

CITY OF PORTLAND, MAINE
Standing Committee on Sustainability and Transportation
Councilor Regina Phillips, Chair
Councilor Victoria Pelletier, District 2
Councilor Anna Bullett, District 4

Agenda
March 13, 2024
5:00 PM

The Sustainability and Transportation Committee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the The Sustainability and Transportation Committee. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

<https://portlandmaine-gov.zoom.us/j/87554450883?pwd=djNIY0wrTkNqbKQ1bDJQdGNRZmtrdz09>

1. Review and approve minutes from February 14
 - a. 2-14 Minutes
2. Sustainability Program Updates
General Updates Electrify Everything!
 - a. General updates
 - b. Electrify Everything!
3. Presentation and Discussion
 - a. Parks, Recreation, and Facilities: Update on City response to the Emerald Ash Borer infestation.
Presenters: Mark Reiland, City Arborist, and Alex Marshall, Parks Director
No public comment
 - b. Amendments to Chapters 24 and 34 of City Code addressing stormwater and low impact development requirements
Presenter: Benjamin Pearson, PE, Water Resources Compliance Section Coordinator
Public comment will be taken
 - c. Presentation and update regarding ReCode: Resilience -- Climate Resilience Overlay Zones
Presenters: Christine Grimando, Director of Planning and Urban Development, and Nell Donaldson, Director of Special Projects
No public comment
 - d. Presentation of Landcare Management Advisory Committee Annual Report and consideration of recommended amendments to Chapter 36
Presenter: Troy Moon, Sustainability Director
Public comment will be taken
4. Other Business

CITY OF PORTLAND, MAINE
Committee on Sustainability and Transportation
Councilor Regina Phillips (D3), Chair
Councilor Victoria Pelletier (D2)
Councilor Anna Bullett (D4)

Draft Minutes February 14, 2024

Members Present: Councilor Phillips, Councilor Pelletier, Councilor Bullett

Staff Present: Troy Moon, Erin Ferrell, Kayley Weeks

Meeting was called to order.

January 10 Minutes

The January 10, 2024 meeting minutes were approved unanimously.

Sustainability Update

Presented by Troy Moon and Erin Ferrell

The Sustainability Office welcomed a new coworker, Kayley Weeks, an AmeriCorps with the GPCOG Resilience Corps Fellowship. Troy has been involved in a series of grid planning and modernization workshops, led by the Maine Public Utilities Commission, to identify priorities that the utilities must address. Energy Benchmarking reporting season started in January, and Erin is busy assisting building owners to report and help building owners and property managers understand their benchmarking reports and identify actions that can be taken to improve their metrics. Sustainability Office staff are working on reviewing Pesticide Applicator Reports which are due Feb 1 each year under the Landcare Ordinance. A summary report will be shared with the Committee in March. More information on City owned EV charging infrastructure, outreach initiatives, and other office programming can be found in the agenda packet.

Councilor Comment on Sustainability Update

Councilor Phillips asked if we have plans to add more EV charging stations? *Yes we are working to install them in a variety of locations as permitting and infrastructure allows.*

Councilor Bullett asks if there are there incentives for developers to install charging stations when building multi unit properties (with Doherty Field project in mind)? *Our Technical Manual requires a certain number of chargers to be installed if you are planning to build parking. We are also expecting incentives for property developers for multifamily buildings through Efficiency Maine soon.*

Kenwood Street Parking Restrictions

Presented by Troy Moon

Citizen petition asks to lift the time restricted parking limits on Kenwood St near the University of Southern Maine. In accordance with City Code Section 28, City Council has the authority to

change parking regulations from time limited or metered to unregulated parking. Residents can request these changes with support from neighbors via a petition. Parking and Public Works staff that reviewed this request do not oppose the removal of time-limited parking restrictions on Kenwood Street.

Public Comment on Kenwood Street Parking Restrictions

Three residents commented in favor of removing the one hour parking time limit on Kenwood St.

Councilor Comment on Kenwood Street Parking Restrictions

Councilors Pelletier and Bullett both commented in agreement with the public comments. Committee confirmed that the petition is sufficient to move forward with recommendation.

Motion to remove 1 hour parking on Kenwood Street

Moved by Councilor Pelletier and seconded by Councilor Bullett.

Motion to approve the removal of 1 hour parking limits on Kenwood Street

Approved unanimously

Community Resilience Partnership Self Assessment

Presented by Troy Moon

As a member of the Community Resilience Partnership with the Governor's Office of Policy, Innovation, and the Future, we report on our community's progress and share assessments on our approach to increasing resilience to natural hazards and climate change impacts. Our most [recent community vulnerability assessment](#) identifies ten key areas of vulnerability: release of hazardous waste; grid system reliability and business continuity; impact to property values, commercial areas, and tax base; disruption to critical transportation routes; vulnerability of sewer and stormwater critical infrastructure; degradation of ecosystem health due to sea level rise and habitat loss; public health challenges due to unseasonably hot days, extreme heat, as well as extended heat waves; greater need for social services; vulnerability of food systems; and risk of increasing social inequity. These hazards primarily arise from sea level rise and storm surge - both trends we have been tracking and are continuing to monitor, anticipate, zone for, and spread awareness about.

No Public Comment Received

Councilor Comment on the Community Resilience Partnership Self Assessment

Councilor Bullett asked if the island communities are receiving help (federal dollars, FEMA) after the past storms? *Our emergency management coordinator does engage with FEMA and county assistance, but our staff can look into this.*

Councilor Phillips and Councilor Pelletier share appreciation for this presentation and how the City is monitoring and working to ensure that resilience is carried in all conversations.

Committee Discussion regarding Cassidy Point coal pile

Presented by Troy Moon

Members of the public have raised many concerns regarding coal dust emissions from the coal pile that Sprague operates at Merrill Terminal on Cassidy Point. Sprague recently received a new load of coal and dust is blowing off the site. We are encouraging the Maine Department of Environmental Protection to continue communicating with neighborhood groups and Sprague. The Maine DEP's air quality monitors at the site do not indicate any major health impact for those in nearby residential buildings. We also understand that the Maine DEP is encouraging Sprague to institute best-management practices plan to control fugitive dust. Maine DEP staff asked to present to the committee, again in May 2024.

Councilor Comment on the Discussion

Councilor Pelletier notes the challenge in communication between concerned residents and the Maine DEP and is curious if they may be able to elect a representative liaison for community members and Council members on this issue.

Councilor Bullett asked if there are impacts (from the coal dust emissions) for marine life or the waterfront?

Committee Work Plan

Troy Moon maps out the tentative agenda for the next few months of the Sustainability and Transportation Committee session. Topics of interest and priorities of committee members include:

- Reestablishing two-way traffic on State Street and High Street
- Bayside Tree Planting and an update from Forestry and City trees
- Establishing a Sustainability Fund
- Proposing amendments to the Landcare Ordinance (Chapter 34) recommended by Landcare Management Advisory Committee
- Review ongoing work with Climate Resilience Overlay Zoning
- Proposing amendments to the Low Impact Development Ordinances with Water Resources
- BirdSafe Maine Ordinance
- More non-car focused transportation opportunities
- Franklin Street Redesign
- Commercial Street Sea-Level Rise

Motion to Adjournment

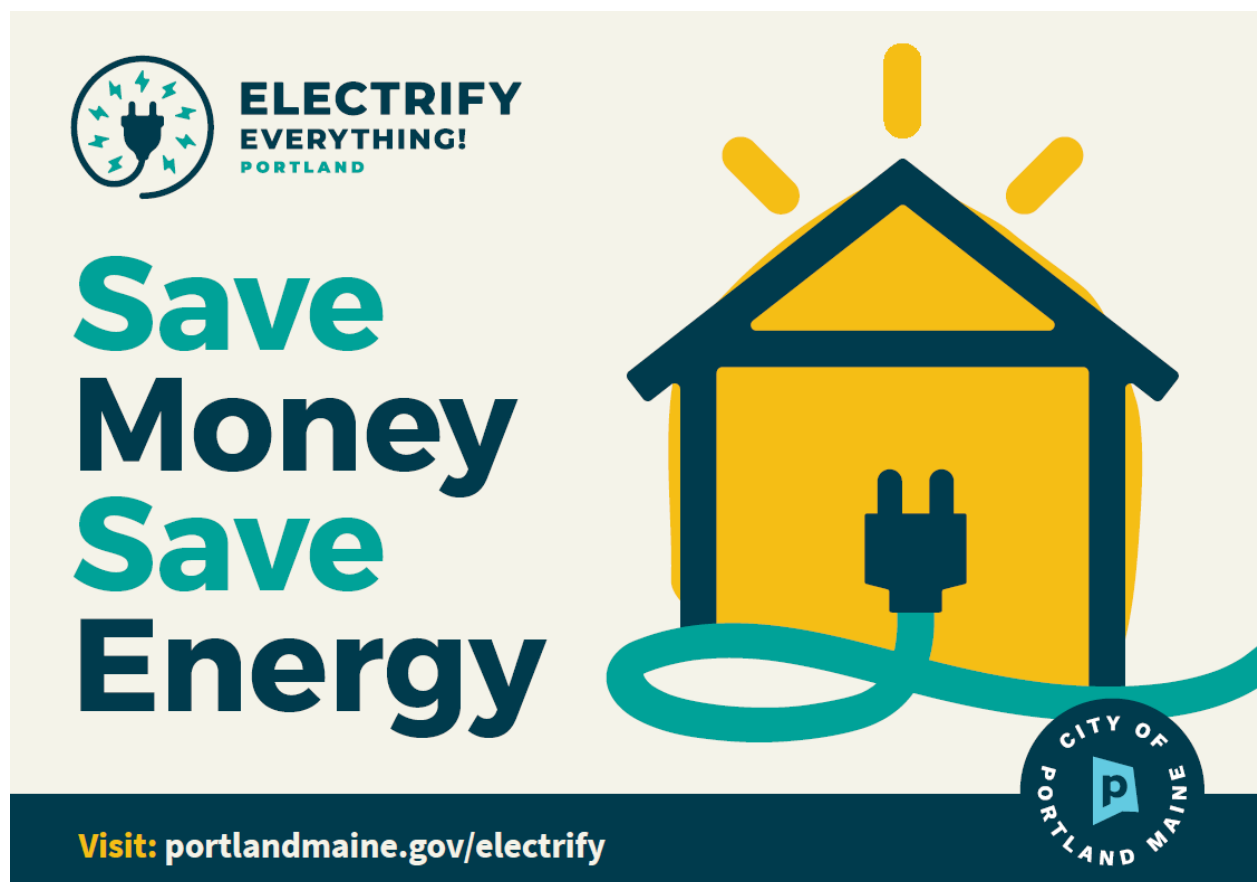
Motion to adjourn by Councilor Bullett. Second by Councilor Pellitier. All adjourned.

Meeting Adjourned

Sustainability Updates
March 13, 2024

Energy

The Sustainability Office launched DIY Electrify on March 1st offering \$250 rebates per household for home weatherization and electrification efforts and sent a postcard to all Portland homes with information about saving money through home electrification.



The Office is excited to host a Home Energy Expo for Portland homeowners to learn how to plan and prioritize how to make their home more energy efficient. The event is on March 16th with guests from Efficiency Maine, Green Healthy Maine Homes, Window Dressers, and Maine Solar Solutions, multiple local insulation & home efficiency contractors, and local green realtors for a day filled with interactive workshops and valuable information about energy efficiency.

Waste Reduction

Troy attended the SWANA EPR Conference on February 27th where industry experts, policymakers, and environmental groups from around the state met to discuss the impending Extended Producer Responsibility (EPR) legislation for packaging. In July 2021, the Maine legislature passed a law establishing an [EPR stewardship program for packaging](#). The program's purpose is to reduce the volume and toxicity and increase the recycling of packaging material. Producers of packaging products will pay into a fund, which will be used to reimburse municipalities for eligible recycling and waste management costs, make investments in recycling infrastructure, and help Maine citizens understand how to recycle.

Landcare

We've been working to schedule our summer outreach program that will address topics including soil science and tests, permaculture, urban runoff and water quality, healthy lawn building, and winter lawn preparation. The program will include guest speakers from Maine Cooperative Extension, Friends of Casco Bay, and Cumberland County Soil and Water Conservation District.

Education and Outreach

On March 8th, the OCF team hosted Coffee and Climate with speakers from both City Sustainability Offices and Maine Audubon to discuss Landcare Ordinances and sustainable landcare.

On March 9th, Staff presented to the Natural Helpers hosted by the Office of Economic Opportunity about sustainability efforts in Portland and current programs.

The OCF newsletter is a once-a-month e-newsletter with more than 1,100 subscribers. We share information on upcoming events, programs launching, and educational information. You can sign up for the newsletter at oneclimatefuture.org.

Climate and Coffee events are community conversations that happen on the 2nd Friday of the month at 9 AM. We record sessions with guest speakers and post them on www.oneclimatefuture.org, along with other information about our work. You can also follow us on social media. Instagram [@sustainableportlandme](#) // FB [@SustainablePortlandME](#)



2024 Emerald Ash Borer Management in Portland

Intro

Starting in 2019, emerald ash borer, an invasive tree pest, has been detected in Portland, and poses serious risks to our 600+ inventoried Ash street trees. In 2021, the Forestry team within the Parks, Recreation and Facilities Department worked with the State of Maine to develop a plan to address the infestation, and to preserve as many trees throughout Portland as possible. While some trees can be saved through treatments and organic bio-controls, many trees will succumb to the pest and will have to be removed and replaced over the next 3-5 years.

Background

The emerald ash borer (EAB) is an invasive wood boring beetle first discovered in Michigan in 2002 after introduction through the Great Lakes shipping lanes. Native to east Asia, EAB feeds almost exclusively on members of the ash genus (*Fraxinus*) with the adult beetles feeding on the foliage of the upper canopy and the larvae feeding on the vascular tissues within the sapwood. The extensive damage to the vascular system caused by larval feeding leads to rapid decline and death of affected trees with mortality rates exceeding 90% within ~5 years of initial infestation.

Following discovery in the early 2000's, initial management regimens were focused on eradication of the pest and included local, state, and federal quarantines and restrictions on the movement of ash wood and wood products. Containment and eradication efforts were unsuccessful and EAB has since spread to thousands of counties across 35+ US states as well as provincial territories in Canada. EAB response and long term management are now focused on an integrated pest management (IPM) approach with 3 major foci:

1. Risk mitigation through host tree removal and replacement with non-host species
2. Selective retention of high value trees through long term treatment
3. Biocontrol of pest populations through parasitic wasp release

EAB was first detected in Portland in 2019 and has since spread throughout the municipality affecting ash trees across political boundaries and habitats. There are ~600 publicly owned, inventoried ash street trees (~3% of total inventory) as well as hundreds to thousands more in the non-inventoried publicly owned spaces throughout the city. The following management summary applies only to ash trees on publicly owned property.

EAB in Portland

EAB likely experiences a 2 year life cycle in the Portland area with female beetles laying eggs in bark crevices as early as mid June. A female beetle can potentially produce hundreds of eggs in their 3-4 week lifespan while adult male beetles live ~2 weeks. The adult beetles feed on the fringes of the foliage and cause little to no long term damage. The eggs hatch after 2-3 weeks and the larvae bore through the outer bark to feed on the phloem tissue of the inner bark. The larvae overwinter in the inner bark or sapwood and begin pupation the following spring after the accumulation of 100-150 growing degree days (GDD's, base 50°F), usually in the first or second week of May. Pupation lasts approximately 4-5 weeks and the adult beetles begin exiting the trees through small 'D' shaped exit holes after the accumulation of 400-500 GDD's, usually in mid-June. Peak rates of adult emergence coincide with the accumulation of ~1000 GDD's and usually occurs in mid-July (see Figure 1).

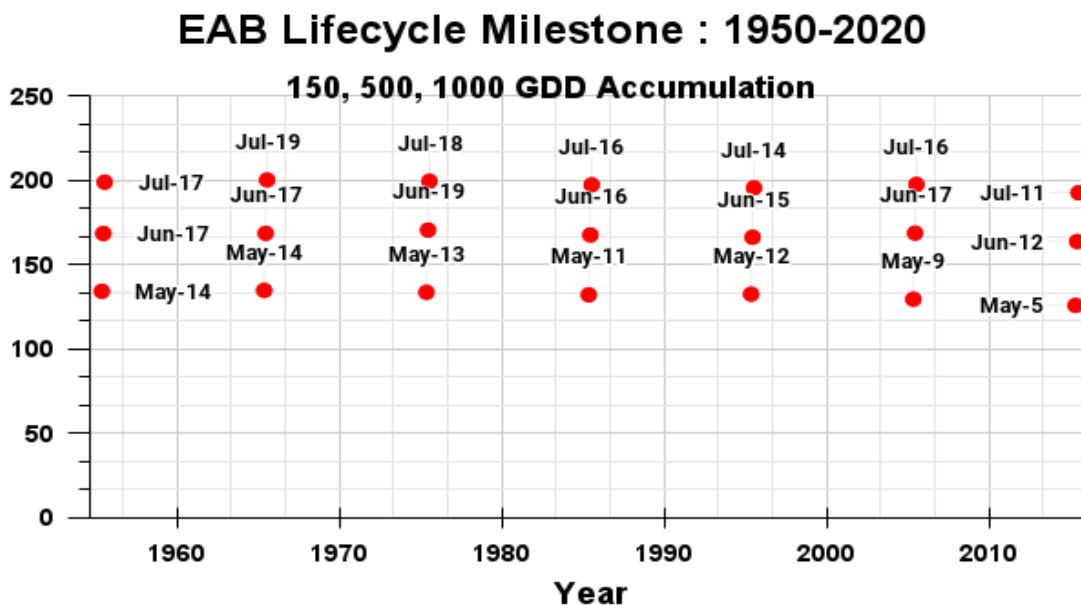


Figure 1: Average Historical Dates of Significant EAB GDD Accumulation by Decade, 1950-2020

In the early fall of 2023 the Forestry division completed a visual assessment of the inventoried ash trees and assigned each a condition rating of 1-4 with '1' indicating no outward sign of infestation and '4' indicating severe decline and mortality. Over 75% of the surveyed trees showed signs of decline due to infestation with ~25% showing moderate to severe decline (Categories 3 and 4), ~50% showing initial to moderate decline (Category 2), and <25% showing no outward signs of infestation (Category 1) (See Figure 2). The trees on the

peninsula are showing the advanced stages of decline more quickly, likely due to reduced health and vigor caused by the chronic stress of the urban environment (See Figure 3).

Ash Condition Rating Fall 2023, n=~600

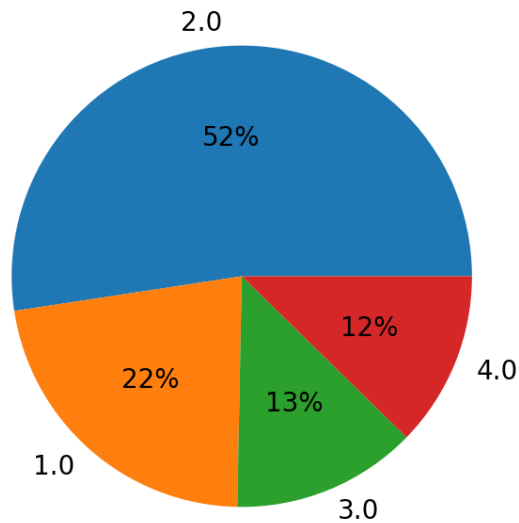


Figure 2: Health Condition Rating for Inventoried Ash Trees in Portland (1:No Sign of Infestation ... 4:Severe Decline/Mortality)

Fall 2023 Ash Condition Survey

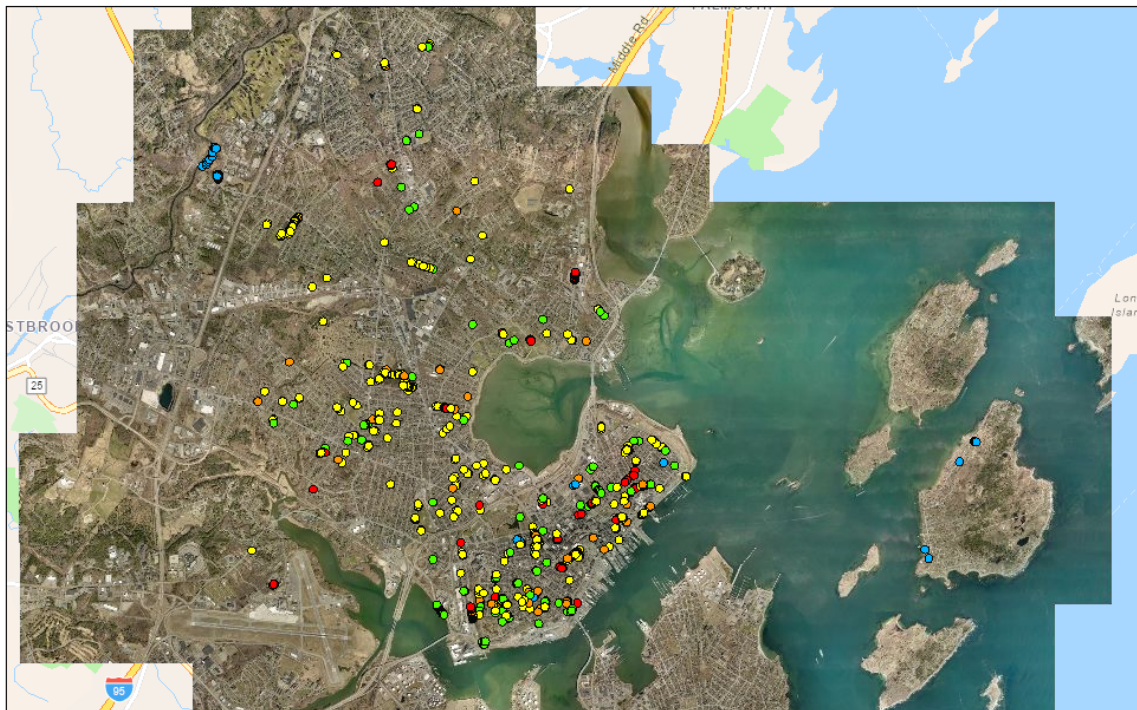


Figure 3: Fall 2023 Ash Tree Condition Survey (1:Green, 2:Yellow, 3:Orange, 4:Red). Treated Trees are Blue.

Previous Treatment

In the Spring of 2023 selective treatment of high value trees and biocontrol measures began with 142 trees receiving targeted insecticide treatment and 7 trees serving as biocontrol release sites. Biocontrol measures were focused in Riverton Trolley Park to build up a population of non-stinging parasitic wasps to provide long term EAB population control and protect the ash trees in the Presumpscot River corridor. In general, biological control measures will be focused in the Presumpscot River corridor to preserve the population of native ash trees along the banks and bottomlands and prevent post mortality replacement by invasive species (Norway maple, buckthorn, knotweed, bittersweet, etc).

Insecticide treatments consisted of either a stem injected systemic insecticide (emamectin benzoate) or an insecticide soil drench (imidacloprid) with 116 trees receiving stem injections and 16 receiving soil drenches. Of the 142 trees that received insecticide treatment in the spring; 28 showed signs of moderate to severe decline during the fall survey (~4 months after treatment) while 114 showed mild to no signs of decline (See Figure 4). It is reasonable to conclude that the 28 treated trees showing signs of moderate to severe decline in the fall survey were already heavily infested at the time of treatment and existing vascular system damage compromised treatment efficacy. Several multi-year field studies have demonstrated that stem injected emamectin benzoate, when applied at the right time with appropriate dosage, provides 2-3 years protection even under heavy pest pressure.

Treated Ash Condition Rating Fall 2023 (n=142)

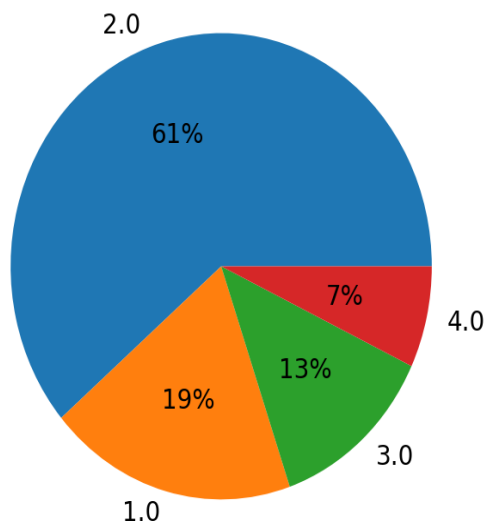


Figure 4: Health Condition Rating for Treated Ash Trees in Portland (1:No Sign of Infestation ... 4:Severe Decline/Mortality)

2024 Treatment

Risk reduction and host tree removal will begin in the early months of 2024 and continue for 2-3 years as the most severely affected trees (Survey Categories 3 & 4) are removed first and the remaining trees (Survey Categories 1 & 2) removed as they deteriorate over the coming

years. A second group of trees will be selected for stem injected insecticide treatments during the Spring of 2024. Biocontrol efforts will be expanded with release sites added in the Presumpscot River Preserve to further preserve the ecologically significant ash population in the river corridor.

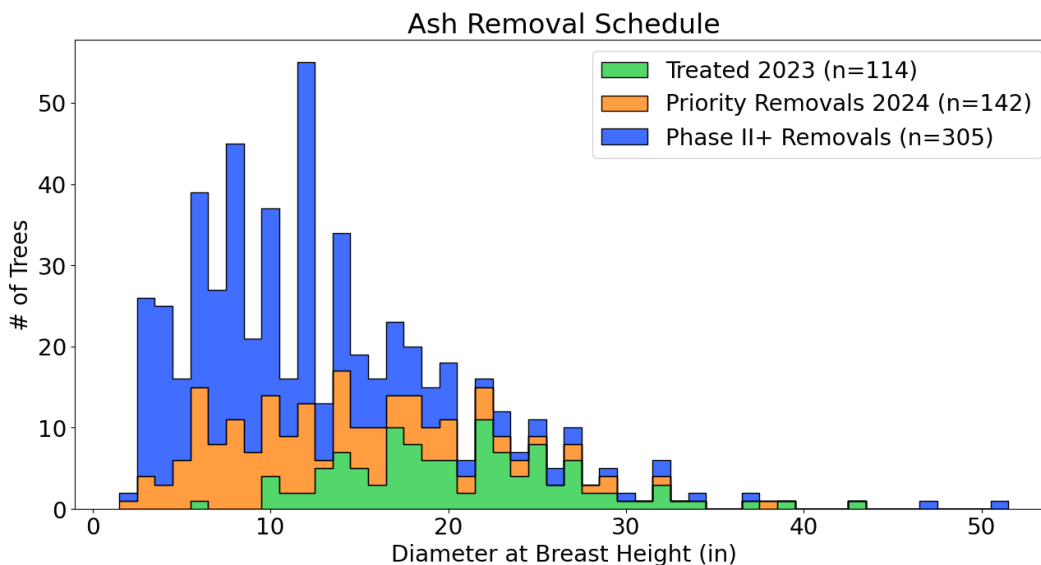


Figure 5: DBH Distribution of Removal Phases and Surviving Treated Trees

It is expected that ~350-400 inventoried ash street trees will be removed over the coming few years while ~150-200 will be preserved through a long-term treatment and monitoring program (See Figure 5). The trees selected for stem injected insecticide treatments in 2024 will migrate from the 'Phase II+ Removal' group in the figure to the 'Treated' group. These estimates do not include additional non-inventoried ash trees that will need to be removed in public spaces nor does it include the non-inventoried ash trees that will be preserved due to the biocontrol efforts.

Replanting of removed trees will be with non-host species and likely lag at least 1 year behind removal. The Parks, Recreation, and Facilities department, in conjunction with the Portland Parks Conservancy is applying for grant funding from the US Forest Service to facilitate a comprehensive replanting plan that will work to address infrastructure improvements where most needed. The habitat and site conditions of the affected trees is highly variable and will require different replanting approaches on a site by site basis.

Chapter 24 SEWERS*

***Cross reference(s)**--Buildings and building regulations, Ch. 6; disposal of wastes by food service establishments, § 11-26; land use, Ch. 14; streets, sidewalks and other public places, Ch. 25.

State law reference(s)--Sewers and drains, 30 M.R.S.A. § 4351 et seq.

Art. I. In General, §§ 24-1--24-15

Art. II. Sewer Construction, §§ 24-16--24-30

Art. III. Sewer Use Regulations, §§ 24-31--24-70

Art. IV. Sanitary Sewer User and Industrial Pre-treatment Charges, §§ 24-71--24-77

Art. V. Stormwater Service and User Charges,

ARTICLE I. IN GENERAL

Sec. 24-1. Purpose

The city is responsible for the health and safety of the public and maintaining over 300 miles of sewer line comprised of the sanitary sewer and storm sewer lines themselves, catch basins, manholes, detention ponds, underground waste water storage facilities, and sewer pump stations.

The city maintains a sewer system in order to convey domestic wastewater and stormwater runoff from private and public property for treatment at the Publicly Owned Treatment Works.

The city maintains a stormwater drainage system in order to convey stormwater runoff away from private and public property to minimize flooding, reduce pollution discharge to waters of the State of Maine, and to control erosion of streams and channels.

The city council finds that funding the comprehensive wastewater and stormwater programs to properly operate this infrastructure should be equitably paid for by properties making use of sewer and stormwater services provided by the city according to costs incurred to provide those services.
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-2. Definitions.

For the purposes of this chapter, all words shall have their normal meanings and such meanings as may be in common use in the

field of wastewater treatment. Certain words are more particularly defined. For the purposes of this Chapter, the following terms shall have the following meanings.

Act shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, U.S.C. § 1251 et seq., and the regulations promulgated thereunder, as amended from time to time.

Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, which begins eight (8) feet outside the outer face of the building wall.

Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.

Combined sewer shall mean a sewer conveying both stormwater and wastewater.

Department of Public Works shall mean the public works authority.

Discharge shall mean any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants

District shall mean the Portland Water District, a quasi-municipal corporation existing pursuant to Chapter 84 of the Private and Special Laws of Maine of 1975, as amended, with a business address of 225 Douglas Street, Portland, Maine.

Domestic wastewater shall mean the liquid wastes and liquid borne wastes discharged from the sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, home laundry rooms, kitchens, and floor drains essentially free of industrial wastes or toxic materials.

Industrial user shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.

Industrial waste shall mean any liquid, gaseous, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

Interceptor sewer shall mean a large sewer used to intercept a number of main or trunk sewers and convey wastewater and stormwater runoff to treatment or other disposal facilities.

National pollutant discharge elimination system or NPDES permit shall mean a permit issued pursuant to § 402 of the act, 33 USC § 1342, and M.R.S.A. Title 38, § 414-A.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

POTW (publicly owned treatment works) ("facility") shall mean the treatment works, as defined by § 212 of the act, operated by the Portland Water District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater consisting of domestic, commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, pump stations and other conveyances which convey wastewater to the facility and may be owned by the city. For the purposes of this chapter, POTW shall also include any sewers that convey wastewater to the treatment works from persons who are, by permit, contract, or agreement with the city, users of the facility.

POTW treatment plant shall mean that portion of the facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal wastewater, industrial waste, septage and holding water and other trucked-in wastes as allowed under the provisions of this article.

Private wastewater disposal system shall mean a treatment tank with the effluent discharging into a subsurface absorption area, or such other facilities as may be permitted under the procedures set forth in rules and regulations adopted by the state department of health and welfare pursuant to 22 M.R.S.A. § 42(3), and the city's plumbing code.

Private sewer system shall mean any sewer system within the city not owned by or constructed by a public authority.

Private wastewater treatment works shall mean all facilities other than private sewage disposal systems for treating and disposing of wastewater within the city not owned by a public authority. Private wastewater treatment works shall be distinct from private wastewater disposal systems as the effluent is discharged directly into surface water bodies. Private wastewater

treatment works shall be licensed by the state department of environmental protection, in accordance with the provisions of 38 M.R.S.A. §§ 413, 414.

Public sewer shall mean a sewer directly owned, operated or controlled by the city or the Portland Water District.

Sanitary sewer shall mean a sewer, conveying either exclusively domestic wastewater and industrial waste or a sewer also conveying stormwater runoff together with ground and surface water that is not admitted intentionally.

Sewer shall mean a pipe or conduit for conveying liquid or liquid-carried waste.

Storm sewer shall mean a sewer for conveying stormwater runoff, groundwater, subsurface water, condensate, cooling water or other similar discharge but which excludes domestic wastewater and polluted industrial wastes.

Stormwater shall mean any stormwater runoff, snowmelt runoff, and surface runoff and drainage. "Storm water" shall have the same meaning as stormwater.

Stormwater drainage system shall mean any publicly owned or operated conveyance for stormwater, natural and human-made including, but not limited to, storm sewers, city and state roads including the Maine Turnpike and other physical works with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, culverts, human-made channels, swales, ditches, swamps, rivers, streams, creeks, brooks, reservoirs, ponds, drainage ways, inlets, pipes, head walls, lakes, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.

Stormwater services shall mean the program and maintenance activities as well as the pipe, conduits, or other conveyances or facilities provided by the city including but not limited to necessary programs, improvements, or maintenance required to meet national pollutant discharge elimination system (NPDES) permits the city may hold or other regulatory or court imposed obligations on the city, or general maintenance of pipes, conduits or other facilities improvements and other unforeseen improvements necessary to provide stormwater service to the city.

Wastewater shall mean a combination of the liquid and water-

carried wastes from residences, commercial buildings, institutions and industrial establishments, together with such ground, surface, and stormwater as may be present.

Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently on a natural basis.

Westbrook Inter-Municipal Sewer Service Area shall mean the Domestic and sanitary sewage and waste water from the Riverside Street/Warren Avenue/Forest Avenue vicinity of Portland as defined on the plan to the Rules and Regulations enacted by the Department of Public Works, and on file in the Department of Public Works, intercepted by the District and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment.
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

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

Reference - Council Order 54-02/03 § An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook).

Sec. 24-3. Administration.

(a) The director of public works shall establish rules and regulations governing the availability and use of city wastewater collection and treatment facilities and stormwater drainage system. The rules and regulations shall be consistent with federal law and ordinances. Said wastewater rules shall be enacted in conjunction with the Portland Water District prior to enactment.

(b) The rules shall be enacted in the same manner as the rules for solid waste disposal are promulgated, prescribed in section 12-105(b) and (b.1) of this Code, with the exception that the rules will go into effect twenty (20) days after enactment by the director unless stayed by action of the city council. Proposed rules shall be delivered to the council as a communication prior to enactment.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-4. Enforcement Agency.

The Department of Public Works or the Portland Water District as agent for the city and at the request of the Department of Public Works, shall administer and enforce the provisions of this chapter.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-5. Reserved.

Sec. 24-6. Reserved.
Sec. 24-7. Reserved.
Sec. 24-8. Reserved.
Sec. 24-9. Reserved.
Sec. 24-10. Reserved.
Sec. 24-11. Reserved.
Sec. 24-12. Reserved.
Sec. 24-13. Reserved.
Sec. 24-14. Reserved.
Sec. 24-15. Reserved.

ARTICLE II. SEWER CONSTRUCTION

Sec. 24-16. Accepted streets.

When any person owning property on an accepted street shall petition for the construction of a sewer in the street, such sewer may be constructed under one (1) of the following arrangements at the option of the petitioner, subject to the approval of the Department of Public Works:

- (a) Upon authorization by the city council, a sewer shall be constructed by the city, the cost of a sewer to be recovered in part as hereinafter provided; or
- (b) The petitioner may cause a sewer to be built to the specifications of the Department of Public Works and under his or her supervision, with or without regard to competitive bids. Upon completion of a sewer, the city shall be reimbursed in full for its costs, including engineering and inspection, and a sewer shall be deeded to the city as a public sewer at no cost to the city.

(Code 1968, § 704.1; Ord. No. 101-81, §§ 1--3, 9-21-81; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-17. Dedicated streets.

When any person owning property on a street, which prior to July 7, 1948, has been dedicated, constructed and used for public travel but has not been accepted by the city, shall petition for the construction of a sewer in the street, such sewer may be constructed under one (1) of the following arrangements at the option of the petitioner, subject to the approval of the Department of Public Works:

- (a) Upon authorization by the city council, a sewer shall be constructed by the city, the cost aa sewer to be recovered in part as hereinafter provided; or
- (b) The petitioner may cause a sewer to be built to the specifications of the Department of Public Works and under his or her supervision, with or without regard to competitive bids. Upon completion of a sewer, the city shall be reimbursed in full for its costs, including engineering and inspection, and at such time as the street is accepted by the city, a sewer shall be deeded to the city as a public sewer at no cost to the city.

(Code 1968, § 704.2; Ord. No. 101-81, §§ 4, 5, 9-21-81; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-18. Initiative of city council.

The city council may, on its own initiative and without petition therefor, authorize construction by the city of a sewer in accepted and dedicated-but-unaccepted streets, the cost of a sewer to be recovered in part as hereinafter provided.

(Ord. No. 101-81, § 6, 9-21-81; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-19. Costs.

(a) A charge is hereby established for the connection heretofore or hereafter of any property to a sewer constructed by the city or the Portland Water District and completed on or after January 1, 1978. Such charge shall be due and payable upon application for a connection permit as provided in section 24-39, and except for connections made before November 15, 1981, shall be in lieu of all other charges related thereto, including the fee for the connection permit and street and sidewalk opening charges as provided in section 25-156, provided that connection is made in accordance with article III of this chapter. This section shall not apply to any property assessed for the cost of sewer construction according to law.

(b) For any such sewer completed heretofore, the charge shall be two hundred dollars (\$200.00) per each sanitary sewer connection made heretofore or hereafter but before November 15, 1981, and one thousand dollars (\$1,000.00) per each such connection made thereafter.

(c) For any such sewer completed hereafter, the charge shall

be two thousand dollars (\$2,000.00) per each such connection, provided that the city council may, from time to time, by order readjust the charge according to the then-prevailing cost of sewer construction and the anticipated number of such connections.
(Ord. No. 101-81, § 7, 9-21-81; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Cross reference(s)--Uniform procedure for collecting assessments, § 1-16.

Sec. 24-20. Reserved.
Sec. 24-21. Reserved.
Sec. 24-22. Reserved.
Sec. 24-23. Reserved.
Sec. 24-24. Reserved.
Sec. 24-25. Reserved.
Sec. 24-26. Reserved.
Sec. 24-27. Reserved.
Sec. 24-28. Reserved.
Sec. 24-29. Reserved.
Sec. 24-30. Reserved.

ARTICLE III. SEWER USE REGULATIONS*

***Editor's note**--Ord. No. 263-96, passed May 20, 1996, amended this article in its entirety, in effect repealing the former provisions and enacting similar new provisions as herein set out. Formerly, such provisions pertained to sewer use regulations, consisted of substantive §§ 24-31--24-60, and derived from §§ 309.1--309.29 of the 1968 Code, as amended by the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
13-76	--	10- 6-76	221-88	1	1- 4-88
154-79	--	3-19-79	228-88	1	2- 1-88
355-84	1--14, 16, 17	1- 4-84	77-91	--	8- 7-91
317-87	1	2- 2-87	37-93	--	7- 7-93

Sec. 24-31. Scope.

The provisions of this article shall apply to and govern all types of buildings requiring wastewater facilities; the excavation, construction, installation, usage, maintenance, extension, alteration, repair or removal of any building sewer, building storm drain, sanitary sewer system, or storm drainage or sewer system; the connection of building sewers and building storm sewers to sanitary sewer systems and/or storm drainage systems or combined sewers; the types of wastes or wastewaters prohibited from public sewers and storm drainage systems; permitted and prohibited concentrations and strengths of wastewater; and situations in which use of a private sewage disposal system is permissible.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-32. Intent and purpose.

(a) It shall be the intent and purpose of this article to eliminate existing pollution, and to prevent further pollution caused by inadequate wastewater disposal, and to accomplish the necessary local legislation to meet the pollution abatement schedule for the Portland Regional Wastewater Plan established by the state and the federal government. All this is in furtherance of the health, welfare, comfort and convenience of the inhabitants of the city.

(b) Whereas the Portland Water District has been designated by state legislative action and local public referendum as the regional agency responsible for interception and wastewater treatment, and is the owner and operator of the POTW treatment plant, none of the provisions of this article shall be construed to repeal or otherwise interfere with the rights, duties or powers granted to the Portland Water District pursuant to Chapter 433 of the private and special laws of the State of Maine of 1907, as amended.

(Ord. No. 263-96, 5-20-96)

Editor's Note - Section 24-32.1 Administration was deleted by Order 129-14/15, passed on 1-21-2015 and Effective 1-1-2016.

Sec. 24-33. Reserved

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-34. Definitions.

For the purposes of this article, all words not defined in section 24-2 shall have their normal meanings and such meanings as may be in common use in the field of sanitation and wastewater treatment. For the purposes of this article, the following terms have the following meanings.

B.O.D. (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in milligrams per liter.

Categorical industrial user shall mean an industrial user subject to national categorical pretreatment standards.

Caustic alkalinity (hydroxide alkalinity) shall mean a measure of the capacity of wastewater, which exhibits a pH of greater than or equal to 8.3, to neutralize acids.

C.O.D. (chemical oxygen demand) shall mean the measure of the oxygen required for oxidation of the organic matter in a sample that can be oxidized by a strong chemical oxidizing agent under standard laboratory procedure.

F.O.G. shall mean the measure of fats, wax, grease and oils (other than petroleum based materials).

Garbage shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and produce, and from the handling, storage and sale of food and produce.

Incompatible pollutant is defined as any pollutant other than biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria or additional pollutants identified in the POTW's NPDES permit to discharge, which the POTW was not designed to treat and does not remove to a substantial degree or may be toxic to the POTW or receiving water.

Industrial user shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.

Interference means a discharge which, alone or in conjunction with discharges from other sources, inhibits or disrupts the facility, its treatment processes or operations, or its sludge processes, use or disposal, and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase

in the magnitude or duration of a violation), or of the prevention of wastewater sludge use or disposal by the facility in accordance with applicable federal, state, or local statutes and regulations or permits issued thereunder, as set forth in 40 CFR § 403.3(i).

mg/l shall mean milligrams per liter.

National categorical pretreatment standard shall mean any regulations containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the act, which apply to a specific category of industrial users and which are found in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.

pH shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in a solution expressed as standards units.

Properly shredded garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Significant industrial user shall mean any industrial user subject to categorical pretreatment standards, and any other industrial user that discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the facility's operation or for violating any pretreatment standard or requirement; provided, however, that upon a finding that an industrial user meeting the foregoing criteria has no reasonable potential for violating any pretreatment standard or requirement or for adversely affecting the facility's operation, the city may, at any time, upon its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

Slug shall mean any discharge of nonroutine, episodic nature, including, but not limited to, an accidental spill, noncustomary

batch discharge, or any discharge of wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration or flow rate during normal operation or which may adversely affect the POTW.

Total suspended solids (TSS) shall mean the total suspended matter that floats on the surface of, or is suspended in water, wastewater, or other liquids, and which is removable by laboratory filtration.

(Ord. No. 263-96, 5-20-96; Ord. No. 97-03/04, 12-17-03; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-35. Sanitary facilities required.

Every building intended for human habitation, occupancy, employment, recreation or other purposes, situated within the city shall be provided with suitable and sufficient sanitary facilities for the use of the occupants thereof, which facilities in character, number and method of installation shall comply with all health laws of the state, ordinances of the city, and rules and regulations of the state bureau of health so far as the same are compatible and not inconsistent.

(Ord. No. 263-96, 5-20-96)

Sec. 24-36. Connection to public sewer required.

The owner of any building used for human habitation, occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public sanitary, combined or interceptor sewer, is hereby required at his expense to connect the building sewer in the most direct manner possible with the proper public sewer in accordance with the provisions of this article, provided that the public sewer is within two hundred (200) feet of the building (the two hundred (200) feet to be measured in such manner so as not to pass over any property owned privately by anyone other than the owner of the premises from which such measurement is being made). Any required compliance with this section shall be completed within one (1) year after the date of official notice to do so.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-37. Exception for private wastewater system.

Where the public sewer does not extend to within two hundred (200) feet distant from the nearest point of the building (measured as described in section 24-36), the public sewer shall, at such time, be classified as inaccessible with regard to such premises. Where the public sewers are inaccessible to premises, any building required to be provided with sanitary facilities under section 24-35 shall comply with the following:

- (a) The owner may at his own expense connect with the public sewer even though the building is over two hundred (200) feet distant from the public sewer; or
- (b) Where liquid-carried wastes or wastewater result, they shall discharge into a private wastewater disposal system; or
- (c) Where liquid-carried wastes or wastewater result, they shall discharge into a private wastewater treatment works.

(Ord. No. 263-96, 5-20-96)

Sec. 24-38. Private wastewater systems discontinued.

(a) At such time as a public sewer becomes accessible, as defined in section 24-36, to a property served by a private wastewater disposal system, direct connection shall be made to the public sewer by the owner of such property in compliance with this article within twelve (12) months of receipt of official notice to do so. At the time that direct connection to the public sewer is completed, use of the private wastewater disposal facilities shall have been discontinued. Such abandoned private wastewater disposal system shall be cleaned of sludge and waste materials and filled with clean bankrun gravel or dirt within thirty (30) days.

(b) The closing and filling of the private wastewater disposal system and the connection to the public sewer system shall be inspected by the Department of Public Works. The fee for such inspection shall be a minimum of ten dollars (\$10.00) per septic tank plus ten dollars (\$10.00) per hour for all inspection time exceeding one (1) hour. The permit for the connection to the public sewer is the same as those required under sections 24-39 and 24-42.

(c) No such work may be approved unless notice is given to the Department of Public Works sufficient to permit the inspector to be present at the filling of the private wastewater disposal system and the connection to the public sewer. No new sewer

construction or sewer repair or reconstruction may be approved if backfilled and/or covered prior to inspection. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the city.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-39. Public sewer connection; permit; fee.

No person shall uncover, make any connections with or openings into, alter or disturb either any public sewer or appurtenance thereof or any private sewer or appurtenance thereof without first obtaining a written permit from the Department of Public Works or the Portland Water District, if required. The fee for such permit shall be fifty dollars (\$50.00).

(Ord. No. 263-96, 5-20-96; Ord. No. 261-01/02, 5-20-02; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-40. Costs.

All costs and expense incidental to the installation, connection and maintenance of the building sewer shall be borne by the owner.

(Ord. No. 263-96, 5-20-96)

Sec. 24-41. Separate connections required.

A separate and independent building sewer shall be provided for every new building, and a separate connection shall be made for each building sewer. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Department of Public Works, to meet all requirements of this article.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-42. Defective building sewers to be repaired or replaced.

(a) Whenever any building drain or building sewer connected to the public sewers, or to a private sewer system connected to the public sewers is found to be defective, deteriorating or substandard, the owner of the building served by such building drain or sewer shall be served by the Department of Public Works with written notice stating the nature of the defect and providing a fifteen (15) day period for the satisfactory repair or replacement of such building sewer and requiring the owner to make a new connection to the public sewer at the owner's expense.

(b) All work done pursuant to this section shall be inspected by the Department of Public Works. The fee for such inspection shall be twenty-five dollars (\$25.00).

(c) *Failure to comply.* When a person to whom an order is directed fails to fully comply within the fifteen (15) day period, it shall be lawful for the city to repair a building drain or building sewer which is located within the public right-of-way, and all costs thereof shall be charged to the owner thereof.

(d) *Lien procedure.* The Department of Public Works shall keep an accurate account of the expense of the work under this article, and as soon as practicable after completion of such work, the city shall assess to the person(s) upon whom notice has been served pursuant to subsection (a) of this section their just cost thereof, and all assessments so made shall constitute a lien on the property to be enforced in the manner provided for the collection of sewer assessments within the city.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Cross reference(s)--Uniform procedure for collecting assessments, § 1-16.

Sec. 24-43. Methods of construction.

On all work done within the scope of this article, the size, slope, alignment and materials of construction of a building sewer, and the methods to be used in placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the Department of Public Works' building sewer construction specifications. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain shall be lifted by a means subject to the approval of the Department of Public Works and discharged to the building sewer.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-44. Public sewer connection limitations.

(a) No person shall make connection of sanitary facilities such as toilets, washrooms, urinals, sinks, showers, drinking fountains, kitchens or laundry rooms, nor discharge or cause to be discharged any waste or domestic wastewater to a building's stormwater system or building storm drain which in turn is connected directly or indirectly to the storm drainage system.

(b) No person shall make connection of roof downspouts, foundation drains, sump pump, areaway drains or other sources of surface runoff or groundwater, nor discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(c) Stormwater shall be discharged to such sewers as are specifically designated as ~~combined sewers or~~ storm sewers, or to a natural outlet approved by the Department of Public Works. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Department of Public Works, to a storm sewer, combined sewer or a natural outlet.

(d) Stormwater shall not be allowed to discharge into a combined sewer unless approved by the Department of Public Works. Prior to receiving approval from the Department of Public Works it must, at a minimum, be demonstrated that no practicable alternative exists, and that the proposed discharge adheres to all technical requirements as listed in Section's II & V of the City's Technical Manual.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-45. Connections to public sewer.

The connection of the building sewer into the public sewer shall be constructed in the following manner:

- (a) The Department of Public Works shall be notified in advance of the time when the connection is to be made. Such notice must be sufficient to permit the Department of Public Works to inspect the building sewer during construction and to be present when the connection is made to the public sewer.
- (b) In the case of new construction, domestic wastewater systems and stormwater drainage systems shall be kept separated from their connections to the proper city sewers.
- (c) The building sewer shall be connected to the public sewer at the point designated by the Department of Public Works.

- (d) No building sewer connection constructed pursuant to this section can be approved if such sewer is backfilled and/or covered prior to inspection. No connection to the public sewer constructed pursuant to this section can be approved if such connection is made other than in the presence of an inspector from the Department of Public Works or the Portland Water District, as required. No such unapproved or unapprovable building sewer in the city may be used, and if the building served by such building sewer is occupied, the owner of such building will be held to be in violation of this section, with each day in which the violation continues deemed to be a separate violation.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-46. Sewer excavations.

(a) All excavations under this article within the public way shall be in accordance with article VII of chapter 25 of this Code.

(b) All excavations for sewer installation shall be made and maintained in compliance with the provisions of the construction safety rules and regulations of the state, applicable to excavation work.

(Ord. No. 263-96, 5-20-96)

Sec. 24-47. Prohibited wastes.

(a) No person shall discharge or cause to be discharged any waters or wastes prohibited by Department of Public Works rule; or:

1. Any noxious or malodorous gas or substance capable of creating a public nuisance.

(b) The Department of Public Works may, if deemed necessary in its judgment, impose the following limitations on discharges of the following described waters or wastes to any public sewer or any part thereof:

1. Any aluminum exceeding a concentration of 500 milligrams per liter;
2. Any iron exceeding a concentration of 10 milligrams per liter;

3. Any tin exceeding a concentration of 2 milligrams per liter;
4. Any fluorides exceeding a concentration of 100 milligrams per liter;
5. Any phenols exceeding a concentration of 100 milligrams per liter;
6. Any chlorides exceeding a concentration of 3,000 milligrams per liter;
7. Any sulphates exceeding a concentration of 600 milligrams per liter;
8.
 - a. Any waters or wastes containing animal or vegetable based fats, wax, grease or oils, whether emulsified or not, in excess of 500 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
 - b. In the Westbrook Intermunicipal Sewer Service Area, any waters or wastes containing animal or vegetable based fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperature between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
 - c. Any waters or wastes containing hydrocarbon (nonpolar) based fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).

(Ord. No. 263-96, 5-20-96; Ord. No. 250-97, 4-9-97; Ord. No. 97-03/04, 12-17-03; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-48. Prohibited wastes permitted how; cost.

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters or wastes contain any of the substances or possess the characteristics listed in section 24-47, and which in the judgment of the Department of Public Works may have a deleterious effect upon the wastewater works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Department of Public Works may:

1. Reject the wastes;
2. Require pretreatment to an acceptable condition for discharge to the public sewer as required by rule;
3. Require control over the quantities and rates of discharge (flow equalization); and/or
4. Require payment to cover the added cost of handling and treating the wastes.

(b) If the Department of Public Works permits or requires pretreatment or waste flow equalization, the design and installation of the plants and equipment shall be subject to its review and approval subject to the provisions of the state plumbing code, and the provisions of this article

(c) Where preliminary treatment or flow equalizing facilities are provided for any water or wastes, the owner shall bear the cost and responsibility for installing and maintaining them in continuously satisfactory and effective operating condition, as determined by the Department of Public Works.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-49. Separate systems required.

Any person discharging or causing to be discharged into any public sewer both domestic wastewater and industrial wastes from any building or premises shall install separate drainage systems for the domestic wastewater and industrial waste. The control manhole required by rule shall be installed in the industrial waste system; or where two (2) separate systems are required, the two (2) systems may be joined in the control manhole provided that samples of each system can be sampled separately.

(Ord. No. 263-96, 5-20-96)

Sec. 24-50. Discharge permit.

(a) All categorical users and other dischargers of industrial wastes shall obtain a discharge permit from the Portland Water District, as required by rule. New users shall obtain permits prior to any discharge. Applications and permits shall be in a form prescribed by the Portland Water District and shall be subject to an application fee as set by the Portland Water District.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 31-18/19, 8-13-2018)

Sec. 24-51. Public wastewater works not to be damaged.

No person shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the public sewer or stormwater drainage system.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-52. Right of entry.

The Department of Public Works, or the Portland Water District as its agent, bearing proper credentials and identification, shall be permitted to enter upon all properties with sewer or stormwater drainage systems connected to the public sewer and producing industrial or process wastes, at reasonable times and upon reasonable notice for the purpose of inspection, observation, measurement, sampling and testing or to otherwise enforce the rules, including copying of reports and records relating to the industrial pretreatment program in accordance with the provisions of this article.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 31-18/19, 8-13-2018)

Sec. 24-53. Exclusion of industrial waste.

(a) The Department of Public Works or the Portland Water District shall have authority to temporarily exclude any industrial waste, whether pretreated or not, from the public sewers whenever, in its or their opinion, such action is necessary for the purpose of determining the effects of such wastes upon the sewers, wastewater system or wastewater treatment facilities.

(b) The Department of Public Works or the Portland Water District shall notify the affected user prior to taking such actions and shall afford the user a reasonable time for response. The Department of Public Works or the Portland Water District shall

have the authority to take actions necessary to halt the discharge of pollutants from any user to the treatment works which reasonably appears to present an imminent endangerment to the health or welfare of persons or the POTW. Such actions shall be preceded by a notification, oral or written, to the user.

POTW(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-54. Demolition of buildings.

(a) No building served by a building drain or sewer which is connected to the public sewers or to a private sewer system connected to the public sewers, may be demolished prior to the termination of the building sewer or drain at the public sewer under the inspection of the Department of Public Works. The building sewer shall be terminated at the main, at the point designated by the Department of Public Works.

(b) Notice of intent to demolish a building shall be given to the Department of Public Works, by means of a copy of the application for a demolition permit from the building authority or by direct notice to the Department of Public Works, in advance of the time when the building drain or sewer is to be terminated. No such demolition permit shall be issued until a drain termination permit has been issued by the Department of Public Works and a copy thereof has been given to the building authority.

(c) The fee to terminate the building and/or facility sewer and/or drain system will be paid to the city in advance of the termination. The fee of two hundred fifty dollars (\$250.00) per termination represents inspection fees and materials to terminate sewer service. Upon payment of this fee and approval by the Department of Public Works, the applicant shall be issued a sewer termination permit.

(d) Failure to give notice of intent to demolish a building to the Department of Public Works, or to terminate the building drain prior to demolition thereof, or to obtain a permit therefor, shall be deemed a violation of this section, with each day in which the violation continues deemed to be a separate violation.

(e) All excavation for sewer service termination shall be made and maintained in compliance with all provisions of the construction safety rules and regulations of chapter 25, article VII of this Code.

(f) *Violations.* The property owner who fails to obtain a

sewer termination permit and terminate the sewer or drain from the building to be demolished to the public sewer shall be guilty of an offense.

(g) *Failure to comply.* When a person to whom an order is directed fails to terminate a building sewer or drain within a ten-day period, it shall be lawful for the city to terminate the building sewer or drain. All city costs thereof shall be charged to the property owner.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-55. Written notice required.

Forty-five (45) days' written notice shall be given to the Department of Public Works and the Portland Water District by any person proposing to:

- (a) Substantially change the volume or character of pollutants over that being discharged into the treatment system at time of enactment of this article;
- (b) Create a new discharge into the treatment system of pollutants from any source which would be a new source as defined in section 306 of the act if such a source were discharging pollutants elsewhere;
- (c) Create a new discharge into the treatment system of pollutants from any source which would be subject to section 301 of the act if it were discharging such pollutants elsewhere.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 31-18/19, 8-13-2018)

Sec. 24-56. Violations.

Any person failing to comply with or violating any provision of this article shall be served by the Department of Public Works with written notice stating the nature of the failure or violation and providing a reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated in such notice, permanently cease or correct all such failures or violations. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this section shall be guilty of an offense. Any person violating any of the provisions of this article shall be liable to the City and shall be assessed a civil penalty

of a minimum of one thousand dollars (\$1,000.00) per day for each violation of industrial pretreatment standards and requirements, and in addition, shall be liable for any expense, loss or damage occasioned by the City by reason of such violation, including reasonable attorney's fees. The City may seek injunctive relief for the purposes of enforcing this article.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-57. Appeals.

(a) Whenever the person receiving written notice shall deem himself or herself aggrieved by an order made by the Department of Public Works, the person may file an appeal to the city manager within ten (10) days of the date of the written notice, and the person shall be afforded a hearing on the matter before the city manager or his or her designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.

(b) In cases of applicability or interpretation of this article, the city manager may revoke such order made by the Department of Public Works.

(c) In cases where compliance with such order made by the Department of Public Works would cause undue hardship, the city manager may extend the time limit of such order or they may permit exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article, subject always to the rule that the city manager shall give due consideration to the purposes of this article in eliminating existing pollution, preventing further pollution and promoting the public health, safety and welfare.

(d) This Section shall not apply to notices of violation or other determinations issued by the Portland Water District. Any notices issued by the Portland Water District under this Article shall be subject to review by the superior court under Rule 80B of the Maine Rules of Procedure within thirty (30) days of the decision.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 31-18/19, 8-13-2018)

Sec. 24-58. Reserved.

Sec. 24-59. Reserved.

Sec. 24-60. Reserved.

Sec. 24-61. Reserved.

Sec. 24-62. Reserved.
Sec. 24-63. Reserved.
Sec. 24-64. Reserved.
Sec. 24-65. Reserved.
Sec. 24-66. Reserved.
Sec. 24-67. Reserved.
Sec. 24-68. Reserved.
Sec. 24-69. Reserved.
Sec. 24-70. Reserved.

**ARTICLE IV. SANITARY SEWER USER AND
INDUSTRIAL PRE-TREATMENT CHARGES***

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***Editor's note**--Ord. No. 263-96, passed May 20, 1996, amended this article in its entirety, in effect repealing the former provisions and enacting similar new provisions as herein set out. Formerly, such provisions pertained to sewer use charges, consisted of substantive §§ 24-71--24-78, and derived from §§ 322.1--322.3, 322.5--322.8 of the 1968 Code, as amended by the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
326-77	--	5-16-77	123-89	--	10- 2-89
420-77	--	7-18-77	259-90	--	2-21-90
284-78	--	5-15-78	79-91	--	8- 7-91
102-81	1, 3	9-21-81	88-92	1, 2	9- 9-92
476-82	1--3	4- 6-82	187-95	--	3- 6-95
523-83	1--3	6- 8-83	157-96	--	2- 5-96
17-88	--	6-20-88			

Sec. 24-71. Definitions.

Unless the context specifically provides otherwise, the meanings of terms used in this article, and not defined elsewhere in this chapter, shall be as follows:

Commercial unit shall mean any structure or portion of a structure from which wastewater or industrial waste is discharged, excepting only dwelling units as defined hereinafter and shall include industrial users. Commercial units owned by different entities within the same structure and sharing the same water meter shall be treated as one (1) commercial unit.

Dwelling unit shall mean one (1) or more rooms occupied or designed to be occupied by one (1) or more natural persons as a single housekeeping unit with sanitary facilities, other than a place of public accommodation as defined hereinafter, discharging only domestic wastewater and shall include each unit of ownership in any condominium. If the occupant or occupants of rooms fit the definition of a dwelling unit except for the fact that the occupants share sanitary facilities with an occupant or occupants of other rooms located within the same structure, the number of units in the structure shall be deemed to be the total number of toilets or urinals located within such structure.

Parcel of land shall mean any area of land shown on the assessor's maps on the April first last preceding the operative date, located within the city, which is either connected in fact to a sewer within the city, or developed-but-unconnected to a sewer within the city, which sewer is nevertheless accessible to the area within the meaning of section 24-36.

Place of public accommodation shall mean any establishment having sanitary facilities located therein which gives or offers shelter or lodging to members of the general public, whether transient or long term and shall include but is not limited to hotels, motels, guest houses, hospitals, rest homes, nursing homes, inns, fraternity houses and dormitories.

Treatment facilities shall mean all wastewater treatment plants owned and operated by the Portland Water District or by the city.

Total organic carbon or TOC shall mean the determination of organic matter present by the measurement of carbon dioxide produced by pyrolysis measured in accordance with 40 CFR Part 136.

Volume of water shall mean the amount of water, estimated or measured, whichever is less, provided to the property by the Portland Water District during the previous period of the calendar year. This term shall include any amounts of water obtained from other sources whether or not water is also provided by the district.

(Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

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

Sec. 24-72. Sanitary sewer user charges.

(a) *Applicability.* There are levied upon all parcels of land charges for cost of treatment of wastewater and stormwater and for the operation and maintenance of the wastewater system.

(b) *Billing.* Bills for all charges under this article may be sent to the record owner, or to the person requesting water service. Bills shall be sent to each such owner or person every month, except that persons billed quarterly or seasonally by the Portland Water District for water service may be billed quarterly or seasonally for all charges under this article. All payments shall be credited against the oldest outstanding bill sent to such owner or person. Any payments made to the Portland Water District or its agents, which do not indicate to which account they are to be applied, shall be applied as provided by contract between the city and the Portland Water District.

Bills shall contain an amount for sanitary sewer user charges, and if delinquent as provided in section 1-16 of this Code, shall include charges for interest to be computed in the same manner as provided for real estate taxes.

(c) *Computation.* The user charges shall be computed in accordance with the following schedule, as from time to time amended, which shall be sufficient to meet costs of the eligible purposes for which such charges may be used. Beginning July 1, 2023, user charges under this section for both dwelling units and commercial units shall be twelve dollars and seventy-five cents (\$12.75) per hundred cubic feet of volume for connected parcels of land. The user charge for developed but unconnected parcels of land shall be one dollar and seventy-one cents (\$1.71) per hundred cubic feet of volume. Each metered billing unit shall have a minimum charge of at least one hundred (100) cubic feet per month.

(d) *Purposes for which charges may be used.* Charges and assessments made under this article shall be used consistently with 33 U.S.C.A. § 1281 et seq., and applicable federal regulations for the following purposes:

- (1) To defray the current expenses of operating and maintaining the wastewater system, including any assessment made by the Portland Water District;
- (2) To pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of sewers heretofore or hereafter constructed within the city;
- (3) To reimburse the city for the cost of computation, billing and enforcement of such charges.

(e) *Collection.* Charges assessed pursuant to this section shall be enforceable pursuant to section 1-16 of this Code.

(f) *Disconnection for nonpayment of charges.* The Portland Water District shall disconnect sewer users with unpaid sanitary sewer user charges according to the same terms and procedures used to disconnect water users with unpaid water user charges.

(Ord. No. 263-96, 5-20-96; Ord. No. 88-97, 9-15-97; Ord. No. 118-01/02, 12-3-01; Ord. No. 249-02/03, 5-19-03, Ord. No. 31-03/04, 7-21-03(enacted as emergency); Ord. No. 218-03/04, 5-17-04; Ord. No. 249-04/05, 5-16-05, enacted as emergency; Ord. No. 244-07/08, 5-19-08; Ord. No. 265-08/09, 5-18-09; Ord. No. 225-09/10, 5-17-10; Ord. No. 227-10/11, 5-16-11; Ord. No.222-12/13, 6-24-13; Ord. No. 239-13/14, 5/19/14; Ord. No. 250-14/15, 6-24-2015; Ord. No. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 245-16/17, 5-15-2017, Effective 7-1-2017; Ord. No. 217-17/18, 7-1-2018; Ord. No. 244-18/19, 5-20-2019; Ord. No. 79-20/21, 9-21-2020; Ord. No. 256-20/21, 6-7-2021; Ord. 256-21/22, 7-1-2022; Ord. 221-22/23, 7-17-2023)

Sec. 24-73. Industrial surcharges.

(a) *Applicability.* Each industrial user except those included in the Westbrook Inter-Municipal Sewer Service Agreement Area, shall be subject to surcharges in addition to any other treatment charge if the wastewater discharged by such user is determined by the Department of Public Works, in accordance with 40 CFR Part 136, to exceed any of the following concentrations:

- (1) BOD of two hundred fifty (250) mg/l; or COD, where indicated for specific wastewater and a correlation between BOD and COD is established in such wastewater; or

TOC, where indicated for specific wastewater and a correlation is established between TOC and BOD in such wastewater;

(2) TSS content of three hundred (300) mg/l.

(b) *Computation of surcharge for BOD.* The surcharge for BOD shall reflect the cost of removing the excess BOD and shall be computed in accordance with the following formula:

$$\text{Surcharge for BOD} = (C_1 - 250 \text{ mg/l}) \times Q \times 8.34 \times S_1$$

Where C_1 = The concentration of BOD in mg/l

Q = The total volume of wastewater contributed during the billing period, in millions of gallons

8.34 = Conversion factor of gallons to pounds

S_1 = \$0.1633 for each pound of BOD in dollars

(c) *Computation of surcharge for TSS.* The surcharge for TSS shall reflect the cost of removing the excess TSS and shall be computed in accordance with the following formula:

$$\text{Surcharge for TSS} = (C_2 - 300 \text{ mg/l}) \times Q \times 8.34 \times S_2$$

Where C_2 = The concentration of TSS in mg/l

Q = Total volume of wastewater contributed during the billing period, in millions of gallons

8.34 = Conversion factor of gallons to pounds

S_2 = \$0.0817 for each pound of TSS in dollars

(d) Westbrook Inter-Municipal Sewer Service Agreement area may be surcharged for BOD and TSS, based on the cost of treatment at the Westbrook Gorham Regional Treatment Plant.

(e) *Industrial surcharge fee.* An industrial surcharge fee is hereby established for all permitted discharges from all permitted users at a rate of \$0.0857 per hundred cubic feet of volume, provided that the city council may, from time to time, by order, readjust the surcharge fee according to the then prevailing cost of administering the industrial pretreatment program and the

anticipated number of permitted users and anticipated volume to be surcharged.

(f) *Appeals.* Any person aggrieved by a determination of the Department of Public Works made pursuant to this section may appeal such determination to the city manager, within thirty (30) days of notification of such determination. Such person may submit additional evidence and shall be heard orally by the manager or his deputy. The manager may modify the Department of Public Works' determination if satisfied that the determination was erroneous, inconsistent with this chapter, or with applicable rules, regulations or grant requirements made pursuant to 33 U.S.C.A. c. 26. All determinations of the manager shall be rendered within a reasonable period of time, not to exceed ninety (90) days from the date of such hearing and shall be final.

(Ord. No. 263-96, 5-20-96; Ord. No. 97-03/04, 11-17-03; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-74. Reserved.

Sec. 24-75. Volume measurements.

(a) *Water volume measurements.* Whenever in this article there is reference to volume of water, and the charges of such person are computed in whole or in part upon such volume of water, the use of such standard shall give the Department of Public Works the right to require any person obtaining water from sources other than the Portland Water District to install and maintain at such person's own expense water meters of a type approved by the Department of Public Works for the purpose of determining the volume of water obtained from their other sources and to report the volume of such water recorded by such meter to the Department of Public Works. Following installation, such meter shall not be removed without the written permission of the Department of Public Works.

(b) *Wastewater volume.* Devices for measuring the volume of wastewater discharged by a commercial or industrial user may be required by the Department of Public Works if these volumes cannot be determined from the water volume records. Any person who is a commercial or industrial user may, at his option, install devices approved by the Department of Public Works for the metering of wastewater and may have the charges based upon the volume of wastewater rather than upon water volume. All metering devices for determining the volume of wastewater shall be installed, owned and maintained by the person to be charged. Following approval and installation, such meters may not be removed without the consent of

the Department of Public Works and may be read by the Department of Public Works at all reasonable times.

(c) *Submetering of water volume.* Any person who feels that recorded water records are not a reliable index of his discharge volume may install an additional water meter of a type approved by the Department of Public Works to measure the volume of water which can be shown not to enter the sewerage system. The person installing such a meter shall immediately notify the Department of Public Works of such installation and shall be responsible to the Department of Public Works for reporting meter readings once every month. Such person shall be credited with the volume charges for the volume shown by such meter, which meter shall be accessible for reading by the city or its agents at all reasonable times.

(d) *Review.* Any person subject to charges under this article may make a written request for review of such charges by the city manager as provided in section 1-16 of this Code. The city manager may review and modify such charges, to the extent that justice requires, upon affirmative proof by such person that:

- (1) The volume of metered water consumed exceeds the volume of wastewater generated by the unit;
- (2) The difference between the volume of water and of wastewater exceeds ten (10) percent of the metered water measurement;
- (3) The amount of the difference can be established to a substantial certainty by reliable tests or is documented by reliable sources prepared for purposes unconnected with wastewater disposal; and
- (4) Measurement by the measuring devices provided for in the preceding subsections is impossible or impractical.

(Ord. No. 263-96, 5-20-96; Ord. No. 37-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-76. Assessments.

(a) *Lien.* All assessments upon a parcel of land made under this article shall create a lien for the benefit of the city.

(b) *Reserved.*
(Ord. No. 263-96, 5-20-96)

Cross reference(s)--Uniform procedure for collecting assessments, § 1-16.

Sec. 24-77. Violations.

Any person violating the provisions of this article, other than the requirement of payment of charges or assessments, shall be guilty of an offense.

(Ord. No. 263-96, 5-20-96)

ARTICLE V. STORMWATER SERVICE CHARGES

Sec. 24-80. Purpose; Stormwater Service.

Stormwater services assist the city in meeting the regulatory obligations imposed by national pollutant discharge elimination system (NPDES) permits or other court orders or regulations promulgated from the act by reducing pollution and improving water quality within the city.

Stormwater services assist the city in protecting the public health, safety and welfare and the environment and providing stormwater services and regulation of the use thereof renders and/or results in both service and benefit to individual properties, property owners, business, citizens, and residents of the city and to all properties, property owners, businesses, citizens, and residents of the city concurrently and for the environment.

The area of impervious surface on each property is the most important factor influencing the cost of providing stormwater services by the city or to be provided by the city in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater service charge.

The City of Portland presently owns and operates storm sewers, combined sewers, and the stormwater drainage system, which have been developed over many years. The future usefulness of those existing services owned and operated by the city, and of additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use, and enhance stormwater services in the city with the management of other water resources in the city. In order to do so, the city must have adequate and stable funding for its stormwater service operating needs and capital program.

Stormwater services are needed throughout the city because many of those areas are developed. While specific service and facility demands may differ from area to area at any given point in time, a stormwater service area encompassing all lands and water bodies within the city is consistent with the present and future needs of the community.

The provision of stormwater services in the city promotes an essential regulatory purpose by influencing where stormwater runoff flows and how it is managed, thereby reducing flooding, erosion and water pollution caused by stormwater runoff.

By mitigating the impact of stormwater runoff from developed properties, stormwater services provided by the city help minimize damage that would subject a parcel owner to civil liability.

The city council is responsible for the protection and preservation of the public health, safety, and welfare of the community, and the environment and finds that it is in the best interest of the health, safety, and welfare of the citizens of the city and the community at large and the environment to provide stormwater services accounted for in the city budget as a separate enterprise fund dedicated solely to the provision of stormwater services and to institute funding methods associated therewith.

In order to fully recover the cost of providing stormwater services a stormwater service charge is the most fair and reasonable means of apportioning the cost among developed land throughout the city.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-81. Definitions.

Unless the context specifically provides otherwise, the meanings of terms used in this article shall be as follows:

Credit shall mean a conditional reduction in the amount of a stormwater service charge to developed land based on the provision and continuing presence of an effectively maintained and operational approved on-site stormwater system or facility or other service or activity that reduces the cost of providing service.

Developed land shall mean property altered from its natural state by construction or installation of more than 400 square feet of impervious surfaces as defined in this chapter.

Exemption shall mean not applying to, or removing the application of the stormwater service charge from, a property. No permanent exemption shall be granted based on taxable or non-taxable status or economic status of the property owner.

Impervious surfaces are those areas that prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Impervious surfaces include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Undeveloped land shall mean land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have less than or equal to 400 square feet of impervious surfaces as defined in this chapter consisting of limited pavement, asphalt, or compacted dirt or gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur naturally.
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-82. Authority and Establishment of the Stormwater Fund.

(a) Under the authority of the Maine Constitution, Article VIII, and Title 30-A M.R.S. § 3001, the city hereby establishes the stormwater service charge to fund stormwater services within the city. Such stormwater charges shall be maintained and accounted for separately in accordance with generally accepted accounting principles as determined by the city's finance director.

(b) Charges made under this article shall be used for the following purposes:

To defray the current expenses of stormwater services and a portion of the current expenses of the combined sewer system attributable to providing stormwater service;

To pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of the storm drainage system and a portion of the

combined sewer systems heretofore or hereafter constructed within the city similarly attributable to providing stormwater service;

To reimburse the city for the cost of computation, billing, and enforcement of such charges.

(c) The city manager will designate appropriate Department of Public Works management and other personnel, including support as needed of personnel from other city departments such as finance, to provide stormwater services and to collect and account for the stormwater service charge imposed hereunder.
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-83. Exemptions.

Exemptions from stormwater charges established under this article are not allowed, except as provided in this section. Exemptions shall be allowed for:

(a) All roads owned or maintained by the State of Maine, including the Maine Turnpike; and all accepted City roads and all roads maintained by the City; all private roads and ways serving more than two dwelling or structures, but not driveways; all public pedestrian walkways. However, parking lots, buildings, or other developed land within the right-of-ways shall not be exempt from storm water service charges;

(b) Undeveloped land;

(c) Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from storm water service charges;

(d) Airport runways, taxiways and aprons upon which public and private aircraft operate;

(e) With the exception of Peaks Island, all islands are exempted from the fee due to the limited services provided to the islands; and

(f) All City-owned land, buildings and other real property.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 217-17/18, 7-1-2018)

Sec. 24-84. Stormwater Service Charge.

(a) There is levied upon all developed land stormwater service charges for the cost of providing stormwater services. All developed land shall be charged seven dollars and seventy-five cents (\$7.75) per month per one thousand two hundred (1,200) square feet of impervious surface area, rounded to the nearest one thousand two hundred (1,200) square feet of impervious surface area.

(b) The basis for this charge is the measured amount of impervious surface area on the developed land as determined by the city. This measured area may be updated from time to time at the discretion of the Department of Public Works upon evidence of impervious surface area change or the availability of updated or more accurate information.

(c) Fees collected hereunder to fund stormwater services can also be supplemented by other revenues available to the city, including but not limited to state, federal, general and special city funds, and private grants and loans.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 217-17/18, 7-1-2018; Ord. No. 79-20/21, 9-21-2020; Ord. No. 256-20/21, 6-7-2021; Ord. 256-21/22, 7-1-2022; Ord. 221-22/23, 7-17-2023)

Sec. 24-85. Credits

(a) Owners of developed land may apply for and receive a voluntary stormwater service charge credit for approved stormwater credit systems or facilities. The director of the Department of Public Works or his/her designee shall determine such approved stormwater systems and facilities and stormwater service charge credit amounts based on the technical requirements, design and performance standards contained in the city's stormwater credits manual, to be adopted by the director of the Department of Public Works pursuant to this ordinance, as it may be updated or amended from time to time.

(b) It is the responsibility of the record owner to initiate and apply in writing for stormwater service charge credits, and to provide all necessary information with a letter requesting the credit. The department of Public Works is not responsible for initiating a credit application, performing engineering calculations, or otherwise assisting in the preparation of a request for a credit. Credits will only be applied if the requirements outlined in the city's stormwater credit manual are met including but not limited to completion of on-going

maintenance, guaranteed right-of-entry for inspection, and submittal of annual self-certification reports or other required reports as required per ordinance and rule.

(c) Credits will be applied to the stormwater service charge while stormwater facilities or management practices are functioning as approved by the city. If the approved practice or facility is not functioning as approved, or is terminated, the credit will be cancelled. Once the credit has been cancelled, the customer must reapply for the credit.

(d) The department of Public Works will only review complete credit requests. If approved, the credit will be applied to the first bill issued 30 days after the approval. Credits may be made retroactive, one calendar year from the date of the first billing period of the charge.

(e) A credit of up to one hundred percent (100%) of the stormwater service charge may be approved.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-86. Billing.

(a) All charges under this article shall be sent to the record owner of a given property. The record owner may request, subject to the approval of the director of the Department of Public Works, that the full charge be billed to the owner's designated tenant. The director may direct billing to the tenant of the property if the tenant is currently billed for water and sanitary sewer charges. The record owner shall be liable for payment even if the stormwater service charges are billed to the tenant of the property.

(b) Condominiums shall have the full charge for the developed land equally divided among all condominium owners of developed land. The condominium owners may appeal the director in writing to adjust the fraction of the charge applied to each condominium owner. The director will require signed confirmation from each condominium owner of developed land that they approve the adjustment to the fraction of the charge applied.

(c) Bills shall contain an amount for stormwater service user charges, and if delinquent, as provided in section 1-16 of this Code, shall include charges for interest to be computed in the same manner as provided for real estate taxes and such delinquency may be collected by a civil action against the owner and/or may result in a lien being placed on the property as specified in section 24-

88.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-87. Right of appeal and adjustments.

(a) A record owner may request review of the amount of the stormwater service charge imposed on such owner by written request to the director of the Department of Public Works within 30 calendar days of the date the customer receives the service charge bill.

(b) The owner must demonstrate the impervious surface area is less than the amount used in calculating the developed land's stormwater service charge. Factors that will be considered include the impervious surface area of the property.

(c) An owner must comply with all rules and procedures adopted by the director when submitting a request for appeal or adjustment of the stormwater service charge and must provide all necessary information to make a determination.

(d) The director of the Department of Public Works or his/her designee shall review the service fee and issue a determination, in writing, within 30 calendar days.

(e) With a finding that the impervious surface area is less than the amount used to calculate the developed land's stormwater service charge, the sole remedy to the owner shall be recalculation of the stormwater service charge based on the corrected impervious surface area. A finding that the impervious surface area is not less than the amount used to calculate the developed land's stormwater service charge shall be conclusive with respect to that property and shall remain effective unless the owner changes the impervious surface area of the property.

(f) An owner may appeal the director of the Department of Public Works decision to the city manager or his/her designee within 30 days of the date of the decision. An owner may appeal a decision of the manager to a court of competent jurisdiction pursuant to the applicable Rules of Civil Procedure.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-88. Right of enforcement and violations.

(a) The director of the Department of Public Works or his/her designee is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(b) It shall be unlawful for any person to violate or to fail to comply with the requirements of this article or its fees. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

(c) Any person who violates this article may also be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this article also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this section; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(d) Without limiting the foregoing, failure to comply with this article may also be enforced as a nuisance and be subject to an abatement action, in addition to, or alternatively to, the enforcement actions described above.

(e) *Consent agreement.* The enforcement authority, with the approval of corporation counsel and the city manager, may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(f) *Delinquent fees.* Any owner that fails to pay the stormwater service charge when due shall be responsible for the amount of the unpaid service charge, interest on the unpaid amount, and attorneys' fees and other costs of collection. To the extent permitted by law, the fee, when overdue, including interest and penalties, is a lien on real property and may be collected in the same manner as a sewer user lien pursuant to state law. Delinquent amounts may also be collected by a civil action against the person. (Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-89. Limitation of liability.

This article shall not be interpreted to mean that property subject to the charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater drainage systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Therefore the following limitations on liability, in addition to any other limitations or immunities existing in law, are set forth:

(1) It is the express intent of the city that this article will protect the public health, safety and welfare of properties and persons in general. However, this ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the service area.

(2) The city shall not be held liable for flood damage or assessing and removing pollution sources, and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the city, or its officers, agents or employees for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.

(3) The issuance of any permit, plan approval or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of monetary damages against the city or its officers, employees or agents.

(4) Operation of stormwater drainage systems located on private property or public property not owned by the city and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvements of the system, shall be the legal responsibility of the property owner, except as may be affected by the laws of the State of Maine and the United States of America.

(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-90. Severability.

Each section of this ordinance is severable from all other sections. If any part of this ordinance is deemed invalid by a court or competent jurisdiction, remaining portions of the ordinance shall not be affected and shall continue in full force. Whenever this ordinance conflicts with any other ordinance of the

city, State of Maine, or federal government, the stricter standard shall apply, except as limited by state or federal law.
(Ord. 129-14/15, 1-21-2015, Effective 1-1-2016)

Sec. 24-91. Reserved.
Sec. 24-92. Reserved.
Sec. 24-93. Reserved.
Sec. 24-94. Reserved.

CHAPTER 32 STORM WATER

Art. I. ~~Prohibited Discharges~~ In General, §§ 32-1--32-15

Art. II. ~~Prohibited Discharges~~, §§ 32-16--32-35

Art. III. Post-Construction Stormwater Management, §§32-36—32-40

Art. IV. Erosion & Sedimentation Control

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. “Applicant” means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project ~~that requires a post-construction stormwater management plan under this article.~~

Best management practices (“BMP”). “Best management practices” or “BMPs” means schedules or activities, prohibitions of practices, maintenance procedures, and other methods, techniques, designs, and management practices to prevent or reduce the pollution of Waters of the State and to control erosion (Erosion Control BMPs) and sedimentation (Sedimentation Control BMPs). ~~BMPs also include treatment requirements, operating procedures, and practices to control Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.~~

Clean Water Act. —“Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.

Discharge. —“Discharge” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to “waters of the state.” “Direct discharge” or “point source” means any ~~discernible~~ discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority ^[1]. —“Enforcement authority” The -Department of Public Works, the Planning Department, and their designee(s), are authorized to enforce this Ordinance. The use of eEnforcement aAuthority in this Ordinance is synonymous with “eEnforcement aAuthority or their designee” . means the person(s) or department authorized

~~under section 32-3 of this article to administer and enforce this article.~~

Exempt person or discharge. —“Exempt person or discharge” means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine Department of Transportation and the Maine Turnpike Authority municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency (“EPA”) or the Maine department of environmental protection (“DEP”). ~~City of Portland~~

Municipality. —“Municipality” means the ~~City~~ of Portland.

Municipal separate storm sewer system, or MS4. —“Municipal separate storm sewer system” or “MS4,” means a conveyance or system of conveyances designed or used for collecting or conveying stormwater (other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that Discharges to Waters of the State other than groundwater. ~~means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.~~

National pollutant discharge elimination system (NPDES) storm water discharge permit. —“National pollutant discharge elimination system (NPDES) storm water discharge permit” means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. —“Non-storm water discharge” means any discharge to an MS4 that is not composed entirely of storm water.

Person. —“Person” means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. —“Pollutant” means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. “Post- construction stormwater management plan” means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development’s Technical and Design Standards and Guidelines.

Premises. “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified Professional – Qualified Professional means a person who has been certified by Enviro-Cert International in erosion and sedimentation control practices or has been certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional Engineer with at least two years’ experience in designing Erosion and Sedimentation Control BMPs. ~~Qualified post-construction stormwater inspector. “Qualified post-construction stormwater inspector” means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.~~

Regulated small MS4. Regulated Small MS4 means any Small MS4 authorized by the most recent, in-force MS4 General Permit or the general permits for the Discharge of stormwater from MDOT and MTA Small MS4s or state or federally owned or operated Small MS4s including all those located partially or entirely within an Urbanized Area.

~~“Regulated small MS4” means any small MS4 regulated by the State of Maine “general permit for the discharge of storm water from small municipal separate storm sewer systems” dated July 1, 2008 (“general permit”) or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).~~

Small municipal separate storm sewer system, or small MS4. Small MS4 means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state or federally owned systems, such as colleges, universities, prisons, military bases and facilities, and transportation entities such as MDOT and MTA road systems and facilities. See also 40 CFR 122.26(b)(16). ~~“Small municipal separate storm sewer system”, or “small MS4,” means any MS4 that is not already covered by the phase I MS4 storm~~

~~water program including municipally owned or operated storm sewer systems, state or federally owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.~~

Storm drainage system. ~~“~~“Storm drainage system” means the City of Portland’s regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm-water. ~~Stormwater means the part of precipitation including runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainage ways. “Storm water” means any storm water runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “storm water”.~~

Urbanized area (“UA”). ~~Urbanized Area means the area of the State of Maine so defined by the inclusive sum of the 2000 decennial census and latest decennial census (2010) by the U.S. Bureau of the Census. “Urbanized area” or “UA” means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.~~
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2.	Reserved.
Sec. 32-3.	Reserved.
Sec. 32-4.	Reserved.
Sec. 32-5.	Reserved.
Sec. 32-6.	Reserved.
Sec. 32-7.	Reserved.
Sec. 32-8.	Reserved.
Sec. 32-9.	Reserved.
Sec. 32-10.	Reserved.
Sec. 32-11.	Reserved.
Sec. 32-12.	Reserved.
Sec. 32-13.	Reserved.
Sec. 32-14.	Reserved.
Sec. 32-15.	Reserved.

~~ARTICLE~~ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The ~~e~~D~~e~~partment of ~~P~~ublic ~~W~~orks is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09; Ord. 108-15/16, 11/16/2015)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system.

—Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* —The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- 1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.
- 2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- 3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* —This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the ~~C~~city's small MS4.

(a) —The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents

or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the City to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system.

~~(a)~~ (b) If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

(a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- 1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
- 2) The cessation of discharges, practices, or operations in violation of this article.
- 3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
- 4) The payment of fines, of the City's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a

deadline within which such abatement or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and ~~S~~state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(c) *Consent agreement.* The enforcement authority may, with the approval of the ~~C~~city ~~M~~anager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the ~~e~~City ~~M~~anager or their designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The ~~C~~city ~~M~~anager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the ~~e~~City ~~M~~anager and the appellant. The ~~C~~city ~~M~~anager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the ~~C~~city ~~M~~anager or by a reviewing court. A party aggrieved by the decision of the ~~e~~City ~~M~~anager may appeal that decision to the Maine superior court within 45 days of the date of the ~~C~~city ~~M~~anager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the ~~e~~City ~~M~~anager, within 45 days of a decision of the ~~C~~city ~~M~~anager affirming the enforcement authority's decision, then the enforcement authority may recommend that the ~~C~~orporation ~~C~~ounsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore, this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the ~~e~~City, or any officer agent or employee thereof for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-23.	Reserved.
Sec. 32-24.	Reserved.
Sec. 32-25.	Reserved.
Sec. 32-26.	Reserved.
Sec. 32-27.	Reserved.
Sec. 32-28.	Reserved.
Sec. 32-29.	Reserved.
Sec. 32-30.	Reserved.
Sec. 32-31.	Reserved.
Sec. 32-32.	Reserved.
Sec. 32-33.	Reserved.
Sec. 32-34.	Reserved.
Sec. 32-35.	Reserved.

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to ~~Section V of the department of planning and urban development's~~ [City of Portland's Technical and Design Standards and Guidelines Manual](#).

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-37. Post-construction stormwater management plan approval.

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post- construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post- construction stormwater management plan shall maintain the BMPs in accordance with the

approved plan and shall demonstrate compliance with that plan as follows:

(a) *Inspections.* The owner or operator of a BMP shall hire a qualified ~~post-construction stormwater inspector~~professional to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning, and maintenance requirements of the approved post-construction stormwater management plan.

~~(b) *Maintenance and repair.* If the BMP requires maintenance, repair, or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP must provide to the DPW, a record of the deficiency and corrective action(s) taken in no later than 60 days following the date the deficiency was identified. If 60 days is not possible, then the DPW must establish an expeditious schedule for the owner or operator of the BMP to complete the maintenance and establish a record of the deficiency and corrective action(s) taken.~~
~~shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the dDepartment of pPublic wWorks ("DPW") in the annual report.~~

~~(b) (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector~~professional hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to the DPW in a form provided by the DPW, certifying that the person has inspected the BMP(s) and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan. If, at the time of inspection, the BMP(s) or that they required maintenance or repair, the owner or operator of a BMP or a qualified professional hired by that person, shall provide including the record of the deficiency and corrective action(s) taken to the DPW in no later than 60 days following the date the deficiency was identified. If 60 days is not possible, then the DPW must establish an expeditious schedule for the owner or operator of the BMP to complete the maintenance and establish a record of the deficiency and corrective action(s) taken.

~~(e) (d) *Filing fee.* Any persons required to file an~~d annual certification under this section shall include, with the annual certification, a filing fee established by the DPW to pay the administrative and technical costs of review of the annual certification.

~~(d) (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPW may enter upon property at reasonable hours with the consent of the owner, occupant, or agent to inspect the BMPs.~~
(Ord. No. 35-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015)

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the

requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPW may enforce this article in accordance with 30-A § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

(a) *Notice of violation.* Whenever DPW believes that a person has violated this article or the post-construction stormwater management plan, DPW may order compliance, by written notice of violation to that person indicating the nature of the violation and ordering ethe action necessary to correct it, including, without limitation:

- 1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
- 2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
- 3) The payment of fines, of the eCity's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
- 4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the eCity's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. —Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred b-y the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines, or injunctive relief imposed under this section.

(c) *Consent agreement.* The enforcement authority may, without approval of the Ceity Mmananager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs, and fees without court action.

(d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the eCity Mmananager or their designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The eCity Mmananager shall hold a hearing on the

appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the ~~C~~city ~~M~~anager and the appellant. The ~~C~~city ~~M~~anager may affirm, reverse, or modify the decision of the DPW. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the ~~C~~city ~~M~~anager, within forty-five (45) days of a decision of the ~~C~~city ~~M~~anager affirming the enforcement authority's decision, then the enforcement authority may recommend that the ~~C~~orporation ~~C~~ounsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
(Ord. No. 35-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015)

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.
(Ord. No. 35-09/10, 8-17-09)

ARTICLE IV. EROSION & SEDIMENTATION CONTROL

Sec. 32-41 Definitions.

Adverse Impact. Adverse impact means any undue deleterious effect due to erosion or sedimentation from Construction Activity on Waters of the State, Protected Natural Resources, the infrastructure of the Regulated Small MS4, or off-Site. Such undue deleterious effect is or may be potentially harmful or injurious to human health, welfare, safety, or property to biological productivity, diversity, or stability, or may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

Common Plan of Development or Sale. Common Plan of Development or Sale means a "subdivision" as defined in Title 30-A M.R.S. §§ 4401 et seq. (the Maine Subdivision statute) and in Chapter 14 Land Use Code.

Construction Activity. Construction Activity means any activity on a Parcel that results in Disturbed Area.

Construction Dewatering. Construction Dewatering means the removal of water from trenches, excavations, foundations, elevator pits, utility vaults, coffer dams, ponds, and other areas

within a construction area that retains water after excavation. The collected water removed from a ponded area(s) may be rainfall collected in the excavation or groundwater associated with the water table or a seasonal perched water table. In many cases ponded water in excavations does not infiltrate or evaporate quickly enough and hinders correct and safe construction practices, and therefore must be removed for construction to proceed.

Dewatering Plan. Dewatering Plan means a written plan detailing the operating procedures, equipment, and devices to be used for removing sediment, and if required, petroleum or hazardous substances, from approved discharges to the City Right of Way or water resources infrastructure. A basic written plan for any construction work is required and must be approved by the City prior to start of construction for any off-site discharges. The plan should be submitted as part of the Construction Management Plan when applicable. Additional requirements can be found in Section 8 of the City of Portland's Rules and Regulations for Use of the Sewer System.

Disturbed Area. Disturbed Area means all land areas that are stripped, graded, grubbed, filled, or excavated at any time during the Site preparation or removing vegetation for, or construction of, a project. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include redevelopment and new Impervious Areas. "Routine maintenance" [for the purpose of this definition](#) is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces [is considered routine maintenance](#) provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same ~~is considered routine maintenance~~. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Impervious Area. Impervious Area means the total area of a Parcel covered with a 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. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Areas of pervious pavement, pervious pavers, pervious concrete, and under-drained artificial turf fields are all considered impervious.

Permitting Authority. Permitting Authority means the Code Enforcement Officer, Building Inspector, Planning Board, or other official or body authorized by State law or the Municipality's ordinances to approve development or redevelopment projects.

Site. Site means the portion(s) of a Parcel(s) upon which Construction Activity subject to this Ordinance is located.

Waters of the State. Waters of the State means Waters of the State as defined in 38 M.R.S. §361-A (7).

Sec. 32-42 Applicability.

a. ——— This article shall apply to any Construction Activity commencing after the effective date of this Ordinance that results in a disturbed area of 5000 square feet or more or where sediment is being discharged to the City right-of-way.

Sec. 32-43 Responsibility for administration

The Department of Public Works and/or the Planning Department is the enforcement authority who shall administer, implement, and enforce the provisions of this article.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09; Ord. 108-15/16, 11/16/2015)

Sec. 32-44 Erosion and Sediment Control Plan Submission & Review

(a) *Erosion and Sedimentation Control Plan Required.* No Person shall commence Construction Activity subject to the Applicability Section of this Ordinance without first preparing and obtaining approval for an Erosion and Sedimentation Control Plan in accordance with this Ordinance. The requirements of the Erosion and Sedimentation Control Plan are detailed in any/all of the following:

- 1) *The Rules and Regulations for Use of the Collection System*
- 2) *City of Portland Technical Manual*

(b) *Concurrent Review.* When Construction Activity is subject to Subdivision, Site Plan, or other review under the City's Land Use Code which includes a review for erosion and sedimentation control, an Erosion and Sedimentation Control Plan meeting these requirements shall be submitted to the Permitting Authority concurrently with that review. When a concurrent review is not otherwise required, an Erosion and Sedimentation Control Plan shall be submitted to the eEnforcement Authority.

(c)- *Erosion and Sedimentation Control Plan Requirements.* The eEnforcement Authority or Permitting Authority, as appropriate, will review the Erosion and Sedimentation Control Plan for compliance with the regulations and specifications detailed in any/all of the following:

- 1) *The Rules and Regulations for Use of the Collection System*
- 2) *City of Portland Technical Manual*

(d)- *Approval, Denial, and Appeals.* The Enforcement Authority or Permitting Authority may approve the Erosion and Sedimentation Control Plan, approve it with conditions, or deny the Erosion and Sedimentation Control Plan, and that decision shall be in writing and supported by findings of fact and conclusions of law. Any person receiving a denial may appeal the determination of the enforcement authority to the City Manager or their designee. The notice of appeal must be received within 30 days from the date of receipt of the decision.

The City Manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the City Manager and the appellant. The City Manager may affirm, reverse, or modify the decision of the enforcement authority. A party aggrieved by the decision of the City Manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(e) [2] e. f. Compliance with Approved Plans and Plan Changes. The applicant shall implement and comply with the Erosion and Sedimentation Control Plan as approved throughout all phases of Construction Activity.

(fg.) Project Completion. The applicant shall provide notice to the eEnforcement aAuthority when permanent stabilization of the Site has been achieved to allow for final inspection.

Sec[3]. 32-45 Inspections

(a) Sites with 1 acre or More of Disturbance - Third Party Inspections Required.

- 1) For all sites with one acre or greater of disturbance, the applicant shall retain the services of a third-party inspector to inspect the site weekly, for the duration of construction until final site stabilization is in place.
- 2) The inspection is required in order to ensure that all construction and stabilization activities comply with the approved drawings and specifications; that field decisions regarding erosion control implementation, stormwater system installation, and natural resource protection are based on sound engineering and environmental considerations; and that any changes to the development's erosion control plan, stormwater management plan, or final stabilization plan is communicated to the City of Portland for additional review and approval.
- 3) The inspector will submit weekly written reports to the Stormwater Coordinator(s) in the Water Resources Division of Public Works and the Development Review Coordinator(s) in Planning. Reports must include: project ID, project address, the date(s) and time(s) of inspection(s), site photographs of areas under construction, and the date(s) and approximate duration(s) of any rainfall events in the prior week. The report will identify and describe any erosion problems or discharge of pollutants and what actions will be taken to address these issues and repair any damage to other properties or natural resources, actions to eliminate the erosion source, and actions to prevent future sediment discharges from the area.

(b) Sites with less than 1 acre of Disturbance. The applicant is responsible for inspecting the site and maintaining erosion and sedimentation controls in good working order. In general, sites with less than 1 acre of disturbance are not required to submit an inspection report, however the City reserves the right to require reports of any project. The applicant should inspect the site as follows:

- 1) Once before any disturbance begins and after all Erosion and Sedimentation Control BMPs specified in the Erosion and Sedimentation Control Plan are in place;
- 2) Once at project completion to ensure the Site has reached permanent stabilization and all temporary erosion and sedimentation controls have been removed. [4] [5]

(c) The enforcement authority Department of Public Works, bearing proper credentials and identification, shall have reserve the right of entry to any site with soil disturbance, either permitted or unpermitted, in order to complete an inspection of the for the purpose of inspecting the site to determine that to ensure that all construction and stabilization activities comply with the provisions of this article and applicable standards.

Ord. No. 263-96, 5-20-96; Ord. 129-14/15, 1-21-2015, Effective 1-1-2016; Ord. No. 31-18/19, 8-13-2018) [6]

Sec. 32-46 Enforcement

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452 and Chapter 1, Section 15 of the City Code.

(a) Notice of violation. Whenever the enforcement authority believes that a person has violated this article, the Enforcement Authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- 1) The elimination of sediment-laden discharges off-site or to the collection system, including, but not limited to, disconnection [7] of the premises from the collection system, whether it is a separated system or combined system.
- 2) The cessation of discharges, practices, or operations in violation of this article.
- 3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of sediment-laden discharges off-site or to the storm drainage system and the restoration of any affected property; and/or
- 4) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

(b) Stop Work Order. The eEnforcement aAuthority or Permitting Authority may issue a Stop Work Notice whenever:

1) A Person has not corrected ~~acted on~~ a notice of violation issued pursuant to this Ordinance within the time set forth in the notice, or

2) A Person subject to the applicability section of this Ordinance undertakes Construction Activity without first submitting an application for and obtaining approval of an Erosion and Sedimentation Control Plan.

The eEnforcement aAuthority or Permitting Authority will attempt to deliver the Stop Work Notice to the applicant, the Person performing the Construction Activity, or the owner or occupant of the Parcel, as appropriate, by any means reasonably calculated to effectuate delivery.

Once the Stop Work Notice has been delivered, no further Construction Activity at the Site may proceed other than as is necessary to correct the non-compliance. Construction Activity may resume only when the eEnforcement aAuthority or Permitting Authority provides written notice that the Person may resume that Construction Activity.

(c) Penalties/fines/injunctive relief. In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the City's attorney's fees and costs, all in accordance with Chapter 1, Section 15 of the City Code and 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the City for violation of federal and State environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(d) Consent agreement. The EeEnforcement AaAuthority may, with the approval of the City Manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(e) Appeal of notice of violation. Any person receiving a notice of violation or suspension notice may appeal the determination of the eEnforcement aAuthority to the City Manager or their designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The City Manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the City Manager and the appellant. The City Manager may affirm, reverse or modify the decision of the eEnforcement aAuthority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the City Manager or by a reviewing court. A party aggrieved by the decision of the City Manager may appeal that decision to the Maine Superior Court within 45 days of the date of the City Manager's decision pursuant to Rule 80B

of the Maine Rules of Civil Procedure.

(f) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the City Manager, within 45 days of a decision of the City Manager affirming the eEnforcement aAuthority's decision, then the eEnforcement aAuthority may recommend that the Corporation Counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(g) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the City, or any officer agent or employee thereof for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.

Sec. 32 - 47 Severability

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

Sec. 32 - 48 Waivers

Where the eEnforcement aAuthority finds that there are special circumstances of a particular Erosion and Sedimentation Control Plan that make a particular submission requirement or standard inapplicable, a waiver may be granted, provided that such waiver will not have the effect of voidingnullifying the intent and purpose of this Ordinance. The applicant shall submit, in writing, the reason for the requested waiver. In granting waivers or modifications, the eEnforcement aAuthority may require such conditions that will substantially secure the objectives of the standards so waived or modified.

Sec. 32 - 49 Authority

The Municipality enacts this Erosion and Sedimentation Control Ordinance pursuant to 30-A M.R.S. §§3001 et seq. (municipal home rule ordinance authority), 38 M.R.S. §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency's regulations governing the National Pollution Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the Municipality as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements

of this Ordinance as part of the Municipality's stormwater management program in order to satisfy the minimum control measures for Construction Site Stormwater Runoff Control.



City of portland

Water Resources Ordinance Revisions Transportation and Sustainability Committee

Transportation and Sustainability Committee
March 13, 2024

Benjamin Pearson, PE
Compliance Section Coordinator
Water Resources Division
Department of Public Works



Background



Discharge Permits

The Maine Department of Environmental Protection (DEP) issues a stormwater permit, known as the Municipal Separate Stormwater Sewer System (MS4), to the City for the discharge of stormwater to our surface waters. The DEP also issues a Combined Sewer Overflow (CSO) permit for discharges from the combined sanitary and stormwater system during rain events.

How We Meet Permit Requirements

The Water Resources Division at the Department of Public Works has four groups that help achieve regulatory compliance: Asset Management, Compliance, Engineering, and Operations and Maintenance. We also rely on Ordinances – including Chapter 24, Sewers, and Chapter 32, Stormwater to keep the City compliant from a regulatory mechanism standpoint.



Ordinance Revisions

Chapter 24

In order to reduce the amount of combined sanitary and stormwater discharges to our surface waters, Chapter 24 is being revised to allow Public Works better control of any new stormwater connections into the combined sewer.

Chapter 32

The City's MS4 permit requires municipalities to enact a regulatory mechanism for Erosion and Sediment Control by July 1, 2024. A fourth article titled Erosion and Sediment Control is being proposed within Chapter 32 to meet the permit requirement. Erosion and Sediment Controls are employed during construction to prevent dirt from being discharged to surface waters during rain events. Other revisions are being proposed including some updates to match permit language including definitions, deadlines, and references.

Alignment

These ordinance revisions are being made to strengthen and better align our regulatory mechanisms with our Permit requirements and other initiatives, including an updated Technical Manual, to limit the impact of discharges to the City's brooks, rivers, and harbor.





Questions & Answers

Contact bnp@portlandmaine.gov

ReCode PORTLAND

Climate Resilience Zoning

The Challenges

High heat

+

More precipitation

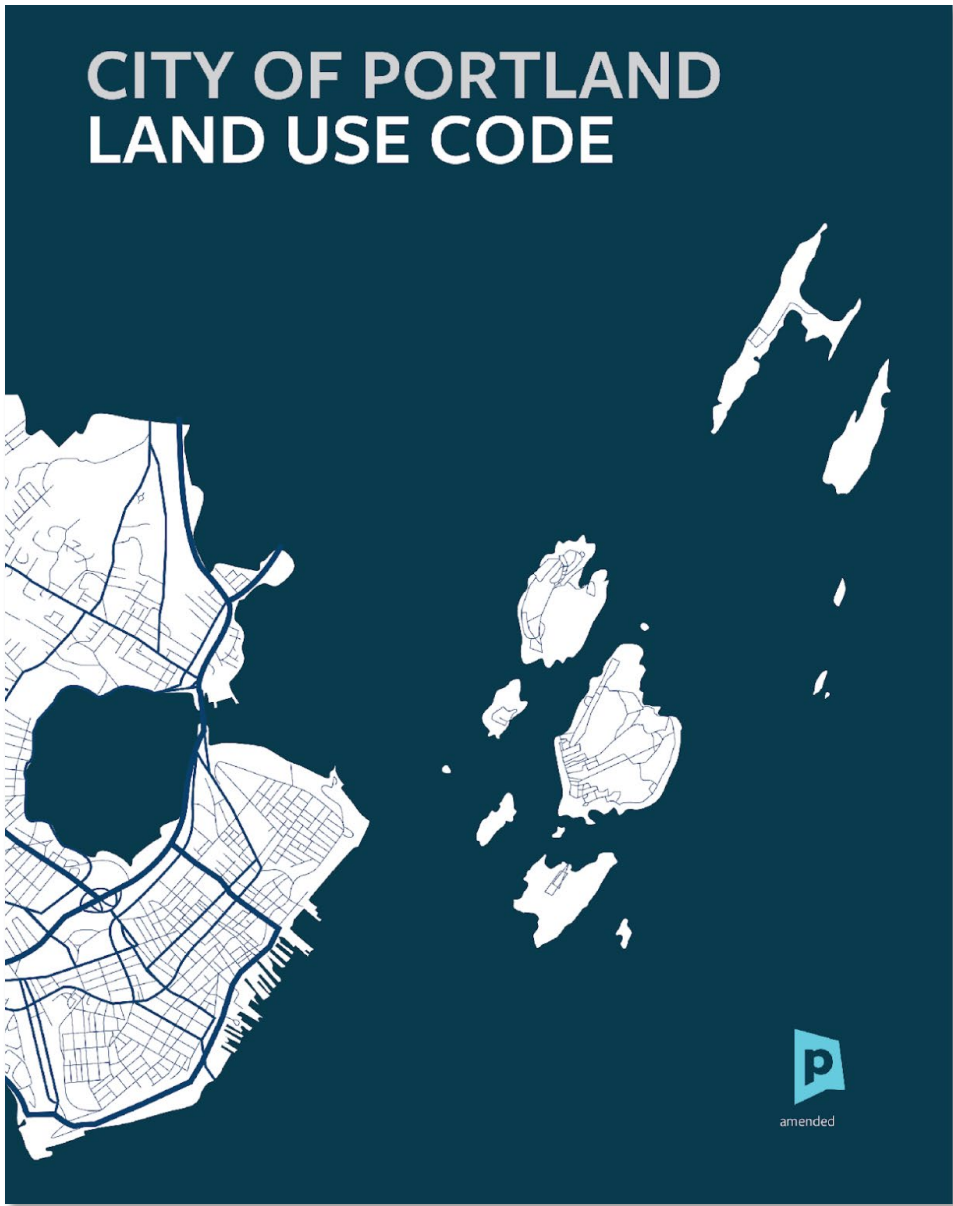
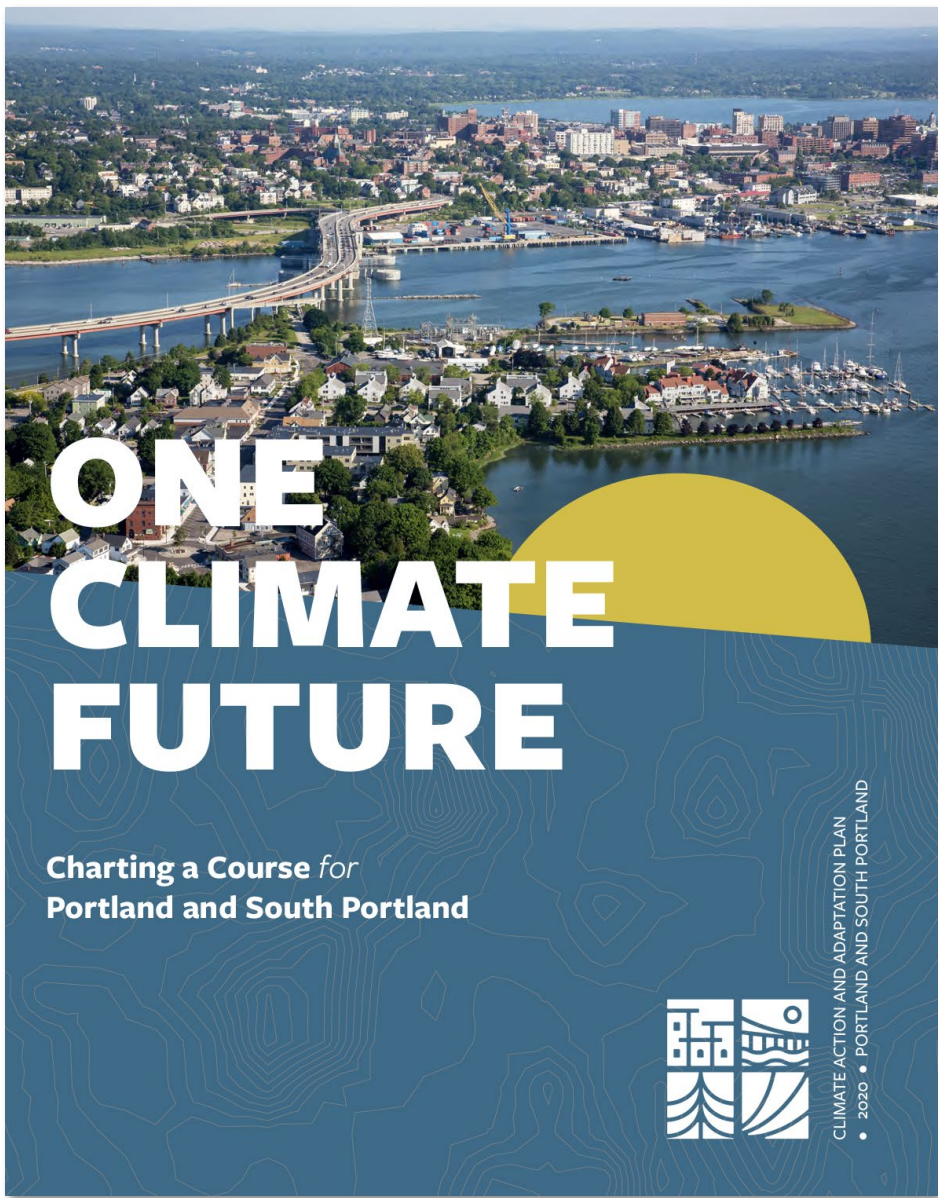
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Sea level rise

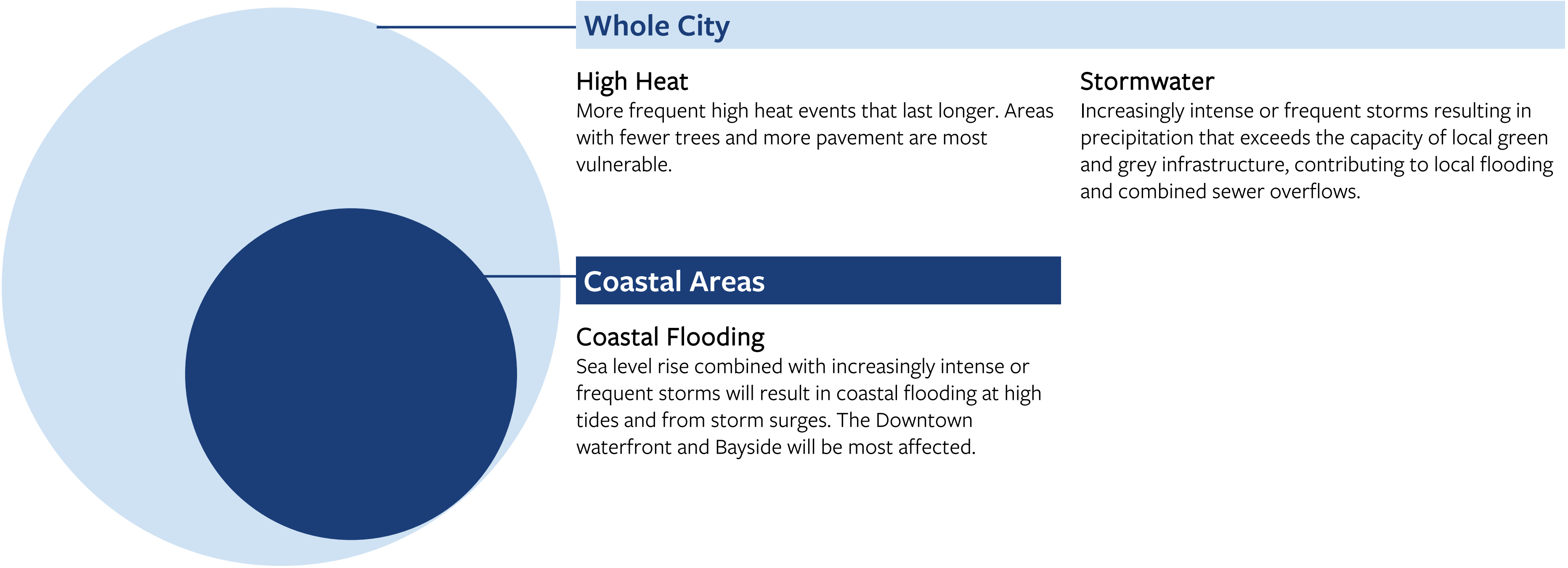
Vulnerable properties
and vulnerable people



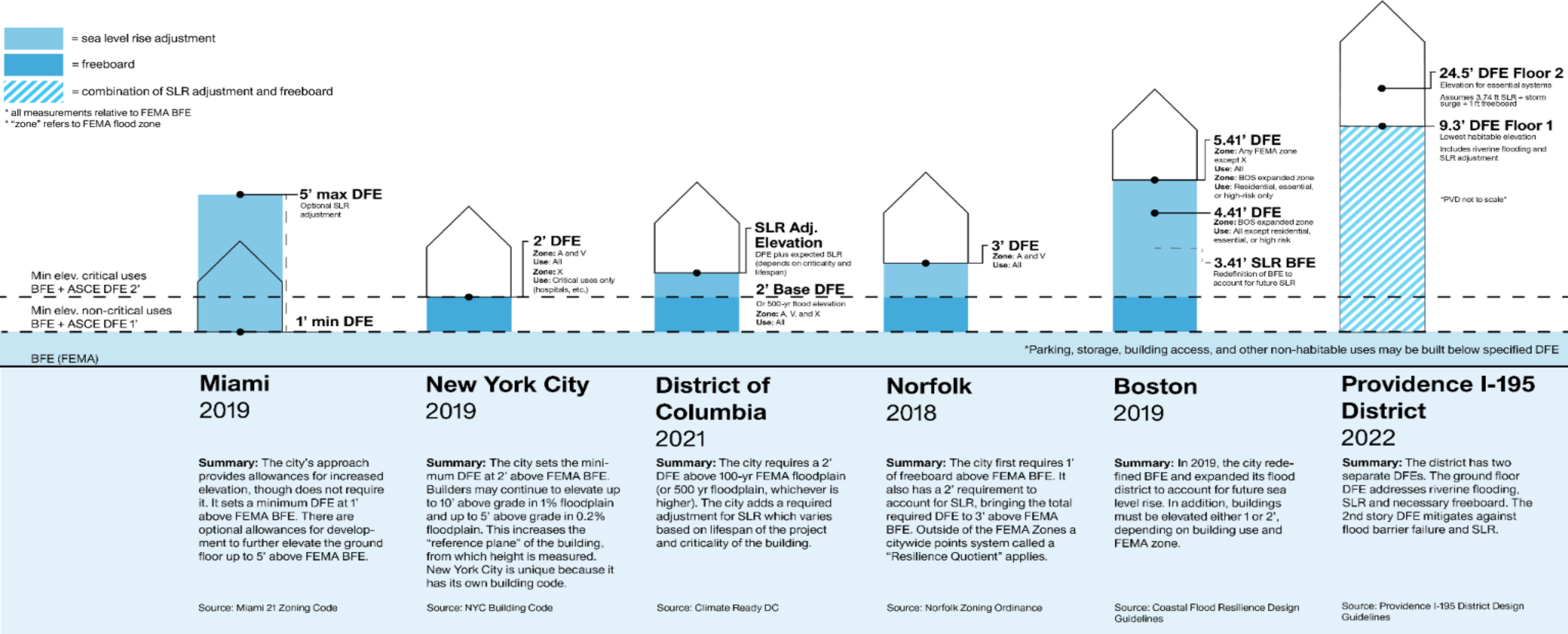
Foundations in Planning + Engagement



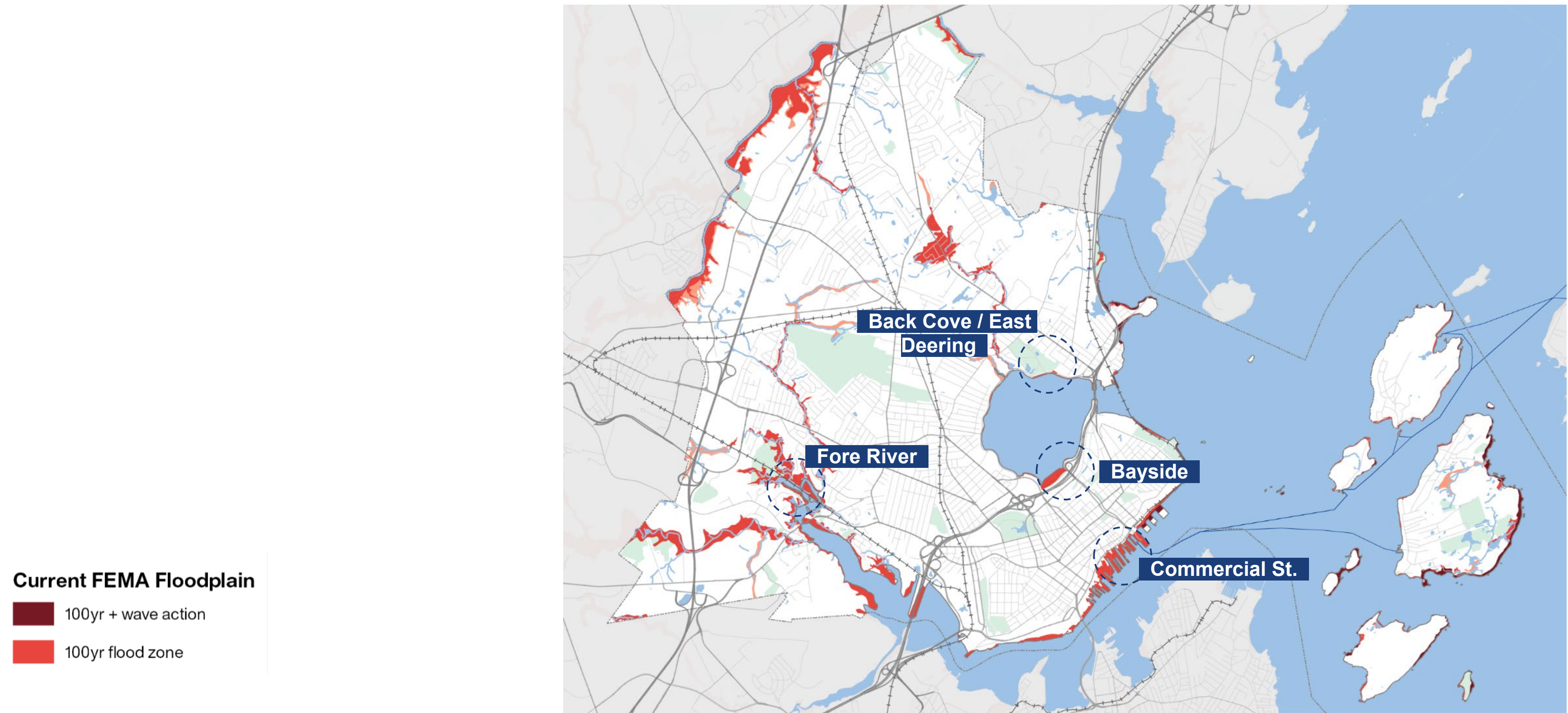
Approach: Geography



Flood Resilience Zoning Case Studies

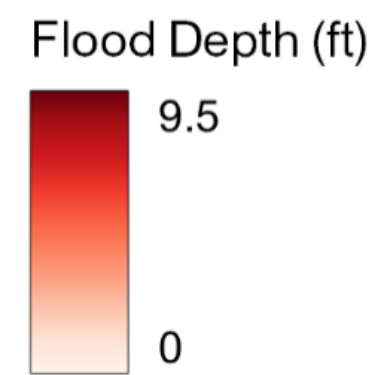


Current System for Managing Flood Risk: FEMA Floodplain



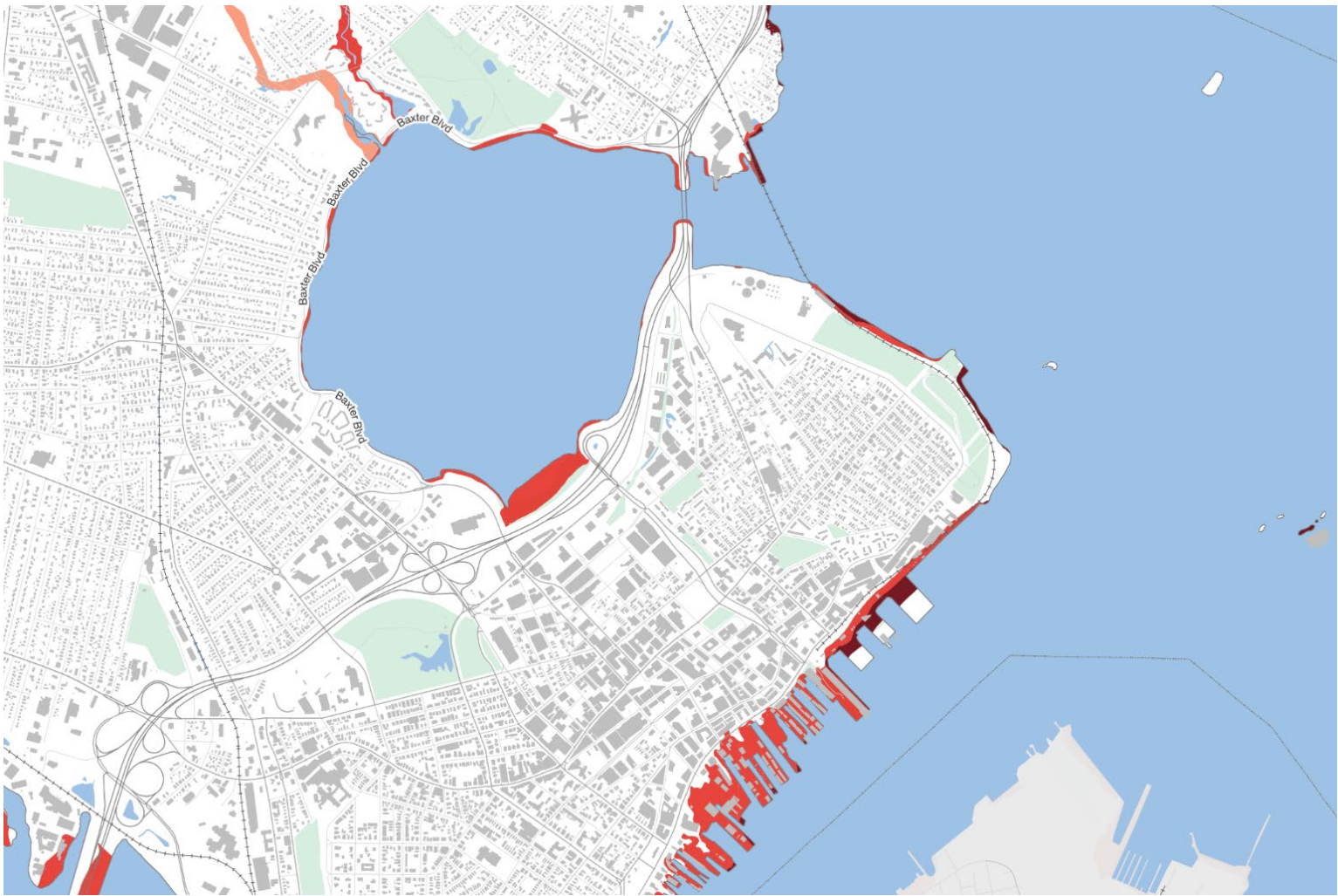
Modeled Flood Risk: Hydrodynamic Model

100-year storm + 3.9 ft. of SLR in 2100



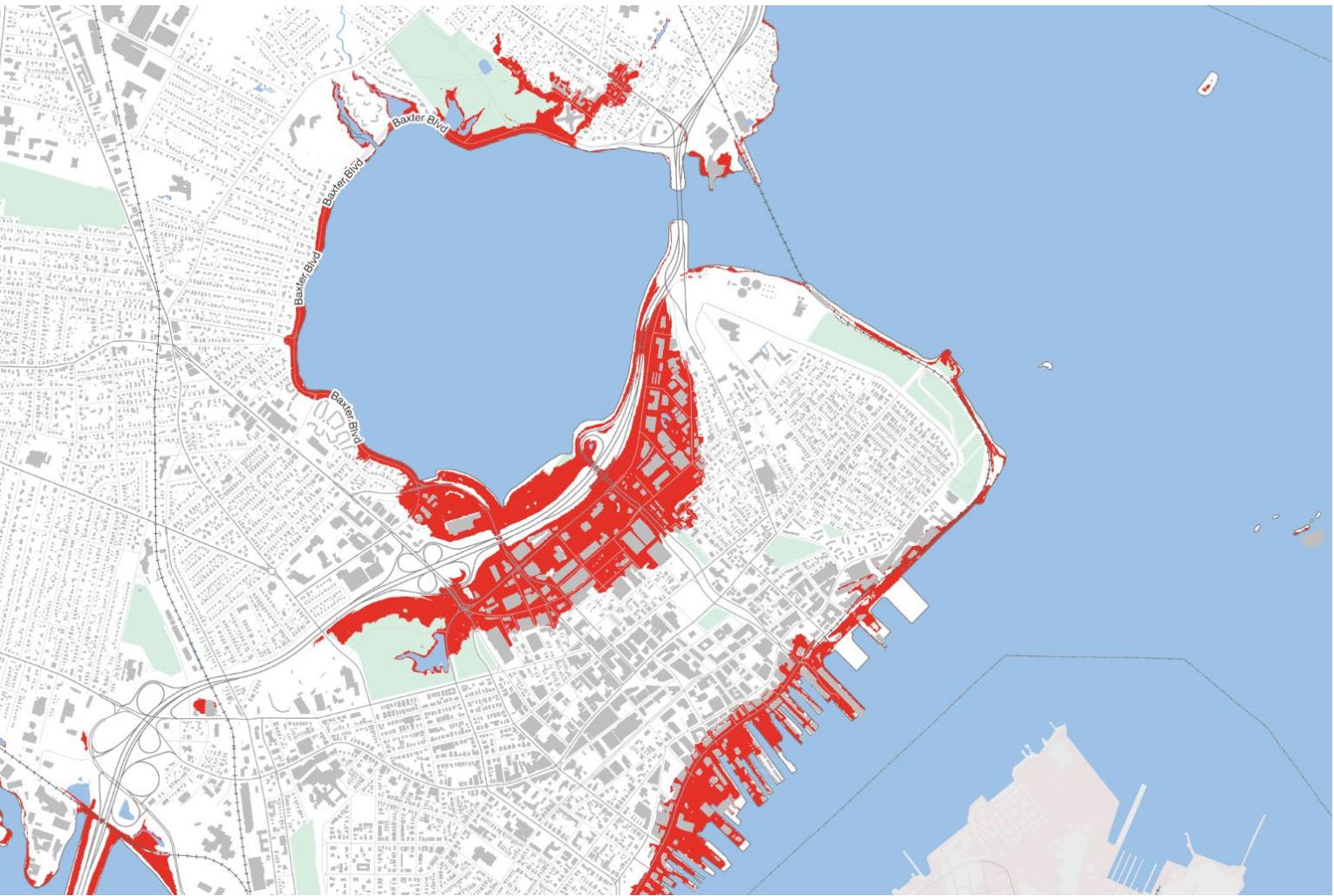
FEMA vs. Model Comparison

Current FEMA Floodplain



- 100 year flood zone + wave action
- 100 year flood zone
- 500 year flood zone

Hydrodynamic Modeled Floodplain



- 100 year flood zone

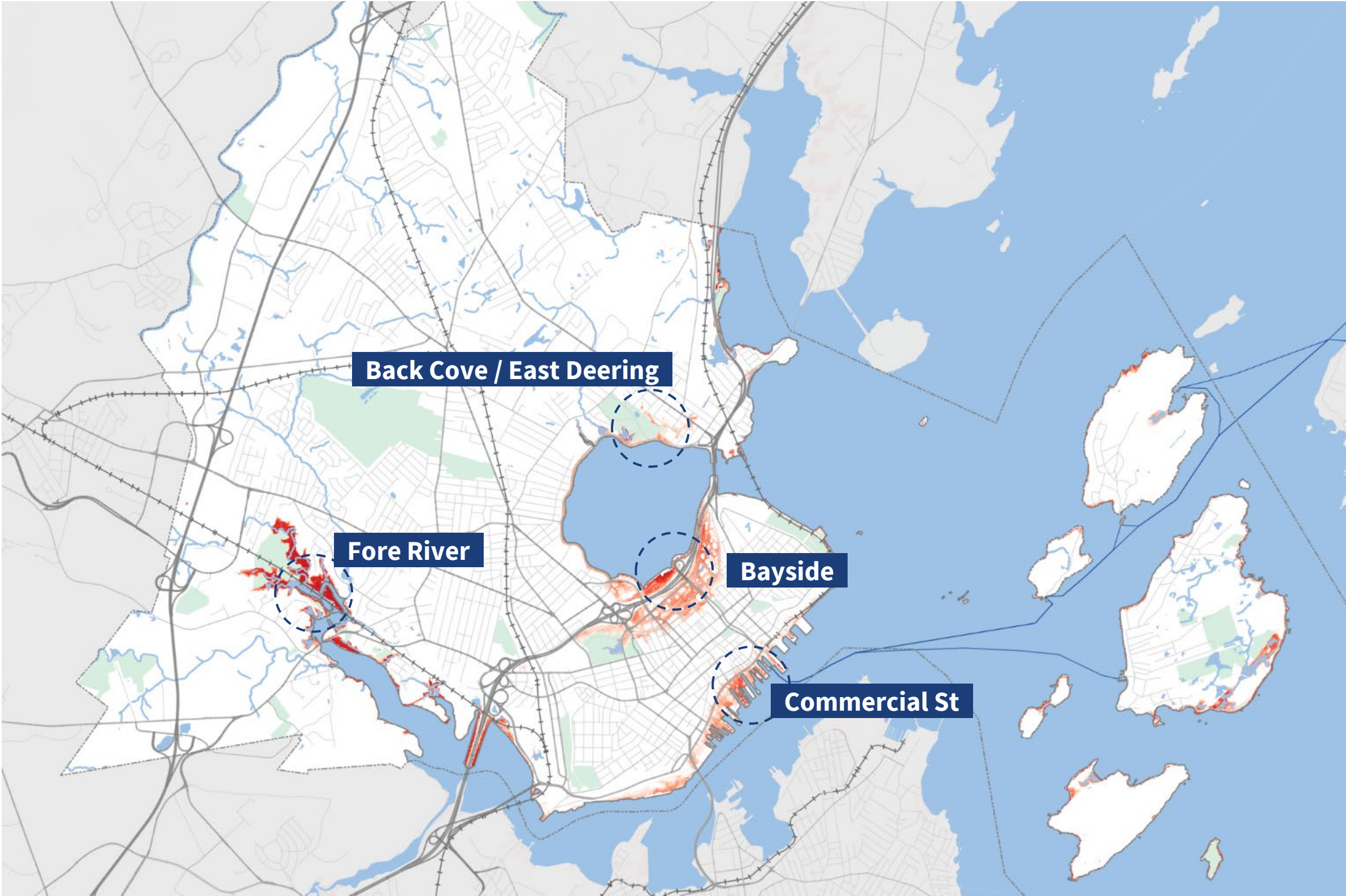
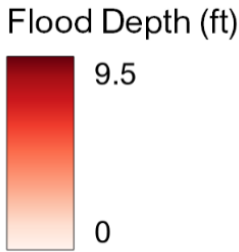
Coastal Flood Resilience Overlay Zone (CFROZ) Approach

Boundary:
All parcels that intersect with the modeled flood scenario

- Applicability:**
- All new construction
 - Additions over 1,000 SF
 - Changes of use involving “critical uses”

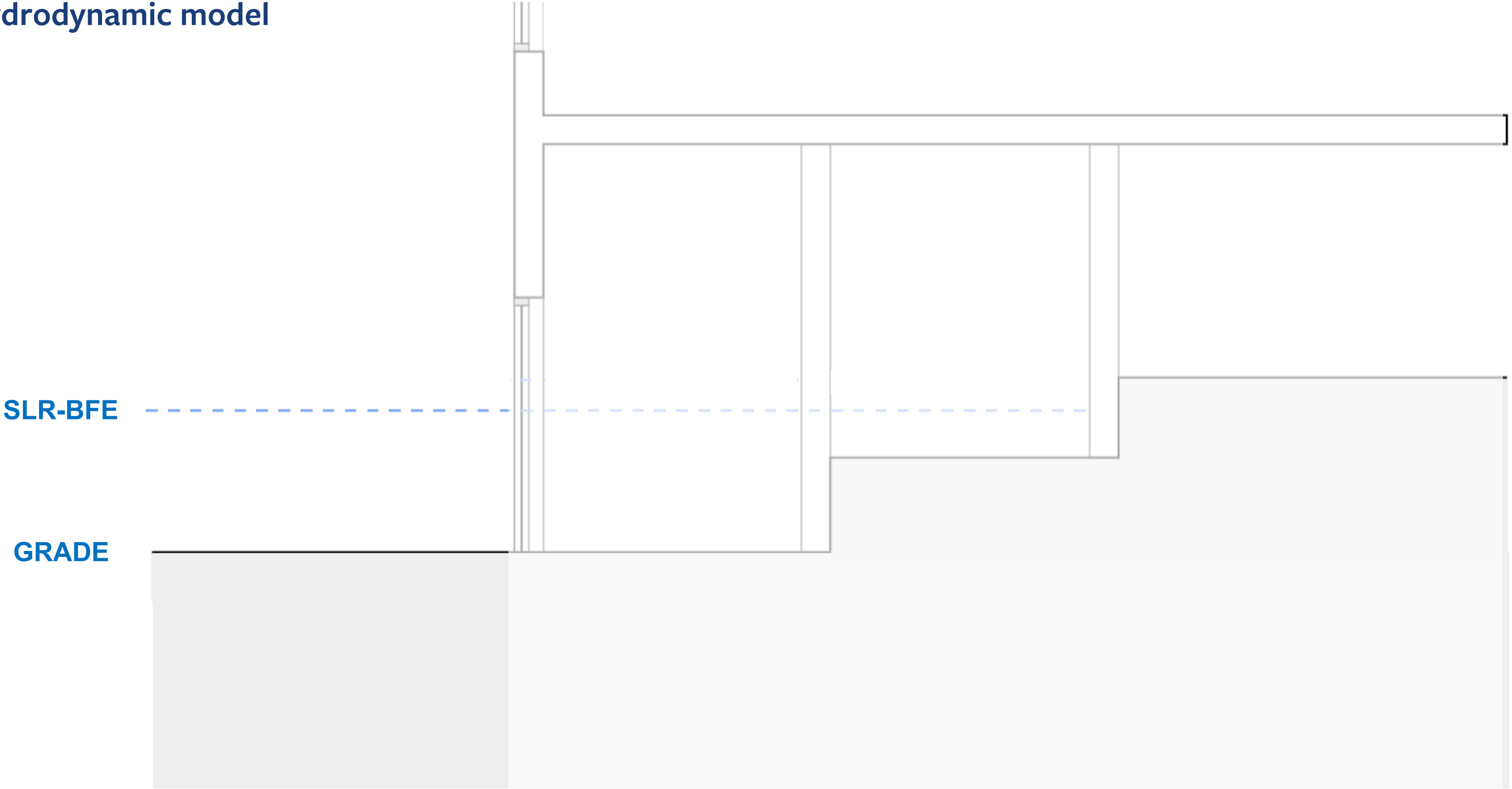
Relationship to FEMA floodplain:

- Underlying requirements of FEMA floodplain still apply

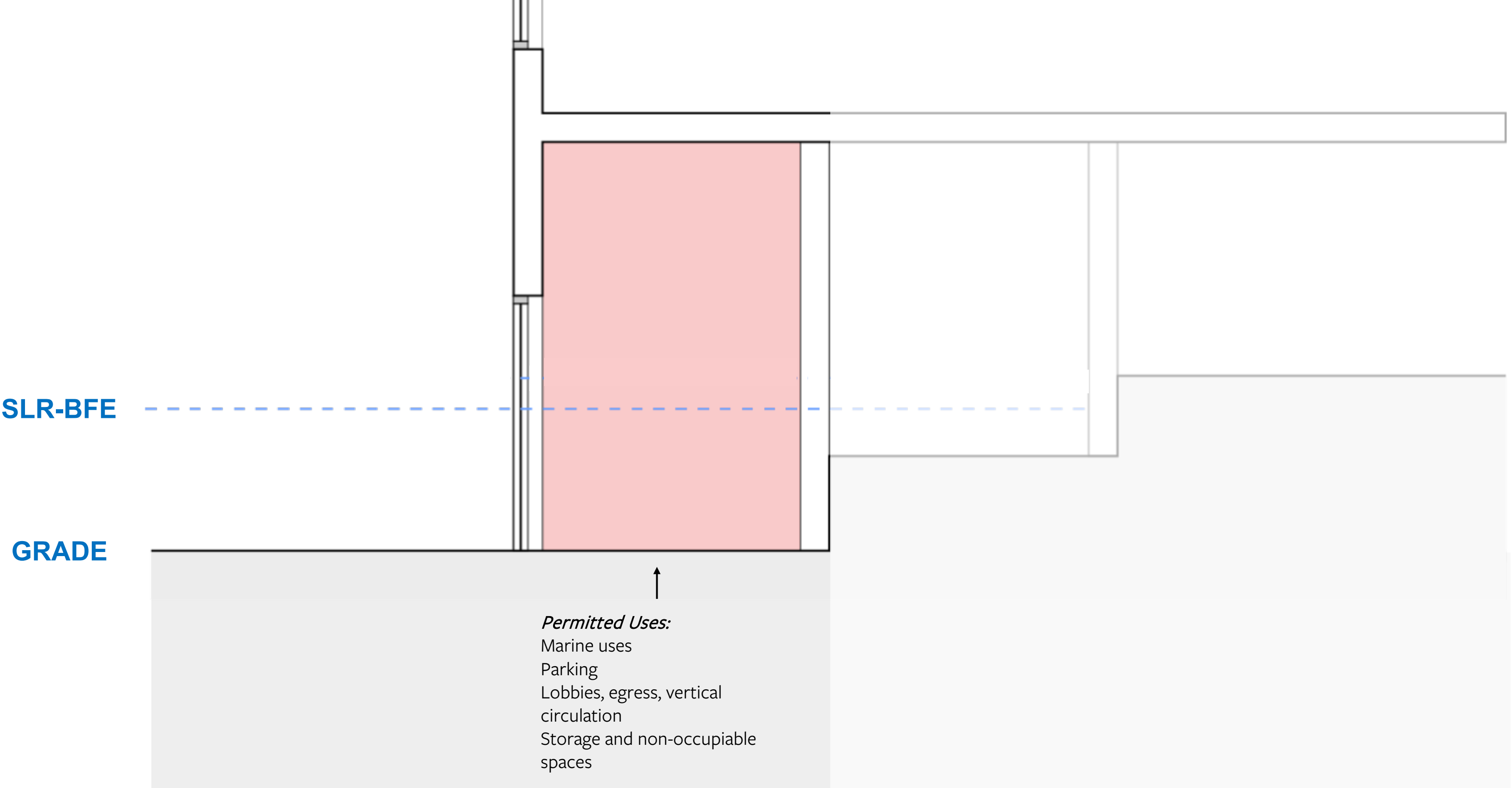


New Base Flood Elevation (SLR-BFE)

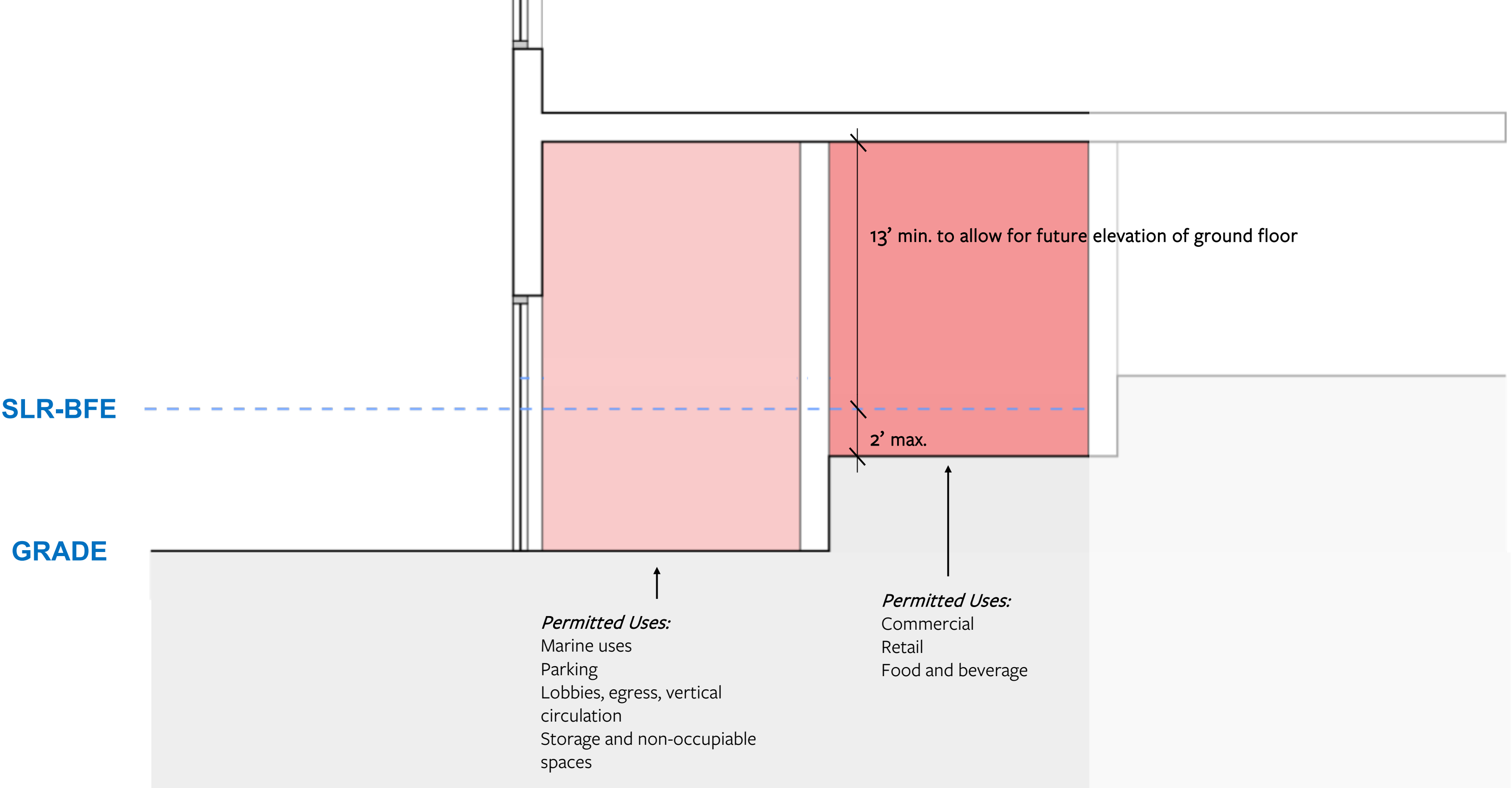
Based on hydrodynamic model



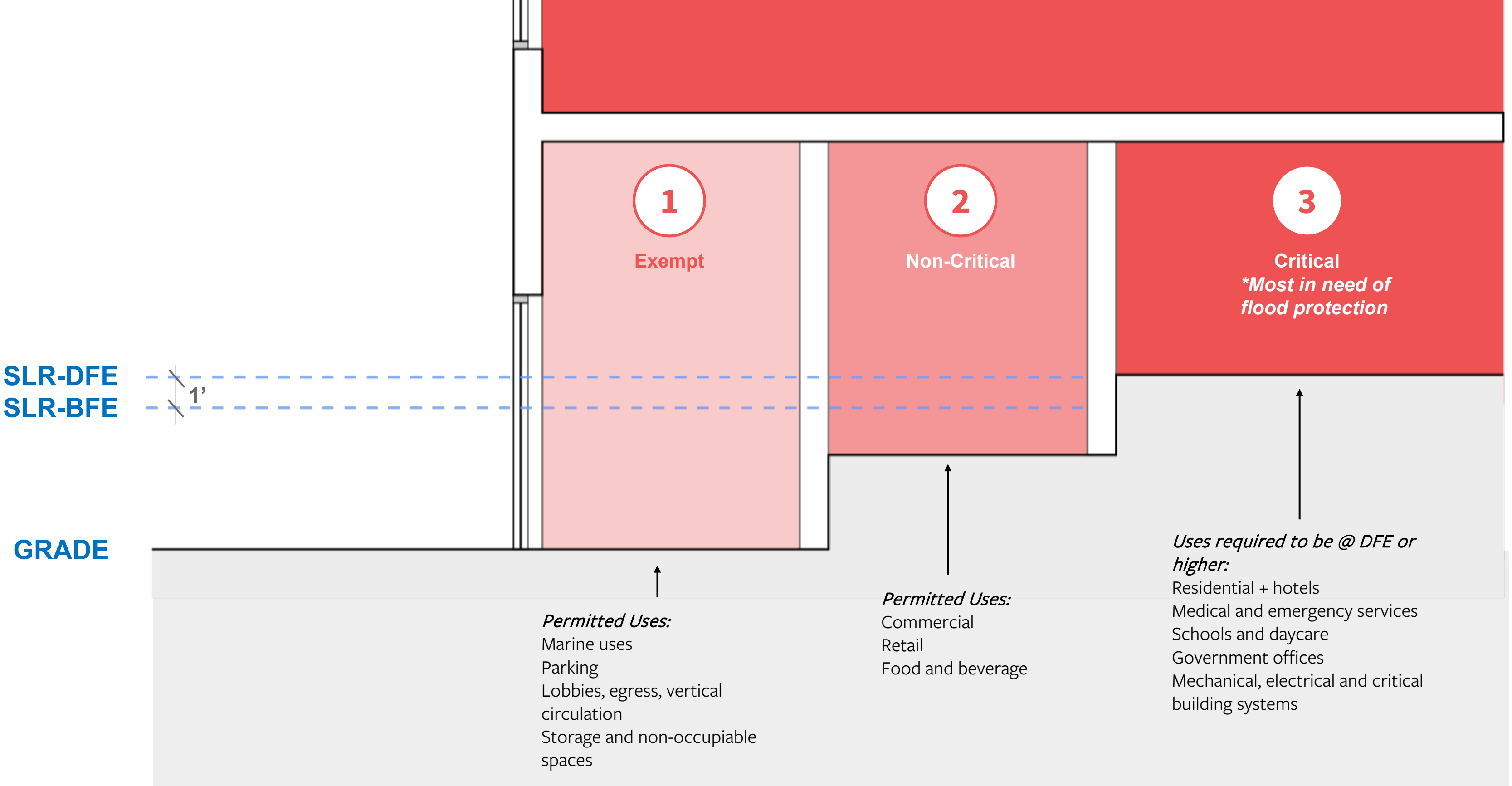
New Design Flood Elevation (SLR-DFE): Exempt Uses



New Design Flood Elevation (SLR-DFE) : Non-Critical Uses



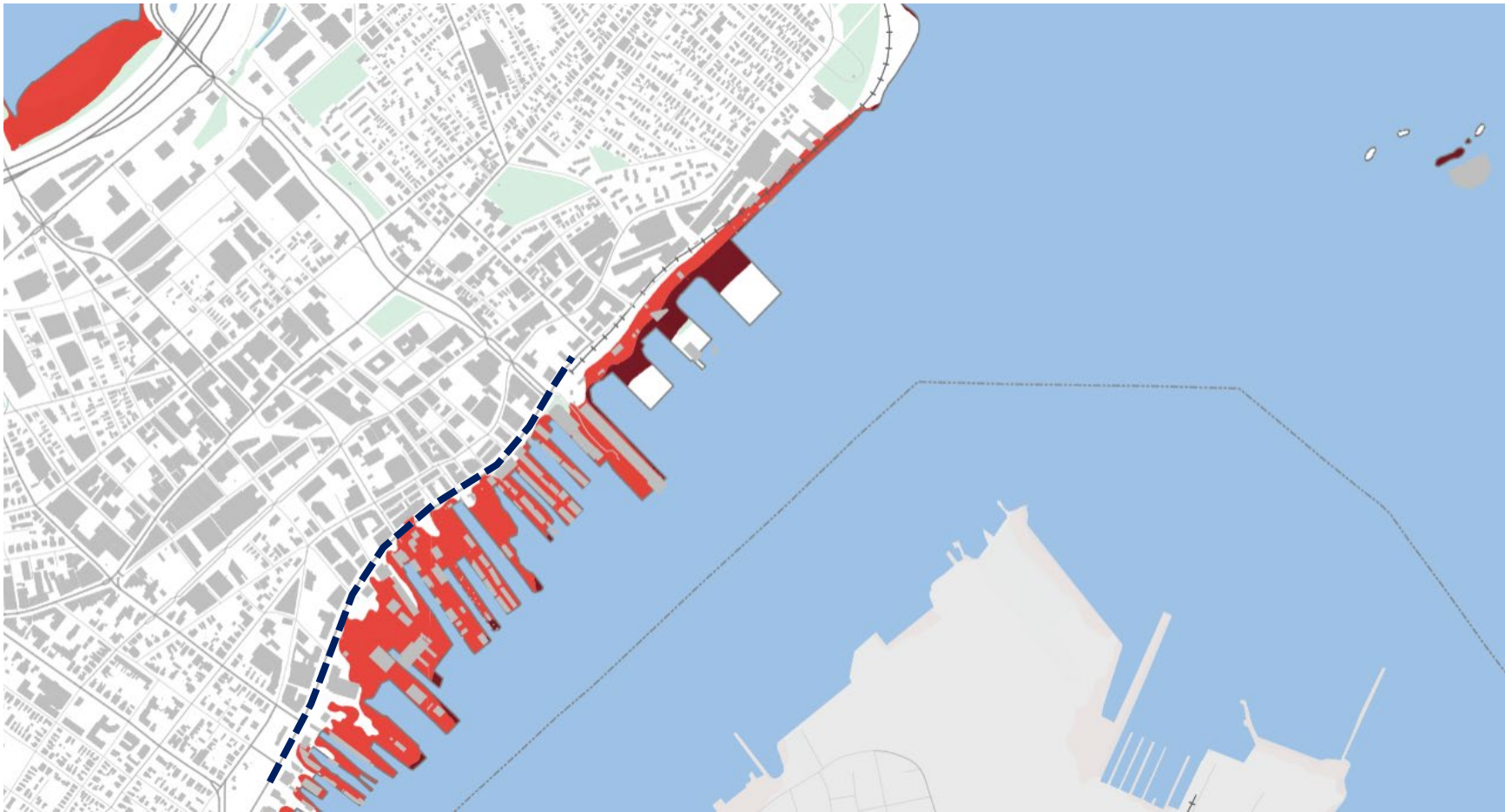
New Design Flood Elevation (SLR-DFE) : Critical Uses



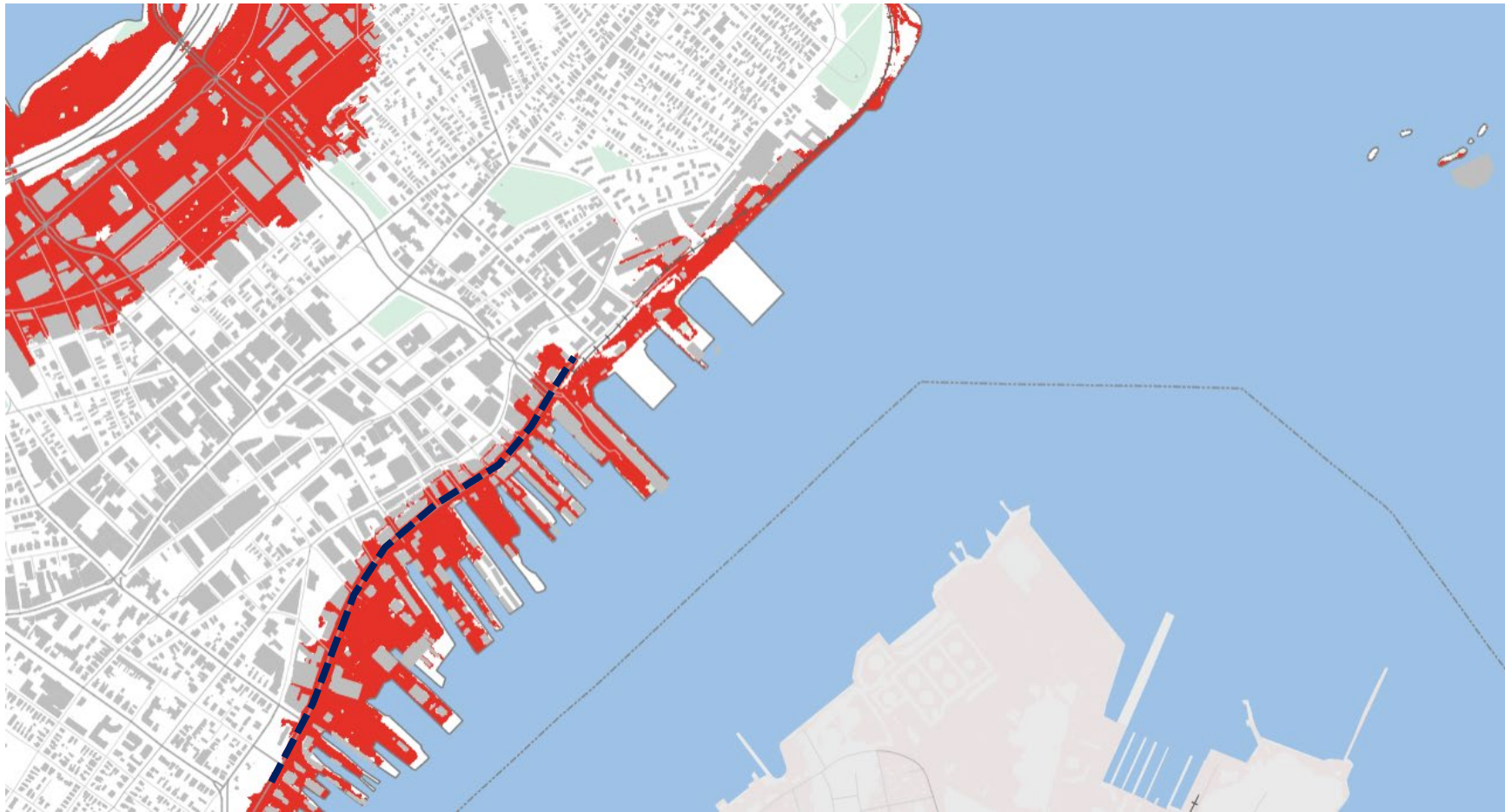
Downtown Waterfront

Geography

Current FEMA Floodplain



Coastal Flood Resilience Overlay Zone



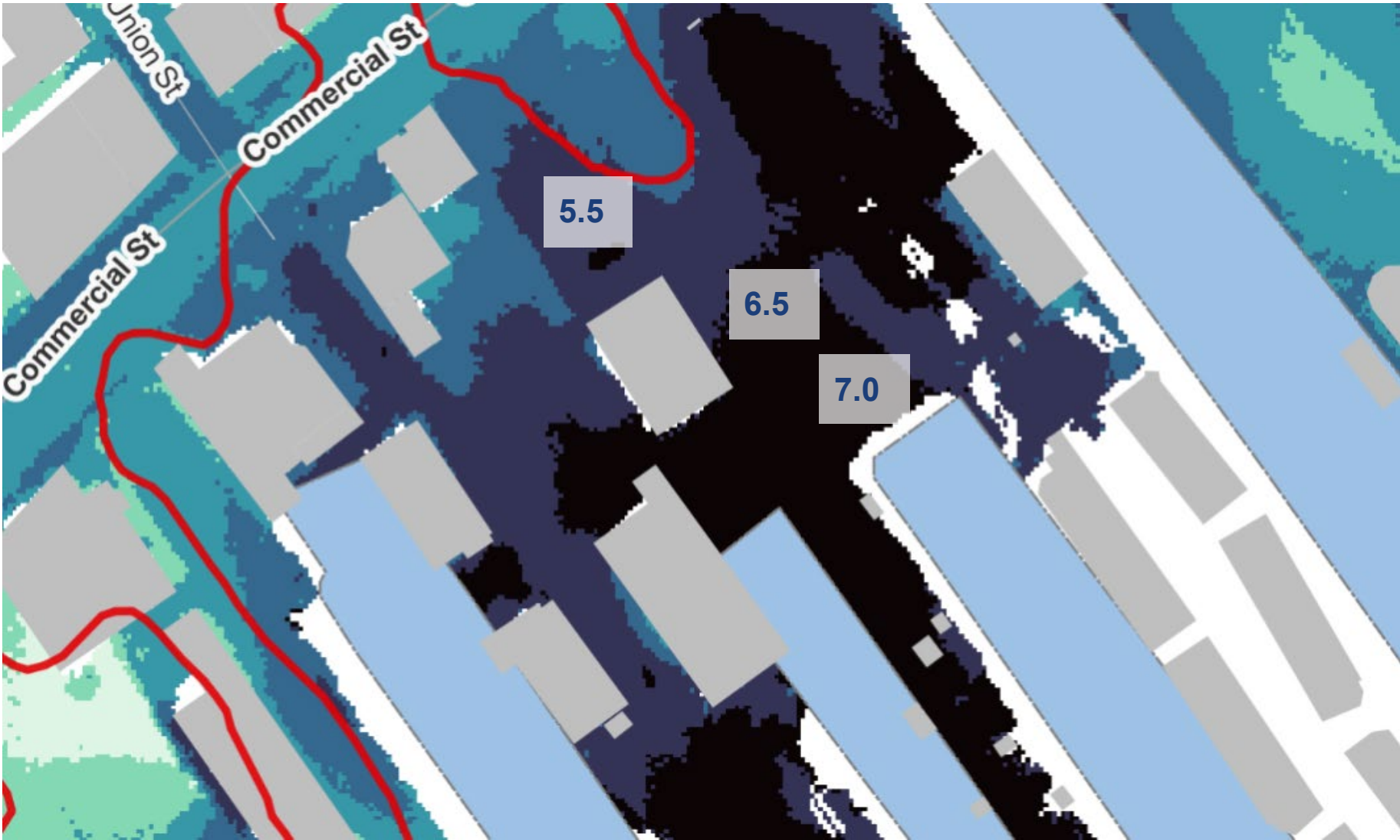
Downtown Waterfront

Design Flood Elevation

Current FEMA Floodplain



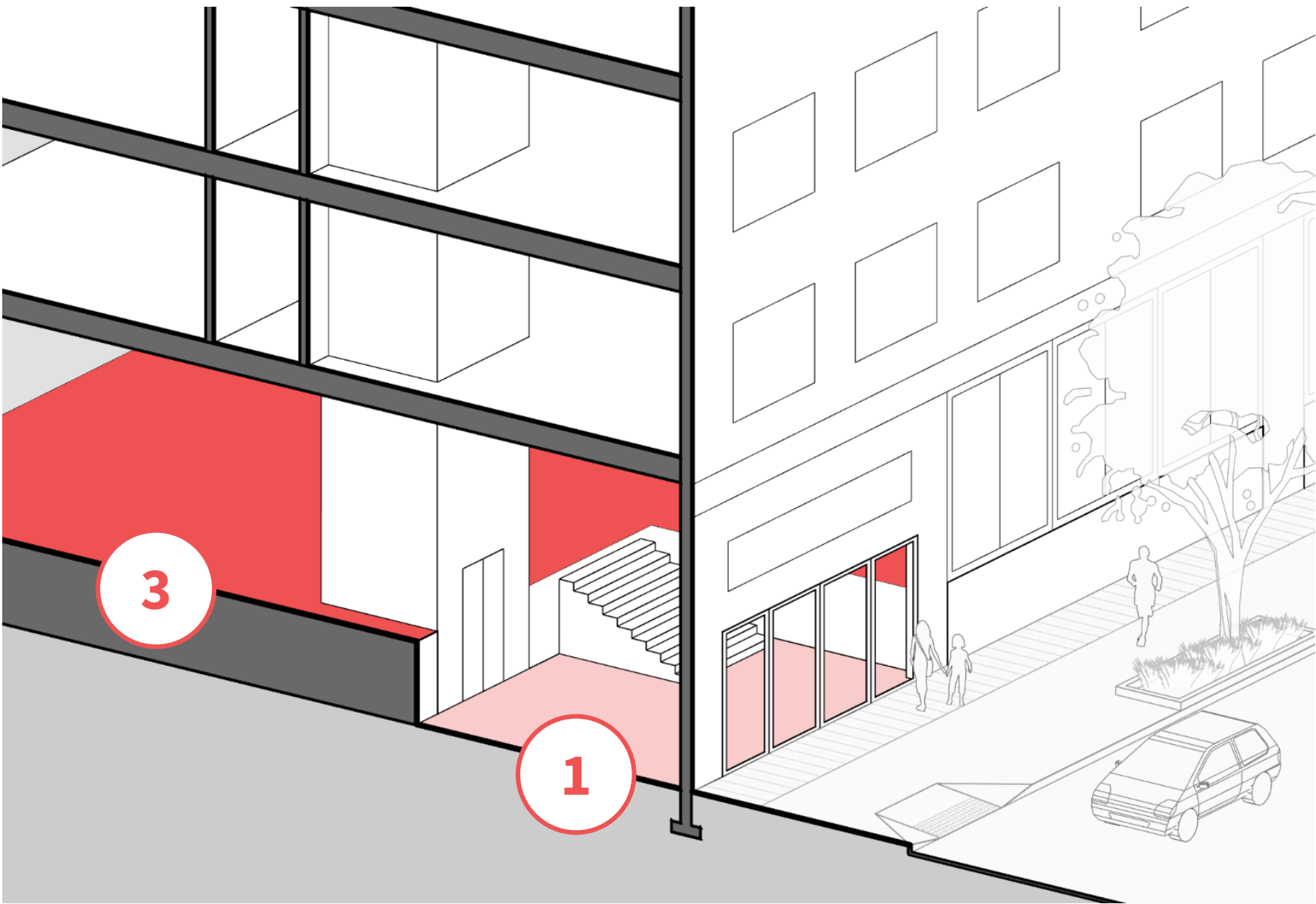
Coastal Flood Resilience Overlay Zone



— Current 100yr FEMA Floodplain

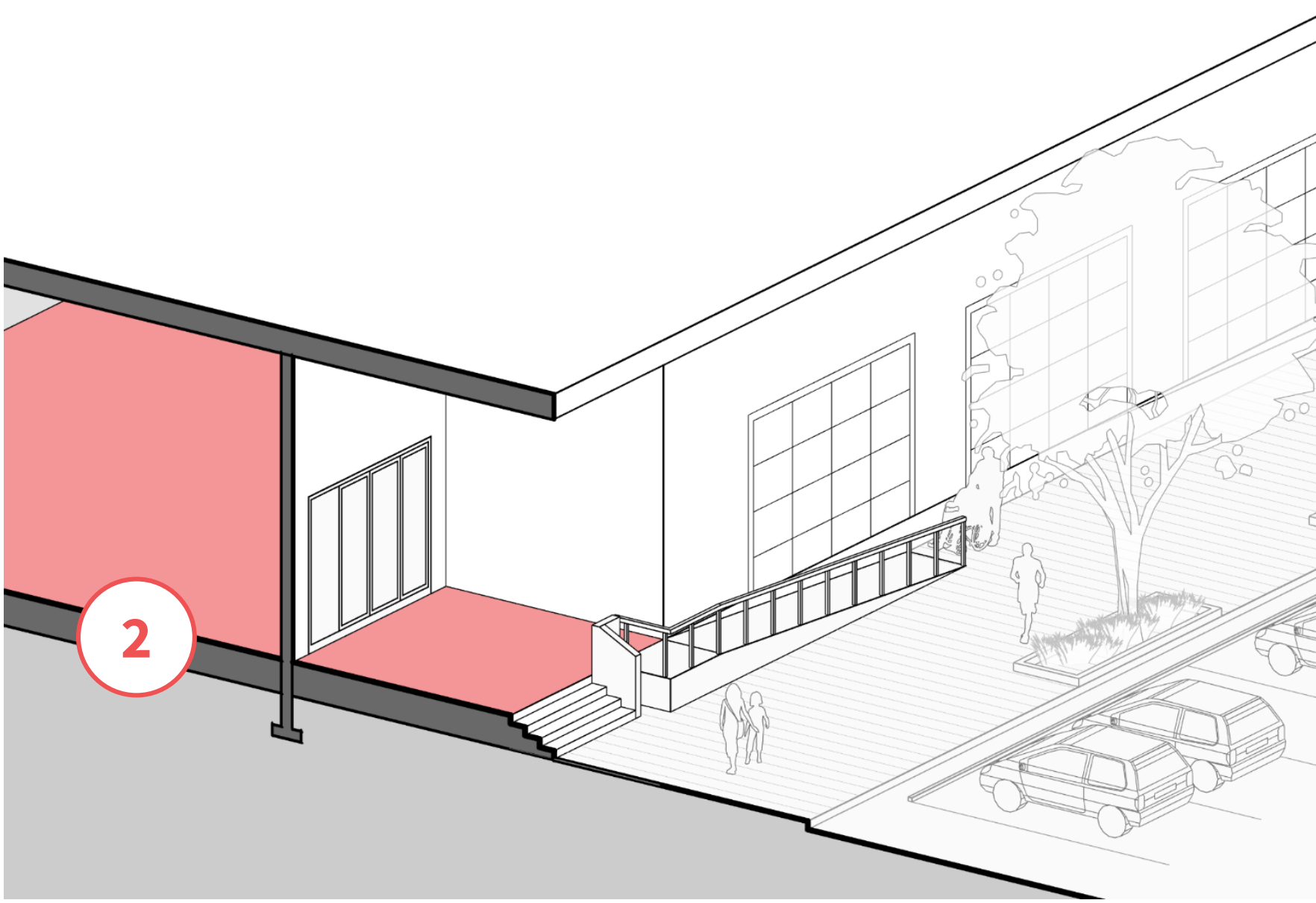
Case Study

Elevating Critical Uses 5.0’ + Non-Critical Uses 2.0’



Multi-Story Example

Interior lobbies can negotiate the elevation change from grade to the DFE.

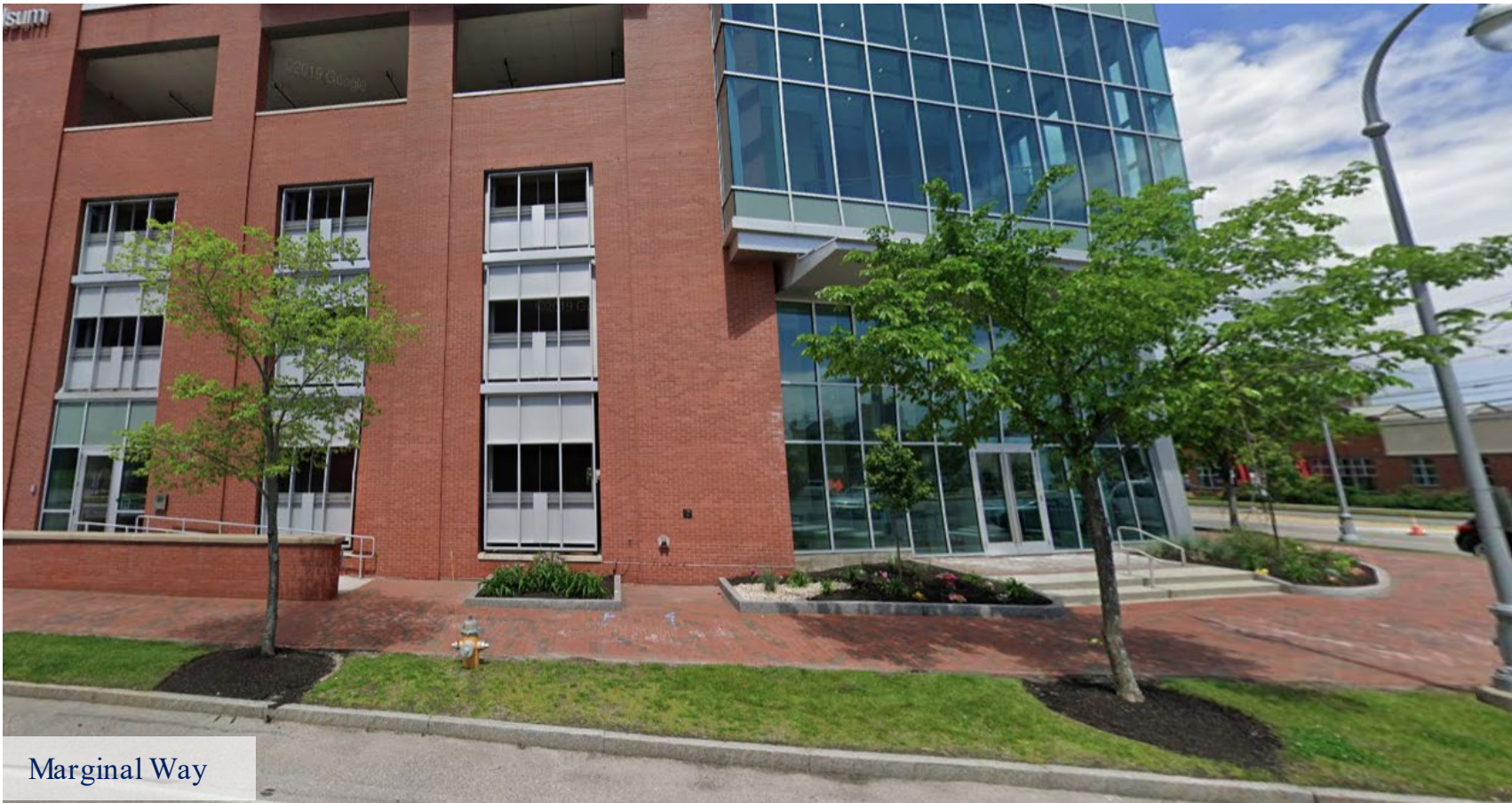


Single-Story Example

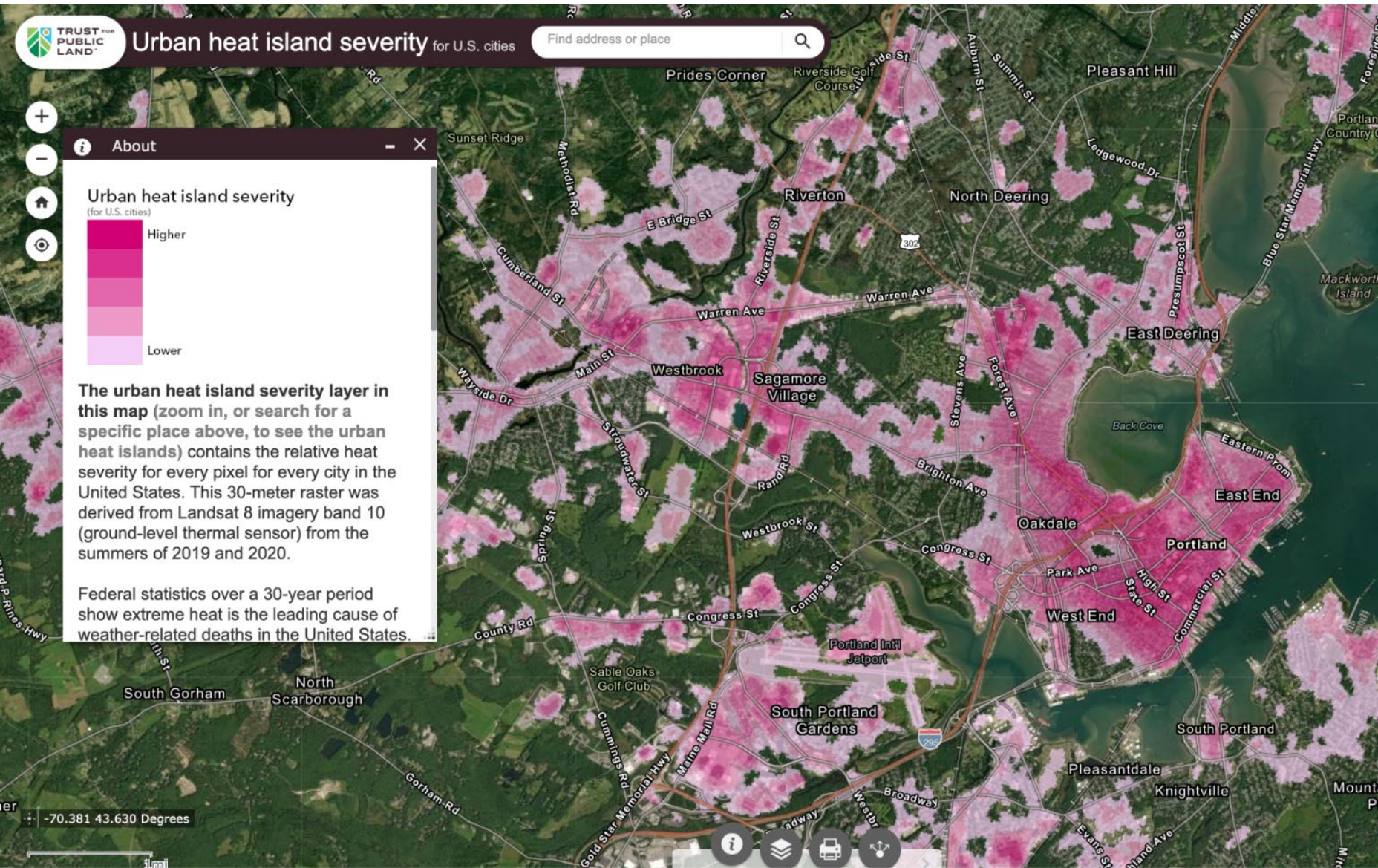
Exterior stairs and ramps to a shared entry platform can negotiate the elevation change from grade to the DFE.

Case Studies

How can we effectively transition to elevated ground floor levels?



High Heat + Stormwater Approach



High Heat Approach

- 1. Improve requirements for tree canopy in parking areas
- 2. Require cool materials in landscape/hardscape
- 3. Require cool roofing

Stormwater Approach

- 1. Simplify thresholds across all development types (i.e. redevelopment & new development) and manage connections to existing system
- 2. Increase natural resource protections
- 3. Establish simple standards for smaller residential projects

To learn more:
www.recodeportland.me/resilience



City of Portland, ME
Landcare Management Advisory Committee
Annual Report to the Sustainability and Transportation Committee
March 13, 2024

The City of Portland's Landcare Ordinance requires the Landcare Management Advisory Committee to provide a report to the Sustainability and Transportation Committee every year before March 31 in order to inform the City Council about the actions of the committee and to provide recommendations to the pesticide ordinance to enhance its environmental and public health benefits. This is the fourth annual report.

LMAC 2023

- Jesse O'Brien (*Chair*)
- Avery Yale Kamila, Waiver Committee
- Carol Laboissonnier
- Priscilla Skerry
- Melissa Runstrom
- Troy Moon, City Staff
- Noah Tucker

Executive Summary

- During the past year, Portland Parks & Recreation actively worked to combat invasive species in Portland such as Emerald Ash Borer and Hemlock Woolly Adelgid.
- The LMAC received 36 applicator reports for 2023 compared to 40 applicator reports for 2022. Staff connected with all applicators that reported in 2022 and found full reporting compliance with at least 5 additional applicators listing no applications in Portland in 2023.
- The LMAC did not receive any waiver requests in 2023.
- There were seven pesticide complaints registered on SeeClickFix in 2023, the majority for signage violations.
- In September 2022, the Portland City Council approved amendments to the Pesticide Ordinance recommended by city staff and LMAC. The new Land Care Ordinance restricts the use of synthetic fertilizers in addition to the restriction of pesticides. These amendments went into effect on March 19, 2023.
- The Sustainability Office held numerous events and educational campaigns in 2023 to bring attention to the Landcare Ordinance and sustainable practices. The committee will continue to assist in educating the public about the City's Landcare Ordinance.
- The LMAC proposes a few amendments to the Landcare Ordinance in 2024 to clarify items regarding soil tests and exempt applications.
- The LMAC will review commercial applicator reporting requirements included in the Landcare Ordinance over the next year so they provide additional information to help administer the ordinance.

Portland Parks & Recreation Organic Land Care Highlights

The Parks & Recreation Department achieved 100% organic management of the City's athletic facilities in 2022 and continued having success with the organic applications in 2023. This significant accomplishment demonstrates the City of Portland's commitment to building vibrant, livable communities.

The Parks Department is actively working to combat disruptive invasive species in Portland. The Parks Department released 80 colonies of a predatory beetle that consumes Hemlock Woolly Adelgid - this included about 8,000 beetles across a handful of Hemlock stands around the city. The City also participated in a predatory wasp release along the Presumpscot River to combat the extensive Emerald Ash Borer infestation the city is facing. This program was administered through the Maine Forest Service.

Applicator Report 2023 Data

- The Landcare Ordinance requires that licensed applicators submit an annual report containing the following information for applications performed in the City of Portland in the prior year: target site, pesticide brand name, EPA registration number, total undiluted formulation, and total area treated as listed and as amended on the Commercial Applicator Annual Summary Report required by the Maine Board of Pesticide Control.
- To notify applicators of this requirement, we utilized the MELNA and State of Maine Board of Pesticide Control lists and sent notice via email to all licensed applicators in Cumberland County.
- We received reports from 36 businesses, which is 4 less than was received last year. 5 businesses that reported last year informed us they had no applications in Portland in 2023. There was 1 new reporter for 2023.
- While discussing the applicator reports, the members noted that the information requested from the applicators does not provide enough information to determine whether reported applications of synthetic pesticides are for an exempt purpose or whether the application is in violation of the ordinance. The Committee members agreed they should review the reporting requirements to determine what information should be reported in order to provide meaningful and actionable data. Improved data will help with the administration of the ordinance.

Businesses that submitted reports include:

1. A1 Exterminators	14. Liberty Pest Control, Inc.	24. Organic First LLC
2. Ant Man Pest Control	15. Magic Carpet Cleaning & Restoration Inc	25. Pest-End
3. Ants Etc Pest Control	16. Maine Pest Solutions	26. Prep-Clean
4. Atlantic Insect & Lawn Control		27. Protect Pest Services
5. Bartlett Tree Expert Co		28. Rainbow International of Greater Portland
6. Big Blue Bug		29. Riverside Golf Club
7. Bouchard Cleaning and Restoration		30. Seabreeze Property Services

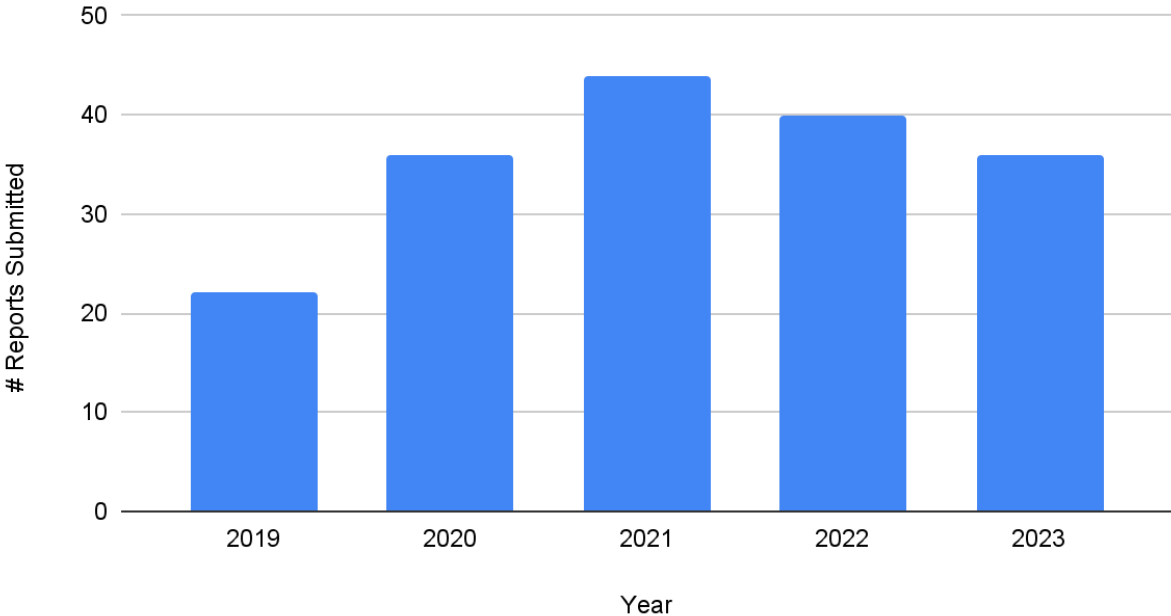
8. Bullseye Pest Services, LLC 9. Burnell Pest Services Inc 10. Davey Tree Expert Company 11. Erlich Pest Solutions 12. EZ Pest Solutions 13. Green Pest Defense	17. Maine Tick and Mosquito Control, LLC 18. Maine Verminator 19. Mainely Grass Holding LLC 20. Mainely Ticks 21. MD Weaver Corporation 22. Modern Pest Services 23. Mosquito Squad of Southern Maine	31. Sterling Insect - Lawn Control Inc 32. Superior Pest Control 33. Terminix 34. TruGreen 35. Turf Doctor Lawn & Pest Services 36. Waltham Pest Services
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Staff was pleased that these companies submitted reports detailing their pesticide applications during the calendar year 2023.

- *It is important to note that we do not know how many pest management and landscaping companies operate in Portland so we do not know how many firms are required to submit reports.*

City of Portland Commercial Applicator Annual Reporting Summary Data (2019 to 2023)

Reports Submitted



Portland Pesticide Annual Report Areas	2023	2022	2021	2020	2019
# of Pesticide Annual Reports Submitted	36	40	44	36	22
Resident Complaints (Portland SeeClickFix)	7	12	6	12	0
# of Waivers Submitted	0	0	1	1	2
# of Waivers Submitted Approved	0	0	0	0	0
# of Education and Outreach Efforts Held	8	5	2	4	7

Education and Outreach Efforts in 2023

- The Office hosted a landcare professionals workshop in February 2023 titled Healthy Soils and Happy Lawns: A Deep Dive into Organic Turfgrass and Lawn Care Practices. Lawn care professionals and lawn care managers were invited to this workshop to learn how soil testing, proper irrigation, and proper use of organic fertilizers can create healthy soils that grow grass without the use of synthetic pesticides. The workshop was led by Jesse O'Brien, a practicing agronomist and sod expert, along with veteran Golf Course Superintendent, Brendan Parkhurst. Both have decades of practical experience cultivating high-quality turfgrass. Licensed applicators received one recertification credit for participation in this workshop.
- Sustainable Landcare Fair was held on September 9th, 2023 at the farmers market in Deering Oaks Park. The event saw many residents stop by to view educational materials about the Landcare Ordinance and Mow Tall Until Fall campaign presented by City staff and LMAC. Attendees were also able to learn from event partners such as Master Gardeners, Wild Seed Project, Eldredge Lumber, the Parks and Recreation Department, and State Entomologist Hillary Peterson.
- Sustainability Office staff launched an educational campaign "Mow Tall Until Fall" to educate about the importance of healthy soils creating happy lawns. This campaign included handing out yard signs at the farmers market, Wayside pop up picnic events, and at the Sustainable Landcare Fair. Additionally, all educational materials were also shared via a social media campaign.
- Sustainability Office staff launched a summer webinar series focused on sustainable landcare topics. Guest speakers from Maine Audubon to speak about creating Bird-Friendly Habitat in your Backyard, University of Maine's Cooperative Extension to speak about soil science and soil tests, and Wild Seed Project to speak about "building a biodiverse and climate-resilient yard". These events were well attended and reached over 200 individuals.

- Sustainability Office staff increased outreach to retailers by creating a “Pesticide and Fertilizer Retailer Guide” along with visiting local retailers to notify them of the Ordinance requirement to post signage near pesticides alerting customers of the Landcare Ordinance.
- The City of Portland Landcare website was updated with the new ordinance information and continues to be updated regularly by City staff. See the website at portlandmaine.gov/landcare

Waiver Requests

There were no waiver requests submitted in 2023.

Portland See-Click-Fix Resident Complaints on Pesticide Use

- The City of Portland relies on community-sourced reporting through the See-Click-Fix (SCF) platform to monitor compliance with the Landcare Ordinance. In 2023, residents filed seven SCF reports about potential Landcare Ordinance violations. Many of them note the lack of proper signage on applied lawns, specifically the lack of a chemical name and trade name as required by the ordinance.
- The Sustainability Office sent information about the ordinance to the owners of the properties identified by the See-Click-Fix report. Staff also included information about proper signage in our annual letter to applicators reminding them of the ordinance’s reporting requirements. Staff will continue to respond to resident reports and encourage residents to use the platform to share concerns they may have about compliance.

Summary

Portland’s Landcare Ordinance charges the Landcare Management Advisory Committee (LMAC) with advising the Sustainability Director and the Sustainability and Transportation Committee about implementation of the ordinance and recommended amendments.

- The LMAC proposes the following ordinance amendments in 2024:
 1. Changing the required soil test to a “standard soil test” offered by the University of Maine Cooperative Extension.
 2. Required soil tests may be done every three years rather than yearly.
 3. Application of organic fertilizer to gardens is permitted with a soil test highly recommended.
 4. Fertilization of woody plants and shrubs is permitted so long as fertilizer is injected to the root or applied within the drip edge of the plant and incorporated into the soil.
 5. Removal of the term “penetrometer” because it is not referenced in the ordinance language.
- The LMAC will review the reporting requirements for commercial applicators and will share findings and recommendations in the 2024 LMAC report.
- The LMAC will continue to assist in implementing an ongoing education and outreach program in coordination with the Sustainability Office that will inform residents, property

owners, and landscaping companies about the ordinance and ways to manage their property organically.

Chapter 34

LANDCARE

Sec. 34-1. Title.

This chapter shall be known as the City of Portland Landcare Ordinance (hereinafter, the "Ordinance").
(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-2. Purpose.

The purpose of this ordinance is to safeguard the health, safety and welfare of the residents of the City and to conserve and protect the City's waterways and natural resources by curtailing the use of pesticides and fertilizers for turf, landscape and outdoor pest management.
(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-3. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meaning:

Aggrieved party means an individual or entity that applies for but is denied a waiver from provisions of this ordinance as described in Section 34-6.

Broadcast application means the spreading of pesticides over an entire area.

Commercial Agriculture means the production of crops for sale, including crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

Compost means soil amendment made from decomposing organic matter used to improve soil structure and nutrient holding capacity. For the purposes of this ordinance, compost is not considered a fertilizer.

Emergency means a serious, unexpected, and often dangerous situation requiring immediate action.

Environmentally sensitive areas means areas that are particularly vulnerable to fertilizer nutrient loss and/or where direct transmission of fertilizer nutrients to surface water or ground water is likely. This includes coastal and freshwater wetlands, beaches and sand dunes, streams and tributary streams

EPA means the United States Environmental Protection Agency.

Fertilizer means a substance containing one or more plant nutrients and used for its plant nutrient content. State law requires that all fertilizer products be registered with its department of agriculture prior to distribution.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

Golf course means an area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf and disc golf courses are not considered golf courses.

Heavy rain event means a rain event producing 0.5 inch or more of precipitation in a one hour period.

High Use Athletic Facilities means the following playing fields located in the following parks as listed in Chapter 18, section 18-11: Fox Field, Quinn Field and Deering Oaks Baseball Field at Deering Oaks Park; Back Cove Park; and Payson A Field in Payson Park. It shall also include Presumpscot Field at Deering High School.

Hydro-seeding means the process of seeding by pumping seed in a mixture of water through a nozzle that sprays the mixture onto a seedbed. The water mixture may also contain add-ins such as fertilizer and certain mulches.

Landcare means a land management approach intended to prevent soil degradation and responsibly manage land resources, and cultivate environmental health.

Landcare Management Advisory Committee (LMAC) means the Landcare Management Advisory Committee as described in this Chapter.

New development means any alteration of land for the purposes of construction or reconstruction redevelopment that

results in soil disturbance and/or compaction, vegetation removal, and/or regrading.

Organic fertilizer means a fertilizer derived from either plant or animal products that contain nutrients for plant growth. It is acceptable for the materials in these fertilizers to have been subjected to biological degradation processes under normal conditions of aging, rainfall, suncuring, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. In order to qualify as organic fertilizer, the materials in these fertilizers may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis, or pelleting in order to qualify as organic fertilizer. Organic fertilizers are broken down by, and feed, the microbial life in the soil.

Organic landcare means a landcare management technique that integrates cultural, biological, and mechanical practices to build soil health, including practices such as mowing at higher levels, aeration, top dressing with compost, over-seeding, and watering deeply but infrequently, and without the use of toxic pesticides and synthetic fertilizers.

Organic material means the organic matter component of soil, consisting of plant and animal detritus at various stages of decomposition, cells and tissues of soil microbes, and substances that soil microbes synthesize.

Over-seeding means the application of additional turfgrass seeding to existing turf.

~~**Penetrometer** means an instrument used to give a quantitative measurement of the consistency or hardness of a substance by measuring the depth or rate of penetration of a rod or cone-shaped into it.~~

Performance turf means grounds devoted to athletic fields and golf courses.

Prills means a small aggregate or globule of a material, most often a dry sphere or pellet. Fertilizers and some detergent powders are commonly manufactured as prills.

Repellant means a substance that deters insects or other pests from approaching or settling.

Invasive Species means a plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

Natural, organic or "non-synthetic" means a substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

Organic pest management means the act of managing or controlling pests through the use of mechanical, cultural, or, biological processes, or through the use of natural, organic, or non-synthetic substances.

Person means any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

Pest shall have the same meaning as the term set forth in 40 C.F.R. § 152.5, as the same may be amended from time to time.

Pest Management means the act of managing or controlling pests through the use of chemical, mechanical, cultural, biological, or genetic measures.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Pests of significant public health importance means the pests listed by the EPA, in conjunction with the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, as pests of significant public health importance.

Preemptive application means the application of pesticides as a measure against something possible, anticipated or feared, i.e., as a preventive or deterrent measure.

Public utility means any transmission and distribution utility, telephone utility, water utility, gas utility, or natural gas pipeline utility that is subject to the jurisdiction of the Maine Public Utilities Commission.

Re-establishment means a procedure involving complete turf removal and seeding or laying sod to establish new turf.

Restricted Entry Interval, also known as the re-entry interval or re-entry time, means the minimum amount of time that must pass after a pesticide is applied to an area before people or pets can safely go into that area. The labels on pesticides provide information about an individual pesticide's REI.

Slope means the ratio of elevation change to horizontal distance, expressed as a percentage. Slope is computed by dividing the vertical distance by the horizontal distance, and multiplying the ratio by 100. For purposes of this Chapter, a slope shall include only those areas with a horizontal distance of at least 50 feet.

Soil means the outer, weathered layer of the Earth's crust which can potentially support plant life and made up of inorganic particles, organic matter, organisms, water and air.

Soil amendment means a soil amendment is material added to soil to improve its physical properties, including, but not limited to, the substances listed on the National List of Allowed and Prohibited Substances, 7 C.F.R § 205.601, as the same may be amended from time to time. For the purposes of this ordinance, a soil amendment is not considered fertilizer.

Soil microbes means living organisms in soil (such as bacteria and fungi), which feed on organic matter and decompose rapidly.

Soil test means ~~a test designed to analyze soil acidity, organic matter, and essential nutrients available for plant growth. A "standard soil test" indicates soil pH, levels of essential nutrients such as potassium, phosphorus, calcium, magnesium, and sulfur, level of organic matter, whether there is lead contamination, and it will provide recommendations for corrective amendments to address deficiencies. A "comprehensive soil test" includes all the elements of a standard soil test, plus an analysis of soil microbial mass.~~ the standard soil test offered by the University of Maine Cooperative Extension or or a comparable test identified by the City Manager or their designee.

Commented [RM1]: Is there another test we should reference in the event that the UMaine Cooperative Extension stops doing testing?

Starter fertilizer means a fertilizer formulated for a one-time application at planting or near that time to encourage root growth and to enhance the initial establishment of turf. This is typically a water-soluble product that contains high levels of phosphorus to allow for robust root growth.

Steep topography means slope lengths exceeding 50 feet (horizontal distance) on slopes greater than 15%.

Summer dormancy means the period during mid-summer most commonly observed in un-irrigated lawns when turf growth ceases. Dormancy is characterized by brittle texture and a loss of green color.

Synthetic means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Synthetic fertilizer means any fertilizer manufactured from one or more synthetic materials and may or may not contain animal parts, animal byproducts, manures or renderings. Synthetic fertilizer bypasses the microbial life in the soil and is taken up by the plant directly.

Total nitrogen means the sum of all fertilizer nitrogen species, including water soluble nitrogen forms, slow release nitrogen forms, and water insoluble nitrogen forms. The percentage of total nitrogen appears as the leftmost number of the grade on fertilizer labels.

Turf means a community of herbaceous plants that can be mowed, including grass and sod; a surface layer of the earth with grass growing on it, usually mowed, including lawns, grass covered medians, athletic fields, golf courses, outdoor event spaces, and the like.

Waiver Committee means the Waiver Committee as described in this Chapter.

Water body means any great pond, river, stream or tidal area as those terms are defined in Chapter 14 of the Portland Code of Ordinances.

Wetland means a coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 14 of the Code of Ordinances.
(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-4. Applicability

The following provisions shall apply to all outdoor pest management activities and use of fertilizer conducted within the boundaries of the City of Portland (hereinafter, the "City"), on both public and private land, excluding the exemptions provided in this Chapter.
(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-5 Permitted, prohibited, and exempt applications

(a) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all outdoor pest management activities in the City.

1. Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:
 - i. Organic Pest Management, except as provided in (b)2 below;
 - ii. Use or application of Synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List"); and/or
 - iii. Use or application of Pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time.

2. Prohibited Pest Management Activities and/or Materials:
 - i. Use or application of Synthetic substances other than those described in (a) (2) above;
 - ii. Use or application of Non-synthetic substances specifically listed as "prohibited" on the National List; and/or
 - iii. The use or application of pesticides (whether natural, organic, "non- synthetic," synthetic or otherwise) within seventy five feet of a water body or wetland.
3. Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore are allowed):
 - i. Use or application of Pest Management Activities and/or Materials in connection with Commercial agriculture;
 - ii. Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
 - iii. Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
 - iv. Insect repellents when used in the manner specified by the manufacturer;
 - v. Rat and rodent control supplies when used in the manner specified by the manufacturer;
 - vi. Swimming pool supplies when used in the manner specified by the manufacturer; and/or
 - vii. General use paints, stains, and wood preservatives, and sealants when used in the manner recommended by the manufacturer.
4. Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):
 - i. Specific health and safety applications. Prohibited pesticides may be used to control plants that are poisonous to the touch, such as poison ivy, pests of significant health importance such as ticks and mosquitoes, and

- animals or insects that may cause damage to a structure, such as carpenter ants or termites;
- ii. Golf course applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
 - iii. Hadlock Field applications;
 - iv. Treatments for Heritage Elms;
 - v. Applications on fields at High Use Athletic facilities (until January, 2023, unless this date is extended by the City Council);
 - vi. Prohibited pesticides may be used to control the Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth and other insects identified as invasive by the Maine Forest Service;
 - vii. Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City; and/or
 - viii. Invasive plant applications on city property. Applications to control plants categorized as *currently considered invasive in Maine* by the Maine Department of Agriculture, Conservation, and Forestry.
5. Disclosures. For any exempt applications by the City, disclosure shall be made in the annual report described in Section 34-9 of this ordinance.
6. Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):
- i. Any use of pesticides mandated by state or federal law or required by an order or decision from a court or state or federal board or agency.
- (b) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all fertilizer applications in the City.
- 1. Prohibited Fertilizer Applications. The following prohibitions apply for all fertilizer applications on all turf types:

- i. Applications within 75 feet of a water body or wetland or other environmentally sensitive area are prohibited.
- ii. Applications on frozen ground or saturated surfaces are prohibited.
- iii. Applications when a heavy rain event is occurring is prohibited.
- iv. Applications during summer dormancy or when the ground is partially or wholly frozen are prohibited.
- v. Applications on impervious surfaces are prohibited; if spills occur on impervious surfaces, they must be swept up immediately.
- vi. Applications with phosphorus are prohibited except where a soil test conducted within the last three years indicates a need for phosphorus, or phosphorous is being used for new development/re-establishment, as specified in subsection (B) below.
- vii. Applications of synthetic fertilizer are prohibited except where a waiver has been granted pursuant to Sec. 34-7 below.
- viii. Application of compost or fertilizers derived from wastewater treatment sludge or from organic residuals remaining after industrial processes (such as paper making) is prohibited within the boundaries of the City of Portland.
- ix. Applications of organic fertilizer not in compliance with subsection (2) below are prohibited.

2. Permitted Fertilizer Applications. The following applications of organic fertilizer are allowed within the limits for the specific application as set forth below:

- i. Except as specified in subsections (ii), (iii), and (iv) below, applications of organic fertilizer, including residential lawns, are allowed only when a ~~comprehensive~~ soil test conducted within the ~~same calendar~~ the last three years indicates a need for nitrogen. Applications of organic fertilizer may not contain nutrients in excess of the amount recommended by the completed soil test. Only phosphorus-free, organic fertilizer is allowed for these

- applications, unless the soil test indicates a need for phosphorus. ~~ii.~~
- ii. Applications of organic fertilizer on performance turf are allowed as necessary provided that total nitrogen does not exceed 4 lbs per 1,000 square feet per year.
 - iii. Applications of organic starter fertilizer for new development may contain phosphorus without a soil test. The fertilizer must be incorporated into top soil 2-3 inches deep. Two fertilizer applications are permitted for one calendar year from the date of first application only. For each application, total nitrogen and phosphorus may not exceed 1 lb. per 1,000 square feet
 - iv. Applications of organic fertilizer for re-establishment of turf may contain phosphorus without a soil test. Unless the application is through hydro-seeding or overseeding, the organic fertilizer must be incorporated into the soil 2-3 inches deep. Fertilizer applications may not exceed 1 lb. of nitrogen and phosphorus per 1,000 square feet per application. Total nitrogen and phosphorus may not exceed 2 lbs. per 1,000 square feet per calendar year from the date of last application.
 - v. Application of organic fertilizer to gardens, including vegetable, flower, and ornamental, may be applied without a soil test, although a soil test is highly recommended. Fertilizer must be incorporated into the soil with a rake or other tool so it is not left exposed on the topsoil.
~~iv.~~

3. Exempt Fertilizer Applications. Notwithstanding any other provision in this Chapter, the following applications of fertilizer are exempt from the provisions of this ordinance (and therefore allowed without restriction):

- i. ~~i.~~ Golf course applications. Fertilizers may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
- ~~i.~~ ii. Hadlock Field applications.
- ii. ~~ii.~~ Liquid deep root feeding of trees.
- iii. ~~iii.~~

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- iv. Fertilization of woody plants and shrubs so long as fertilizer is injected to the root or applied within the drip edge of the plant and incorporated into the soil with a rake or other tool.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 79-20/21, 9-21-2020; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-6. Landcare Management Advisory Committee.

(a) The Landcare Management Advisory Committee ("LMAC") is hereby established. The LMAC shall consist of seven (7) members as follows:

1. The City's Sustainability Director or a City employee appointed by the City Manager;;
2. One (1) practicing agronomist appointed by the City Council;
3. Two (2) Maine Board of Pesticides Control-licensed landscape professionals, at least one (1) of whom has experience in organic land care management and is accredited by the Northeast Organic Farming Association in Organic Land Care, each appointed by the City Council; and
4. Three resident or taxpayer representatives appointed by the City Council at least one of whom has experience in organic land care management.

(b) The terms of office of the six (6) LMAC members appointed by the City Council shall be three-year terms, except that the initial appointments after the establishment of the LMAC shall be such that the terms of office of no more than two (2) members shall expire in any single year. The term of office for the City employee LMAC member shall be for as long as the employee holds said employment position.

(c) The LMAC shall advise the City Council and the City's Sustainability Coordinator with respect to the following:

1. Advising the Sustainability and Transportation Committee and the City's Sustainability Coordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this ordinance;
2. Reviewing and acting upon waiver applications when applicable;

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3. Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance (in coordination with the Sustainability Coordinator);
 4. Seeking the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs, and organic pest protocol;
 5. Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the LMAC;
 6. Reviewing annual data and issuing a summary report annually by March 31 to the Sustainability and Transportation Committee, or whatever committee is assigned an oversight role by the City Council, which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this chapter; the number of waivers granted in the past year; and comprehensive data taken from the written documents provided by Applicators and/or Licensed Applicators about the use of pesticides and fertilizers within the City of Portland including, but not limited to:
 - i. The amount of pesticides and fertilizers used on privately or publicly owned land in the City of Portland;
 - ii. The reasoning for such use of pesticides and fertilizers; and
 - iii. The specific pesticides and fertilizers that were used.
 7. Any additional responsibilities as may be assigned and deemed necessary by the City Council.
- (d) PLMAC Officers, meetings and records.
1. The members shall annually elect a chair and a secretary from their membership;
 2. All meetings of the LMAC shall be noticed and open to the public in accordance with the City's notice policies and Maine's Freedom of Access Act;
 3. A quorum shall consist of four members;

4. The LMAC shall meet at least five (5) times annually;
5. Minutes shall be kept of all meetings and posted on the City web page; and
6. An annual report of the LMAC's activities shall be submitted to the Sustainability and Transportation Committee by March 31 of each year.

(e) LMAC may adopt procedural rules for the conduct of its business not inconsistent with this article. Such rules shall be filed with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

(f) Waiver Subcommittee:

1. A subcommittee of the LMAC shall be established annually and consist of the designated City staff member and one (1) other member of the LMAC designated by the Chair;
2. This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7; and
3. The LMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to waiver requests. All meeting dates shall be posted in advance on the City calendar.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-7. Waivers.

(a) In situations that are an emergency, threaten the public health, safety or welfare, or for the control of invasive species that pose a threat to the environment, persons shall apply to the LMAC Waiver Committee for a waiver from the provisions of this ordinance prior to the use/application of a prohibited fertilizer or pesticide or prior to the conduct of a prohibited application.

(b) In addition, Persons may apply to the Waiver Committee for a waiver in order to use a synthetic fertilizer on performance turf or for new development, prior to the actual use

of the synthetic fertilizer, if one or more the following conditions exists:

1. The soil temperature is less than 55 degrees Fahrenheit and reasonable grounds exist to justify fertilizer use at that location and at that time;
2. The turf is experiencing high stress due to high use and must be ready for high performance play when the sports season(s) begin; or
3. A suitable organic product that meets the nutrient needs of the soil as specified in a soil test is unavailable.

(c) The waiver application shall be filed with the LMAC Waiver Committee, on a form prescribed by the Committee and shall include the following information: the reason for requesting the use/application of a prohibited pesticide; the proposed location(s) of the proposed application(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; and a pest identification and threshold report. In order to approve a waiver application, the LMAC Waiver Committee must find that all of the following criteria are met:

1. A situation exists that: is an emergency; threatens the public health, safety and/or welfare; involves an invasive species ~~that poses a threat to the environment~~; or requires a non-permitted pest management activity and/or material to protect buildings or structures from damage;
2. The applicant has carefully evaluated all alternative methods and materials including, but not limited to, non-pesticide management tactics, minimum risk pesticides, non-synthetic pesticides, and is choosing to use the minimum amount of the least toxic, most effective pesticide necessary;
3. The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and

4. To the maximum extent possible the grant of the waiver will not be detrimental to the public's health, safety or welfare.

(d) The Waiver Committee shall conduct a hearing on all complete waiver applications received within ten (10) business days of receipt of the complete application and shall seek to issue a written decision on the application within three (3) business days of reviewing an application.

(e) In approving any waiver application, the Waiver Committee may also prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The waiver decision of the Waiver Committee shall be in writing, with copies provided to the applicant, the LMAC, ~~and~~ the Sustainability Coordinator, and the City Clerk.

An Aggrieved Party may appeal a written decision of the LMAC Waiver Committee to the City Manager or designee within five (5) business days of the issuance of the committee's decision. The appeal shall be in writing and shall state the basis for the appeal. The City Manager or designee (who shall not be a member of the LMAC) shall act upon the appeal within five (5) business days of receipt of the appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the aggrieved party, the LMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or designee shall be final. (Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-8. Reporting by State of Maine Licensed Applicators.

In addition to complying with the Maine Board of Pesticides Control rules regarding record keeping and reporting requirements as outlined in 01-026 C.M.R. Ch. 50, as amended from time to time, all State of Maine licensed applicators are required to submit to the LMAC an annual summary report on or before February 1st of each calendar year relating to the preceding calendar year. This report shall contain the following information for applications performed in the City in the prior calendar year: target site, pesticide brand name, EPA registration number, total undiluted formulation (in pounds or gallons), and total area treated as listed and as amended on the Commercial Applicator Annual Summary Report required by the Maine Board of Pesticides Control.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-9. Management plan and annual reporting for publicly owned parks and open spaces.

The City shall maintain a management plan for public open spaces that shall be posted on the City website. The City Manager or designee shall provide an annual report to the LMAC describing efforts to reduce the use of synthetic pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticide usage. (Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

34-10. Public Notification.

Any person shall comply with the following posting requirements.

- (a) For all prohibited pesticide uses or applications:
 - 1. A warning sign shall be posted on the privately or publicly owned land. These signs must be posted before application activities commence on the land and be left in place for at least forty-eight (48) hours after actual application or until expiration of the restricted entry interval indicated by the pesticide label, whichever is longer;
 - 2. All signs shall be at least five (5) inches high and four (4) inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for the duration of the placement;
 - 3. All signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible;
 - 4. The sign must include the following:
 - i. The word "CAUTION" in 72-point type;
 - ii. The words "PESTICIDE APPLICATION" in 30-point type or larger;
 - iii. The Maine Board of Pesticides Control designated symbol;
 - iv. Any reentry precautions from the pesticide labeling;

- v. The name and telephone number of the entity making the pesticide application;
- vi. The date and time of the application;
- vii. A date and/or time to remove the sign;
- viii. the chemical and trade name of the pesticide; and
- ix. the length of time to remain off the treated area as indicated by the pesticide label; and

- 5. For licensed applicators, the requirements above are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules, as may be amended from time to time, regarding public notification.

(b) All retailers selling pesticides or fertilizers subject to the provisions of this chapter shall post a sign at the point of sale that contains the following verbiage:

- 1. Application of synthetic pesticides and fertilizers within the City of Portland must comply with Chapter 34 of the City Code.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-11. Outreach and Education.

(a) The Sustainability Coordinator or designee shall publish notice of this ordinance in a newspaper of general circulation in the City upon adoption and shall attempt to provide information about it to identified retailers and lawn, garden, and tree-care providers serving the City of Portland, as well as to churches, schools, and other institutions in Portland.

(b) The LMAC shall prepare and publish materials designed to educate the community about the role of pesticides and fertilizers in the local environment and the benefits of organic fertilizers and pest management. This outreach may include: a community-based social marketing campaign targeting City households and businesses; promotion of professional education and training for State of Maine licensed applicators; distribution of information and news about City practices through Portland internet and web-based resources; public service announcements; news releases and news events; tax bill inserts; posters and brochures made available at City events and

applicable locations that serve the public; workshops, trainings, and demonstration projects; targeted outreach to schools; and/or any additional methods deemed appropriate by the LMAC.

(c) The LMAC shall also develop a program to work directly with retailers that sell pesticides and fertilizers in the City of Portland to:

1. Provide educational training for all retail store employees who recommend and sell pesticides or fertilizers for use in the home and garden, highlighting the following:
 - i. federal, state, and local pesticide and fertilizer regulations;
 - ii. principles of organic landcare, including pest management and use of fertilizers;
 - iii. pesticide and fertilizer toxicity and health and environmental concerns;
 - iv. proper pesticide display and storage; and
 - v. the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills; and
2. Implement a toolkit consisting of educational materials and signage (i.e., posters, signs, stickers) that can be customized, printed, and placed in stores to help consumers understand this ordinance and alternatives to prohibited pesticides and fertilizers.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-12. Violations.

Any person violating any of the provisions of this ordinance or failing, neglecting or refusing to obey any order or notice of the City Manager or designee issued hereunder shall be subject to enforcement action as provided in §34-13.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-13. Enforcement and Remedies.

(a) This ordinance may be enforced by the City Manager or designee;

(b) The City Manager or designee shall have the authority to enact rules and regulations in order to implement the provisions of this ordinance;

((c) The Permitting Department is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article; and

(d) Any violation of this chapter shall constitute a civil violation subject to the penalties contained in Portland City Code, Chapter 1, § 1-15.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-14. Severability.

If any section, paragraph, sentence, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this ordinance.

(Ord. No. 110-17/18, 1-3-2018;)

Sec. 34-15. Conflicts with Other Ordinances.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive chapter, article or ordinance of the Portland City Code shall control.

(Ord. No. 110-17/18, 1-3-2018)

Sec. 34-16. Effective date; Applicability dates.

In order to allow time for residents and businesses to become familiar with the requirements of this ordinance, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be effective as follows:

(a) Phase One: Commencing no later than July 1, 2018, the provisions set forth in Sec. 34-5 on outdoor pest management activities shall apply to City-owned property (but not to high use athletic fields or golf courses);

(b) Phase Two: Commencing no later than January 1, 2019, the provisions set forth in Sec. 34-5 on outdoor pest management

activities shall apply to private property (but not high use athletic fields or golf courses); and

(c) Phase Three: Commencing no later than January 1, 2023, the provisions set forth in Sec. 34-5 on outdoor pest management activities with respect to high use athletic fields shall apply to public or private property, except that the City Manager or his or her designee may request that the City Council extend this applicability date if he or she determines more time is necessary to transition to organic management practices for these properties and facilities.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 79-20/21, 9-21-2020)