chapter 6, Section 150.1 of the City of Portland Code of Ordinances.~~

- ~~5.4.~~ When an ADU is significantly visible from public ways, the building design shall:
- Be clearly subordinate to the principal structure(s) in scale and position in relationship with the street and principal structure(s).
 - Not include outside stairways or fire escapes above the ground floor.
- ~~6.5.~~ Under circumstances where an existing nonconforming structure is converted to an ADU, the design of the ADU shall take into consideration to the extent practicable the privacy of adjacent properties.
- ~~7.6.~~ The developer of an ADU shall record a deed restriction requiring that the ADU and at least one other non-accessory unit on-site remain under common ownership.
- ~~8.7.~~ ADUs shall comply with all dimensional requirements of the underlying zone except:
- ~~9.8.~~ Lot coverage and lot area per dwelling unit requirements.
- ~~Within the IR-1 zone, the minimum lot area shall be 70,000 square feet, except on Peaks Island where this standard shall not apply.~~
 - ~~Within the IR-2 zone, the minimum lot area shall be 30,000 square feet, except on Peaks Island where this standard shall not apply.~~
- ~~10.9.~~ An ADU shall be limited to a gross floor area of 2/3 of the gross floor area of the principal unit(s). In no circumstance shall the height of detached ADUs on a lot

exceed the height of the primary structure. Additionally, the aggregate square footage of detached ADUs on a lot shall not exceed the gross floor area of the primary structure.

- B. Amusement devices.** Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two such machines or devices on the premises.
- C. Antennas, discs, transmitting and receiving equipment.** Building-mounted antennas, discs, and other transmitting and receiving equipment shall be:
- No taller than 15 feet above the highest structural steel of the building roof.
 - Setback no less than 15 feet from the building perimeter.
 - Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.
- D. Drive-throughs.** Drive-throughs shall be permitted as an accessory use in the B-4 zone. Drive-throughs shall be reviewed as conditional accessory uses in the B-2/B-2b/B-2c zones, B-3/B-3b/B-3c zones, B-6 zone, and B-7 zone. In all other zones, drive-throughs shall be prohibited. Where a conditional use, drive-throughs shall be subject to the provisions of Section 6.5 and the following additional review standards:
- In general*
 - The Planning Board shall be the review authority.

- b. Features such as windows, vacuum cleaners, menu/order boards, and stacking lanes must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than 40 feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than 25 feet from the right-of-way.
 - c. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.
 - d. Any speakers, intercom systems, or other audible means of communication shall not play pre-recorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.
 - e. Site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in the City of Portland *Technical Manual*.
 - f. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, and noise. As deemed necessary by the review authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts.
 - g. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
 - h. The board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.
2. *In the B-2/B-2b/B-2c zones.* Drive-throughs shall only be permitted when accessory to a pharmacy or banking facility use. Drive-throughs shall not be permitted for restaurant, bakery, or other food or beverage service uses. Drive-throughs are only permitted in buildings of three or more stories where a majority of the upper stories is devoted to three or more dwelling units. The drive-through shall be screened as much as practical from the

front of the building and shall be no closer than 40 feet from abutting residential zones and 25 feet from the street line.

3. *In the B-3/B-3b/B-3c zones.* Drive-throughs shall only be permitted when accessory to a bank. Drive-throughs shall be subject to the Downtown Urban Design Guidelines.
4. *In the B-6 zone.* Drive-throughs shall only be permitted when accessory to a bank and located in the interior of parking structures. Drive-through vehicle circulation shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.
5. *In the B-7 zone*
 - a. The drive-through must be accessory to a bank occupying a minimum floor area of 4,000 square feet.
 - b. The drive-through must be attached to or included within a building with a minimum floor area of 20,000 square feet, except that for lots of less than 20,000 square feet and in existence as of March 9, 2005, a drive-through may be included in a building of less than 20,000 square feet.
 - c. The drive-through facility must be attached or included within a building and/or addition meeting the minimum height of four stores in the Bayside Height District A and three stories in the Bayside Height Districts B and C. For the purposes of this conditional use, the minimum height exceptions for the B-7 zone shall not apply.
 - d. The first floor of the building must include banking or other retail

storefront uses with storefront windows, entries, and interior public space oriented to and visible from the street, with front entry access facing the street and directly accessible from the public sidewalk.

- e. Drive-through vehicle circulation shall not be located between the building and any adjacent public streets.
- f. The drive-through shall be limited to two vehicle drive-through lanes.
- g. The location of any drive-through shall be limited to the geographic area between Somerset/Kennebec Streets/I-295/Franklin Street/Forest Avenue.

E. Heliports. Heliports shall meet the following minimum specifications:

1. *Roof heliport*
 - a. Take-off area (min.): 200 feet x 250 feet
 - b. Parking area (min.): 30 feet x 90 feet
2. *Ground heliport*
 - a. Take-off area (min.): 300 feet x 700 feet
 - b. Parking area and station building shall be located out of flight area.
3. *Elevation of operational area above street (max.):* 100 feet
4. *Clearance from lateral obstruction (min.):* 100 feet
5. *Width of approach and departure path (min.):* 500 feet at landing area, tapering outward 15 degrees on each side to a width of 1,000 feet
6. *Slope with emergency landing areas:* 1:8
7. *Slope without emergency landing areas:* 1:20

8. *Curved approach*: Minimum radius to turn, 650 feet
9. *Approach zone transition area slope*: 1:2

F. Home occupations

1. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.
2. Home occupations must be conducted entirely within the dwelling unit by one or more persons residing within the dwelling unit.
3. In connection with the operation of a home occupation, the following requirements shall be met:
 - a. A home occupation shall not occupy more than 500 square feet of floor area or more than 25% of the total floor area of such a dwelling unit, whichever is less, or in the case of licensed family day care homes or home babysitting services, to accommodate not more than six children plus two children after school and having no nonresidential employees.
 - b. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside.
 - c. Storage of materials related to the home occupation shall count as a part of the occupancy limitations above, but shall not constitute a dominant part of such occupancy, provided, however, storage of such materials or products in garages or other accessory structures is prohibited.
- d. Exterior signs shall be limited to one non-illuminated sign not exceeding a total area of two square feet, affixed to the building and not projecting more than one foot beyond the building.
- e. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs.
- f. The home occupation shall not produce offensive noise, vibration, smoke, dust, or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects.
- g. There shall be no more than one nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees.
- h. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood.
- i. No motor vehicle exceeding a gross vehicle weight of 6,000 pounds shall be stored on the property in connection with the home occupation.

4. No residence shall be occupied, altered or used for any home occupation except the following:

- a. Accountants and auditors.
 - b. Answering services (telephone).
 - c. Architects.
 - d. Artists and sculptors.
 - e. Authors and composers.
 - f. Computer programming.
 - g. Custodial services.
 - h. Custom furniture repair and upholstery.
 - i. Dentists, doctors, therapists, and health care practitioners.
 - j. Direct mail services.
 - k. Dressmakers, seamstresses and tailors.
 - l. Engineers.
 - m. Family planning services.
 - n. Hairstylists (limited to no more than two hair dryers).
 - o. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics.
 - p. Interior designers.
 - q. Lawyers, justices of the peace, and notary publics.
 - r. Licensed family day care home or babysitting services.
 - s. Musicians or music teachers, including group instruction not to exceed six students at any time but not including performances or band rehearsals, which shall meet the following additional requirements:
 - i. Electronic amplification is prohibited.
 - ii. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners, or any combination of these or similar noise attenuation measures.
 - iii. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.
 - t. Office facility of a minister, rabbi, or priest.
 - u. Photographic studios.
 - v. Professional counseling and consulting services.
 - w. Professional research services.
 - x. Sales persons provided that no retail or wholesale transactions are made on the premises.
 - y. Small appliance repair.
 - z. Snow plowing provided that only one snow plow vehicle is stored on or generated from the site.
 - aa. Special tutoring or instruction (not to exceed three pupils at any given time).
 - bb. Clerical services.
 - cc. Small-scale marijuana caregiver, except that no more than one small-scale caregiver may operate out of any one dwelling unit.
5. A home occupation that is not listed in (4) above but is similar to and no more objectionable than those home occupations listed, shall be permitted as a conditional use subject to the requirements of Section 6.5 of this article. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique

shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.

G. Letting of rooms. The letting of rooms within an existing dwelling unit in any residential zone shall be permitted as an accessory use provided that:

1. There shall be no more than two persons occupying such room or rooms.
2. There shall be not more than two rooms per dwelling unit occupied for such use.
3. There shall be no increase in the bathroom and/or kitchen facilities in the dwelling, and no such facility shall have been constructed in the immediately preceding two years.

H. Makers' markets in the IL-b zone. Makers' markets, including periodic or seasonal sale of handcrafted and limited production products for final consumption, which may include prepared or raw foods, shall be permitted as an accessory use in the IL-b zone, provided that:

1. Such sales are located within a lawfully conforming principal permitted use.
2. Such sales occupy an area no larger than 45% of the floor area devoted to the principal use.
3. Such sales by any single vendor or group of vendors shall occur for no more than a total of 28 hours a week collectively.
4. Such products are produced or permitted to be produced in the IL/IL-b zone.
5. Such products are sold by the producer of the product or their designee.

I. Tasting rooms in industrial zones. Tasting rooms shall be permitted as accessory uses on the premises of facilities where beer, wine, spirits, other alcoholic or non-alcoholic

beverages, or food are produced, provided that:

1. Service of food in the facility is limited to that which does not constitute a full course meal.
2. No more than 10% of the beverage menu in tasting rooms accessory to beverage production or 10% of the food menu in tasting rooms accessory to food production is produced or manufactured off-site.

Tasting rooms shall not be subject to the limitations on the use of unbuilt lot or yard area in Subsection 6.6.1(C).

J. Solar energy generation. Roof-mounted, building-integrated, or small-scale ground-mounted solar energy systems shall be permitted as accessory uses within all zones except the Stream Protection Zone and within cemeteries. Accessory solar energy systems are only permitted within the Recreation and Open Space Zone where co-located with public industrial or utility infrastructure and are subject to historic preservation review when such systems are either located within or less than 100 feet from an identified historic district or historic landscape district. All accessory solar energy systems are subject to the following conditions:

1. Accessory solar energy systems shall comply with all general use standards for solar energy systems as stated under Subsection 6.4.16 of this article and with the dimensional requirements as stated under Article 7.
2. Small-scale ground-mounted solar arrays shall occupy less than 1,000 square feet of ground area.

- K. Wind energy generation.** Freestanding and roof-mounted wind energy systems shall be permitted as accessory uses within all zones except the Stream Protection Zone, within historic districts except where the Congress Street Historic District coincides with the B-3 zone, within historic cemeteries or historic landscape districts, or within 1,000 feet of any designated historic landmark (Portland Observatory, Cathedral of Immaculate Conception, St. Dominic's Cathedral, St. Luke's Cathedral, State Street Church, and City Hall), subject to the following conditions:
1. Accessory wind energy systems shall comply with all general use standards for wind energy systems as stated under Subsection 6.4.18 of this article.
 2. Properties shall be limited to one free-standing wind energy system and/or three roof or building mounted wind energy systems.
 3. Accessory wind energy systems shall either be located on the rear half of a building or structure, or within the rear yard and shall be sited to maximize existing vegetative or other screening from nearby residential buildings and public ways. The location shall minimize changes to existing topography and natural vegetation which would result from construction or maintenance of the system.

6.7 TEMPORARY USES

6.7.1 In general

Temporary uses may be permitted from time to time as determined by the Planning Authority. In addition to regulations pertaining to temporary uses contained elsewhere in the City of Portland Code of

Ordinances, the following standards shall apply for specific temporary uses.

6.7.2 Standards for specific temporary uses

- A. Temporary parking.** Parking of vehicles may be permitted by a temporary certificate of occupancy for a limited period of time not to exceed one year in anticipation of future development.
- B. Temporary private tenting.** Temporary private tenting with one tent accessory to a principal residential use is permitted in the IR-1 and IR-2 zones provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use.
- C. Temporary sales.** No "garage sale," "lawn sale," "attic sale," "rummage sale," or other similar casual sale of tangible personal property which is advertised by any means whatsoever whereby the public at large is or can be made aware of such sale, shall be deemed to be accessory or temporary if such sale occurs after sales have been conducted on the same premises for six or more days previously during the calendar year.
- D. Temporary stands**
1. No premises shall be used for business purposes consisting of temporary stands, booths, platforms, or vehicles intended for the sale of merchandise or other mercantile purposes if any part of such stand, booth, platform, or vehicle is proposed to be located nearer than 125 feet to any residential zone, except that a single stand with no more than 200 square feet of floor area for the sale of agricultural products produced on the

- premises shall be permitted as accessory to a permitted agricultural use.
2. A single produce stand shall be permitted on the premises of a community garden for the sale of flowers, vegetables, herbs, or fruit produced on the premises, provided that the stand is no more than 100 square feet in floor area or open table area and is located a minimum of five feet from any property line; that sales are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year-round. If the community garden is owned or operated by a non-profit organization, sales of flowers, vegetables, herbs, or fruit produced in other gardens or farms in Maine owned or operated by said organization shall be permitted within the same limitations listed above. For purposes of this subsection, community garden means a parcel of open land used for the cultivation of flowers, vegetables, herbs, or fruit by a group of city residents either jointly as a single plot or through individual garden plots or beds.
 3. A single produce stand shall be permitted on the premises of a non-profit organization incorporated pursuant to the laws of the State of Maine with the permission of the owner and on the premise of public schools with the permission of the school department; provided that the stand is for the sale of local fruit, vegetables, flowers, seedlings, and plants produced by the seller; that the stand is no more than 100 square feet in floor area or open table area and is located a minimum of five feet from any property line; that sales on the premises are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year-round.
 4. In the IR-1 and IR-2 zones, a single stand with no more than 200 square feet of floor area for the sale of agricultural products produced on the premises or the sale of fish or shellfish caught by the occupant of the premises shall be permitted as a temporary use.
- E. Truck load sales.** Truck load sales shall not extend beyond three consecutive days nor occur more frequently than three times a calendar year.

6.8 PERFORMANCE STANDARDS

6.8.1 Design

- A. In the B-3 zone, all development, all building and site alterations, and all provision of landscaping or other pedestrian amenities shall be consistent with the Downtown Urban Design Guidelines.
- B. In the B-7 zone, all buildings shall have a minimum of one operable public pedestrian entrance facing the street frontage of the lot.

Such building entrances shall comply with the B-7 design standards.

6.8.2 Development in the R-OS zone

All development in the Recreation and Open Space Zone shall comply with the following development standards:

- A.** All ground areas not used for parking, loading, vehicular, or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted City policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.
- B.** Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.
- C.** Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.
- D.** Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.
- E.** Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.
- F.** The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

6.8.3 Discharges

No discharge shall be permitted at any point into any private sewage disposal system, or stream, or

into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the Public Health Authority or by the Public Works Authority. No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the Department of Public Works in accordance with Chapter 24 of the City of Portland Code of Ordinances. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of Chapter 24.

6.8.4 Electromagnetic interference

In any industrial zone, there shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference.

6.8.5 Exterior lighting

All exterior lighting shall be designed and installed with full cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties.

6.8.6 Heat, glare, radiation

Heat, glare, or radiation shall be imperceptible without instruments at lot boundaries and shall not present a safety hazard.

6.8.7 Historic resources

The exterior design of proposed or renovated structures located within historic districts shall be subject to the historic preservation provisions of Article 17. The exterior design of proposed or

renovated structures located adjacent to historic districts or historic resources shall be subject to historic preservation requirements of Article 14.

6.8.8 Landscaping and screening

- A. In all mixed-use zones, the O-P zone, the R-P zone, and the A-B zone outside of restricted access areas, sites shall be landscaped to screen parking and accessory site elements, including storage and solid waste receptacles, from the right-of-way, public open space, or abutting residential zones.
- B. In the I-H and I-Hb zones, where a front yard abuts an arterial or a major collector street, it shall be landscaped. Rear yards, side yards, and the perimeter of any parking area for greater than 15 vehicles shall be landscaped if visible from a right-of-way, public open space, or residential zone.

6.8.9 Noise

- A. The maximum permissible sound level of any continuous, regular, or frequent source of sound produced by an activity shall be as shown in Table 6-G.
- B. For any noise generated by a use in the B-5/B-5b, B-6, B-7, I-L/I-Lb, I-M/I-Mb, and I-H zones, sound shall be measured at or within the boundaries of any residential zone. For any noise generated by a use in the B-1/B-1b, B-2/B-2b/B-2c, I-B, R-P, O-P, A-B, and IS-FBC zones, sound shall be measured at lot boundaries. For any noise generated by a use in the B-3/B-3b/B-3c, sound shall be measured at lot boundaries or within publicly accessible pedestrian open space. For any noise generated by a use in the B-4 zone, sound shall be measured off premises at the source of complaint.

- C. In addition to the sound level standards established in Table 6-G, all uses shall employ best practicable sound abatement techniques to prevent tonal sounds, or sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time, and impulse sounds, or sound events characterized by brief excursions of sound pressure, each with a duration of less than one second. If such tonal and impulse sounds cannot be prevented, uses shall employ best practicable sound abatement techniques to minimize the impact of such sounds in residential zones.
- D. Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards

TABLE 6-G: NOISE STANDARDS

	Daytime/Evening (7 a.m.-9 p.m.)	Night (9 p.m.-7 a.m.)
I-B	60 dBA	55 dBA
R-P	55 dBA	55 dBA
O-P	60 dBA	60 dBA
B-1/B-1b	55 dBA	55 dBA
B-2/B-2b/B-2c	60 dBA	55 dBA
B-3/B-3b/B-3c	60 dBA	55 dBA
B-4	65 dBA	60 dBA
B-5/B-5b, B-6, B-7¹	60 dBA	50 dBA
I-L/I-Lb¹	60 dBA	50 dBA
I-M/I-Mb¹	70 dBA	55 dBA
I-H/I-Hb¹	75 dBA	55 dBA
A-B	60 dBA	60 dBA
IS-FBC	60 dBA	55 dBA

¹ Daytime/evening noise regulations shall extend until 10 pm, after which time nighttime noise regulations shall apply.

prescribed by the American National Standards Institute (ANSI) or its successor body.

Measurements shall be made at all major lot lines of the site, at a height of at least four feet above the ground surface. In measuring sound levels under this subsection, sounds with a continuous duration of less than 60 seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of 60 seconds or more shall be measured on the basis of the energy average sound level over a period of 60 seconds (LEQ₁).

E. Wind energy systems

1. Where the underlying zone is residential and does not specify sound requirements, or where the system will be within 100 feet of a residential building, the audible sound levels generated by the wind energy system shall not exceed 45 decibels on the A scale between the hours of 9:00 p.m. and 7:00 a.m., and 50 decibels on the A scale between 7:00 a.m. and 9:00 p.m., as measured at the nearest property line in accordance with this provision and technical standards set out in the City of Portland *Technical Manual*.
2. For any system over 45 feet in total height not in the Recreation and Open Space, Resource Protection, or Island Transfer Station Overlay Zones, the maximum sound levels allowed by this ordinance shall not be exceeded at the nearest property boundary and at the nearest point vertically above the property line that coincides with the maximum building height allowed in the abutting zone.

3. Any system located within the Recreation and Open Space, Resource Protection, or Island Transfer Station Overlay Zones and more than 100 feet from a residential building shall not exceed 55 decibels on the A scale as measured 50 feet from the base of the tower.
4. Audible sound levels of wind energy systems shall include sounds generated in all conditions including low and high winds (furling, yawing, and flutter) and power outages (freewheeling). If after installation, the system is determined to be operating at levels above these limits (as measured at the property lines in accordance with this provision and applicable technical standards, the owner shall take (at the owner's cost) remedial action to ensure compliance with these limits. Required action may include relocation or removal of the system.

F. Exemptions

1. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth above. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed 50 dBA.
2. The following uses and activities shall also be exempt from the requirements of Table 6-G:
 - a. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.

- b. Traffic noise on public roads or noise created by aircraft and railroads.
- c. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
- d. Emergency construction or repair work by public utilities, at any hour.
- e. Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the City, including but not limited to concerts, parades, sporting events, and fireworks displays.

6.8.10 Odor

- A. It shall be a violation of this article to create an odor nuisance.
 - 1. An odor nuisance shall be considered to exist when 10 confirmed complaints occur in an area within two separate 24-hour periods. The 10 confirmed complaints must originate from 10 different households in an area zoned residential or from 10 different individuals in a commercial or industrial facility. The Building Authority shall only respond to a complainant who confirms that the odor is detectable at the time of the actual complaint. In order to confirm a complaint, the Building Authority or its designee shall first determine that an odor is detectable in the area of the complaint. The Building Authority or its designee shall interview the complainant to verify that the detectable odor is in fact the odor that resulted in the complaint. If the

complainant verifies the odor as the source of the complaint, then the Building Authority shall notify the owner or operator of the alleged odor source either in person or by telephone within one working day, with a written confirmation within seven working days of the complaint. In the event that the Building Authority is unable to contact the owner or operator of the alleged odor source in person or by telephone within one working day, then the Building Authority shall send written notice to the operator within seven working days of the complaint.

- 2. In the event that 10 complaints are confirmed as set forth in paragraph (1) above in two separate 24-hour periods within a 90-day period, the Building Authority shall cause a certified odor inspector to investigate any odor complaints received in the next 30 days following the receipt of the tenth confirmed complaint from the second 24 hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next 30 days, then a new odor nuisance must be established after that time in accordance with the requirements of this subsection. The certified odor inspector shall do the following in response to a complaint under this subsection:
 - a. Verify that an odor is detectable in the area of the complaint and confirm that it is the odor that resulted in the complaint.
 - b. Quantify the intensity of the odor on the eight point in butanol intensity

scale as defined in regulations promulgated by the Planning & Urban Development Director to establish training and technical standards to support this subsection.

- c. Track the odor to its source.
- B. When the certified odor inspector determines that a violation has occurred because an odor has exceeded the maximum ambient odor levels set forth in this subsection, the Building Authority shall notify the owner or operator either by telephone or in person of the violation within one working day of the violation. The Building Authority shall confirm this notification in writing within seven working days of this initial notice. In the event that the Building Authority is unable to contact the owner or operator by telephone or in person within the required time period, then it will send written notification within seven working days of the violation.
- C. Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:
 - 1. Implement odor reduction procedures immediately upon notification by the Building Authority that the facility has violated this subsection wherever odor reduction can be achieved by operational or procedural changes at the facility.
 - 2. Submit to the Building Authority, within 30 days of the written notice of violation, an odor reduction plan which is designed to reduce ambient odors attributable to emissions from that source to the maximum allowable intensity for that zone. The plan shall include a detailed summary of the measures that the owner or

operator will take to mitigate the community annoyance and estimated dates for completion of those measures. In the event that it will take longer than 30 days to develop the odor reduction plan, the owner or operator of the facility shall submit within the 30-day time period a schedule for the development of the odor reduction plan. The Building Authority shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period.

- 3. Implement the plan in accordance with the schedule approved by the Building Authority.
- D. The maximum ambient intensity standard for odors generated by uses located in the industrial zones shall not exceed the following levels when the odor is measured in the zone indicated:
 - 1. 4.0 in any industrial or mixed-use zone for odors resulting from uses in industrial or mixed-use zones.
 - 2. 3.0 in any residential zone for odors resulting from uses in industrial or mixed-use zones.

6.8.11 Outdoor effects

- A. In all mixed-use, office, and industrial zones and the IS-FBC zone, uses shall be operated within a completely enclosed structure, except for those customarily operated in open air.
- B. In the mixed-use and IS-FBC zones, open air activities shall be those licensed by the city.
- C. There shall be no outdoor kennels.
- D. No open exterior stairways or fire escapes shall be constructed above the ground floor, except that the Building Authority may permit the



installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a conforming or lawfully nonconforming dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life safety codes, provided that the owner demonstrates to the Building Authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair.
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other

affected facades of the building and plans or drawings of the proposed egress stairs.

6.8.12 Outdoor storage

Outdoor storage shall comply with the requirements of Table 6-H.

6.8.13 Relocation of displaced residents

In the B-3, B-3b, and B-3c zones, any development which results in the displacement of residents of dwelling units currently located on the development site shall meet the requirements of Section 18.5.

6.8.14 Smoke

Smoke shall not be emitted at a density in excess of the opacity level designated in Table 6-I, as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

TABLE 6-H: OUTDOOR STORAGE STANDARDS

B-1/B-1b, B-2/B-2b/B-2c, B-3/B-3b/B-3c, O-P, R-P, A-B', and IS-FBC	There shall be no exterior storage with the exception of fully enclosed receptacles for solid waste disposal.
B-4, B-5/B-5b, B-6, B-7, and Industrial	Outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by raising materials above ground, separating materials, preventing stagnant water, or by some other means. In the B-4, B-5/B-5b, B-6, and B-7 zones, no outdoor storage shall be permitted in the front setback, except for storage for plant and tree nurseries or lumber yards if listed as a permitted use. In the B-4, B-5/B-5b, B-6, and B-7 zones, any storage of new materials, finished products, or related equipment must be suitably screened from the public way and abutting properties by a landscaped buffer or solid fence at least five feet in height.

TABLE 6-H: OUTDOOR STORAGE STANDARDS

B-1/B-1b and B-2/B-2b/B-2c	Vehicles or truck trailers with or without wheels shall not be used for on-site storage. In the B-2/B-2b/B-2c zone, there shall be an exception where such storage is located in a designated loading zone identified on an approved site plan or such storage is not visible from the street or adjacent residences during winter.
B-5	Outdoor storage of rental and moving equipment shall be located on the site and not within a public right-of-way or sidewalk. A curb, guard rail or other barrier shall be provided to contain such equipment and storage on the site as well as out of landscape buffer areas. A landscape buffer shall be provided. Outdoor storage of rental and moving equipment must be accessory to a building in existence as of the date of this ordinance. Exterior lighting shall not exceed that which is necessary for security purposes.

¹ Does not apply to airports.

TABLE 6-I: SMOKE STANDARDS

Zone	Opacity Level
R-P	20%
O-P	
B-1/B-1b	
B-2/B-2b/B-2c	30%
B-3/B-3b/B-3c	
B-4	
B-5/B-5b	40%
B-6	
B-7	
Industrial and A-B zones	20%
IS-FBC	

old or new building when completed would be closer than five feet to any part of any church, public or private hospital, or school or if any part of either old or new building when completed would be less than 15 feet from the boundary line of any lot upon which any part of any church, public or private hospital, or school is located. No existing garage used for the storage of more than three motor vehicles or for the business of repairing motor vehicles shall be deemed to become a nonconforming use through the subsequent erection of such church, hospital, or school closer than the aforesaid distance to such a garage.

6.8.15 Storage and repair of vehicles

- A. In all residential zones, all island zones, the R-P zone, and the B-3 zone, only one unregistered motor vehicle may be stored outside for a period not exceeding 30 days.
- B. In other mixed-use zones, storage of unregistered motor vehicles for more than 10 days and outdoor storage of used automobile tires shall be prohibited.
- C. No building in any zone shall be erected, altered or used as a garage for the storage of more than three motor vehicles or for the business of repairing motor vehicles if any part of either

6.8.16 Traffic

Development in the I-M, I-Ma and I-Mb zones shall utilize streets classified as arterials by the Maine Department of Transportation to the greatest extent possible.

6.8.17 Waste disposal

- A. All solid waste disposal, including materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in fully enclosed, covered containers or receptacles. In all nonresidential zones with the

exception of the industrial zones, such containers or receptacles shall be within designated, screened areas. In industrial zones and the B-4 zone, outdoor storage of refuse, debris, or previously used materials awaiting reuse shall either be in an appropriate container or located within a designated, screened area.

- B. Containers or receptacles shall not leak or otherwise permit liquids or solids to escape from the container or be transferred beyond lot boundaries by natural causes or forces. Areas attracting large numbers of insects or vermin are prohibited.
- C. Where food processing is permitted, 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 48 hours of its generation. All enclosed and exterior food processing waste storage areas shall be cleaned and sanitized on a regular basis.

vibrograph or similar instrument at the property boundaries.

6.8.18 Vibration

- A. In any mixed-use zone, the O-P, and the R-P zones, vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile-supported pier.
- B. In all industrial zones, any use creating earthshaking vibrations, with the exception of airports, shall be controlled in such a manner as to prevent transmission beyond lot lines of vibrations causing a displacement of .003 or greater on one inch, as measured by a

7 DIMENSIONAL STANDARDS

7.1 APPLICABILITY

Construction, alterations, and additions to structures and buildings are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

7.2 RULES OF MEASUREMENT

Building footprint. The lot area contained within the outermost perimeter of the building envelope including cantilevered portions of the building, projections, and porches, decks, and similar attached structures integral to the building and contributing to its mass, but excluding roof overhangs.

Floor area. The total floor space enclosed by exterior or standard fire walls of a building, exclusive of vent shafts and courts.

Grade, pre-development. Average grade, existing on October 1, 2000, at the corners of the foundation of the proposed structure.

Height. The vertical measurement from grade, or the pre-development grade on the islands, to the highest point of a structure. For buildings, height shall be measured to the roof beams in flat roofs, to the highest point of the roof beams or the highest point on the deck of mansard roofs, to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs, or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this

purpose, the level of the eaves shall be taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

Impervious surface ratio. The proportion of a site covered by impervious surfaces, calculated by dividing the total impervious surface area by the lot area. For the purposes of this measurement, impervious surface shall be as defined by the Maine Department of Environmental Protection.

Landscaped open space ratio. The proportion of lot area covered by landscaped open space, calculated by dividing the total landscaped open space area by the lot area. For the purposes of this measurement, landscaped open space shall not include rooftop gardens or structured or engineered surfaces.

Lot area. The area of a lot enclosed within the boundary lines of a lot.

Lot coverage. The proportion of lot area covered by building footprint and the footprint of accessory detached structures.

Lot width. The distance measured between side lot lines through that part of the principal building where the lot is narrowest.

Net land area. The land area arrived at by subtracting from lot area the square footage of the following: a) areas of special flood hazard; b) existing watercourses measured by the area between the top of the banks at the normal high-water mark; c) wetlands; and d) slopes of 25% or greater. Where a slope of 25% or greater was altered to less than 25%

within the two years immediately preceding a development proposal, such slope shall also be subtracted from the lot area.

Setback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure, except as otherwise permitted in this code of ordinances. A setback shall be measured from a line parallel to the lot line drawn through the point of a structure nearest to such lot line. This measurement shall be taken at right angles from such parallel line. When measuring setbacks, setbacks shall be interpreted to include setbacks of structures from property lines and setbacks of principal structures from one another. No principal structure shall occupy the minimum setback of another principal structure. Setbacks shall not apply to fences, flagpoles, raised garden beds, and other similar structures. When setbacks are established in relationship to height, the height in stories or feet of that part of the principal structure adjoining a yard shall be used in determining the required setback.

Setback, front. A setback along the front lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between the front lot line and any structure. In the case of lots with frontages on two or more streets, the orientation of the principal entry to the principal building shall prevail. In the case of lots without frontage on a street, the property line that parallels the nearest developed street shall be considered the front.

Setback, rear. A setback along the rear lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between

the rear lot line and any structure.

Setback, side. A setback along a side lot line extending from the front lot line to the rear lot line, the width of which shall be the shortest horizontal distance between the side lot line and any structure.

Stepback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure that occurs at a prescribed height above the ground. Stepbacks shall apply to all attached accessory structures, including the minimum necessary housing of elevators, stairways, tanks fans, or other building operating equipment not intended for human occupancy.

Story. That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four feet above the floor does not exceed two-thirds of the floor area of the story immediately below it. A story which exceeds 18 feet in height shall be counted as two stories. A basement shall be counted as a story for the purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

Street frontage. The distance for which a lot line adjoins a public street, from one lot line intersecting said street to the furthest distant lot line intersecting the same street.

7.3 DIMENSIONAL STANDARDS

Tables 7-A to 7-H shall establish the dimensional standards for each zone.

TABLE 7-A: RESIDENTIAL ZONE DIMENSIONAL STANDARDS

		R-1	R-2	R-3 ²	R-4	R-5 ^{2,3}	R-5a ⁴	R-6 ^{6,7}	R-6a ¹³
Lot area (min.)	Governmental	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF			
	Hospital			10 ac.		5 ac.		2 ac.	
	Intermediate or long-term, extended care facility	3 ac.	3 ac.	2 ac.		2 ac.	1.5 ac.	1 ac. ⁸	
	Lodging house					9,000 SF		2,000 SF	
	Multiplex				9,000 SF	9,000 SF			
	Place of assembly	<10,000 SF	1 ac.	1 ac.	1 ac.	15,000 SF	.5 ac.	.5 ac.	10,000 SF
		>10,000 SF	2 ac.	2 ac.	2 ac.	30,000 SF	1 ac.	1 ac.	15,000 SF
	Post-secondary school		2 ac.			2 ac.		2,000 SF	
	Elementary, middle, and secondary school	2 ac.	2 ac.	2 ac.	30,000 SF	30,000 SF		30,000 SF	
	Raising of animals	3 ac.							
	Residential	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF ³	6,000 SF / 2 ac. max ⁵	2,000 SF	4 ac.
	All other uses	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF		2,000 SF	
	Lot area per dwelling unit (min.)	15,000 SF	10,000 SF	6,500 SF	3,000 SF	3,000 SF	1,600 SF	725 SF	
	Lot area per rooming unit (min.)					1,000 SF		250 SF ⁹	
	Lot area per multiplex unit (min.)				3,000 SF for first 3; 6,000 SF thereafter	4,500 SF			
	Lot area per SNIDU¹ (min.)				2,400 SF	3,600 SF			
	Street frontage (min.)	75 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	20 ft.	
	Lot width (min.)	100 ft.	80 ft.	65 ft.	60 ft.	60 ft. 90 ft. for multiplex	60 ft.	20 ft.	
	Front setback (min.)	25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	5 ft.	
		Or average depth of adjacent front yards							
Rear setback (min.)		25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	10 ft.	
	Detached accessory (< 250 SF footprint)	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	
Side setback (min.)	<1.5 stories to 1.5 stories	12 ft.	12 ft.	8 ft.	10 ft.	8 ft.	10 ft.		<45 ft. in height: 10 ft.
	2 stories	14 ft.	14 ft.	14 ft.	14 ft.	12 ft.	14 ft.		
	2.5 stories	16 ft.	16 ft.	16 ft.	16 ft.	14 ft.	16 ft.	5 ft. ¹⁰	
	Detached accessory (< 250 SF footprint)	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.		>45 ft. in height: 15 ft.
	On side street (min.)	20 ft.	20 ft.	20 ft.	20 ft.	15 ft.	20 ft.	None	
		Or depth of front yard directly abutting the lot.							

TABLE 7-A (CONT.): RESIDENTIAL ZONE DIMENSIONAL STANDARDS

	R-1	R-2	R-3 ²	R-4	R-5 ^{2,3}	R-5a ⁴	R-6 ^{5,7}	R-6a ¹³
Stepbacks (above 35 ft. when property line abuts a residential zone)(min.)							10 ft. from side property line and 15 ft. from rear property line ¹¹	
Structure height (max.)	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	45 ft. ¹²	65 ft.
Detached accessory	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	
Lot coverage (max.)	20%	20%	35%	30%	40%	30%	60%	
Landscaped open space ratio (min.)							20%	
Width of garage opening on front façade (max.)							9 ft. or 40% of the front facade, whichever is greater, and in no case more than 20 ft.	

¹ Special needs independent dwelling unit.

² See Table 7-B for PRUD standards.

³ Single-family homes may be built on small lots in the R-5 under small residential lot dimensional requirements under certain conditions. See Table 7-C for R-5 Small Residential Lot dimensional requirements.

⁴ For R-5a, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities, unless noted otherwise in the table above. See Table 7-B for additional standards that apply to these uses.

⁵ Applies to 1-, 2-, and 3-family dwellings only.

⁶ Alterations to single-family, two-family, and multi-family dwellings in existence as of 6/15/15 shall not result in the creation of any additional dwelling unit of less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic; and shall not result in any existing dwelling unit being reduced in size to less than 1,000 square feet of floor area, exclusive of common areas and storage in basement and attic.

⁷ Subdivisions consisting of horizontally attached dwellings on individual lots are not required to have side yards between such dwellings where a party wall condition will exist. Horizontally attached dwellings located within a single lot shall be required to meet the applicable side setback requirements at the external lot boundaries of the subdivision and internal lot boundaries between such dwellings that are not attached to each other. No minimum lot size or width shall be required for individual lots underlying townhouse (horizontally attached) dwelling types. The applicable minimum lot area per dwelling shall apply to each lot.

⁸ Except for long-term and extended care facilities: 10,000 SF for the first 9 residents plus 750 SF for each additional resident, up to a total of 2 ac.

⁹ A minimum lot area per intermediate care resident of 250 SF also applies.

¹⁰ Except that a side setback in the R-6 zone may be reduced to zero, provided that the cumulative side yards are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.

¹¹ Does not apply on side streets.

¹² Except as provided under the Fort Sumner Park Height Overlay and the Bayside Height Overlay.

¹³ All R-6 dimensional standards apply in the R-6a unless otherwise indicated.

TABLE 7-B: PRUD DIMENSIONAL STANDARDS

	R-3	R-5	R-5a³
Lot area¹ (min.)	3 ac.	2 ac.	2 ac. ⁴
Net land area per dwelling unit (min.)	6,500 SF	3,000 SF	1,600 SF ^{4,5}
Units per building (max.)	PRUD < 5 ac.: 2 PRUD > 5 ac.: 6	12	
Average number of units per building (max.)	PRUD > 5 ac.: 5		
Structure height (max.)	35 ft.	35 ft.	55 ft.
Building length (max.)	Without garages: 100 ft. With integral garages: 140 ft.	140 ft.	
Length of accessory garage structure (max.)		60 ft.	
Building setback from external subdivision property lines (min.)	3 or fewer D.U. in building: 25 ft. 4 or more D.U. in building: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.
Distance between detached PRUD dwelling units (min.)	16 ft.		
Common recreation open space area² (min.)	300 SF/D.U.	300 SF/D.U.	200 SF/D.U. ⁴
Habitable space elevation	No habitable space in a PRUD shall be below grade, except basements that are a part of and below above-ground units.		

¹ Areas of special flood hazard as defined in Article 12 shall be excluded from lot area calculations.

² Common open space shall be designated on the site. The primary purposes of such open space areas shall be for passive or active recreation. Such spaces may include natural, landscaped or hardscaped elements. At a minimum, a contiguous area of 6,000 SF shall be provided.

³ In the R-5a zone, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities unless otherwise noted.

⁴ Does not apply to intermediate, extended, or long-term care facilities but does apply to PRUDs, congregate care, and multi-family development of 4 or more units.

⁵ Minimum land area per intermediate care facility resident: 8,000 SF lot area for first 35 residents, plus 350 SF for each additional resident.

⁶ For PRUD standards in island zones, see Table 7-D.

TABLE 7-C: R-5 SMALL RESIDENTIAL LOT DEVELOPMENT DIMENSIONAL STANDARDS¹

	Lot area (min.)	5,000 SF
		7 ft. ²
Side setback (min.)	Detached accessory (< 250 SF footprint)	5 ft.
	Side yard on side street	10 ft.
	Lot width (min.)	40 ft.
	Street frontage (min.)	40 ft.
	Lot coverage (max.)	50%

¹ Single-family homes may be built on small lots in the R-5 under small residential lot development dimensional requirements if the lot is: vacant; or used exclusively for parking; or contains structure(s) not used for residential purposes; or is created from a single lot division of a developed lot and results in a lot meeting the small residential lot dimensional requirements with the remaining developed portion meeting the standard dimensional requirements of the R-5 zone.

² The width of one side setback may be reduced 1 ft. for every foot that the other side yard is correspondingly increased, but no side yard shall be less than 4 ft. in width.

TABLE 7-D: ISLAND ZONE DIMENSIONAL STANDARDS

						I-B ¹⁰	
						Served by Public Water & Sewer	Not Served by Public Water & Sewer
Lot area (min.) ¹¹			IR-1	IR-2	IR-3		
	Bed and breakfast					5,000 SF for 3 guest rooms plus 5,000 SF/ additional room	10,000 SF/ guest room
	Campground		10 ac.		5,000 SF/ campsite, but not less than 10 ac.		
	Hotel				10,000 SF/ guest room	5,000 SF for 3 guest rooms plus 5,000 SF/ additional room	10,000 SF/ guest room
	Lodging house			10,000 SF/ rooming unit	10,000 SF/ rooming unit	5,000 SF for 3 rooming units, plus 5,000 SF/ additional rooming unit	10,000 SF/ rooming unit
	Place of assembly	>10,000 SF	30,000 SF	30,000 SF	35,000 SF	20,000 SF	
		<10,000 SF	15,000 SF	15,000 SF			
	PRUD/PUD		5 ac. ¹	5 ac. ¹	20 ac.		
	Raising of animals		3 ac.				
	Residential		40,000 SF ^{2,3}	20,000 SF ³	42,500 SF ⁶	20,000 SF	
	Restaurant				35,000 SF	10,000 SF	20,000 SF
	Retail				35,000	None	20,000 SF
	Seasonal camp		10 ac.		35,000 SF		
	School/educational facility		40,000 SF	20,000 SF	35,000	20,000 SF	
All other uses				35,000 SF	20,000 SF		
Lot area per dwelling unit (min.)		None ⁴ 40,000 SF ⁴	None ^{20,000} 20,000 SF ⁴	42,500 SF ⁷			
Street frontage (min.)		100 ft. ⁵	70 ft. ⁵	70 ft. ⁸	40 ft.		
Lot width (min.)		100 ft. ⁵	80 ft. ⁵	80 ft.	40 ft.		
Front setback (min.)		30 ft. ⁵	25 ft. or the average of adjacent front yards ⁵	25 ft. ⁹	20 ft. or avg. depth of adjacent front yards		
Rear setback (min.)		30 ft. ⁵	25 ft. ⁵	25 ft. ⁹	10 ft.		
	Detached accessory (< 250 SF footprint)	10 ft. ⁵	10 ft. ⁵	10 ft. ⁹			

TABLE 7-D (CONT.): ISLAND ZONE DIMENSIONAL STANDARDS

				I-B ¹⁰	
				<i>Served by Public Water & Sewer</i>	<i>Not Served by Public Water & Sewer</i>
		IR-1	IR-2	IR-3	
Side setback (min.)		20 ft. ⁵	20 ft. ⁵	20 ft. ⁹	10 ft.
	Detached accessory (< 250 SF footprint)	15 ft. ⁵	15 ft. ⁵	15 ft. ⁹	10 ft.
	On side street	20 ft. ⁵	20 ft. ⁵	20 ft. ⁹	10 ft.
Structure height (max.)		35 ft.	35 ft. For Little Diamond Island: 27 ft.	35 ft.	35 ft.
	Accessory detached	18 ft.	18 ft.	18 ft.	18 ft.
	Lot coverage (max.)	20%	20%	20%	50%

¹ PRUDs shall consist of detached dwellings.

² 60,000 SF if not served by public water.

³ For PRUDs, minimum lot area shall be reduced up to 50% provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.

⁴ ~~In the case of PRUDs, lot area per dwelling unit shall be calculated based on net land area. Except 1 dwelling unit per 40,000 SF of net land area for PRUDs in IR-1 and 20,000 SF of net land area in for PRUDs IR-2.~~

⁵ For PRUDs, standard shall be reduced up to 50%. For accessory structures in the IR-1, IR-2, and I-B zones, side setbacks from principal structures shall be 5 feet.

⁶ Except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of 35,000 SF per dwelling unit, provided that the Planning Board finds that the development meets the following criteria: a. The minimum lot size per dwelling unit shall be reduced by 5,000 SF if a public off-island water source provides 75% of the water needs of the development. b. The minimum lot size per dwelling unit shall be reduced by 2,500 SF if the development provides appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of all private motor vehicles exclusive of construction and common service vehicles.

⁷ The maximum density for a PUD shall be based on the applicable minimum lot size for each use as measured in terms of net area. For purposes of calculating density, if separately described lots exceed the applicable minimum lot size, the excess area shall not be credited toward the minimum lot size for any other use.

⁸ Except where the Planning Board finds that the development has an adequate street network to permit access for pedestrians and emergency service vehicles.

⁹ When adjoining any external property boundary.

¹⁰ All I-B standards apply for lots served by public water and sewer and lots not served by public water and sewer unless otherwise indicated.

¹¹ In the IR-3, the minimum lot area for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two or more residential uses contained in a building, the minimum lot area shall be the larger of the applicable minimum lot sizes.



DIMENSIONAL STANDARDS

TABLE 7-E: MIXED-USE ZONE DIMENSIONAL STANDARDS

		B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Lot area (min.)	School	20,000 SF			10,000 SF			
	Place of assembly	10,000 SF						
Lot area per dwelling unit (min.)	On-peninsula	435 SF	435 SF					
	Off-peninsula	1,000 SF	1,000 SF, except 435 SF if active street frontage ³					
Lot area per rooming unit (min.)	On-peninsula	150 SF	150 SF					
	Off-peninsula	350 SF	350 SF					
Street frontage (min.)		20 ft.	20 ft.	15 ft.	60 ft.			
Front setback (from all street frontages) (max.)		10 ft., or the average front yard depth of nearest developed lots if < 10 ft.	10 ft.	5 ft.	20 ft.	None, except 10 ft. in B-5b	10 ft. ⁷	10 ft.
Rear setback (min.)	Principal	None, except 10 ft. if abutting a residential zone	10 ft.		20 ft.			
	Accessory	None, except 5 ft. if abutting a residential zone	5 ft.		7 ft.			
Side setback (min.)	Principal	None, except 5 ft. if abutting residential zone	None		10 ft.			
	Accessory		5 ft.		5 ft.			
Stepbacks (above 35 ft. when property line abuts a residential zone) (min.)		Side: 10 ft. Rear: 15 ft.	Side: 5 ft. Rear: 15 ft.					
Length of building wall at maximum setback (min.)							70% of street frontage or 25% of building perimeter ⁸	75% of street frontage or 25% of building perimeter ⁹
Length of undifferentiated blank wall along publicly accessible way (max.)				30 ft., except 15 ft. within PAD Overlay				
Floor area (max.)		Non-residential uses on first floor: 10,000 SF total ¹ Restaurants (public area): 2,000 SF Clinics: 3,000 SF	Laboratory and research facilities, warehousing: 10,000 SF	None, except 15,000 SF for each floor above 125 ft.			Laboratory and research facilities and warehousing: 15,000 SF Exhibition and meeting halls: 20,000 SF	

TABLE 7-E (CONT.): MIXED-USE ZONE DIMENSIONAL STANDARDS

	B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Structure height (max.)	On-Peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor and residential above ² Off-Peninsula: 35 ft.	45 ft., except 50 ft. if first floor is in commercial use, 65 ft. in B-2 and B-2c on lots >5 ac. if required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft., or as otherwise governed by the Bayside Height Overlay Map	See Downtown and Bayside Height Overlay Maps	65 ft.	65 ft., except in B-5b along W. Commercial St. south of Danforth St. ⁵ and 120 ft. on Thompson's Point ⁶	65 ft. or as otherwise governed by the B-6 Building Height Overlay Map	See Bayside Height Overlay Map
Lot coverage (max.)			25% of lot area for portions of structures exceeding 125 ft. in height ⁴				
Impervious surface ratio (max.)	90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%		80%			

¹ Uses in structures which existed prior to the date of enactment of the B-1/B-1b zones are exempt.

² The commercial first floor uses shall utilize at least 75 % of the first-floor frontage along Congress Street and shall have an average depth of at least 20 ft.

³ A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable: the primary building façade shall be within 10 ft. feet of the front lot line; there shall be no parking on the lot within 35 ft. of the front lot line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals and the remaining minimum 75% shall have an average depth of a minimum of 20 ft. for residential or commercial uses; and all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

⁴ Except that no floor area shall be required to be less than 10,500 SF, gross.

⁵ For parcels of land in the B-5b zone located along W. Commercial St. south of Danforth St.: West of the projection of the centerline of the Fletcher St. right-of-way, the maximum building height shall be 45 ft.; and, east of the projection of the centerline of the Fletcher St. right-of-way and west of the projection of the centerline of the Emery St. right-of-way, the maximum building height shall be 55 ft. A projection of the centerline of a street is defined by extending the centerline of the referenced street right-of-way along its most southerly block to the centerline of W. Commercial St. Furthermore, notwithstanding Subsection 7.5.1, no rooftop structure located between the projections of the centerlines of Emery St. and Fletcher St., as described above, shall exceed a height of 62 ft as measured from average grade of the building at its foundation.

⁶ Applies only to parcels subject to an approved master development plan. Thompson's Point is defined as the contiguous parcels of upland occupying the peninsula bounded on the east by Route 295, on the north by the Mountain Division Rail right-of-way, and on the south and west by the Fore River and its associated wetlands. Nearby lands accessed from Hobart and Osgood Streets are not included.

⁷ Does not apply to parking garages and public transportation facilities. Notwithstanding required setbacks, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension shall build to the key building envelopes shown on the B6 Building Height Overlay & Building Envelopes map. Buildings located in the area east of the Fore Street Connector shall not have a maximum front setback and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, be set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right-of-way.

⁸ For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 ft. Buildings in the area east of the Fore Street Connector shall not be subject to this requirement.

⁹ Does not apply to additions to or relocations of designated historic structures or structures determined to be eligible by the Historic Preservation Board.

TABLE 7-F: OFFICE PARK & RESIDENCE PROFESSIONAL ZONE DIMENSIONAL STANDARDS

	O-P	R-P ¹
Lot area (min.)	1.5 ac.	6,000 SF
Street frontage (min.)	100 ft.	60 ft.
Lot width (min.)	150 ft.	60 ft.
Front setback (min.)	50 ft.	20 ft., or avg. depth of adjacent front yards ²
Rear setback (min.)	Principal	20 ft.
	Accessory	7 ft.
Side setback (min.)	Principal	1 story: 10 ft.
	25 ft., except 40 ft. where side yard abuts residential zone or use	2 stories: 12 ft.
		3+ stories: 14 ft.
	Accessory	7 ft.
On side street		1-2 stories: 15 ft.
		3+ stories: 18 ft.
Structure height (max.)	55 ft., except 75 ft., including rooftop appurtenances, on lots within office park subdivisions which are > 50 ac. if each minimum setback is increased by 1 ft. for each 1 ft. of height above 55 ft.	45 ft.
Floor area (max)	High-tech manufacturing: 20,000 SF	
Impervious surface ratio (max.)	60%	70%
Pavement setback (min.)	15 ft.	

¹ Residential uses shall meet the dimensional requirements of the nearest residential zone.

² The front yard of a lot existing as of April 4, 1988, which lot is less than 100 ft. deep, need not be deeper than 10% of the depth of the lot.

TABLE 7-G: INDUSTRIAL & AIRPORT ZONE DIMENSIONAL STANDARDS

	I-L/I-Lb		I-M/I-Ma/I-Mb		I-H/I-Hb		A-B
Lot area (min.)							20,000 SF
Street frontage (min.)	60 ft.		60 ft.		60 ft.		50 ft. ²
Lot width (min.)							50 ft.
Front setback (min.)	I-L	25 ft.	I-M/I-Ma	1 ft. for each ft. of building height	I-H	25 ft.	None, except 20 ft. if property has frontage on Westbrook St.
	I-Lb	None	I-Mb	None	I-Hb	None	
Rear setback (min.)	I-L	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H	35 ft.	None., except 50 ft. if abutting residential zone or use ³
	I-Lb	None, except 25 ft. when abutting residential zone	I-Mb	None, except 25 ft. when abutting residential zone	I-Hb		
Side setback (min.)	I-L	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H	35 ft.	None, except 25 ft. if abutting residential zone or use ³
	I-Lb	None, except 25 ft. when abutting residential zone	I-Mb	None, except 25 ft. when abutting residential zone	I-Hb		
Structure height (max.)	45 ft.		I-M/I-Mb	75 ft.	75 ft.		75 ft., except 45 ft. within 100 ft. of a residential zone
			I-Ma	45 ft.			
Impervious surface ratio (max.)	I-L	65%	I-M/I-Ma	75%	I-H	85%	70% ²
	I-Lb	100%	I-Mb	100%	I-Hb	100%	
Pavement setback (min.) ¹	15 ft.		10 ft.		10 ft.		

¹ Shall not apply to entrance drives.

² Except for lots in airport restricted access areas, which shall not be subject to this provision.

³ No structure may extend beyond the building line established for any runway or taxiway. If provided, rear and side yards must not be less than 5 ft. in width.

TABLE 7-H: RECREATION OPEN SPACE ZONE DIMENSIONAL STANDARDS

R-OS ¹		
Front setback (min.)		25 ft.
Rear setback (min.)		25 ft.
Side setback (min.)	Principal	
	Accessory	12 ft.
	On side street	
Structure height (max.)	Principal	35 ft., except 45 ft. if more than 1,000 ft. from a shoreland zone.
	Accessory	
Floor area ratio (max.)		.5
Impervious surface ratio (max.)		25% ²

¹ Public open spaces less than 2 ac. and on the peninsula are not required to meet the R-OS dimensional standards.

² Except 75% for sports complexes and 100% for sewage treatment facilities.

7.4 SUPPLEMENTAL DIMENSIONAL STANDARDS

7.4.1 Corner clearance

No shrub, wall, fence, sign, or pile of material higher than 3 1/2 feet above the lowest elevation at the curblin shall be permitted on a corner lot within the area of a triangle formed by a line connecting the curblines of the intersecting streets at points 25 feet from the corner, unless said obstruction is reviewed by the Public Works Authority and found not to be a traffic or public safety hazard.

7.4.2 Fences

In residential zones, no wall or fence within 15 feet of the street shall be more than four feet in height, unless said fence is located in the side or rear yard.

7.4.3 Solar energy systems

A. Setbacks

- Solar energy systems shall be located in side or rear yards wherever possible.
- Minor solar energy systems shall be setback 50 feet from residential, R-P, B-1/B-1b, and B-2/B-2b/B-2c zones.

- Major solar energy systems shall be setback 75 feet from residential, RP, B-1/B-1b, and B-2/B-2b/B-2c zones.

B. Height

- Ground-mounted solar energy systems.*
Where the total height of the support structure plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall be 20 feet above the ground as measured from the base of the support.
- Roof-mounted solar energy systems.*
Where the total height of the support structure/building plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall be:
 - In all residential and R-P zones: 5 feet above the roof and set back from the edge of the roof by one foot for every one foot of solar energy system height.

- b. In B-4 and industrial zones: No limit
- c. In all other zones: 8 feet above the roof and set back from the edge of the roof by one foot for every one foot of solar energy system height.

7.4.4 Swimming pools

Outdoor swimming pools as accessory uses shall be subject to the following dimensional standards:

- A.** No swimming pool shall be sited in the front yard.
- B.** No part of any swimming pool shall be located closer than 10 feet from the principal structure, nor closer than 10 feet from side or rear lot lines.

7.4.5 Wind energy systems

A. Setbacks

1. Wind energy systems and associated facilities shall meet all setbacks for principal structures for the zone in which the system is located. Where setbacks vary, the largest setback shall apply. All parts of the wind energy system, including associated facilities and guy wires, shall be at least 10 feet from the property line (except where connecting to the grid), any utility line (in any direction), or other easement/right-of-way. The setback from utility lines, easements, and right-of-way lines may be reduced where the owner/benefitted party provides written permission.
2. Roof-mounted wind energy systems shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than four times the height of the system as measured from the roof surface at the point of attachment. For systems in and adjacent to waterfront zones, mixed-use zones (except B-1/B-1b and I-B), OP zone, industrial zones, the Island Transfer Station Overlay zone, and the R-OS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the height of the system, where the system is incorporated into the architecture of the building and a certified engineer confirms that it would not present a public safety risk. The setback shall be measured to the center of the wind generator base.
3. Freestanding wind energy systems with a total height of less than 85 feet shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than 1.1 times the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than twice the total height of the system. The setback distance shall be measured to the center of wind generator base.
4. Freestanding wind energy systems with a total height of greater than 85 feet shall be set back away from property boundaries and street right-of-way lines by a distance equal to or greater than twice the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than four

times the total height of the system.

5. For freestanding wind energy systems in and adjacent to waterfront zones, mixed-use zones (except B-1/B-1b and I-B), the O-P zone, industrial zones, the Island Transfer Station Overlay Zone, and the R-OS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the total height of the system where determined that the minimum required setback would be contrary to the public interest.
6. In residential zones, the B-1/B-1b zones, the I-B zone, and the R-P zone, where the lot is less than 0.5 acres, any vertical element of the wind energy system (tower/pole) shall be located in the rear yard or on the rear half of the existing building. Wind energy systems and associated facilities shall be sited to maximize existing vegetative or other screening from nearby residential buildings and public ways. The location shall minimize changes to existing topography and existing natural vegetation which would result from construction or maintenance of the system.

B. Height

1. Heights of wind energy systems, permitted as either freestanding or roof-mounted structures, shall be as shown in Table 7-1.
2. Roof-mounted wind energy systems shall measure no higher than 10 feet above the highest part of the roof.

TABLE 7-1: WIND ENERGY SYSTEM HEIGHT

Zone	Height (max.)
RPZ	10 ft.
Residential Zones¹, R-P, B-1/B-1b, and I-B	25 ft.
Historic Districts² and within 1,000 ft. of designated landmarks	45 ft.
EWPZ, WPDZ, WCZ, B-2/B-2b/B-2c, B-5, and B-6	65 ft.
B-3, B-4, B-7, and O-P	85 ft.
ROS, I-M, I-Mb, I-H, and A-B	160 ft.

¹ Permitted up to 65 ft within USM Overlay Zone or on other sites with institutional uses measuring over 5 acres.

² Permitted up to 85 ft in B-3 part of Downtown Historic District.

7.5 SPACE AND BULK EXCEPTIONS

7.5.1 Height

- A. In the B-3/B-3b/B-3c zones.** Minimum height provisions as depicted on the Downtown Height Overlay Map shall not apply to:
1. Accessory building components and structures such as truck loading docks covered parking, mechanical equipment enclosures and refrigeration units.
 2. Information kiosks and ticketing booths.
 3. Public transportation facilities of less than 10,000 square feet, or additions of less than 5000 square feet to existing public transportation facilities provided that the cumulative additions as of June 4, 2007 do not exceed 10,000 SF.
 4. Additions to buildings existing as of June 4, 2007 provided that the cumulative additions since June 4, 2007 do not exceed 10% of the building footprint on June 4, 2007, except building additions on those portions of the lot located closer to the street line than the building footprint

existing as of June 4, 2007 shall not be included in this 10% limitation.

5. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures, and other similar structures.
6. Additions to and/or relocation of designated historic structures or structures determined by the Historic Preservation Board to be eligible for such designation.
7. Parking attendant booths or bank remote teller facilities.
8. Structures accessory to parks and plazas.
9. Buildings or building additions of less than 2,500 square feet footprint, on lots or available building sites of less than 3,000 square feet.

B. In the B-6 zone. Minimum height provisions as depicted on the B-6 Building Height Overlay and Building Envelopes map shall not apply to:

1. Buildings located in the area east of the Fore Street Connector.
2. Parking attendant booths.
3. Information kiosks and ticketing booths.
4. Parking garages.
5. Public transportation facilities.
6. Additions to buildings existing as of December 8, 2004 provided that the cumulative additions since December 8, 2004 do not exceed 25% of the building footprint on December 8, 2004, except that such restriction shall not apply to those portions of the building addition that are constructed closer to the street line

than the building footprint existing as of December 8, 2004.

7. Buildings or building additions of less than 2,000 square feet footprint on lots or available building sites of less than 2,000 square feet.
8. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures.
9. Additions to and/or relocations of designated historic structures.

C. In the B-7 zone. Minimum floor provisions as depicted on the Bayside Height Overlay Map shall not apply to:

1. Accessory building components such as truck loading docks, mechanical equipment enclosures and refrigeration units.
2. Information kiosks and ticketing booths.
3. Parking garages.
4. Public transportation facilities.
5. Additions to buildings existing as of March 9, 2005 provided that the cumulative additions since March 9, 2005 do not exceed 50% of the ground floor building footprint on March 9, 2005, except that such restriction shall not apply to those portions of the building addition(s) that are constructed closer to the street line than the building footprint existing as of March 9, 2005.
6. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations,

telephone electronic equipment enclosures, and other similar structures.

7. Additions to and/or relocation of designated historic structures or structures determined by the Historic Preservation Board to be eligible for such designation.
8. Portions of buildings more than 50 feet from the street line.

D. In the Bayside Gateway Urban Height District

A. Buildings in the Bayside Gateway Urban Height District A as depicted on the Bayside Height Overlay Map may be greater than 125 feet but no more than 165 feet in height provided that:

1. Such buildings shall be reviewed by the Planning Board as conditional uses under Section 6.5 of this Land Use Code.
2. Such buildings shall be sited to minimize encroachment into designated view corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as referenced in the Bayside Height Study Map and the B-7 design standards.
3. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than the ratio of building height to width of adjacent streets, trails and open spaces equivalent to 1.5 to 1. The Planning Board may modify this requirement for master development plans or major site

plans provided that the following conditions are met:

- a. Each building exceeding 125 feet shall contain at least 20 dwelling units per building.
- b. Building wall stepback requirement along public street frontage for buildings with frontage on one street: Minimum 10-foot stepback between third and fifth stories and a minimum 10-foot stepback between the 125 and 145 foot level.
- c. Building wall stepback requirement along public street frontage for buildings with frontage on multiple streets: Above paragraph (b) requirement along longest building façade street wall, and of the remaining street walls the same requirement as paragraph (b) or a 15 foot wide streetscape improvement area containing a public sidewalk, landscaping, and other streetscape improvements within the abutting street right-of-way and/or private property along the remaining street frontage. A building with frontage on four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.
- d. The Planning Board shall have the authority to waive one or more of the required stepbacks provided that one of the following conditions is met:

- i. The depth of the building lot precludes a building having an average minimum lot depth dimension of 170 feet.
- ii. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich, visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level.
- e. In the event such a waiver is granted, the Planning Board may require the applicant to mitigate the impacts of the waiver by requiring the following:
 - i. Along all public street frontages and public open spaces, all buildings (regardless of height) shall maintain a pedestrian scale through the use of building elements at the street level as listed in this standard along no less than 60% of the building's horizontal length.
 - ii. Along all public street frontages and public open space for the building(s) over 125 feet, a canopy, awning, or similar permanent architectural feature to provide pedestrian protection and wind mitigation shall be provided within the first 35 feet of height.
 - iii. In order to preserve view corridors and to maintain a varied skyline, all buildings above 125 feet within a single development site should be separated to avoid the appearance of a tall, solid block massing. In accordance with this policy, on development sites of 500 feet or greater as measured parallel to Marginal Way, the aggregate building façade widths above 85 feet shall not exceed 50% of the total development site distance parallel to Marginal Way. Buildings over 125 feet in height that are being reviewed as separate phases of a master development plan shall be entitled to meet the 50% building requirement in aggregate for all such buildings over 125 feet in height in the master development plan, provided that view corridors are retained as each phase is built.
 - iv. The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.
- 4. Such buildings provide publicly accessible and usable open space, meeting the B-7 design standards, of at least 10% of the building lot area.

5. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the 10% open space requirement. Buildings over 125 feet in height that are being reviewed as separate phases of a master development plan shall be entitled to meet the 10% percent open space requirement in aggregate for all such buildings over 125 feet in height, provided that the open space shall not fall below 10% percent at any built phase or combination of built phases.
6. Such development shall comply with all other requirements and design standards as required by this article.

E. Roof-mounted solar energy systems.

Photovoltaic panels and thermal water heating panels, whether parallel or angled to a pitched or gable roof, may be erected above the height limitation for principal or accessory buildings as follows:

1. *In all residential zones.* Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to five feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.
2. *In B-4 and industrial zones.* Up to four feet above the maximum height allowed in the underlying zone. In the case of flat roofs, there are no height limits.

3. *In all other zones.* Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to eight

feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.

- F. **Public art.** Except in residential zones, public art that has been individually accepted by the City Council for inclusion within the public art collection pursuant to Article 21 shall not be subject to the height limitations within the underlying zone.
- G. **Rooftop appurtenances.** Unless otherwise noted, rooftop appurtenances for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, deck railings, skylights, steeples, flag poles, chimneys, smokestacks, radio or television masts, water tanks, or silos may be erected above the height limitations herein prescribed.
- H. **Telecommunication towers.** Where permitted, ground-mounted telecommunication towers may be erected above the height limitations within the underlying zone.

7.5.2 Length of building wall at maximum setback

- A. **In the B-6 zone.** Buildings located area east of the Fore Street Connector shall not be subject to the building wall requirement.

- B. In the B-7 zone.** Additions to and relocations of designated historic structures or structures determined to be eligible under Article 17 shall be exempt from the building wall requirement.

7.5.3 Lot area

- A. Institutional uses in residential zones.** No minimum lot area shall be required for institutional uses in residential zones in the following cases:
1. Uses existing as of June 1, 1983.
 2. Expansion on to land abutting the lot on which the principal use is located.
 3. Expansion onto land other than the lot on which the principal use is located to the extent that such expansion consists of the reuse of surface parking area or nonresidential structures existing and in nonresidential use as of June 1, 1983, provided that such reuse is contained within the lot of such structure or parking area as of June 1, 1983.
 4. Expansion onto land other than the lot on which the principal use is located of no more than 15% of the total contiguous land area of the existing use, or one acre, whichever is less, within any five-year period.
- B. Residential lots not served by public sewers.** A lot in an unsewered residential district shall meet the provisions of the state Minimum Lot Size Law, 12 M.R.S. § 4807 et seq., or the applicable minimum lot area, whichever is larger, except that the minimum lot size may be reduced on the islands in Casco Bay as provided in (C) below.

- C. In island zones.** In issuing any permit for new development in island zones:
1. The Building or Planning Authority shall require that any lot located in the IR-1 zone shall be at least 40,000 square feet in area and in the IR-2, IR-3, and I-B zones be at least 20,000 square feet in area when the lot is to be serviced by a subsurface wastewater disposal system, except those lots which are located in a subdivision approved by the Planning Board after June 8, 1968 and excluding Peaks Island.
 2. Excluding Peaks Island from this paragraph (2), any property owner whose lot does not meet the minimum lot size requirements outlined in (1) above may, for purposes of this subsection only, merge two 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 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 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:

- a. No structure shall be permitted on this property.
 - b. No parking or storage of vehicles or machinery shall be permitted on this property at any time.
 - c. No area of this property shall be paved.
 - d. No exterior storage for commercial use shall be permitted on this property.
 - e. The easement deed shall reference the lot which is benefited by this conservation easement. No conservation easement shall be used to benefit more than one lot.
3. Conservation easements shall only be granted over lots which conform either to the provisions of Subsection 4.3.1 or to the minimum lot sizes set forth in Table 7-D. Conservation easements shall not be granted over any lot which is encumbered by any other easement which prohibits all construction on that lot. A conservation easement may also name as a holder or grant a third-party right of enforcement to a nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open space use; protecting natural resources; or

maintaining or enhancing air or water quality of real property. Nothing in this subsection shall be construed to allow an owner of a currently existing and developed lot to convey or permit a portion of that lot to be used to fulfill the requirements of this subsection if such conveyance would render the existing lot nonconforming under the terms of this Land Use Code. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of Subsection 4.3.1.

4. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the replacement system shall meet the applicable state requirements. The land area requirements in paragraph (1) above shall not apply to such a replacement system.
5. For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

7.5.4 Lot coverage

- A. **Lot surrounded by streets or alleys.** Where a lot containing ten thousand 10,000 square feet or less is completely surrounded by streets or alleys, the lot coverage may be increased 20%.

7.5.5 Setbacks

- A. **Setbacks in residential and R-P zones.** In any residential zone and the R-P zone, the width of one side setback may be reduced one foot for every foot that the other side setback is

correspondingly increased, but no side setback shall be less than the minimum required for a one-story building.

- B. Setbacks in the O-P zone.** The Planning Board may reduce by up to 50% the minimum setback if another yard within the lot is correspondingly increased so that the combined minimum yards on all four sides equal 150 feet. If two or more buildings are located on one lot, only the requirements of the front, rear or side setbacks that adjoin any external property boundary must be met, provided a sufficient fire line is provided.
- C. Projections in required setback areas.** Any setback may be occupied by a one-story entrance porch not enclosed, with or without a roof, if the area of the porch does not exceed 50 square feet nor the projection from the building exceed six feet. A basement bulkhead of similar size, but not more than 24 inches in height, is also permitted. A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required setback a distance of not more than two feet.
- D. Pavement setbacks.** Pavement setbacks shall not apply to entrance drives.
- E. Corner lot setbacks.** In case a principal residential structure has its front yard upon the long side of a corner lot, the rear setback may be reduced to a depth not less than the required side setback on the lot, provided that the aggregate of the widths of both sides and depths of front and rear yards is not less than the similar aggregate of required dimensions of all setbacks if the front yard were faced on the short side of the lot.

F. Maximum front setbacks

- 1. Maximum front setbacks shall not apply to utility substations and secondary building components.
- 2. *In the B-1/B-1b zone.* Building additions are encouraged but not required to meet front setbacks.
- 3. *In the B-2/B-2b/B-2c zones*
 - a. Building additions do not have to meet maximum front setback requirements.
 - b. The Planning Board or Planning Authority may approve a different front setback for irregularly shaped lots or lots with frontage greater than 40 feet in width provided the front setback is met to the maximum extent practicable.
 - c. If a lot has less than 40 feet of frontage and is more than 100 feet deep, then no maximum setback is required.
 - d. If existing structures are within 20 feet of the street or meet the front setback maximum and the remainder of the lot has less than 40 feet of frontage, then no maximum setback is required.
 - e. The Planning Board or Planning Authority may waive the maximum front setback for utility substations and alternative energy installations.
 - f. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street,

- consisting of street trees spaced at no more than 15 feet on center, approved by the City arborist, and a combination of landscaping no less than four feet deep, ornamental brick or stone walls, or ornamental fencing.
4. *In the B-3/B-3b/B-3c zones.* The Planning Board may require or approve an additional setback to comply with the design standards of Article 14 and the City of Portland *Design Manual*.
 5. *In the B-6 zone.* For lots fronting on more than one street in the B-6 zone, the front setback can be increased more than 10 feet if all of the following conditions are met:
 - a. The increased setback occurs at the intersection of the streets.
 - b. The increased setback area is the primary pedestrian entrance to the building.
 - c. 75% of the total building wall length facing the abutting streets shall be setback no greater than 10 feet. All building wall segments which make up the increased setback shall be included in the calculation of the total building wall length.
 - d. For new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two streets with the highest traffic volume.
 6. *In the B-7 zone*
 - a. Parking structures, public transportation facilities, utility substations, secondary building components such as truck loading docks, mechanical equipment enclosures, and refrigeration units are not subject to the maximum front setbacks.
 - b. The maximum front setback may be increased to more than 10 feet if all of the following conditions are met:
 - i. 75% of the total building wall length of an individual building facing the abutting streets is setback no greater than 10 feet.
 - ii. The increased setback area shall include a functional and accessible public pedestrian entrance into the building that faces the street, unless a public pedestrian entrance already exists along the same street.
 - iii. The increased setback shall not be used for surface parking.
 - c. For a corner lot having frontage on two streets, the maximum setback shall apply to both streets. In the case of a lot having frontage on two or more street corners, newly constructed buildings shall be sited at street corners and meet the maximum setback requirement prior to other freestanding buildings being constructed on the lot which shall also meet the maximum street setback. In the case of a corner lot having frontage on a third street (but not a corner) the maximum setback need not apply to the third street.

- d. In the case of a lot having frontage on two streets but not on a corner, the maximum setback shall apply to all streets but in the case of a lot having frontage on three streets but not on a corner, the maximum setback shall apply to only two streets. For purposes of this subsection only, the first building on a lot shall meet the maximum setback on at least one street with future buildings required to meet the maximum setback on the remaining street(s).
- e. In the case of a lot in which a minimum 75% of the total lot frontage has a building within ten feet of the street, other buildings may be located on the lot more than 10 feet from the street. In the case of a lot having frontage on Marginal Way and I-295, the property edge along I-295 shall not be considered street frontage.
- f. The maximum building setback shall not apply to vertical building expansions in the following cases:
 - i. The upper floors of a building in which the lower floors meet the maximum setback and the minimum height requirement.
 - ii. The building existed as of March 9, 2005 and meets the minimum height requirement.
 - iii. A building not meeting the maximum street setback and the minimum height requirement may vertically expand a total of one floor from March 9, 2005.
- iv. In the case of a building in which at least 50% of the building wall(s) abutting street(s) is within 20 feet of the street.
- v. Additions to parking garages existing as of March 9, 2005.
- g. Additions to buildings existing as of March 9, 2005 that are nonconforming as to the maximum setback need not conform to the maximum street setback provided the cumulative building footprint since March 9, 2005 does not exceed 50% of the existing building footprint. Such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of March 9, 2005 and to vertical expansions as provided for in (f) above.
- h. Lots having frontage on streets in which the curve of the street frontage precludes a rectangular-shaped building along the street line, for purposes of calculating the setback, the average setback of the building from the street line may be used, but in no event shall the average setback along the length of the building edge exceed an average setback of 15 feet nor shall the maximum setback exceed 20 feet. The increased setback shall not be used for surface parking, vehicular loading or vehicular circulation.

- i. Additions to and relocations of designated historic structures or structures determined to be eligible by the Historic Preservation Board shall be exempt from the maximum setback requirement.

G. Minimum setback exceptions for lots of record

1. In the case of a lot of record existing as of June 5, 1957 in the R-1, R-2, R-3, R-4, R-5, R-5a, and R-6 zones and less than 100 feet deep, the front setback need not be deeper than 20% of the depth of the lot.
2. In the case of a lot of record existing as of June 5, 1957 in a residential zone, the required side setback for principal structures may be reduced in order to provide a buildable width of up to 24 feet, but in no case shall the resulting side yards be less than the following:
 - a. R-1, R-2: 12 ft.
 - b. R-3, R-5: 8 ft.
 - c. R-4, R-5a: 10 ft.

easement or right-of-way which existed as of July 15, 1985. Such easement or right-of-way shall have a minimum width of 16 feet and a minimum travel width of eight feet except that an easement or right-of-way providing access for three or more lots or providing the only means of access to a parcel or parcels of three acres or more, shall meet the construction requirements of Chapter 25, Article III of the City of Portland Code of Ordinances. In the IR-1 zone, such easement or right-of-way shall conform to the requirements contained within the City of Portland *Technical Manual*. In the IR-2 zone, such easement or right-of-way shall be a minimum of 32 feet wide. Such easement or right-of-way shall be sufficient to permit municipal service delivery.

7.5.6 Stepbacks

A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required stepback a distance of not more than two feet.

7.5.7 Street frontage

In the IR-1 and IR-2 zones, a lot of record that is buildable pursuant to Subsection 4.3.1 and lots created after July 15, 1985, which are not part of a subdivision need not provide street frontage if access is available by means of a permanent



18 HOUSING

18.1 HOUSING PRESERVATION AND REPLACEMENT

18.1.1 Purpose

The purpose of the housing preservation and replacement ordinance is:

- A. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups.
- B. To limit the net loss of housing units in the city.
- C. To preserve housing in zones where housing is permitted in the city for all residents in order to promote the health, safety, and welfare of its citizens.

18.1.2 Applicability

- A. Except as otherwise provided in this section, the housing preservation and replacement ordinance shall apply to the loss of three or more dwelling units in a five-year period, provided that such dwelling units were a legally registered residential use as of July 1, 2002. For the purposes of this section, dwelling units shall be as defined in Article 3, but also include rooming units that people rent in or sleep in within lodging houses, dormitories, shelters, and sheltered care group homes.
- B. Except as otherwise provided in this section, the housing preservation and replacement ordinance shall also apply to proposals that result in the loss of fewer than three dwelling units which were legally registered residential use as of July 1, 2002 for the purposes of creating surface parking.
- C. For the purposes of this section, loss of dwelling units shall mean the elimination or conversion to nonresidential use of a dwelling unit and dwelling units that remain vacant for

three years or more or are lost due to demolition unless the vacancy or demolition results from accidents outside of the owner's control, fire, natural disasters, or acts of war.

- D. Determination of number of the dwelling units within a structure or structures and the number of units lost will be based on the records of the Building Authority indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the property for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and sworn affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.

18.1.3 Exemptions

This section does not apply to:

- A. Consolidation, elimination, or reconfiguration of one or more dwelling units within an existing structure, as long as all the resulting units remain as dwelling units after such consolidation, elimination, or reconfiguration, except as provided by (E) below. Conversion of a dwelling unit to a hotel or motel room shall not qualify for the exemption provided by the paragraph.
- B. Proposals that result in a number of units equal to or greater than the number of units lost as determined by the Planning Authority.
- C. Legally nonconforming dwelling units existing in zones which no longer permit residential uses.
- D. Property which has been ordered demolished by the City, pursuant to 17 M.R.S. § 2851, et seq.,

as amended, except where it is determined by the Building Authority that the deterioration was caused by neglect or lack of maintenance.

- E. Paragraph (A) above notwithstanding, the conversion to a nonresidential use of any dwelling units located on the ground floor of a building within a mixed-use zone.

18.1.4 Planning Authority approval required

Notwithstanding any other provision of this section, a proposal to demolish or to convert three or more dwelling units to a nonresidential use in a zone where such use is otherwise permitted must first obtain approval from the Planning Authority. In addition to any other requirements of the Land Use Code, the applicant must submit a statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units.

18.1.5 Tenant notification requirements

Prior to elimination as a result of demolition or conversion to nonresidential use, the owner shall:

- A. Provide the Planning Authority a list containing the name of each tenant currently residing in the dwelling units to be demolished or converted to nonresidential use, as well as verification of compliance with tenant notice requirements of this subsection.
- B. Deliver to each tenant who occupies such a dwelling unit a written notice to vacate the unit. The notice shall either be sent by certified mail, return receipt requested, or served in-hand. The notice will grant the tenant not less than 90 days from the date of receipt of the notice to vacate the unit.

- C. File proof of service of the notice with the Planning Authority.

18.1.6 Housing replacement requirements

- A. The Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to nonresidential use.
- B. This requirement may be satisfied in any one of the following ways, which may be used in combination:
 1. *Construction of units.* The construction of housing units within a new structure or a new addition either on site or off-site.
 2. *Residential conversion.* The conversion of a nonresidential building to residential use.

18.1.7 Replacement unit requirement

In addition to the foregoing, all replacement units built pursuant to Subsection 18.1.6.B above shall:

- A. Be located within the same United States census block group as the parcel from which the dwelling units are being removed or within 1,500 feet of the dwelling units being removed.
- B. Not previously have been on the market as of the date of application.
- C. Be situated within a development which has not been a candidate for site plan approval as of the date of the application.
- D. Be comparable in size to the units replaced. For the purpose of this section, “comparable in size” means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units to be replaced.



18.1.8 Contribution to the Housing Trust Fund

- A.** The applicant may meet the requirements of this housing replacement ordinance by depositing \$50,000 for each dwelling unit into the City's Housing Trust Fund.
- B.** Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the index") for January 1, 2003 year, and the numerator of which shall be the index for the same month in each subsequent year. In the event that the index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence, or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the index. If the index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the index, the base index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2004 shall not be less than the amount originally required to be deposited for each rooming or dwelling unit.

18.1.9 Performance guarantee

Owners or affiliates must post a performance guarantee in the form of a letter of credit, or other security acceptable to the City attorney, in the amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to Subsection 18.1.8. Such a performance guarantee shall be valid for no more than three years, after which the full amount due shall be provided to the City's Housing Trust Fund if replacement units satisfying the conditions of this housing replacement ordinance do not have certificates of occupancy.

18.1.10 Partial waiver of replacement requirements

- A.** Any owner who has applied for site plan review for elimination or conversion to nonresidential use of dwelling units may apply to the Zoning Board of Appeals for a partial waiver from the housing replacement requirements of this section. Such waiver may be a downward adjustment of up to 50% of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:
 - 1. The proposed development is consistent with the Comprehensive Plan.
 - 2. The proposed development provides significant value and benefit to the immediate and surrounding neighborhood, including, but not limited to, community enhancement, social benefits or job creation.
 - 3. The applicant demonstrates with objective evidence that the imposition of the requirements of this section would impose such an economic burden upon the

project relative to its scope that it renders the project impossible to develop.

4. The requested relief does not constitute a grant of a special privilege inconsistent with the limitations upon similar properties.
- B.** The Zoning Board of Appeals must make positive findings on each of the four criteria above in order for any such adjustment to be valid. An applicant aggrieved of a decision of the Zoning Board of Appeals may appeal a decision under this subsection pursuant to the provisions of Article 2.

18.1.11 Effect of other City ordinances

- A.** Nothing in this section shall permit the demolition or conversion to nonresidential use of dwelling units in residential property protected by Article 17, except as permitted by that ordinance.
- B.** A conditional zone may not be used to circumvent the application of this section. The terms of this section shall apply to any conditional zone which involves dwelling units affected by this section. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the City and the applicant from agreeing to terms which exceed those imposed by this section by means of a conditional zone.

18.1.12 Appeals

Any applicant aggrieved by a decision of the Planning Authority under this section may appeal to the Zoning Board of Appeals within 30 days of that decision.

18.2 AFFORDABLE HOUSING

18.2.1 Purpose

It is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section therefore is to offer incentives to developers to include units of affordable and workforce housing within development projects, thereby mitigating the impact of market rate housing construction, or the demonstrated increase in affordable housing needs resulting from the creation of new lower-income jobs, on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the city. The City believes that this section will assist in meeting the City's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety, and welfare of its citizens.

TABLE 18-A: AFFORDABLE HOUSING FEE REDUCTIONS

% of New Units That are Low- Income or Workforce	Development Fee Discount	Cost of Work (Building Permit) Fees
5% up to but not including 10%	5% reduction	\$10.50 per \$1,000
10% up to but not including 15%	10% reduction	\$9.90 per \$1,000
15% up to but not including 20%	15% reduction	\$9.35 per \$1,000
20% up to but not including 25%	20% reduction	\$8.80 per \$1,000
25% or more	25% reduction	\$8.25 per \$1,000

18.2.2 Reduction of fees

- A.** Notwithstanding any other provision of this Land Use Code or Chapter 6 to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in Table 18-A.
- B.** Development fees shall include:
1. Site plan review and inspection fees.
 2. Subdivision review and inspection fees.
 3. Impact fees.
 4. Administrative fees.
 5. Construction and permit fees as described in Chapter 6 of the City of Portland Code of Ordinances.
- Development fees do not include any fees charged for review conducted by any party other than the City.
- C.** Eligible project shall mean a development project:
1. That is permissible under the provisions of this Land Use Code in the zone in which it is proposed.
 2. That will be a single-family or multi-family dwelling, or subdivision consisting of a group of dwellings, and will not be located in an R-1 or R-2 zone.
 3. That creates new dwelling units, among which is at least one low-income or workforce housing unit for rent or sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a nonresidential 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.

4. Projects shall not be considered “eligible projects” solely because they are subject to Subsection 18.2.3.
- D.** The Planning Authority 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 Authority may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.
- E.** The Planning Board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the Planning Board’s jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the Planning Board shall promptly issue a decision on all such plans and applications before it for consideration.

18.2.3 Ensuring workforce housing

- A. Purpose.** Based on the City’s Comprehensive Plan and the City’s 2015 housing study, it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this subsection 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.
- B. Applicability.** This subsection shall apply to development projects that create ten or more net new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a nonresidential use to

residential use, or any combination of these elements, with the exception that projects using public financing requiring affordability restrictions, as defined by tax increment financing, U.S. Department of Housing and Urban Development funds such as HOME or CDBG, other federal, state, or local housing program, or the Low-income Housing Tax Credit program, shall be considered exempt.

C. Standards. Development projects subject to this subsection shall be subject to the following requirements:

1. Notwithstanding any language to the contrary in this Land Use Code, all developments of ten units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of this subsection, unless they are within the India Street Form-Based Code Zone, in which case the review will be conducted administratively or by the Planning Board in accordance with the thresholds of site plan review for the district.
2. At least 25% of the units in the project shall meet the definition of workforce housing unit for sale or for rent as defined in Article 3. The project shall have the option of paying a partial fee-in-lieu as per (6) below or providing an additional unit on-site for any fractional value.
3. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.
4. Workforce units must be integrated with the rest of the development, must use a common entrance, and must provide no indications from common areas that these units are workforce housing units.
5. 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 no less than 10 percent of the total number of bedrooms in the development. For the purposes of calculating the number of bedrooms in a development, every 400 square feet in each market rate unit will count as a bedroom if the Planning Authority determines this method is appropriate in lieu of counting actual bedrooms.
6. As an alternative to providing workforce housing units, projects may pay a fee-in-lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund. The fee for affordable units not provided shall be \$150,000 per unit, adjusted annually in the same way as the fee under Subsection 18.1.8.
7. Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.
8. If at least 33% of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing TIF, subject to City Council approval.
9. The term of affordability for the required 25% workforce units provided shall be defined as shown in Table 18-B.



HOUSING

TABLE 18-B: MINIMUM TERM OF AFFORDABILITY FOR REQUIRED WORKFORCE UNITS

% of Workforce Units Provided	Minimum Term of Affordability
25%	30 years
50%	20 years
100%	10 years

TABLE 18-C: BONUSES FOR ELIGIBLE PROJECTS

% Low-income or Workforce Units	% Workforce Units	Density Permitted ¹	Additional Height Permitted ²	Setback Reductions ³
10-19%	20%	1.1 x base	N/A	N/A
20-29%	40%	1.2 x base	10 ft.	N/A
30-39%	60%	1.3 x base	10 ft.	5 ft.
40-49%	80%	1.5 x base	15 ft.	5 ft.
50-74%	100%	2.5 x base	25 ft.	10 ft.
≥ 75%	N/A	2.5 x base	25 ft.	10 ft.

¹ “Base” is the number of units allowed under the zoning without this bonus but with any other bonuses applied. In R-P zones, multifamily is permitted with a “base” no less than 1 unit per 1,500 SF of land area. ~~If an eligible project is providing both workforce and affordable housing units, the applicant shall have the option of utilizing applicable incentives, but not cumulatively.~~

² The maximum additional height permitted in the B-1/B-1b zones and the R-P zone shall be 15 feet. In addition, the maximum structure height is 50 feet within 750 feet of the Portland Observatory.

³ Setback reductions are absolute reductions in front, side, and/or rear setback requirements. The maximum setback reductions in the B-1/B-1b and R-P zones shall be 5 ft.

- D. Implementing regulations.** Regulations to further specify the details of this subsection shall be developed, including, but not limited to:
1. Specific methodology for income verification.

2. Situations where less than permanent affordability might be considered.
3. Guidelines for meeting the requirement that off-site units be “in the same neighborhood.”

- E. Reporting to City Council.** In conjunction with the annual report on the Housing Trust Fund, the Planning Authority shall annually report on developments subject to this subsection, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this subsection in achieving its stated purpose.

18.2.4 Density and dimensional bonuses and reductions

Notwithstanding any other provision of this Land Use Code to the contrary, in order to encourage low-income and workforce units in designated growth areas, eligible projects as defined under Subsection 18.2.2 may avail themselves of the following options:

- A. Density and dimensional bonuses.** The maximum number of units that would otherwise be allowed under this Land Use Code shall be increased for an eligible project in the manner described in Table 18-C, applicable where multi-family is allowed as a permitted or conditional use, with the exception of the I-B zone. Other dimensional bonuses related to height and setbacks shall only be applicable in the B-1/B-1b, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-5, R-7, and R-P zones.

- B. Planned Residential Unit Developments (PRUDs).** ~~In order to promote orderly development of low- and moderate-income development as PRUDs, in the R-3, R-5, and R-5a zones, any project-PRUD in which more than~~

50% of the units are low-income or workforce units for rent or for sale may utilize the following dimensional bonuses and changes:

1. ~~Minimum lot area per dwelling unit is reduced by 50%. The maximum number of units that would otherwise be allowed under this land use code shall be increased by 2.5.~~
2. Maximum number of units and maximum length of buildings do not apply but may be set through site plan review.
3. Minimum building setbacks may be reduced to 10 feet.
4. The PRUD may cross public rights of way provided that the right of way does not count towards minimum lot size nor towards any open space requirements.
5. Minimum recreation open space area is reduced to 200 square feet per dwelling unit of common area designated for recreational purposes by the residents. Minimum contiguous size and setbacks do not apply and shall be set through site plan review.
6. The Planning Board's *Design Manual*, design standards, and guidelines with respect to PRUDs shall apply in full to PRUDs utilizing this subsection.

C. Unit size and term of affordability. In order to be eligible for this subsection, the low-income and workforce housing units must meet Subsections 18.2.3(C)(3), (4), and (5).

~~C.D. Term of affordability.~~ ~~Affordable units under this section shall be deed-restricted to remain and be affordable for 30 years or the longest term permitted under federal, state, and local laws, whichever is longer. Such deed~~

~~restrictions shall be recorded in the Cumberland County Registry of Deeds.~~

D.E. Required public process. The developer of the project must also commit to a good faith effort to communicate openly with affected properties as their process moves forward. At a minimum, no less than 30 days prior to application for site plan review, any project that wishes to take advantage of this subsection must hold a public meeting noticed to all properties within 500 feet of their site and post a sign on the property in question describing the proposed project, intent to submit an application to the City in 30 days (cite anticipated submission date), and contact information for the developer and the Planning Authority. The Planning Board may adopt regulations regarding the content and processes for noticing as part of the *Technical Manual*.

E.F. Projects under 18.2.3. Projects that are subject to Subsection 18.2.3 that choose to provide the required workforce housing units on site are eligible for a 25% increase in total permitted units. If an eligible project as defined under Subsection 18.2.2 is also subject to Subsection 18.2.3, the applicant shall have the option of utilizing either this bonus or any bonuses they are eligible for under Subsections 18.2.4(A) and (B) but not both.

18.2.5 Inclusionary zoning for hotel projects

A. Purpose. This subsection is based on City analysis, most specifically the analysis documented in the Greater Portland Council of Government study *Proposed Hotel Linkage Fee: Supportable Range* dated August 29, 2018, that finds that new hospitality developments create



a need for new affordable housing. This need is the result of the fact that hospitality developments necessarily create a number of jobs that do not pay employees at a rate sufficient to allow those employees to afford market-rate housing in the City of Portland.

- B. Hotel projects.** For the purposes of this subsection, hotel projects shall include any hotel as defined in Article 3 consisting of 10 or more guest rooms for rent. Any expansion of an existing hotel by 10 or more rooms within any five-year period will also be considered a hotel project.
- C. Hotel projects conditional uses.** Notwithstanding anything to the contrary in this Land Use Code, all hotel projects are conditional uses subject to Planning Board review on the condition that they comply with the requirements of this Subsection 18.2.5.
- D. Low-income housing minimum.** All hotel projects shall provide one unit of low-income housing for rent in the City of Portland for every 28 rooms in the hotel project, which shall meet the standards outlined in Subsections 18.2.3(C)(3), (4), and (5) and in the implementing regulations governing low-income units. This amount shall be rounded up to the nearest increment of 28 rooms. These units shall be deed restricted for the longest period permitted by law, shall not be used for short-term rentals of less than 30 days, and must be provided with distinct entrances from the street to delineate them from the hotel itself.
- E. Fee-in-lieu alternative.** As an alternative to providing low-income housing units under Subsection 18.2.5(D) above, a hotel project may pay a fee-in-lieu of \$3,806 per hotel guest

room. This amount shall be paid into the City's Housing Trust Fund and used for the purposes set forth in the ordinance and regulations applicable to that trust.

- F. Annual adjustments.** The amounts in Subsection 18.2.5(E) above shall be adjusted annually in the same way as the fee under Section 18.1.8.
- G. Regulations.** The Planning Board may promulgate implementing regulations based on this subsection.

18.3 JILL C. DUSON HOUSING TRUST FUND

18.3.1 Purpose

The purpose of enacting this section is:

- A.** To establish a City of Portland Housing Trust Fund for the promotion, retention, and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the city.
- B.** To serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as set out in this article.

18.3.2 Establishment of the Jill C. Duson Housing Trust Fund

The City Council shall establish a special revenue account under the name "City of Portland Jill C. Duson Housing Trust Fund" (Housing Trust Fund). Deposits into the fund shall include:

- A.** Contributions from the City's housing replacement ordinance under Subsection 18.1.8.
- B.** In-lieu fees under Subsections 18.2.3 and 18.2.5.
- C.** Funds appropriated to be deposited into the fund by vote of the City Council.

- D. Voluntary contributions of money or other liquid assets to the fund.
- E. Any federal, state, or private grant or loan funds provided to the fund.
- F. Interest from fund deposits and investments.
- G. Repayments of loans made from the fund.

18.3.3 Management of the trust fund

The City Manager, or his or her designee, shall serve as the manager of the Housing Trust Fund. The responsibilities of the manager, subject to the orders of the City Council, shall include:

- A. Maintaining the financial and other records of the Housing Trust Fund.
- B. Disbursing and collecting Housing Trust Fund monies in accordance with the Housing Trust Fund annual plan.
- C. Monitoring the use of monies distributed to successful applicants for Housing Trust Fund support to assure on-going compliance with the purposes of the fund and the conditions under which these monies were granted or loaned.

18.3.4 Housing Trust Fund annual plan

- A. Each fiscal year, the City Council shall adopt a Housing Trust Fund annual plan. The City Manager shall submit to the City Council a recommended Housing Trust Fund annual plan, utilizing the revenues of the Housing Trust Fund as well as any other funds the manager may propose as appropriate. The housing committee of the City Council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action.

- B. The Housing Trust Fund annual plan shall include:
 1. A description of all programs to be funded in part or in full by the Housing Trust Fund.
 2. A description of how funds from the Housing Trust Fund will be distributed among very low-income, low-income and moderate-income households.
 3. The amount of funds budgeted for programs funded in part or in full from the Housing Trust Fund.
- C. Priority for the expenditure of funds collected pursuant to Section 18.1 shall be given to the creation of new housing stock, through either new construction or conversion of nonresidential buildings to residential use.

18.3.5 Distribution and use of the Housing Trust Fund's assets

- A. All distribution of principal, interest, or other assets of the Housing Trust Fund shall be made in furtherance of the public purposes set out in Section 18.1.
- B. During each year, the Housing Trust Fund shall disburse as grants or loans so much of the Housing Trust Fund's assets as the City Council in its discretion has approved in the Housing Trust Fund annual plan.
- C. Funds shall not be used for City administrative expenses.
- D. Funds shall not be used for property operating expenses or supporting services.
- E. No grants or loans shall be awarded by the Housing Trust Fund to corporations, partnerships, or individuals who are delinquent at the time of application in the payment of property taxes or other fees to the City of Portland, who have been convicted of arson,



who have been convicted of discrimination in the sale or lease of housing under the fair housing laws of the State of Maine, or who have pending violations of current City electrical, plumbing, building, or housing codes or zoning ordinances.

18.3.6 Term of affordability

- A.** Whenever funds from the Housing Trust Fund are used for the acquisition, construction, or substantial rehabilitation of an affordable rental or cooperative unit, the City of Portland shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of 30 years.
- B.** Whenever funds from the Housing Trust Fund are used for the acquisition, construction, or substantial rehabilitation of ownership housing, the City of Portland shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining and equitable balance between the interests of the owner and the interests of the City of Portland.
- C.** The affordability restriction requirements described in this subsection shall run with the land and the City of Portland shall develop appropriate procedures and documentation to enforce these requirements and shall record such documentation in the Cumberland County Registry of Deeds.

18.4 CONDOMINIUM CONVERSION

18.4.1 Purpose

The purpose of this section is to regulate the conversion of rental housing to condominiums, to minimize the potential adverse impacts of such conversion on tenants, to ensure that such converted housing is safe and decent, and to maintain a reasonable balance of housing alternatives within the city for persons of all incomes.

18.4.2 Applicability

This section shall apply to the conversion of any rental unit to a condominium unit. For the purposes of this section, developer shall mean any person or other legal entity, but not including an established lending institution unless it is an active participant in a common promotional scheme, who, whether acting as principal or agent, records a declaration of condominium that includes real estate, any portion of which was previously a rental unit.

18.4.3 Protection of tenants

- A. Notice of intent to convert.** A developer shall give to each tenant, meaning any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise, written notice of intent to convert at least one 120 days before the tenant is required by the developer to vacate. If a tenant has been in possession of any unit within the same building for more than four consecutive years, the notice period shall be increased by 30 additional days for each additional year, or fraction thereof, to a maximum of 240 additional days. The notice shall set forth specifically the rights of tenants under (A), (B), and (C) of this subsection and Subsection 18.4.4, and shall contain the following statement:

If you do not buy your apartment, the developer of this project is required by law to assist you in finding another place to live and in determining your eligibility for relocation payments. If you have questions about your rights under the law, or complaints about the way you have been treated by the developer, you may contact the Department of Permitting & Inspections, City of Portland, 389 Congress Street, Portland, Maine 04101.

- B. If the notice specifies a date by which the tenant is required to vacate, the notice may also serve as a notice of termination under the applicable law of forcible entry and detainer, if it meets the requirements thereof. The notice shall be hand delivered to the tenant or mailed, by certified mail, return receipt requested, postage prepaid, to the tenant at the address of the unit or such other address as the tenant may provide. The notice shall be effective when actually received. No tenant may be required by a developer to vacate without having been given notice as required herein, except for the reasons specified in the applicable law of forcible entry and detainer, and in accordance with the procedures thereof. The terms of a tenancy, including rent, may not be altered during the notice period, except as expressly provided in a preexisting written lease. If, within 120 days after a tenant is required by a developer to vacate, the developer records a declaration of condominium without having given notice as required herein, the developer shall be presumed to have converted in violation of this article.

- C. **Option to purchase.** For a 60-day period following the giving of notice as required in Subsection 18.4.3(A), the developer shall grant to the tenant an exclusive and irrevocable option to purchase the unit of which the tenant is then possessed, which option may not be assigned. If the tenant does not purchase or contract to purchase the unit during the 60-day period, the developer may not convey or offer to convey the unit to any other person during the following 180 days at a price or on terms more favorable than the price or terms previously offered to the tenant, unless the more favorable price or terms are first offered exclusively and irrevocably to the tenant for an additional 60-day period. This subsection shall not apply to any rental unit that, when converted, will be restricted exclusively to nonresidential use. If, within two years after a developer records a declaration of condominium, the use of any such unit is changed such that but for the preceding sentence, this subsection would have applied, the developer shall be presumed to have converted in violation of this article.

18.4.4 Relocation payments

If the tenant does not purchase the unit, the developer shall, before the tenant is required by the developer to vacate, make a cash payment to the tenant in an amount equal to the amount of rent paid by the tenant for the immediately preceding two months, provided that this requirement shall not apply to any tenant whose gross income exceeds 80% of the median income of the Portland SMSA, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development at the time notice is given as required



in Subsection 18.4.3. Additionally, the developer shall, upon demand, provide assistance to the tenant in the form of referrals to other reasonable accommodations and in determining the tenant's eligibility for relocation payments as provided herein.

18.4.5 Conversion permit

Before conveying or offering to convey a converted unit, the developer shall obtain a conversion permit from the Building Authority. The permit shall issue only upon receipt of a completed application therefore in a form to be devised for that purpose, payment of a fee of \$25,000 per converted unit, to be adjusted annually in the same way as the fee under Chapter 14, Section 18.1.8 of this code, at least \$1,000 of which shall be appropriated to the Housing Safety Office for the administration and enforcement of the Rent Stabilization Ordinance, Chapter 6, Articles XII and XIII of this code, and the remainder of which shall be paid into the Jill C. Duson Housing Trust Fund, and a finding, upon inspection, that each unit, together with any common areas and facilities appurtenant thereto, is in full compliance with all applicable provisions of Chapter 6, Articles II, III, and V and Chapter 10, Article II of the City of Portland Code of Ordinances, and the Life Safety Code as adopted by the state. The developer shall post a copy of the permit in a conspicuous place in each unit and shall make copies available to prospective purchasers upon request.

18.4.6 Variation by agreement

No provision of or right conferred by this Section 18.4 may be waived by a tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage, or induce a tenant

to waive any provision hereof, or right conferred hereby, shall be a violation of this article. Nothing herein shall be construed to void any term of a lease which offers greater rights than those conferred hereby.

18.5 RELOCATION OF DISPLACED TENANTS

18.5.1 Purpose

The purpose of this section is to encourage the retention of a diverse housing supply throughout the downtown and in areas readily accessible to the downtown, to ensure that persons displaced as the result of redevelopment of residential units to nonresidential uses within the B-3 Downtown Business zone are treated fairly and consistently, and to ensure that persons so displaced will be relocated at the reasonable expense of the developer to comparable housing at a location providing comparable access to services and amenities.

18.5.2 Notice and eligibility for relocation assistance

When a proposed development will result in the displacement of residents of an existing structure, the developer of the property shall give all tenants written notice as set forth below and shall provide relocation assistance as set forth below for any tenant whose gross income is 80% or less of the median income of the Portland SMSA, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development at the time the developer gives the tenant written notice of intent to cause removal of the residential unit. Such written notice shall be given to the tenant at least 120 days before the tenant shall be required to vacate the premises and shall contain the following statement:

The developer of this project is required by law to assist you in finding another place to live and in determining your eligibility for relocation payments. If you have questions about your rights under the law, or complaints about the way you have been treated by the developer, you may contact the Department of Planning and Urban Development, City of Portland, 389 Congress Street, Portland, Maine 04101.

18.5.3 Relocation assistance for all tenants

The developer shall provide, upon demand, assistance to all tenants who will be displaced by the development in the form of referrals to other reasonable accommodations and in determining the tenants' eligibility for relocation payments as provided herein. The developer shall make relocation payments to eligible tenants in accordance with the schedule adopted by the City Council in Subsection 18.5.4.

18.5.4 Schedule of relocation payments for eligible tenants

The developer shall, before the tenant is required by the developer to vacate, make a cash payment to the tenant in an amount equal to the amount of rent paid by the tenant for the immediately preceding two months.

19 OFF-STREET PARKING & LOADING

19.1 OFF-STREET PARKING

19.1.1 General

Off-street parking, either by means of structured or surface spaces, in addition to being a permitted principal use in certain zones, shall be considered as an accessory use when required or provided to serve principal uses. The provisions of this article shall apply to parking as an accessory use.

19.1.2 Uses requiring off-street parking

Except as provided in Table 19-B and as provided elsewhere in this article, minimum off-street parking requirements shall be as provided in Table 19-A. For any use not listed in Table 19-A, the parking provisions for the most similar use, as determined by the Building Authority or the Planning Authority, shall apply.

19.1.3 Rules of calculation

- A. Floor area.** Unless otherwise stated, all square footage-based off-street parking standards shall be computed on the basis of gross floor area used or intended to be used for service to customers, patrons, clients, or patients. It need not include floors or parts of floors used principally for non-public purposes, such as bulk storage, cellar, or food preparation areas. These provisions notwithstanding, the "floor area" used as the basis for computing off-street parking requirements shall never be less than 80% of the total gross floor area.
- B. Fractions.** Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

- C. Multiple uses.** When two or more principal uses or separate establishments are located within the same lot, off-street parking shall be provided for each principal use or separate establishment according to Table 19-A, unless joint use is approved under Subsection 19.1.5.
- D. Accessory uses.** Off-street parking shall not be calculated separately for accessory uses.
- E. New construction.** In the case of new construction, the minimum off-street parking requirements in Table 19-A shall be met.
- F. Changes of use.** In the case of changes of use, the only additional off-street parking required shall equal the difference between the parking required for the new use and the parking required for the existing use.
- G. Building additions or alterations.** In the case of additions or alterations which increase the number of units or square footage of a given use, the only additional off-street parking required shall equal the difference between the parking required for the use in the post-development condition and the parking required for the use in the pre-development condition.

19.1.4 Shared use vehicles

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

TABLE 19-A: OFF-STREET PARKING MINIMUMS

	Vehicular	Bicycle
Single-, two-, or multi-family units	1 space/ dwelling unit	
Lodging house	1 space/5 rooming units ¹	
Special needs independent dwelling unit	1 space/4 dwelling units, plus 1 space/staff member normally present at any one time	2 spaces/5 units
Sheltered care group home	1 space/2 employees	
Congregate care facilities	1 space/3 dwelling units	
Emergency shelters	1 space/2 employees	
Long-term, extended care, and intermediate care facilities	1 space/5 beds, plus 1 space/employee normally present during weekday morning shift	
Governmental uses	1 space/400 SF of floor area	
Hospitals and clinics	1 space/500 SF of floor area	
Places of assembly	1 space/150 SF of floor area used for assembly purposes ²	
Preschool facilities	1 space/staff member normally present at any one time	
Schools	For students up to 15 years	1 space/room used for instruction purposes
	For students 16 years and older	1 space/10 seats used for instruction purposes or, if no fixed seats, 1 space/100 SF used for instruction purposes
Bed and breakfasts	1 space/2 guest rooms for first 4 guest rooms, plus 1 space/additional room thereafter ³	2 spaces/10 vehicle parking spaces for the first 100 vehicle spaces required, plus 1 space/20 vehicle parking spaces thereafter ⁴
General offices	1 space/400 SF of floor area	
Hostels	1 space/8 beds or, if within ¼ mi. of a transit stop, 1 space/12 beds	
Hotels	1 space/4 guest rooms	
Retail	1 space/200 SF of first floor area in excess of 2,000 SF, plus 1 space/700 SF for each floor above	
Restaurants and bars	1 space/150 SF of floor area	
Theaters, performance halls, funeral homes	1 space/5 seats or, if no fixed seats, 1 space/100 SF of assembly space	
Industrial uses	1 space/1,000 SF of floor area in excess of 3,000 SF not including area catering to retail	

¹ Except in the R-5 zone, where the requirement shall be 1 space/2 rooming units.

² Except for neighborhood centers which primarily serve clientele from the surrounding neighborhood, where the parking requirement shall be 1/1,000 SF of floor area

³ Except in the I-B zone, where no off-street parking shall be required for beds and breakfasts.

⁴ Development with under 10 required vehicular parking spaces shall provide at least two bicycle parking spaces.

TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS

Categorical Vehicular Exceptions		
Major site plans	The Planning Board shall establish the off-street parking requirement based on a parking study.	
Affordable housing	±2 spaces are required for every 3 units, except that the Planning Board may establish a lesser parking requirement that is less than 1 space per workforce or low income housing unit, regardless of the size of the structure.	
Multi-family housing	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 Transportation Demand Management program, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.	
Historic structures	No off-street parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required. ¹	
Accessory Dwelling Units	No off-street parking shall be required.	
Transit proximate development and uses	No off-street parking shall be required within ¼ mile of fixed route transit service. New uses or changes of use of more than 10,000 SF taking advantage of this exception shall be required to provide a Transportation Demand Management Plan if they use this provision in lieu of parking requirements.	
Zone-Based Vehicular Exceptions		
	Residential	Nonresidential
R-6	No off-street parking required for first three dwelling units. ²	
IR-1/I-B		Off-street parking requirements for nonresidential uses shall be reduced by 75%.
IR-3	No off-street parking required.	
R-OS	Off-street parking shall be adequate to serve projected employee and visitor needs.	
B-2/B-2b/B-2c		For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
IS-FBC	No off-street parking required for first three dwelling units.	For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
B-3	No off-street parking required for changes of use.	
B-5	No off-street parking required.	
B-6	Off-street parking requirement shall be determined based on a parking study.	
B-7	Off-street parking requirement shall be determined based on a parking study.	
Waterfront Zones	Off-street parking requirements shall be reduced by 50%. No off-street parking required in the WCZ.	

¹ Exception applies for uses within any contributing structure in a local or national register historic district or locally-designated or national register landmark building under Article 17. However, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

² 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 used one time.

³ If the number of existing parking spaces serving the site is less than the requirements of this article, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except to the extent necessary to meet the requirements of the Americans with Disability Act, to the extent it is a requirement or a condition of site plan review, or 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 article for all uses on the site including the change of use. A newly constructed building, a building addition, or a change of the use of a building exceeding 10,000 SF of floor area, shall provide parking as required by this article.

19.1.5 Joint use

The joint use of a parking facility by two or more principal uses may be permitted where it is clearly demonstrated that the parking facility will substantially meet the intent of the off-street parking requirements by reason of variation in the probable time of maximum use by patrons or employees among such establishments.

19.1.6 Off-site parking

Required off-street parking shall be located on the same lot with the principal use, except as follows:

- A. For uses in residential zones.** Off-street parking may be located off-site upon an applicant demonstrating the following:
1. Off-street parking cannot reasonably be provided on the same lot with the principal use.
 2. Off-site parking is proposed to be located no more than 300 feet from the principal use, measured along lines of public access.
 3. The premises to be used for off-site parking are held, either under the same ownership or by lease, by the applicant. Evidence of such control, either by deed or lease, shall be provided.
 4. The premises to be used for off-site parking have adequate parking supply to meet any parking required for existing uses on those premises.
 5. The premises to be used for off-street parking are located in the same or less restrictive zone as that of the building or use served.
- B. For uses in nonresidential zones.** Off-street parking may be located off-site at a distance of no more than 100 feet from the principal use, measured along lines of public access.

Off-street parking may be located further than 100 feet from the principal use provided the applicant demonstrates the following:

1. Off-site parking is proposed to be located no more than 1,500 feet from the principal use, measured along lines of public access.
2. The premises to be used for off-site parking are held, either under the same ownership or by lease, by the applicant. Evidence of such control shall be provided by showing, at a minimum, a signed letter of intent, purchase and sale agreement, or option for sale or lease at the time of approval, and an executed deed or lease prior to issuance of any certificate of occupancy for review and approval by Corporation Counsel. Off-site parking leases shall be for a term of not less than five years with an option to renew.
3. The premises to be used for off-site parking have adequate parking supply to meet any parking required for existing uses on those premises.

19.1.7 Fee-in-lieu of parking

- A. Applicability.** Any development subject to site plan review shall either provide the required parking on- or off-site or pay a fee-in-lieu of parking of not less than \$5,000 per space not provided. Fees shall be deposited into the Sustainable Transportation Fund, as established in Section 19.3 of this article. The fee shall be paid on or before the date upon which a certificate of occupancy is issued. Payment shall be secured by a bond at the time the amount of the fee is set.
- B. Annual adjustment.** The value of the fee shall be adjusted annually according to the

Engineering News Record construction index as published on January 1st of the current calendar year. The fee adjustment shall be calculated by dividing the index amount published on January 1st of the current year by the index amount published on January 1, 2010 (\$8,660), multiplied by the minimum fee amount of \$5,000. The base fee, the adjustment index, or the calculation method may be otherwise amended by action of the City Council from time to time.

19.1.8 Location of vehicular parking

A. In general

1. Tandem vehicular parking shall be permitted for residential uses, and for developments where managed parking is part of an approved site plan.
2. Parking shall be prohibited in the front yard, which shall mean the open space between the street line and building, except for parking within driveways on lots containing single- or two-family dwellings. "Driveway," as used in this paragraph, shall not include any turnaround area.
3. Where an existing front yard exceeds a maximum front setback, a maximum of 10% of the total parking area provided on the site may be located between the principal structure and the street.

B. In residential zones

1. Where off-street parking for six or fewer vehicles is required or provided, parking located within five feet of any lot line shall be located 50 feet or greater from any street line, except for in the R-6 zone, and parking in all residential zones shall maintain the minimum front setback from

any street line, except on a corner lot where parking shall maintain the side setback on a side street.

2. Where off-street parking for more than six vehicles is required or provided:
 - a. Parking for nonresidential uses shall be located 25 feet or greater from any residential structure on an adjoining lot.
 - b. Where vehicles are to be or may be parked within a required setback:
 - i. A continuous, permanently-anchored curb guard, at least five feet from the lot line, shall be provided between such off-street parking and that lot line involved, the top of which shall be at least 20 inches in height so that bumpers of vehicles cannot project beyond its face.
 - ii. Where such off-street parking abuts a lot in residential use or an unoccupied lot located in a residential zone, a fence, not less than 48 inches in height, shall be provided and maintained between such off-street parking and that part of the lot line involved.

C. In mixed-use zones

1. Where off-street parking for more than six vehicles is required or provided:
 - a. Where vehicles are to be or may be parked within 10 feet of any street line, a continuous, permanently-anchored curb guard shall be provided and maintained between such off-street parking and that part of the street line involved so that vehicle

- bumpers cannot project beyond its face toward the street line involved.
- b. Where such off-street parking abuts a lot in a residential zone or in residential use, a fence, not less than 48 inches in height, shall be provided and maintained between such off-street parking and that part of the lot line involved.
- 2. In the B-7 zone, off-street surface parking shall be located 35 feet or greater from any street, except in the case of:
 - a. A lot where 80% of the frontage has a building within 10 feet of that frontage.
 - b. A lot where all or a portion of the 35-foot setback area had a gravel surface not exceeding 15,000 square feet as of 9/29/15 and the principal use served is in a building meeting the minimum height requirements of the Bayside Height Overlay or of 25,000 square feet or greater. In these cases, the total number of spaces within the 35-foot setback and elsewhere on site shall not exceed parking requirements. Parking within the 35-foot setback shall provide stormwater quality treatment.
 - c. The 35-foot setback requirement shall not apply to a driveway located perpendicular to the site.

19.1.9 Off-street parking restricted

Off-street parking shall not include:

- A. More than one commercial motor vehicle in any residential zone, the R-P zone, or the B-1/B-1b zones.

- B. More than six commercial motor vehicles in the B-2/B-2b/B-2c zone.
- C. Loading, sales, dead storage, repair, or servicing of any kind, except when customarily incidental or accessory to a conforming principal use when located in an industrial zone.
- D. Notwithstanding Section 19.1.9(A), any truck body, commercial trailer, or similar commercial vehicles in any residential zone or the R-P zone.

19.2 OFF-STREET LOADING

19.2.1 Uses requiring off-street loading

Off-street loading is not required in the B-6, B-7 or WCZ zones. In all other zones, the minimum off-street loading bays or loading berths shall be as provided in Table 19-C. These minimum requirements shall be met and maintained in the case of new construction, alterations, and change of use.

19.2.2 Design of off-street loading

Each loading bay shall have minimum dimensions of 50 feet by 14 feet and may be located either within a building or outside and adjoining an opening in the building, except that in the case of hospitals and intermediate, long-term, and extended care facilities, the off-street loading area provided for ambulance and other emergency vehicles shall be exempt from the minimum dimensional requirement but shall be of sufficient width and depth to permit expeditious access and egress from the loading area. Every part of such loading bay shall be located completely off the street. In case trucks, trailers, or other motor vehicles larger than the dimensions of the minimum loading bay habitually serve the building in question, additional space shall be provided so that such vehicle shall park or stand completely off the street.

TABLE 19-C: OFF-STREET LOADING REQUIREMENTS

Use and Size (Gross Floor Area)		Minimum Number of Bays or Berths
General offices and hotels (> 100,000 SF)		1
Retail and industrial	5,000 - 40,000 SF	1
	40,000 - 100,000 SF	2
	100,000 - 160,000 SF	3
	160,000 - 240,000 SF	4
	240,000 - 320,000 SF	5
	320,000 - 400,000 SF	6
Each 90,000 over 460,000 SF		1 additional
Hospitals and intermediate, long-term, and extended care facilities		2 off-street loading areas shall be provided whereby one service area for ambulance and other emergency vehicles shall be separate from one service area accommodating supply vehicles, and whereby both off-street loading areas shall be separate from parking and entrance locations.

19.2.3 Requirements for additional bays, alterations, or modifications

Any additional loading bays which are provided in excess of the requirements of this article or any loading bays otherwise established shall meet the requirements of Subsection 19.2.2, and no alterations or modifications shall be made in an existing building or structure whereby loading openings or platforms are constructed or established unless the provisions of Subsection 19.2.2 are met.

19.2.4 Nonconformity as to off-street loading

A building which is nonconforming as to the requirements for off-street loading shall not be enlarged or added to, unless off street loading is provided sufficient to satisfy the requirements of Article 19 for both the addition or enlargement and the original building or structure.

19.3 SUSTAINABLE TRANSPORTATION FUND

19.3.1 Establishment

By act of the Portland City Council, the Sustainable Transportation Fund is hereby established.

19.3.2 Purpose

The purpose of the Sustainable Transportation Fund is to implement those provisions of the *Peninsula Transit Study Report and Action Plan*, as adopted by the Portland City Council on August 3, 2009, which recommended creation of a Sustainable Transportation Fund. The *Peninsula Transit Study Report and Action Plan* established a goal to reduce the number and impact of single-occupancy vehicle trips to and from the Portland Peninsula. Achieving this goal requires transportation choice for residents, businesses, and visitors. This ordinance establishes a funding source for broadening transportation choice and facilitating development with lower traffic impacts and reduced parking requirements. The mechanism and protocol for collecting fees and spending funds

are consistent with state requirements for utilizing transportation-related impact fees.

19.3.3 Deposits and expenditures

A. Deposits. The City shall establish a Sustainable Transportation Fund to be set up as a separate account within the City. Deposits into the fund shall include:

1. 100% of the revenue generated by the fee in-lieu of parking program, as established in Subsection 19.1.7 of this article.
2. Funds appropriated for deposit into the fund by vote of the City Council.
3. Voluntary contributions of money or other liquid assets to the fund.
4. Any federal, state or private grant or loan funds provided to the fund.

B. Accounting of deposits. Funds from the fee in-lieu of parking program, as established in Subsection 19.1.7, shall be individually collected and accounted for by project and the geographic fee in-lieu of parking subdistrict in which it is located.

C. Funds to be used within 10 years of deposit. Funds collected under the fee in-lieu of parking ordinance shall be spent on eligible infrastructure and/or capital improvements or expenses within 10 years of the date of collection. Any funds which are not so utilized and which exceed the City's actual costs of implementing the infrastructure improvement or improvements for which such fees were collected shall be refunded. Refunds shall be paid to the owner of records of the property for which the funds were collected, determined as of the date the refund is made.

D. Use of funds by subdistrict. Funds collected under the fee in-lieu of parking ordinance shall

be spent on permitted expenditures of the fund within the same geographic fee in-lieu of parking sub-district as the contributing project. However, for projects located within 250 feet of an abutting subdistrict, contributed fees can be used for eligible infrastructure projects in either abutting subdistrict.

E. Permitted expenditures of the fund. The Sustainable Transportation Fund may only be expended on the activities as described below:

1. Funds collected as fees in-lieu of parking shall be expended toward capital transportation improvements. Such capital improvements shall include but are not limited to the following:
 - a. Parking infrastructure:
 - i. Shared use, publicly accessible parking facilities.
 - ii. Publicly accessible bicycle racks and bicycle parking shelters.
 - b. Transit capital improvements and expenses:
 - i. Bus shelters, bus turnouts, transit signage and other transit amenities.
 - ii. Buses and transit vehicles.
 - iii. Transit and transportation information systems.
 - iv. Fixed guide way and/or rail transit systems.
 - c. Pedestrian and bicycle infrastructure:
 - v. Multi-use trails and non-vehicular transportation corridors.
 - vi. Pedestrian infrastructure and amenities located on publicly accessible rights-of-way including but not limited to crosswalks, signalization, landscaping, street

furniture, wayfinding signage, traffic calming, and lighting.

- vii. New public sidewalks and new bicycle lanes along publicly accessible rights of way or corridors where such facilities are not previously provided.

- d. Other such improvements intended to enhance transportation choice and promote transit and non-automotive transport.

- 2. Funds collected or appropriated by means other than from a fee in-lieu of parking may be used for any of the capital transportation improvements listed above, and for any of the following uses:

- a. Transportation Demand Management program administration.
- b. On- or off-peninsula transit and/or non-automotive transportation capital or operating expenses.
- c. Transit and/or non-automotive transportation promotion and education material.
- d. Other such programs or improvements intended to enhance transportation choice and promote transit and non-automotive transport for the City of Portland.

- F. **Annual Sustainable Transportation Plan and appropriations schedule.** Annually, the City Manager shall submit to the City Council a recommended sustainable transportation plan and appropriations schedule, utilizing the revenues of the Sustainable Transportation Fund. The Transportation Committee of the City Council or such other committee as the council shall designate shall recommend and

refer the plan and appropriations schedule to the City Council for action.

LD 2003 Zoning Text Amendments

APPROVED

APRIL 27, 2022

BY GOVERNOR

CHAPTER

672

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-TWO

H.P. 1489 - L.D. 2003

**An Act To Implement the Recommendations of the Commission To Increase
Housing Opportunities in Maine by Studying Zoning and Land Use
Restrictions**

WHAT IS LD 2003?

Goal: to remove local barriers to housing production

Requires: Adoption of regulations, including

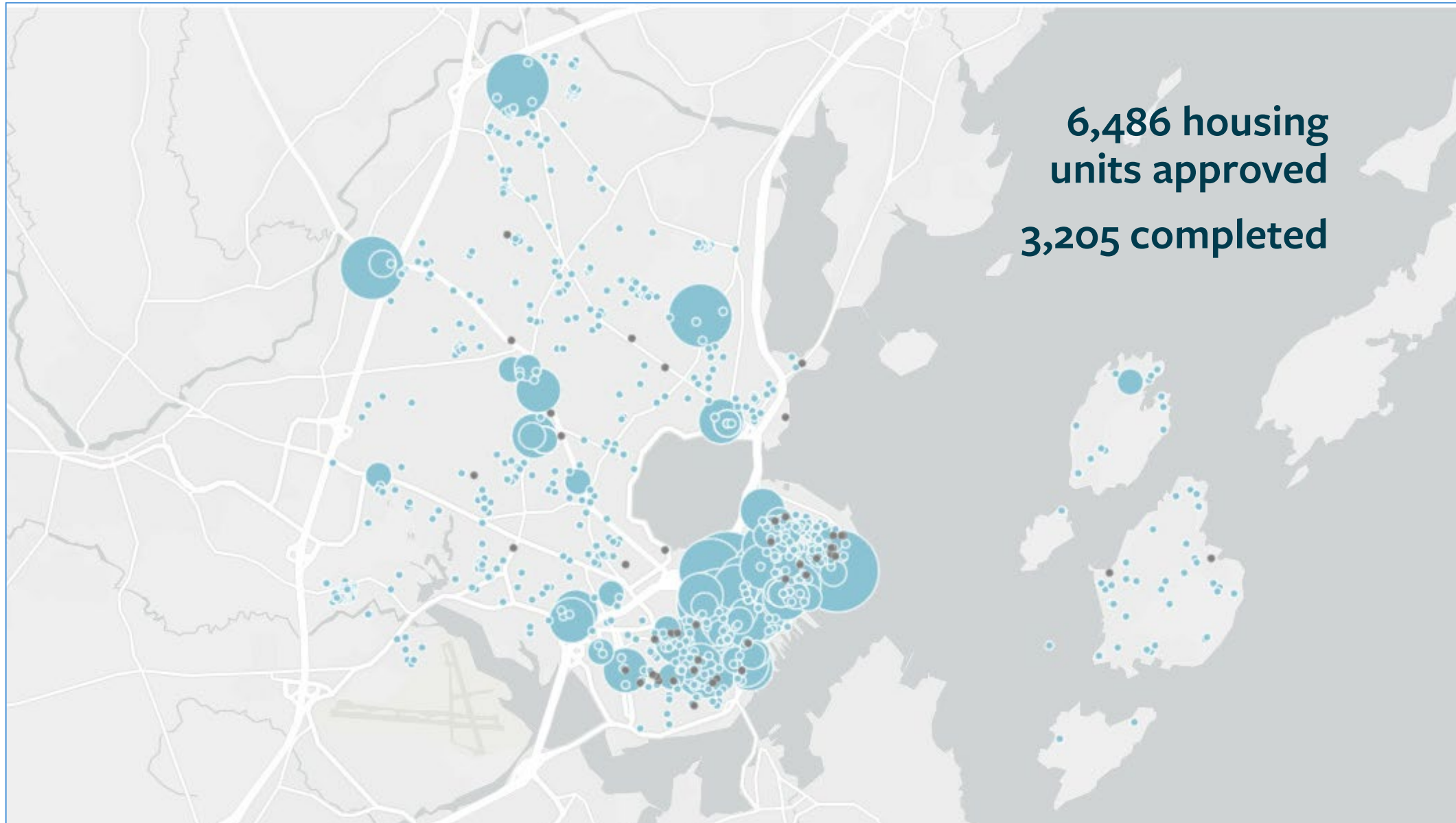
- Affordable housing density bonuses
- Dwelling unit allowances
- Accessory Dwelling Units (ADUs)

Deadline: January 1, 2024

HOW DO WE CURRENTLY COMPLY?

30-A MRSA §4364. AFFORDABLE HOUSING	Definitions	○
	Density requirements - Density bonus - Parking requirements	○ ○
	Long-term affordability	○
30-A MRSA §4364-A. RESIDENTIAL DENSITY	Use allowed - Up to 2 dwelling units on vacant lot - Up to 4 dwelling units on vacant lot in growth area 2 additional dwelling units on a lot with one existing dwelling unit	○ ○ ○
	General requirements	○
	Use permitted	●
30-A MRSA §4364-B. ADUs	Zoning requirements	●
	General requirements	●
	- Exempt ADUs from density requirements - Same or more permissive setback & dimensional requirements for ADUs - No additional parking requirements for ADUs	○ ●

HOUSING APPROVED 2010-present

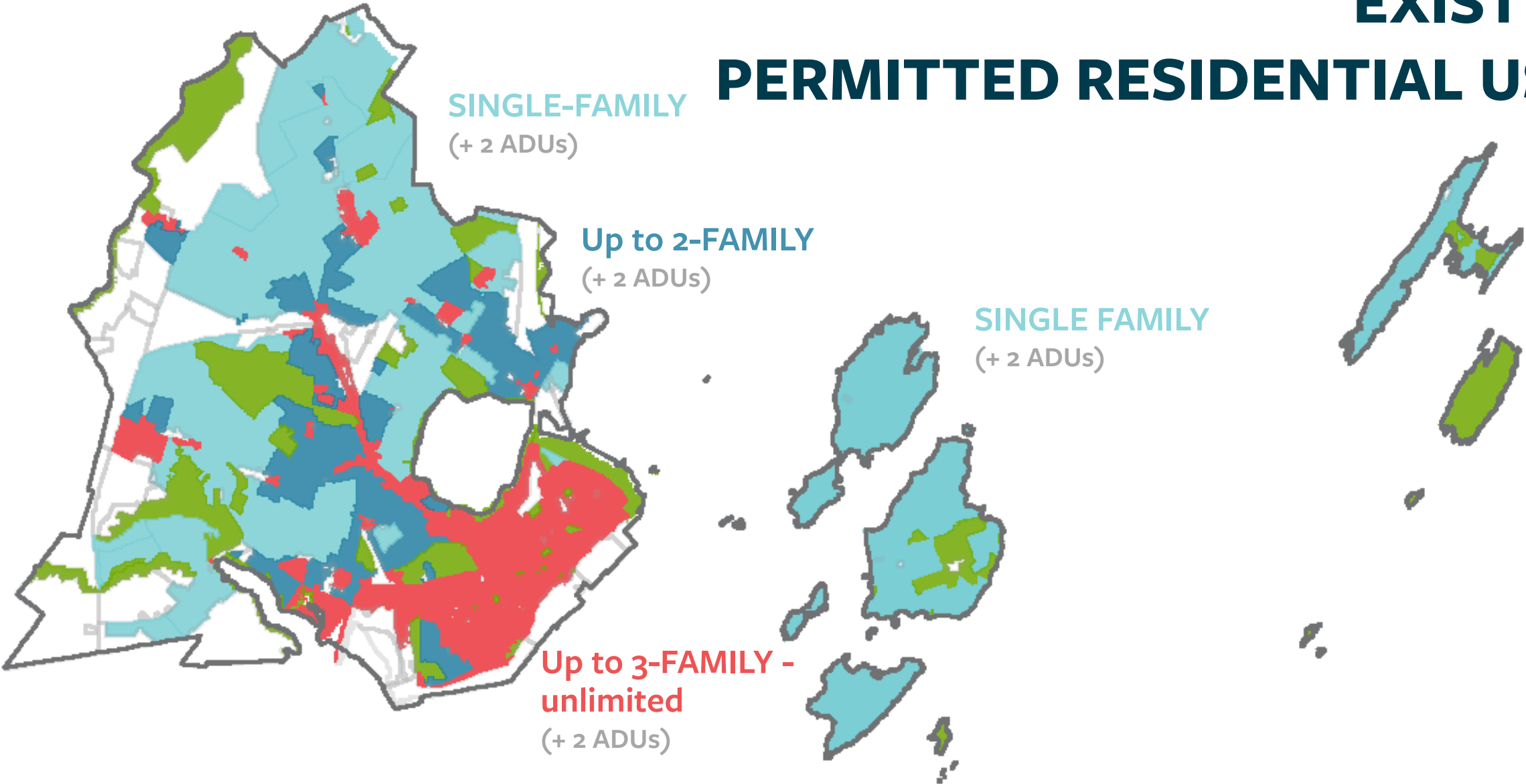


HOW MUCH MORE HOUSING COULD BE PRODUCED THROUGH RECODE?

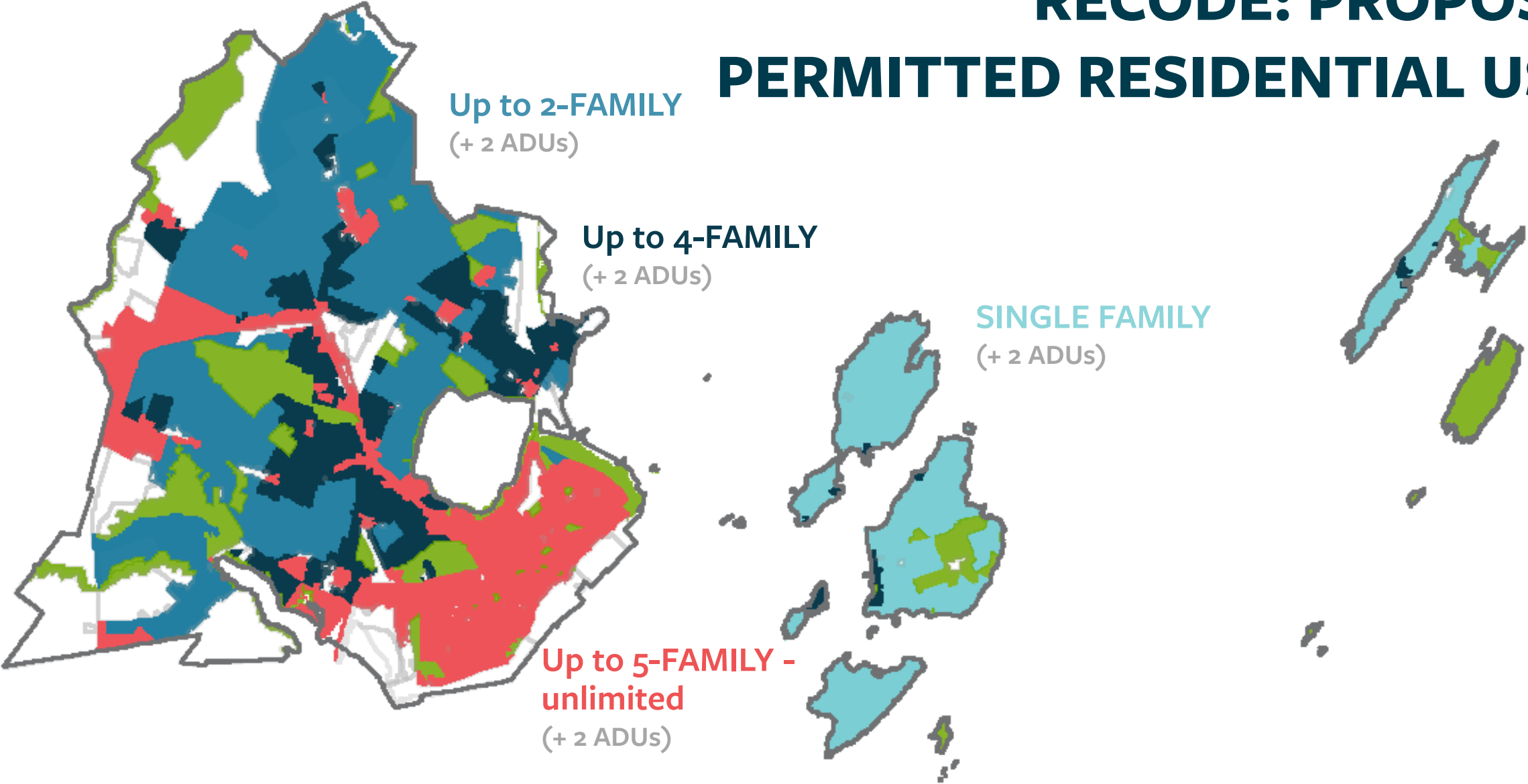


ReCode
PORTLAND

EXISTING PERMITTED RESIDENTIAL USES

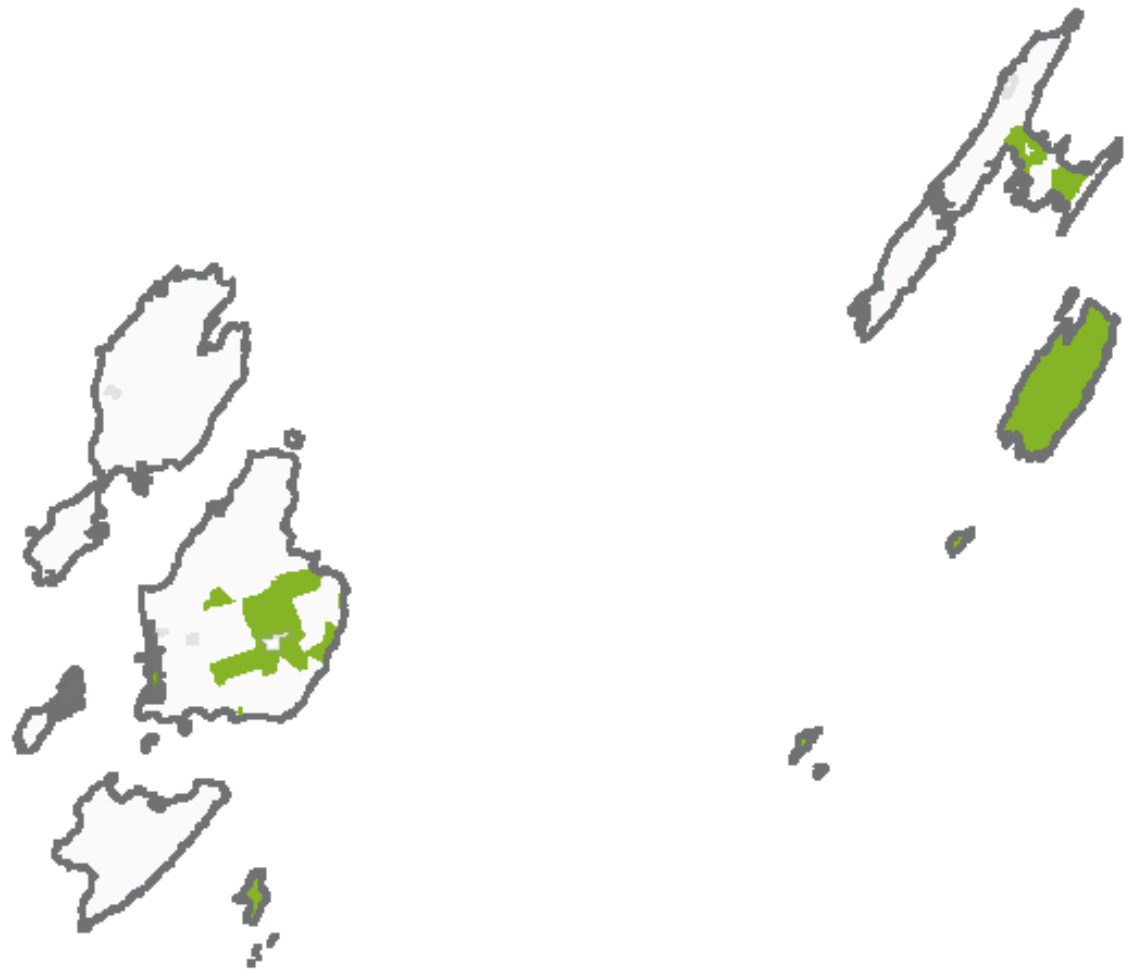
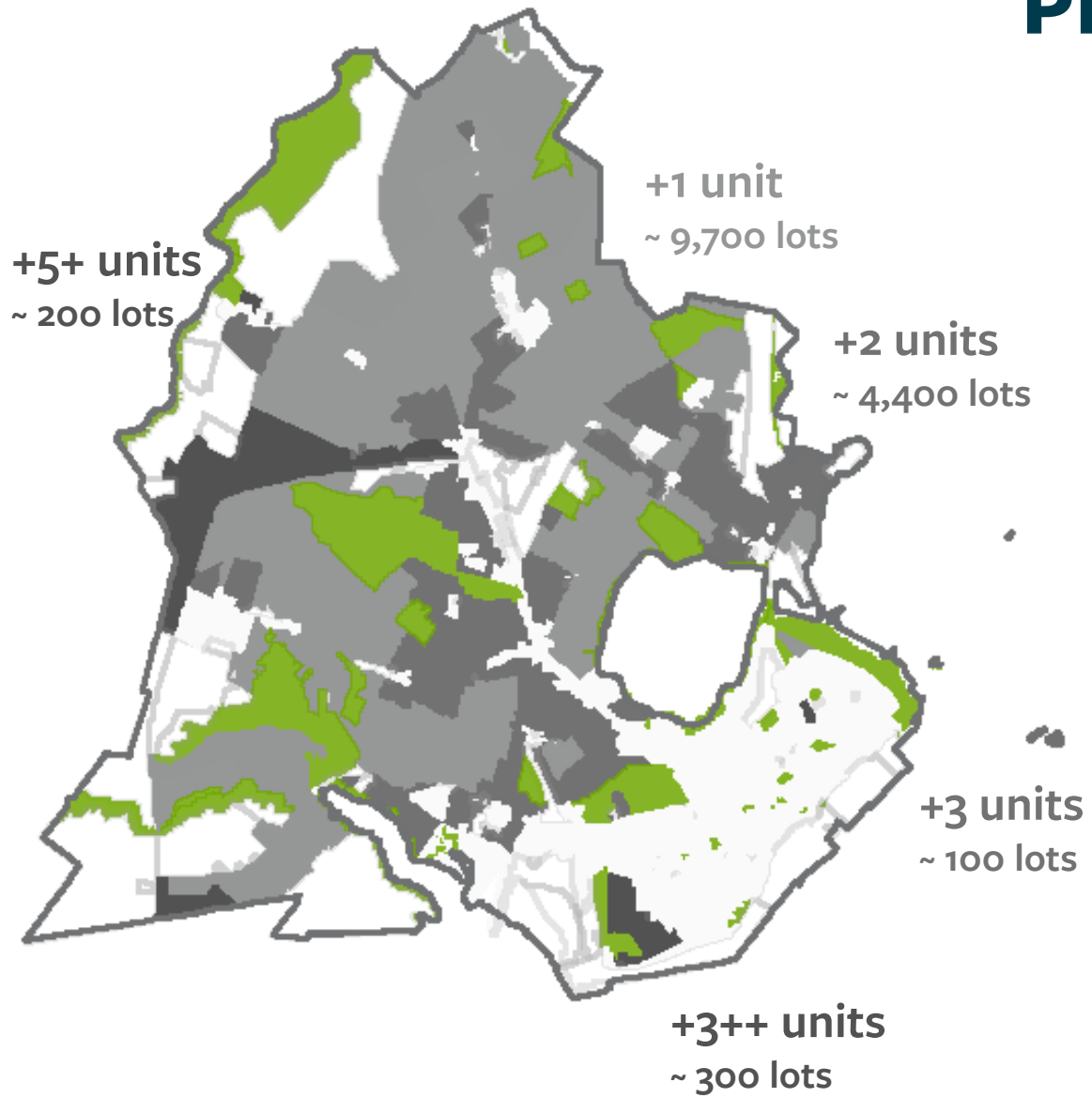


RECODE: PROPOSED PERMITTED RESIDENTIAL USES



PERMITTED RESIDENTIAL USES

DEGREE OF RECODE CHANGE



PERMITTED USES UNDER LD 2003

Residential Areas

Empty Lot Where Housing Is Already Allowed



NOTE: The three and four units can be within one structure or multiple structures.

THREE AND FOUR UNITS ALLOWED IF:

- Located in "growth area" consistent with section 4349-A, subsection 1, paragraph A or B.
- Located in area with existing water/sewer capabilities in towns without comprehensive plans.

Existing Home



EXISTING LAND USE CODE

on any lot

R-1



R-2



R-3



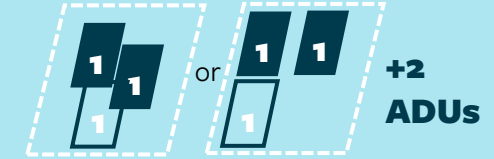
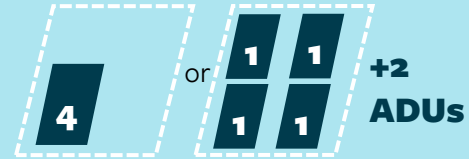
PROPOSED UNDER RECODE

on any lot

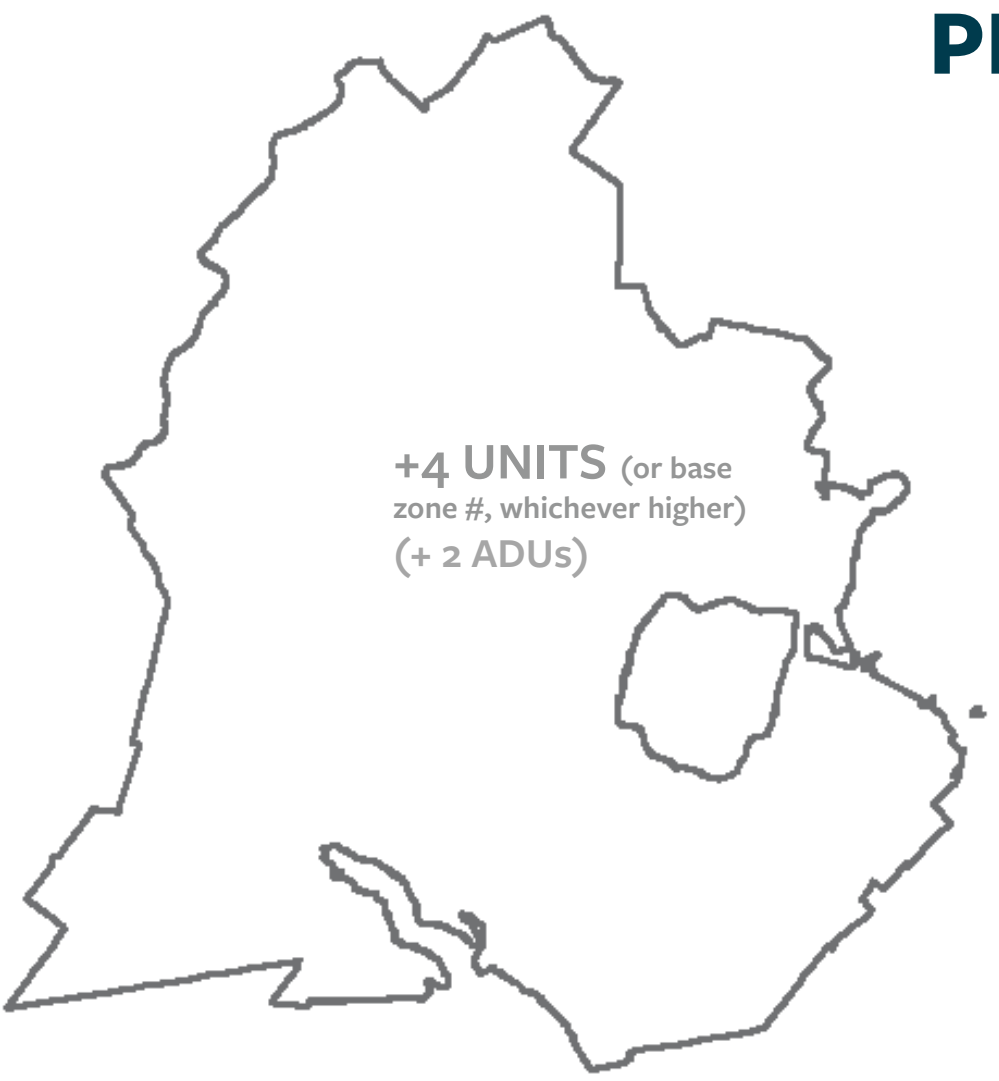


PROPOSED UNDER DRAFT SECTION 6.4.2

on a vacant lot as
of 7/1/23



PERMITTED USES ON VACANT LOTS UNDER DRAFT SECTION 6.4.2



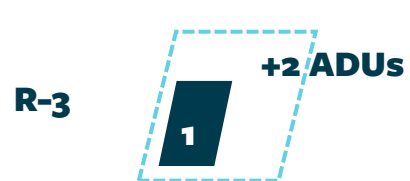
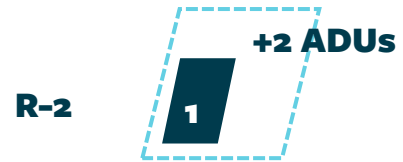
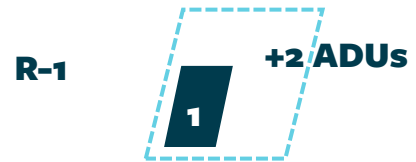
+4 UNITS (or base
zone #, whichever higher)
(+ 2 ADUs)



+2 UNITS
(+ 2 ADUs)

EXISTING LAND USE CODE

on any lot



PROPOSED UNDER RECODE

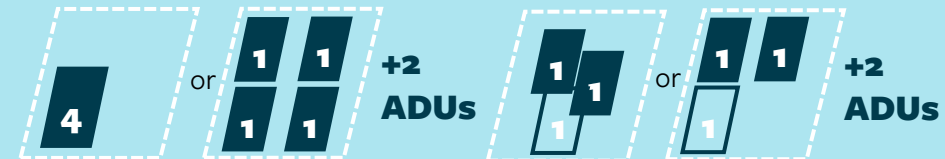
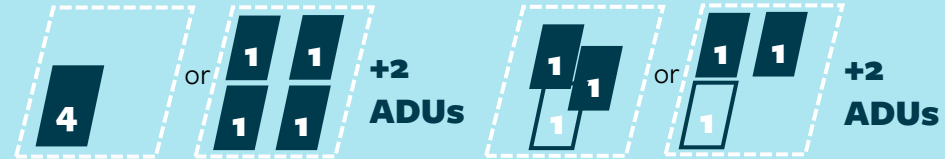
on any lot



PROPOSED UNDER DRAFT SECTION 6.4.2

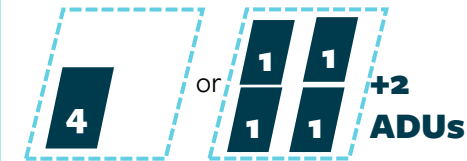
on a vacant lot as
of 7/1/23

on a lot with 1
existing unit



PROPOSED UNDER COUNCILOR AMENDMENTS TO SECTION 6.4.2

on any lot



&

eligibility for
affordable
housing
bonus

DRAFT SECTION 6.4.2 & COUNCILOR AMENDMENTS

EXAMPLE OF EXISTING ZONING within growth area

R-3 zone

Current



(+ 2 ADUs)
Single-family



Multi-family
(Existing nonresidential structures only)

Other uses include:

- Group homes
- Child care centers
- Schools
- Places of assembly
- Parks + Open Spaces
- Intermediate care facilities
- Long-term care facilities
- Solar energy systems
- Off-street parking
- Accessory dwelling units
- PRUDs

6,500 SF

Minimum lot size

25'

8' - 16'

8' - 16'

25'

Front Minimum setbacks

35%

Maximum lot coverage

REQUIRED BY LD 2003 and proposed in draft 6.4.2

+



four-family

on vacant lots

+

2 additional units

on a lot with 1 existing unit

**2 off-street parking spaces
for every 3 units***

ALLOWED BY LD 2003 and proposed in Councilor amendments

1

+



four-family

on any lot

& eligibility for affordable housing bonus

2

+

~~2 additional units~~

~~on a lot with 1 existing unit~~

3

~~Lot area/
dwelling unit~~

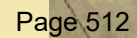
60%

Maximum lot coverage

4

**No off-street parking
required for first 4 units***

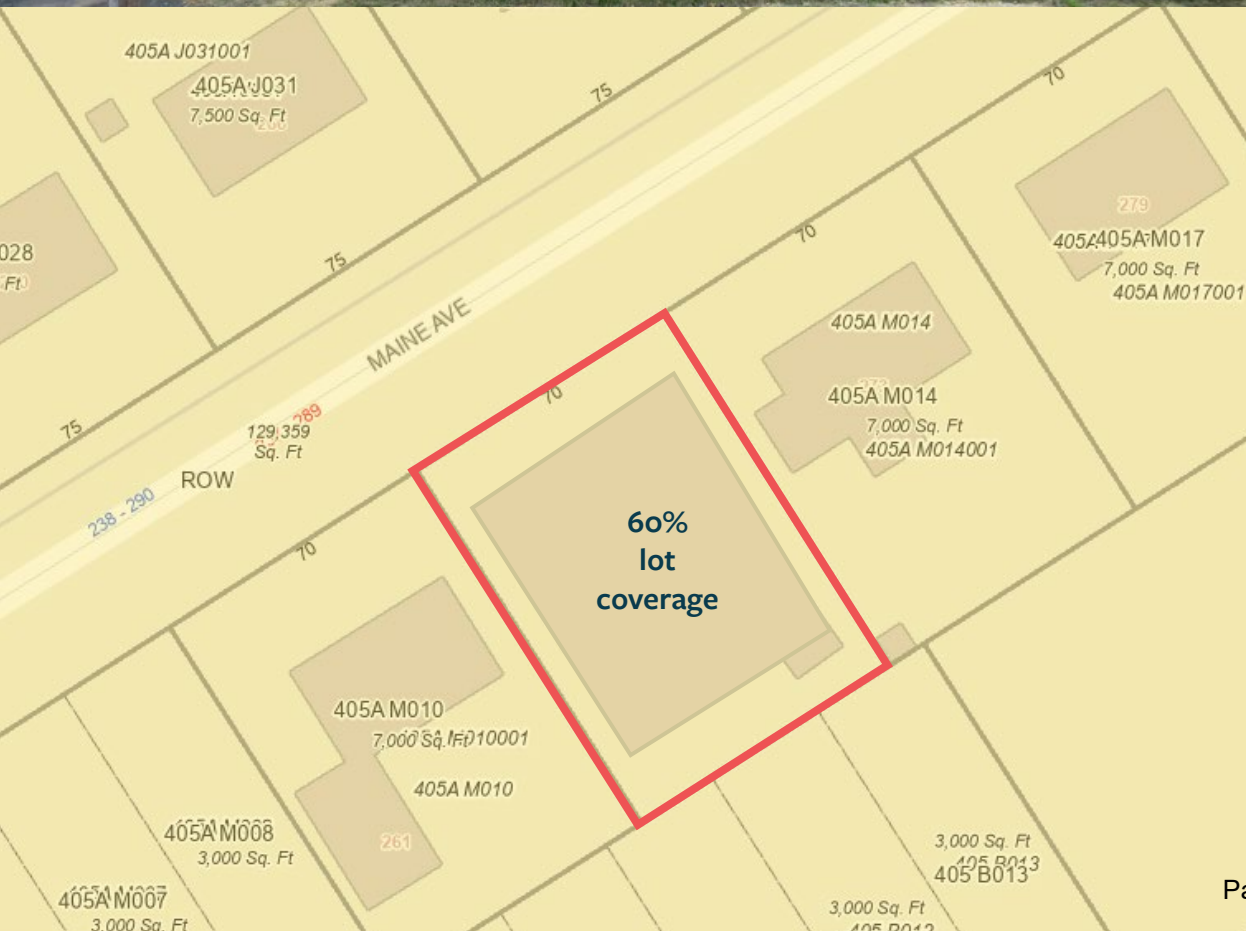
*LUC has multiple other exemptions that lower this #

[illegible]



TYPICAL R-3 LOT

ALLOWED BY LD 2003 &
ALLOWED UNDER
COUNCIL AMENDMENTS



AMENDMENT 1 TO ORDER 85-22/23
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR RODRIGUEZ
RE: APPLICATION TO LOTS WITH DWELLING UNITS DEMOLISHED
AFTER JULY 1, 2023

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

*That Chapter 14, Sections 3, 6, 7, 18 and 19 are hereby
amended to read as follows, on the following pages:*

...

Additional residential use permissions

A. *In island zones:* Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

B. *In mainland zones where residential is a permitted or conditional use:* Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is demolished and a vacant lot results. Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:

1. Up to two additional dwelling units are permitted on any lawfully conforming lot containing one existing dwelling unit.

2. Such units may be located:

- i. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
- ii. Within or attached to the existing structure, in which case the lot area per dwelling unit standards of Article 7 shall not apply.

3. Units created under this section [6.4.2](#) shall not be considered accessory dwelling units under Section 6.6.2(A).

...

AMENDMENT 2 TO ORDER 85-22/23
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR RODRIGUEZ
RE: REMOVING RESTRICTIONS ON LOTS WITH EXISTING DWELLING UNITS

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

*That Chapter 14, Sections 3, 6, 7, 18 and 19 are hereby
amended to read as follows, on the following pages:*

...

6.4.2 Additional residential use permissions

- A. *In island zones:* Up to two units are permitted on any lawfully conforming lot ~~that does not contain an existing dwelling unit.~~

Such units may be located:

1. In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

- B. *In mainland zones where residential is a permitted or conditional use:* Up to four units are permitted on any lawfully conforming lot ~~that does not contain an existing dwelling unit.~~ Such units may be located:

1. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or
2. Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.

- C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is demolished and a vacant lot results.

~~Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:~~

~~Up to two additional dwelling units are permitted on any lawfully conforming lot containing one existing dwelling unit.~~

~~Such units may be located:~~

~~In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or~~

- ~~i. Within or attached to the existing structure, in which case the lot area per dwelling unit standards of Article 7 shall not apply.~~

- D. Units created under this section 6.4.2 shall not be considered accessory dwelling units under Section 6.6.2(A).

...

AMENDMENT 3 TO ORDER 85-22/23
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR RODRIGUEZ
RE: COMPLIANCE WITH DIMENSIONAL REQUIREMENTS

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

*That Chapter 14, Sections 3, 6, 7, 18 and 19 are hereby
amended to read as follows, on the following pages:*

...

6.4.2. Additional residential use permissions

A. *In island zones:* Up to two units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit.

Such units may be located:

~~In two separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or~~

~~Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.~~

Such units shall comply with all dimensional requirements of the underlying zone except lot coverage and lot area per dwelling unit requirements.

This exception shall not allow a lot to exceed 60% lot coverage unless permitted by the underlying zone.

B. *In mainland zones where residential is a permitted or conditional use:* Up to four units are permitted on any lawfully conforming lot that does not contain an existing dwelling unit. Such units may be located:

~~In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or~~

~~Within a single structure, in which case the minimum lot area per dwelling unit standards of Article 7 shall not apply.~~

Such units shall comply with all dimensional requirements of the underlying zone except lot coverage and

lot area per dwelling unit requirements.

This exception shall not allow a lot to exceed 60% lot coverage unless permitted by the underlying zone.

A.C. Sections 6.4.2(A) and (B) shall not apply to lots on which a dwelling unit in existence on July 1, 2023 is demolished and a vacant lot results.

B.D. *Lots with one existing dwelling unit in any zone where residential is a permitted or conditional use:*

1. Up to two additional dwelling units are permitted on any lawfully conforming lot containing one existing dwelling unit.

2. Such units may be located:

i. In separate structures, so long as the minimum lot area per dwelling unit standards of Article 7 are met, or

ii. Within or attached to the existing structure, in which case the lot area per dwelling unit standards of Article 7 shall not apply.

3. Units created under this section 6.4.2 shall not be considered accessory dwelling units under Section 6.6.2(A).

...

AMENDMENT 4 TO ORDER 85-22/23
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR RODRIGUEZ
RE: EXEMPTION FROM OFF-STREET PARKING REQUIREMENTS

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

*That Chapter 14, Sections 3, 6, 7, 18 and 19 are hereby
 amended to read as follows, on the following pages:*

...

TABLE 19-B: CATEGORICAL EXCEPTIONS TO OFF-STREET PARKING MINIMUMS

Categorical Vehicular Exceptions

Major site plans	The Planning Board shall establish the off-street parking requirement based on a parking study.
Affordable housing	T2 spaces are required for every 3 units, except that the Planning Board may establish a lesser parking requirement regardless of the size of the structure.
Multi-family housing	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 Transportation Demand Management program, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.
Historic structures	No off-street parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required. ¹
Accessory Dwelling Units	No off-street parking shall be required.
Transit proximate development and uses	No off-street parking shall be required within ¼ mile of fixed route transit service. New uses or changes of use of more than 10,000 SF taking advantage of this exception shall be required to provide a Transportation Demand Management Plan if they use this provision in lieu of parking requirements.

Residential Uses No off-street parking required for the first four dwelling units, not counting accessory dwelling units, except as otherwise

Specified herein.

Zone-Based Vehicular Exceptions

	Residential	Nonresidential
R-6	No off-street parking required for first three dwelling units. ²	
IR-1/I-B		Off-street parking requirements for nonresidential uses shall be reduced by 75%.
IR-3	No off-street parking required.	
R-OS	Off-street parking shall be adequate to serve projected employee and visitor needs.	
B-2/B-2b/B-2c		For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
IS-FBC	No off-street parking required for first three dwelling units.	For changes of use of 10,000 SF or less, no off-street parking shall be required for nonresidential uses. ³
B-3	No off-street parking required for changes of use.	
B-5	No off-street parking required.	

B-6	Off-street parking requirement shall be determined based on a parking study.
B-7	Off-street parking requirement shall be determined based on a parking study.
Waterfront Zones	Off-street parking requirements shall be reduced by 50%. No off-street parking required in the WCZ.

^{6.1} ¹ Exception applies for uses within any contributing structure in a local or national register historic district or locally-designated or national register landmark building under Article 17. However, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

² 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 used one time.

³ If the number of existing parking spaces serving the site is less than the requirements of this article, that number of parking spaces may not be reduced lower than the required amount prior to the change of use except to the extent necessary to meet the requirements of the Americans with Disability Act, to the extent it is a requirement or a condition of site plan review, or 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 article for all uses on the site including the change of use. A newly constructed building, a building addition, or a change of the use of a building exceeding 10,000 SF of floor area, shall provide parking as required by this article.

• • •



Dena Libner <dlibner@portlandmaine.gov>

Please seize the opportunity to make LD 2003 as good as it can be.

1 message

Zack Barowitz <zbarowitz@gmail.com>

Fri, Dec 1, 2023 at 8:36 AM

To: City Council <council@portlandmaine.gov>, publiccomment@portlandmaine.gov

Honorable Mayor and Councilors:

LD 2003 is a great opportunity to increase the amount of housing in Portland—IF it is implemented to the fullest extent of state law. The current staff proposal will affect only tiny percentage of the land in Portland whereas the UCP proposal will affect much larger percentage that will actually allow housing to be built.

More housing has many great benefits:

- It makes housing more affordable
- Builds wealth of homeowners
- Fosters sustainability
- Increases the tax rolls
- Provides opportunities for public transport
- Improves neighborhood vitality

If, on the other hand, the scaled back version that is presented gets implemented we will not only have a highly restrictive and difficult to interpret ordinance that is of negligible benefit we will continue to lose tax base and representation in the State House to surrounding towns (which prevents us from getting things like a local options tax).

In 1950 Portland housed 45% of the population of Cumberland County, today we are at 22%. That is because surrounding towns have grown by 150% whereas Portland has lost 14% of its population; this means that Portland is effectively shrinking as the county and national population booms. Even since 1970, after decades of depopulation (and despite at least two building booms), Portland's population has grown by only 2,969; whereas in that same 50 year period, the combined populations of Gorham, Westbrook, and Scarborough have grown by 30,593(!). And you can be quite sure that this trend will continue because Gorham, Westbrook, and Scarborough all have much more inclusive interpretations of LD2003 than what is being proposed.

Thank you for your consideration of this matter.

Cordially,
Zack Barowitz

--
207-838-6120
917-696-5649
ZacharyBarowitz.com



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--
207-838-6120
917-696-5649
ZacharyBarowitz.com



ATTENTION:

The information in this electronic mail message is private and confidential, and only intended for the addressee. Should you receive this message by

12/1/23, 12:41 PM

City of Portland Mail - Please seize the opportunity to make LD 2003 as good as it can be.

mistake, you are hereby notified that any disclosure, reproduction, distribution or use of this message is strictly prohibited. Please inform the sender by reply transmission and delete the message without copying or opening it.



Dena Libner <dlibner@portlandmaine.gov>

Make Real Change with LD2003

1 message

Hans Goudey <mail@hansgoudey.com>

Sat, Dec 2, 2023 at 12:14 PM

To: "publiccomment@portlandmaine.gov" <publiccomment@portlandmaine.gov>

City Council,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003.

The proposed language adds new and complicated rules to limit the housing potential of LD2003 at a time when Portland is desperately in need of housing and supposed to be simplifying its code.

Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in the entire area we chose as our growth area; all mainland residential zones.

One amendment, and part of another, that were proposed by the Urbanist Coalition of Portland have already been incorporated into the recommendation from the Planning Board. This is an important step in the right direction and demonstrates that these amendments can be added in time for our deadline to comply with LD2003. However, the current proposal is still seriously flawed.

I urge the City to adopt the remaining amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- Amendment 1: Allow lots that become vacant after July 1, 2023 to build 4 units.
- Amendment 3: Allow 4 units on lots with an existing home without requiring its demolition.
- Amendment 4: Give the newly allowed units the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits).

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,
Hans Goudey



Dena Libner <dlibner@portlandmaine.gov>

Make Real Change with LD2003

1 message

Linda Suitor <lindacampt@gmail.com>

Sun, Dec 10, 2023 at 7:39 PM

To: publiccomment@portlandmaine.gov

City Council,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003.

The proposed language adds new and complicated rules to limit the housing potential of LD2003 at a time when Portland is desperately in need of housing and supposed to be simplifying its code.

Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in the entire area we chose as our growth area; all mainland residential zones.

One amendment, and part of another, that were proposed by the Urbanist Coalition of Portland have already been incorporated into the recommendation from the Planning Board. This is an important step in the right direction and demonstrates that these amendments can be added in time for our deadline to comply with LD2003. However, the current proposal is still seriously flawed.

I urge the City to adopt the remaining amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- Amendment 1: Allow lots that become vacant after July 1, 2023 to build 4 units.
- Amendment 3: Allow 4 units on lots with an existing home without requiring its demolition.
- Amendment 4: Give the newly allowed units the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits).

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,

Linda Suitor

lindacampt@gmail.com
(207) 751-1018 (cell)



Dena Libner <dlibner@portlandmaine.gov>

LD 2003 Zoning Amendments

1 message

Wendy Cherubini <wcherubini@gmail.com>

Mon, Dec 11, 2023 at 9:56 AM

To: mdion@portlandmaine.gov, Pious Ali <pali@portlandmaine.gov>, afournier@portlandmaine.gov, vpelletier@portlandmaine.gov, Regina Phillips <rphillips@portlandmaine.gov>, atrevorrow@portlandmaine.gov, roberto Rodríguez <rrodriguez@portlandmaine.gov>, abullett@portlandmaine.gov, ksykes@portlandmaine.gov
Cc: publiccomment@portlandmaine.gov

Mayor Dion and Members of the Portland City Council,

I strongly support the Urbanist Coalition of Portland's proposed amendments to the zoning changes proposed by the City to bring Portland into compliance with LD 2003.

When LD 2003 was passed by the Legislature I hoped Portland would take a leadership role in complying with this legislation. It is disappointing to see the City attempt to undermine the impact of LD 2003.

As proposed the language adds new and complicated rules that will severely limit the housing potential of LD2003 at a time when Portland is desperately in need of housing and presumable working to simplify its byzantine code.

The overly complicated new rules will confuse property owners and discourage the average homeowner from taking advantage of the opportunities for new housing LD 2003 created. These are the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is a major root cause of the housing affordability crisis we are all experiencing today; the same local resistance that has forced the State Legislature to intervene.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the city's need for additional housing more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in the entire area we chose as our growth area; all mainland residential zones.

One amendment, and part of another, that were proposed by the Urbanist Coalition of Portland have already been incorporated into the recommendation from the Planning Board. This is an important step in the right direction and demonstrates that these amendments can easily be added in time to meet the deadline to comply with LD2003. However, the current proposal is still seriously flawed.

I urge the City to adopt the remaining amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- Amendment 1: Allow lots that become vacant after July 1, 2023 to build 4 units.
- Amendment 3: Allow 4 units on lots with an existing home without requiring its demolition.
- Amendment 4: Give the newly allowed units the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits).

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at https://urbanistportland.me/policy/portland_ld2003.

I urge you to support the UCP's proposed amendments to the City's proposed zoning changes and truly bring Portland into compliance with LD 2003.

Thank you for your consideration.

Sincerely,

Wendy Cherubini

99 Federal Street Unit 302
Portland, ME 04101



Dena Libner <dlibner@portlandmaine.gov>

Build more housing with LD2003

1 message

Eric Anderson <qualiajunkie@gmail.com>

Tue, Dec 12, 2023 at 1:41 PM

To: publiccomment@portlandmaine.gov

City Council,

Portland is facing a housing crisis. I have family members who have lived in Portland their entire lives, and who are being forced out. We need to build more housing for our families, friends, and future neighbors.

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003.

The proposed language adds new and complicated rules to limit the housing potential of LD2003 at a time when Portland is desperately in need of housing and supposed to be simplifying its code.

Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property.

Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene.

Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents.

The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in the entire area we chose as our growth area; all mainland residential zones.

One amendment, and part of another, that were proposed by the Urbanist Coalition of Portland have already been incorporated into the recommendation from the Planning Board. This is an important step in the right direction and demonstrates that these amendments can be added in time for our deadline to comply with LD2003. However, the current proposal is still seriously flawed.

I urge the City to adopt the remaining amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would:

- Amendment 1: Allow lots that become vacant after July 1, 2023 to build 4 units.
- Amendment 3: Allow 4 units on lots with an existing home without requiring its demolition.
- Amendment 4: Give the newly allowed units the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits).

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,

Eric Anderson
84 Douglass St, Portland, ME



Dena Libner <dlibner@portlandmaine.gov>

Make Real Change with LD2003

1 message

Christian Divoll <christiandivoll@gmail.com>

Fri, Dec 1, 2023 at 6:52 PM

To: publiccomment@portlandmaine.gov

City Council,

I am writing in support of the Urbanist Coalition of Portland's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003. I am disappointed to see the City's attempt to undermine the impact of LD 2003. The proposed language adds new and complicated rules to limit the housing potential of LD2003 at a time when Portland is desperately in need of housing and supposed to be simplifying its code. Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property. Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene. Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents. The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in the entire area we chose as our growth area; all mainland residential zones. One amendment, and part of another, that were proposed by the Urbanist Coalition of Portland have already been incorporated into the recommendation from the Planning Board. This is an important step in the right direction and demonstrates that these amendments can be added in time for our deadline to comply with LD2003. However, the current proposal is still seriously flawed. I urge the City to adopt the remaining amendments proposed by the Urbanist Coalition of Portland. The amendments simplify the City's proposed language and would: - Amendment 1: Allow lots that become vacant after July 1, 2023 to build 4 units. - Amendment 3: Allow 4 units on lots with an existing home without requiring its demolition. - Amendment 4: Give the newly allowed units the same exemptions currently given to ADUs (exemptions from parking minimums, lot coverage maximums, and density limits). A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,
Christian Divoll



Honorable Mayor Dion and esteemed members of the City Council,

Please accept the following public comment in support of an expanded interpretation of LD2003 from the The Maine DSA Housing Equity Inclusion working group, as endorsed by the Portland Local Campaign Committee, the elected body that oversees the Livable Portland project:

Portland is in the depths of a historic housing crisis that is largely self-inflicted. Over the 20th century, national and local policy has been designed to obstruct people of color, the working class and immigrant communities from owning homes or having access to stable rental housing. This manifested through redlining, the bulldozing of communities to create Franklin Arterial, and through the practice of exclusionary zoning—a suite of restrictions on housing construction which limits everything from lot size, to occupancy, to building height. Against this backdrop, Portland has in recent decades seen accelerated development and rising property values, bringing with it massive increases in housing costs for the poor and working class.

Portland is not alone in the state in having these restrictive zoning laws, but is experiencing some of its most severe effects. LD2003 opens the door to a vitally important opportunity to build a city that meets the challenges at hand.

Unfortunately, the City Staff's proposal to comply with the law appears to shut that door.

A good faith interpretation of LD2003 would allow (at minimum) four units per lot in all mainland zones and allow 2.5 times that if 51% are affordable to those making 80% AMI (Area Median Income) for rental projects, or 120% for ownership projects, thus allowing ten units per lot as long as six are affordable. Opting for the maximum capacity to develop commercially designated multi-family housing with six units or more offers more stability compared to single, two, or three-family rental homes, as it is purpose built and would remain as multi-family housing.

City Staff's interpretation is excessively narrow. It restricts the law only to vacant lots and limits the locations for multifamily housing development, threatening to miss a critical opportunity at the expense of the residents of Portland. If this interpretation is codified on the City level, it will be increasingly difficult to build truly affordable housing for the working class in Portland.

In response, the Urbanist Coalition of Portland (UCP) has presented a [detailed set of recommendations](#) for amending the City's proposal. We endorse these recommendations, as they significantly improve upon the current proposal. However, even these recommendations do not fully seize on the opportunities presented by LD2003. The City of Portland can and should do more to ensure that any new housing built is maximally affordable, stable, and accessible to working-class Mainers.

Upzoning alone will not solve our housing crisis and poses the risk of incentivizing land speculation and the production of market-rate housing, instead of affordable housing, potentially contributing to displacement in Portland's low income and working class neighborhoods. Hence, before fully implementing LD2003, and as Portland explores potential density increases beyond LD2003's requirements through ReCode, we strongly urge that robust protections for tenants and low income homeowners be put in place:

- Give tenants the first opportunity to purchase the unit they live in prior to its listing on the market; this should also extend to condo conversions and sales of apartment buildings. Public housing agencies and qualified non-profit organizations should have the second opportunity to purchase before any unit is listed on the market.
- Provide tenants displaced by development the right to return to a comparable unit in a redeveloped property.
- Prioritize the enhancement of public transit and complete neighborhoods in anticipated areas of development, to allow ready access to goods and services without the need for a personal automobile.
- Increase the term of affordability to longer than 30 years if practicable.
- Establish a Portland Social Housing Developer with bonding authority and a program to purchase and build publicly owned, permanently affordable, mixed income housing through a revolving loan program similar to the program Montgomery County, MD has successfully run for decades.

Time has shown that free-market "solutions" will not eliminate the scarcity that itself was created to drive profits. To create a prosperous, diverse, inclusive, and functional city, we must re-envision and evolve our methods of producing housing. Putting an end to exclusionary zoning represents a crucial component of a holistic strategy to adopting proven, non-market-based models for creating permanently affordable housing. A century of exclusionary and speculative land use practices have manifested as a dearth of affordable housing, a shrinking workforce, an inadequate tax base, and under-representation in Augusta. These problems are not

the fault of the current Council, but we are at a pivotal moment, one which calls for you to act with principle and foresight that will have a lasting impact for generations.

We hope the council acts promptly to address these long-standing needs and swiftly implements LD2003 in a way that will usher in an era of more equitable housing production. It may be necessary in working within such a short timeline to meet LD2003s requirements, to refer our and the UCP's equity requirements to committee and expeditiously address them. We in Maine DSA's Housing Equity and Inclusion Working group stand by to assist the Housing & Economic Development Committee in bringing these issues to the full council as swiftly as possible. These changes are imperative, and we strongly advocate for their implementation through the Council process.

Signed,

Maine DSA Housing Equity Inclusion Working Group

Grayson Lookner Winston Lumpkins IV

Wes Pelletier Damon Yakovleff

Maine DSA Local Campaign Committee

Tzara Kane Buddy Moore Sarah Loudon

Ethan Strimling Katie Wilson



Dena Libner <dlibner@portlandmaine.gov>

Neighborhoods

'Debbie Flaherty' via Public Comment <publiccomment@portlandmaine.gov>

Sat, Dec 16, 2023 at 12:21 PM

Reply-To: Debbie Flaherty <delo1016@yahoo.com>

To: publiccomment@portlandmaine.gov

Please *support the reasonable, balanced approach taken by the*

Planning Board in its recommendation to the city council regarding

compliance with State Law LD2003.

Deborah & Ed Flaherty

142 Regan Lane

40 year Portland residents

Sent from my iPhone



Dena Libner <dlibner@portlandmaine.gov>

Please protect our neighborhoods

Susan Anspacher <susanmtns@gmail.com>

Sun, Dec 17, 2023 at 7:23 AM

To: council@portlandmaine.gov

Bcc: publiccomment@portlandmaine.gov

I am writing to ask you to support the equitable and balanced approach taken by the Planning Board regarding LD2003.

The Planning Board has thoroughly studied the recommended Planning Department proposals to comply with the law making adjustments to the land use code. Kudos to them for doing an exemplary job to provide for increased housing that incorporates housing diversity. Housing diversity is at the core of a healthy housing ecosystem. A healthy housing ecosystem recognizes that the uniqueness of all neighborhoods in the city should not have a cookie cutter approach, that is the same dimensional and use permissions. One size does not fit all.

Additionally, please support the changes to the proposed Tear Down Provision. It is critical to preventing the demolition of existing residential homes in any residential and island zone for a multi-unit dwelling. Once again, one size does not fit all.

Your support for this provides for additional equitable and diverse housing while protecting the preservation of our communities. This is especially important because it will allow the continued uniqueness and integrity in our well-defined, livable neighborhoods.

Sincerely,

Susan Anspacher
88 Skylark Road



Dena Libner <dlibner@portlandmaine.gov>

Order 85: Amendments 1-4 should be applied.

Winston Lumpkins <winston.lumpkins@gmail.com>

Sun, Dec 17, 2023 at 9:17 AM

To: City Council <council@portlandmaine.gov>, publiccomment@portlandmaine.gov

Dear Mayor Dion, Portland City Councilors,

I urge you to apply amendments 1-4 to Order 85, as submitted by Councilor Rodriguez.

LD2003 was passed by the state legislature to originally take effect 6 months ago; I applaud staff and the planning board for coming up with such a clever way to put it off even longer, however, I urge the council to take the simpler path and apply the amendments. Recode is a long process, and we should not over complicate the building code simply because we must wait for re-code... remember, the whole point of re-code is to simplify...

A maximum application of LD2003 will not absolve the council of the need to solve the housing affordability crisis; likely it will take the investment of public equity to realize the benefit of small, entry level & affordable 10 unit mixed income infill development. Developers have thrown up their hands at the requirement to include 25% affordable units and they won't be rushing to build 50% affordable buildings: the demands of private equity are too high. Public investment through a series of housing bonds (which would be paid off through rents, and once paid off prove revenue positive) & a willingness to take on permanent ownership interests in many small housing projects will also be necessary to see any real benefit from the passage of this amended order; however, it's a critical first step in that process.

Amend and pass Order 85; it is merely one of many things which must be done to address housing in Portland Maine.

Thanks as always for reading my comments, and perhaps for heeding them.

Yours,

Sincerely,

~Winston

Winston Lumpkins IV (he/him/his)

*District 1,
Portland Maine*



Dena Libner <dlibner@portlandmaine.gov>

Make Real Change with LD2003

Emma Grotto <emgrotto@gmail.com>
To: publiccomment@portlandmaine.gov

Sun, Dec 17, 2023 at 11:36 AM

City Council,

I am writing in support of the Urbanist Coalition of Portland and Councilor Rodriguez's proposed amendments to the language proposed by the City to bring Portland into compliance with LD 2003.

I am disappointed to see the City's attempt to undermine the impact of LD 2003. The proposed language adds new and complicated rules to limit the housing potential of LD2003 at a time when Portland is desperately in need of housing and supposed to be simplifying its code. Confusion around navigating these complicated new rules will discourage the average homeowner from taking advantage of these new allowances, the very people that LD 2003 is meant to empower to create new housing on their own property. Local resistance to housing creation is the root cause of the housing affordability crisis we're experiencing today, the same local resistance that has forced the state to intervene. Portland is not exempt from the statewide need to allow new housing. On the contrary: Portland's status as our state's hub for healthcare, tourism, and services for homeless and refugee communities makes the need for additional housing in Portland more urgent than perhaps anywhere else in Maine. Without more housing, Portland's workers are forced into long commutes; Portland's seniors are not able to age in place; Portland's young people are forced to move elsewhere in search of a lower cost of living; our refugees go unhoused and our most vulnerable are living in tents. The City's proposed changes will not create the new housing supply we desperately need – we must comply with LD 2003 and amend the proposed changes to allow 4 units in the entire area we chose as our growth area; all mainland residential zones. One amendment, and part of another, that were proposed by the Urbanist Coalition of Portland have already been incorporated into the recommendation from the Planning Board. This is an important step in the right direction and demonstrates that these amendments can be added in time for our deadline to comply with LD2003. However, the current proposal is still seriously flawed. I urge the City to adopt the remaining amendments proposed by the Urbanist Coalition of Portland.

A complete comparison of the original ordinance, the City's proposed changes, and UCP's proposed amendments to these changes may be found at urbanistportland.me/policy/portland_ld2003.

Sincerely,
Emma Morse

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 4, 2023

SUBJECT: Order 86-23/24 Accepting and Appropriating an Anonymous \$5,000 Donation for Those In Need - Sponsored by Danielle P. West, City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: n/a

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This item accepts and appropriates an anonymous donation of \$5,000 from a family in Falmouth, Maine, to be used as a Secret Santa giveaway by the Police Department to those in need.

This donation has been given to and accepted by the City for this purpose since 2020.

This item must be read on two separate days. Staff is requesting that the second reading be waived, which requires seven affirmative votes, so that the funds can be distributed during the holiday season. Staff also requests that this item be passed as an emergency. Seven votes are required for passage as an emergency following public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Order Anonymous Donation for Assistance to Those in Need 12.18.2023

Prepared by:

Date: 12/04/2023

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER ACCEPTING AND APPROPRIATING AN ANONYMOUS
\$5,000 DONATION FOR THOSE IN NEED**

ORDERED, that an anonymous donation in the amount of \$5,000 is hereby accepted and that amount appropriated for distribution by the Police Department to those in need; and

BE IT FURTHER ORDERED, that the City Manager or designee is hereby authorized to execute a donation agreement and whatever other documents are necessary to effect the intent and purpose of this order; and

BE IT FURTHER ORDERED, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and allow the money to be given away during the holidays.

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

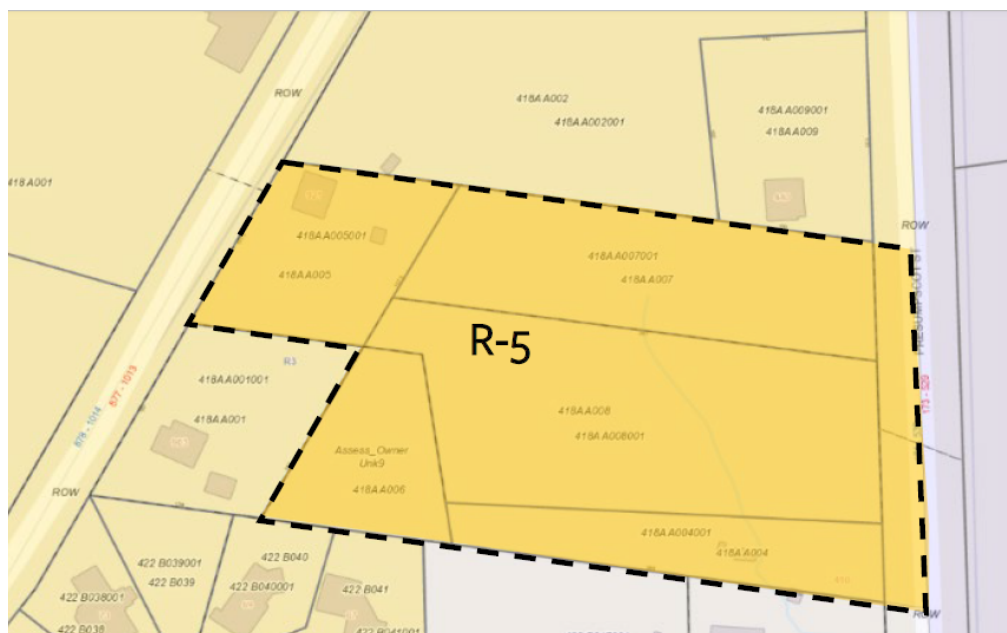
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA Y. BULLETT (4)
KATHRYN SYKES (5)

**AMENDMENT TO ZONING MAP
RE: R-5 RESIDENTIAL
FOR 921 OCEAN AVENUE, 410, 422, & 426 PRESUMPCOT STREET,
AND PARCEL 418A A006**

WHEREAS, based on the information provided to the City Council in the October 25, 2023 Planning Board Report to City Council, numbered ZN-002427-2023, the testimony, comment and other information submitted to the City Council, as well as the findings, conclusions and recommendations contained in the Planning Board Report for the public hearing held on January 4, 2023, which is attached hereto and incorporated herein by reference, the City Council adopts the findings and conclusions in the Planning Board Report and finds that the below-referenced zoning amendment is pursuant to and consistent with the City's Comprehensive Plan;

**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 Portland City Code Chapter 14, the Zoning Ordinance, by §1.2, be and hereby is amended pursuant to §1.10.1 by adopting the attached map amendment and specifically rezoning property around 921 Ocean Avenue, 410, 422, and 426 Presumpscot Street, and parcel 418A A006 to R-5, as depicted in the map below.





PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

921 Ocean Avenue; 410, 422 & 426 Presumpscot Street; Parcel 418A Aoo6

ZN-002427-2023

Christopher Lee, Backyard ADUs, Applicant

Submitted to:	Mayor and City Councilors	Prepared By:	Zach Powell, Senior Planner
Council 1st Read:	December 4, 2023	Date:	October 25, 2023
Council Hearing Date:	December 18, 2023		

I. INTRODUCTION

On October 24, 2023, the Planning Board unanimously recommended to the City Council (7-0) a zoning map amendment submitted by Christopher Lee of Backyard ADUs that would change the zoning of 921 Ocean Avenue, 422 & 426 Presumpscot Street, and parcel 418A Aoo6 from R-3 Residential to R-5 Residential zone. In addition, the Planning Board is recommending to change the zoning at 410 Presumpscot Street from an R-3 Residential zone to a R-5 Residential zone as well. 410 Presumpscot Street is not owned by the applicant, and is not proposed to be developed as part of the applicant's conceptual development plan but would create a consistent R-5 zoning boundary.



Figure 1: 2021 Aerial View of the subject properties (Outlined in Green). Please note that the structure shown in the image at 410 Presumpscot Street has been demolished.

The proposed zoning map amendment application was submitted by Backyard ADUs to facilitate the future development of the subject properties into a Planned Residential Unit Development (PRUD) with approximately 41-51 residential dwelling units through a combination of duplexes and accessory dwelling units (ADUs). The R-5 zone would facilitate the creation of a PRUD based on the size of the project site and allow for the construction of duplexes in a site configuration that could help protect natural resources on the site. While not included as part of the proposed development, Planning Staff and the Planning Board also recommended the inclusion of 410 Presumpscot Street to create a consistent R-5 Residential zone boundary.

II. EXISTING CONDITIONS AND SURROUNDING AREA

The project area is bounded by Presumpscot Street to the east and Ocean Avenue (State Route 9) to the west, both of which serve as major urban collector streets. The proposed zoning map amendment encompasses 921 Ocean Avenue (Chart 418A, Block A, Lot 005001), which is improved by a single-family dwelling, and undeveloped parcels at 410 (Chart 418A, Block A, Lot 004001), 422 (Chart 418A, Block A, Lot 008001) and 426 (Chart 418A, Block A, Lot 007001) Presumpscot Street and parcel 418A A006.

The subject properties are located in the East Deering neighborhood and are approximately a mile from Lunts Corner (Ocean & Washington Avenue intersection). In the surrounding area, commercial and industrial uses are primarily located to the south along Presumpscot Street, zoned I-M Industrial Moderate and I-L Industrial Low-Impact and lower-density residential uses to the west along Ocean Avenue (excluding the Dragon cement factory at 921 Ocean Avenue), zoned R-3 Residential. The site is not currently served by City sewer service.

The properties are an approximately twenty-minute walk and 4-minute bike ride from the nearest METRO Route 9A/9B line, which stops at Lunts Corner every 35 minutes. The closest dedicated bicycle facilities are located approximately a mile away along Washington Avenue and there are inconsistent pedestrian facilities along Ocean Avenue & Presumpscot Street.

All properties proposed for rezoning are located within the R-3 (Residential) zone, which continues to the north, west, and southwest.

III. PROPOSED MAP AMENDMENT

The applicant proposes a zoning map amendment to rezone the subject properties from R-3 (Residential) to R-5 (Residential), shown in Figure 2 with the proposed zone boundaries shown in Figure 3. The applicant's submittal (Plan 2) shows the proposed Zoning Map Amendment.

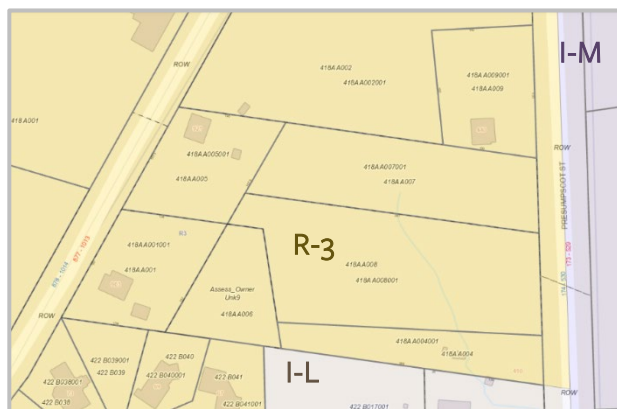


Figure 2: Current zoning with R-3 in tan, I-L in gray, and I-M in darker gray.

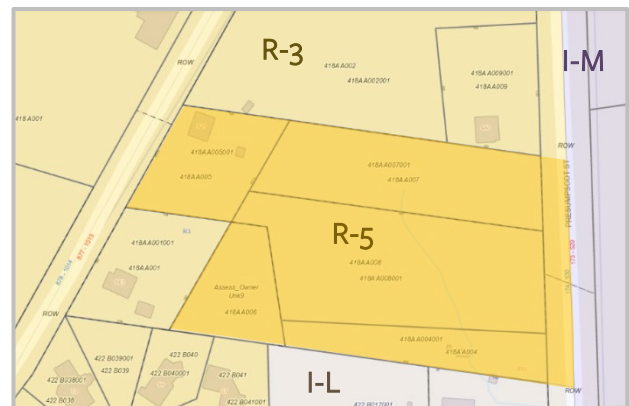


Figure 3: Proposed Zoning Map Amendment, with the R-5 shown in orange

The proposed rezoning would not bring any existing properties into non-conformity. The R-5 zone is more permissive in regards to minimum lot area, minimum lot area per dwelling unit, and side & rear setbacks. The R-5 zone would allow two-family dwellings as a permitted use, as well as a limited number of institutional uses.

IV. ZONING ANALYSIS

A. Overview of Zone Purpose Statements Existing Versus Proposed Zoning

The subject properties proposed to be rezoned are currently located in the R-3 Residential zone and are proposed to be rezoned to an R-5 Residential zone. The purpose statement of the R-3 & R-5 zones are listed below:

Existing zone:

R-3 Residential: *“to provide medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels.”*

Proposed zone:

R-5 Residential: *“to provide appropriate areas of the city for medium-density residential development characterized by single-family, two-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.”*

B. Discussion of Zoning Amendments

Use Analysis

Table 1 provides a comparison of the permitted uses for the existing zone and proposed zone under consideration. Uses marked with a ‘P’ are permitted uses in the zone. A ‘C’ indicates a conditional use. Uses with an empty cell are not permitted in the zone. “**” indicates that other restrictions may apply. These additional restrictions or use parameters are listed under the Supplemental Use Standards (Sec. 6.4), and the Conditional Uses Section (Sec. 6.5) of the City of Portland Land Use Code.

Overall, the proposed rezoning would expand the allowances for different types of residential dwellings, as well as expand conditional allowances for low- to mid-intensity institutional uses.

Table 1 - Permitted Uses		R-3	R-5
Residential	Single-family dwellings	P	P
	Two-family dwellings		P
	Multi-family dwellings	C*	C*
	Multiplex		P
	Congregate care facilities		
	Handicapped family units	P	P
	Planned Residential Unit Development	P	P
	Special needs independent dwelling units		P
Institutional	Lodging houses		C
	Sheltered care group homes	C	C
	Elementary, middle, and secondary schools	C	C
	Governmental uses	P	P
	Hospitals		C
	Intermediate care facilities	C	C
	Long-term and extended care facilities	C	C
	Places of assembly (<10,000 sq. ft.)	C	C
	Places of assembly (>10,000 sq. ft.)	C	C
	Preschool facilities	C	C
	Post-secondary schools		C
Other	Off-street parking	C	C
	Parks and open spaces	P	P
	Solar energy system (minor)	P	P
	Utility substations	C	C

Dimensional Analysis

R-3 – Residential

All of the subject properties are currently zoned R-3 (Residential). The R-3 zone limits residential density by requiring a minimum of 6,500 square feet of lot area per dwelling unit, a minimum lot width of 65 feet, and minimum street frontage of 50 feet. The maximum height in the R-3 zone is 35 feet, and affordable housing height and density bonuses are not permitted for development within most residential zones, including the R-3 zone. A number of categorical exemptions to off-street parking minimums are permitted for development in the R-3 zone (e.g., Affordable housing, Multi-Family housing, Transit proximate development and uses) and can be found in Table 19-B of the Land Use Code.

R-5 – Residential

The submitted application proposes to rezone the the subject parcels to R-5. The R-5 zone limits residential density by requiring a minimum of 3,000 square feet of lot area per dwelling unit and further requires a minimum lot area of 6,000 square feet for residential uses or 5,000 square feet for sites governed by the R-5 Small Residential Lot Development Dimensional Standards (Table 7-C). The maximum height in the R-5 zone is 35 feet and affordable housing height and density bonuses are not permitted. A number of categorical exemptions to off-street parking minimums are permitted for development in the R-5 zone (e.g., Affordable housing, Multi-Family housing, Transit proximate development and uses) and can be found in Table 19-B of the Land Use Code.

Table 2 provides a comparison of the dimensional requirements for zones under consideration.

Table 2 - Dimensional Standards	R-3	R-5
Lot Size (min)	6,500 sq. ft. to 10 ac. (depending on use)	6,000 sq. ft. to 5 ac. (depending on use)
Density (lot area per dwelling unit)	6,500 sq. ft.	3,000 sq. ft.
Street Frontage (min)	50 ft.	50 ft.
Front Yard (min)	25 ft. (or average depth of adjacent yards)	25 ft. (or average depth of adjacent yards)
Rear Yard (min)	25 ft.	20 ft.
Side Yard (min)	5-20 ft. (depending on height and location)	5-15 ft. (depending on height and location)
Lot Coverage (max)	35%	40%
Lot Width (min)	65 ft.	General: 60 ft. Multiplex: 90 ft.
Building Height (max)	Principal: 35 ft. Accessory: 18 ft.	Principal: 35 ft. Accessory: 18 ft.

PRUD Analysis: R-3 Residential, and R-5 Residential

As the PRUD constitutes the most intensive form of development permitted in either zone, the following analysis is limited to the discussion of the PRUD use.

The R-5 PRUD standards limits residential density by requiring a minimum of 3,000 square feet of net land area per dwelling unit and further requires a minimum lot area of two acres. The net land area per dwelling unit can be reduced to 1,500 square feet for PRUDs that include 50 percent of the units as low-income or workforce units for rent or for sale. The maximum permitted number of units per building is 12 and building length is restricted to a maximum of 140 feet. Buildings with a length of 100 feet or less are required to be setback a minimum of 25 feet from external subdivision property lines while buildings with a building length greater than 100 feet are required to be setback 35 feet. The maximum height permitted in the R-5 zone for a PRUD is 35 feet. The maximum lot coverage permitted is 40 percent. A minimum of 300 square feet of common recreation space area per dwelling unit is also required, but can be reduced to 200 square feet for PRUDs that include 50 percent of the units as low-income or workforce units for rent or for sale.

The R-3 PRUD standards limit residential density by requiring a minimum of 6,500 square feet of net land area per dwelling unit and further requires a minimum lot area of three acres. The subject area for rezoning (2.93 acres) is less than three acres and is currently not eligible to develop a PRUD under current zoning. The net land area per dwelling unit can be reduced to 3,250 square feet for PRUDs that include 50 percent of the units as low-income or workforce units for rent or for sale. The maximum number of units per building on a site less than five acres is two and the maximum number of units per building on a site greater than five acres is six. Building length is limited to a maximum of 100 feet without a garage and 140 feet with garages. Buildings with three or fewer units are required to be setback a minimum of 25 feet from external subdivision property lines, while buildings with four or more units are required to be setback a minimum of 35 feet. The minimum distance between detached PRUD dwelling units is 16 feet. The maximum height in the R-3 zone for a PRUD

is 35 feet, which is the same as the R-5 PRUD standards. A minimum of 300 square feet of common recreation space area per dwelling unit is required.

Any PRUD development that includes 50 percent of the units as low-income or workforce units for rent or sale is eligible for the following dimensional bonuses:

1. Minimum lot area per dwelling unit is reduced by 50%.
2. Maximum number of units and maximum length of buildings do not apply but may be set through site plan review.
3. Minimum building setbacks may be reduced to 10 feet.
4. The PRUD may cross public rights of way provided that the right of way does not count towards minimum lot size nor towards open space requirements.
5. Minimum recreation open space area is reduced to 200 square feet per dwelling unit of common area designed for recreational purposes by residents. Minimum contiguous size and setbacks do not apply and shall be set through site plan review.

Table 3 shows a side-by-side comparison of the PRUD dimensional requirements of each zone. The highlighted rows indicate where the two zones have different dimensional requirements.

TABLE 1: PRUD Zoning Requirements by Use	R-3	R-5
Lot area (min.)	3 acres	2 acres
Net land area per dwelling unit (min.)	6,500 sq. ft.	3,000 sq. ft.
Units per building (max.)	PRUD <5 ac.: 2 PRUD > 5 ac.: 6	12
Average number of units per building (max.)	PRUD >5 ac.: 5	
Structure height (max.)	35 ft.	35 ft.
Building length (max.)	100 ft. without garages; 140 ft. with internal garages	140 ft.
Length of accessory garage structure (max.)	N/A	60 ft.
Building setback from external subdivision property lines (min.)	3 or fewer D.U. in building: 25 ft.; 4 or more D.U. in building: 35 ft.	Bldg. Length 100 ft. or less: 25 ft.; Bldg. Length >100 ft.: 35 ft.
Distance between detached PRUD dwelling units (min.)	16 ft.	N/A
Common recreation open space area (min.)	300 SF/D.U	300 SF/D.U.
Habitable space elevation	No habitable space in a PRUD shall be below grade, except basements that are a part of and below above-ground units	

V. COMPREHENSIVE PLAN CONSISTENCY

Relevant sections of the Comprehensive Plan that the Council could take under consideration for this zoning map amendment application include:

Environment

Local Goal

Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.

Strategy

Coordinate future land use policy changes with long-range regional transportation planning, including planning for transit, pedestrian, and bicycle improvements, to reduce local and regional vehicle miles traveled.

Continue to develop land use policies which support complete neighborhoods.

Housing

Local Goal

Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.

Strategy

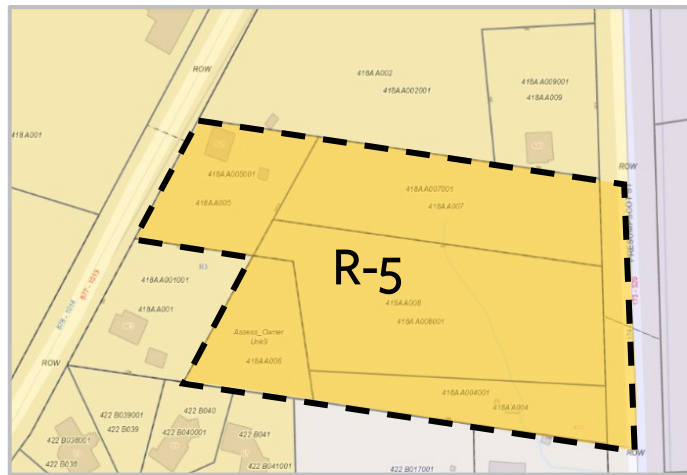
Coordinate linkages between accessible transportation and housing affordability.

The submitted application would significantly increase the potential residential density of the project site from 57 to 126 dwelling units under a PRUD. As part of the review of this change in land use policy, a number of Comprehensive Plan goals direct future growth to expand existing nodes of development, connect affordable housing with accessible transportation, and align growth in areas that support complete neighborhoods. Existing conditions including the absence of sewer service and connections to a robust multi-modal network are potential considerations in the review of this rezoning. Additionally, while proximate to a recently reviewed rezoning at 900 Ocean Avenue to R-5a, the proposed rezoning would be surrounded by zoning districts with lower permitted residential densities. These surrounding zoning designations may limit the nodal growth envisioned in the goals of the Comprehensive Plan.

VI. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed Zoning Map Amendment at a public hearing on October 24, 2023. After deliberation, and on the basis of the staff report, public testimony, and review of applicable policies, the Planning Board voted unanimously 7-0 to find that the following zoning map amendment is consistent with the Comprehensive Plan and recommends adoption to the City Council:

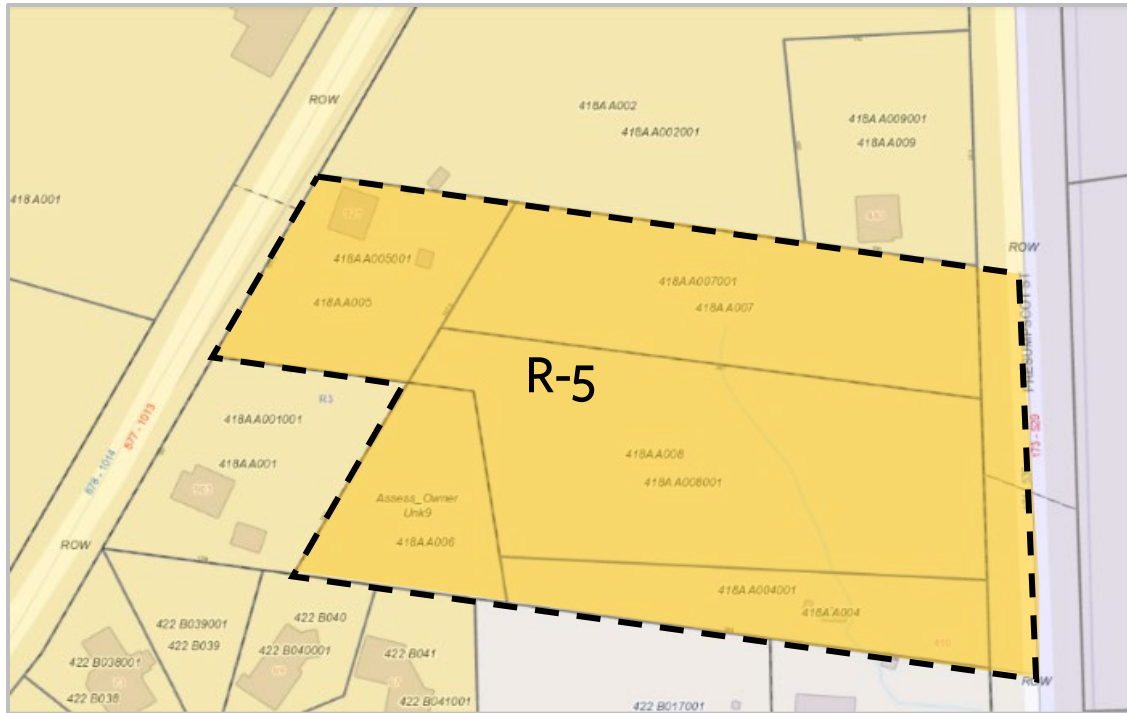
1. Zoning map amendment for the area of land as shown on the map below and that includes parcels CBLs 418A A004, 418A A005, 418A A006, 418A A007, and 418A A008 to be rezoned to R-5 Residential zone.



VII. ATTACHMENTS

- A. Zoning Map Amendment – R-3 to R-5
- B. Planning Board Report – October 24, 2023
- C. Boundary Survey
- D. Applicant's Conceptual Site Plan

Attachment 3 – Proposed Area to be Rezoned | 921 Ocean Avenue; 410, 422 & 426 Presumpscot Street; Parcel 418A Aoo6



 Rezoning Boundary

Planning Board Report

Planning & Urban Development Department

921 Ocean Avenue; 410, 422 & 426 Presumpscot Street; Parcel 418A Aoo6
Zoning Map Amendment
ZN-002427-2023

Submitted to:	Portland Planning Board	Prepared By:	Zach Powell
Public Hearing Date:	October 24, 2023	Date:	October 20, 2023

I. INTRODUCTION

Backyard ADUs has submitted a zoning map amendment application requesting to rezone property at 921 Ocean Avenue, 422 & 426 Presumpscot Street, and parcel 418A Aoo6 from R-3 Residential to R-5 Residential. The zoning map amendment is intended to facilitate a future 41-unit housing development comprised of semi-detached two-family dwellings and accessory dwelling units (ADUs). Based on discussion concerning the proposed zoning boundary at the September 26th Planning Board workshop, Planning Staff have included 410 Presumpscot Street as part of the rezoning area under consideration. 410 Presumpscot Street is not owned by the applicant, and is not proposed to be developed as part of the applicant's conceptual development plan



Figure 1: 2021 Aerial View of the subject properties (Outlined in Green). Please note that the structure shown in the image at 410 Presumpscot Street has been demolished.

The Planning and Urban Development Department mailed 26 notices advertising this meeting to property owners within 500 feet of the site. A legal advertisement ran in the October 14, 2023 and October 18, 2023 editions of the *Portland Press Herald*.

Applicant: Christopher Lee, Backyard ADUs

Authorized Agent: John Whitten, Haley Ward

II. PROJECT DATA

Property Size	921 Ocean Avenue: 20,320 square feet (0.47 acre) 410 Presumpscot Street: 16,981 square feet (0.39 acre) 422 Presumpscot Street: 55,419 square feet (1.27 acres) 426 Presumpscot Street: 36,771 square feet (0.84 acre) 418A Aoo6: 15,255 square feet (0.35 acre)
Existing Zone	R-3 (Residential)
Existing Uses	Residential (Single-family dwelling) & Undeveloped Land
Proposed Zones	R-5 (Residential)
Proposed Uses	Residential (41-51 dwelling units)

III. EXISTING CONDITIONS AND SURROUNDING AREA

The project area is bounded by Presumpscot Street to the east and Ocean Avenue (State Route 9) to the west, both of which serve as major urban collector streets. The proposed zoning map amendment encompasses 921 Ocean Avenue (Chart 418A, Block A, Lot 005001), which is improved by a single-family dwelling, and undeveloped parcels at 410 (Chart 418A, Block A, Lot 004001), 422 (Chart 418A, Block A, Lot 008001) and 426 (Chart 418A, Block A, Lot 007001) Presumpscot Street and parcel 418A Aoo6.

The subject properties are located in the East Deering neighborhood and are approximately a mile from Lunts Corner (Ocean & Washington Avenue intersection). In the surrounding area, commercial and industrial uses are primarily located to the south along Presumpscot Street, zoned I-M Industrial Moderate and I-L Industrial Low-Impact and lower-density residential uses to the west along Ocean Avenue (excluding the Dragon cement factory at 921 Ocean Avenue), zoned R-3 Residential. The site is not currently served by City sewer service.



Figure 2: Route Map (Source: Greater Portland Metro)

The properties are an approximately twenty-minute walk and 4-minute bike ride from the nearest METRO Route 9A/9B line, which stops at Lunts Corner every 35 minutes. The closest dedicated bicycle facilities are located approximately a mile away along Washington Avenue and there are inconsistent pedestrian facilities along Ocean Avenue & Presumpscot Street.

All properties proposed for rezoning are located within the R-3 (Residential) zone, which continues to the north, west, and southwest.

IV. SEPTEMBER 26, 2023 WORKSHOP

A Planning Board workshop was held on September 26, 2023 for this project. At the workshop, Planning Staff provided the Board and public with an overview of the applicant's proposed zoning map amendment. The Board was supportive of the proposed rezoning to R-5 and recommended the inclusion of neighboring 410 Presumpscot Street as part of the rezoning, in order to avoid having one isolated parcel zoned R-3 Residential.

In the previously submitted application, the proposed rezoning included a B-1b zone along Presumpscot Street. At the workshop, Board members raised questions on whether the proposed B-1b rezoning would successfully facilitate the mixed-use node intended by the Applicant. Additional questions were raised as to how the site would meet the walkable intent of the B-1b zoning district, when pedestrian facilities are inadequate along Presumpscot Street. Board members considered whether an industrial zoning classification along Presumpscot Street would be more appropriate given the adjacent I-L & I-M zoning districts. The Applicant stated that the proposed site design includes a mixed-use building with maker's space and residential uses above, which could not be constructed in an industrial district.

Based on feedback from the workshop, the Applicant has revised the application to remove the B-1b portion of the rezoning and just propose an R-5 designation. The concept plan has also been updated to remove the proposed maker's space along Presumpscot Street and townhouse units. A mixture of 10-20 units (ADUs and principal dwelling units) along Presumpscot Street is still being contemplated by the Applicant.

V. PROPOSED PROJECT

Not including 410 Presumpscot Street, the proposed zoning map amendment to R-5 would facilitate Backyard ADUs' plan to retain the existing single-family structure at 921 Ocean Avenue and construct nine, two-family dwellings with 20 ADUs, and an additional 10-20 dwelling units on Presumpscot



Figure 3: Conceptual Site Plan

Road. The conceptual site plan envisions a mixture of 100% AMI units and ownership market-rate units. The proposed development would require the submission of a major site plan application to be reviewed by the Planning Board.

The submitted application aims to increase permissible housing density for the subject properties by means of a zoning map amendment. As part of the applicant's vision for the site, lots would consist of a two-family dwelling along with two ADUs. Integrating the construction of ADUs into a larger subdivision is a novel development strategy in the City. The Applicant has stated that the proposed zoning map amendment will allow for a diversification of housing typologies and affordability with market-rate ownership units and rental units at 100% AMI. However, it is important to note that zoning map amendments do not regulate whether or not a future project will be affordable or market rate. Amending the zoning map changes the allowable uses and permitted dimensional standards.

Currently, the project area is constrained by the amount of street frontage and lot width available for the site, which results in a maximum density of five principal dwelling units and 10 ADUs, for a total of 15 dwelling units. Given these constraints, the applicant has proposed the construction of a road that bisects the project area and increases the total street frontage from 388 feet to 1,104 feet. Under the current R-3 zoning standards, 57 units could be constructed (19 principal units and 38 ADUs) in 19 structures, for a total of 57 units. Under the submitted application, 41 -51 units are proposed.

VI. PROPOSED MAP AMENDMENT

The applicant proposes a zoning map amendment to rezone the subject properties from R-3 (Residential) to R-5 (Residential), shown in Figure 4 with the proposed zone boundaries shown in Figure 5. The applicant's submittal (Plan 2) shows the proposed Zoning Map Amendment.

VII. ZONING ANALYSIS

R-3 (Residential) Zone

All of the subject properties are currently zoned R-3 (Residential). The purpose of the R-3 zone is to:

“provide medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels.”

The R-3 zone limits residential density by requiring a minimum of 6,500 square feet of lot area per dwelling unit, a minimum lot width of 65 feet, and minimum street frontage of 50 feet. The maximum height in the R-3 zone is 35 feet, and affordable housing height and density bonuses are not permitted for development within most residential zones, including the R-3 zone. A number of categorical exemptions to off-street parking minimums are permitted for development in the R-3 zone (e.g., Affordable housing, Multi-Family housing, Transit proximate development and uses) and can be found in Table 19-B of the Land Use Code.

R-5 (Residential) Zone

The submitted application proposes to rezone the the subject parcels to R-5. The purpose of the R-5 zone is to:

“provide appropriate areas of the city for medium-density residential development characterized by single-family, two-family, and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversion; and to provide for planned residential unit development on substantially-sized parcels.”

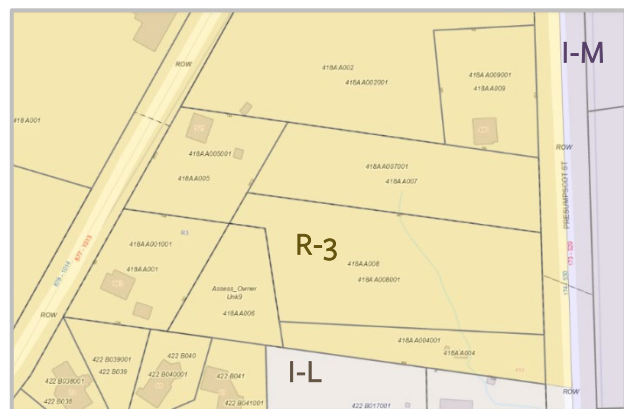


Figure 4: Current zoning with R-3 in tan, I-L in gray, and I-M in darker gray.

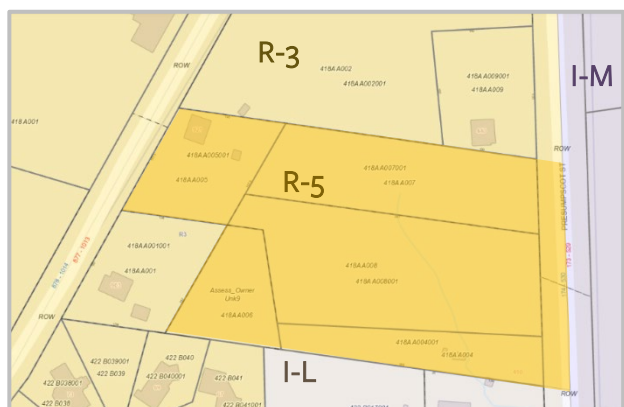


Figure 5: Proposed Zoning Map Amendment, with the R-5 shown in orange

The R-5 zone limits residential density by requiring a minimum of 3,000 square feet of lot area per dwelling unit and further requires a minimum lot area of 6,000 square feet for residential uses or 5,000 square feet for sites governed by the R-5 Small Residential Lot Development Dimensional Standards (Table 7-C). The maximum height in the R-5 zone is 35 feet and affordable housing height and density bonuses are not permitted. A number of categorical exemptions to off-street parking minimums are permitted for development in the R-5 zone (e.g., Affordable housing, Multi-Family housing, Transit proximate development and uses) and can be found in Table 19-B of the Land Use Code.

Table 1 provides a comparison of the permitted uses for zones under consideration. Uses marked with a 'P' are permitted uses in the zone. A 'C' indicates a conditional use. Uses with an empty cell are not permitted in the zone. '**' indicates that other restrictions may apply. These additional restrictions or use parameters are listed under the Supplemental Use Standards (Sec. 6.4), and the Conditional Uses Section (Sec. 6.5).

Table 1 - Permitted Uses	R-3	R-5
Single-family dwellings	P	P
Two-family dwellings		P
Multi-family dwellings	C*	C*
Multiplex		P
Handicapped family units	P	P
Planned Residential Unit Developments	P	
Special needs independent dwelling units		P
Lodging houses		C
Sheltered care group homes	C	C
Elementary, middle, and secondary schools	C	C
Governmental uses	P	P
Hospitals		C
Intermediate care facilities	C	C
Long-term and extended care facilities	C	C
Places of assembly (<10,000 sq. ft.)	C	C
Places of assembly (>10,000 sq. ft.)	C	C
Preschool facilities	C	C
Post-secondary schools		C
Off-street parking	C	C
Parks and open spaces	P	P
Solar energy system (minor)	P	P
Utility substations	C	C

Table 2 provides a comparison of the dimensional requirements for zones under consideration.

Table 2 - Dimensional Standards	R-3	R-5
Lot Size (min)	6,500 sq. ft. to 10 ac. (depending on use)	6,000 sq. ft. to 5 ac. (depending on use)
Density (lot are per dwelling unit)	6,500 sq. ft.	3,000 sq. ft.
Street Frontage (min)	50 ft.	50 ft.
Front Yard (min)	25 ft. (or average depth of adjacent yards)	25 ft. (or average depth of adjacent yards)
Front Yard (max)		
Rear Yard (min)	25 ft.	20 ft.
Side Yard (min)	5-20 ft. (depending on height and location)	5-15 ft. (depending on height and location)
Lot Coverage (max)	35%	40%
Lot Width (min)	65 ft.	General: 60 ft. Multiplex: 90 ft.
Building Height (max)	Principal: 35 ft. Accessory: 18 ft.	Principal: 35 ft. Accessory: 18 ft.

An assessment of maximum permitted densities of the site under different zoning classifications for the entirety of the site, as well as whether a new road is constructed are included in Attachment 1. Please note that site features such as grading and significant natural resources were not considered as part of this assessment and may reduce the maximum feasible permitted density for the site.

VIII. COMPREHENSIVE PLAN CONSISTENCY

Relevant sections of the Comprehensive Plan that the Planning Board should take under consideration for this zoning map amendment application may include:

Environment

Local Goal

Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.

Strategy

Coordinate future land use policy changes with long-range regional transportation planning, including planning for transit, pedestrian, and bicycle improvements, to reduce local and regional vehicle miles traveled.

Continue to develop land use policies which support complete neighborhoods.



Figure 6: Visions of Portland's Plan 2030.

Housing

Local Goal

Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.

Strategy

Coordinate linkages between accessible transportation and housing affordability.

The submitted application would significantly increase the potential residential density of the project site from 57 to 126 dwelling units under a PRUD. As part of the Board's review of this change in land use policy, a number of Comprehensive Plan goals direct future growth to expand existing nodes of development, connect affordable housing with accessible transportation, and align growth in areas that support complete neighborhoods. Existing conditions including the absence of sewer service and connections to a robust multi-modal network are potential considerations in the review of this rezoning. Additionally, while proximate to a recently reviewed rezoning at 920 Ocean Avenue to R-5a, the proposed rezoning would be surrounded by zoning districts with lower permitted residential densities. These surrounding zoning designations may limit the nodal growth envisioned in the goals of the Comprehensive Plan.

IX. NEIGHBORHOOD MEETING & PUBLIC COMMENT

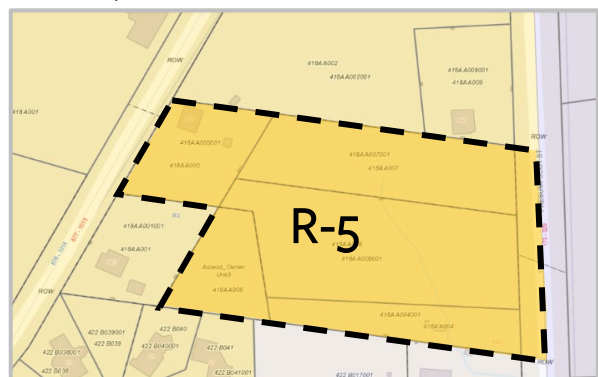
No public comment has been submitted. The Applicant held a neighborhood meeting on May 16, 2023 and was attended by two people. One favorable comment for the project was noted and a question was raised about the proposed site layout.

X. REQUISITE COUNCIL ACTION

Any proposed rezoning, regardless of whether it is favorably or unfavorably recommended by the Planning Board, must be approved by City Council vote in order to take effect.

XI. PROPOSED MOTION

- On the basis of materials submitted by the applicant, the City of Portland Land Use Code, Portland's Comprehensive Plan, public comment, and the information provided in the public hearing on October 24, 2023 for the application ZN-002427-2023 (921 Ocean Avenue & 410, 422, and 426 Presumpscot Street & Parcel 418A Aoo6), and/or other findings, the Planning Board finds that the proposed zoning map amendment **[is/is not]** consistent with the Comprehensive Plan for the city of Portland; and therefore, the Planning Board **[recommends/does not recommend]** to the City Council adoption of the Zoning Map amendment for the area of land that includes 921 Ocean Avenue & 410, 422, and 426 Presumpscot Street & Parcel 418A Aoo6 as shown to the right:



XII. ATTACHMENTS

REPORT ATTACHMENT

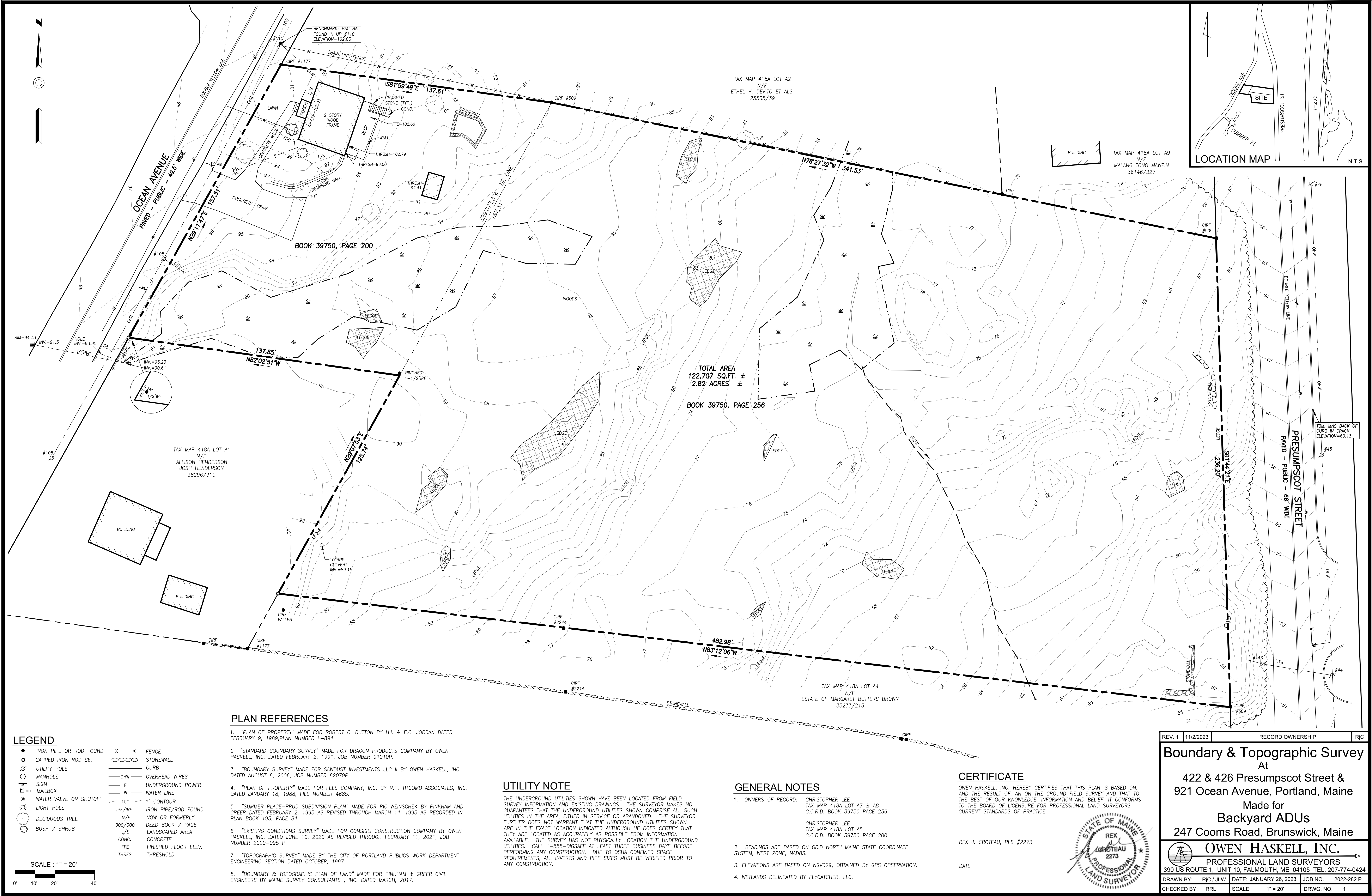
1. Maximum Permitted Densities Assessment

APPLICANT SUBMITTAL

- A. Project Summary 2023-03-27
- A1. Project Summary 2023-10-13
- B. Consistency with Comprehensive Plan 2023-09-12
- B1. Consistency with Comprehensive Plan 2023-10-13
- C. Checklist
- D. Right, Title, & Interest
- E. Neighborhood Meeting Materials

PLANS

- Plan 1. Vicinity Map
- Plan 2. Existing and Proposed Zoning Maps 2023-09-13
- Plan 2a. Existing and Proposed Zoning Maps 2023-10-13
- Plan 3. Conceptual Site Plan -R-5 & B-1b Zoning
- Plan 4. Conceptual Site Plan – RN-4 & B-1 Zoning
- Plan 5. Conceptual Site Plan – R-5 Zoning 2023-10-18



LEGEND

● IRON PIPE OR ROD FOUND	✕ FENCE
○ CAPPED IRON ROD SET	○ STONEWALL
○ UTILITY POLE	— OHW — OVERHEAD WIRES
○ SIGN	— E — UNDERGROUND POWER
○ MAILBOX	— W — WATER LINE
○ WATER VALVE OR SHUTOFF	— 100 — 1' CONTOUR
○ LIGHT POLE	— IFF/IRF — IRON PIPE/ROD FOUND
○ DECIDUOUS TREE	— N/F — NOW OR FORMERLY
○ BUSH / SHRUB	— 000/000 — DEED BOOK / PAGE
	— L/S — LANDSCAPED AREA
	— CONC. — CONCRETE
	— FFE — FINISHED FLOOR ELEV.
	— THRES — THRESHOLD

SCALE : 1" = 20'

- PLAN REFERENCES**
- "PLAN OF PROPERTY" MADE FOR ROBERT C. DUTTON BY H.J. & E.C. JORDAN DATED FEBRUARY 9, 1989, PLAN NUMBER L-894.
 - "STANDARD BOUNDARY SURVEY" MADE FOR DRAGON PRODUCTS COMPANY BY OWEN HASKELL, INC. DATED FEBRUARY 2, 1991, JOB NUMBER 91010P.
 - "BOUNDARY SURVEY" MADE FOR SAWDUST INVESTMENTS LLC II BY OWEN HASKELL, INC. DATED AUGUST 8, 2006, JOB NUMBER 82079P.
 - "PLAN OF PROPERTY" MADE FOR FELS COMPANY, INC. BY R.P. TITCOMB ASSOCIATES, INC. DATED JANUARY 18, 1988, FILE NUMBER 4685.
 - "SUMMER PLACE-PRUD SUBDIVISION PLAN" MADE FOR RJC WEINSCHKE BY PINKHAM AND GREER DATED FEBRUARY 2, 1995 AS REVISED THROUGH MARCH 14, 1995 AS RECORDED IN PLAN BOOK 195, PAGE 84.
 - "EXISTING CONDITIONS SURVEY" MADE FOR CONSIGLI CONSTRUCTION COMPANY BY OWEN HASKELL, INC. DATED JUNE 10, 2020 AS REVISED THROUGH FEBRUARY 11, 2021, JOB NUMBER 2020-095 P.
 - "TOPOGRAPHIC SURVEY" MADE BY THE CITY OF PORTLAND PUBLICS WORK DEPARTMENT ENGINEERING SECTION DATED OCTOBER, 1997.
 - "BOUNDARY & TOPOGRAPHIC PLAN OF LAND" MADE FOR PINKHAM & GREER CIVIL ENGINEERS BY MAINE SURVEY CONSULTANTS, INC. DATED MARCH, 2017.

UTILITY NOTE

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEY HAS NOT PHYSICALLY LOCATION THE UNDERGROUND UTILITIES. CALL 1-888-DIGSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

- GENERAL NOTES**
- OWNERS OF RECORD: CHRISTOPHER LEE
TAX MAP 418A LOT A7 & A8
C.C.R.D. BOOK 39750 PAGE 256
 - BEARINGS ARE BASED ON GRID NORTH MAINE STATE COORDINATE SYSTEM, WEST ZONE, NAD83.
 - ELEVATIONS ARE BASED ON NGVD29, OBTAINED BY GPS OBSERVATION.
 - WETLANDS DELINEATED BY FLYCATCHER, INC.

CERTIFICATE

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

REX J. CROTEAU, PLS #2273

DATE

STATE OF MAINE
REX J. CROTEAU
2273
PROFESSIONAL
LAND SURVEYOR

REV. 1	11/2/2023	RECORD OWNERSHIP	RJC
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Boundary & Topographic Survey
At
422 & 426 Presumpscot Street &
921 Ocean Avenue, Portland, Maine
Made for
Backyard ADUs
247 Cooms Road, Brunswick, Maine

OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS
390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424

DRAWN BY: RJC/JLW	DATE: JANUARY 26, 2023	JOB NO. 2022-282 P
CHECKED BY: RRL	SCALE: 1" = 20'	DRWG. NO. 1

PROPOSED UNITS

1. ADUs (13) - 7 single level, 3 sunken, 3 over sunken
1-Bedroom Apartments (100% AMI rental)
2. Duplex Units (18) - 9 buildings
3-Bedroom Condominiums (owned)
3. Existing House Renovation (1) - Existing
3-Bedroom House (Owned)

4 OCEAN AVENUE

MAP 418A LOTS
A005, A006, A007, A008, & A011
TOTAL AREA 2.8 AC

SITE BOUNDARY

An additional
10-20 units will be
developed along
Presumpscot Road

Lot 1



MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 6, 2023

SUBJECT: Order 45-23/24 Amendment to the Portland City Code Chapter 2 Re: Qualification for Land Bank Commission Members and Addition of North Deering Park - Sponsored by Ashley Rand, City Clerk

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: N/A

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

The various boards and committees struggle to fill vacant spots. Amending the Land Bank Commission rules will help with recruitment efforts to fill vacancies. Vacancies are posted in the paper as well as online, but we still are not receiving enough applications to fill spots. Right now the Land Bank Commission requires a member from each district as well as At-Large members to be on the board. This vacancy was advertised, but no one from a district that was needed applied. Amending this would allow for positions to be advertised for each district, but when no applicants apply from the vacant district seat, candidates from the same district may be appointed.

This amendment also adds North Deering Park to the list of Land Bank parcels, after it was placed in the Land Bank by Order 98-22/23 approved on November 14, 2023.

On October 16, 2023 this item was referred to the Legislative and Nominating Committee for review.

On November 21, 2023, the Legislative and Nominating Committee meeting and voted 3-0 (Ali Absent) to refer this item back to City Council for approval.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Ch. 2 Members of Land Bank from same District and add N Deering Park 10.2023 (1)

Prepared by:

Date: 12/06/2023

KATE SNYDER (MAYOR)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANDREW ZARRO (4)
MARK DION (5)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 2
RE: QUALIFICATIONS FOR LAND BANK COMMISSION MEMBERS AND
ADDITION OF NORTH DEERING PARK**

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

1. That Sections 2-42 and 2-44 are hereby amended to read as follows:

Sec. 2-42. Commission Established.

(a) *Findings.* The City Council hereby finds that:

1. There is a need to balance development within the municipality with conservation of open space important for wildlife, ecological, environmental, scenic or outdoor recreational values;
2. there are insufficient financial resources currently in place to plan for, and acquire significant open space lands or easements which are or may become available within the municipality or in adjoining buffer areas; and
3. there is a need to supplement the city's open space conservation efforts, without duplicating the efforts of other public and private groups including the Portland Planning Board, Portland Trails and the Portland Parks Commission.

Therefore, in order to ensure the conservation and preservation of limited open space with important wildlife, ecological, environmental, scenic or outdoor recreational values, there is hereby established a Portland Land Bank Commission, Portland Land Bank and a Portland Land Bank Fund.

(b) *Purposes.* It shall be the purpose of the commission to:

1. work for the acquisition and conservation of open space within the City, as defined in §2-43(a) below;
2. cooperate with other agencies and parties on wetlands mitigation projects;
3. recommend on a priority basis the acquisition of various interests in real estate in order to effectuate the goals of this article;
4. accept gifts and funds from both private and public sources and to disburse such funds in accordance with the commission's approved budget for the purposes hereunder;
5. act as a liaison to other public and private nonprofit agencies involved in planning, acquisition, disposition, and management of conservation and open space land within the municipality; and
6. recommend an annual budget to the City Manager and City Council to carry out its purposes.

(c) *Appointment of commission.* The Portland Land Bank Commission shall consist of and be administered by nine (9) persons appointed by the City Council for staggered three-year terms. Except as provided below for non-voting members, the members must be legal residents of the municipality and shall serve without compensation. One member of the commission shall be appointed from the City Council. Neither a municipal employee nor member of the Planning Board or Board of Appeals may be a member of the commission. To the extent feasible, representation on the board shall be diversified, including without limitation, members representing environmental or conservation interests, the Parks Commission, economic development, business and financial interests, and the public generally. There shall be a resident from each of the City Council districts on the commission, but if no candidate from a particular district applies to serve on the commission, an additional candidate from another district may be appointed.

...

Sec. 2-44. Specific Properties Dedicated as Land Bank Property Interests.

In addition to those properties currently designated or dedicated as Land Bank property interests, the following properties are hereby dedicated as Land Bank property interests:

- (a) Back Cove Park and Trail (429 K001, 166 X001, 165 X001, 158 X001, 157 X001, 139 X001, 128 X001, 440 A001, 442 B001, 442 X001, 441 X001, 009 X001, 008 X001, 440 X001)
- (b) Barrow's Park/Baxter Sundial (128 F001)
- (c) Bayside Park (026 H001, 026 H002, 026 H008)
- (d) Baxter Pines (133 A001-A017, 133 B001-B013, 133 B016-B020)
- (e) Baxter Woods (137 E012, 136 D004, 135 A005)
- (f) Bell Buoy Park (444 A001) (including only the existing brick and grass area around bell buoy) (urban open public space)
- (g) Belmeade Park (111 A001)
- (h) Capisic Pond Park (224A X001, 224A E016, 224 X001, 192 C001 192 H018, 192 H019, 192 H020, 192 H029, 223 A002, 223 A003)
- (i) Clark Street Park (057 K010)
- (j) Congress Square Park (037 E001) (urban open public space)
- (k) Deering Oaks Park (050 A001, 049 B001, 035 I001, 035 G001, 035 F001)
- (l) Dougherty Field (080 L001, 079 B001, 066 A002)
- (m) Eastern Promenade Park, East End Beach, Fort Allen Park (008 A003, 008 A007, 010 B006, 015 G001, 006 A001, 006 A002, 006 A006, 006 B003, 005 E004, 005 E001, 005 E002, 006 B001, 005 E008, 004 C002, 004 C001, 004 A001, 001 A001, 001 A003, 001 C007, 001 C006, 001 C005, 001 C004, 001 C001, 002 A014)
- (n) Fessenden Park (081 C006)
- (o) Fort Gorges (110 A010)
- (p) Fort Sumner Park (012 Q015, 013 K015)
- (q) Fox Field/Kennedy Park (023 B001)

- (r) Harbor View Park and Tate-Tyng Park (043 A001, 043 A002, 043 A003, 043 A004, 043 A005, 043 A006, 043 A007, 043 A008, 043 A009, 043 A010, 043 A011, 043 A013, 044 D001)
- (s) Heseltine Park (129 C001)
- (t) Lincoln Park (028 B001) (urban open public space)
- (u) Lobsterman Park (032 X002 - only including land south of the entrance to parking garage) (urban open public space)
- (v) Longfellow Square (no separate tax parcel) (only including statue and circular grassy area immediately surrounding statue) (urban open public space)
- (w) Monument Square (027 G001) (urban open public space)
- (x) Munjoy South Playground (017 G008)
- (y) Payson Park (159 G001, 163 L006, 164 A001, 165 A001, 166 A001, 166 A009, 167 B009, 167 B010)
- (z) Peppermint Park (021 F002)
- (aa) Pleasant Street Park (039 F025)
- (bb) Post Office Park (032 D005) (urban open public space)
- (cc) Riverside Golf Course (but excluding land on or within three hundred (300) feet of the parking lots and land on and within three hundred (300) feet of the existing clubhouse (building 1158) and three other buildings (buildings 1140, 1200, and 1260) and excluding any land on or within three hundred (300) feet of the Riverside Recycling Facility) (361 A002, 360 A001, 362 A001, 363 A001, 359 A001, 358, A001, 364 A001, 357 A001, 365 A001, 366 A001, 367 A001)
- (dd) Riverton Park (325 C008, 361 A001)
- (ee) Stroudwater Park (213 E003, 213 E004)
- (ff) Taylor Street Park (057 A006, 057 A009, 057 A010, 057 A018)
- (gg) Tommy's Park (032 H009) (urban open public space)

(hh) University Park (436 B001, 438 B001) ~~and~~

(ii) Western Promenade Park (064 E024, 068 E001, 070 C001, 071 A011, 071 A002, 071 A007) and

~~(ii)(jj) —~~ North Deering Park (371 A047, 371 A048, 371 A004, 371 A020, 371 A021)

Dedication of the above-listed properties as Land Bank property interests shall not affect any rights and interests of record held by third parties existing on the effective date of this ordinance. The above-listed properties may be removed from such dedication by the same process set forth in section 2-43(c).