

Historic Preservation Board

Wednesday, May 29, 2024 at 5:00 PM
Room 24, Basement Level of City Hall



MEMBERS

Robert O'Brien (Chair)
Brad Miller (Vice Chair)
Hilary Bassett
Ashley Keenan
Valerie Paquin-Gould
Brian Sosebee
Rob Whitten

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REMOTE PARTICIPATION

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

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+1 305 224 1968 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

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PUBLIC COMMENT INFORMATION:

To submit written public comment on an agenda item, email hp@portlandmaine.gov. Submissions must be received by 12:00 pm **the day before** the Historic Preservation Board meeting to guarantee their inclusion in

the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

AGENDA:

1. ROLL CALL AND DECLARATION OF QUORUM

2. REPORT OF ATTENDANCE AT THE MEETING HELD ON MAY 15, 2024

- i. All members were present.

3. REPORTS OF DECISIONS AT THE MEETING HELD ON MAY 15, 2024

- i. Certificate of Appropriateness for New Construction; 64 PINE STREET; 64 Pine Street LLC, Applicant. Plan Number: HPBR-002757-2023. The Board voted unanimously (all in favor) to approve the application.
- ii. Certificate of Appropriateness for Rehabilitation & Addition; 7 LAFAYETTE STREET; Tanya Mahood, Applicant. Plan Number: HPBR-002874-2024. The Board voted unanimously (all in favor) to approve the application with conditions.

4. COMMUNICATION AND REPORTS

5. PUBLIC HEARING

- i. Certificate of Appropriateness for New Construction; 42 ATLANTIC STREET; LB Atlantic LLC, Applicant. Plan Number: HPBR-002814-2024.

6. WORKSHOP

- i. Preliminary review of ReCode Portland. City of Portland, Applicant. The Historic Preservation Board will hold a hybrid workshop to review the second wave of changes to the land use code under ReCode Phase II, reviewing proposed changes to Article 2. Administration, Article 3. Definitions, and Article 16. Historic Preservation (Currently Article 17). More information on the draft changes can be found at www.recodeportland.me.

7. CONSENT AGENDA

**STAFF MEMORANDUM
HISTORIC PRESERVATION PROGRAM
PLANNING AND URBAN DEVELOPMENT**



TO: Chair O'Brien and Members of the Historic Preservation Board
FROM: Evan R. Schueckler, Historic Preservation Program Manager
DATE: May 28, 2024
RE: 42 Atlantic Street – PUBLIC HEARING – New Construction
PROJECT ID: HPBR-002814-2024
MEETING: May 29, 2024

Owner: Daniel Black, LB Atlantic LLC
Architect: Kyle Barker, Primary Projects

A sign announcing the Historic Preservation Board's meeting on May 29, 2024 was posted at the property on May 20, 2024. A legal ad was published in the Portland Press Herald on May 18, 2024 and May 21, 2024, and 292 notices were sent to neighboring property owners within 100 feet of the subject property.

PROJECT SCOPE

Demolish existing noncontributing structure.

Construct new four story, 29-unit residential building.

Dimensions:

Overall Height: ~40'
Footprint: ~86' x 72'

Material Specifications:

Foundation	Concrete
Siding	Painted and clear-coated horizontal clapboards
Trim	Painted wood and metal
Roofing	Flat Membrane (not visible)
Windows	uPVC
Doors	Unspecified

SUMMARY OF HISTORIC CONTEXT

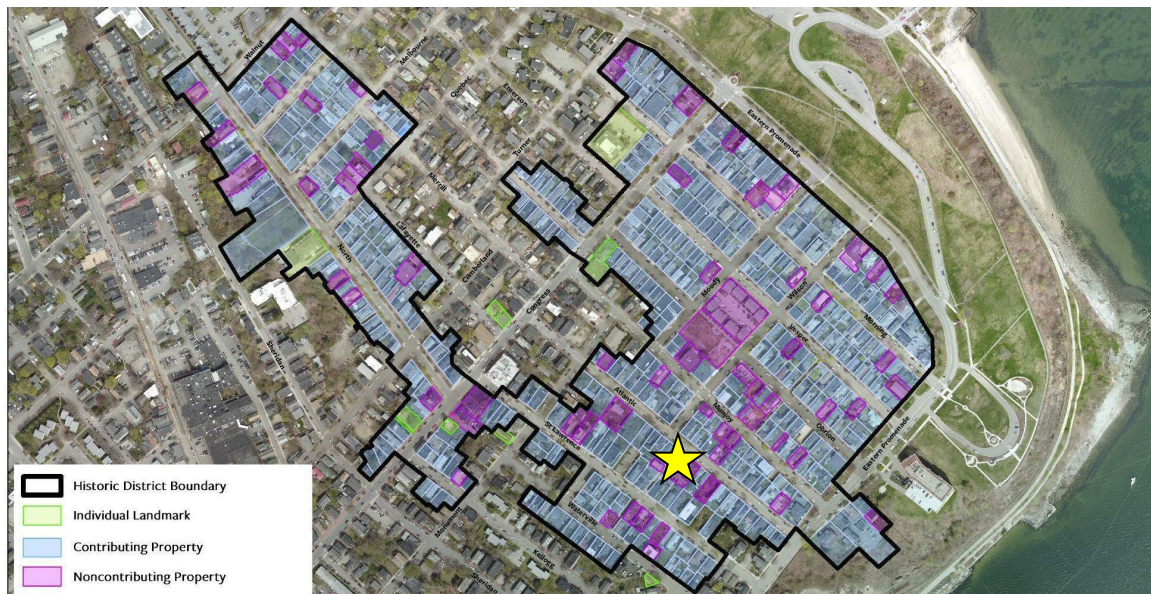


Figure 1: Map of the Munjoy Hill Historic District showing location of 42 Atlantic Street with yellow star.

Munjoy Hill is a dense historic neighborhood with a blend of vernacular, working-class architecture, a number of grand, high-style houses (primarily facing onto the Eastern Promenade), and a small number of commercial and institutional buildings scattered throughout.

Early in Portland's development, Munjoy Hill was sparsely populated. Other than the area occupied by the Portland Observatory and its attendant structures (constructed in 1807), the majority of the Hill was privately maintained for the pasturing of cows. Development on the hill remained slow-going early in the nineteenth century. Regardless, in 1836 the City of Portland purchased the lands along the edge of the peninsula that would eventually become the Eastern promenade in response to the increasing development. The earliest houses, of which only a few survive, were generally very modest one- to two-story wood-frame capes. Development picked-up pace in the mid-nineteenth century with the founding of the Atlantic and St. Lawrence Railroad in 1845 and the Portland Company in 1847. Jobs at the Portland Company in particular created the need for nearby working-class housing. The undeveloped tracts on Munjoy Hill provided ample space for that growth. Homes from the mid nineteenth century were often built in the vernacular Greek Revival style, featuring symmetrical façades and austere classically-inspired details.



Figure 2: Examples of early house types built on Munjoy Hill. An early- to mid-nineteenth century cape type house (left; 7 Lafayette Street), and a more ornate asymmetrical gable-fronted Greek Revival (right; 8 Sherbrook Street).

In the aftermath of the Great Fire of 1866, Portland found itself in dire need of additional housing and significant development occurred on Munjoy Hill. This was fueled by subdivision of the remaining large tracts of land and the arrival of streetcars, which made the easternmost ends of the peninsula easily accessible to downtown Portland. In this late-nineteenth century era, the scale of buildings increased, with many two- to three-family Italianate and Second Empire structures being built. This dense mode of development was further fueled by an influx of immigrants in the early-twentieth century. The demand for housing led to the advent of the now ubiquitous triple-deckers which dominate the easternmost ends of Munjoy Hill. These large frame structures can be found dressed in various architectural styles that were popular from the 1880s into the 1910s. This same era also saw increased interest in the expansive views and beauty of the Eastern Promenade by Portland's wealthiest residents. A number of grand single-family homes were built along the Promenade in the Italianate, Second Empire, Shingle, and Queen Anne styles. This development in the early-twentieth century solidified the Eastern Promenade streetscape as we know it today.



Figure 3: A typical street showing examples of triple-deckers and Italianate duplexes (left; 82, 84, 86, & 88 Beckett), and a grand Queen Anne house on the Eastern Promenade (right; 140 Eastern Promenade).

Munjoy Hill has a long history of development and features highly varied architectural expressions across buildings. Many buildings also feature historical alterations, as past owners tried to update Capes or Greek Revival houses with Italianate or Queen Anne details, creating varied and dynamic layers of history. Structures typically range from one-and-a-half to three stories with a number of later three-and-a-half to four story late apartment or institutional buildings scattered throughout the district. Regardless of this diversity, there are a handful of unifying features within the district. Construction is primarily of wood frame over brick or stone foundations, with only a handful of primarily brick structures. Structures are typically independent, but constructed densely, with tight driveways and side yards. Front yards are typically extremely shallow, with proximity to the sidewalk being prioritized even on large lots. Projecting bay windows or entry porches are often used to create additional variety along the sidewalk. Windows are predominantly vertically oriented with varied placement on front and side elevations, though windows typically align on larger multi-family buildings.

The immediate vicinity of the proposed development is highly eclectic, reflecting the overall diversity of the district's architecture. There are several one-and-a-half story structures along Atlantic, with 48 Atlantic being the most architecturally spectacular of them. Two-and-a-half-story Greek revival and Italianates predominate, with a couple of second empire houses mixed in. 28 Atlantic Street is the only proper triple decker along this stretch, though 55 Atlantic is also a full three-stories and stands out for its fully brick construction.



Figure 4: 2023 google street views showing 48 Atlantic Street (left image, left), a spectacular low-scale Italianate house next to 52 Atlantic (left image, right), a typical two-and-a-half-story Italianate house. 29 and 23 Atlantic (right image, left to right) are examples to austere two-and-a-half-story Greek revivals.



Figure 5: 2023 google street views showing 28 Atlantic Street (left), an example of high-style triple decker, and 55 Atlantic, an early fully brick three-story apartment built.

Additional information on the Munjoy Hill Historic District can be found on the city website:
<https://www.portlandmaine.gov/665/Historic-Districts>

PREVIOUS REVIEW BY HISTORIC PRESERVATION BOARD

April 17, 2024, Workshop:

During the April 17 workshop, the applicant presented revised plans for the proposed apartment building at 42 Atlantic Street. The revised design sought to address Board comments by simplifying the massing of the proposed structure and proposing new siding patterns and configurations in an effort to articulate the mass of the building. The applicant also added a cornice, relocated the basement egress door, and reconfigured the front stairs and ramp.

The applicant presented a revised massing that was largely a simplified, rectangular massing. In effort to articulate the façade and address Board comments that the structure would still need to be broken up visually to relate to the scale of adjacent structures, the applicant proposed alternating areas of painted clapboard siding and unpainted vertical or horizontal siding. The different areas of siding were proposed to be separated by projecting vertical trim boards.

The Board generally received this revised approach favorably. Board members noted that they found that the use of all horizontal siding was more appropriate to the context and helped to lower the sense of the building's height. Additionally, while members noted that the efforts to articulate the building were headed in a good direction, they found that there may have been too many changes in siding. They stated that this created a sense of uninterrupted vertical stripes that made the building feel taller. Members suggested reducing the number of changes in materials in an effort to simplify the building and create more appropriately-scaled masses on the façade. One

board member did suggest exploring the inclusion of some horizontal datums, but the Board did not provide a consensus on the need for that.

Several Board members did ask questions about how the unpainted siding might evolve as the building ages. Members recommended that the applicant provide renderings showing how the building might appear once the boards have developed a patina.

In addition to the change to the siding and massing, the applicant also proposed a different program of trim, including vertical boards to separate siding materials, and a cornice. Board members noted that the addition of a cornice helped to relate the building to adjacent structures and cap the building, but they did find that it should be more prominent given the size of the proposed structure.

Along Atlantic Street, the applicant relocated the basement egress door to be closer to the primary entrance, allowing a more regular pattern of windows at the building's southern corner. Board members noted this was an improvement but also recommended exploring filling the space above the repositioned egress door with a transom, some articulation, or possible building address numbers.

The applicant also reconfigured the front entrance to include stairs that face towards Atlantic Street rather than running parallel with the sidewalk. Board members noted that this change was more consistent with the context, but recommended that the applicant explore whether the stairs could be widened to improve the quality of the entrance. The applicant responded with an explanation of the tight parameters for the entrance landing relating to zoning limitations and accessibility requirements, but noted they would consider if improvements could be made. Board members also recommended further exploring the texture and character of the concrete used at the entrance stairs and ramp to see if there are opportunities for something that might relate to foundation or site materials found throughout the district.



Figure 6: Rendering of the proposed structure presented during the April 17 workshop.



Figure 7: Rendering of the proposed structure to be presented during the May 29 public hearing.

STAFF COMMENTS

Since the last workshop, the applicant has made several changes to the proposed structure in an effort to address the Board's comments. The most prominent changes have been in the simplification of façade articulation and in making the building cornice more prominent.

The number of changes in material have been reduced creating larger areas of the two different siding finishes. The reconfiguration of the siding divisions has also eliminated any tall sections of siding without windows, creating an assemblage of more compatible proportioned and scaled areas of siding. The applicant is also now proposing to use all horizontal siding.

The applicant has also increased the height of the cornice line from 1-1/2" to 3-1/2" inches making it more prominent and differentiating it from the vertical trim boards. The cornice board is proposed to have the same depth as the vertical trim boards, so that they connect across the façade.

In addition to the changes in the design, the applicant has provided additional details for the proposed structure including typical construction details, and information on how the metal cladding will wrap the entrance canopy. The renderings have also been updated to show how the building will appear as the clear-coated pine weathers over time.

The applicant is seeking final approval of the proposed new construction, having attempted to address all Board comments from the April 17 workshop.

ANALYSIS OF APPLICABLE REVIEW STANDARDS

Standards for Review of New Construction, 17.8.3:

Standard A. Scale and Form	
1. Height The proposed height shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.	
Standard Met?	Staff Comments
Yes	The proposed structure will be four stories. Atlantic Street is typically lined with one-and-a-half- to three-story structures. Board members generally found the proposed height to be compatible with the varied surrounding context.
2. Width The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.	
Standard Met?	Staff Comments
Yes	The proposed structure will be wider than typical structures along Atlantic Street, though not out of scale with some of the larger buildings in the district. The applicant is also proposing to break down the width of the building through changes in material and applied details.
3. Proportion of principal facades The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways, and open spaces to which it is visually related.	
Standard Met?	Staff Comments
Yes	The overall façade is proposed to have a fairly horizontal proportion; however, changes in material and the use of applied details will help to break down the horizontality of the elevations. The context is predominantly vertically oriented buildings, with some more horizontal buildings interspersed.
4. Roof shapes The roof shape of a structure shall be visually compatible with the structures to which it is visually related.	
Standard Met?	Staff Comments
Yes	The proposed structure will have a flat roof. Flat roofs are typical of the Munjoy Hill Historic District.

<u>5. Scale of a structure</u> The size and mass of structures in relation to open spaces, windows, door openings, porches, and balconies shall be visually compatible with the structures, public ways, and places to which they are visually related.	
Standard Met?	Staff Comments
Yes	Structures in the district typically range from one-and-a-half to three stories with a number of later three-and-a-half to four story apartment or institutional buildings scattered throughout the district. Board members found the proposed scale to be compatible with the surrounding context based on the articulation of the façade through changes in material which help to break down the mass of the proposed building.
<u>6. Applicability to Congress Street Historic District</u> In the Congress Street Historic District, for new construction within the B3 zone, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the B-3 zone.	
Standard Met?	Staff Comments
Not Applicable	
<u>7. Applicability to India Street Historic District</u> For new construction within the India Street Historic District, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.	
Standard Met?	Staff Comments
Not Applicable	
<u>8. Applicability to the Portland Company Historic District</u> For new construction within the Portland Company Historic District, the height requirements of the B-6 zone as shown on the B6 Building Height Overlay & Building Envelopes map shall be controlling and the historic preservation board shall not impose conditions more restrictive than the building height requirements of the B-6 zone.	
Standard Met?	Staff Comments
Not Applicable	

Standard B. Composition of Principle Facades	
1. Proportion of openings The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways, and places to which the building is visually related.	
Standard Met?	Staff Comments
Yes	The proposed structure will primarily feature vertically oriented openings with some more square or horizontal openings used sparingly as is typical of the historic context.
2. Rhythm of solids to voids in facades The relationship of solids to voids in the façade of a structure shall be visually compatible with structures, public ways, and places to which it is visually related.	
Standard Met?	Staff Comments
Yes	The structure favors solid to void, as is typical of the district. Windows are fairly regularly arranged as is also typical of the context.
3. Rhythm of entrance porch and other projections The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways, and places to which they are visually related.	
Standard Met?	Staff Comments
Yes	The proposed structure would feature a central recessed entry accentuated by a projecting canopy and raised landing at the top of the street-facing stairs and accessible ramp.
4. Relationship of materials The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in the structures to which they are visually related.	
Standard Met?	Staff Comments
Yes	The structure is proposed to be clad in horizontal clapboard siding, which is ubiquitous in the Historic District.
5. Signs Any new sign, and any change in the appearance of an existing sign located on a landmark, within a historic district, or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the Historic Resources Design Manual.	
Standard Met?	Staff Comments
Not Applicable	

Standard C. Relationship to Street	
1. Walls of continuity Facades and site structures, such as masonry walls, fences, and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways, and places to which such elements are visually related.	
Standard Met?	Staff Comments
Yes	The proposed structure would be situated close to the street, as is typical of structures throughout the district.
2. Rhythm of spacing and structures on streets The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways, and places to which it is visually related	
Standard Met?	Staff Comments
Yes	The proposed structure is set close to the street, and retains modest side yards, as is typical of the district. The structure is wider than typical. However, this section of Atlantic Street is not particularly regular in its rhythm, and the proposed changes in façade material help to break down the façade to help it fit into the rhythm of the context.
3. Directional expression of principal elevation A structure shall be visually compatible with the structures, public ways, and places to which it is visually related in its directional character, whether this be vertical character, horizontal character, or nondirectional character.	
Standard Met?	Staff Comments
Yes	The proposed structure has a horizontal massing that is broken up by changes in material that create more vertical masses, accentuated by applied vertical trim. Structures in the district are predominantly vertically oriented, though some have a horizontal massing. Many feature vertical accents such as trim details, bay windows, or porches.
4. Streetscape, pedestrian improvements Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to or on a landmark, within a historic district, or within a historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the Historic Resources Design Manual.	
Standard Met?	Staff Comments
Not Applicable	

Standard D. Other Standards	
1. Compatible use Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character defining features of the structure, object, or site and its environment or to use a property for its originally intended purpose.	
Standard Met?	Staff Comments
Yes	The proposed structure will have a residential use which is in keeping with the typical uses in the Munjoy Hill Historic District.
2. Distinguishing original character The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The alteration of any historic material or distinctive architectural features should be avoided when possible.	
Standard Met?	Staff Comments
Not Applicable	
3. Archeological resources Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.	
Standard Met?	Staff Comments
Not Applicable	
4. Contemporary design Contemporary design for additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, material, and character of the property, neighborhood and environment.	
Standard Met?	Staff Comments
Yes	The proposed structure has a clearly contemporary character through its simplified massing and minimal exterior details. The use of horizontal clapboard siding, vertically oriented windows, and a cornice make the building compatible with adjacent historic structures.
5. Additions Wherever possible, new additions to structures and objects shall be undertaken in such a manner that, if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.	
Standard Met?	Staff Comments
Not Applicable	

MOTION FOR CONSIDERATION

I move to APPROVE application HPBR-002814-2024 for new construction at 42 Atlantic Street on the basis of submitted documentation, plans, and specifications; information provided in the staff memo; and findings by the Historic Preservation Board that the project meets Standards for Review of New Construction 17.8.3 A.1-8, B.1-5, C.1-4, & D.1-5

ATTACHMENTS

1. Project Description
2. Application checklist and deed
3. Plans



Dan Black
PO Box 10452
Portland, ME 04104
(207) 831-2824
danblack@lbdevpartners.com

March 25, 2024 (*Revised April 1, 2024 & May 6, 2024*)

Re: Historic Preservation Application, Project Description V3 (*new changes in Italics*)

Dear City of Portland Planning & Urban Development Department,

The 42 Atlantic Street, Portland, ME 04101 parcel is a 0.23 acre (10,018 square feet) site on Munjoy Hill. It currently has a two-story structure on it that used to house the local American Legion chapter. It is a non-contributing property within the Munjoy Hill historic district.

The proposed structure will be four stories and 23,857 square feet (with an additional 2,981 square feet of basement space). After receiving feedback at the first Public Workshop on March 6th, we've revised the design to simplify the massing. The building is now a rectangle in plan.

Accessed via ramp or stair, the primary entrance is recessed 3 feet into the central bay of the Atlantic Street facade. To address feedback from the Board & the public we have:

- Added a projecting canopy at the entrance
- Rotated the entry stair to be perpendicular to the façade
- Relocated the basement egress stair to minimize the presence of its door and allow for two windows at the ground floor unit on the South
- Added a projecting cornice
- Added projecting vertical trim to zone the façade into two distinct materials: one that references the tone of the brick at 55 Atlantic and one that references the wood clapboard at 48 Atlantic
- Simplified the design of the wall enclosing the entry stairs & ramp

After our second Public Workshop on April 17th, we've revised the design to address feedback from the Board & the public. We have:

- *Increased the visual weight of the cornice*
- *Reduced the number of changes in the cladding (there are fewer "bands" now)*
- *Changed all cladding to clapboard*
- *Detailed the metal seaming pattern at the canopy*
- *Developed the planting plan*
- *Visualized the project with weathered siding (we are proposing a weathering finish to reduce the change over time)*

Gilbert Lane will have two additional doors: one for emergency egress, and one for bike storage access. We have added an exterior light & a vision panel to the door at the bike storage, per feedback.

The building will have a total of 30 units, consisting of 14 studio apartments, 8 two-bedroom units, and 8 three-bedroom units. All will be deed restricted as affordable. The building will also have a communal laundry, tenant storage, and a common room that meets the specification of MaineHousing's construction standards. The building will have an elevator and two stairs. Roof access will be limited to maintenance.

Recent changes to the city's land use code, in response to LD2003, allow for 2.5 times the base zoning density for affordable housing projects. This area is in the R-6 zone which allows multi-family use by right with a density of one unit for every 750 square feet of lot size—at 10,018 square feet, 42 Atlantic is permitted to have 13 units on site. The density boost allows density of up to 32 units on the site.

The attached packet provides the requested material. Please let us know if you have any additional questions.

Sincerely,

Daniel Black

CITY OF PORTLAND
Planning & Urban Development Department

HISTORIC PRESERVATION APPLICATION SUBMISSION CHECKLIST Please submit each document as a separate PDF file Please confirm by electronically checking the boxes to the left		
To supplement your application, please submit the following items <i>as applicable to your project</i>. Keep in mind that the written project description that you provide the Historic Preservation Board and staff, is the only description they will have of your project or design. Therefore, it should precisely illustrate the proposed alteration(s), additions, and/or infill construction.		
GENERAL APPLICATION DOCUMENTS		
Yes ☒	N/A ☐	Project Description Cover Letter with detailed project description
Yes ☒	N/A ☐	Completed Checklist for Historic Preservation review (this document)
Yes ☒	N/A ☐	Evidence of Right, Title and Interest Deeds, leases or purchase and sales agreements
PLANS, etc.		
Yes ☒	N/A ☐	Exterior photographs of property (required for all applications). Include a general streetscape view, view of entire building, and close-ups of project area.
Yes ☒	N/A ☐	Sketches or elevation drawings at a minimum ¼" scale.
Yes ☒	N/A ☐	Details or wall sections, where applicable.
Yes ☒	N/A ☐	Floor plans, where applicable.
Yes ☒	N/A ☐	Site Plan, where applicable, showing relative location of adjacent structures.
Yes ☒	N/A ☐	Catalog cuts or product information (e.g. proposed windows, doors, fencing).
Yes ☒	N/A ☐	Materials – list all visible exterior materials.

DLN: 1002440261143

MAINE REAL ESTATE TAX-Paid

WARRANTY DEED**KNOW ALL PERSONS BY THESE PRESENTS**

THAT I, JASON T. HALL, in his capacity as Department Adjutant, The Department of Maine, American Legion, a duly organized non-profit corporation existing under the laws of the State of Maine, with a mailing address of 5 Verti Drive, Winslow, ME 04901,

for consideration paid,

grants to LB Atlantic LLC, a limited liability company duly organized and existing under the laws of the State of Maine and having a mailing address of PO Box 10452, Portland, ME 04112,

with **WARRANTY COVENANTS**, a certain lot or parcel of land with the buildings and improvements thereon situated in the City of Portland, County of Cumberland and State of Maine, being more particularly bounded and described as follows, to wit:

A certain parcel of land situated on the southwesterly side of Atlantic Street in the City of Portland and more particularly bounded and described as follows:

Commencing at the intersection of said Atlantic Street with the southeasterly side of Gilbert's Lane; thence running southeasterly by said Atlantic Street, ninety - two (92) feet; thence southwesterly and parallel with said Gilbert's Lane, one hundred ten (110) feet, more or less to land now or formerly of Thomas Warren; thence northwesterly by said Warren's land and land now or formerly of Edward Waite, to Gilbert's Lane; thence northeasterly by said Lane to the point of beginning.

Meaning and intending to convey hereby, the two parcels of land described in two separate deeds to Edward H. Sargent, both dated August 17, 1871, and one recorded in the Cumberland County Registry of Deeds, Book 388, Page 97, and the second recorded in said Registry in said Book 388, Page 100, and being the same premises devised to Jennie A. Sargent under the will of her father, Edward H. Sargent, which will is recorded in said Registry of Deeds, Book 1124, Page 215, also being the same premises deeded to this grantor by Jennz A. Sargent under date of June 16, 1936, and recorded in Cumberland County Registry of Deeds, Book 1500, Page 194.

Meaning and intending to convey and hereby conveying precisely the same premises conveyed by Deed of Harold V. Bickmore to Paul Malia Post Building Committee, Inc. dated August 18, 1947 and recorded in the Cumberland County Registry of Deeds in Book 1879, Page 472.

Grantor, The Department of Maine, American Legion, is the parent organization of now dissolved Paul Malia Post #161 which in turn is the parent organization of Paul Malia Post Building Committee, Inc.

Further reference is made to an affidavit to amplify title of near or even date to be recorded in the Cumberland County Registry of Deeds which provides evidence of Grantor's status as a successor in interest to the parcels being herein conveyed.

WITNESS my/our hand(s) and seal(s) this 5th day of January, 2024



**Jason T. Hall, Department Adjutant,
Department of Maine, American Legion**

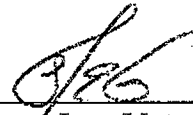
**STATE OF MAINE
COUNTY OF CUMBERLAND, ss.**

January 5, 2024

Then personally appeared the above-named **Jason T. Hall** and acknowledged the foregoing instrument to be his free act and deed individually and in his said capacity.

Before me:

**KEVIN J. GERSPACH
MAINE BAR #6477**



Attorney-at-Law/Notary Public

Print Name: _____

My Commission Expires: _____

42 Atlantic Street Housing Historic Preservation Public Hearing Submitted: May 6, 2024

Owner
LB Atlantic, LLC

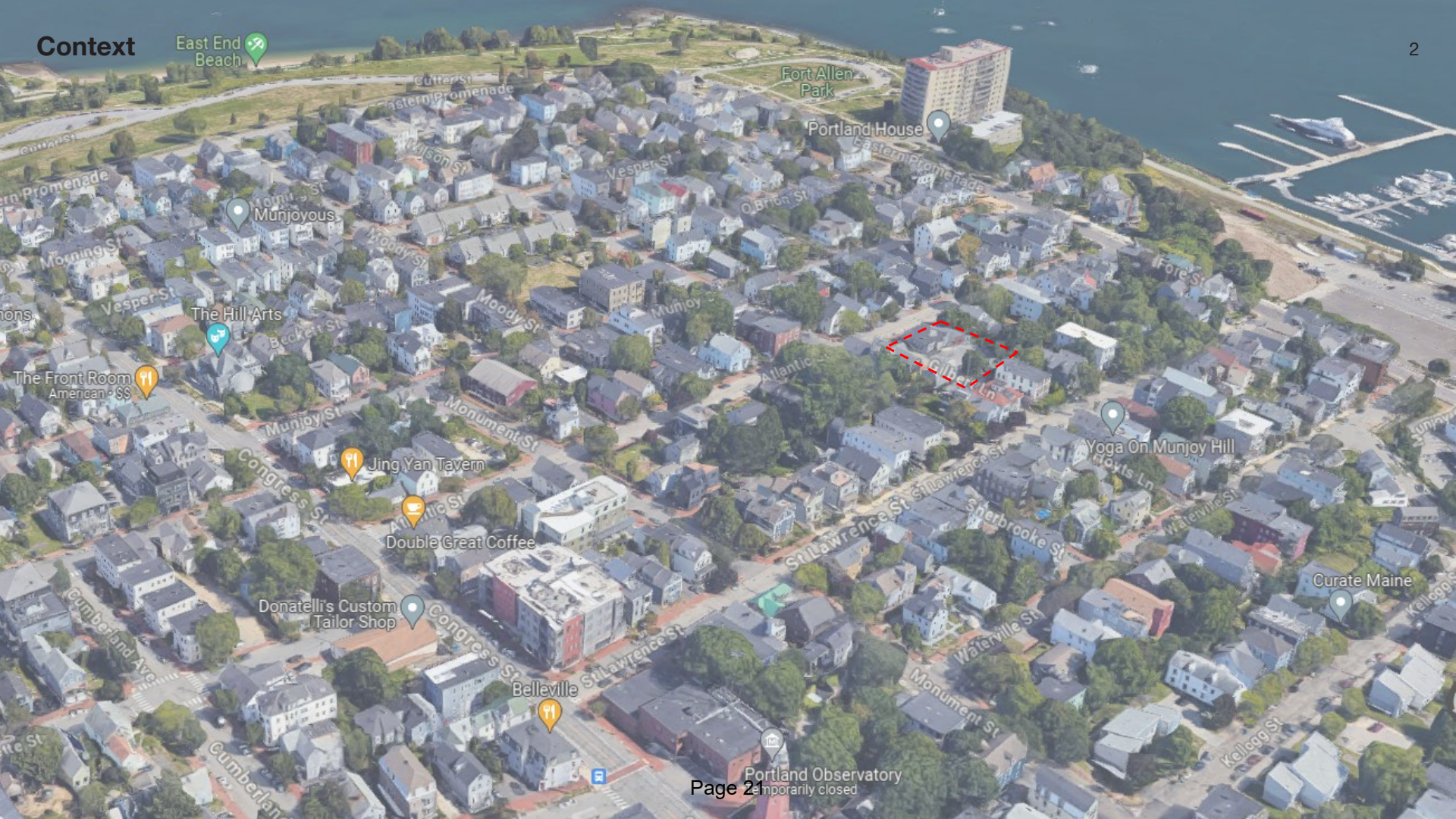
Architect
Primary Projects, PLLC

Civil Engineer
Acorn Engineering, Inc

Structural Engineer
Base Design Group, Inc

MEP-FP Engineer
BLW Engineers, Inc

Lighting Designer
Pieszak Lighting Design, LLC



Fort Allen Park

Portland House

Munjoyous

The Hill Arts

The Front Room
American · \$\$

Jing Yan Tavern

Double Great Coffee

Donatelli's Custom
Tailor Shop

Belleville

Portland Observatory
temporarily closed

Yoga On Munjoy Hill

Curate Maine

We heard the following feedback at the first Public Workshop on March 6th. Consider:

- Simplifying the building form at Atlantic St / Gilbert Lane
- Adding a cornice
- Adding horizontal or vertical banding
- Using two or more cladding materials
- Adding detail at the windows
- Adding detail at the entry
- Adding a projecting canopy at the entry
- Adding one or two windows at the southern unit on the first floor, facing Atlantic Street
- Reorienting the direction of the stairs at Atlantic Street
- Adding glazing at or near the door of the bike room
- Fleshing out the landscape approach

We heard the following feedback at the second Public Workshop on April 17th. Consider:

- Increasing the visual weight of the cornice
- Reducing the number of changes in the cladding
- Changing all cladding to clapboard
- Adding more detail to the concrete wall at the entry
- Detailing the metal seaming pattern at the canopy
- Developing the planting plan
- Visualizing the project with weathered siding
- Showing abutting neighbors on analysis slide



Looking up Atlantic



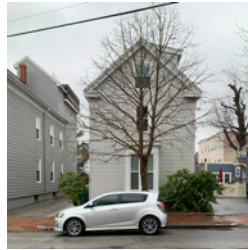
Looking down Atlantic



From Gilbert



From Rear Parking
Page 23



- Common Attributes:
- 1. Street-Facing Porches
 - 2. Vertically Oriented, Stacked Windows
 - 3. Painted Wood Siding
 - 4. Vertical Proportion (Building)

6

7

15 FT	NA	< 15 FT
45 FT	—	40.48 FT
60%	32%	59%
80%	82%	71%
20%	18%	29%

PERMITTED ON THE LOT. DUE TO AFFORDABILITY RESTRICTION

TO CITY OF PORTLAND STANDARDS.
D. PROPERLY DISPOSED OF OFFSITE
CORDANCE WITH DETAIL. BROKEN CURB SHALL BE
THE CONTRACTOR'S EXPENSE.
SHALL NOT EXCEED 1 INCH PER FOOT.
CONTRACTOR TO COORDINATE AND INSTALL.
S SHALL BE RESPONSIBLE FOR THE MAINTENANCE
REMOVAL AND SNOW REMOVAL.

PREPARED BY OWEN HASKELL, INC. DATED

TM 16-F-26
N/F
JAMES E. MANN
JACQUELINE MANN
35202/196
36389/324

1ST FLOOR BUILDING
FOOTPRINT

OUTLINE OF BASEMENT
FOOTPRINT

EX. FENCE TO REMAIN OR BE
REPLACED AS NECESSARY.
COORDINATE WITH BOTH
LANDOWNERS

SETBACK LINE, TYP.

PR. BUILDING ENTRANCE

BASEMENT STAIR
ENTRANCE/EGRESS

PR. PRECAST PAVER
PATHWAY TO BUILDING

EX. DRIVEWAY

EX. UTILITY POLE

PARKING SPOT TICK MARKS SHOWN FOR
VISUAL PURPOSES ONLY, TYP. OF 4

EX. CURB TO BE TEMPORARILY REMOVED

PR. DRIP EDGE, SEE
SHEET C-30 FOR
MORE INFORMATION

0.75'

0.88'

15.10'

16.69'

17.81'

9.40'

8.60'

PR. 7"x7" PAD MOUNT
TRANSFORMER

PR. BOLLARDS PER DETAIL

PR. REINFORCED
CONCRETE SIDEWALK,
PER DETAIL

PR. BIKE ROOM EGRESS DOOR.
FOR INTERNAL BIKE STORAGE
AREA. 24 PROPOSED INTERIOR
BIKE STORAGE SPACES, PER
ARCHITECTURAL PLANS

PR. BUILDING EGRESS
PR: 126.00'

PROPOSED BUILDING:
42 ATLANTIC STREET
30 UNITS
1ST FLOOR FFE: 126.00'
BASEMENT FFE: 116.50'

BIKE ROOM

STAIRS

ELEVATOR

STAIRS

SPRINKLER ROOM

LOBBY

VESTIBULE

GILBERT LANE

PR. LANDSCAPED AREA
PER LANDSCAPE PLAN

SEE C-20 FOR PR.
RECONFIGURATION OF EX. UT POLES

EX. UTILITY POLE

EX. UTILITY POLE

PR. RECONSTRUCTED BRICK
SIDEWALK, PER DETAIL

PR. STREET TREES, TYP. OF 3

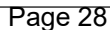
EX. CATCH BASIN

12" PROTRUSION OF
HANDRAIL RETURN INTO ROW
PR. LOCATION OF ADA SIGN TO BE
RESET AND/OR REPLACED AS
NEEDED IN COORDINATION WITH THE

Page 27
RISK 27.6 THE
BUILDING ENTRANCE

BIKE RACK PER
DETAIL, TYP. OF 2

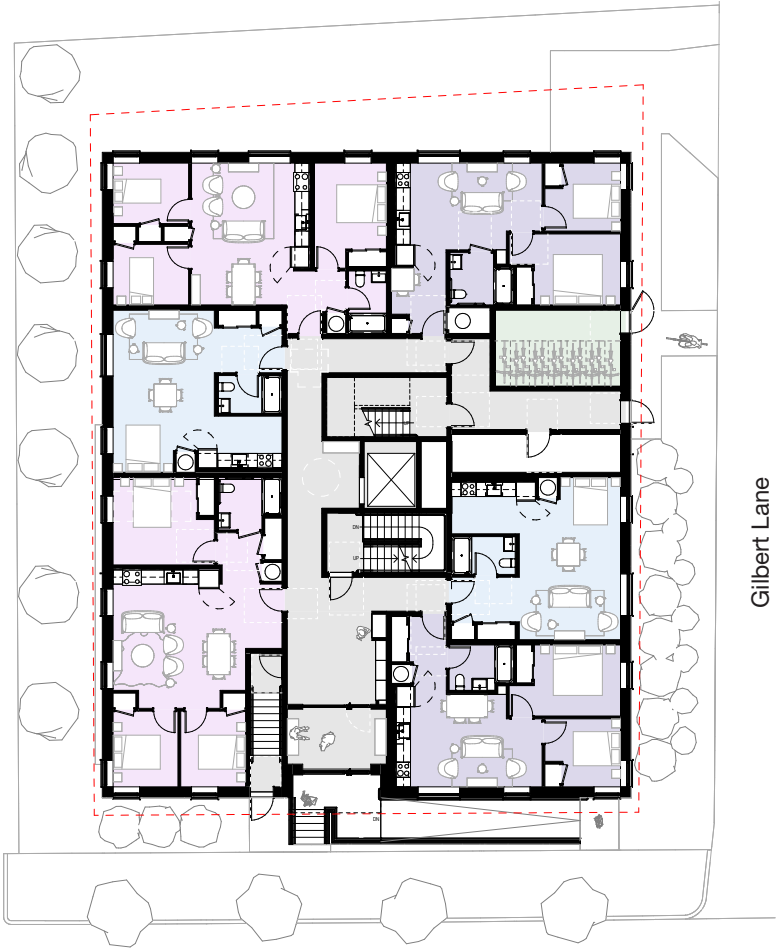
EX. ST



Previous Proposal Floor 1



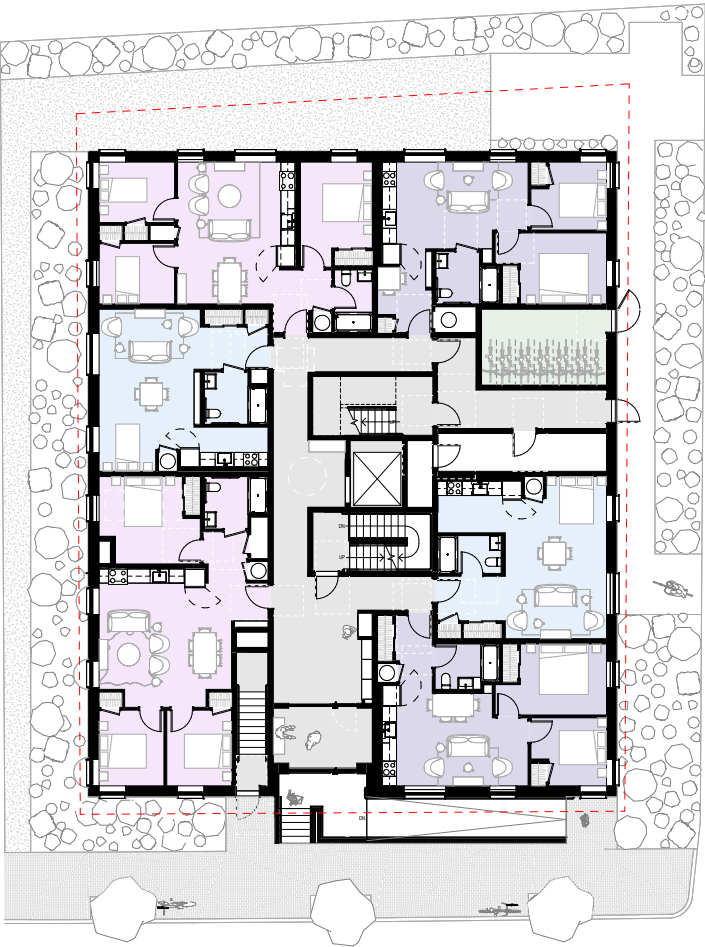
- Studio
- 2-Bed Unit
- 3-Bed Unit
- Circulation
- Resident Amenity



Current Proposal Floor 1



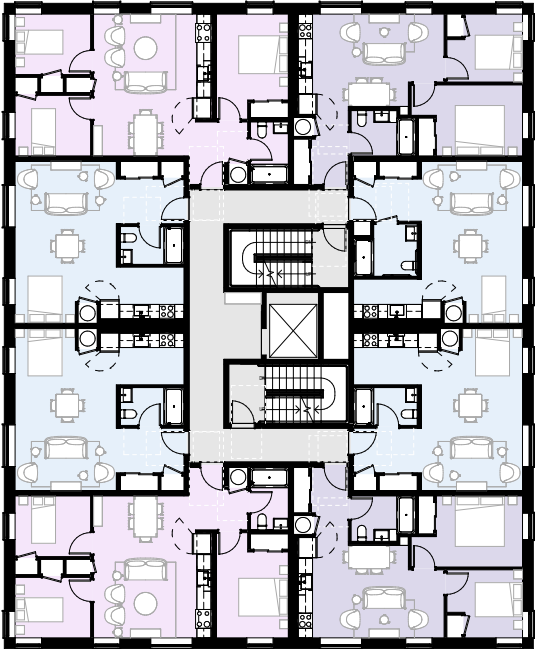
- Studio
- 2-Bed Unit
- 3-Bed Unit
- Circulation
- Resident Amenity



Gilbert Lane



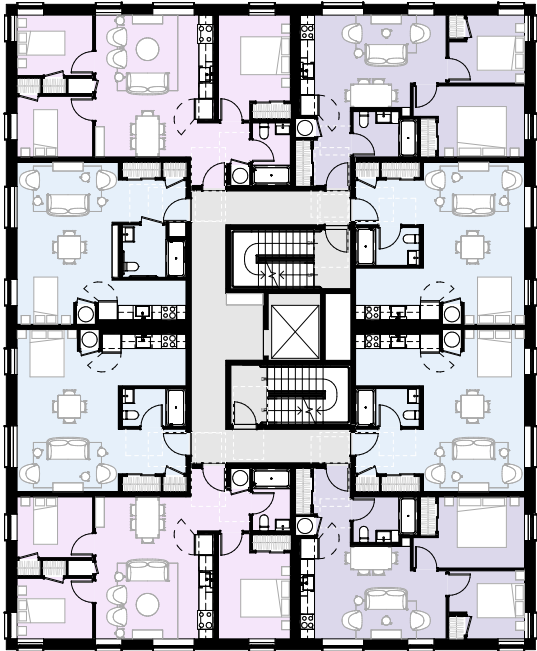
- Studio
- 2-Bed Unit
- 3-Bed Unit
- Circulation
- Resident Amenity



Gilbert Lane



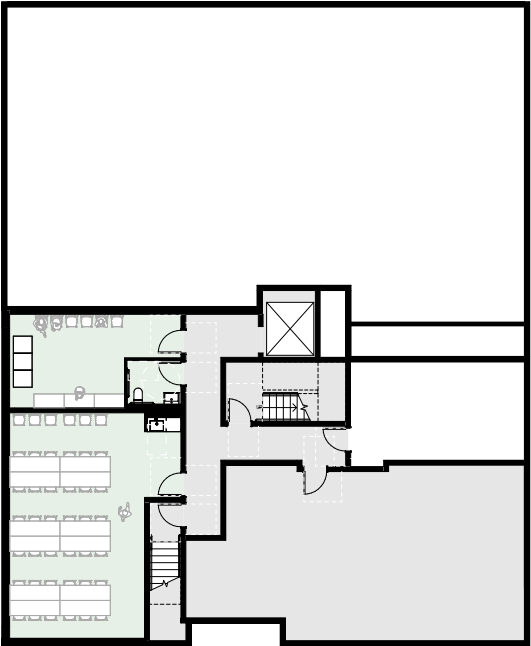
- Studio
- 2-Bed Unit
- 3-Bed Unit
- Circulation
- Resident Amenity



Gilbert Lane

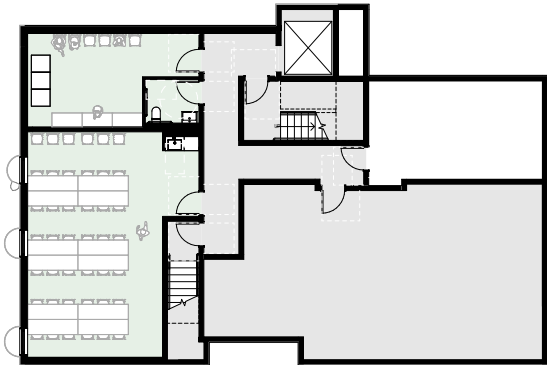


- Studio
- 2-Bed Unit
- 3-Bed Unit
- Circulation
- Resident Amenity





- Studio
- 2-Bed Unit
- 3-Bed Unit
- Circulation
- Resident Amenity



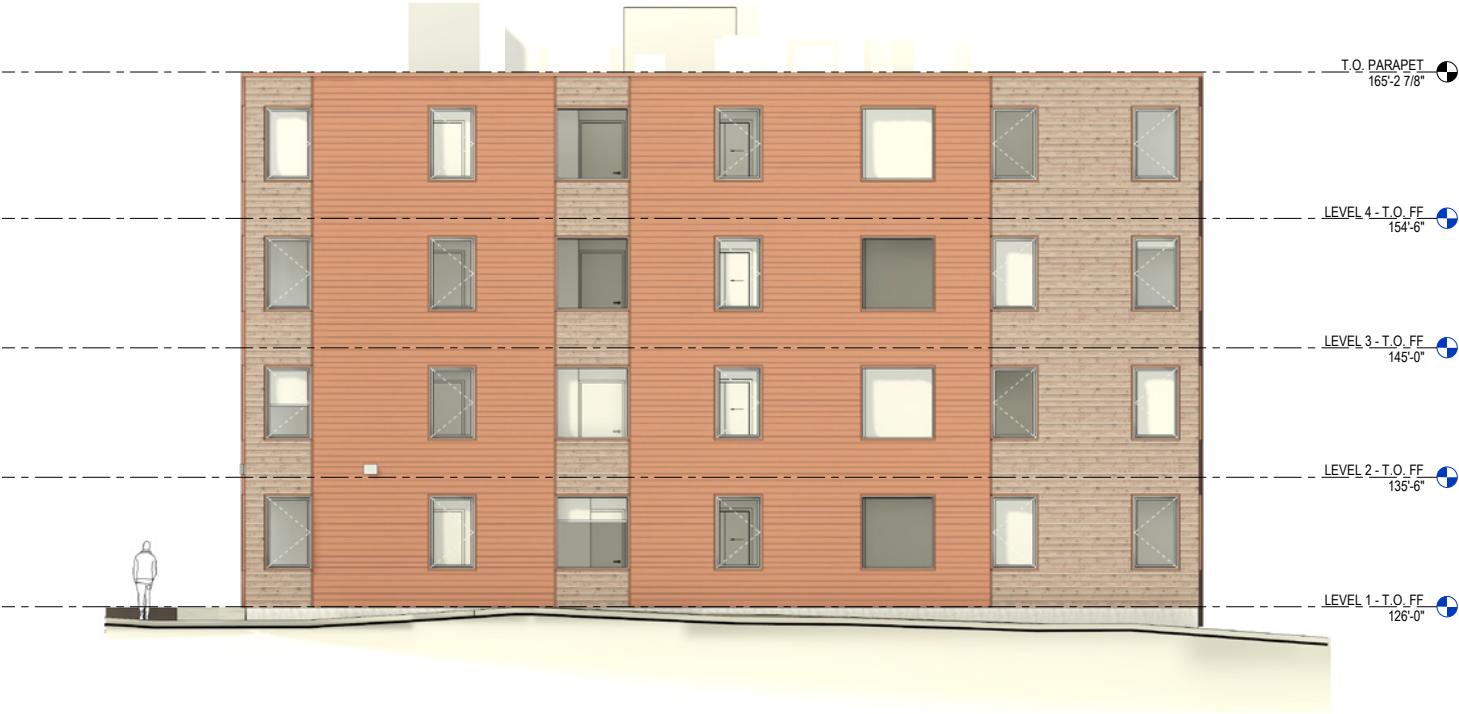


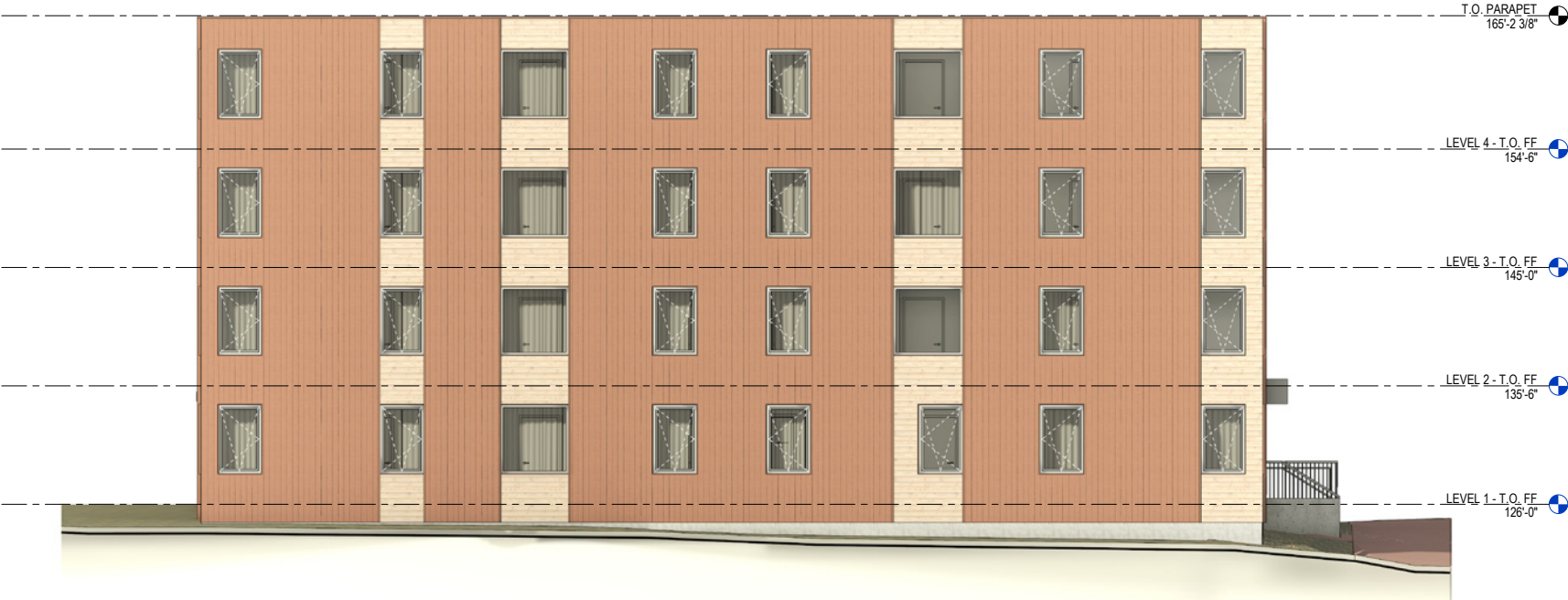




















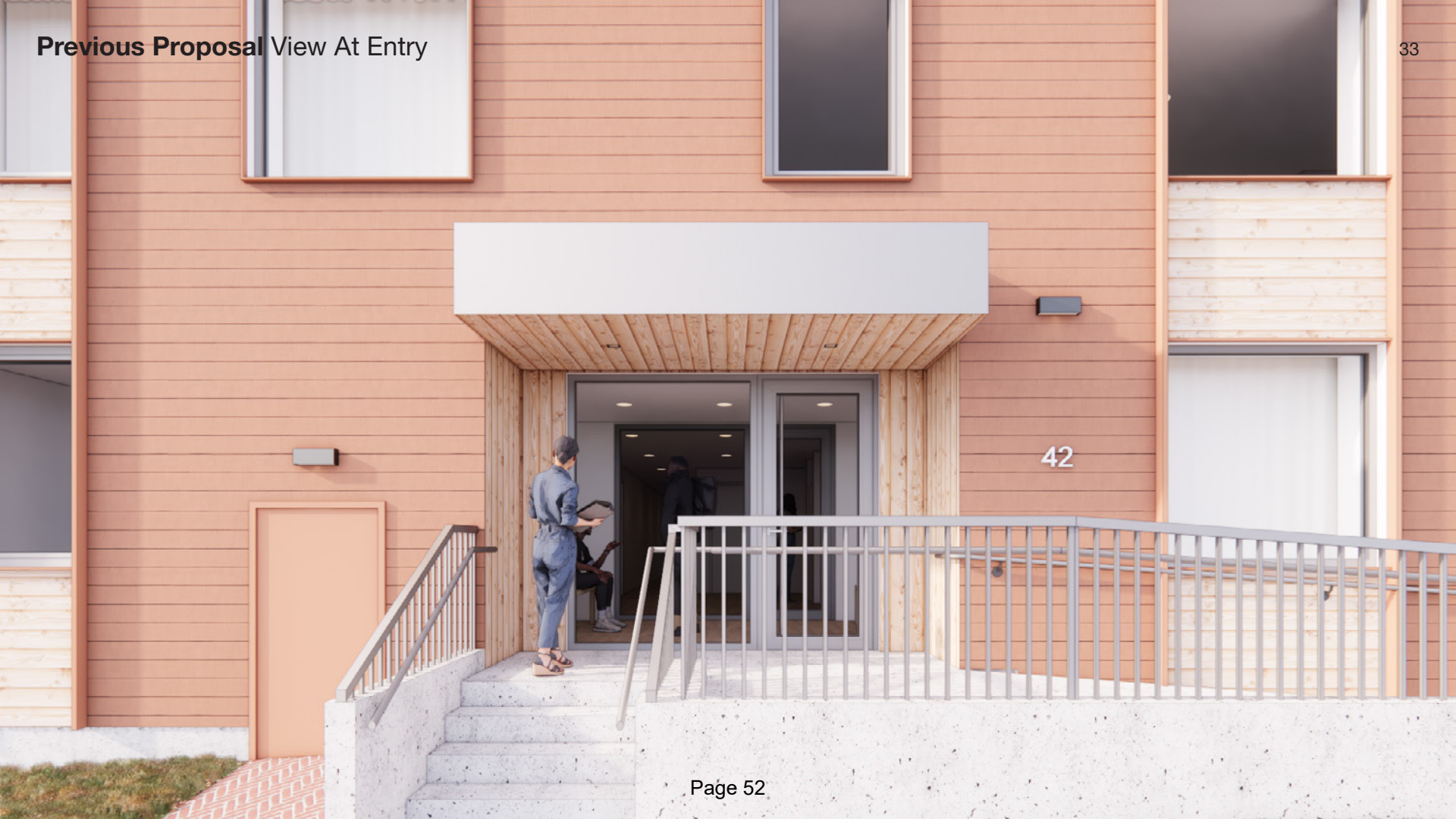




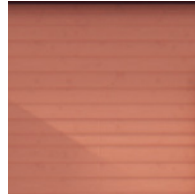












Painted Clapboard
Primary Cladding

- Clapboard
- 4.5" Exposed Face
- Quartersawn Pine
- Rusty Neutral Paint



Natural Clapboard
Accent Cladding

- Clapboard
- 4.5" Exposed Face
- Quartersawn Pine
- Clear Finish



Metal Fascia
Awning Surround

- Seaming as Shown
- Galvalume
- Warm Gray
Powdercoat (to
match window &
hardware finish)



Current Proposal:

Finish

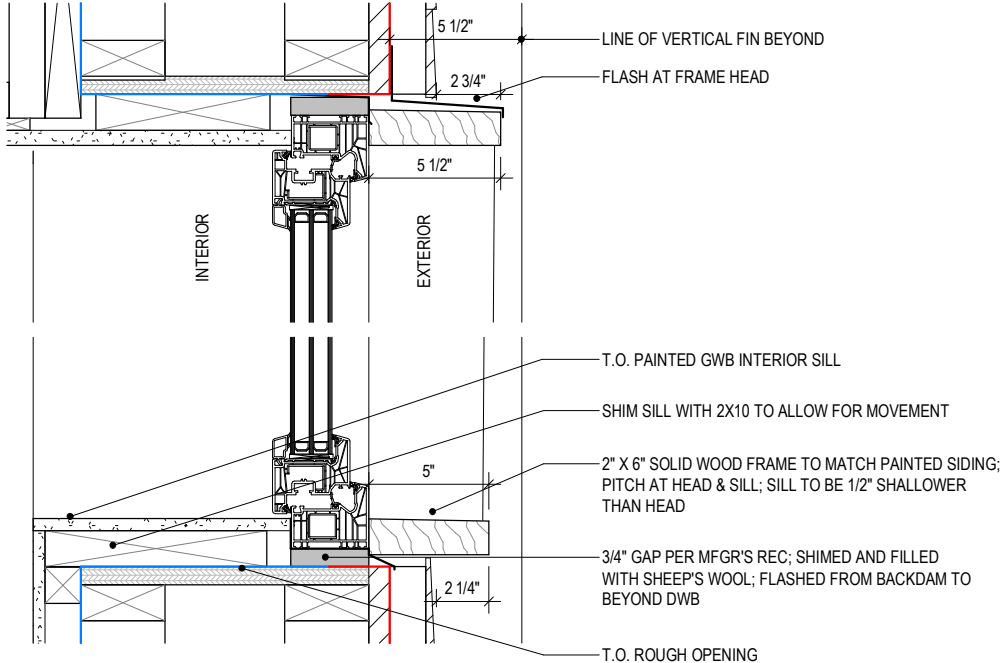
Charcoal Gray uPVC
(Lighter than shown in images)

Operation

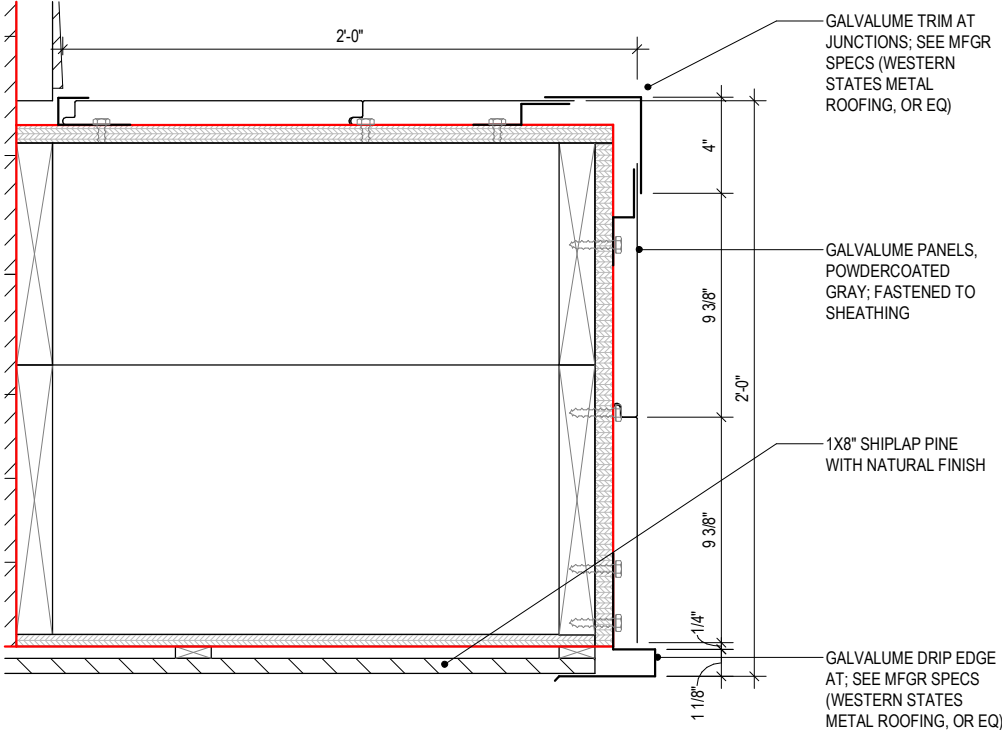
Windows: Picture & Tilt-Turn
Doors: Swinging

Features

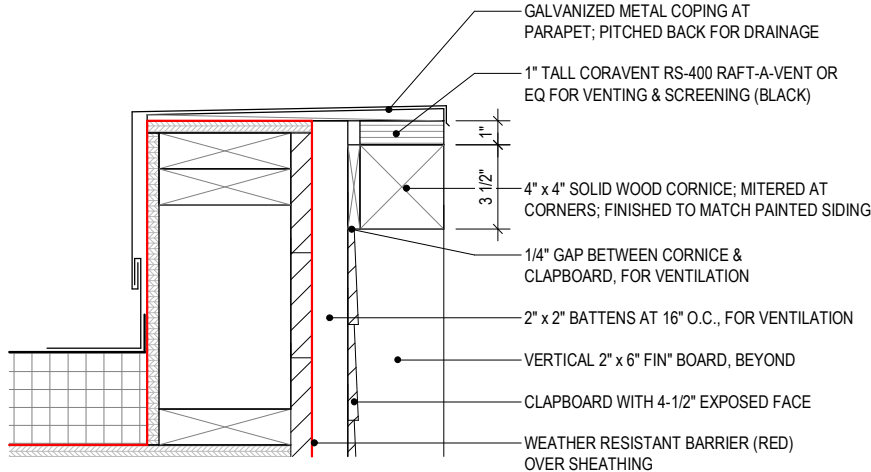
Triple-Glazed



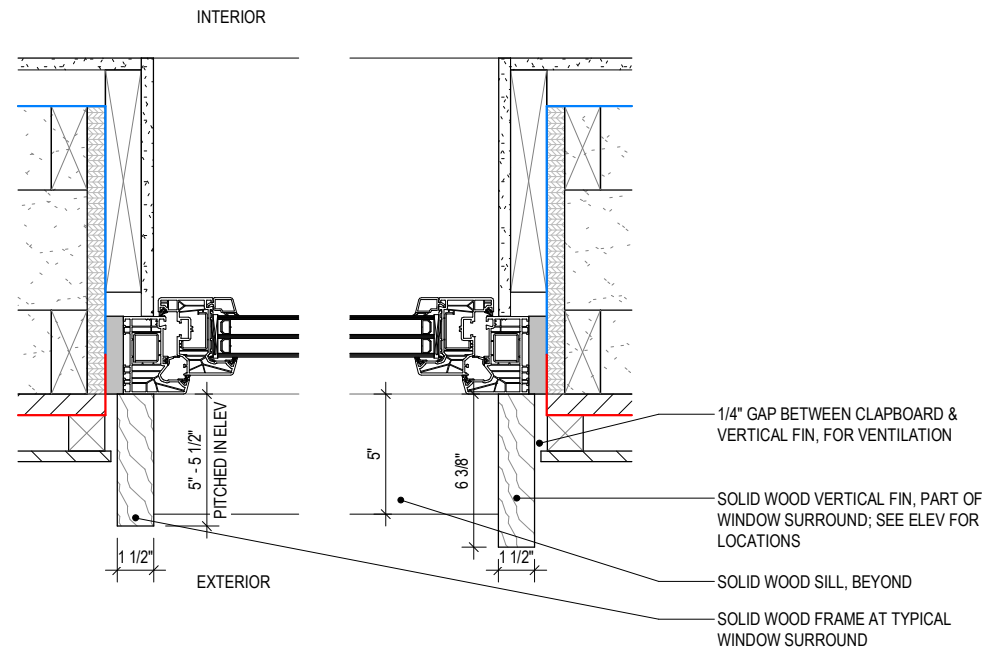
1 SECTION DETAIL - WINDOW HEAD & SILL
1 1/2" = 1'-0"



2 SECTION DETAIL - ENTRY CANOPY
1 1/2" = 1'-0"



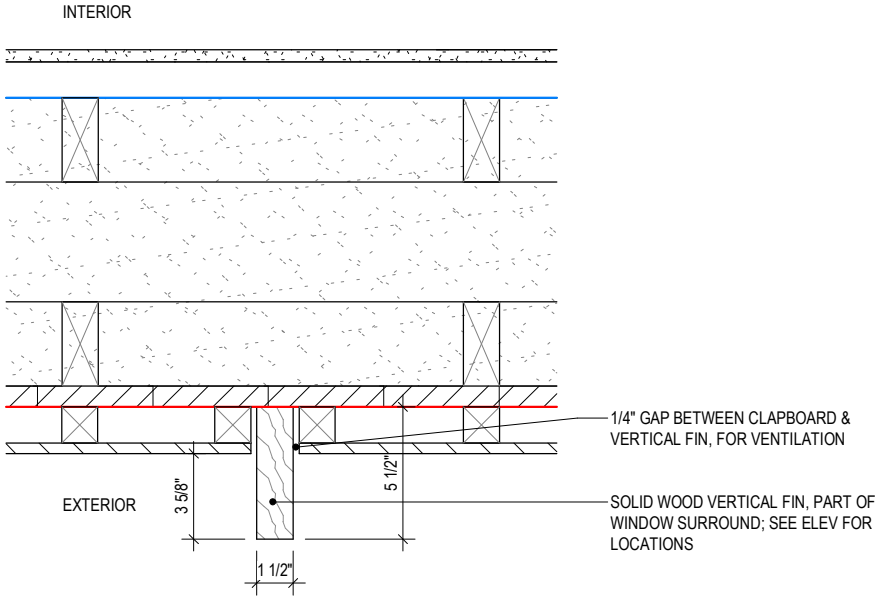
3 SECTION DETAIL - CORNICE
1 1/2" = 1'-0"



4

PLAN DETAIL - WINDOW

1 1/2" = 1'-0"



5 PLAN DETAIL - VERTICAL FIN
1 1/2" = 1'-0"

42 Atlantic Street Housing Historic Preservation Public Hearing Submitted: May 6, 2024

Owner
LB Atlantic, LLC

Architect
Primary Projects, PLLC

Civil Engineer
Acorn Engineering, Inc

Structural Engineer
Base Design Group, Inc

MEP-FP Engineer
BLW Engineers, Inc

Lighting Designer
Pieszak Lighting Design, LLC



PO Box 17533, Portland, ME 04112

5 March 2024

RE: PRELIMINARY REVIEW OF NEW CONSTRUCTION: 42 ATLANTIC STREET, HPBR-002814-2024

Chair O'Brien and Members of the Historic Preservation Board,

Greater Portland Landmarks supports the proposed apartment building at 42 Atlantic Street. We have met with the applicant and understand there are many constraints which the applicant must balance to provide this much needed type of housing on Munjoy Hill.

Although located in an older part of the Munjoy Hill neighborhood, largely characterized by 1 ½ to three story buildings, the existing building to be demolished was once one of the larger scaled buildings on the street until it was significantly altered.



38-42 Atlantic Street, 1924 (*Maine Memory Network*)

Although the new building is proposed to be four stories in height, we believe its height will be similar to the building on the abutting parcel at 43 St. Lawrence, which is three stories on a raised basement, with high floor to ceiling dimensions, as is typical of older residential buildings in the neighborhood.

We appreciate the applicant's articulation of the front wall plane to relate the building to its context, although we believe a single articulation in the central bay would have been sufficiently contextual. In addition to the abutting building at 43 St. Lawrence Street, there are residential buildings of a similar massing with multi-family uses present in the neighborhood and on the peninsula that could serve as models for how the proposed building might further relate to its smaller scaled historic neighbors.

PO Box 17533, Portland, ME 04112

Munjoy Hill is characterized by buildings of various styles and sizes that nearly all relate to the street with a prominent entrance. As mentioned in the staff report, we believe some additional focus at the main entrance, through trim details, a canopy or another design feature, would be appropriate for the proposed building type and help it to visually relate it to its neighbors. We offer some examples of historic precedence below:



119 Morning Street is essentially a large ‘boxy’ building with minor façade relief at the two bays, with a prominent central entrance at grade. The siding has prominent horizontal details which accentuate its long street façade.



102-104 Morning Street is another large-scale multi-family building with a similar number of bays, building length, and articulation of the front wall plane to 119 Morning Street. Set on a raised foundation, it currently features a covered entry porch. The entry porch used to connect to a wrap-around deck as can be seen in the 1924 tax photograph.

PO Box 17533, Portland, ME 04112



49-51 Morning Street (left) and **231 State Street** (right) are historic examples of 4+ story ‘boxy’ buildings that fit well into their lower-scale historic contexts and feature minor articulation of their front wall planes and prominent entrances.

We believe some articulation around the front entrance would better meet the standards for new construction and we hope you will urge the applicant to consider this design direction.

Thank you for considering our views on this proposed project,

Carol De Tine
Vice President of the Board of Trustees
Greater Portland Landmarks



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic Street proposal

Jackie Mann <jackiemann5@gmail.com>

Thu, Apr 4, 2024 at 2:28 PM

To: hp@portlandmaine.gov, evans@portlandmaine.gov

Cc: Jim Mann <jem1944@gmail.com>

Dear Mr Schueckler and Members of the Historic Preservation Planning Board,

We are writing to you regarding the appearance of the building that is being considered for construction at the above address. We own the house at #36 Atlantic Street, which, we are told, is the property that abuts the site in question more closely than any others.

We would like to suggest that, in order to maintain the continuity and integrity of the neighborhood, the exterior of #42 be more in keeping with other houses on the block. That is: a light colored clapboard with a significant cornice and trim around doors and windows.

If one goal of affordable housing is to integrate neighborhoods with a diverse population, it would seem wise and considerate to help the folks who live there feel comfortable and welcome in their new neighborhood. Residing in a building that resembles others on Atlantic Street in style and character will promote that integration.

Please feel free to follow up on this suggestion with any questions you might have.

Thanks in advance for attending to our opinion.

Sincerely,

Jacqueline and Jim Mann

[36 Atlantic Street](#)

[Portland](#)



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic St Feedback

Brian Partridge <brianpartridge@gmail.com>

Wed, Apr 10, 2024 at 12:10 AM

To: "evans@portlandmaine.gov" <evans@portlandmaine.gov>

Cc: Beth Golini <elizabeth.golini@gmail.com>

Hello Evan,

My wife (cc'd) and I are the residents and owners of 52 Atlantic St and we have some concerns about the project planned for 42 Atlantic St. I previously attended their neighborhood meeting and so I was made aware of their updated proposal and that I could send you feedback. I have a number of overall concerns, but I understand that for this audience I should keep this focused on historic preservation topics.

First, I really appreciate the work that went into making the building look more a part of the neighborhood in terms of style, materials, and color. This current proposal looks like a better fit in the neighborhood. However, it is still just a big box. I think it would be a better fit with a pitched roof like all of the neighbors. Perhaps dormers could help make that more acceptable for the top floor residents?

Second, I'm concerned about the proposed view renderings, they appear unintentionally deceptive in terms of scale. The proposed building is 4 stories. All the neighboring buildings are 2-3 stories. The tallest in the vicinity may be my residence at 52 Atlantic because it is 3 stories and a widows walk. The renderings (especially the ones from Gilbert Lane) show the 4 stories at a comparable height to the direct neighbors that are 2 stories. I don't understand how that is possible. I do understand that we are on a hill, and visual perspective is a factor, but not to this degree. I'm concerned that this contributes to making the building look more comparable to the neighbors and meet historic requirements when in reality it will tower over the neighbors.

Thank you for taking feedback. I look forward to seeing this project progress and have design iterations make it a fit for the neighborhood.

--

Brian Partridge

brianpartridge@gmail.com



Evan Schueckler <evans@portlandmaine.gov>

Comments on 42 Atlantic Street Proposal for New Construction

Ananda Moor-Jankowski <anandakmj@gmail.com>

Sun, Mar 10, 2024 at 6:10 PM

Reply-To: anandakmj@gmail.com

To: hp@portlandmaine.gov

Dear Members of the Historic Preservation Board,

We would like to submit the following comments about the new construction project proposed for 42 Atlantic Street. We are neighbors who live at 37 Atlantic Street. We attended both the neighborhood meeting and the Historic Preservation Board workshop last week. While we support the commendable ambition to provide much-needed affordable housing in this neighborhood and appreciate the legal and economic complexity of bringing such a project to fruition, we have significant concerns about the compatibility of the project, as designed, with its surrounding context.

At this early stage in the development review process, our principal concern is the proposed building's scale and form. The City's Historic Preservation Ordinance Standards for Review of New Construction states that "the proposed height shall be visibly compatible with surrounding structures when viewed from any street or open space" and "The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space." At +/- 42' high and +/- 75' wide, the proposed building is highly incompatible with surrounding structures, disrupting the rhythm of spacing and structures that characterizes Atlantic Street and the vast majority of the district. The applicants' efforts to break down this massing, including the shifts in the Atlantic Street facade, are feeble and ineffective.

The architecture of Munjoy Hill is indeed eclectic, and there are certainly 4-story buildings scattered throughout the district. The vast majority of these tall buildings are also narrow, however, with the relief of open space with light and views between adjacent building masses. As noted in the Historic Preservation Program's Staff Memorandum for this project, one of the "handful of unifying features" of Munjoy Hill's architecture is that structures are independent, rather than connected row houses spanning wide or multiple lots. Furthermore, the taller and wider "boxy" buildings on Munjoy Hill are mostly concentrated toward the northeastern edge of the neighborhood along Vesper and Morning Streets, closer to the long view of Casco Bay.

Notably but perhaps not surprisingly, the applicants' "Neighborhood Analysis" neglected to include photographs of the houses immediately adjacent to the project site: the two houses directly across Atlantic Street (37 and 42) and the two houses directly adjacent to the southeast (34 and 36). We are appending photographs of these buildings to these comments. These houses, plus 48 Atlantic Street adjacent to the northwest, comprise a unique pocket of modest, 1 1/2- to 2-story, pre-Fire of 1866 homes (with 48, 41, 37, 36, and 34 Atlantic Street all built between c. 1840 and 1854). The massive, "boxy" building proposed for 42 Atlantic Street would be jarringly incongruous with this most immediate context.

If the width of the proposed building (or two buildings) were closer to 30', as is typical along Atlantic Street, the project would, with the right detailing, have a much better chance of fitting in with the surrounding context. At double the width of the vast majority of buildings in the district and certainly the immediate surroundings, the proposed building would be a significant disruption to the neighborhood as a whole and particularly incompatible with the unusual group of small, older homes directly surrounding it.

We certainly appreciate the varied and evolving architecture of Munjoy Hill. Since the City has collectively agreed that the historic fabric of our neighborhood is a valuable asset worth maintaining, however, we ask the Board to give serious consideration to the proposed building's potential rupture of our neighborhood's character and streetscape.

Thank you for considering our comments.

Sincerely,
Ananda & Bernard Moor-Jankowski

4 attachments



41 and 37 Atlantic St.jpeg
1291K



34 and 36 Atlantic St.jpeg
874K



Atlantic St Looking Southeast.jpeg
939K



Atlantic St Looking Northwest.jpeg
825K











Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic workshop review

Joe Lewis <joe@portcitylegal.com>
Reply-To: joe@portcitylegal.com
To: "hp@portlandmaine.gov" <hp@portlandmaine.gov>

Mon, Mar 18, 2024 at 4:47 PM

Good afternoon.

I live at 33 Atlantic Street and obviously have a keen interest in this project.

I am writing today to formally request that the applicant provide several renderings of the next proposed design that demonstrate what the proposed building will actually look like in real space. The initial rendering was pretty much inadequate to the task. I appreciate that HP staff and members of the HP board are probably well-used to visualizing what elevations and other drawings might look like, but the public does not have this expertise. Simply put, we can't begin to imagine what the proposal will look like without modern, appropriate renderings and illustrations.

Thank you for your consideration.

- Joe

Joe Lewis, Attorney
Port City Legal, LLC
[10 Moulton Street, 4th Floor](#)
Portland, Maine 04101
(207) 210-6559
www.portcitylegal.com

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I am a lawyer, but I am not your lawyer unless you have been in my office and signed a contract. Unless I am your lawyer, this communication is not intended as legal advice, and no attorney client relationship results. Please consult your own attorney for legal advice.



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic Street

Tom Pearson <tpearson73@gmail.com>

Mon, Mar 18, 2024 at 3:49 PM

To: "evans@portlandmaine.gov" <evans@portlandmaine.gov>

I live in and own the property at [20 Atlantic Street](#). I attended the neighborhood meeting regarding the proposed new construction at 42 Atlantic Street. Although I support the construction of low income housing for the site, the massive scale of the proposed project is horribly out of scale to the surrounding properties. Further the failure to provide any parking for 26 units will create a parking issue for Atlantic Street. The proposed design stands out like a sore thumb. I would fully support a scaled down project with a design more compatible with the neighborhood.

Thanks for listening.

Tom Pearson

20 Atlantic St.



Evan Schueckler <evans@portlandmaine.gov>

Re: 42 Atlantic Street project before the HP Board- 4/17 @ 5pm

elizabeth <elizabethmiller1953@hotmail.com>
To: Dan Black <danblack@lbdevpartners.com>
Cc: Evan Schueckler <evans@portlandmaine.gov>

Wed, Apr 10, 2024 at 8:06 AM

Excellent improvement! Especially like the redesigned siding materials and the front entrance. Good luck with the project. It promises to be a much-needed addition to the neighborhood.

Elizabeth Miller and David Body
[46 Waterville Street #3](#)

From: Dan Black <danblack@lbdevpartners.com>
Sent: Tuesday, April 9, 2024 10:56 PM
To: Dan Black <danblack@lbdevpartners.com>
Subject: 42 Atlantic Street project before the HP Board- 4/17 @ 5pm

All, you're receiving this email because you attended the March 5 community meeting at the St. Lawrence church regarding our proposed affordable housing development at 42 Atlantic Street.

We have updated our plans based on the feedback we received at the March 6 Historic Preservation board meeting. You can find our updated plans that we will be reviewing with the board on the 17th attached.

The meeting on the 17th will include time for the public to provide comment and feedback. Additionally, you can provide written feedback to Evan Schueckler at evans@portlandmaine.gov.

Please reach out if you have any questions!

Dan Black



P.O. Box 10452
Portland, ME 04104
c: (207) 831-2824



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic St. Housing Project- Public Comment

'Lesko, Jack' via Historic Preservation <HP@portlandmaine.gov>

Sun, Apr 14, 2024 at 9:19 PM

Reply-To: j.lesko@northeastern.edu

To: "hp@portlandmaine.gov" <hp@portlandmaine.gov>

Re: Public Comment – Proposed 42 Atlantic St. Housing

Reviewing the following documents:

- Historic Preservation Public Workshop & #2 25 March 2024 &
- Historic Preservation 17.1 Purpose

Points 17.1 C, E, F, & G appear at direct odds with the proposal.

- Given its size, placement, and design, the building is remarkably unlike any house in the immediate vicinity. It will be immediately noticeable and dominant, not fitting the neighborhood's present character.
- The persons/sqft (assuming ~50 persons in 26 units) of land is estimated to be ~4 to 5 times that of the current density and at least twice as big as everything else, making it difficult to claim that it "ensures compatible new construction."
- It is difficult to imagine the construction will "Stabilize and improve [e] the values of the properties and areas," given the added traffic, congestion (Atlantic St. is already tight with two cars), and added parking that would be needed. Journal articles seem to indicate otherwise.
Diamond, Rebecca, and Tim McQuade. "Who wants affordable housing in their backyard? An equilibrium analysis of low-income property development." Journal of Political Economy 127, no. 3 (2019): 1063-1117

I want to urge you to reject the plan. Thank you for the opportunity to comment.

John "Jack" Lesko

[33 Atlantic St.](#)

[#2](#)

[Portland, ME 04101](#)

2 attachments

10_240401_42Atlantic_HP_PlansEtc.pdf
10133K

hp - purpose.pdf
523K



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic St

Markos Miller <markossmiller@hotmail.com>

Fri, Apr 12, 2024 at 2:14 PM

To: "evans@portlandmaine.gov" <evans@portlandmaine.gov>, "hp@portlandmaine.gov" <hp@portlandmaine.gov>

To Members of Portland's Historic Preservation Board,

I live at 17 Atlantic Street, a few houses down from the proposed affordable housing development at 42 Atlantic St. I have lived here for almost 30 years and have seen the historic characteristics of this working-class neighborhood erode. I support the building of dense housing for low and middle-income residents in my neighborhood. There are other large, tall, and relatively densely populated buildings just a street away in either direction. Most houses on Munjoy Hill used to have lots more people in them. I understand your purview is the architectural quality of this project; I'll spare my speech about why this project is important.

I do want to share a few brief thoughts about how the visual characteristics of this proposed building could better speak to the characteristics of the existing neighborhood.

The project has strong vertical lines. Looking around the neighborhood, there is a strong horizontal quality to the typical building design. The vertical lines 'hold a building up', but the horizontal texture is the predominant feature of the face of most buildings. I think this helps give them a human scale; the eye is drawn across, not up. I think this building would benefit from a greater emphasis on some horizontal features.

The pictures on slides 27 and 28 of the packet (if you're seeing the same thing as me) give a hint of how the horizontal quality could be emphasized over the vertical quality. Slide 19 mentions how the vertical panels "distinguish zones" but I don't know what that means; there no reason why the facade needs to reference internal zones. The facade should serve as the face, holding together all the parts as a cohesive whole, perhaps with 'brows' and 'foreheads' and such that give definition to windows, doors, etc.

The darker vertical panels are what really define the facade here and draw the eye. I wonder what it would look like with stronger horizontal bands (above windows?) with vertical features serving more visually as columns, or lines that provide a lighter definition to the skin.

In general, this is a important project. There are so many constraints placed on the construction of much needed housing, especially affordable housing. We have a housing crisis. We should be removing obstacles to building urban housing. I hope the board can at least help this project move around some of our existing obstacles.

My 2 cents.

Markos Miller



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic Street development feedback

Emma Etnier <emmaetnier@gmail.com>

Mon, Apr 15, 2024 at 7:32 AM

Reply-To: emmaetnier@gmail.com

To: hp@portlandmaine.gov

Historic Preservation Board,

I am writing regarding the proposed new construction at 42 Atlantic Street on Munjoy Hill. I live in the neighborhood, on O'Brien Street, and am opposed to this new development for the following reasons:

- The building, even with the adjusted façade, has no visual continuity with the rest of the street. It's a box. The exterior design doesn't fit or compliment the neighborhood - instead it would dominate. Neighboring buildings, as noted in the meeting packet, have common characteristics like bay windows and ornate detailing - this development lacks all of those historic features.
- The proposed building is roughly twice as big as other buildings on the street. The unusual size combined with the façade would result in a significant change to Atlantic Street - one that would noticeably stick out.
- Gilbert Street, for obvious reasons, is special and currently has minimal development along it. Adding a 80' stretch of building that has no complimentary historic character would overshadow, literally and figuratively, this pedestrian walkway.

I am very much in favor of densifying Portland and creating more housing opportunities for all. This project, though, does not fit into the historic preservation guidelines and I hope this board will provide strong feedback to the developer to continue to adjust their proposal accordingly.

Thank you for your time and consideration - and for all the work you do!

Sincerely,

Emma Etnier

O'Brien Street

Portland, Maine

04101



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic Street

Karen Harrison <karen.harrison.me@gmail.com>

Tue, Apr 16, 2024 at 9:20 AM

Reply-To: karen.harrison.me@gmail.com

To: hp@portlandmaine.gov

I have lived on Munjoy Street for over 30 years, and my daily walks take me up and down every street in this neighborhood.

The proposed building at 42 Atlantic Street is a shocking departure from the local streetscape. Although there are flat-top buildings scattered throughout the neighborhood (the working-class “three-deckers” built inexpensively a hundred years ago and earlier), the rooflines overall are an engaging mix of sloped roofs at various angles, mansard roofs and the occasional flat roof.

Newer buildings in this area with flat roofs are much smaller and less commandeering than the proposed structure, which is too big, both visually and experientially (in terms of how long it will take to walk past it). It will dominate Atlantic Street and will devastate Gilbert Lane, which is a lovely little cobblestone byway that links Atlantic Street to St. Lawrence Street and forces pedestrians and the occasional vehicle to slow way down and experience the streetscape.

You have only to glance at the latest drawing, which shows the contrast between the massive box and the graceful human dwelling across the lane at 48 Atlantic, which has been a family home for generations.



There are many newer buildings in the neighborhood, and most were built before the creation of the Munjoy Hill Historic District. Some of these developments have attempted, with varying levels of success, to fit in with their immediate neighbors to the extent possible. Those that preferred to stand out certainly helped advance the enactment of the historic district – which now is seemingly being discounted to enable the construction of a maximum number of residential units at minimum construction cost. Certainly the proposed building’s width, proportion, scale, and rhythm show little to no attempt to conform with Historic Preservation Standards for Review of New Construction.

Thank you for giving neighborhood residents the opportunity to weigh in.

Karen Harrison

34 Munjoy Street



Evan Schueckler <evans@portlandmaine.gov>

Proposed development at 42 Atlantic Street

Susan Grisanti <susan@decormaine.com>

Mon, Apr 15, 2024 at 11:53 AM

Reply-To: susan@decormaine.com

To: hp@portlandmaine.gov

To the Historic Preservation Board,

I am the resident at 29 Atlantic Street and I am writing to express my concern for the proposed development at 42 Atlantic Street. The rendering of the building in the context of our historic street is shocking. The scale of this building is so out of context with the buildings around it, being at least twice as big as anything around it. Visually it simply overwhelms the neighborhood around it. The character of our street, with the original architectural styles of the mid-1800s will be determined by this oversized, box-shaped building that has no design or architectural merit whatsoever.

My house is from 1844 and I spent nearly two years preserving a derelict building back to its original form. Nearly all of any of my neighbors have also preserved their home's architectural style. I hope the board will take into consideration our investments in historic preservation when determining if this building passes your standards.

The board is here to ensure compatibility of new construction in the historic district, and to protect and enhance neighborhood character. (Chapter 17.1(E) of the Land Use Code) I hope that the board will consider how this proposed development follows the board's mission.

Thank you for considering my perspective,
Susan Grisanti

**SUSAN GRISANTI** (she/her)
FOUNDER & EDITOR207.632.9968
susan@decormaine.com
www.decormaine.com

About 42 Atlantic.

One purpose of this board is:

- *Applying review standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible new construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles.*

You are also supposed to protect and enhance neighborhood character, as well as protect and enhance the attractiveness of the city to home buyers, home owners, residents, tourists, visitors, businesses, and shoppers.

This proposed development as currently designed utterly fails. It is not visually compatible with the structures to which it is visually related. It does not protect or enhance the neighborhood character. It does not protect or enhance the attractiveness of the city.

It does the opposite of these things. It is a giant box, now imagined with a wallpaper treatment meant to substitute for architectural articulation or interest. It is twice as big or more as anything else in view. It is flat and ugly and utterly lacking in the charm and grace that makes Atlantic, Gilbert, and Wilson streets so pleasant in that area.

This board's Portland Historic Resources Design Manual states on page 152: "*A new building in a historic district . . . need not follow the pattern set by its neighbors in each and every area of compatibility. It should, however, relate to a number of them.*"

My position is that this proposal doesn't relate to any of them: scale, form, façade, relationship to the street. The proposed building is not visually related to its neighbors.

It is not just visually incompatible: at 72' x 85' x 40' high, this proposed structure not only won't complement the historic streetscape, but it will also dominate it to the point of parody. If built as currently proposed, this structure will become the defining structural element for the street. It will be both unwelcome and unavoidable. As someone mentioned at the initial neighborhood meeting, this is the sort of building that will leave visitors and residents in the future wondering how on earth this thing got built and who gave it the go-ahead.

This board was both brave and spot-on in defense of 142 Free Street. It refused to take part in the taking apart of a historic designation. Please be brave again. Don't sacrifice this lovely street in this lovely historic district to development pressures. Don't be the people who allowed this thing to be built.

- Joe

About 55 Atlantic Street.

55 Atlantic Street is an important part of this conversation. It is kitty-corner across from the proposed development, at the intersection of Wilson Street. This building is not even half the size of the proposed development but is still an excellent example of how to do massing well.

Through the use of high-quality materials (bricks, granite lintels, a dramatic wood cornice) this relatively large mass works well. It is beautiful.





The Wilson Street side of 55 Atlantic runs about 72', nearly twice as long as the 44' Atlantic front. The high-quality materials persist along this long run. This emphasis on quality is married to a human scale façade, featuring a fully decorated large porch, and bay windows.

Contrast this existing building to the proposed new neighbor, which is flat on all sides, using relatively low-quality materials in a wallpaper treatment to cover a total lack of architectural elements or building articulation.

The proposed design of 42 Atlantic is an insult to 55 Atlantic.

Some notes about the presentation (slide show).

Some of the renderings seem “off” somehow and I am hoping that the developer will explain how they were created. (See below).

Also, where is the sidewalk for Gilbert Street? Shouldn't that be shown? City code requires new construction along public streets in a historic district to include an ADA-compliant brick sidewalk.

Slide 25: From Gilbert Lane.



Note that the transformer on Atlantic, which measures 39' tall using a drone, peeks out over the top of the building even when viewed from far back in the rear. The building to the left, while several feet closer than the proposed building, is only 24' tall at the apex of the roof. The dormer across the Atlantic is roughly 35' tall at maximum. (Building heights approximated using city's on-line tools.

Slide 26: View from Atlantic



Here, the transformer pole is so much higher than the rendering it doesn't even fit into the view!



PO Box 17533, Portland, ME 04112

16 April 2024

RE: PRELIMINARY REVIEW OF NEW CONSTRUCTION: 42 ATLANTIC STREET, HPBR-002814-2024

Chair O'Brien and Members of the Historic Preservation Board,

Greater Portland Landmarks supports the proposed apartment building at 42 Atlantic Street. While this is a large building on a street characterized by 1 ½ to three story buildings, there are examples within the historic district of large 'boxy' four-story residential buildings that relate to their lower scaled neighbors.

The proposed project is modern in design, but the applicant has taken steps to better articulate the entrance to the apartment building, clad the building in a siding that will relate to its neighbors, and utilize modern design details that will create shadows and texture, articulating the façade.

We believe that there is opportunity for additional design moves that would further relate the building to its neighbors.

- The proposed canopy is very deep, with little detail. We urge the board to request a detail of the proposed canopy to understand its construction and if there are any opportunities for shadow lines or other detailing on the deep face of the canopy.
- The projecting cornice should be more exaggerated, either in thickness or in some other manner, possibly with a frieze board below in a similar color to give it additional visual weight.
- A horizontal element or material change either between the third and fourth floors, or at the fourth floor could further relate the four-story building to its lower scaled context.

Thank you for considering our views on this proposed project,

A handwritten signature in black ink that reads "Carol DeTine". The signature is written in a cursive, flowing style.

Carol DeTine
Vice President of the Board of Trustees
Greater Portland Landmarks



Evan Schueckler <evans@portlandmaine.gov>

RE: 42 Atlantic st

David Lloyd <lloyd@archetypepepa.com>

Tue, Apr 16, 2024 at 10:07 PM

To: Evan Schueckler <evans@portlandmaine.gov>

Cc: Robert Wiener <rwiener@portlandmaine.gov>

Please substitute the below letter VS my first letter

David Lloyd Architect

Architectural Consultant to Archetype Architects

Cell 207-831-8627

lloyd@archetypepepa.comdlloyd1947@icloud.com

From: David Lloyd <lloyd@archetypepepa.com>
Sent: Tuesday, April 16, 2024 8:31 PM**To:** 'Evan Schueckler' <evans@portlandmaine.gov>**Cc:** 'Robert Wiener' <rwiener@portlandmaine.gov>**Subject:** 42 Atlantic st

Evan

I live at [29 Waterville street close](#) to Atlantic ave . I have reviewed the submitted drawings and would like to offer the following

1 :I see no real attempt at fitting into the neighborhood architectural fabric

2: At best it is a boring box with no interface to the neighborhood. I would suggest more pronounced window trim, double hung windows should be considered Vs the casements shown , a more pronounced roof cornice , consider a welcoming porch element Vs the very plan canopy over main entry . Traditional elements can be used and accomplished in a more contemporary style

3: Materials chosen like painted pine clapboard , is a cheap siding that will not hold up over the years, I see this pine cracking and cupping . If you want to use wood clapboard it should at least be cedar . The other vertical siding is also painted wood . Again you need to high quality wood or choose from the many wood like alternatives that don't rot or peel paint. I also see no context for vertical wood siding .

4: it should be noted that affordable housing needs an exterior that will look good when it goes on and good 10 years later . In my experience affordable housing typically has very little money to repair and maintain , therefore materials that have

a long life should be specified

David Lloyd

29 Waterville st

David Lloyd Architect

Architectural Consultant to Archetype Architects

Cell 207-831-8627

lloyd@archetypepa.com

dlloyd1947@icloud.com



Evan Schueckler <evans@portlandmaine.gov>

Proposed development of 42 Atlantic Street

Susan Grisanti <susan@decormaine.com>

Fri, May 10, 2024 at 11:32 AM

Reply-To: susan@decormaine.com

To: planningboard@portlandmaine.gov

Cc: hp@portlandmaine.gov

To the City of Portland Planning Board:
cc: The Historic Preservation Board

I am writing to you as a neighbor to the proposed development of 42 Atlantic Street. My home is across the street at 29 Atlantic Street. When I first heard of the plan for the old Legion Hall as affordable housing units, I was pleased and supportive. I have lived in this neighborhood since I renovated an 1844 building in 2013 and have seen successful affordable housing developments such as 8-unit 65 Munjoy Street, which melds into the character of the neighborhood seamlessly—both in the design and massing of the buildings, and in the diversity of income levels it adds to the neighborhood. This diversity is a defining characteristic of Munjoy Hill, a place that I know my neighbors and I love and value.

In contrast to 65 Munjoy Street, The LB Atlantic, LLC building plan does not appear to have taken the same care and design consideration. The proposed building design for 42 Atlantic Street exemplifies the importance of planning boards and Historic Preservation boards—to thoughtfully consider and protect from development dramatically out-of-character design and massing that will visually dominate and unalterably change the atmosphere of the neighborhood.

The scale and color of the exterior of this design will not only visually dominate but will add substantial cramping to our narrow street in which it's already challenging to fit with the comings and goings of street residents.

I acknowledge that there is an urgent need for affordable housing and support well-planned efforts to accomplish this. However, a single 30-unit building on a relatively small side street in Munjoy Hill, ignoring the scale and massing characteristic of the neighborhood is not such a plan.

If approved, this building will certainly be one that people will ask for years to come: who approved this design, and allowed this to get through planning board considerations and protections?

Thank you for considering my perspective on the proposed project,
Susan Grisanti



SUSAN GRISANTI (she/her)
FOUNDER & EDITOR

207.632.9968
susan@decormaine.com
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PO Box 17533, Portland, ME 04112

24 May 2024

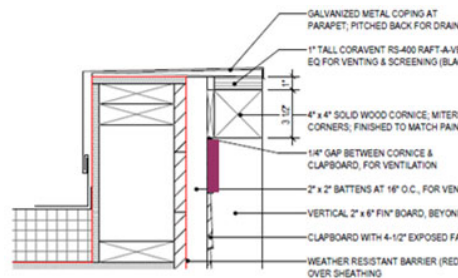
RE: FINAL REVIEW OF NEW CONSTRUCTION: 42 ATLANTIC STREET, HPBR-002814-2024

Chair O'Brien and Members of the Historic Preservation Board,

As we have stated in our previous comments, Greater Portland Landmarks supports the proposed apartment building at 42 Atlantic Street. Since it was first proposed the applicant has taken steps to better articulate the entrance to the apartment building, clad the building in a siding that will relate to its neighbors, create a projecting cornice, and utilize modern design details that will create shadows and texture, articulating the building's façades.

In the current submission, the applicant has submitted additional construction details that are helpful to an understanding of the canopy, cornice and fin assemblies and how those assemblies will impact the building's appearance. We believe that there is an opportunity for an additional detail that would enhance the cornice.

- The projecting cornice would benefit from a simple frieze board (in dark red below) in a similar color or material to the proposed wood cornice to give the roof parapet additional visual weight, similar to the roof lines of the many triple decker and apartment buildings found on Munjoy Hill.



We would like to also see some additional articulation of the canopy edge. It still appears heavy and box-like. We also have concerns about the proposed use of natural finish clapboards as we do not think they will age well and are not consistent with the character of finishes in the district. A possible solution would be better to use two shades of the same color finish.

Thank you for considering our views on this proposed project,



Carol De Tine
Vice President of the Board of Trustees
Greater Portland Landmarks



→ Historic character enriches our lives ←

PO Box 17533, Portland, ME 04112



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic

Joe Lewis <joe@portcitylegal.com>

Tue, May 28, 2024 at 11:59 AM

Reply-To: joe@portcitylegal.com

To: "hp@portlandmaine.gov" <hp@portlandmaine.gov>

Hello.

My name is Joe Lewis and I live at 33 Atlantic Street. I am happy to offer this additional public comment for the public hearing on this project.

I really want the HP board to follow its own rules and standards. This includes serving the purpose of preservation generally, applying new construction guidelines as written, and being mindful of the nature of the Munjoy Hill Historic District in particular.

The District. As indicated in the description of the District, Munjoy Hill has "a number of shared building characteristics that serve to unify much of the neighborhood and give it its own identifiable visual character." These include:

- A dense development pattern
- Buildings that occupy narrow, deep lots that are closely spaced
- Buildings of modest scale, ranging from 1 1/2 to 3 stories.
- Generally small footprints, with a narrow end facing the street
- Houses that are two-three bays wide, often with a projecting one or two-story front bay
- Commonly, buildings have a projecting front entry vestibule.

Munjoy Hill is described as "friendly" and "approachable", a reputation that has been found to be supported by the neighborhood's distinct visual character.

At 30 units and a volume of at least 230,000 cubic feet, the building as proposed would be possibly the third largest residential building in the District in terms of both physical scale and use. It is the opposite of modest. It has a massive footprint. It is architecturally basic: it is simply a box with some minor gilding. The building as proposed is the opposite of friendly and approachable: it is a monolith that dominates its surroundings.

The streetscape. As the neighbors have repeatedly said, the design of this building is simply too large and wholly uninteresting. The new construction design standards require a height and width that is "visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines."

Neither of these things are true. The building as proposed is visually massive and dominating and fully at odds with the surrounding structures when viewed from the street. The scale and form of this proposed building is nothing like its neighbors. Nothing at all.

The facade is ugly. Not basic. Not modern. Simply ugly. It does not look like anything else on Atlantic Street. It is just a big, ugly box that can only be described as maximalist.

The purpose of preservation. This board and the code are supposed to meet the following purposes:

- Ensure compatible new construction.
- Protect and enhance neighborhood character.
- Protect and enhance the attractiveness of the city.

Allowing this building to be built in this historic district is antithetical to the purposes of the historic preservation code.

Please, please, please don't give up on historic preservation. Please don't insult the people who live here who have invested in trying to protect and enhance this historic district through their own efforts by letting this building be built. Stand tall and stand for preservation. Don't let this massive box be built here. Please don't make this mistake.

Thank you for your consideration.

- Joe

--

Joe Lewis, Attorney
Port City Legal, LLC

10 Moulton Street, 4th Floor
Portland, Maine 04101
(207) 210-6559
www.portcitylegal.com

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I am a lawyer, but I am not your lawyer unless you have been in my office and signed a contract. Unless I am your lawyer, this communication is not intended as legal advice, and no attorney client relationship results. Please consult your own attorney for legal advice



Evan Schueckler <evans@portlandmaine.gov>

42 Atlantic St. Proposal - Concerns

letourneau.lisa@gmail.com <letourneau.lisa@gmail.com>

Mon, May 27, 2024 at 8:24 PM

To: hp@portlandmaine.gov, Evan Schueckler <evans@portlandmaine.gov>

To: Evan Schueckler & Portland Historic Preservation Board

My husband and I are writing to express significant concerns about the proposed plan for a new condominium development at 42 Atlantic St. Our home is located just several houses up Atlantic St in the Munjoy Hill Historic District, and we were quite surprised and disappointed to see the proposed plan for the new building as we feel its appearance is markedly out of alignment with the look and feel of the neighboring homes and the expectations for alignment with the Historic District.

We have reviewed the City's "Historic Preservation Ordinance Review Standards", "Standards for Review of New Structures" and the proposed scale drawings for 42 Atlantic St, and feel strongly that the proposed structure fails to align with numerous specific requirements of those standards, including the following:

- The proposed height *is not* "visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines".
- The width *is not* "visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines".
- The proportion of principal facades and relationship of the width to the height of the principal elevations *is not* "visually compatible with structures, public ways and open spaces to which it is visually related".
- The roof shape *is not* "visually compatible with the structures to which it is visually related".
- The scale, size and mass of structures in relation to open spaces, windows, door openings, porches and balconies *is not* "visually compatible with the structures, public ways and places to which they are visually related".
- Additionally, the proposed structure does not appear to meet numerous other requirements related to "composition of principal facades", "relationship of materials", and "relationship to street".

We greatly enjoy the culture, feel, and spirit of living in the Munjoy Hill Historic District, and have taken significant efforts to ensure that our home continues to conform to the historic appearance of the neighborhood.

We appreciate the Historic Preservation Board's careful review of this proposal, and are hopeful that changes can be made to the plan to make it more compatible with expectations for new construction in the neighborhood.

Thank you.

Lisa Letourneau & Lee Chick

58 Atlantic St

Portland ME

C: 207.415.4043

**STAFF MEMORANDUM
HISTORIC PRESERVATION PROGRAM
PLANNING AND URBAN DEVELOPMENT**



TO: Chair O'Brien and Members of the Historic Preservation Board
FROM: Evan R. Schueckler, Historic Preservation Program Manager
Kevin Kraft, Interim Director, Planning and Urban Development
Helen Donaldson, Interim Deputy Director, Planning and Urban Development
DATE: May 24, 2024
RE: ReCode, Phase 2, Proposed Changes to the Historic Preservation Ordinance
MEETING: May, 29, 2024

A legal ad announcing the Historic Preservation Board's meeting on May 29, 2024 was published in the Portland Press Herald on May 18, 2024 and May 21, 2024

BACKGROUND

In 2017, the City Council adopted *Portland's Plan 2030*, a new comprehensive plan for the City of Portland. *Portland's Plan* was developed with the input of thousands of members of the public, and includes a series of policy guides related to key topic areas for the city, from transportation to housing, public facilities, historic resources, waterfront, open space, and the economy. One of the first recommendations of *Portland's Plan* was to "create a new unified development code...that incorporates zoning, the historic preservation ordinance, housing policies, and other aspects of the development review process into a more readable and useful document" (p. 90). This recommendation reflected a desire to modernize and streamline the City's land use regulations, but also the imperative of state statute; 30-A MRS Section 4352(2) requires explicitly that a "zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body."

In direct response to the *Portland's Plan* recommendation and shortly following the plan's adoption, the City began ReCode Portland (www.recodeportland.me), the first comprehensive rewrite of the land use code in over fifty years. From the outset, the effort was designed to advance in two consecutive phases: Phase I would focus largely on improving the code's structure and functionality, paired with several discrete but substantive changes, and Phase II would focus on the more policy-oriented work of ensuring that the code aligns with the goals and guides of *Portland's Plan*. Phase I concluded in November 2020 when the City Council adopted a revised, reorganized and improved land use code. As part of Phase I, no major changes were proposed to the historic preservation ordinance.

Phase II began almost immediately following the conclusion of Phase I. At the outset, the City

hired a consultant with national experience in writing and updating land use regulations. Their first task was to evaluate the existing code with respect to the goals from *Portland's Plan*. The resulting code evaluation was released in December 2021, and was the subject of an extensive public engagement effort. Based on the evaluation and feedback from the public, the city subsequently began drafting amendments to the code, which has been released in two “waves.” The first wave, released in June 2023, included updates to Articles 3 (Definitions), 5 (Zones), 6 (Use Standards), & 7 (Dimensional Standards). The City engaged the public online and in person around the first wave of draft changes, and held a workshop with the Planning Board.

The second wave of changes, which were released in April of this year, encompass revisions to the “first wave” articles, as well as draft changes to the remainder of the land use code, and notably include proposed revisions to the historic preservation ordinance (Article 17 of the current code, and Article 16 of the draft). Proposed changes to Articles 2 and 3 are also applicable to the Historic Preservation Board.

General information on ReCode can be found here: <https://www.recodeportland.me/>. Information on the second wave of draft changes can be found here: <https://www.recodeportland.me/second-wave-changes>.

SCOPE

Changes to Articles 2

The draft revisions to Historic Preservation Board administrative procedures focus on simplifying language and creating consistency between the administration of the Planning Board and the Historic Preservation Board where possible. For instance, the draft revisions include the addition of provisions for pro tempore officers and add a process for hearing of conflicts of interest by the Board.

Changes to Article 3

In an effort to simplify the land use code overall, definitions have been consolidated under Article 3 or integrated into the body of Article 16. The majority of definitions previously included under 17.2 have been integrated into the body of Article 16 where they arise to make the ordinance more easily readable. Historic rehabilitation has been added as a definition under Article 3.

Changes to Article 16

The draft revisions to the historic preservation ordinance are focused on maintaining and strengthening the core functions of the article while making the article easier for all users to understand. The draft amendments consolidate related sections, clarify procedures, and simplify language where possible.

Proposed changes relating to historic designations:

1. Clarified the types of historic designations: landmarks, historic districts, and historic landscape districts.
2. Clarified basis for determining “contributing” classifications within designations
3. Clarified the historic designation process, including consolidation of a single process for amendments
4. Clarified protections for properties listed on or eligible for the National Register
5. Reorganized provisions to more clearly convey intent

Proposed changes relating to Certificate of Appropriateness review:

1. Established clear thresholds for administrative and Historic Preservation Board review (see proposed table 16-A).
2. Added exemptions for specific projects that otherwise receive City review (often with historic preservation staff consultation) and/or advance other City goals (e.g. roof-mounted solar, new public art, and work in the right-of-way such as bike share stations or bus shelters)
3. Consolidated and clarified language related to review process
4. Extended duration of approvals to three years to provide greater flexibility for applicants

STAFF COMMENTS

In preparation for this meeting, Board members were directed to review the publicly available draft language and to provide staff with questions, comments, or topics of particular interest. Staff received responses from several Board members and have broken down the responses into two categories: discrete questions which can be addressed directly and themes that should be flagged for further discussion during the workshop.

DISCRETE QUESTIONS:

The following were discrete questions and staff have endeavored to answer these clearly in the Table 1 below.

TABLE 1: HPB Questions + Comments re ReCode Second Wave Draft*Historic Preservation Board*

What are the reasons to omit other purposes and actions of HP program that were listed in the past, like community education; conduit for grants; signage identifying districts., etc. Are these activities still included somewhere else?

The existing language in Article 2 regarding HP Board jurisdiction and authority blurs distinctions between the role of the Historic Preservation Board and the role of the Historic Preservation Program (i.e. staff). In the interest of clarity and based on practice, roles that have fallen squarely within the purview of the program are proposed to be struck from the Historic Preservation Board language in Section 2.2.9. The Historic Preservation Program will still oversee and expand on these functions.

Designations

Discuss any changes regarding property classifications and the designation process.

A section has been added which lays out clear parameters for determining contributing and noncontributing classifications within the designations section (16.2.3). This integrated content was previously found under definitions (17.2).

The designation process is largely unchanged, but language has been revised to more clearly frame the major steps of the process: Nomination, Historic Preservation Board review, Planning Board review, Council action, and Designation.

Historic landscape district” as a new category of oversight deeply concerns me. Portland is blessed in possessing beautiful natural landscapes and green spaces, many of which certainly have intersected with points of historical significance. This being said, the remit of the HP program has always been focused on and equipped for the evaluation and management of Portland’s built environment. I’m inclined to think this simply falls outside the scope of what the HP board and staff can and should handle. Besides, between Portland’s parks department and the Land Bank, I’m not currently convinced that another cook is needed in this kitchen. I’m open to hearing more about this, and could imagine being convinced, but I don’t know what problem this is supposed to be a solution to as of yet.

This is not a new category. Historic landscape districts are currently a classification within the historic preservation ordinance, subject to a designation process much like a historic district.

Current historic landscape districts include:

- *Back Cove Historic Landscape District*
- *Deering Oaks Historic Landscape District*
- *Eastern Promenade Historic Landscape District*
- *Lincoln Park Historic Landscape District*
- *Western Promenade Historic Landscape District*

A recent applicant (an extraordinarily charming one) was approved for some significant renovations to her home, a lovely little single-family house which has been around a long time. I was surprised to learn, however, that her house was a landmark, as opposed to merely a contributing building. Without besmirching the applicant or the home, I would be utterly shocked if anyone outside a very small cluster of neighbors could even have picked the house out of a lineup, let alone told you anything about it. This did not seem at all to be “landmark” status to me, and I’m very concerned that bloat in the list of landmarks will only serve to weaken the cause of HP over time. From our conversation, it seemed as though the landmark designation may have been the result of the property falling outside the bounds of the relevant historic district, so it was a way to give the home protections. However, we also discussed the idea of non-contiguous historic districts, in which the lots covered by a district don’t necessarily have to all be joined together. The home would have absolutely met the criteria of a contributing building, so I think it would have been a prime candidate for being such a “district island.” I suppose my point here is that I think I’d like to see the list of landmarks reasonably pruned down, while offering many current landmarks continued protections using non-contiguous districts. Something worth discussing, perhaps.	<i>The three categories of historic designations are not intended to be hierarchical, though the category of landmark has been applied to stand out buildings within Historic Districts.</i> <i>As stated under 16.2.1(A), a landmark may have <u>particular</u> or <u>individual</u> significance. Within a district, the particular significance would be applicable. Outside of districts, a property must have individual significance and could also have particular significance.</i> <i>Landmark designation is the mechanism for historically designating individual properties. The ordinance does allow for discontinuous districts, but practically speaking we would not want to limit designations to be interrelated groups. Either approach of individual designations or discontinuous district can be used, but that choice should be considered in relation to the specific significance identified. Furthermore, the number of landmarks in the city has not been raised as a general concern from the public.</i>
In 16.2.2.C, regarding the integration of the Comprehensive Plan into the HP Program’s considerations, I worry this is a bit of a gray area. As we saw with the recent 142 Free St. palaver, there’s some legal haze over the persuasive authority of the Comprehensive Plan, and I think the language as it stands could further contribute to this ambivalence. I’d be interested in hearing more about exactly what staff’s position on this question is, and how the text could be clarified to dissolve future disputes.	<i>The current language under criteria for designation (Section 17.4.1) states that the Planning Board and Council should apply “historic preservation goals included in the Comprehensive Plan, but shall also consider the effect of such designation on other aspects of the Comprehensive Plan of the City.” The proposed language is rephrased to fit the restructured content of this section, but maintains this intent.</i>
Does the draft give the planning board the right to override HP recommendations by citing the	<i>The Historic Preservation Board would make recommendations based on the criteria for designation. The Planning Board would do the same and also consider</i>

comprehensive plan or other priorities, rather than applying the same standards that HP board does?	<i>the comprehensive plan in making its recommendation. Both recommendations would be forwarded to Council. This follows the existing process under 17.4.1(D).</i>
I noticed that under 16.3.2, the planning authority appears to gain the prerogative to nominate a Historic District all alone, without the need for two HP Board members. I'm not necessarily opposed to this, but I'd be curious in hearing more about why this was added, and justifications as to its necessity.	<i>In many cases in the past, historic designations were initiated as City-led projects; however, because the Planning Authority did not have the authority to nominate, staff had to coordinate with Board Members. The draft language includes providing the Planning Authority with the power to nominate a site for historic designation with the goal of being clearer and more forthright about who has initiated the process. A Planning Authority initiated nomination would still have to be substantively reviewed by the Historic Preservation Board and follow the designation process laid out in the ordinance.</i>
COA review process	
(16-6) Is there a "project of special merit" exception to be invoked by the planning board? Clarify what would be included in "exemptions for projects that advance other city goals."	<i>The draft language does not include any exemptions for "projects of specific merit."</i> <i>Proposed consolidated exemptions are listed under 16.6.1(A-L). They include exemptions for specific projects that otherwise receive City review (often with historic preservation staff consultation) and/or advance other City goals (e.g. roof-mounted solar, new public art, and work in the right-of-way such as bikeshare station locations or bus shelters).</i>
Concerning 16.6.1.D, while I'm sure there would rarely be any conflict between HP and Portland's Public Art Program, is it necessary that this latter program's projects should receive an automatic bypass of Historic Preservation review? Public art, of course, has a massive effect on the overall perception of a district, and for the benefit of general harmony, it seems as though HP should retain some say here. At least it seems so to me. I'm, again, open to being convinced here, but I would like to hear some compelling reasons.	<i>The Portland Public Art Committee is charged with the responsibility of reviewing all artwork including gifts or new acquisitions, which includes the establishment of an Artist/Artwork Selection Panel. Artist/Artwork selection panels include two site, neighborhood or district representatives, two visual arts professionals, and a representative from the Portland Public Art Committee. Non-voting advisors consist of additional community, design, technical and City departmental representatives. In the case of a piece within a historic district, historic preservation staff are engaged in a consultative capacity. Public artwork can only be located on city-owned land, therefore there are limitations on location and staff generally provides feedback on potential impacts on views to historic properties or installation concerns.</i>

	<i>Review and merits of the artwork is the responsibility of the Public Art Committee.</i>
Does the solar panel exemption apply to designated landmark buildings too? Is there any requirement that such installation be reversible?	<i>As proposed, all roof-mounted solar installations would be exempt from historic preservation review, but would still be subject to city-wide standards for solar installation found under 6.4.38(C). This exemption would only apply to roof-mounted solar as defined in the code.</i>
Those who I've spoken to about this subject would not be surprised to hear me mention this, and here I go again. Regarding 16.7.2.I, I've observed one of the widest gulfs separating the public perception of Historic Preservation and what Historic Preservation actually does and values to be around the issue of "Contemporary design and differentiation." The general public imagines that HP has, as at least one of its objectives, the promotion of traditional, vernacular, timeless architecture. Those familiar with the actual processes of HP know better of course, and I've witnessed several instances of HP professionals recommending, if not outright insisting upon more contemporary designs from applicants, even when presented with beautiful and traditional proposals! I think this is somewhat wrongheaded. I'm not suggesting that we embrace Freeport-style demands for conformity of course, we should continue to not discourage contemporary design. But I think the current standard of "differentiation" is tuned a little too tightly against novel expressions of traditional architecture; I think that we should maybe move a bit closer to the what the general public already thinks we do. I don't think this requires any substantial alterations in the text, but maybe some reworking to ensure that applicants know Portland loves traditional architecture in the modern day!	<i>The current phrasing of this standard has at times led to confusion around whether it includes an imperative for contemporary design. Staff's reading of the standard is that it does not require contemporary design. Instead, the substance of it is that "The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material, and character of the property, neighborhood or environment." Support of contemporary design is a secondary component of the standard and more of a directive for the Board than the applicant.</i> <i>The standard could be inverted to emphasize the above and make clear that the need for the Board to be supportive of contemporary design when proposed by an applicant is secondary to the differentiated but compatible standard.</i> <i>The same could be done for 16.7.3, D-4.</i>
<i>Language and terminology</i>	
Historic Preservation is a whole lot of "you CAN'T do this", "you CAN'T do that". "You're NOT ALLOWED" to make some change to the building which you own, etc. This is unavoidably part of what Historic Preservation	<i>The draft language was prepared with the intention of generally minimizing changes to the existing standards that are applied. However, staff have received comments that the current language is unfriendly because it is largely framed in a prohibitive way. The language could</i>

means, I get that, and I wouldn't want to change that. But what are some ways in which we can make Historic Preservation about "you CAN do this"? I always bring up how many of our favorite historic buildings were built under much more lax zoning and regulatory regimes, and as a result we got some of the best cozy urban environments in New England. Could we, perhaps, offer qualifying projects in Historic Districts zoning opportunities which are more permissive than the underlying zoning code? Or what else could we do to encourage new construction and renovations in historic districts?	<i>be restructured to be more imperative.</i> <i>For instance, Standard 16.7.2, could be restructured as follows, "B. Retain historic features. The distinguishing original qualities or character of a structure, object, or site and its environment shall be retained. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible."</i>
ReCode process	
How have the Maine Historic Preservation Commission's guidelines for Certified Local Government status been taken into account in this draft?	<i>Guidelines for CLGs have been considered. Draft language has been shared with MHPC and staff are awaiting comments.</i>
Other general comments	
Similarly, from the CAMP training, it was recommended that Historic Preservation programs should cultivate their own brand, inviting the public to see what we do, what we're involved with, who we are, and why things work how they do. This can be done by creating a logo/other branding, creating distinct and eye-catching certificates for public display on projects, that sort of thing. Right now the program (like most other elements of the city's government) uses the general citywide branding, but I'd very much like to see some development here. I was even sketching out some ideas myself, (I like to doodle,) maybe we could adopt "Historic Portland" or some other more snappy name as our d/b/a, our brand. Something to set us apart! Just something to think about.	<i>Idea noted. Rebranding is not within the scope of work for ReCode. The department will continue to use city-wide branding, but is looking forward to expanding storytelling, signage, and branding in the future</i>
As I've said, Portland is in a massive housing shortage, and we need to be incentivizing new construction. A major way to do this, from everyone in the business I've spoken with, is cutting down on the administrative bloat that builders have to wade through. While there's been a couple good changes towards this end, what else can we do to make building in historic districts as painless as	<i>The proposed review thresholds are an effort to ease applicants understanding of the review process. However, the Board could discuss whether those thresholds could be adjusted to ease/encourage certain project types.</i>

possible – while, of course, retaining the integrity of the process?	
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TOPICS FOR DISCUSSION:

Protections for properties listed on the National Register of Historic Places (16.5)

The draft language proposes to streamline and reinforce the protections afforded to properties that are listed on or eligible for the National Register of Historic Places. Demolition of National Register listed or eligible properties would be prohibited, except for in the following instances:

1. The owner has received a Certificate of Economic Hardship,
2. The Historic Preservation Board has held a public hearing and found that the property lacks integrity,
3. The owner has received a determination from the Maine Historic Preservation Commission that the property is no longer eligible for National Register listing, or
4. The City Council has found that retention of the structure is not consistent with the Comprehensive Plan.

The intent of the draft language is to avoid the loss of known significant buildings that are not locally designated, to create opportunities for the public to weigh in around the potential loss of such structures, and to provide property owners with reasonable and predictable paths towards demolition where warranted. This provision would also be paired with a programmatic update whereby a formal list of National Register listed and eligible properties would be maintained by the Planning Authority and made available to the public to increase awareness and predictability for property owners.

Reviewable and exempt activities (16.6.1)

The current code features a list of reviewable activities and a list of exempt activities. Staff have found that these two lists can create confusion when an activity does not fall squarely into either. The draft language therefore proposes to consolidate to a single list of exempt activities. If an activity cannot be found within the list of clearly stated exemptions it would therefore be reviewable.

Administrative and Board review thresholds. (16.6.2, & Table 16-A)

Presently, the code provides the Planning Authority with broad discretion over what projects will require administrative or Board review. While this flexibility and discretion can be useful, it has also at times led to confusion for applicants about what review process they may be required to follow, making it difficult for them to plan their projects. The draft Table 16-A is intended to capture the line of where the Planning Authority already draws this distinction. By codifying these thresholds,

the goal is to increase predictability and consistency for applicants and eliminate unnecessary confusion or the perception of partiality. A large change in the relative volume of administrative and Board reviews is not anticipated but should be discussed as part of this workshop.

It is worth noting that these more clearly established thresholds would still be in conversation with other provisions of the code. For instance, work that has little-to-no visibility from public rights of way (as determined by the Planning Authority) would still not be subject to review. Additionally, while work might fall below the Board review threshold, if the work is found not to be consistent with the applicable standards or has additional impacts not covered by the table, the Planning Authority may escalate a project to the Board for review. In either of these cases, pre-application meetings with staff are encouraged and are intended as an opportunity to discuss such scenarios.

The relationship between the historic preservation review and the underlying zoning and site plan standards. (16.7)

Staff have received several questions about the relationship between the historic preservation review and other standards within the land use code including zoning or site plan standards. In many cases these questions have been framed in terms of “which supersedes which?” In reality these varying standards and regulations are intended to be in conversation throughout the necessary reviews. The function of zoning is to set minimums and maximums for use, density, and building mass; site plan standards address environmental, community, and economic considerations; and design standards (both within and outside of the Historic Districts) exist to promote compatibility, contextuality, principles of good urban design, and the enhancement of significant architecture. All of these are also in conversation with life safety and building code requirements.

While in some cases a code might simply say “the stricter shall apply” to address conflicts between provisions, to take that approach here would belie the complexity and nuance that exists. The substance and challenge of reviewing projects for compliance with the historic preservation standards is in guiding projects towards a compatible and appropriate resolution while considering the other regulatory and practical parameters that an applicant is working within. This balancing act is not exclusive to historic preservation reviews, but is also prevalent outside of historic districts. In many cases, principles of good design or contextuality may require that an applicant adjust their project from the minimum or maximum standards allowed by the underlying zoning. These adjustments may vary in how they take form, for instance, requiring the building to stepback may be an appropriate solution to mitigate impacts of height, in other instances adding horizontal trim, differentiating the top floor, or including projections or recesses may be the best design solution depending on context.

While the Board may have the authority to seek adjustments in mass and volume beyond what is allowed by the underlying zoning, that does not mean that the Board should do so without reservation or conversation with the applicant. Furthermore, a Board cannot just reduce building height because there is a preconceived notion that a building is “too” tall. As seen in several

recent reviews, while Board members have suggested adjustments in form, by identifying the underlying standard driving the concern, applicants were able to explore and propose other solutions to those design problems. Inversely, there may be some instances such as relating to highly significant or iconic landmarks, or in contexts that have a particular regularity or uniformity, that it may be appropriate to require adjustments in massing.

The work of the Board is to be thoughtful, clear, and forthright in making these demands while also endeavoring to be flexible and accommodating to the economic or programmatic realities applicants are facing. Ensuring that this authority is used reasonably and clearly is essential to continued encouragement of rehabilitation and development within the historic districts while upholding the relevance of the standards for review.

In summary, zoning is a law that organizes how land may be used. It establishes rules that regulate what may be built on a piece of property, what uses are allowed and the size of a building through dimensional standards. Site Plan review is a set of regulations that inform how development occurs within a local municipality. Site Plan review sets standards related to transportation, environmental, public infrastructure, site design features, lighting, and natural features and open space to ensure that development has a positive impact on the community. Design standards, both within and outside of historic districts, elaborate on those rules and regulations and other adopted policies and plans with more specific guidance to inform the shape of development. In doing so, the design standards reinforce the collective values of a city by ensuring that buildings are molded to contribute positively to the overall environment in a manner that complements and enhances its surroundings, thereby reinforcing the collective values of the community.

Renaming Certificate of Appropriateness

One Board member suggested renaming “Certificate of Appropriateness” to simply “Certificate of Approval”. Staff have previously received comments that “Certificate of Appropriateness” is a cumbersome and confusing name for what amounts to a Historic Preservation approval. Staff support considering this change and would welcome board feedback on what that change could entail, such as Certificate of Approval; Historic Preservation Approval; Historic Preservation Certificate; Historic Preservation Permit.

NEXT STEPS

Following this workshop, workshops with the Planning Board, and ongoing public engagement, comments on the entirety of the second wave of ReCode drafts will be reviewed and the drafts will be revised as necessary. After these revised drafts are released to the public, the final draft language for Articles 2, 3, & 16 will be brought back to the Historic Preservation Board for a public hearing to make a recommendation to the Planning Board.

The Historic Preservation Board's recommendation will then be considered by the Planning Board as they make their recommendation to the City Council.

ATTACHMENTS

1. Current Land Use Code Excerpts (Articles 1, 2, 3, & 17)
2. ReCode One-Page Historic Preservation Article Guide
3. Proposed Land Use Code Excerpts (Articles 1, 2, 3, & 16)
4. Proposed Land Use Code Redlines Excerpts (Articles 1, 2, 3, & 16)

Completed version of the Land Use Code can be found in the following locations:

- Existing: <https://content.civicplus.com/api/assets/e27b9933-d54c-4988-ba26-db4df8eb9954>
- Proposed: <https://recodeportland.konveio.com/second-wave-recode-changes-draft-land-use-code>
- Proposed, Redlines:
https://static1.squarespace.com/static/5a75f43a692ebbeb1159413d/t/660d6a7ee07b3e5981ac1fad/1712155274839/Draft+LUC_Redline_4_3_24_reduced.pdf

CITY OF PORTLAND LAND USE CODE



12/18/23

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1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this chapter of the City of Portland Code of Ordinances is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

1.2 ZONING MAP

The City of Portland zoning map is incorporated by reference.

1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, and the relationship of development to the public realm, Portland's open spaces, and the environment.

1.4 APPLICABILITY

No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be sold, leased, conveyed, used, developed, or altered except in conformity with the provisions of this Land Use Code.

1.5 ENFORCEMENT

1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer 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 Land Use Code.

1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Chapter 1, Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

1.6 RELATIONSHIP WITH OTHER LAWS

1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this code, the more restrictive provision shall control.

1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

1.6.4 Comprehensive Plan

The Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current Comprehensive Plan.

1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

1.6.6 Private agreement

This Land Use Code does not nullify any private agreement or covenant. However, where this code is more restrictive than a private agreement or covenant, this code controls. The City does not enforce private agreements.

1.7 DELEGATION OF AUTHORITY

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom he or she has authority.

1.8 RULES OF INTERPRETATION

1.8.1 Meaning of words and terms

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For words or terms not specifically defined in this Land Use Code, they are interpreted by their common

dictionary meaning or customary usage consistent with their context.

1.8.2 Graphics and illustrations

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text controls.

1.8.3 Lists and examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as”, or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

1.8.4 Time

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be completed. Business days shall be interpreted as days on which the City of Portland is open for business.

1.8.5 Obligatory terms and conjunctions

The terms in the text of the Land Use Code shall be interpreted in accordance with the following rules of construction:

- A. The terms “must”, “shall”, or “will” are mandatory terms that express a requirement or impose an obligation.
- B. The terms “must not”, “shall not”, “will not”, and “may not” express a prohibition.
- C. The term “should” expresses a recommendation or suggestion and does not express a requirement or imposition.

- D. The term “may” is permissive and does not express a requirement or imposition.
- E. The conjunction “and” indicates that all connected words or provisions apply.
- F. The conjunction “or” indicates that the connected words or provisions may apply singly or in any combination.
- G. The conjunction “either [...] or” indicates that the connected words or provisions apply singly, but not in combination.

1.8.6 Gender

Words denoting one gender apply to all genders.

1.8.7 Abbreviations

Building Authority. Either the Department of Permitting and Inspections, its director, or their designee.

Council. The Portland City Council.

Planning Authority. Either the Department of Planning and Urban Development, its director, or their designee.

Public Works Authority. Either the Department of Public Works, its director, or their designee.

1.9 SUCCESSIVE APPLICATIONS

Whenever any application, appeal, or other request filed pursuant to this Land Use Code has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless, in the opinion of the authority or board before which it is brought, there has been a

substantial change in circumstance or substantial new evidence is available.

1.10 AMENDMENTS

1.10.1 Authority

The City Council may amend this Land Use Code and the zoning map incorporated herein.

1.10.2 Procedure

- A. An application for a text or zoning map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The fee for text or zoning map amendment applications may be waived or reduced by the Planning Authority in the case of an application submitted by a governmental body or where an applicant can establish financial hardship. If a text or zoning map amendment application is withdrawn by an applicant prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of half of the amount of the application fee will be made to the applicant by the City provided that all costs incurred by the City have been paid in full by the applicant.
- B. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be 1,000 feet. The notice

hereunder shall include a brief description of the application, the address or location of the property involved, and contact information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- C. A private applicant for a map amendment that would permit a development subject to major site plan review shall conduct neighborhood outreach according to the provisions for neighborhood meetings under Article 14.
- D. The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- E. The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- F. The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or zoning map.

1.10.3 Review fees

The applicant shall pay a fee to cover the professional and administrative costs for review and analysis associated with the amendment, including but not limited to planning, legal, engineering, or other services. The fee shall be based on the hours of review and processing time and the prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant.

1.10.4 Review standards

Except as otherwise required by law, amendments to the City's Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

1.11 TRANSITION RULES

A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6. A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a nonconforming use and is controlled by the provisions of Article 4.

2 ADMINISTRATION

2.1 PLANNING BOARD

2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the City. Members shall serve without compensation.

2.1.2 Appointments

- A. **Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly appointed and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term. Members may serve for three consecutive three-year terms.
- B. **Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing.

2.1.4 Officers

- A. **Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. The chair may administer oaths.
- B. **Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.

2.1.5 Committees

The chair of the Planning Board shall assign the members of the board to such regular and special committees as may be established by the board. Such committees shall have no final authority but shall assist the board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq.

2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The vote of at least four members shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks at any one time. The Planning Authority shall notify

in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

2.1.7 Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be recused from the matter.

2.1.8 Meetings and procedures

A. Meetings. Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the board. Special meetings may be called by the chair or any four members of the Board or at the request of the City Council.

1. *Workshops.* Workshops of the Planning Board or any of its committees may be held at the call of the board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, their staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1 M.R.S. § 401 et seq. shall be informational only and shall not result in final decisions on any matter.

2. *Public hearings.* Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the board.

B. Notice. The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. *Site plan and subdivision.* Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property, except that for subdivisions within industrial zones the notice range shall be 1,000 feet.
2. *Land Use Code or zoning map amendment.* Notice of public hearing shall be publicly posted in the municipal office at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12 days prior to any public hearing and the date of the second publication must be at

least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 13 calendar days in advance of any workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.

3. *Contract or conditional zoning.* Notice of public hearing shall be posted in the City Clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two times, the date of the first publication to be at least seven days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

The cost of noticing shall be charged to the applicant.

- C. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the Planning Authority and with the City Clerk. Any and all rule changes shall be placed on a City Council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of the date of filing with the City Clerk. No rules change shall take effect until that time period has elapsed. If a part of a

rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in Subsection 2.1.8(A)(1), all meetings, hearings, and deliberations of the Planning Board and its committees shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

- D. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of their staff who shall attend all Planning Board proceedings. The staff shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or their absence or failure to vote, and shall maintain the permanent records and decisions of all Board meetings, hearings, and proceedings and all correspondence of the Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

2.1.9 Record and decisions

- A. **Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.
- B. **Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or

recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

2.1.10 Jurisdiction and authority

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the City and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- A. To prepare and recommend a Comprehensive Plan to the City Council.
- B. To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan.
- C. To aid and assist the City Council and departments and agencies of the City in implementing general plans and in planning, developing, and completing specific projects.
- D. To hear, review, and approve, conditionally approve, or deny master development plans and major site plans.
- E. To hear, review, and approve, conditionally approve, or deny applications for subdivision approval.
- F. To hear, review, and approve or deny applications for conditional uses listed in Article 6.
- G. To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code.
- H. To review and offer its recommendations to the City Council on certain public projects.
- I. To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas.
- J. To prepare and offer its recommendations to the City Council with regard to the City's annual Capital Improvement Program.
- K. Upon reasonable request, to make its special knowledge and expertise available to any official, department, board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City.
- L. To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable.
- M. To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper, provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes by the City Council.
- N. To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances.
- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority.
- P. To approve, following a public hearing and at the recommendation of the Public Works Authority and the Planning Authority, *Technical*

Manual and *Design Manual* standards, provided that such standards shall be additional to and consistent with the provisions of this Land Use Code, necessary and reasonable, and in accordance with sound engineering and urban design practice.

2.1.11 Administrative appeals

- A. **Application procedures.** An appeal may be taken to the Planning Board by any person affected by a final decision of the Planning Authority except as provided elsewhere in this Land Use Code. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority an application for appeal specifying the grounds thereof. The application shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany each application. The Planning Authority shall forthwith transmit to the Planning Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Planning Board in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the Planning Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the board to act within 30 days shall be deemed a denial of the appeal unless mutually extended in writing by the appellant and the board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.

- D. **Conditions and limitations.** Any right granted by the reviewing board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.1.12 Planning Board appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

2.2 HISTORIC PRESERVATION BOARD

2.2.1 Composition

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. Members shall not be officers or employees of the City. Members shall have demonstrated interest, knowledge, ability, experience, or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

2.2.2 Appointments

- A. **Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not more than three members expire in any calendar year. Members may serve for three consecutive three-year terms.
- B. **Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60 days. However, every member shall continue in office after expiration of the term until a

successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

2.2.4 Officers

- A. **Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. **Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.
- C. **Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.

2.2.5 Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which he or she has an interest.

2.2.6 Meetings and procedures

- A. **Meetings.** Regular meetings of the Historic Preservation Board shall be held no less frequently than monthly. Special meetings may

be called by the chair or any four members or at the request of the chair of the Planning Board.

- B. **Notice.** The Planning Authority shall give notice of the time and place of Historic Preservation Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. *Landmark or district nomination.* Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant and to the owner(s) of the subject property or properties.
2. *Certificate of Appropriateness review.* Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
3. *Major site plan review.* For alteration or new construction that is classified as a major site plan under Article 14, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.

The cost of noticing shall be charged to the applicant.

- C. **Procedures.** The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with this article, including the creation of a subcommittee



structure to enhance efficiency in consideration of Historic Preservation Board business. Such rules shall be filed with the Planning Authority and 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.

2.2.7 Record and decisions

- A.** The Director of the Department of Planning & Urban Development or their designated staff representative shall attend all Historic Preservation Board meetings. The staff shall provide for the keeping of tape recordings or minutes of the proceedings of the Historic Preservation Board, showing the vote of each member on every question or their absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions of the Historic Preservation Board to Historic Preservation Board members and to others upon approval of the Historic Preservation Board.
- B.** No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition, or demolition until such owner either has

knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section 17.6.

- C.** Every recommendation or recommended decision of the Historic Preservation Board shall include written findings of fact and shall specify the reason or reasons for such action.
- D.** Staff shall mail notice of any final determination or recommendation of the Historic Preservation Board to the applicant and property owner(s).

2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally, and archaeologically significant areas, sites, structures, and objects.
- B.** To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and City Council for the designation of those areas, sites, structures, and objects as local landmarks or districts.
- C.** To investigate and recommend to the Planning Board and City Council the designation of areas, sites, structures, and objects not listed in the National Register of Historic Places as local landmarks and districts and to make recommendations to the Planning Board concerning sites, structures, and objects that have contributing significance or are intrusions within nominated or designated districts.
- D.** To keep and make available to the public a register of all areas, sites, structures, and

objects that have been designated as landmarks or districts, including all information required as part of each designation.

- E.** Upon request, to advise and assist owners of landmarks and property, sites, structures, or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation, and reuse and for procedures for inclusion on other registers of significant areas, sites, structures, and objects, including the National Register of Historic Places.
- F.** To recommend to the Planning Board the nomination of areas, sites, structures, and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established.
- G.** To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission, and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- H.** To seek funding for which the City of Portland is eligible through the Certified Local Government Program to assist in local preservation projects, including projects undertaken by local non-profit organizations.
- I.** To, upon request by the City Council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act, attend informational and educational programs sponsored by the Maine Historic Preservation Commission, and prepare an annual report of the activities of the Historic Preservation Board.
- J.** To inform and educate the citizens of Portland concerning the cultural, historic, architectural, and archeological heritage of the city by publishing appropriate maps, newsletters, brochures, and pamphlets and by sponsoring programs and seminars.
- K.** To hold meetings and public hearings to review applications for Certificates of Appropriateness affecting proposed or designated landmarks and districts and to recommend approval or disapproval of Certificates of Appropriateness.
- L.** To provide testimony to the Board of Appeals in connection with any application for a Certificate of Economic Hardship.
- M.** To develop design guidelines affecting landmarks or districts for review and approval by the Planning Board.
- N.** To advise the Planning Board as to recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise.
- O.** To advise the Planning Board as to the administration of such gifts, grants, and money as may be appropriated for the purposes of this article upon authorization and approval by the City Council.
- P.** To provide comment, as appropriate, to the Planning Board and/or City Council on matters pertaining to historic preservation in Portland.
- Q.** To confer recognition upon the owners of landmarks or properties, sites, structures, or objects within districts by means of certificates, plaques, or markers.
- R.** To assist the Planning Board in the development of a preservation component in the Comprehensive Plan of the City of Portland.



- S. To periodically review the Land Use Code and to make recommendations to the Planning Board concerning any amendments appropriate for the protection and continued use of landmarks or properties, sites, structures, or objects within districts.

2.2.9 Administrative appeals

- A. **Application procedures.** An appeal may be taken to the Historic Preservation Board by any person affected by a decision of the Planning Authority relative to Article 17. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority an application for appeal specifying the grounds thereof. The application shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany the application. The Planning Authority shall forthwith transmit to the Historic Preservation Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised, and conducted by the Historic Preservation Board in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the Historic Preservation Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the board to act within 30 days shall be deemed a denial of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of

such decision or failure to act notice thereof shall be mailed to each party.

- D. **Conditions and limitations.** Any right granted by the board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.2.10 Historic Preservation Board appeal

- A. **Historic Preservation Board decision.** An appeal from any final decision of the Historic Preservation Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Planning Board, adhering to the requirements of Subsection 2.1.11 of this article.
- B. The Planning Board shall deny the appeal unless it finds that the action of the Historic Preservation board was arbitrary or capricious or was not based on substantial evidence. Review by the Planning Board under this subsection is intended to be appellate in nature. Except where the Planning Board determines that injustice would result, the Planning Board shall determine the appeal without considering any facts or arguments which were not presented to the Historic Preservation Board. Where the Planning Board finds it necessary to consider such new evidence in order to do substantial justice, it shall remand the matter to the Historic Preservation Board for further consideration, unless it determines that the resulting delay is likely to result in undue hardship to the applicant.
- C. **Planning Board decision.** The Planning Board's decision on an appeal from a decision of the Historic Preservation Board shall be final with respect to the application or matter initially

presented to the Historic Preservation Board. An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the board is limited to the making of a recommendation.

2.3 ZONING BOARD OF APPEALS

2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of the City or any of its agencies or departments. Members shall serve without compensation.

2.3.2 Appointments

- A. **Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall serve until their successors are duly elected and qualified provided, however, that such service shall not extend to over 120 days after expiration of their term. Members may serve for three consecutive three-year terms.
- B. **Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing.

2.3.4 Officers

- A. **Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair.
- B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. The secretary shall fulfill the duties provided by statute and this article and have such other duties as may be provided by the rules of the board.
- C. **Pro tempore officers.** In the absence of both the chair and the secretary, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving as chair, the board shall elect a secretary pro tempore from among its number and the secretary pro tempore shall have all the powers of the secretary during the secretary's absence or service as chair.

2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at

least four members of the board shall be necessary to grant any request or application or to sustain any appeal. Any matter that receives fewer than four votes shall be deemed to have been denied.

2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify him or her shall be decided by a majority vote of the members, except the member who is being challenged. Where such a vote results in a tie, the challenged member shall be deemed disqualified.

2.3.7 Meetings and procedures

- A. **Staff.** The Building Authority or their designee shall serve as staff to the Board of Appeals.
- B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the board. Special meetings shall be called by the chair at the request of any two members of the board or at the request of the City Council. All meetings and hearings of the board shall be open to the public. For all matters properly brought before the Board of Appeals, the board shall select a reasonable time and place for a public hearing following the submission of the subject application.
- C. **Notice.** The Building Authority shall give notice of public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is

required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:

- 1. In all cases, to the petitioner.
- 2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant.
- 3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning Board and City Council by reasonable means.
- 4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine Commission of the Department of Environmental Protection at least 20 days prior to action by the board.
- 5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract.
- 6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property.

For purposes of this subsection, the owners of property shall be considered to be the parties listed by the Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the board.

The cost of noticing shall be charged to the applicant.

- D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the board upon good cause being shown.

1. *Conduct of hearings.*
 - a. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.
 - b. The applicant and any abutter or similar person with standing shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.
2. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.

2.3.8 Records and decisions

- A. Record.** The recording of testimony, if any, and all exhibits, papers, applications, and requests filed in any proceeding before the Board of Appeals and the decision of the board shall constitute the record.
- B. Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall hand deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council within seven days of such decision, and shall also file the decision with the City Clerk.

2.3.9 Jurisdiction and authority

The Board of Appeals shall have the following jurisdiction and authority:

- A.** To hear and decide appeals from the granting or denial of any permit required by Chapter 6, Article II or Chapter 10 of the City of Portland Code of Ordinances.
- B.** To hear and decide appeals from any decision or order made by the Building Authority pursuant to the provisions of this chapter, except that decisions relating to enforcement of the Shoreland Zone provisions of this chapter may not be appealed to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B and 30-A M.R.S. §§ 2691 & 4483.

- C. To review interpretations of the Zoning Administrator or their designee, except that decisions on such interpretations shall be advisory only and shall not be appealable.
- D. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to terms related to use; dwelling unit conversion; space and bulk, such as lot size, density, and setbacks; parking; loading; and signs.
- E. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeals

- A. **Application procedures.** Application for any appeal to the board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Subsection 2.3.7.
- C. **Standard of review.** The standard of review for appeals pursuant to Subsections 2.3.9(A), (B), and (C) shall be de novo. The appellant shall bear the burden of proof.
- D. **Conditions and limitations on rights granted by appeal.** Any right granted by the Board of Appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.3.11 Variances

A. Application procedures

- 1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- 2. A public hearing shall be set, advertised, and conducted by the Board of Appeals in accordance with Subsection 2.3.7.
- 3. All decisions by the board shall be rendered in a manner and form not inconsistent with the statutes of this state.

- B. **Undue hardship variance.** An undue hardship variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his or her property would cause undue hardship. The words “undue hardship” as used in this subsection mean the following:

- 1. The land in question cannot yield a reasonable return unless a variance is granted.
- 2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
- 3. The granting of a variance will not alter the essential character of the locality.
- 4. The hardship is not the result of action taken by the applicant or prior owner.

C. Disability variance

- 1. *By the Board of Appeals.* Notwithstanding the provisions of subsection (B) above, the

board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall, or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S. § 4553.

2. *By the Building Authority.*

Notwithstanding the provisions of subsections (B) and (C(1)) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability.

D. Practical difficulty variance. Notwithstanding the provisions of subsections (B) and (C)

above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, lot coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood.
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties.
3. The practical difficulty is not the result of action taken by the applicant or a prior owner.
4. No other feasible alternative is available to the applicant, except a variance.
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment.
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S. § 435, nor within a Shoreland

Zone or flood hazard area, as defined in this Land Use Code.

E. Specified variances prohibited

1. No use permitted in medium- and high-density residential zones shall be permitted in low-density residential zones. No use permitted in mixed-use or office zones shall be permitted in any residential zone. No use permitted in industrial and airport zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial or airport zone. The general use categories are listed below:
 - a. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
 - b. Medium- and high-density residential: R-4, R-5/R-5a, R-6/R-6a.
 - c. Mixed-Use/Office: B-1/B-1b, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-4, B-5/B-5b, B-6, B-7, I-B, R-P, O-P.
 - d. Industrial: I-L/I-Lb, I-M/I-Ma/I-Mb, I-H/I-Hb, A-B.
2. A variance may only be granted with respect to the generally applicable space and bulk requirements of the zone in which the property is located and not from any provision that allows a deviation from those requirements.
3. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.
4. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
5. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
6. No variance shall be granted from the minimum lot sizes set forth in Subsection 4.3.1 for lots in the IR-1 and IR-2 zones.
7. No variance shall be granted from the requirements in Subsection 6.4.1.

F. Conditions on variances; variances less than requested.

Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening, and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the

applicant's right to some relief but not to the relief requested.

- G. Limitations on variances.** No variance permitting the erection or alteration of a building shall be valid for a period longer than two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than two years, unless an occupancy permit is issued and a use commenced within such period.
- H. Recording of variances.** No variance shall be valid unless, within 90 days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S. § 4353(5).

2.3.12 Violations

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this chapter or the conditions under which the relief was granted have not been complied with.

2.3.13 Appeals

An appeal from any final decision of the Board of Appeals may be taken by any aggrieved party to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure and 30-A M.R.S. §§ 2691 & 4483, except as otherwise specifically provided in this article.

3 DEFINITIONS

Accessory dwelling unit. A dwelling unit subordinate in size to the principal residential structure(s) on a lot and located either within the principal residential structure(s) or in an accessory structure.

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S. §§ 2911, 2912.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses (including utilities such as electric, heat, water, sewer, and/or trash that the household pays separately from rent) or must pay in ownership cost (including but not limited to mortgage payments, condominium/HOA fees, mortgage insurance, other insurance, and real estate taxes), does not exceed 30% of a household’s income, or other amount established in City

regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. The practice of farming, including the cultivation of the soil for the growing of crops and rearing of animals to provide food and other products. Agriculture may include nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises.

Airport restricted access areas. Runways, taxiways, and other areas of the Jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building.

Auto service station. A business selling gasoline, diesel, or propane fuel, providing services specific to electric vehicles, or providing motor vehicle repairs including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair, or similar activities. Such businesses may also include car-washes and/or vacuums.

Back office use. An office-related use with minimal public visitation and minimal direct service to the general public, primarily to provide support services to larger organizations such as educational institutions, social service agencies, or business headquarters.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Bed and breakfast. A building that contains between two and nine guest rooms; is used to provide or offer overnight accommodations for transient guests; has an owner, manager, or operator living in the building as a permanent resident; does not provide cooking facilities in any of the guest rooms; and does not provide meals other than breakfast, which shall be offered only to overnight guests.

Blasting operations. The use of explosives for purposes of breaking up and removing soil, rock, and ledge, related to construction and development of real estate within the city.

Building. A roofed and walled structure built for permanent use.

Building, accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint, floor area, or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a building.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Clinics. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists, or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.



Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit, or emergency purposes, but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural

exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development intended to facilitate aging in place that includes individual dwelling units with support services which provide assistance to residents. The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses. A congregate care facility may also accommodate the needs of persons with disabilities and their spouses that are younger than 55 years of age, provided the majority of the residents are 55 years of age or older. Services to be provided shall include the following:

- A. Transportation for essential support activities.
- B. Provision of at least one meal per day.
- C. Programmed social activities which are facilitated by staff.
- D. Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring.
- E. Installation of emergency call buttons or systems in each unit.

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of persons in correctional pre-release programs.

Drive-through. A facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities.

Dwelling, multi-family. A building or portion thereof containing three or more dwelling units.

Dwelling, single-family. A single building containing one dwelling unit.

Dwelling, two-family. A single building containing two dwelling units.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling, or grading of soil, earth, loam, sand, gravel, rock, and other mineral deposits.

Easement. A right, privilege, or liberty which one has in land owned by another for some special and definite purpose.

Emergency operations. Operations conducted for the public health, safety, or general welfare, such as

protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to homeless individuals in a dormitory-style or per-bed arrangement.

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

Esplanade. That portion of a street which is located between the curbline and the edge of the sidewalk closest to the street.

Essential services. The construction, alteration, or maintenance of gas, electrical, or communication facilities; steam, fuel, electric power, or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles, and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection, or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants, and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Explosives. Any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities, or packaging that an



ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the components for handloading rifle, pistol and shotgun ammunition, or fireworks.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Freshwater wetland. Freshwater swamps, marshes, bogs, and/or similar areas which are both:

- A. Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning map.
- B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures.

General services. Establishment primarily engaged in rendering services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, employment services, management services, personnel services, or maintenance services.

Handicapped family unit. A dwelling unit which provides living facilities for handicapped persons. A handicapped family unit may also provide counseling and support services. Staff members may also be included in the population.

Helistop. An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common spaces for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A building used for more or less temporary occupancy of individuals who are lodged with or without meals.

Impervious surface. Area covered with low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial, and lower-impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: artist studios, bakeries; breweries; distilleries; bottling; coffee roasters; commercial kitchens; pharmaceuticals; machine shops; watchmakers; makers of precision instruments, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry; assembly of electrical components; canteen services; tool and die shops; plant and tree nurseries; and the packaging of foods. Low-impact industrial uses do not include the processing of raw materials or salvaging operations. Low-impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Intermediate care facility. A facility which provides, on a regular basis, health-related care and services for more than 13 individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care



facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Lodging house. A house, building or portion thereof containing two or more rooming units, as well as common areas, and providing such units to individuals on not less than a monthly basis for compensation.

Long-term or extended care facility. An institution or a distinct part of an institution that is licensed or approved to provide full-time convalescent or chronic care, or health care under medical supervision for 24 or more consecutive hours, to nine or more individuals who, by reason of advanced age, illness, or infirmity are unable to care for themselves, and who are not related to the governing authority by marriage, blood, or adoption.

Lot. A parcel or area of land that is designated as an individual unit for use, development, or ownership that is either: a) a parcel or area of land that is separately described in a deed or on a plan recorded in the Cumberland County Registry of Deeds; b) a contiguous combination of such lots under common ownership and designated as one unit for development; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

Lot of record. A nonconforming parcel or area of land that: a) is separately described in a deed or on a plan recorded in the Cumberland County Registry

of Deeds as of the date designated in the relevant provision of this chapter and b) conformed to the requirements of this chapter as of the date designated in the relevant provision of this chapter.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD).
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of Area Median Income (AMI).
- B. The unit is sold to a household earning 100% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

Manufactured housing. A structural unit or units designed for residential occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two types of manufactured housing are included. They are:

A. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein. This term also includes any structure which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and

B. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning, or electrical systems contained therein.

Any unit which does not fall within the definitions of this section and which is legally sited within the city on December 18, 1989, may be relocated to any location in the city in which manufactured housing is allowed.

Manufactured housing park. A parcel of land under unified ownership approved by the Planning Board under 30-A M.R.S. § 4358 for the placement of single-component manufactured housing.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 28-B M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings, and marijuana seeds, for use or sale.

Marijuana manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana product. As defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.



Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants, and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marina. A commercial operation providing floats, slips, and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Military personnel berthing. A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multi-family development. The construction or creation of three or more dwelling units on any parcel of land or the addition of two or more dwelling units cumulatively within a three-year period.

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and services, usually owned and operated by a public or nonprofit group or agency. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

Office park. Separate office buildings planned, constructed, or managed on an integrated coordinated basis.

Off-peninsula. All land located north of I-295.

On-peninsula. All land located south of I-295.

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

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, permanent. Structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, neighborhood center, private club, or fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, neighborhood center, private and fraternal organization, or place of religious assembly where 15 or fewer people, not including the permanent residents of a single-family dwelling, assemble.

Place of religious assembly. A building or portion of a building used for religious worship or instruction including, but not limited to, churches,

synagogues, masjids, mosques, and other places of worship.

Planned residential unit development (PRUD). A residential subdivision consisting of attached or detached dwellings intended for separate ownership and land to be owned and used in common, with open spaces, recreational areas, access ways, and buildings which are designed, built, and managed in accordance with a unified development plan.

Planned unit development (PUD). A development consisting of either detached or attached single-family dwelling units and commercial or other uses, on substantially-sized properties of greater than 20 acres and designed to be compatible with the surrounding built and natural environment.

Plant canopy. As defined by 28-B M.R.S. § 102.

Preschool facility. Facility which provides a regular program of care and protection for children generally younger than those attending elementary school, which may also encompass daycare facilities.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this Land Use Code and other applicable codes and ordinances.



Recent flood plain soils. Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, and Winooski.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities, including games of skill or games of chance licensed either by the City of Portland or by the State of Maine. Such facilities may limit admission either to members or to persons paying an entrance fee.

Registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. § 2422.

Registered patient. As defined by 22 M.R.S. § 2422.

Repair services. Establishments primarily engaged in rendering services related to the maintenance or repair of goods. In industrial zones only, repair services shall include motor vehicle repair services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service establishment with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Roadway. That portion of a street between the regularly established curblines, or that part of a street or alley devoted to vehicular traffic.

Rooming unit. One or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes by an individual or a family, but not designed for food preparation. In a suite of rooms, each room that provides sleeping accommodations shall be counted as one rooming unit for the purpose of this chapter.

Self-storage facility. A fully enclosed building with individual, secured units (accessed with or without supervision) used for the exclusive purpose of storage of non-hazardous business or personal materials.

Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A M.R.S. § 251.

Sheltered care group home. A facility which, in addition to providing food and shelter to a defined population of up to 12 individuals, provides guidance or counseling services as a primary function of the facility.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

Small-scale marijuana caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than: 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems. Solar energy systems shall include the following:

- A. Accessory solar energy system. A system as defined above where power generation is incidental to a principal use, which may take the form of either a building integrated or roof-mounted solar array of any size, or a ground-mounted array occupying less than 1,000 square feet of air-space over ground area.
- B. Minor solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building- or roof-mounted solar array of any size, or a ground-mounted system occupying

between 1,000 and 9,999 square feet of ground area.

- C. Major solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building or roof-mounted solar array of any size, or a ground-mounted system occupying greater than 10,000 square feet of ground area.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

Special needs independent dwelling unit. A dwelling unit developed and managed by a nonprofit organization for habitation by persons with special social, physical or mental needs beyond strictly economic needs. Such persons shall be provided required levels of supervision, care and/or counseling services appropriate to their special needs, and the services shall be provided by either the sponsoring nonprofit agency or through another entity with which the agency has entered into a contractual arrangement.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least 6,000 seats.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock, or other mineral deposits upon a site for the purpose of storage, warehousing, or reserving for future use.

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or

any stream designated within a Stream Protection Zone.

Street. A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street line. The line of demarcation between private property and a street.

Street, cul-de-sac or dead end. A street with only one outlet.

Structure. Anything constructed or erected of more than one member having a permanent or semi-permanent location on another structure or in or on the ground, including without limitation buildings, fences, gazebos, signs, antennas, satellite sending or receiving dishes, and swimming pools. Stockpiles shall be considered structures for the purposes of dimensional requirements.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture, or other arts, or the practice of arts such as music or dance, or the production of custom, hand-crafted, or limited production of products such as furniture, wood, clay, and metal products, publications, and similar low-impact arts and crafts activities.

Subdivider. Any individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under these regulations to effect a subdivision of land hereunder for himself, herself, or for another.

Subdivision. As defined in 30 A M.R.S. § 4401 and 4402.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

Tenant. Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

Tributary stream. A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal

wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four inches in diameter, measured at four and one-half feet above ground level.

Very low-income household. A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Warehousing, storage, and distribution. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers.

Watercourse. Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed, and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands (outside of shoreland zones). Those areas which have two or more of the following:

- A. A water table at or near the surface during the growing season;
- B. Very poorly drained soils, including Sebago mucky peat; or
- C. Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and Wildlife Service publication of Wetland Plants of the State of Maine (1986).

Wind energy system. A wind energy generator and all associated facilities.

Wind energy system, useful life. The period for which the system has been designed by the manufacturer to operate in a safe manner, including the period during which new parts and refurbishment allow it to continue operating safely.

Wholesale. Sale for resale, not for direct consumption.

Workforce housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less than of AMI.
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale. A dwelling unit for which:

- A. The purchase price is affordable to a household earning 80% or less of AMI.
- B. The unit is sold to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

17 HISTORIC PRESERVATION

17.1 PURPOSE

The purpose of this article is to promote the educational, cultural, economic, and general welfare of the City of Portland by:

- A. Creating a mechanism to identify, preserve and enhance distinctive areas, sites, structures, and objects that have historic, cultural, architectural, and archaeological significance.
- B. Providing a resource of information and expertise to help those interested in rehabilitation or new construction in a district or restoring a landmark.
- C. Applying review standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible new construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles.
- D. Fostering civic pride in the city's history and development patterns as represented in such distinctive areas, sites, structures, and objects.
- E. Protecting and enhancing neighborhood character.
- F. Stabilizing and improving the values of designated properties and areas.
- G. Protecting and enhancing the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers.
- H. Fostering and encouraging preservation, restoration, and rehabilitation that respects the historic, cultural, architectural, and archaeological significance of distinctive areas, sites, structures, and objects.

17.2 DEFINITIONS

Alteration. Any act or process requiring a building permit and any other act or process not requiring a building permit but specifically listed in this article as a reviewable action, including without limitation the repair, reconstruction, demolition, or relocation of any structure or object, or any part of a structure or object.

Certificate of Appropriateness. A certificate issued by the Planning Authority evidencing approval of specific plans for alteration of a structure, site, or designated historic landscape or new construction on a site in accordance with this article.

Certificate of Economic Hardship. A certificate issued by the Planning Authority evidencing a hardship variance approved by the Zoning Board of Appeals in accordance with Article 2.

Certificate of Non-Applicability. A certificate issued by the Planning Authority evidencing a determination that specific plans for alteration of a structure, site, or designated historic landscape or new construction on a site do not require approval under this Article.

Contributing. A classification applied to a site, structure, or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district.

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

District. A historic district or historic landscape district.

Historic district. A geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

Historic landscape district. A geographically definable area possessing a significant concentration, linkage, or continuity of landscape components which are united by human use and past events or aesthetically by design, plan or physical development.

Historic Resources Design Manual. A manual including guidelines for meeting historic preservation ordinance review standards and other information.

Landmark. Any property, site, structure, or object of particular historic, architectural, or archaeological significance to Portland, the State of Maine and/or the United States relating to its cultural, social, economic, political, or architectural heritage, or which is associated with historic persons, important events or themes in local, state, or national history.

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

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

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

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

Preservation. The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic

materials and features rather than the extensive replacement and new construction.

Rehabilitation. The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural value.

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

Restoration. The act or process of accurately depicting the form, features, and character of the property as it appeared at a particular period of time by means of the removal of features from other period in its history and reconstruction of missing features from the restoration period.

Site. The location of a significant event, an archaeological site, a landscape or traditional cultural property, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.

17.3 ADMINISTRATIVE PROCEDURES

17.3.1 Costs

A. Any project may be subject to fees as established by the City Council to cover administrative costs and the costs of Historic Preservation Board review. Applicants shall also pay a fee to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services. The fee shall

be based on the hours of review and processing time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant.

- B.** Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.
- C.** No Certificate of Appropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.

17.3.2 Notice of public meeting

- A.** For all Certificate of Appropriateness applications that are subject to Historic Preservation Board review, the applicant shall be responsible for posting a notice of public meeting sign on the property where the development is to occur. The dimensions, construction, and content of the sign shall be in accordance with standards established by the Planning Authority.
- B.** The sign shall be posted at least 10 days prior to the public workshop or hearing date, and shall be removed from the site no more than three days following the date of the meeting.
- C.** Once the required notice of public meeting signage is posted, the applicant shall submit a completed certification of posting form to the Planning Authority.

- D. In the event that a required notice of public meeting sign is knocked over or made illegible, it shall be the responsibility of the applicant to promptly reset or replace the sign, though failure to do so shall not invalidate the review.

17.3.3 Notices and public comment

- A. Except as provided in Subsection 17.7.5, notice of proceedings upon any application for a Certificate of Appropriateness shall be given only when the proposed activity otherwise constitutes major site plan. Notice of such proceedings also shall be furnished to any persons interested in historic preservation who have registered with the Planning Authority, and to the Historic Preservation Board and/or the Planning Board when the proceeding is pending before a different body. The failure to give any notice required by this article shall not affect the validity of any action taken.
- B. The Historic Preservation Board, the Planning Board, the Board of Appeals, and the City Council shall each invite public comment at a public meeting in accordance with their respective rules, prior to any final action being taken under this article.
- C. The Planning Authority shall advise the Historic Preservation Board and the Planning Board of any demolition permit application received by the Planning Authority as to structures or objects that have been classified as noncontributing within nominated or designated districts, but there shall be no Historic Preservation Board review of such permit applications.

17.4 CATEGORIES AND CRITERIA FOR DESIGNATION

17.4.1 Minimum criteria for designation

- A. The Historic Preservation Board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure, or object for designation by ordinance as a landmark or district:
 1. Its value as a significant example of the cultural, historic, architectural, archaeological, or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.
 2. Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property.
 3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archaeological, or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States.
 4. Its exemplification of a significant architectural type, style, or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.
 5. Its identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States.

6. Its representation of a significant cultural, historic, architectural, archaeological, or related theme expressed through distinctive areas, sites, structures, or objects that may or may not be contiguous.
- B. In the case of a nominated historic district, the Historic Preservation Board shall also determine whether there is an interrelationship of resources within it which creates an identifiable entity, even if composed of a wide variety of resources. A district must convey a visual sense of the overall historic environment or be a grouping of historically or functionally related properties. A historic district can comprise both individually distinctive historic resources and historic resources that may lack individual distinction but which contribute to the significance and visual character of the district as a whole.
 - C. In the case of a nominated historic landscape district, the Historic Preservation Board shall also consider its significance as a geological, natural, or designed landscape associated with the development, heritage, or culture of the City of Portland, State of Maine, New England region, or the United States.
 - D. The Planning Board and City Council shall apply the criteria of (A), (B), and (C) above as well as historic preservation goals included in the Comprehensive Plan, but shall also consider the effect of such designation on other aspects of the Comprehensive Plan of the City.

17.4.2 Integrity of landmarks and historic districts

Any area, structure, or object that meets the criteria in Section 17.4.1 must also have sufficient integrity of

location, design, condition, materials, and workmanship to make it worthy of preservation or restoration.

17.4.3 Designation of historic landscape districts

An historic landscape district may be nominated and considered for designation only if the entire area of the district is owned by a unit of federal, state, or local government, or any combination of such ownership.

17.5 NOMINATION, CONSIDERATION AND DESIGNATION

17.5.1 Procedure

The provisions of this section shall govern the nomination, consideration, and designation of landmarks and districts.

17.5.2 Initiation of nomination

- A. Nomination of an area, site, structure, or object for consideration of designation as a landmark, historic district, or historic landscape district shall be submitted to the Planning Authority by the following:
 1. Any two members of the Historic Preservation Board on their own initiative, by written notice to the Planning Authority, or
 2. By written petition of any owner, in the case of a landmark, or
 3. By written petition of one or more owners of affected property in the case of a district, provided two members of the Historic Preservation Board must sponsor the petition.
- B. A nomination shall be completed and filed with the Planning Authority with all required signatures for the nomination to be pending.

- C. Upon nomination, the Planning Authority shall notify the owner or owners of the nomination and shall transmit the nomination to the Historic Preservation Board for its preliminary consideration at a scheduled meeting, which in no event shall be held later than 60 days following nomination.
- D. If documentation and analysis that is necessary for the consideration of a given designation has not been provided at the time of nomination, such documentation shall be completed prior to further consideration by the Historic Preservation Board of the nominated landmark, district, or historic landscape.
- E. At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the Historic Preservation Board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the Historic Preservation Board that the structure is eligible for a permit shall be conclusive.

17.5.3 Notification of nomination and public hearing

- A. A public hearing on the nomination shall be held by the Historic Preservation Board following one or more preliminary workshops of the Historic Preservation Board.
- B. The hearing shall be conducted in accordance with procedures adopted by the Historic Preservation Board. The Historic Preservation Board shall consider all testimony or evidence relating to the designation criteria in Section 17.4 from any person who makes written submissions or appears at the public hearing. The owner of a nominated landmark or of

property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in Section 17.4.

17.5.4 Recommendation by Historic Preservation Board

- A. Within 45 days following the close of the public hearing, the Historic Preservation Board shall make recommendation to the City Council in the case of a landmark, or to the Planning Board in the case of a district, upon the evidence as to whether the nominated landmark or district meets the criteria for designation in Section 17.4. Such recommendation shall be approved by at least four members of the Historic Preservation Board and shall be accompanied by a report to the City Council and/or Planning Board containing the following information:
 1. Explanation of the significance or lack of significance of the nominated landmark or district as it relates to the criteria for designation.
 2. Explanation of the integrity or lack of integrity of a nominated landmark or historic district.
 3. Proposed design guidelines for review of alteration or construction may be recommended. The specific design guidelines may provide explanation by text and/or schematic examples of visual compatibility for purposes of complying with Section 17.8.
 4. Relationship of the nominated landmark or district to the ongoing effort by the Historic Preservation Board to identify and

nominate areas, sites, structures, and objects that meet the criteria for designation.

5. A map showing the location of the nominated landmark and/or the boundaries of the nominated district.
 6. A list, including the address, of every site, structure, and object in each nominated historic district indicating their degree of cultural, historic, architectural, or archaeological significance by classification as a landmark, contributing, or noncontributing.
- B.** Where a motion either in favor of a recommendation or in opposition to a recommendation results in a vote of fewer than four members, the item shall automatically be tabled to the next regularly scheduled meeting.

17.5.5 Notification of Historic Preservation Board recommendation

- A.** The recommendation of the Historic Preservation Board, including a copy of the report, shall be transmitted to the City Council in the case of a landmark and to the Planning Board in the case of a district. Notice of the recommendation shall be sent by mail to the owner of a nominated landmark and to all owners within a nominated district within 14 days following adoption of the recommendation and report.
- B.** If the recommendation of the Historic Preservation Board is that the property or district not be designated, the nomination process shall terminate and no new nomination shall be submitted for the identical property or area for a period of one year from the date of termination, except upon a showing of

substantial and material newly discovered information.

17.5.6 Determination by Planning Board

- A.** The Planning Board, upon receipt of a recommendation and a report from the Historic Preservation Board concerning nomination of a district, may hold one or more workshops pursuant to the provisions of Article 2. After review of the Historic Preservation Board recommendation and report, the Planning Board shall hold a public hearing.
- B.** All meetings, hearings, and deliberations of the Planning Board to consider the recommendation and report of the Historic Preservation Board shall be held in conformity with Article 2.
- C.** The Planning Board may request the chair of the Historic Preservation Board, or a member designated by the chair, to appear at any meeting, hearing or deliberation to explain any recommendation or report.
- D.** A public hearing shall be scheduled within 30 days of the Planning Board's final workshop. At the conclusion of the public hearing, the Planning Board shall make its final determination including written findings as to whether the nominated district meets the criteria for designation in Section 17.4. A copy of the determination of the Planning Board shall be sent by regular mail to all owners within a nominated district within 14 days following the determination.

17.5.7 Planning Board recommendation to City Council

The recommendation of the Planning Board regarding a nominated district shall be filed with the

City Clerk within 14 days. It shall be accompanied by a copy of the report and recommendation of the Historic Preservation Board, including any specific proposed design guidelines applicable to the nominated landmark or district. The recommendation of the Planning Board may include proposed changes in other City ordinances, policies, infrastructure, or recommendations with respect to the Comprehensive Plan of the City relating to the proposed designation.

17.5.8 Action by City Council

- A.** Within 60 days after the filing of a Planning Board recommendation, or Historic Preservation Board recommendation in the case of a landmark, on the nomination with the City Clerk pursuant to Section 17.5.6, the City Council shall designate the landmark or district or reject designation. Any designation may include specific design guidelines for the designated landmark or district.
- B.** Designation of a district shall be accompanied by a list, including the address, of every site, structure and object in the district. Every site, structure, or object shall be assigned a classification of landmark, contributing, or noncontributing, indicating their degree of cultural, historic, architectural, or archaeological significance. This list may be amended thereafter by the City Council upon recommendation from the Historic Preservation Board and Planning Board under the same procedures as set forth above. Where there are no express findings by the City Council in the designation ordinance, there shall be a presumption that the City Council found that all requirements of Section 17.4 were met.

- C.** Notice of the proposed action of the City Council shall be provided by mail to the nominator and the owner of the nominated landmark and/or of all properties adjacent thereto prior to City Council action.
- D.** Notice of City Council action to the same persons shall be sent within 14 days following the City Council action. A copy of each designation and any design guidelines shall be sent to the Planning Board, the Historic Preservation Board, and the Planning Authority.
- E.** A complete schedule of all landmarks and districts, including design guidelines and a listing of landmark and contributing structures, shall be maintained by the Planning Authority and shall be available online or for public inspection and copying during ordinary business hours.

17.5.9 Amendment or rescission of designation

Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the City Council, and shall follow the procedure set forth in Section 17.5 for designation. The City Council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the Historic Preservation Board, Planning Board, and City Council shall be limited to those provided in Subsections 17.4.1(A) and (B) and Subsection 17.4.2. Amendments may include reclassification of a portion of a contributing property to noncontributing status, refinement or correction of design guidelines, maps, and other parts of any designation.

17.5.10 Time limits

If any time limit in the nomination and designation process as provided in Sections 17.4 or 17.5 is not met, the validity of any designation and the interim protection provided by Section 17.6 shall not be affected, provided the Historic Preservation Board, Planning Board or City Council announce the delay and the basis for such in a public meeting, as well as the date to which the matter will be rescheduled.

17.6 INTERIM PROTECTION FOR NOMINATIONS

17.6.1 Nominated landmarks and districts

- A.** From the time of nomination until the Historic Preservation Board acts upon such nomination, a site, structure, object or area nominated but not yet designated as a landmark or district shall be subject to all of the provisions of Sections 17.9 and 17.10 governing demolition and minimum maintenance, to the same extent as if designated. Upon final action of the Historic Preservation Board recommending designation, the site, structure, object, or area nominated shall be subject to all of the protections of this article until a final decision on designation by the City Council becomes effective. If the City Council rejects designation or fails to designate a property, that property shall no longer be subject to the provisions of Sections 17.9 and 17.10 of this article.
- B.** Alteration or new construction commenced pursuant to a building permit issued prior to nomination shall not require a Certificate of Appropriateness, unless such permit has expired, been canceled or revoked. No project for which any application is pending and which has received substantive review by the Planning Board prior to nomination shall be affected by nomination. Substantive review, as used in this

paragraph, shall include workshop review of any completed application under Article 14 and Article 15 of the Land Use Code.

17.6.2 National Register of Historic Places

Upon notice to the City that a property or area has been listed in the national register after the adoption of this article, a nomination shall be deemed submitted to the Historic Preservation Board for designation of such property or area as a landmark, historic district, or historic landscape district under this article, and the procedures of Section 17.6 shall be applicable thereto.

17.6.3 Properties eligible for listing on national register or for local designation

A Certificate of Economic Hardship shall be obtained prior to demolition of any structure which has not been designated in accordance with this article but which has been determined by the Maine Historic Preservation Commission as eligible for listing in the National Register of Historic Places under the criteria established by 16 U.S.C. Section 470(a) or its successor statute and/or regulations made thereunder or which has been determined to be eligible for local listing under the criteria for designation of this article. The determination of eligibility for listing shall be made by the Planning Authority, which may refer such a determination to the Historic Preservation Board, and by the Board of Appeals if an appeal is taken. Upon determination of eligibility, the structure so determined shall also be subject to the provisions of Section 17.10 until a final decision by the City Council on designation becomes effective. If the City Council rejects designation or fails to designate a structure which has been determined to be eligible under the terms of this section, that structure shall no longer be

subject to the provisions of Sections 17.9 and 17.10 of this article.

17.7 CERTIFICATES OF APPROPRIATENESS AND NON-APPLICABILITY

17.7.1 Certificate of Appropriateness

- A.** Except as provided in Subsections 17.7.2 and 17.7.3, a Certificate of Appropriateness shall be required before the following actions affecting any landmark, contributing or noncontributing structures, objects, sites, or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work:
1. Any exterior alteration or new construction requiring a building permit from the City of Portland, including, but not limited to the following:
 - a. Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings, and cornices.
 - b. Moving of structures or objects on the same site or to another site.
 - c. Construction of rooftop additions or decks.
 - d. Alteration of accessory structures such as garages.
 - e. Porch replacement or new construction of porches.
 - f. Installation of exterior access stairs.
 - g. Window or door replacement requiring enlargement of openings.
 - h. Installation of antennas and satellite receiving dishes.
 - i. Installation of solar collectors.

2. Any exterior alteration that does not require a building permit but which involves any one of the following activities:
 - a. Installation or replacement of either roofing or gutters where the roofing or gutters are a significant and integral feature of the structure including, but not limited to, mansard roofs, cupola roofs, ornamental slate roof features, and built-in gutter systems and the installation or replacement of siding.
 - b. Window and door replacement whether or not it requires enlargement of openings.
 - c. Masonry work including, without limitation, tuckpointing, sandblasting, chemical cleaning.
 - d. Site features other than vegetation including, without limitation, fencing, walls, paving, and grading. However, required review for alterations to cemeteries designated under this article shall not include review of alterations to headstones made for the purpose of recognition of additional decedents or installation of grave markers and/or tombs.
 - e. Streetscape and pedestrian improvements within historic districts, including but not limited to installation of pedestrian lighting, alteration to road or intersection alignment, installation of public signage (other than public-safety-related signage).
 - f. Landscaping within an historic landscape district.
 - g. Exterior lighting where proposed in conjunction with commercial and

institutional signage or awnings or architectural lighting.

- h. Exterior utilities including mechanical, HVAC, plumbing, and electrical, where placed on elevations readily visible from a public way.
- 3. Installation or alteration of any exterior sign.
- 4. Any relocation of a landmark or contributing structure within a district.
- B. There shall be a rebuttable presumption that all structures within a district shall be contributing unless the designation report and Historic Resources Inventory expressly identifies otherwise. Where the Planning Authority or the owner believes that the identification is erroneous, the Historic Preservation Board shall determine whether the structure is noncontributing.

17.7.2 Exceptions to requirement of Certificate of Appropriateness

A Certificate of Appropriateness is not required:

- A. Where a Certificate of Non-Applicability has been issued within the previous 12 months.
- B. Where the work consists solely of ordinary maintenance and/or restoration, provided that there is no substitution of materials or alteration of architectural details.
- C. Where the work consists solely of emergency repair of a temporary nature.
- D. Where a Certificate of Economic Hardship has been issued and remains valid.
- E. In the case of either alteration of a structure (other than a landmark) or of new construction within a district, a Certificate of Appropriateness shall not be required where the Planning Authority determines that the

proposed exterior changes to a structure are not readily visible at pedestrian heights from any public way or public open space. Where a Certificate of Appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.

17.7.3 Alterations or new construction within historic landscape districts

A Certificate of Appropriateness shall be obtained before any site alteration or new construction within a historic landscape district may be undertaken, except where a Certificate of Non-Applicability has been issued or where construction or alteration is pursuant to a master plan approved by a prior Certificate of Appropriateness within five years of commencement and where the master plan is sufficiently detailed to guide the specific work

17.7.4 Applications for Certificate of Appropriateness

- A. Application for a Certificate of Appropriateness shall be made on a form prepared by the City and shall be submitted to the Planning Authority along with the applicable fee. Upon receipt of an application, the Planning Authority shall determine whether the application is complete. The Planning Authority shall determine whether the scope, nature, or scale of the proposed project requires review by the Historic Preservation Board or whether it is a minor or routine project that is appropriately reviewed at the administrative level.
- B. If the Planning Authority determines that the project should be reviewed by the Historic Preservation Board, the item shall be scheduled for the next available Historic Preservation

Board meeting, provided that the notice requirements of this article can be met prior to that meeting. The Planning Authority shall transmit a copy of the complete application to the Historic Preservation Board at least four days prior to their next scheduled meeting. The Planning Authority shall not issue or act upon the application until the Historic Preservation Board has completed its review and approval process. An application for a Certificate of Appropriateness shall be treated as an application for a Certificate of Economic Hardship under Section 17.9 whenever the Historic Preservation Board or the Planning Board, as applicable, determines that the proposed alteration includes any demolition which would:

1. Have the effect of causing the structure to no longer meet the criteria for designation of Section 17.4, or
 2. Materially impair the significance and integrity of the structure.
- C. Where a determination under (B) above is made by the Historic Preservation Board, the Planning Board shall review that decision as a preliminary matter, whether the Historic Preservation Board has taken final action with respect to the application or not. Upon any final determination that an application for a Certificate of Appropriateness is required to be treated as an application for a Certificate of Economic Hardship, no further action shall be taken with respect to the application until that certificate is applied for and is granted.
- D. Where the applicant has done work or caused work to be done on a structure or a property for which a Certificate of Appropriateness is sought and such work is either not done in compliance with an approval received under this article or was performed without the approvals required under this article, no application for such structure or property shall be considered by the Planning Authority or by the Historic Preservation Board until the work done without approval is brought into compliance with the requirements of this article. The Historic Preservation Board may waive this requirement if the Historic Preservation Board determines that the work does not alter the essential character of the structure or district and one or more of the following standards are also met:
1. The work was needed to bring a building into conformance with any building or safety code.
 2. The applicant can demonstrate a good faith belief that necessary approvals had been received for the work at issue prior to the commencement of the work.
 3. The applicant can demonstrate a good faith belief that the work done was not subject to review under this article.
- E. Review of any application by the Planning Authority or by the Historic Preservation Board shall not constitute waiver of any future claims by the City concerning violations and shall not stop the City from prosecuting any violation.
- F. Once a completed application has been submitted, it shall be diligently pursued. Failure of an applicant to attend two or more Historic Preservation Board meetings at which an application is scheduled for review shall cause the application to expire and to be deemed null and void, unless the Planning Authority determines that good cause is shown for the failure to attend. Where good cause is shown

for a failure to attend, the Historic Preservation Board shall table an application to a date mutually agreed upon in writing.

- G. In determining the existence of the circumstances specified in this article, the Historic Preservation Board, Planning Board, or Board of Appeals may require such additional documentation or evidence as they may respectively determine to be necessary, including plans, drawings, and elevations, and notwithstanding any time limit for action or decision specified in this article, it may continue a proceeding for such additional time as it reasonably takes an applicant or any other party to comply with the request for additional relevant documentation or evidence and may draw a negative inference with regard to the content of any material evidence not produced upon reasonable request.
- H. Prior to issuance of any Certificate of Appropriateness, any applicant shall demonstrate sufficient right, title, or interest in the property, technical capacity, and financial capacity to complete any change proposed to be undertaken under the Certificate of Appropriateness, upon reasonable request of the Planning Authority. If the Planning Authority determines that the applicant has failed or refused to demonstrate an ability to complete the proposed activity, it shall refer the issuance to the Planning Board which shall make a final determination as to whether the applicant has demonstrated a sufficient capability to complete the proposed activity. Notwithstanding any other provision of this article, the Historic Preservation Board or Planning Board may include reasonable conditions, including the provision of adequate

financial security, to ensure that actions taken under a Certificate of Appropriateness will be successfully prosecuted to completion, as approved, in a timely manner.

17.7.5 Review process for Certificate of Appropriateness

The process for review of an application for a Certificate of Appropriateness shall be as follows, except to the extent specifically provided elsewhere in this Section 17.7:

- A. **For administrative-level reviews.** An application for a Certificate of Appropriateness for installation or alteration of any exterior sign; minor or routine alterations; and temporary alterations, construction, or improvements shall be reviewed by the Planning Authority for compliance with the standards of Section 17.8 and the *Historic Resources Design Manual*. Where staff determines that such an application meets these requirements, the Certificate of Appropriateness shall be issued by staff without presentation to the Historic Preservation Board for approval. Staff shall provide the Historic Preservation Board with written notice of staff approvals on a quarterly basis.
 - 1. If staff approves an application with conditions, the applicant may request review by the Historic Preservation Board. The application shall then be subject to review by the Historic Preservation Board pursuant to Subsection 17.7.5(B).
 - 2. Staff may elect to forward to the board an application found by staff to meet review standards but for which board confirmation is sought. The application shall be placed upon the next consent

agenda of the Historic Preservation Board. Any member of the Historic Preservation Board may remove an application from the consent agenda for the purpose of giving it a public hearing.

3. If the Planning Authority determines that the application does not meet the requirements of Section 17.8 and the *Historic Resources Design Manual*, the application shall be scheduled for review by the Historic Preservation Board pursuant to Subsection 17.7.5(B), unless the applicant withdraws the application.
4. For purposes of this subsection only, temporary is defined as either a one-time occurrence that does not exceed 30 days or as an annual occurrence that does not exceed one 30-day period each year. Minor or routine alterations are defined as incidental changes or additions to a building, site features, or exterior utilities which require building permits but will neither result in substantial changes to any significant historic features nor obscure such features. In no event shall any change be deemed minor when, in the opinion of the Planning Authority, such change shall alter the historic character of the building or site.

B. For Historic Preservation Board-level reviews. The Planning Authority shall review the application and prepare a report for the Historic Preservation Board's consideration which addresses the proposed project's compliance with the review standards in Section 17.8. The Planning Authority may schedule one or more preliminary workshops on the application prior to a public hearing.

1. Following any preliminary workshop(s) and upon determination by the Historic Preservation Board that the application is complete, the application shall be scheduled for a public hearing at the next available meeting of the Historic Preservation Board which allows for adequate notice.
2. Following a public hearing, the Historic Preservation Board shall make a decision on the application.
3. The Historic Preservation Board shall enter findings of fact concerning the relationship between the application and the applicable standards of Section 17.8 immediately following a denial or conditional approval of any Certificate of Appropriateness. Written notice of the determination of staff or the Historic Preservation Board on the application, including a copy of the findings of fact, shall be sent by regular mail to the applicant.

C. Review process involving major site plans.

The process for review of an application for alteration or new construction that is also a major site plan as defined in Article 14 shall be as follows:

1. Site plan review by the Planning Board and historic preservation review by the Historic Preservation Board shall, to the extent feasible, proceed concurrently. Any proposed major site plan required to obtain a Certificate of Appropriateness under this article shall be exempt from the design standards included in Article 14, and shall comply with the applicable design standards listed within Article 17.

2. Upon receipt of the application for a Certificate of Appropriateness, the Planning Authority shall review the application and schedule a workshop for preliminary review by the Historic Preservation Board. The Planning Authority shall prepare an analysis of the application based upon the standards in Section 17.8 for consideration at the workshop. Additional workshops may be scheduled by the Historic Preservation Board with the consent of the applicant.
3. Following preliminary workshop(s) and upon determination by the Historic Preservation Board that the application is complete, the Historic Preservation Board shall conduct a public hearing and make a final decision on the application.
4. If the Historic Preservation Board finds that the application meets the applicable standards of Section 17.8, it shall issue a Certificate of Appropriateness, with or without conditions. If the action by the Historic Preservation Board is a denial or conditional approval, the Historic Preservation Board shall make findings of fact concerning the relationship between the application and the applicable standards of Section 17.8.
5. Written notice of the determination of the Historic Preservation Board on the application, including a copy of the findings of fact, if any, shall be sent by regular mail to the applicant within 14 days following its determination.

17.7.6 Issuance of Certificate of Appropriateness

- A. The Planning Authority shall issue the Certificate of Appropriateness within 14 days following a proposed affirmative decision by the Historic Preservation Board becoming final.
- B. Unless work authorized by a Certificate of Appropriateness shall be commenced within six months of the date of issuance of the Certificate of Appropriateness, the Certificate of Appropriateness shall expire and shall become null and void. The Planning Authority may approve additional extensions of this six-month period, not to exceed a total of two years, provided that a written request for extension is received prior to the expiration date of the Certificate of Appropriateness. In the event of litigation arising out of the granting of a Certificate of Appropriateness, the certificate shall remain valid until one year after the entry of final judgment in the litigation or until the end of the two-year period, whichever is later.
- C. An approval shall expire and become null and void upon the expiration of the authorization for the work, or for the development, under the applicable provisions of Chapter 6 of this Code of Ordinances or Articles 14 or 15.

17.7.7 Certificate of Non-Applicability

- A. The Planning Authority shall issue a Certificate of Non-Applicability as to property subject to this article when requested to do so when:
 1. The Planning Authority determines that none of the proposed work requires a Certificate of Appropriateness.
 2. The Planning Authority determines that all of the proposed work is ordinary

maintenance, restoration, or a combination thereof.

3. In the case of the alteration of a structure other than a landmark or of new construction within a district, where the Planning Authority determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any public way. Where a Certificate of Appropriateness is required for such changes, a Certificate of Non-Applicability shall be issued upon request for those portions of the structure or structures not visible at such heights, provided, however, this paragraph shall not apply to alteration of a landmark or to any demolition.
 4. After any appeal where the Historic Preservation Board, Planning Board or any court determines that paragraphs (1), (2) or (3) of this subsection are applicable.
- B. The Planning Authority shall act upon any application for a Certificate of Non-Applicability within 14 days of receiving a complete written description of all work to be undertaken.

17.7.8 Amendments to approved certificates of appropriateness

- A. If at any time before or during work approved under the procedures set forth in this Section 17.7 the applicant requests minor amendments to approved work, the Planning Authority may approve such minor amendments under the procedures set forth in Subsection 17.7.5, provided that such amendments will not result in a waiver or substantial alteration of the approval or any condition attached to the approval. The applicant shall supply a written statement of the proposed amendment and

amended plans or drawings to the Planning Authority. The decision of the Planning Authority as to whether an amendment may be reviewed under this subsection shall be final.

17.7.9 Review process for demolition of landmarks or contributing structures within a district

- A. Any applicant seeking demolition of a landmark or contributing structure must apply for a Certificate of Economic Hardship to the Board of Appeals in accordance with Section 17.9 of this article. Said application must be approved by the Board of Appeals before a demolition permit can be issued.
- B. Any applicant seeking demolition of a noncontributing building as defined in this article may apply directly for a demolition permit without receiving approval from the Historic Preservation Board or a Certificate of Economic Hardship from the Board of Appeals.
- C. Any applicant seeking demolition of a portion of a contributing or landmark structure may request that the Historic Preservation Board make a determination as to whether such portion of the structure is noncontributing based on the definition of that classification contained in this article. If the board determines the portion to be noncontributing, the applicant may apply directly for a demolition permit.

17.8 STANDARDS FOR REVIEW OF APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

17.8.1 *Historic Resources Design Manual*

- A. The Historic Preservation Board may provide further guidance on how to meet the standards

of this article in the *Historic Resources Design Manual*, which shall supplement this article. The *Historic Resources Design Manual* may include but need not be limited to maps and descriptions of landmarks and districts, a listing of properties which have been determined to be eligible for listing on the national register or for local designation, a glossary of terms and architectural styles, descriptions, and illustrations of how the standards of this article will be interpreted, and all designation ordinances, reports, and design guidelines. All provisions of the *Historic Resources Design Manual* shall be consistent with the standards of this article and any designation ordinance adopted hereunder.

- B. Amendments to the *Historic Resources Design Manual* shall be forwarded to the City Council as a communication and shall become effective 45 days from the date on which said amendments are sent to the City Council, unless the City Council takes official action disapproving the amendments, in whole or in part, prior to the expiration of the 45-day period.
- C. The *Historic Resources Design Manual* shall be maintained by the Planning Authority.

17.8.2 Standards for review of alteration

In considering an application for a Certificate of Appropriateness involving alteration, the Historic Preservation Board and the Planning Board shall apply the following general standards, as further described in the *Historic Resources Design Manual*, and any design guidelines accompanying the specific designation:

- A. Every reasonable effort shall be made to provide a compatible use for a property which

requires minimal alteration to the character defining features of the structure, object, or site and its environment or to use a property for its originally intended purpose.

- B. The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- C. All sites, structures, and objects shall be recognized as products of their own time, place, and use. Alterations that have no historical basis or create a false sense of historical development, such as adding conjectural features or elements from other properties, shall be discouraged.
- D. Changes which may have taken place in the course of time are evidence of the history and development of a structure, object, or site and its environment. Changes that have acquired significance in their own right shall not be destroyed.
- E. Distinctive features, finishes, and construction techniques or examples of skilled craftsmanship which characterize a structure, object, or site shall be treated with sensitivity.
- F. Deteriorated historic features shall be repaired rather than replaced wherever feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the feature being replaced in composition, design, texture, and other visual qualities and, where possible, materials. Repair or replacement of missing historic features should be based on accurate duplications of features, substantiated by documentary, physical, or pictorial evidence

rather than on conjectural designs or the availability of different architectural elements from other structures or objects.

- G. The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.
- H. Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
- I. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
- J. Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

17.8.3 Standards for review of new construction

In considering an application for a Certificate of Appropriateness involving new construction, the Historic Preservation Board and the Planning Board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the

following standards are further described in the *Historic Resources Design Manual* and shall guide the board in its review.

A. Scale and form

1. *Height.* The proposed height shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways, and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches, and balconies shall be visually compatible with the structures, public ways, and places to which they are visually related.
6. *Applicability to Congress Street Historic District.* In the Congress Street Historic District, for new construction within the B-3 zone, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the B-3 zone.
7. *Applicability to India Street Historic District.* For new construction within the

- India Street Historic District, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.
8. *Applicability to the Portland Company Historic District.* For new construction within the Portland Company Historic District, the height requirements of the B-6 Building Height Overlay & Building Envelopes map shall be controlling and the Historic Preservation Board shall not impose conditions more restrictive than the building height requirements of the B-6 zone.

B. Composition of principal facades

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways, and places to which the building is visually related.
2. *Rhythm of solids to voids in facades.* The relationship of solids to voids in the facade of a structure shall be visually compatible with structures, public ways, and places to which it is visually related.
3. *Rhythm of entrance porch and other projections.* The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways, and places to which they are visually related.
4. *Relationship of materials.* The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant

materials used in the structures to which they are visually related.

5. *Signs.* Any new sign, and any change in the appearance of an existing sign located on a landmark, within a historic district, or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

C. Relationship to street

1. *Walls of continuity.* Facades and site structures, such as masonry walls, fences, and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways, and places to which such elements are visually related.
2. *Rhythm of spacing and structures on streets.* The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways, and places to which it is visually related.
3. *Directional expression of principal elevation.* A structure shall be visually compatible with the structures, public ways, and places to which it is visually related in its directional character, whether this be vertical character, horizontal character, or nondirectional character.
4. *Streetscape, pedestrian improvements.* Streetscape and pedestrian improvements and any change in the appearance thereof

located adjacent to or on a landmark, within a historic district, or within a historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

D. Other standards

1. *Compatible use.* Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character defining features of the structure, object, or site and its environment or to use a property for its originally intended purpose.
2. *Distinguishing original character.* The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The alteration of any historic material or distinctive architectural features should be avoided when possible.
3. *Archeological resources.* Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
4. *Contemporary design.* Contemporary design for additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and

shall be compatible with the size, scale, material, and character of the property, neighborhood and environment.

5. *Additions.* Wherever possible, new additions to structures and objects shall be undertaken in such a manner that, if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

17.8.4 Standards for review of alterations to or redesign of noncontributing structures

- A. In considering an application for a Certificate of Appropriateness involving alteration(s) to a noncontributing structure the standards for review of alterations set forth in Subsection 17.8.2 shall apply as applicable. The intent of the review shall be to ensure no further erosion of any existing architectural character of the subject structure determined to be significant by the Planning Authority or Historic Preservation Board and, where practicable, to guide projects toward a more compatible relationship with the surrounding context.
- B. In considering an application for a Certificate of Appropriateness involving comprehensive redesign of a noncontributing structure, the standards for review of construction set forth in Subsection 17.8.3 shall apply.

17.8.5 Standards for review of relocation

In acting upon an application for a Certificate of Appropriateness involving relocation, the Historic Preservation Board and the Planning Board shall apply the following general standards and any design guidelines in the ordinance designating the landmark or district:

- A. Whether the historic or urban design character and aesthetic interest of the structure or object contribute to its present setting.
- B. If located within a district, whether there are definite plans for the area to be vacated and what the effect of those plans is on the character of the surrounding area. In such cases, consideration of additional design guidelines for construction to be imposed as a condition of approval is appropriate.
- C. Whether the relocation of the structure or object can be accomplished without significant damage to its physical integrity.
- D. Whether the proposed relocation area is compatible with the cultural, historical or architectural character of the structure or object.

17.8.6 Standards for review of signage

In considering an application for a Certificate of Appropriateness involving the installation or modification of sign(s), including awning(s) which incorporate signage, signs shall be compatible with the subject building and its surrounding context as detailed in the signage design guidelines included in the *Historic Resources Design Manual*. If there is a conflict between this standard and the requirements of Article 20, the stricter standard shall apply.

17.9 CERTIFICATE OF ECONOMIC HARDSHIP

17.9.1 Applicability

- A. Any applicant seeking demolition of a landmark or a contributing structure within a district may make application for a Certificate of Economic Hardship from the Board of Appeals. The application shall be submitted to the Planning Authority, together with the applicable fee.

- B. The Planning Authority shall transmit a copy of the application to the Board of Appeals, with copies to the Planning Board and the Historic Preservation Board, within 14 days following receipt of a properly completed application.

17.9.2 Standard to be applied

- A. The Board of Appeals shall approve an application for a Certificate of Economic Hardship only upon a determination that the denial of approval of the proposed activity or of the proposed demolition will result in the loss of all reasonable use of the structure as required by Subsections 17.9.5 and 17.9.7.
- B. In applying this standard, the Board of Appeals shall consider among other things any evidence presented concerning the following:
 1. Any opinions from a licensed engineer or architect with experience in renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation.
 2. Any estimates of the cost of the proposed alteration, construction, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Planning Board for changes necessary for it to be approved.
 3. Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition, or removal; after any expenditures necessary to comply with the recommendations of the Planning Board for changes necessary for it to approve a Certificate of Appropriateness;

and in the case of a proposed demolition, after renovation of the existing structure for continued use.

4. In the case of a proposed demolition, any estimates from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation, or rehabilitation of any existing structures or objects.

17.9.3 Information to be supplied by applicant

A. The applicant shall submit by affidavit the following information for an application to be considered to be complete:

1. The assessed value of the property and/or the structure in the case of a demolition for the two most recent assessments.
2. Real property taxes paid for the previous two years.
3. The amount paid for the property by the owner, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
4. The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two years.
5. All appraisals obtained within the previous two years by the owner or applicant in connection with purchase, offerings for sale, financing, or ownership of the property, or state that none were obtained.
6. All listings of the property for sale or rent, price asked and offers received, if any,

within the previous four years, or state that none were obtained.

7. All studies commissioned by the owner as to profitable renovation, rehabilitation, or utilization of any structures or objects on the property for alternative use, or a statement that none were obtained.
8. For income-producing property, itemized income and expense statements from the property for the previous two years.
9. Estimate of the cost of the proposed alteration, construction, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Planning Board for changes necessary for it to approve a Certificate of Appropriateness.
10. Form of ownership or operation of the property, whether sole proprietorship, for profit or not for profit corporation, limited partnership, joint venture, or other.

B. In the event that the information required to be submitted by the applicant is not reasonably available, the applicant shall file with the affidavit a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

C. Notwithstanding the submission of the above information, the Board of Appeals may require additional evidence as provided in Subsection 17.7.4(G).

17.9.4 Public hearing

A. The Board of Appeals shall hold a public hearing on the application within 30 days following receipt of the completed application form. Where the application requests the demolition of a landmark or a contributing

structure within a district, the public hearing shall not be held less than 90 days following receipt of the completed application, unless the applicant makes a clear showing that the delay will result in undue hardship of a unique or exceptional character which could not reasonably be or have been avoided. Upon such a showing, the Planning Authority may waive all or any part of the 90-day period and schedule the hearing before the board. Undue hardship shall not include mere inconvenience or incidental financial loss. No such waiver shall be granted without the Planning Authority giving best practical notice to all persons entitled to notice of the hearing.

- B.** Where the application requests the demolition of a landmark or a contributing structure within a district, the Planning Authority shall promptly notify any persons interested in historic preservation, who have registered in writing with him or her, give notice by mail to all owners of property within 500 feet of the structure, and shall require that the applicant immediately place a notice, to be supplied by the building official, in a prominent place on the structure and to maintain it there at all times during the pendency of the demolition application. The notice shall state that the structure has been proposed to be demolished by its owner and provide contact information for further information. The failure to give any notice required hereunder shall not affect the validity of any action taken by the Planning Authority or the Board of Appeals.
- C.** The Planning Board may provide a report or any other information, documentation or evidence or request the Historic Preservation Board to assist the Board of Appeals in

considering the extent of variance necessary, an appropriate incentive plan, or reasonable condition to be imposed.

- D.** The Board of Appeals may continue a proceeding for such additional time as it reasonably takes an applicant, any other interested person, the Historic Preservation Board, or the Planning Board to comply with a request for additional information or evidence. The applicant shall be afforded the right to present rebuttal evidence.

17.9.5 Determination by the Board of Appeals

- A.** The determination by the Board of Appeals shall be made within 45 days following close of the public hearing and submission of all information, documentation, or evidence requested by the board. The determination shall be accompanied by findings of fact.
- B.** The Board of Appeals shall not grant approval of an application involving demolition unless the board determines, upon clear and convincing evidence, that one or more of the following circumstances apply:
 - 1. The structure is not subject to this article.
 - 2. Denial of a demolition permit would result in a hardship to the property owner so great that it would effectively deprive the owner of all reasonable use of the structure. The extent of any demolition permitted shall be limited to the amount necessary to allow reasonable use of the structure. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts or neglect of the owner or his

predecessors in title occurring in whole or in part after August 1, 1988.

17.9.6 Disapproval by Board of Appeals

If the determination of the Board of Appeals is to disapprove the application for a Certificate of Economic Hardship, the applicant shall be notified within five business days. The notice shall include a copy of the findings of fact and report.

17.9.7 Determination of no reasonable use

- A.** If the determination of the Board of Appeals is that the denial of the Certificate of Appropriateness has resulted in the denial of all reasonable use of the structure, or the entire property in the case of new construction, then the Certificate of Economic Hardship shall be issued by the Planning Authority 90 days following the determination unless during that time the City Council approves an incentive plan pursuant to Subsection 17.9.8.
- B.** A copy of the determination of the Board of Appeals, together with the findings of fact, shall be mailed to the applicant and filed with the City Clerk, the Planning Board, and the Historic Preservation Board within 14 days following the determination of economic hardship.

17.9.8 Incentive plan

The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The Planning Board, in cooperation with the Historic Preservation Board and the owner, may prepare a report and recommend to the Board of Appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to,

loans or grants from the City of Portland or other public or private sources; acquisition by purchase or eminent domain; building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation, or renovation; changes in applicable zoning regulations, including a transfer of development rights; or relaxation of the provisions of this article sufficient to allow reasonable use of the structure.

17.9.9 City Council consideration of incentive plan

- A.** Upon receipt of a report from the Board of Appeals recommending an incentive plan to assure reasonable use of the property, the City Council shall give prompt consideration to the determination of economic hardship and the report of the board, including the recommended incentive plan. The City Council shall approve or disapprove the incentive plan determined by the Board of Appeals to allow reasonable use of the structure within 90 days following the determination by the Board of Appeals.
- B.** A copy of the ordinance enacted by the City Council, together with the incentive plan, if any, shall be mailed to the applicant and transmitted to the Board of Appeals, the Planning Board, and the Historic Preservation Board within five business days following the enactment of the ordinance.

17.9.10 Issuance of Certificate of Economic Hardship

- A.** Upon receipt by the Board of Appeals of a copy of City Council action disapproving an incentive plan, or upon failure of the City Council to act to either approve or disapprove an incentive

plan within the time specified, the Board of Appeals shall approve a Certificate of Economic Hardship to the applicant within 30 days. The certificate may be subject to conditions including design guidelines for subsequent new construction not inconsistent with the standards set forth in this article and the *Historic Resources Design Manual*. The Certificate of Economic Hardship shall be valid for a period of 120 days from approval by the Board of Appeals, except as provided in Subsection 17.9.7 where an incentive plan has been proposed. Certificates of Economic Hardship shall not be transferable from the applicant to another subsequent owner of the same property.

- B. Upon presentation by the applicant of a valid Certificate of Economic Hardship to the Planning Authority, the Certificate of Appropriateness shall be issued to the applicant within 14 days.

17.10 MAINTENANCE

17.10.1 Preservation of protected structures

- A. All landmarks, and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:
 1. Deteriorated or inadequate foundation which jeopardizes its structural integrity.
 2. Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.

3. Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration which jeopardize its structural integrity.
4. Structural members of ceilings and roofs, or other horizontal structural members, which sag, split, or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
5. Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity.
6. Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation.

- B. The owner or such other person shall repair such building, object, or structure within a specified period of receipt of a written order to correct defects or repairs to any structure as provided by (A) above, so that such structure shall be preserved and protected in accordance with the purposes of this article.
- C. Any such order shall be in writing, shall state the actions to be taken with reasonable particularity and shall specify dates for compliance, which may be extended by the Planning Authority for reasonable periods to allow the owner to secure financing, labor or materials.

17.11 PENALTIES

17.11.1 Fines for violation

Failure to perform any act required by this article or performance of any act prohibited by this article or of any conditions or any certificate issued hereunder shall constitute a violation and be subject to a fine as provided in 30 A.M.R.S. §4452. Each day on which there is failure to perform a required act or on which a violation exists shall constitute a separate violation for purposes of this section.

17.11.2 Additional penalties for willful violation or gross negligence

A. In addition to the penalties authorized by Subsection 17.11.1, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

1. No permit shall be issued under Chapter 6 of this Code of Ordinances for any alteration or new construction affecting such property for a period of five years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the Planning Authority that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.
2. For a period of 25 years, any alteration or new construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural, or archaeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.

3. As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore, or replicate the structure or object on the property.

B. Paragraphs (A)(1) and (2) above shall not apply to violations which are limited to noncontributing structures.

17.11.3 Other remedies

Notwithstanding the provisions of Subsections 17.11.1 and 17.11.2, the City may institute appropriate proceedings in law and equity to prevent or remedy any violation of this article.

17.11.4 Liberal construction of article

This article shall be liberally applied and construed to effectuate the purpose of preservation set forth in Section 17.1.

17.11.5 Exception for dangerous buildings

This article shall not apply to any structure which has been ordered demolished by the municipal officers or a court, in accordance with 17 M.R.S. § 2851 et seq., its equivalent, as it may be amended from time to time, or to any structure which has been partially destroyed and is determined by the Planning Authority to represent an immediate hazard to the public health or safety, which hazard cannot be abated by reasonable measures specified by the Planning Authority, including without limitation securing apertures and/or erecting fencing.

17.12 APPEALS

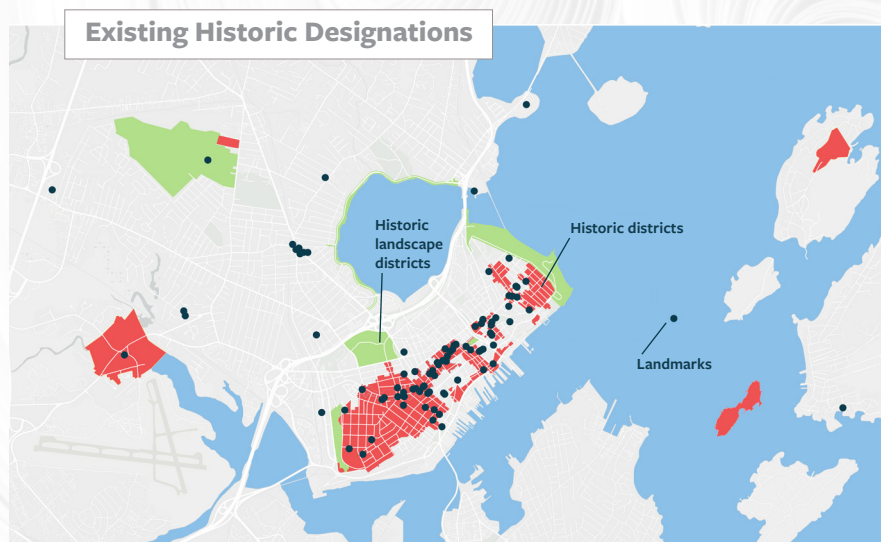
The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of any

application associated with this article, may appeal that decision in accordance with Article 2.

Historic Preservation Article Guide

The historic preservation article of the land use code helps the City of Portland identify and preserve significant historic places. The article lays out a process for designating properties and sites as historic, and establishes standards for the City's review of changes to these properties. The draft revisions focus on consolidating related sections, clarifying procedures, and simplifying long-standing language, with the goals of making the article easier for all users to understand while supporting the rehabilitation of historic resources and compatible infill development.

What is proposed related to historic designations?



- 1 **Clarified the types of historic designations:** landmarks, historic districts, and historic landscape districts, and the basis for "contributing" classifications within those designations
- 2 **Clarified the historic designation process,** including process for amendments
- 3 **Clarified protections** for properties listed or eligible for National Register designation
- 4 **Reorganized provisions** to more clearly convey intent

What are the proposed changes for reviews?

Simplified the historic preservation review process by:

- 1 Establishing clear thresholds for administrative and Historic Preservation Board review
- 2 Adding exemptions for projects that advance other City goals (e.g. roof-mounted solar, new public art, and work in the right-of-way)
- 3 Consolidating and clarifying language related to review process
- 4 Extending duration of approvals to provide greater flexibility

HP review

Current

The Planning Authority shall determine whether the scope, nature, or scale of the proposed project requires review by the Historic Preservation Board or whether it is a minor or routine project that is appropriately reviewed at the administrative level.

HP review

Draft

	Administrative	Historic Preservation Board
 New construction + additions	< 500 SF	> 500 SF
 Alterations	Small + routine changes Changes affecting: • < 25% of facade of historic structure • < 40% of facade of other structures	Changes affecting: • > 25% of facade of historic structure • > 40% of facade of other structures
 Site alterations + signs	All	

1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this chapter of the City of Portland Code of Ordinances is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

1.2 ZONING MAP

The City of Portland zoning map is incorporated by reference.

1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, and the relationship of development to the public realm, Portland's open spaces, and the environment.

1.4 APPLICABILITY

This Land Use Code applies to all land, uses, and structures within the corporate limits of the City of Portland. No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be sold, leased, conveyed, used, developed, or altered except in conformity with the provisions of this Land Use Code.

1.5 ENFORCEMENT

1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer 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 Land Use Code.

1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Chapter 1, Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

1.6 RELATIONSHIP WITH OTHER LAWS

1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this code, the more restrictive provision shall control.

1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

1.6.4 Comprehensive Plan

The City's adopted Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current adopted Comprehensive Plan.

1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

1.6.6 Private agreement

This Land Use Code does not nullify any private agreement or covenant. However, where this code is more restrictive than a private agreement or covenant, this code controls. The City does not enforce private agreements.

1.7 DELEGATION OF AUTHORITY

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom they have authority.

1.8 RULES OF INTERPRETATION

1.8.1 Meaning of words and terms

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For

words or terms not specifically defined in this Land Use Code, they are interpreted by their common dictionary meaning or customary usage consistent with their context.

1.8.2 Graphics and illustrations

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text shall control.

1.8.3 Lists and examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as”, or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

1.8.4 Time

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be completed. Business days shall be interpreted as days on which the City of Portland is open for business.

1.8.5 Obligatory terms and conjunctions

The terms in the text of the Land Use Code shall be interpreted in accordance with the following rules of construction:

- A.** The terms “must”, “shall”, and “will” are mandatory terms that express a requirement or impose an obligation.
- B.** The terms “must not”, “shall not”, “will not”, and “may not” express a prohibition.

- C. The term “should” expresses a recommendation or suggestion and does not express a requirement or imposition.
- D. The term “may” is permissive and does not express a requirement or imposition.
- E. The conjunction “and” indicates that all connected words or provisions apply.
- F. The conjunction “or” indicates that the connected words or provisions may apply singly or in any combination.
- G. The conjunction “either [...] or” indicates that the connected words or provisions apply singly, but not in combination.

1.8.6 Gender

Words denoting one gender apply to all genders.

1.8.7 Abbreviations

Building Authority. Either the Department of Permitting and Inspections, its director, or their designee.

Council. The Portland City Council.

Planning Authority. Either the Department of Planning and Urban Development, its director, or their designee.

Public Works Authority. Either the Department of Public Works, its director, or their designee.

1.9 SUCCESSIVE APPLICATIONS

Whenever any application, appeal, or other request filed pursuant to this Land Use Code has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such

denial unless, in the opinion of the authority or board before which it is brought, there has been a substantial change in circumstance or substantial new evidence is available.

1.10 AMENDMENTS

1.10.1 Authority

The City Council may amend this Land Use Code and the zoning map incorporated herein.

1.10.2 Procedure

- A. An application for a text or zoning map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The fee for text or zoning map amendment applications may be waived or reduced by the Planning Authority in the case of an application submitted by a governmental body or where an applicant can establish financial hardship. If a text or zoning map amendment application is withdrawn by an applicant prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of half of the amount of the application fee will be made to the applicant by the City provided that all costs incurred by the City have been paid in full by the applicant.
- B. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area. The notice hereunder shall include a brief

description of the application, the address or location of the property involved, and contact information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- C. A private applicant for a map amendment that would permit a development subject to major site plan review shall conduct neighborhood outreach according to the provisions for neighborhood meetings under Article 14.
- D. The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- E. The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- F. The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or zoning map.

1.10.3 Review fees

The applicant shall pay a fee to cover the professional and administrative costs for review and analysis associated with the amendment, including but not limited to planning, legal, engineering, or other services. The fee shall be based on the hours of review and processing time and the prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant.

1.10.4 Review standards

Except as otherwise required by law, amendments to the City's Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

1.11 TRANSITION RULES

A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6. A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a nonconforming use and is controlled by the provisions of Article 4.

2 ADMINISTRATION

2.1 PLANNING BOARD

2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the City. Members shall serve without compensation.

2.1.2 Appointments

- A. Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly appointed and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term. Members may serve for three consecutive three-year terms.
- B. Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing.

2.1.4 Officers

- A. Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. The chair may administer oaths.
- B. Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.
- C. Pro tempore officers.** In the absence of both the chair and the vice chair, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the vice chair's absence. In the absence of the vice chair, or when the vice chair is serving as chair, the board shall elect a vice chair pro tempore from among its number and the vice chair pro tempore shall have all the powers of the vice chair during the vice chair's absence or service as chair.

2.1.5 Committees

The chair of the Planning Board shall assign the members of the board to such regular and special committees as may be established by the board. Such committees shall have no final authority but shall assist the board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee

meetings deliberative in nature shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq.

2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The vote of a majority of the members present shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks at any one time. The Planning Authority shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

2.1.7 Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which they have an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be recused from the matter.

2.1.8 Meetings and procedures

A. Meetings. Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the board. Special meetings may be called by the chair or any four members of the Board or at the request of the City Council.

1. *Workshops.* Workshops of the Planning Board or any of its committees may be held at the call of the board or committee

chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, their staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1 M.R.S. § 401 et seq. shall be informational only and shall not result in final decisions on any matter.

2. *Public hearings.* Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the board.

B. Notice. The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. *Site plan and subdivision.* Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property.
2. *Land Use Code or zoning map amendment.* Notice of public hearing shall be publicly

posted in the municipal office at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12 days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 13 calendar days in advance of any workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.

3. *Contract or conditional zoning.* Notice of public hearing shall be posted in the City Clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two times, the date of the first publication to be at least seven days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

The cost of noticing shall be charged to the applicant.

- C. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and

this article. Such rules shall be filed with the Planning Authority and with the City Clerk. Any and all rule changes shall be placed on a City Council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of the date of filing with the City Clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in Subsection 2.1.8(A)(1), all meetings, hearings, and deliberations of the Planning Board and its committees shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

- D. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of their staff who shall attend all Planning Board proceedings. The staff shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or their absence or failure to vote, and shall maintain the permanent records and decisions of all Board meetings, hearings, and proceedings and all correspondence of the Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

2.1.9 Record and decisions

- A. **Record.** The minutes of the staff, and the transcript if one is made, and all exhibits,

papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.

- B. Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall provide notice of any decision of the Planning Board to the applicant.

2.1.10 Jurisdiction and authority

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the City and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- A.** To prepare and recommend a Comprehensive Plan to the City Council.
- B.** To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan.
- C.** To aid and assist the City Council and departments and agencies of the City in implementing general plans and in planning, developing, and completing specific projects.
- D.** To hear, review, and approve, conditionally approve, or deny major site plans.
- E.** To hear, review, and approve, conditionally approve, or deny applications for subdivision approval.
- F.** To hear, review, and approve or deny applications for conditional uses as specified in Article 6.
- G.** To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code.
- H.** To review and offer its recommendations to the City Council on certain public projects.
- I.** To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas.
- J.** To prepare and offer its recommendations to the City Council with regard to the City's annual Capital Improvement Program.
- K.** Upon reasonable request, to make its special knowledge and expertise available to any official, department, board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City.
- L.** To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable.
- M.** To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper, provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes by the City Council.
- N.** To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances.

- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority.
- P. To approve, following a public hearing and at the recommendation of the Public Works Authority and the Planning Authority, *Technical Manual* and *Design Manual* standards, provided that such standards shall be additional to and consistent with the provisions of this Land Use Code, necessary and reasonable, and in accordance with sound engineering and urban design practice.

2.1.11 Administrative appeals

- A. **Application procedures.** An appeal may be taken to the Planning Board by any person affected by a final decision of the Planning Authority except as provided elsewhere in this Land Use Code. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority an application for appeal specifying the grounds thereof. The application shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany each application. The Planning Authority shall forthwith transmit to the Planning Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Planning Board in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the Planning Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the

statutes of the state. The failure of the board to act within 30 days shall be deemed a denial of the appeal unless mutually extended in writing by the appellant and the board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.

- D. **Conditions and limitations.** Any right granted by the reviewing board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.1.12 Planning Board appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

2.2 HISTORIC PRESERVATION BOARD

2.2.1 Composition

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. Members shall not be officers or employees of the City. Members shall have demonstrated interest, knowledge, ability, experience, or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

2.2.2 Appointments

- A. **Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not more than three members expire in any

calendar year. Members may serve for three consecutive three-year terms.

- B. Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60 days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

2.2.4 Officers

- A. Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.
- C. Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.
- D. Pro tempore officers.** In the absence of both the chair and the vice chair, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have

all the powers of the chair during the chair's and the vice chair's absence. In the absence of the vice chair, or when the vice chair is serving as chair, the board shall elect a vice chair pro tempore from among its number and the vice chair pro tempore shall have all the powers of the vice chair during the vice chair's absence or service as chair.

2.2.5 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Historic Preservation Board without a quorum, consisting of four members, being present. The vote of a majority of the members present shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned for a period not less exceeding three weeks at any one time. The Planning Authority shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of the adjournment.

2.2.6 Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which they have an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be recused from the matter.

2.2.7 Meetings and procedures

- A. Meetings.** Regular meetings of the Historic Preservation Board shall be held no less



frequently than monthly. Special meetings may be called by the chair, any four members of the board, or at the request of the Planning Board or City Council.

1. *Workshops.* Workshops of the Historic Preservation Board or any of its committees may be held at the call of the board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, their staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Historic Preservation Board. Such meetings, unless open to the public as provided in Title 1 M.R.S. § 401 et seq., shall be informational only and shall not result in final decisions on any matter.
2. *Public hearings.* Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Historic Preservation Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the board.

B. Notice. The Planning Authority shall give notice of the time and place of Historic Preservation Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. *Landmark, historic district, or historic landscape district nomination.* Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to any workshop or

hearing. Notice shall be sent by regular United States mail to the applicant and to the owner(s) of the subject property or properties at least 10 calendar days in advance of any workshop or hearing date.

2. *Certificate of Appropriateness review.* Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
3. *Major site plan review.* For alteration or new construction that is classified as a major site plan under Article 13, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.
4. The cost of noticing shall be charged to the applicant.

C. Procedures. The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with the statutes of the state and this article. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of the date of filing with the City Clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in Subsection 2.2.7, all meetings, hearings, and deliberations of the Historic Preservation Board and its committees shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq. Testimony at any hearing

may be required by the Historic Preservation Board to be given under oath.

2.2.8 Record and decisions

- A. Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Historic Preservation Board and the decision of the Board shall constitute the record.
- B. Decision.** Every final decision of the Historic Preservation Board and every recommendation of the Historic Preservation Board to the Planning Board or City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall provide notice of any decision of the Historic Preservation Board to the applicant.

2.2.9 Jurisdiction and authority

The Historic Preservation Board shall have the following jurisdiction and authority:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally, and archaeologically significant areas, sites, structures, and objects.
- B.** To review areas, sites, structures, and objects nominated for local historic designation, and to make recommendations to the Planning Board and City Council for their designation as landmarks, historic districts, and historic landscape districts as applicable.
- C.** To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission, and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- D.** To hold workshops and public hearings to review applications for certificates of appropriateness affecting historically designated properties and to approve or deny certificates of appropriateness.
- E.** To review applications for certificates of economic hardship and to issue or deny certificates of economic hardship. To develop design guidelines affecting landmarks or districts.
- F.** To assist the Planning Board and City Council in the development of a preservation component in the Comprehensive Plan of the City of Portland.
- G.** To make recommendations to the Planning Board concerning any amendments to the Land Use Code appropriate for the protection and continued use of historically-designated properties.
- H.** As requested, to provide comment, recommendations, or testimony to the Planning Board or City Council on matters pertaining to historic preservation in Portland.

2.2.10 Administrative appeals

- A. Application procedures.** An appeal may be taken to the Historic Preservation Board by any person affected by a decision of the Planning Authority relative to Article 16. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority an application for appeal specifying the grounds thereof. The application shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing

fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany the application. The Planning Authority shall forthwith transmit to the Historic Preservation Board all of the papers constituting the record upon which the action appealed from was taken.

- B. Standard of review.** The standard of review for appeals pursuant to this section shall be de novo. The appellant shall bear the burden of proof.
- B. Public hearing.** A public hearing shall be set, advertised, and conducted by the Historic Preservation Board in accordance with the provisions of this article.
- C. Action.** Within 30 days following the close of the public hearing, the Historic Preservation Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the board to act within 30 days shall be deemed a denial of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.
- D. Conditions and limitations.** Any right granted by the board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.2.11 Historic Preservation Board appeal

- A. Historic Preservation Board decision.** An appeal from any final decision of the Historic Preservation Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Planning Board, adhering to the requirements of Subsection 2.1.11 of this article.

- B.** The Planning Board shall deny the appeal unless it finds that the action of the Historic Preservation board was arbitrary or capricious or was not based on substantial evidence. Review by the Planning Board under this subsection is intended to be appellate in nature. Except where the Planning Board determines that injustice would result, the Planning Board shall determine the appeal without considering any facts or arguments which were not presented to the Historic Preservation Board. Where the Planning Board finds it necessary to consider such new evidence in order to do substantial justice, it shall remand the matter to the Historic Preservation Board for further consideration, unless it determines that the resulting delay is likely to result in undue hardship to the applicant.
- C. Planning Board decision.** The Planning Board's decision on an appeal from a decision of the Historic Preservation Board shall be final with respect to the application or matter initially presented to the Historic Preservation Board. An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the board is limited to the making of a recommendation.

2.3 ZONING BOARD OF APPEALS

2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of the City or any of its agencies or departments. Members shall serve without compensation.

2.3.2 Appointments

- A. Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall serve until their successors are duly elected and qualified provided, however, that such service shall not extend to over 120 days after expiration of their term. Members may serve for three consecutive three-year terms.
- B. Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing.

2.3.4 Officers

- A. Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. In the absence of the chair, the secretary shall act

as chair and shall have all the powers of the chair.

- B. Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. The secretary shall fulfill the duties provided by statute and this article and have such other duties as may be provided by the rules of the board.
- C. Pro tempore officers.** In the absence of both the chair and the secretary, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving as chair, the board shall elect a secretary pro tempore from among its number and the secretary pro tempore shall have all the powers of the secretary during the secretary's absence or service as chair.

2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at least four members of the board shall be necessary to grant any request or application or to sustain any appeal. The vote of a majority of the members present shall be necessary to authorize any action by the board.

2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which they have an interest. Any question of whether a member has a conflict of interest sufficient to disqualify them shall be decided by a majority vote of the members, except the member

who is being challenged. Where such a vote results in a tie, the challenged member shall be deemed disqualified.

2.3.7 Meetings and procedures

- A. Staff.** The Building Authority or their designee shall serve as staff to the Board of Appeals.
- B. Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the board. Special meetings shall be called by the chair at the request of any two members of the board or at the request of the City Council. All meetings and hearings of the board shall be open to the public. For all matters properly brought before the Board of Appeals, the board shall select a reasonable time and place for a public hearing following the submission of the subject application.
- C. Notice.** The Building Authority shall give notice of public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:
 - 1. In all cases, to the petitioner.
 - 2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant.
 - 3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning Board and City Council by reasonable means.
 - 4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine Department of Environmental Protection at least 20 days prior to action by the board. Any comments received from the Commissioner or their designee prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
 - 5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract.
 - 6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property.
 - 7. For purposes of this subsection, the owners of property shall be considered to be the parties listed by the Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the board.
 - 8. The cost of noticing shall be charged to the applicant.
- D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes

of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the board upon good cause being shown.

1. Conduct of hearings.

- a.** Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.
- b.** The applicant and any abutter or similar person with standing shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.

- 2.** All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.

2.3.8 Records and decisions

- A. Record.** The recording of testimony, if any, and all exhibits, papers, applications, and requests filed in any proceeding before the Board of Appeals and the decision of the board shall constitute the record.

- B. Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall hand deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council within seven days of such decision, and shall also file the decision with the City Clerk.

2.3.9 Jurisdiction and authority

The Board of Appeals shall have the following jurisdiction and authority:

- A.** To hear and decide appeals from the granting or denial of any permit required by Chapter 6, Article 11, or Chapter 10 of the City of Portland Code of Ordinances.
- B.** To hear and decide appeals from any decision or order made by the Building Authority pursuant to the provisions of this Land Use Code or any other chapter of the City of Portland Code of Ordinances, except that decisions relating to enforcement of the Shoreland Zone provisions of this chapter may not be appealed to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B and 30-A M.R.S. §§ 2691 & 4483.
- C.** To review interpretations of the Zoning Administrator or their designee, except that decisions on such interpretations shall be advisory only and shall not be appealable.

- D. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to terms related to use; dwelling unit conversion; space and bulk, such as lot size, density, and setbacks; parking; loading; and signs.
- E. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeals

- A. **Application procedures.** Application for any appeal to the board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Subsection 2.3.7.
- C. **Standard of review.** The standard of review for appeals pursuant to Subsections 2.3.9(A), (B), and (C) shall be de novo. The appellant shall bear the burden of proof.
- D. **Conditions and limitations on rights granted by appeal.** Any right granted by the Board of Appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.3.11 Variances

A. Application procedures

- 1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by

the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.

- 2. A public hearing shall be set, advertised, and conducted by the Board of Appeals in accordance with Subsection 2.3.7.
- 3. All decisions by the board shall be rendered in a manner and form not inconsistent with the statutes of this state.
- 4. When a decision affects property located within the Shoreland Overlay Zone, the Zoning Board of Appeals shall cause written notice of its decision to be mailed or hand-delivered to the Department of Environmental Protection within seven days of the board's decision.

B. Undue hardship variance. An undue hardship variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his or her property would cause undue hardship. The words "undue hardship" as used in this subsection mean the following:

- 1. The land in question cannot yield a reasonable return unless a variance is granted.
- 2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
- 3. The granting of a variance will not alter the essential character of the locality.
- 4. The hardship is not the result of action taken by the applicant or prior owner.

C. Disability variance

1. *By the Board of Appeals.* Notwithstanding the provisions of subsection (B) above, the board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall, or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S. § 4553.
2. *By the Building Authority.* Notwithstanding the provisions of subsections (B) and (C(1)) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability.

D. Practical difficulty variance. Notwithstanding the provisions of subsections (B) and (C) above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, lot coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood.
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties.
3. The practical difficulty is not the result of action taken by the applicant or a prior owner.
4. No other feasible alternative is available to the applicant, except a variance.
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment.

6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S. § 435, nor within a Shoreland Zone or flood hazard area, as defined in this Land Use Code.

E. Specified variances prohibited

1. A variance may only be granted with respect to the generally applicable space and bulk requirements of the zone in which the property is located and not from any provision that allows a deviation from those requirements.
2. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.
3. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
4. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.

F. Conditions on variances and variances less than requested.

Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening, and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

G. Limitations on variances.

No variance permitting the erection or alteration of a building shall be valid for a period longer than two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than two years, unless an occupancy permit is issued and a use commenced within such period.

H. Recording of variances.

No variance shall be valid unless, within 90 days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S. § 4353(5).

2.3.12 Violations

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this chapter or the conditions under which the relief was granted have not been complied with.

2.3.13 Reconsideration

The Board of Appeals may reconsider any decision within 45 days of its decision. A request to the board to reconsider a decision must be filed within 10 days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The board may conduct additional hearings and receive additional evidence and testimony. Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

2.3.14 Appeals

Any aggrieved party may take an appeal, within 45 days of the vote of the original decision, from any final decision of the Board of Appeals to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure and 30-A M.R.S. §§ 2691 & 4483, except as otherwise specifically provided in this article.

3 DEFINITIONS

Adjacent grade (within the floodplain). For the purposes of calculating floor elevation in areas of special flood hazard, the natural elevation of the ground surface prior to the construction next to the proposed wall of a structure.

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S. §§ 2911, 2912.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses (including utilities such as electric, heat, water, sewer, and/or trash that the household pays separately from rent) or must pay in ownership cost (including but not limited to mortgage payments, condominium/HOA fees, mortgage insurance, other insurance, and real estate taxes), does not exceed 30% of a household’s income, or other amount established in City

regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. Land and associated structures used for the growing of crops and raising of domesticated animals to provide food and other products for sale, personal consumption, donation, and/or educational purposes. Agriculture includes single-family dwellings and any additional dwellings that are accessory to the principal use of agriculture. Agriculture also includes farmstands used to sell crops grown on the premises.

Airport. Land, water, or any human-made object or facility located thereon, which is used or intended to be used for landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. Airports may include airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

Airport restricted access areas. Runways, taxiways, and other areas of an airport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of

premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building.

Area of shallow flooding. Area designated AO and AH zone on the Flood Insurance Rate Map (FIRM) with a 1 % or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard. The land in the floodplain having a 1% or greater chance of flooding in any given year as specifically identified in the most recently adopted FEMA Flood Insurance Study for the City of Portland.

Auto service station. A business selling fuel for vehicles and propane, or providing services specific to charging electric vehicles, or providing motor vehicle repairs including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair, or similar activities. Such businesses may also include car-washes and/or vacuums.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Base flood. The flood having a 1% chance of being hereof or exceeded in any given year (i.e., a 100-year storm).

Basement. Area of building that includes a floor that is subgrade (below ground level) on all sides.

Bed and breakfast. A detached dwelling that contains no more than nine guest rooms; is used to provide or offer overnight accommodation for transient guests; has an owner, manager, or operator living in the building as a permanent resident; does not provide cooking facilities in any of the guest rooms; and provides meals on-site.

Beverage container redemption center. A facility established with the primary purpose of accepting empty beverage containers from consumers and paying or otherwise providing the refund value of such containers.

Breakaway wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without damage to the elevated portion of the building or supporting foundation system.

Building. A roofed and walled structure built for permanent use.

Building, accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint, floor area, or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removal of features otherwise affecting the exterior appearance of a building.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Child care center. Per 22 M.R.S. §8301-A(1-A)(A), a child care center is a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for.

Child care facility, small. Per 22 M.R.S. §8301-A(1-A)(E), a small child care facility is a house or other place, not the residence of the operator, in which a person maintains or otherwise carries out a regularly scheduled program, for any part of a day, providing care and protection for 3 to 12 children between 6 weeks and 12 years of age.

Clinic. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists, or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.

Coastal AE Zone. The portion of the coastal high hazard area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

Coastal high hazard area. An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are designated as Zone VE and Zone AE bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM).

Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or

estuarine habitat; and/or any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit, or emergency purposes, but not including pleasure craft used principally for recreational purposes.

Common circulation drives. Private driveways, roadways and circulation areas accessible to all on-site tenants and/or occupants of a lot within the Waterfront Central Zone providing access from/to the public street network.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances. A community hall may also be referred to as a neighborhood center.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S. § 560 et seq., or its equivalent, as it may from time to time be amended.

Construction and engineering services. Offices for businesses in the conduct of any landscape or building trade or craft, together with land and/or structures used for the storage of equipment, vehicles, machinery, and/or materials related to and used by the trade or craft. Construction and engineering services with no storage of equipment, vehicles, machinery, and/or materials are considered general office uses.

Containment wall. Wall surrounding all sides of an above ground tank to contain any spills or leaks.

Critical systems. Mechanical, electrical, plumbing, fire protection, life safety, and communication systems required for the uninterrupted and safe operation and occupancy of a building.

Cultural facility. A facility open to the public, providing access to cultural exhibits and activities including but not limited to museums, cultural or historical centers, non-commercial galleries. A cultural facility may include accessory services such as, but not limited to, retail sales of related items.

Disturbed area. All land areas of a site that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a site. Construction equipment movement, laydown areas, parking for a site, and tree removal is considered disturbed area. Disturbed area does not include routine maintenance but does include

redevelopment and new impervious area.
Replacement of a building is not considered routine maintenance and is therefore considered disturbed area.

Drive-through. A facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling, four-family. A single building containing four dwelling units.

Dwelling, live/work. A principal structure that combines a dwelling unit with a permitted commercial use that is used by one or more of the residents. A live/work dwelling may also include the combination of a dwelling unit with arts-related activities, such as painting, photography, sculpture, music, and film, used by one or more of the residents. Live/work dwellings are subject to the standards for the individual uses contained within this Code. Any area used for commercial space in a live/work dwelling cannot be converted to residential living space if the commercial component is no longer operating.

Dwelling, multi-family. A single building containing five or more dwelling units.

Dwelling, multi-family conversion. A single building containing five or more dwelling units, converted from an existing dwelling of four or fewer units, or an existing structure in nonresidential use.

Dwelling, single-family. A single building containing one dwelling unit.

Dwelling, three-family. A single building containing three dwelling units.

Dwelling, townhouse. A structure consisting of two or more dwelling units, the interior of which is configured in a manner such that dwelling units are attached horizontally, separated by a party wall, and each dwelling unit is located on a separate lot with a separate exterior entrance.

Dwelling, two-family. A single building containing two dwelling units.

Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities.

Dwelling unit, accessory. A dwelling unit subordinate in size to the principal residential structure(s) on a lot and located either within the principal residential structure(s) or in an accessory structure.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling, or grading of soil, earth, loam, sand, gravel, rock, and other mineral deposits.

Easement. A right, privilege, or liberty which one has in land owned by another for some special and definite purpose.

Elevation certificate. An official form (FEMA form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

Emergency operations. Operations conducted for the public health, safety, or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to individuals experiencing homelessness in a dormitory-style or per-bed arrangement.

Entrance, principal. A main point of access for pedestrians into a building. Buildings may have more than one principal entrance.

Essential services. The construction, alteration, or maintenance of gas, electrical, or communication facilities; steam, fuel, electric power, or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles, and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection, or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants, and similar accessories, but shall not

include service drops or buildings which are necessary for the furnishing of such services.

Façade. An exterior building wall, from grade to the top of the parapet or eaves. A facade incorporates the full width of a building elevation, including any projections or recesses occurring across an elevation.

Façade, blank. A building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Family child care provider. Per 22 M.R.S. §8301-A(1-A)(C), a family child care provider is a person who provides day care in that person's home on a regular basis, for consideration, for children under 13 years of age who are not the children of the provider or who are not residing in the provider's home.

Farmstand. A temporary structure, used for the sale of food or non-food crops grown on the premises.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Flood or flooding.

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1. The overflow of inland or tidal waters.
 - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- B. The collapse or subsidence of land along a shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined above.

Flood boundary and floodway map. The official map issued by the Federal Emergency Management

Agency (FEMA) on which the boundaries of the flood have been designated. This may alternatively be referred to as a flood hazard boundary map.

Flood elevation study. An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood insurance rate map. The official map (FIRM) on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the risk premium zones applicable to the city.

Floodplain or floodprone area. Any land area susceptible to being inundated by water from any source (see Flood or Flooding).

Floodplain management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing. Any combination of structural or nonstructural additions, changes, or adjustments to

structures which reduce or eliminate flood damage to real estate or improved real estate, to water and sanitary facilities, structures, and their contents.

Floodway encroachment lines. The lines marking the limits of floodways on federal, state, and local floodplain maps.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Forested wetland. A freshwater wetland dominated by woody vegetation that is six meters (approximately 20 feet) tall or taller.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Freshwater wetland. Freshwater swamps, marshes, bogs, and/or similar areas which are both: Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning map. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to

support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Functionally-dependent use (within the floodplain). A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Garage/yard sale. A temporary event held on residential property, during which the owner or occupant offers used personal items, such as clothing, furniture, and household goods, for sale to the public.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures. Such an office may or may not offer services to the public. An office is not materially involved in fabricating, assembling, or warehousing of physical products for the retail or wholesale market, nor engaged in the repair of products or retail services.

General services. Establishment primarily engaged in rendering frequent or recurring services to persons or business on a fee basis, including but not



limited to banks, health clubs, laundries, beauty shops, barber shops, nail salons, electronics repair shops, and the like.

Greenhouse/nursery (retail). An establishment where flowers, shrubbery, trees, and other horticultural and floricultural products are propagated and sold, which may include gardening and landscape supplies and products, such as hardware, garden tools and utensils, paving stones and bricks, bulk materials such as mulch, straw, and stone, and other related items for sale.

Green roof. A roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane.

Group home. A housing facility for 9 to 12 persons with disabilities that is approved, authorized, certified, or licensed by the State.

Hazard tree. A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice

storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Helistop. An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Highest Astronomical Tide. The elevation of the highest predicted astronomical tide expected to occur at a specific tide station over the National Tidal Datum Epoch, or NTDE.

Historic rehabilitation. The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common

spaces for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A commercial facility that provides sleeping accommodation for a fee and customary lodging services. Related accessory uses may include, but are not limited to, meeting facilities, restaurants, bars, and recreational facilities for the use of guests. A hotel has common facilities for reservations, cleaning services, combined utilities, and on-site management and reception.

Impervious surface. Area covered with low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious surfaces 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. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious.

Impound lot. A facility that provides temporary outdoor storage for vehicles that are to be claimed by titleholders or their agents. An impound lot is typically used for the storage of wrecked motor vehicles usually awaiting insurance adjustment or transport to a repair shop. Impound lot does not include impound facilities owned and used by governmental authorities.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished or semi-finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial, and lower-impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors. High-impact industrial includes fish-waste processing.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished or semi-finished products from previously prepared material, where such activities are conducted wholly within an enclosed building. Low-impact industrial uses do not include the processing of raw materials or salvaging operations. Low-impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Laboratory and research facility. A building or group of buildings used for the purpose of conducting research, investigation, testing, and experimentation in any field of science, medicine, or technology and including facilities such as but not limited to administrative offices, laboratories, and service or machine shops to serve the facility. Laboratory and research facilities do not include manufacturing of products for sale.

Limit of Moderate Wave Action (LiMWA). The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

Locally-established datum. For purposes of the floodplain ordinance, an elevation established for a specific site to which other elevation at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

Lodging house. A house, building or portion thereof containing five or more rooming units, as well as common areas, and providing such units to individuals on not less than a monthly basis for compensation.

Lodging house common areas. Portions of a lodging house which are available for use by residents of the lodging house. Lodging house common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways,

and storage areas shall not be counted as lodging house common areas.

Lot. A lawfully created parcel or area of land that is designated as an individual unit for use, development, or ownership that is either: a) separately described in a deed or on a plan recorded in the Cumberland County Registry of Deeds; b) a contiguous combination of such lots under common ownership and designated as one unit for development; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

Lot, through. A lot that fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.

Lot, flag. A lot platted so that the main building site area (the “flag”) is set back from the street on which it fronts, and includes an access strip (the “pole”) connecting the main building site with the street.

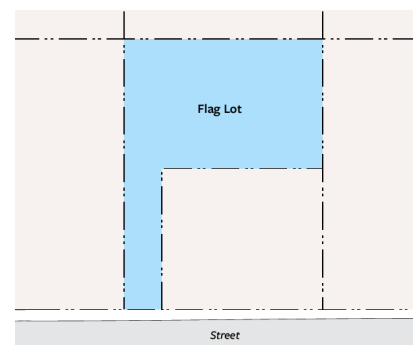


FIGURE 3-A: FLAG LOT

Lowest floor (within the floodplain). The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant

enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Article 12.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD).
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD).
- B. The unit is sold to a household earning 100% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally

binding agreement for future sales for the applicable length of time in this ordinance.

Manufactured housing. A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, 2 types of manufactured housing are included. Those 2 types are:

- A. Those units constructed after June 15, 1976, commonly called "newer mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit. This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction

and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

- B. Those units commonly called “modular homes” that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

Marijuana, cultivation facility. A cultivation facility required to be licensed pursuant to 28-B M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings, and marijuana seeds, for use or sale.

Marijuana, manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana, plant canopy. As defined by 28-B M.R.S. § 102.

Marijuana product. As defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marijuana, registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. § 2422.

Marijuana, registered patient. As defined by 22 M.R.S. § 2422.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants, and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store shall not include a registered dispensary.

Marijuana, small-scale caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than: 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marina. A commercial operation providing floats, slips, and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Market garden. An area of land or a facility, managed and maintained by an individual, group, or business to grow and harvest food and non-food crops to be sold for profit on-site, off-site, or both.

Market gardens may be located outdoors or fully enclosed within a permanent building. Market gardens do not include the cultivation of marijuana.

Mean high tide. The mean height of tidal high waters at a particular point or station over a period of time to such length that increasing its length does not appreciably change this mean. For tidal waters, the cycle of change covers a period of 19 years, and mean high tide is defined as the average of the high waters over a 19 period.

Mean sea level (within the floodplain). For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on the City's FIRM are referenced.

Mid-block permeability. A continuous, open-air corridor at least 20' in width that physically or visually connects two streets or public rights-of-way and provides a break in the street wall. The corridor must be unobstructed and open to the sky.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

National Geodetic Vertical Datum (NGVD). The national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

Neighborhood nonresidential reuse. Select nonresidential uses located within a residential neighborhood to serve nearby residents, and occupying a structure which is nonresidential in its original construction and/or current principal use.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Nonconforming lot. A lot which, at the effective date of adoption or amendment of this Code, does not meet the minimum lot area or minimum street frontage requirements of the zone in which it is located.

Nonconforming structure. A structure which does not meet applicable dimensional requirements but which is allowed solely because it was in lawful existence at the time this Code or subsequent amendments took effect.

Nonconforming use. Use of buildings, structures, or land which is not allowed in the zone in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Code or subsequent amendments took effect.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

North American Vertical Datum (NAVD). The national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound and subsidence, and the increasing use of satellite technology.

Office park. A development of one or more buildings designed to accommodate offices, laboratory and research facilities, high-tech manufacturing, and similar uses with no outdoor storage. An office park may also include hotels, medical/dental offices, and supportive commercial uses for the primary convenience of office park workers and visitors, including limited retail, general services, financial institutions, child care centers and small child care facilities, and restaurants.

Off-peninsula. All land located north of I-295.

100-year flood. See base flood.

On-peninsula. All land located south of I-295.

Open space. Land and water areas designed and reserved for use as active or passive recreation areas or for preservation purposes.

Open space, public. Open space maintained for the use of the general public. Public open space may include parks, plazas, and public seating areas.

Outlet stream. Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Park. A noncommercial public facility that serves the recreational needs of residents and visitors. Park includes, but is not limited to, playgrounds, ballfields, golf courses, gymnasiums, playing fields, courts, dog parks, skateboard parks, pools, community gardens, marinas, sports complexes, and passive recreation areas. Parks may also include non-commercial indoor or outdoor facilities, including zoos and amphitheatres, accessory services such as, but not limited to, restaurant and retail establishments, and temporary outdoor uses such as festivals and performances.

Party wall. Any partition wall common to two adjacent or attached buildings.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, private club, fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, private club or non-profit social and recreational facility, or place of religious assembly where eight or fewer people, not including the permanent residents of a single-family dwelling, assemble. A place of assembly may include accessory uses, such as childcare facilities or preschools, meeting rooms, food preparation and dining areas, auditoriums, and/or classrooms.

Post-secondary school. A facility for post-secondary higher learning that grants associate or bachelor's degrees. The institution may also have research facilities and/or professional schools that grant master and doctoral degrees. Post-secondary schools may also include additional uses as part of the principal use, such as dormitories, cafeterias, restaurants, retail sales, indoor or outdoor recreational facilities, preschool facilities, and similar uses.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper

recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this Land Use Code and other applicable codes and ordinances.

Real estate project sales office/model unit.

A residential unit or other structure within a development that is temporarily used for display purposes as an example of dwelling units available for sale or rental in a residential development and/or sales or rental offices for dwellings within the development.

Recent floodplain soils. Recent floodplain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial. Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, and Winooski.

Recreational Vehicle. A vehicle that is:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- C. Designed to be self-propelled or permanently towable by a motor vehicle; and,
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities. Such facilities may limit admission either to members or to persons

paying an entrance fee. Recreation and amusement centers do not include sports complexes or stadiums.

Recycling facility. A facility engaged exclusively in the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation and treatment of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

Regulatory floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. When not designated on the Flood Insurance Rate Map (FIRM), it is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the normal high-water mark to the upland limit of the floodplain.

Relocation. The act or process of taking a structure or object and moving it from its current location or orientation to a new location or orientation.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Residential care facility (small). A facility which provides, on a regular basis, medical or non-medical care and services for up to 12 individuals in separate dwelling or rooming units. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated

by the State of Maine Department of Health and Human Services.

Residential care facility (large). A facility which provides, on a regular basis, medical or non-medical care and services for 13 or more individuals in separate dwelling or rooming units. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service establishment with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Riprap. Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

Roadway. That portion of a street between the regularly established curblines, or that part of a street or alley devoted to vehicular or bicycle traffic.

Rooming unit. One or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes by an individual or a family, but not designed for food preparation. In a suite of

rooms, each room that provides sleeping accommodation shall be counted as one rooming unit for the purpose of this chapter.

Sapling. A tree species that is less than two inches in diameter at four and one half feet above ground level.

Sea Level Rise-Base Flood Elevation (SLR-BFE). 13 feet NAVD88, or the predicted height of flood waters that may occur as the result of a 100 year storm in conjunction with 3.9 feet of base sea level rise.

Sea Level Rise-Design Flood Elevation (SLR-DFE). The minimum elevation required for a finished ground floor level in the Coastal Flood Resilience Overlay Zone (CFROZ).

Sea Level Rise-Design Flood Elevation - Critical (SLR-DFE-C). The SLR-DFE for all critical uses, including the critical systems serving those uses.

Sea Level Rise-Design Flood Elevation – Non-critical (SLR-DFE-NC). The SLR-DFE for non-critical uses, including the critical systems serving those uses.

Seedling. A young tree species that is less than four and one half feet in height above ground level.

Self-storage facility. A facility for the storage of personal property, where individual renters control and access individual storage spaces. Self-storage facilities may be designed with individual storage spaces located within a fully enclosed, climate controlled building, with individual storage spaces accessed from the outdoors, or with a combination

of storage spaces. Administrative offices for the facility, and retail sales of related items, such as moving supplies may be included.

Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A.M.R.S. § 251.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Sign. A structure, device, figure, display, message placard, or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended, or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, religious, or social information, or direct or attract attention to an object, person, institution, business, product, service, message, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or illumination.

Sign, animated. Flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind.

Sign, awning. Any sign that is part of or attached to an awning over a door, entrance, window, storefront, or outdoor service area.

Sign, A-Frame. A pedestrian-oriented self-supporting sign that is not permanently affixed to a structure or the ground.

Sign, bandit. Any advertising sign that is placed on public property or on private property without the consent of the property owner or as authorized in this article.

Sign, blade. A permanent, pedestrian-scaled sign mounted either to the wall of building by means of a bracket or attached to the underside of a lintel, arch, or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.

Sign, building identification. A sign consisting of letters or numbers applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.

Sign, building-mounted. Sign attached to, connected to, erected against the wall, parapet, or fascia of a building or structure.

Sign, bus shelter. As specified in 23 M.R.S. §1908-A, any outdoor sign visible to the traveling public from public right-of-way that is affixed to a publicly-owned bus shelter operated by a transit agency.

Sign, cabinet. A permanent building-mounted or freestanding sign with its text and/or logo symbols and artwork on a translucent face panel that is mounted within a metal frame or cabinet either that

contains the lighting fixtures which illuminate the sign face from behind.

Sign, canopy. A sign that is printed, painted, or affixed to a canopy, typically used to accent building entries.

Sign, center identification. A sign identifying the name of a building, office park, or shopping center only.

Sign, changeable copy. A sign that is designed so that characters, letters, numbers, or illustrations can be manually or mechanically changed or rearranged without altering the face or surface of the sign. For the purposes of this article, a sign whose message changes more than eight times per day is considered an animated sign and not a changeable copy sign.

Sign, directional. A sign erected to inform the viewer of the approximate route, direction, or location of a facility or use.

Sign, direct illumination. Illumination resulting from light emitted directly from an exposed light bulb or light fixture, and not light diffused through translucent signs or reflected from other surfaces such as the ground or building face.

Sign, directory. A permanent sign which provides information in a list, roster, or directory format.

Sign, Electronic Message. A sign or portion of a sign that utilizes computer-generated messages or some other electronic means of changing its characters, letters, numbers, illustrations, display, color, and/or light intensity, including animated

graphics and video, by electronic or automatic means. An Electronic Message Sign is not a Single- or Two-Color LED Sign.

Sign, externally-illuminated. A sign whose illumination is reflected from its source by the sign surface to the viewer's eye, the source of light not being visible to the viewer. (See Section 19.7.3(C).)

Sign, feather banner. A temporary sign that is taller than it is wide and made of a flexible material (typically cloth, nylon, or vinyl) and mounted to a pole to fly freely.

Sign, freestanding. A permanent sign that is erected or mounted on its own self-supporting permanent structure or base detached from any supporting elements of a building.

Sign, fuel pump topper. A temporary sign affixed to the top of an operable fuel dispensing pump used to advertise goods offered for sale on the same parcel on which the fuel pump is located.

Sign, incidental. A sign which provides incidental information, including security, credit card acceptance, business hours, open/closed, directions to services and facilities, or menus.

Sign, individual letter. A cut-out or etched letter or logo which is individually mounted on a building wall or freestanding sign.

Sign, internally illuminated. Any sign in which the source of light is entirely enclosed or backlit (halo) within the sign and not directly visible.

Sign, landmark. A permanent sign indicating individual historic landmarks, local historic districts, or otherwise determined by the City to have

attained a high degree of community, cultural, aesthetic, or historic significance.

Sign, logo. A stylized group of letters, words, numbers, or symbols used to represent and distinguish a business, product, or organization.

Sign, marquee. A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.

Sign, monument. A permanent freestanding sign with a solid base that is at least 60% the width of the sign face.

Sign, off-premise. Any sign that directs attention to a business, commodity, service, entertainment, product, structure, use, or property different from a structure or use existing on the property where the sign is located, and/or any sign on which space is rented, donated, or sold by the owner of said sign or property for the purpose of conveying a message.

Sign, permanent. A sign intended to exist for the duration of time that the use or occupant is located on the premises.

Sign, pole. An elevated permanent sign typically supported by one or two poles, posts, or columns that do not meet the base width requirements for a monument sign.

Sign, projecting. A permanent sign that is attached to and extends perpendicular from a building from the wall.

Sign, service island canopy. A permanent sign mounted on or under a service island canopy, including on a fascia.

Sign, single-color or two-color LED. A permanent or temporary sign or portion of a sign composed of single-color or two-color LEDs that displays static or changeable sign messages using characters, letters, and numbers only. Examples of these signs include, but are not limited to, “open” or “closed” signs, time and temperature” signs, or signs indicating the number of available spaces in a parking garage.

Sign, temporary. A sign which is intended for a limited period of display and which is designed to be moved easily and is not permanently affixed to a structure, sign area, or window.

Sign, wall. A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of wall or fascia to which it is affixed or erected.

Sign, wall banner. A temporary sign constructed of cloth, bunting, plastic, paper, or similar non-rigid material, and securely attached to the wall or support structure for which it is advertising. Flags are not considered temporary wall banners.

Sign, window. A permanent or temporary sign posted, painted, placed, or affixed in or on a window, or otherwise exposed to public view through a window.

Sign, Yard, Type I. A small temporary sign typically constructed of corrugated plastic and supported on

a wire frame used, for example, for advertising by local businesses or by election campaigns.

Sign, Yard, Type II. A temporary sign mounted on a single post installed securely in the ground with a small sign hanging from a cross-bar mounted parallel to the ground.

Sign, Yard, Type III. A temporary large sign mounted on two posts installed securely in the ground.

Sign copy. Any graphic, word, numeral, symbol, insignia, text, sample, model, device, or combination thereof that is primarily intended to advertise, identify, or notify.

Sign face. The exterior surface of a sign, exclusive of structural supports, on which is placed the sign copy.

Sign substructure. The supports, uprights, bracing and/or framework of a sign.

Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

Social service center. A service establishment that provides assistance for those recovering from chemical or alcohol dependency; survivors of abuse seeking support; those transitioning from homelessness or prior incarceration; and those with health and disability concerns. It does not include in-patient, overnight, or living quarters for recipients of the service or for the staff. Such service does not include medical examinations or procedures, or

medical detoxification, dispensing of drugs or medications, or other treatments normally conducted in a medical office.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems. Solar energy systems shall include the following:

- A. Solar energy system, accessory.** A system as defined above, where power generation is incidental to a principal use. Accessory solar energy systems include building-integrated systems of any size, and building-mounted, roof-mounted, or ground-mounted systems of less than 1,000 square feet in area.
- B. Solar energy system, minor.** A system as defined above, between 1,000 and 9,999 square feet in area, where power generation is considered a principal use. Minor solar energy systems may take the form of either a building-mounted or roof-mounted solar array or a ground-mounted system.
- C. Solar energy system, major.** A system as defined above, of 10,000 square feet or more in area, where power generation is considered a principal use. Major solar energy systems may take the form of either a building-mounted or

roof-mounted solar array, or a ground-mounted system.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Solid waste disposal facility. A solid waste facility for the incineration or landfilling of solid waste or refuse-derived fuel. Facilities that burn material-separated, refuse-derived fuel, either alone or in combination with fuels other than municipal solid waste or refuse-derived fuels, are not solid waste disposal facilities.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound

pressure varies essentially as a simple sinusoidal function of time.

Special Flood Hazard Area. See area of special flood hazard.

Specialty food service. A business that specializes in the sale of certain food products and/or the on-site production of items, such as a delicatessen, bakery, candy maker, meat market, catering business, cheesemonger, coffee roaster, or fishmonger, and may offer areas for ancillary retail sales or eating and drinking areas that serve the products processed on-site. Specialty food service includes preparation, processing, canning, or packaging of food products where all processing is completely enclosed and there are no outside impacts. Specialty food service does not include production of alcohol.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held.

Stadium. A commercial structure with tiers of seats and/or viewing areas around and/or adjacent to a field, court, or stage, intended to be used for the viewing of athletic events, entertainment, concerts, and other public gathering purposes. Stadiums may be indoor or outdoor.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock, or other mineral deposits upon a site for the purpose of storage, warehousing, or reserving for future use.

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the Shoreland Zone of another water body or wetland. When a stream meets the Shoreland Zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Street. A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street, cul-de-sac or dead end. A street with only one outlet.

Street line. The line of demarcation between private property and a street.

Structure. Anything temporarily or permanently located, built, constructed, or erected for the support, shelter, or enclosure of persons, animals, goods, or property of any kind or anything located, built, constructed, or erected on or in the ground or on another structure. The term includes decks and satellite dishes. Structure does not include fences,

poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors or subsurface wastewater disposal systems. Inside the Shoreland Zone, patios and at-grade walkways shall be considered structures.

Structure, accessory. A structure on a lot that is incidental and subordinate in area, extent, and/or use to the principal structure on the lot. A lot may have more than one accessory structure.

Structure, principal. The main structure on a lot having the predominant area, extent, or use. A lot may have more than one principal structure.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture, or other arts, or the practice of arts such as music or dance, or the production of custom, hand-crafted, or limited production of products such as furniture, wood, clay, and metal products, publications, and similar low-impact arts and crafts activities.

Subdivision. As defined in 30 A M.R.S. § 4401 and 4402.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

Temporary contractor's office and contractor's yard. A short-term, portable, or modular structure

utilized as a watchman's quarters, construction office, or equipment shed during the construction of a new development. This may include a contractor's yard where materials and equipment are stored in conjunction with a construction project.

Temporary outdoor sales. Temporary uses, which may include temporary structures where goods are sold, such as but not limited to arts and crafts fairs, flea markets, rummage sales, consignment auctions, and holiday sales such as Christmas tree lots and pumpkin sales lots. Temporary outdoor sales does not include garage/yard sales, or outdoor sales related to a retail goods establishment where such goods are part of the establishment's regular items offered for purchase.

Temporary outdoor storage container. Temporary self-storage containers, delivered to a residence or business for the purpose of storing items, and subsequently picked up and stored at an off-site location until scheduled for retrieval.

Tenant. Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Tidal waters. All waters affected by tidal action during the highest annual tide.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is

limited to no more than 15 days out of any 60-day period.

Tree. A woody perennial plant with a well-defined trunk(s) at least two inches in diameter at four and one half feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.

Tree, feature mature. A tree that meets at least one of the following criteria:

- A. Any tree that is on the Register of Big Trees promulgated by the Maine Department of Agriculture, Conservation & Forestry (the “Big Tree List”)
- B. Certain trees 24” in diameter or greater (diameter at breast height or DBH) as identified by the City Arborist
- C. Ornamental trees 12” in diameter or greater (diameter at breast height or DBH) as identified by the City Arborist
- D. Rare tree specimen to include either a tree species classified as rare or endangered at either the state or federal level, and/or stands of native trees that are rare or threatened as identified by the City Arborist.

Tree, ornamental. Any tree, shrub, or other plant grown primarily for decorative purposes and whose mature height can be expected to be between three feet and 25 feet.

Tree, shade. Any tree, evergreen or deciduous, planted primarily for its high crown of foliage and whose mature height can be expected to exceed 25 feet.

Tree, storm-damaged. A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Tree, street. Tree planted in the public right-of-way and/or private roadway.

Tributary stream. A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest astronomical tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters (approximately 20 feet) tall or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four inches in diameter, measured at four and one-half feet above ground level.

Vegetation, climate resilient northeast native.

Plants identified as native to the northeast as identified by the Northeast Regional Invasive Species & Climate Changes (RISCC) Network or a Maine licensed landscape architect.

Vegetation, Maine native. Vegetation including grass seed mixtures, identified as native to Maine from lists maintained by the U.S. Department of Agriculture Hardiness Zones by the Maine Cooperative Extension, Wild Seed Project, Regional Soil and Water Conservation District, Maine YardScaping Program, or a Maine licensed landscape architect.

Vegetation, non-native invasive species. Species of vegetation listed by the Maine Department of Agriculture, Conservation, and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Veterinary services. An establishment for the treatment of animals, where animals may be boarded during their convalescence

Very low-income household. A household having an income not exceeding 50% of median income for

area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Warehousing and distribution facility. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers. Warehousing and distribution facilities do not include self-storage facilities.

Watercourse. Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed, and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands (outside of shoreland zones). Those areas which have two or more of the following:

- A.** A water table at or near the surface during the growing season;
- B.** Very poorly drained soils, including Sebago mucky peat; or
- C.** Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and

Wildlife Service publication of Wetland Plants of the State of Maine (1986).

Wind energy system. A system of components that converts the kinetic energy of the wind into electrical or mechanical power. A wind energy system comprises all necessary components including turbines, energy storage, power conditioning, control systems, transmission systems (where appropriate) and structural support systems to provide electricity or mechanical power for residential, commercial, industrial, utility, or governmental use. Wind energy systems shall include the following:

- A. Wind energy system, accessory:** A system as defined above, where power generation is incidental to a principal use. Accessory wind energy systems include roof-mounted systems, and ground-mounted systems less than 45 feet in height.
- B. Wind energy system, minor:** A system as defined above, where power generation is considered a principal use. Minor wind energy systems are ground-mounted systems measuring between 45 feet and 85 feet in height.
- C. Wind energy system, major:** A system as defined above, where power generation is considered a principal use. Major wind energy systems are ground-mounted systems measuring between 85 feet and 160 feet in height.

Wholesale. Sale for resale, not for direct consumption.

Workforce housing unit for rent. A dwelling unit for which:

- A.** The rent is affordable to a household earning 80% or less than of AMI.
- B.** The unit is rented to a household earning 80% or less of AMI.
- C.** The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale. A dwelling unit for which:

- A.** The purchase price is affordable to a household earning 80% or less of AMI.
- B.** The unit is sold to a household earning 80% or less of AMI.
- C.** The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

16 HISTORIC PRESERVATION

16.1 PURPOSE

The purpose of this article is to promote the educational, cultural, economic, and general welfare of the City of Portland by creating a mechanism to identify, preserve, and enhance distinctive areas, sites, structures, and objects that have historic, cultural, architectural, and archaeological significance and establishing standards for the review of construction within and affecting designated historic properties to encourage preservation, restoration, rehabilitation, and new construction that respects the historic, cultural, architectural, and archaeological significance of distinctive areas, sites, structures, and objects.

16.2 HISTORIC DESIGNATIONS

16.2.1 Categories of historic designations

- A. Landmark.** A discrete site, structure, or object and any associated area found to have particular or individual significance or prominence. Landmarks may be in or outside of historic districts or historic landscape districts.
- B. Historic district.** A geographically defined area possessing a significant concentration, linkage, or continuity of sites, structures, or objects united historically or aesthetically by design, plan, or physical development. The defined area may comprise individual elements separated geographically but linked by association or history.
- C. Historic landscape district.** A geographically defined area possessing a significant concentration, linkage, or continuity of natural or man-made landscape components which are united by past events, or aesthetically by design, plan or physical development. The

defined area shall be owned in its entirety by a unit of federal, state, or local government, or any combination of such ownership at the time of nomination.

16.2.2 Criteria for designation

- A.** Any area, site, structure, or object nominated for historic designation must be found to demonstrate at least one of the following:
 - 1.** *Significant aspect of heritage.* Value as a significant example of the cultural, historic, architectural, archaeological, or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.
 - 2.** *Significant events or activities.* Location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property.
 - 3.** *Significant persons.* Identification with a person or persons who significantly contributed to the cultural, historic, architectural, archaeological, or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States.
 - 4.** *Significant architecture.* Exemplification of a significant architectural type, style, or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.
 - 5.** *Significant designer.* Identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States.

- 6. *Significant theme.* Representation of a significant cultural, historic, architectural, archaeological, or related theme expressed through distinctive areas, sites, structures, or objects that may or may not be contiguous.
- B. Any nominated area, site, structure, or object must also be found to retain sufficient integrity of location, design, materials, and workmanship to convey its significance with respect to the applicable criteria as defined in Subsection 16.2.2.
- C. The Planning Board and City Council shall also consider the effect of the proposed historic designation within the framework of the Comprehensive Plan when making a recommendation or decision on a nomination..

16.2.3 Classifications within historic designations

- A. The sites, structures, or objects within a nominated historic designation may be classified as contributing or noncontributing.
- B. A contributing classification shall only be applied to an area, site, structure, or object which:
 - 1. Were built at least 50 years prior to the date of district designation, or were built within a period of significance specified in the designation application;
 - 2. Are found to have a relationship with or physically embody the qualities that give the historic designation cultural, historic, architectural, or archaeological significance as embodied in the minimum criteria specified in the designation report; and

- 3. Retain sufficient integrity to communicate that significance as defined in Subsection 16.2.2(B).
- C. If an area, site, structure, or object does not meet the above it will be categorized as noncontributing.

16.3 NOMINATION, CONSIDERATION, AND HISTORIC DESIGNATION

16.3.1 Procedure

The provisions of this section shall govern the nomination, consideration, and designation of landmarks, historic districts, and historic landscape districts.

16.3.2 Nomination of a historic designation

- A. Nomination of a historic designation shall be submitted to the Planning Authority. Nominations shall include the following information:
 - 1. A statement of how the proposed historic designation meets the criteria under Subsection 16.2.2.
 - 2. A map showing the location and proposed boundaries of the historic designation.
 - 3. A draft list of the constituent sites, structures, or objects, indicating their degree of cultural, historic, architectural, or archaeological significance and their classification as contributing, noncontributing, or landmark within the proposed historic designation.
- B. Nominations may be initiated by the following:
 - 1. Any two members of the Historic Preservation Board on their own initiative, by written notice to the Planning Authority, or
 - 2. The Planning Authority, or

- 3. In the case of a landmark, one or more owners of the affected property, or
- 4. In the case of a historic district or historic landscape district, one or more owners of an affected property, provided a minimum of two members of the Historic Preservation Board sponsor the nomination.
- C. In the case of a nomination initiated or sponsored by the Historic Preservation Board, such nomination may be made verbally at a Historic Preservation Board meeting or via signed, written statement to the Planning Authority.
- D. Upon nomination, the Planning Authority shall notify the owner(s) of the subject property or properties.

16.3.3 Historic Preservation Board review and recommendation

- A. A public hearing on the nomination shall be held by the Historic Preservation Board following a workshop, conducted in accordance with procedures adopted by the Historic Preservation Board. In the case of additional workshops, these shall be agreed to by the Historic Preservation Board and the nominators.
- B. The Historic Preservation Board shall consider all testimony or evidence relating to the designation criteria in Subsection 16.2.2 from any person who makes written submissions or appears at the public hearing. The owner of a nominated landmark or of property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in Subsection 16.2.2.

- C. If the Historic Preservation Board finds that documentation and analysis necessary for the consideration of the nomination has not been provided as part of the nomination, such documentation shall be provided prior to further consideration by the Historic Preservation Board.
- D. Following the close of the public hearing, the Historic Preservation Board shall make recommendation to the City Council in the case of a landmark, or to the Planning Board in the case of a historic district or historic landscape district, as to whether the area, site, structure, or object meets the criteria for designation in Subsection 16.2.2. Such recommendation shall be accompanied by a report containing findings by the Historic Preservation Board as to whether the criteria in Subsection 16.2.2 for historic designation have been met, as well as any recommended changes to the scope of the nominated historic designation.

16.3.4 Planning Board review and recommendation

- A. The Planning Board shall hold a public hearing to review the nomination and recommendation from the Historic Preservation Board of a historic district or historic landscape district. The Board may hold one or more workshops prior to the public hearing.
- B. All meetings, hearings, and deliberations of the Planning Board to consider the recommendation and report of the Historic Preservation Board shall be held in conformity with Article 2.
- C. The Planning Board may request that the chair of the Historic Preservation Board, or a

member designated by the chair, appear at a meeting to explain the recommendation or report.

- D.** Following the close of the public hearing, the Planning Board shall make a recommendation to the City Council upon the evidence as to whether the nomination meets the criteria for designation in Subsection 16.2.2. Such recommendation shall be accompanied by:
 - 1.** The report of the Historic Preservation Board.
 - 2.** Findings by the Planning Board as to whether the criteria in Subsection 16.2.2 for historic designation have been met, as well as any recommended changes to the scope of the nominated historic designation.

16.3.5 City Council consideration

- A.** Following the receipt of a Historic Preservation Board recommendation in the case of a landmark nomination, or Planning Board recommendation in the case of a historic district or historic landscape district nomination, the City Council shall approve or reject the historic designation. The designating order shall include a map of the location and boundaries of the historic designation.
- B.** Designation shall be accompanied by a list, including the address, of sites, structures, and objects in the historic designation. Sites, structures, or objects may be assigned a classification of landmark, contributing, or noncontributing under Subsection 16.2.3.
- C.** Notice of City Council action shall be sent to all owners of or within the boundaries of a historic designation within 30 days following the City Council action.

- D.** A record of the historic designation, maps of the historic designation boundary, and copies of all application materials and reports shall be maintained by the Planning Authority and be made available to the public online and during ordinary business hours.

16.3.6 Designation

- A.** Upon designation, all sites, structures, and objects within the boundary of the historic designation shall be subject to the provision of this article.
- B.** Demolition, including any act or process that totally destroys any landmark or contributing structure or object, shall be prohibited, with the exception of:
 - 1.** Any structure or object which has been ordered demolished by the municipal officers or a court, in accordance with 17 M.R.S. § 2851 et seq., its equivalent, as it may be amended from time to time, or
 - 2.** Any structure or object which has been partially destroyed and is determined by the Planning Authority to represent an immediate hazard to the public health or safety, which hazard cannot be abated by reasonable measures specified by the Planning Authority, including without limitation securing apertures and/or erecting fencing.
 - 3.** Any structure or object which is the subject of a certificate of economic hardship under Section 16.8.

16.3.7 Amendment or rescission of designation

- A.** Amendment shall be defined as a change to the historic designation boundary or

reclassification of a site, structure, or object as contributing or non-contributing in its entirety.

- B.** Rescission shall be defined as the complete removal of a historic designation.
- C.** Amendment or rescission of any historic designation shall be upon the request of a person or persons authorized to nominate the property or properties affected as set forth in Subsection 16.3.2, or upon request of the City Council.
- D.** Amendment or rescission shall follow the procedure set forth in Section 16.3 for designation. The standards for rescission or amendment shall be limited to those provided in Section 16.2.

16.3.8 Presumption of contributing classification

Where the designation classifies an area or site as contributing, but does not specify the classification of a structure or object in the area or on the site, there shall be a presumption that the structure or object is contributing, unless:

- A.** Documentation can be provided to the Planning Authority that a structure or object was constructed within 50 years of or after the date of historic designation, or after the stated period of significance, or
- B.** The Historic Preservation Board holds a public hearing and finds that the structure or object has been substantially altered within 50 years of or after the date of historic designation, or after the stated period of significance.

16.4 INTERIM PROTECTION FOR NOMINATED HISTORIC DESIGNATIONS

16.4.1 Minimum maintenance

From the time of nomination until the City Council acts upon such nomination or the nomination is withdrawn, all areas, sites, structures, and objects nominated but not yet designated shall be subject to the provisions of Sections 16.9 governing minimum maintenance, to the same extent as if designated.

16.4.2 Protection from demolition

From the time of nomination until the City Council acts upon such nomination or the nomination is withdrawn, all demolition permit applications for any area, site, structure, or object nominated but not yet designated shall be denied unless the owner has received a certificate of economic hardship under Section 16.8.

16.5 PROTECTIONS FOR PROPERTIES LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES

Upon receipt of notice from the National Park Service or the Maine Historic Preservation Commission that a property or area has been listed on the National Register of Historic Places or has been determined to be eligible for listing on the National Register, the City shall deny any demolition permit application for any structure or object within the listed property or area unless:

- A.** The owner has received a certificate of economic hardship under Section 16.8, or
- B.** The Historic Preservation Board has held a public hearing at the request of the owner and found that the structure or object in question does not have sufficient integrity for historic

designation using Subsection 16.2.2 as the standard for review, or

- C. Documentation is provided from the Maine Historic Preservation Commission that the structure or object in question has been removed from the National Register of Historic Places, no longer retains sufficient integrity to remain listed on the National Register of Historic Places, or an existing determination of eligibility is no longer valid, or
- D. The City Council has held a public hearing at the request of the owner and determined that demolition of the structure or object is consistent with the goals of the Comprehensive Plan.

16.6 REVIEW PROCESS FOR CERTIFICATES OF APPROPRIATENESS

16.6.1 Applicability

A certificate of appropriateness shall be required prior to the issuance of any permit authorizing new construction, additions, exterior alterations, site alterations, signage, or the relocation of structures affecting any property within the boundaries of a landmark, historic district, or historic landscape district as identified in Table 16-A. Notwithstanding the above, the following activities shall be considered exempt::

- A. Work consisting solely of ordinary maintenance, being acts of upkeep or repair which do not include a change in the design, material, or outer appearance of a site structure, or object, such as repainting of previously painted surfaces or in-kind replacement of materials or plantings.
- B. Work consisting solely of emergency repair of a temporary nature.

- C. Work approved under a valid certificate of economic hardship.
- D. Work where the Planning Authority determines that the proposed exterior changes are not readily visible at pedestrian heights from any public way or public open space.
- E. Installation of new public artworks approved or acquired through the City of Portland Public Art Program.
- F. Changes in plantings or vegetation outside of historic landscape districts and minor changes in plantings or vegetation within historic landscape districts.
- G. Alterations to existing grave markers or tombs made for the purpose of recognizing additional decedents or installation of grave markers or tombs recognizing new interments within an existing cemetery.
- H. Work in City rights-of-way.
- I. Roof-mounted solar energy systems.
- J. Installation of temporary structures or objects for a period of less than eight consecutive months, unless such installation otherwise meets a threshold for review established in Table 16-A.
- K. Demolition of non-contributing structures or objects.
- L. Relocation of non-contributing structures to a site outside any historic designation boundary.

16.6.2 Review classifications

- A. Applications shall be subject to administrative or Historic Preservation Board review according to the classifications in Table 16-A.
- B. The Planning Authority may, due to the scope or anticipated impacts of a project, reclassify an administrative review to a Historic Preservation Board review.

TABLE 16-A: HISTORIC PRESERVATION REVIEW CLASSIFICATIONS

		Administrative Review	Board Review
New construction and additions		≤ 500 SF	> 500 SF
Dormer additions¹		Affecting ≤ 40% of roof area (in SF)	Affecting > 40% of roof area (in SF)
Alterations to contributing structures or objects²	Minor alterations	All	--
	Major alterations	≤ 25% of any façade, or where work is based on clear documentation of the historic appearance	> 25% of any facade
Alterations to noncontributing structures or objects²	Minor alterations	All	--
	Major alterations	≤ 40% of any facade	> 40% of any facade
Site alterations³		All	--
Signage		All	--
Relocation of structures⁴		≤ 500 SF	> 500 SF

¹ Dormer additions include any increase in building volume which does not interrupt the ridges, eaves, or rakes of an existing structure.

² Minor alterations include small or routine changes such as required by building code or modern convenience which result in minimal change in exterior appearance of an existing structure. Major alterations include changes to existing or introduction of new details or features which affect the scale, form, proportion of openings, ratio of solid to void, rhythm or placement of entrances, color or texture of materials, or relationship to the street of an existing structure or object.

³ Site alterations include the construction of permanent features such as fences and retaining walls, regrading, hardscaping, the installation of exterior utilities.

⁴ Relocations include the moving of a structure or object on its site or to another site within any historic designation boundary.

- C. At any point in the review process, an applicant may request that the Planning Authority reclassify the application from administrative to Historic Preservation Board review.

decisions relative to the application shall be made at the pre-application meeting, nor shall any advice or information provided by the Planning Authority be construed as a decision.

16.6.3 Historic Preservation pre-application meeting

Applicants are encouraged to schedule a Historic Preservation pre-application meeting with the Planning Authority prior to applying for a Certificate of Appropriateness. The purpose of this meeting is to familiarize the applicant with the City of Portland Historic Preservation submittal requirements, applicable review criteria and standards, and to confirm the level of review required. A pre-application meeting does not confer pending proceeding status under Title 1 MRSA 302. No

16.6.4 Applications

Application for a certificate of appropriateness shall be made on a form prepared by the City and submitted to the Planning Authority along with the applicable fee. Upon receipt of an application and fee, the Planning Authority shall determine whether the application is complete and the level of review required per Table 16-A.

16.6.5 Costs

All projects shall be subject to fees as established by the City Council to cover the administrative costs of

review. Applicants are also required to pay fees to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services as needed.

16.6.6 Lapse in application

An application for a certificate of appropriateness shall be diligently pursued from the date of submission. Applicants shall provide additional information as requested by the Planning Authority or Historic Preservation Board when determined to be reasonably necessary to make any determination required by this article. Failure of an applicant to provide a response to the request for additional information within 120 days of the date upon which the written request was made shall cause the application to expire and be deemed null and void.

16.6.7 Administrative review

An application for a certificate of appropriateness subject to administrative review shall be reviewed by the Planning Authority for compliance with the standards of Section 16.7. The Planning Authority may request revised plans and submittals necessary to determine compliance. The Planning Authority shall approve the application, approve the application with conditions, or deny the application.

16.6.8 Historic Preservation Board review

A. An application for a certificate of appropriateness subject to Historic Preservation Board review shall be reviewed by the Historic Preservation Board for compliance with the standards of Section 16.7. The Planning Authority may request revised plans and submittals necessary to determine compliance with Section 16.7 prior to

scheduling a Historic Preservation Board workshop or public hearing.

- B.** The Planning Authority shall schedule the project for review at a workshop or public hearing on a date that meets public noticing requirements and prepare a report for the Historic Preservation Board's consideration which addresses the proposed project's compliance with the review standards in Section 16.7.
- C.** In the case of applications being reviewed at a workshop or workshops prior to the public hearing, they shall be informational and not result in any formal approval or disapproval of the project. At a workshop, the Historic Preservation Board shall review the plans and submittals, consider the staff review with respect to the review standards of this article, hear public comments and questions, and provide direction to the applicant regarding issues to be addressed.
- D.** At a hearing, the Historic Preservation Board shall approve, approve with conditions, or deny the application based on the applicable review standards of Section 16.7. Should the Historic Preservation Board deny an application, it shall enter findings of fact concerning the relationship between the application and the applicable standards of Section 16.7 within 60 days of the close of the public hearing. Written notice of the determination of the Historic Preservation Board on the application, including a copy of the findings of fact, shall be sent by regular mail to the applicant.

16.6.9 Review process involving major site plans

Site plan review by the Planning Board and certificate of appropriateness review by the

Planning Authority or Historic Preservation Board shall, to the extent feasible, proceed concurrently. Any proposed major site plan required to obtain a certificate of appropriateness under this article shall be exempt from the design standards included in Article 13, and shall comply with the applicable design standards of Section 16.7.

16.6.10 Notice of public meeting

- A.** For all certificate of appropriateness applications that are subject to Historic Preservation Board review, the applicant shall be responsible for posting a notice of public meeting sign on the property where the development is to occur. The dimensions, construction, and content of the sign shall be in accordance with standards established by the Planning Authority.
- B.** The sign shall be posted at least 10 days prior to the public workshop or hearing date, and shall be removed from the site no more than three days following the date of the meeting.
- C.** Once the required notice of public meeting signage is posted, the applicant shall submit a completed certification of posting form to the Planning Authority.
- D.** In the event that a required notice of public meeting sign is knocked over or made illegible, it shall be the responsibility of the applicant to promptly reset or replace the sign, though failure to do so shall not invalidate the review.

16.6.11 Conditions of approval

The Planning Authority or Historic Preservation Board may impose conditions upon its approval of any certificate of appropriateness to bring the application into compliance with the review standards of this article.

16.6.12 Issuance of certificate of appropriateness

- A.** The Planning Authority shall issue the certificate of appropriateness following approval or approval with conditions by the Planning Authority or the Historic Preservation Board.
- B.** No certificate of appropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.
- C.** Prior to issuance of any Certificate of Appropriateness, the applicant shall demonstrate sufficient right, title, or interest in the property, technical capacity, and financial capacity to complete any change proposed to be undertaken under the Certificate of Appropriateness, upon reasonable request of the Planning Authority.

16.6.13 Expiration of approvals

- A.** Unless work authorized by a certificate of appropriateness is commenced or a building permit for the same is issued within three years of the initial date of issuance of the certificate of appropriateness, the certificate of appropriateness shall expire and shall become null and void..
- B.** When the approved work also requires a site plan approval under Article 13, the expiration of the certificate of appropriateness shall be concurrent with the site plan expiration.

- C. In the event of litigation arising out of the granting of a certificate of appropriateness, the certificate shall remain valid until one year after the entry of final judgment in the litigation or until the end of the three-year period, whichever is later.

16.6.14 Amendments

- A. An applicant may apply for an amendment to a certificate of appropriateness by submitting an amendment application that includes a written statement of the proposed amendment, proposed amended plans, and related submittals to the Planning Authority.
- B. The Planning Authority is authorized to approve minor amendments under the procedures set forth in Subsection 16.6.7, provided that the proposed amendments:
 1. Are generally consistent with the approved plans.
 2. Meet all the applicable standards for review set forth in Section 16.7.
 3. Do not modify the work such that Historic Preservation Board review would otherwise be required per Table 16-A.
 4. Do not affect any condition or requirement of the Historic Preservation Board.
- C. Major amendments include changes that exceed the limited criteria for a minor amendment under Subsection 16.6.14(B). Review procedures shall follow those for a certificate of appropriateness Historic Preservation Board review.

16.7 STANDARDS FOR REVIEW OF APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

16.7.1 Historic Resources Design Manual

- A. The standards of this article are supplemented by the *Historic Resources Design Manual*. The *Historic Resources Design Manual* includes descriptions, guidelines, and illustrations of how the standards of this article will be interpreted. All provisions of the *Historic Resources Design Manual* shall be consistent with the standards of this article.
- B. Amendments to the *Historic Resources Design Manual* shall be adopted by the Historic Preservation Board following a public hearing. The *Historic Resources Design Manual* shall be maintained by the Planning Authority.

16.7.2 Standards for review of alteration

In considering an application involving alteration, the reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards:

- A. **Compatible use.** In the case of a change of use of a property from its originally-intended purpose, every reasonable effort shall be made to minimize the alteration of the character-defining features of the structure, object, or site and its environment as they relate to the original use.
- B. **Retain historic features.** The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- C. **Historical accuracy.** All sites, structures, and objects shall be recognized as products of their

own time, place, and use. Alterations that have no historical basis or create a false sense of historical development, such as adding conjectural features or elements from other properties, shall be discouraged.

- D. Acquired significance.** Changes which may have taken place in the course of time are evidence of the history and development of a structure, object, or site and its environment. Changes that have acquired significance in their own right shall not be destroyed.
- E. Sensitive treatment.** Distinctive features, finishes, and construction techniques or examples of skilled craftsmanship which characterize a structure, object, or site shall be treated with sensitivity.
- F. Repair rather than replace.** Deteriorated historic features shall be repaired rather than replaced wherever feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the feature being replaced in composition, design, texture, and other visual qualities and, where possible, materials. Repair or replacement of missing historic features should be based on accurate duplications of features, substantiated by documentary, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects.
- G. Surface cleaning.** The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.

H. Archaeological resources. Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.

I. Contemporary design and differentiation.

Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

J. Reversibility. Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

16.7.3 Standards for review of new construction

In considering an application involving new construction, the reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards:

A. Scale and form

- 1. Height.** The proposed height shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
- 2. Width.** The width of a building shall be visually compatible with surrounding

structures when viewed from any street or open space and in compliance with any design guidelines.

3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways, and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches, and balconies shall be visually compatible with the structures, public ways, and places to which they are visually related.
6. *Applicability of the underlying zoning.* The review standards above shall not supersede the dimensional requirements of the underlying zoning

B. Composition of principal facades

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways, and places to which the building is visually related.
2. *Rhythm of solids to voids in facades.* The relationship of solids to voids in the facade of a structure shall be visually compatible with structures, public ways, and places to which it is visually related.
3. *Rhythm of entrance porch and other projections.* The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures,

public ways, and places to which they are visually related.

4. *Relationship of materials.* The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in the structures to which they are visually related.
5. *Signs.* Any new sign, and any change in the appearance of an existing sign located on a landmark, within a historic district, or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

C. Relationship to street

1. *Walls of continuity.* Facades and site structures, such as masonry walls, fences, and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways, and places to which such elements are visually related.
2. *Rhythm of spacing and structures on streets.* The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways, and places to which it is visually related.
3. *Directional expression of principal elevation.* A structure shall be visually compatible with the structures, public ways, and places to which it is visually

related in its directional character, whether this be vertical character, horizontal character, or nondirectional character.

4. *Streetscape, pedestrian improvements.* Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to or on a landmark, within a historic district, or within a historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

D. Other standards

1. *Compatible use.* In the case of a change of use of a property from its originally-intended purpose, every reasonable effort shall be made to minimize the alteration of the character-defining features of the structure, object, or site and its environment as they relate to the original use.
2. *Distinguishing original character.* The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The alteration of any historic material or distinctive architectural features should be avoided when possible.
3. *Archeological resources.* Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.

4. *Contemporary design.* Contemporary design for additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, material, and character of the property, neighborhood and environment.
5. *Additions.* Wherever possible, new additions to structures and objects shall be undertaken in such a manner that, if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

16.7.4 Standards for review of alterations to noncontributing structures

In considering an application for a certificate of appropriateness involving alteration(s) to a noncontributing structure, the intent of the review shall be to guide projects toward a more compatible relationship with the surrounding context using the standards for review of construction set forth in Subsection 16.7.3.

16.7.5 Standards for review of relocation

In considering an application involving relocation, the reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards:

- A.** Whether the historic or urban design character and aesthetic interest of the structure or object contribute to its present setting.
- B.** If located within a district, whether there are definite plans for the area to be vacated and

what the effect of those plans is on the character of the surrounding area. In such cases, consideration of additional design guidelines for construction to be imposed as a condition of approval is appropriate.

- C. Whether the relocation of the structure or object can be accomplished without significant damage to its physical integrity.
- D. Whether the proposed relocation area is compatible with the cultural, historical or architectural character of the structure or object.

16.7.6 Standards for review of signage

In considering an application involving the installation or modification of sign(s) the reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards:

- A. Signs shall be compatible with the subject building and its surrounding context.
- B. Signs shall be installed in such a manner as to minimize damage to contributing structures or objects.
- C. If there is a conflict between this standard and the requirements of Article 19, the stricter standard shall apply.

16.8 CERTIFICATE OF ECONOMIC HARDSHIP

16.8.1 Applicability

- A. Any applicant who has received a denial under this article or is seeking demolition of a landmark or a contributing structure within a district may apply for a certificate of economic hardship from the Historic Preservation Board.
- B. The application shall be submitted to the Planning Authority, together with the applicable

fee. In the case of a denial, the application shall be submitted within 60 days of the denial.

16.8.2 Standard to be applied

- A. The Historic Preservation Board shall approve an application for a certificate of economic hardship only upon a determination that the denial of the proposed activity or the proposed demolition will result in the loss of all reasonable use of the structure.
- B. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts of neglect of the owner or their predecessors in title under Section 16.9.

16.8.3 Information to be supplied by applicant

- A. The applicant shall submit by affidavit the following information, which shall constitute an application:
 - 1. The assessed value of the property and/or the structure for the two most recent assessments.
 - 2. Real property taxes paid for the previous two years.
 - 3. The amount paid for the property by the owner, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
 - 4. All appraisals obtained within the previous two years.
 - 5. All listings of the property for sale or rent, price asked and offers received within the previous four years
 - 6. All studies commissioned by the owner as to profitable renovation, rehabilitation, or

- utilization of any structures or objects on the property for alternative use.
- 7. For income-producing property, itemized income and expense statements from the property for the previous two years.
- 8. Professional assessment from a licensed engineer or architect with experience in renovation, restoration, or rehabilitation of historic buildings as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation.
- 9. Estimate of the cost of the alteration, construction, demolition, or removal proposed by the applicant.
- 10. Estimate of cost that would be incurred to address findings of fact provided by the reviewing authority in issuing a denial of a certificate of appropriateness.
- 11. A statement of the minimum extent of work necessary to allow reasonable use of the structure.
- B. In the event that the information required to be submitted by the applicant is not reasonably available or attainable, the applicant shall file with the affidavit a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.
- C. The Planning Authority may request that third-party reviewers with applicable expertise to review materials provided by the applicant and prepare a report on their analysis of the application materials. In these cases, the cost of the third-party review shall be charged to the applicant.

- D. The Historic Preservation Board may require additional evidence or supporting materials to inform their decision on the application.

16.8.4 Review

- A. The Historic Preservation Board shall hold a workshop or public hearing on the application within 30 days following receipt of a complete application.
- B. The determination by the Historic Preservation Board shall be made within 30 days following close of the public hearing. The determination shall be accompanied by findings of fact.

16.8.5 Issuance

- A. If the determination of the Historic Preservation Board is that a denial of the certificate of appropriateness or the prohibition on demolition under subsection 16.3.6 has resulted in the loss of all reasonable use of the structure, then the certificate of economic hardship shall be issued by the Planning Authority within 30 days following the determination.
- B. Certificates of economic hardship shall:
 - 1. Limit the scope of work to the minimum extent necessary to allow reasonable use of the structure; and
 - 2. Not allow for the beginning of any demolition work until the necessary approvals and permits have been attained to allow for the rehabilitation, alteration, or replacement of the structure.
- C. Certificates of economic hardship shall be valid for a period of three years from the date of the determination by the Historic Preservation Board.

- D. Certificates of economic hardship shall not be transferable from the applicant to another subsequent owner of the same property.

16.9 MAINTENANCE

16.9.1 Preservation of protected structures

- A. All landmarks and contributing structures and objects shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:
 - 1. Deteriorated or inadequate foundation which jeopardizes its structural integrity.
 - 2. Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
 - 3. Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration which jeopardize its structural integrity.
 - 4. Structural members of ceilings and roofs, or other horizontal structural members, which sag, split, or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
 - 5. Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity.

- 6. Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation.
- B. The owner or such other person shall repair such structure or object within a specified period of receipt of a written order by the Planning Authority to correct defects or repairs to any structure or object as provided by (A) above, so that such structure or object shall be preserved and protected from further deterioration in accordance with the purposes of this article.
- C. Any such order shall be in writing, shall state the actions to be taken with reasonable particularity and shall specify dates for compliance, which may be extended by the Planning Authority for reasonable periods to allow the owner to secure financing, labor or materials.

16.10 PENALTIES

16.10.1 Fines for violation

Failure to perform any act required by this article or performance of any act prohibited by this article or of any conditions or any certificate issued hereunder shall constitute a violation and be subject to a fine as provided in 30 A M.R.S. §4452. Each day on which there is failure to perform a required act or on which a violation exists shall constitute a separate violation for purposes of this section.

16.10.2 Withholding of future approvals

Where the applicant has done work or caused work to be done not in compliance with an approval received under this article or without the approvals required under this article, no new application for a certificate of appropriateness shall be considered for the site or structure associated with the

violation until the work done without approval is brought into compliance with the requirements of this article.

16.10.3 Additional penalties for willful violation or gross negligence

- A.** In addition to the penalties authorized by Subsections 16.10.1 and 16.10.2, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:
- 1.** No permit shall be issued under Chapter 6 of this Code of Ordinances for any alteration or new construction affecting such property for a period of five years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the Planning Authority that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.
 - 2.** For a period of 25 years, any alteration or new construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural, or archaeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.
 - 3.** As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore, or replicate the structure or object on the property.

- B.** Paragraphs (A)(1) and (2) above shall not apply to violations which are limited to noncontributing structures.

16.11 APPEALS

The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of any application associated with this article, may appeal that decision in accordance with Article 2.

1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this chapter of the City of Portland Code of Ordinances is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

1.2 ZONING MAP

The City of Portland zoning map is incorporated by reference.

1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, and the relationship of development to the public realm, Portland's open spaces, and the environment.

1.4 APPLICABILITY

This Land Use Code applies to all land, uses, and structures within the corporate limits of the City of Portland. No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be sold, leased, conveyed, used, developed, or altered except in conformity with the provisions of this Land Use Code.

1.5 ENFORCEMENT

1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer 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 Land Use Code.

1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Chapter 1, Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

1.6 RELATIONSHIP WITH OTHER LAWS

1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this code, the more restrictive provision shall control.

1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

1.6.4 Comprehensive Plan

The City's adopted Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current adopted Comprehensive Plan.

1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

1.6.6 Private agreement

This Land Use Code does not nullify any private agreement or covenant. However, where this code is more restrictive than a private agreement or covenant, this code controls. The City does not enforce private agreements.

1.7 DELEGATION OF AUTHORITY

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom they have authority.

1.8 RULES OF INTERPRETATION

1.8.1 Meaning of words and terms

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For

words or terms not specifically defined in this Land Use Code, they are interpreted by their common dictionary meaning or customary usage consistent with their context.

1.8.2 Graphics and illustrations

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text ~~controls~~ shall control.

1.8.3 Lists and examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as”, or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

1.8.4 Time

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be completed. Business days shall be interpreted as days on which the City of Portland is open for business.

1.8.5 Obligatory terms and conjunctions

The terms in the text of the Land Use Code shall be interpreted in accordance with the following rules of construction:

- A.** The terms “must”, “shall”, ~~or~~ and “will” are mandatory terms that express a requirement or impose an obligation.
- B.** The terms “must not”, “shall not”, “will not”, and “may not” express a prohibition.

- C. The term “should” expresses a recommendation or suggestion and does not express a requirement or imposition.
- D. The term “may” is permissive and does not express a requirement or imposition.
- E. The conjunction “and” indicates that all connected words or provisions apply.
- F. The conjunction “or” indicates that the connected words or provisions may apply singly or in any combination.
- G. The conjunction “either [...] or” indicates that the connected words or provisions apply singly, but not in combination.

1.8.6 Gender

Words denoting one gender apply to all genders.

1.8.7 Abbreviations

Building Authority. Either the Department of Permitting and Inspections, its director, or their designee.

Council. The Portland City Council.

Planning Authority. Either the Department of Planning and Urban Development, its director, or their designee.

Public Works Authority. Either the Department of Public Works, its director, or their designee.

1.9 SUCCESSIVE APPLICATIONS

Whenever any application, appeal, or other request filed pursuant to this Land Use Code has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such

denial unless, in the opinion of the authority or board before which it is brought, there has been a substantial change in circumstance or substantial new evidence is available.

1.10 AMENDMENTS

1.10.1 Authority

The City Council may amend this Land Use Code and the zoning map incorporated herein.

1.10.2 Procedure

A. An application for a text or zoning map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The fee for text or zoning map amendment applications may be waived or reduced by the Planning Authority in the case of an application submitted by a governmental body or where an applicant can establish financial hardship. If a text or zoning map amendment application is withdrawn by an applicant prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of half of the amount of the application fee will be made to the applicant by the City provided that all costs incurred by the City have been paid in full by the applicant.

B. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area; ~~except that for map amendments to a site~~

~~located within industrial zone designations the notice range shall be 1,000 feet.~~ The notice hereunder shall include a brief description of the application, the address or location of the property involved, and contact information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- C. A private applicant for a map amendment that would permit a development subject to major site plan review shall conduct neighborhood outreach according to the provisions for neighborhood meetings under Article 14.
- D. The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- E. The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- F. The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or zoning map.

1.10.3 Review fees

The applicant shall pay a fee to cover the professional and administrative costs for review and analysis associated with the amendment, including but not limited to planning, legal, engineering, or other services. The fee shall be based on the hours of review and processing time and the prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant.

1.10.4 Review standards

Except as otherwise required by law, amendments to the City's Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

1.11 TRANSITION RULES

A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6. A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a nonconforming use and is controlled by the provisions of Article 4.

2 ADMINISTRATION

2.1 PLANNING BOARD

2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the City. Members shall serve without compensation.

2.1.2 Appointments

- A. Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly appointed and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term. Members may serve for three consecutive three-year terms.
- B. Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing.

2.1.4 Officers

- A. Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. The chair may administer oaths.
- B. Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.
- C. Pro tempore officers.** In the absence of both the chair and the vice chair, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the vice chair's absence. In the absence of the vice chair, or when the vice chair is serving as chair, the board shall elect a vice chair pro tempore from among its number and the vice chair pro tempore shall have all the powers of the vice chair during the vice chair's absence or service as chair.

2.1.5 Committees

The chair of the Planning Board shall assign the members of the board to such regular and special committees as may be established by the board. Such committees shall have no final authority but shall assist the board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee

meetings deliberative in nature shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq.

2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The vote of ~~at least four~~ a majority of the members present shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks at any one time. The Planning Authority shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

2.1.7 Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which ~~he or she has~~ they have an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be recused from the matter.

2.1.8 Meetings and procedures

A. Meetings. Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the board. Special meetings may be called by the chair or any four members of the Board or at the request of the City Council.

1. *Workshops.* Workshops of the Planning Board or any of its committees may be

held at the call of the board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, their staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1 M.R.S. § 401 et seq. shall be informational only and shall not result in final decisions on any matter.

2. *Public hearings.* Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the board.

B. Notice. The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. *Site plan and subdivision.* Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property, ~~except that~~



~~for subdivisions within industrial zones the notice range shall be 1,000 feet.~~

2. *Land Use Code or zoning map amendment.* Notice of public hearing shall be publicly posted in the municipal office at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12 days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 13 calendar days in advance of any workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.
3. *Contract or conditional zoning.* Notice of public hearing shall be posted in the City Clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two times, the date of the first publication to be at least seven days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

The cost of noticing shall be charged to the applicant.

- C. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the Planning Authority and with the City Clerk. Any and all rule changes shall be placed on a City Council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of the date of filing with the City Clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in Subsection 2.1.8(A)(1), all meetings, hearings, and deliberations of the Planning Board and its committees shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.
- D. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of their staff who shall attend all Planning Board proceedings. The staff shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or their absence or failure to vote, and shall maintain the permanent records and decisions of all Board meetings, hearings, and proceedings and all correspondence of the Board, as required by statute. Such records shall be public records

open to inspection during working hours upon reasonable notice.

2.1.9 Record and decisions

- A. Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.
- B. Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall ~~mail~~provide notice of any decision of the Planning Board to the applicant.

2.1.10 Jurisdiction and authority

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the City and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- A.** To prepare and recommend a Comprehensive Plan to the City Council.
- B.** To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan.
- C.** To aid and assist the City Council and departments and agencies of the City in implementing general plans and in planning, developing, and completing specific projects.
- D.** To hear, review, and approve, conditionally approve, or deny ~~master development plans~~ and major site plans.
- E.** To hear, review, and approve, conditionally approve, or deny applications for subdivision approval.
- F.** To hear, review, and approve or deny applications for conditional uses ~~listed as~~ specified in Article 6.
- G.** To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code.
- H.** To review and offer its recommendations to the City Council on certain public projects.
- I.** To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas.
- J.** To prepare and offer its recommendations to the City Council with regard to the City's annual Capital Improvement Program.
- K.** Upon reasonable request, to make its special knowledge and expertise available to any official, department, board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City.
- L.** To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable.
- M.** To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder

and to pay for their services and for such other expenses as may be necessary and proper, provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes by the City Council.

- N. To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances.
- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority.
- P. To approve, following a public hearing and at the recommendation of the Public Works Authority and the Planning Authority, *Technical Manual* and *Design Manual* standards, provided that such standards shall be additional to and consistent with the provisions of this Land Use Code, necessary and reasonable, and in accordance with sound engineering and urban design practice.

2.1.11 Administrative appeals

- A. **Application procedures.** An appeal may be taken to the Planning Board by any person affected by a final decision of the Planning Authority except as provided elsewhere in this Land Use Code. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority an application for appeal specifying the grounds thereof. The application shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany each application. The Planning Authority shall forthwith transmit to the Planning

Board all of the papers constituting the record upon which the action appealed from was taken.

- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Planning Board in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the Planning Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the board to act within 30 days shall be deemed a denial of the appeal unless mutually extended in writing by the appellant and the board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.
- D. **Conditions and limitations.** Any right granted by the reviewing board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.1.12 Planning Board appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

2.2 HISTORIC PRESERVATION BOARD

2.2.1 Composition

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. Members shall not be officers or employees of the City. Members shall have demonstrated interest, knowledge, ability,

experience, or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

2.2.2 Appointments

- A. Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not more than three members expire in any calendar year. Members may serve for three consecutive three-year terms.
- B. Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60 days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

2.2.4 Officers

- A. Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.

- C. Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.

- D. Pro tempore officers.** In the absence of both the chair and the vice chair, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the vice chair's absence. In the absence of the vice chair, or when the vice chair is serving as chair, the board shall elect a vice chair pro tempore from among its number and the vice chair pro tempore shall have all the powers of the vice chair during the vice chair's absence or service as chair.

2.2.5 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Historic Preservation Board without a quorum, consisting of four members, being present. The vote of a majority of the members present shall be necessary to authorize any action by the board. If less than a quorum is present, the hearing may be adjourned for a period not less exceeding three weeks at any one time. The Planning Authority shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of the adjournment.

~~2.2.52.2.6~~ Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which ~~he or she has an interest~~ they have

an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be recused from the matter.

2.2.62.2.7 Meetings and procedures

- A. Meetings.** Regular meetings of the Historic Preservation Board shall be held no less frequently than monthly. Special meetings may be called by the chair ~~or~~, any four members of the board, or at the request of the ~~chair of the~~ Planning Board or City Council.
- 1. Workshops.** Workshops of the Historic Preservation Board or any of its committees may be held at the call of the board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, their staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Historic Preservation Board. Such meetings, unless open to the public as provided in Title 1 M.R.S. § 401 et seq., shall be informational only and shall not result in final decisions on any matter.
 - 2. Public hearings.** Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Historic Preservation Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the board.
- B. Notice.** The Planning Authority shall give notice of the time and place of Historic Preservation

Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

- 1. Landmark ~~or, historic district, or historic landscape~~ district nomination.** Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to ~~the any~~ workshop or hearing. Notice shall be sent by regular United States mail ~~at least 10 calendar days in advance of the workshop or hearing date~~ to the applicant and to the owner(s) of the subject property or properties at least 10 calendar days in advance of any workshop or hearing date.
- 2. Certificate of Appropriateness review.** Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
- 3. Major site plan review.** For alteration or new construction that is classified as a major site plan under Article ~~14~~13, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.
- 4. The cost of noticing shall be charged to the applicant.**
- C. Procedures.** The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with ~~this article, including the creation the statutes of a subcommittee structure to enhance efficiency in consideration of~~

~~Historic Preservation Board business. Such rules shall be filed with the Planning Authority~~state ~~and with the City Clerk. All such rules shall be subject to veto~~this article. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of such the date of filing. The initial with the City Clerk. No rules change shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto until that time period. Any rule may be has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in Subsection 2.2.7, all meetings, hearings, and deliberations of the Historic Preservation Board and its committees shall be open to the public in accordance with Title 1 M.R.S. § 401 et seq. Testimony at any hearing may be required by the Historic Preservation Board to be given under oath.

2.2.72.2.8 Record and decisions

- A. Record.** ~~The Director of the Department of Planning & Urban Development or their designated minutes of the staff representative shall attend, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Historic Preservation Board meetings. The staff shall provide for the keeping of tape recordings or and the decision of the Board shall constitute the record.~~

~~minutes of the proceedings~~**Decision.** Every final decision of the Historic Preservation Board, ~~showing the vote of each member on every question or their absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions every recommendation of the Historic Preservation Board to Historic Preservation Board members and to others upon approval of the Historic Preservation Board.~~

- B.** ~~No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition, or demolition until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section 17.6.~~
- C.** ~~Every recommendation or recommended decision of the Historic Preservation Board~~the Planning Board or City Council shall include written findings of fact, and shall specify the reason or reasons for such action.
- D.B.** ~~Staff shall mail decision or recommendation. The Planning Authority shall provide notice of any final determination or recommendation decision of the Historic Preservation Board to the applicant and property owner(s).~~

2.2.8 Responsibilities

2.2.9 Jurisdiction and authority

The Historic Preservation Board shall have the following ~~responsibilities~~ jurisdiction and authority:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally, and archaeologically significant areas, sites, structures, and objects.
- B.** ~~To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and~~ nominated for local historic designation, and to make recommendations to the Planning Board and City Council for ~~the~~ their designation ~~of those areas, sites, structures, and objects as local landmarks or, historic districts.~~
- C.** ~~To investigate and recommend to the Planning Board and City Council the designation of areas, sites, structures, and objects not listed in the National Register of Historic Places as local landmarks and, and historic landscape districts and to make recommendations to the Planning Board concerning sites, structures, and objects that have contributing significance or are intrusions within nominated or designated districts.~~
- D.** ~~To keep and make available to the public a register of all areas, sites, structures, and objects that have been designated as landmarks or districts, including all information required as part of each designation.~~
- E.** ~~Upon request, to advise and assist owners of landmarks and property, sites, structures, or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation, and reuse and for procedures for inclusion on other registers of significant areas, sites, structures, and objects, including the National Register of Historic Places.~~
- F.B.** ~~To recommend to the Planning Board the nomination of areas, sites, structures, and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established as applicable.~~
- G.C.** To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission, and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- H.** ~~To seek funding for which the City of Portland is eligible through the Certified Local Government Program to assist in local preservation projects, including projects undertaken by local non profit organizations.~~
- I.** ~~To, upon request by the City Council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act, attend informational and educational programs sponsored by the Maine Historic Preservation Commission, and prepare an annual report of the activities of the Historic Preservation Board.~~
- J.** ~~To inform and educate the citizens of Portland concerning the cultural, historic, architectural, and archeological heritage of the city by publishing appropriate maps, newsletters, brochures, and pamphlets and by sponsoring programs and seminars.~~
- K.D.** To hold meetings workshops and public hearings to review applications for certificates of appropriateness affecting proposed ~~or~~ historically designated landmarks and

~~districts~~properties and to ~~recommend approval~~approve or ~~disapproval of~~deny certificates of appropriateness.

~~L.E.~~ To ~~provide testimony to the Board of Appeals in connection with any application review applications~~ for a ~~Certificate~~certificates of economic hardship and to issue or deny ~~certificates~~ of economic hardship.

~~F.~~ To develop design guidelines affecting landmarks or districts ~~for review and approval by.~~

~~M.~~ To assist the Planning Board:

~~N.~~ To advise the Planning Board as to ~~recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise.~~

~~O.~~ To advise the Planning Board as to the ~~administration of such gifts, grants, and money as may be appropriated for the purposes of this article upon authorization and approval by the City Council.~~

~~P.~~ To provide comment, as appropriate, to the Planning Board and/or City Council on matters pertaining to historic preservation in Portland.

~~Q.~~ To confer recognition upon the owners of landmarks or properties, sites, structures, or objects within districts by means of certificates, plaques, or markers.

~~R.G.~~ To assist the Planning Board and City Council in the development of a preservation component in the Comprehensive Plan of the City of Portland.

~~H.~~ To periodically review the Land Use Code and To make recommendations to the Planning Board concerning any amendments to the Land Use Code appropriate for the protection and continued use of ~~landmarks or historically-~~

designated properties, ~~sites, structures, or objects.~~

~~I.~~ As requested, to provide comment, recommendations, or testimony to the Planning Board or City Council on matters pertaining to historic preservation in Portland.

~~2.2-92.2.10~~ Administrative appeals

A. Application procedures. An appeal may be taken to the Historic Preservation Board by any person affected by a decision of the Planning Authority relative to Article ~~17~~16. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority an application for appeal specifying the grounds thereof. The application shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany the application. The Planning Authority shall forthwith transmit to the Historic Preservation Board all of the papers constituting the record upon which the action appealed from was taken.

B. Standard of review. The standard of review for appeals pursuant to this section shall be de novo. The appellant shall bear the burden of proof.

B. Public hearing. A public hearing shall be set, advertised, and conducted by the Historic Preservation Board in accordance with the provisions of this article.

C. Action. Within 30 days following the close of the public hearing, the Historic Preservation Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the

state. The failure of the board to act within 30 days shall be deemed a denial of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.

- D. Conditions and limitations.** Any right granted by the board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.2.10 2.11 Historic Preservation Board appeal

- A. Historic Preservation Board decision.** An appeal from any final decision of the Historic Preservation Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the City to the Planning Board, adhering to the requirements of Subsection 2.1.11 of this article.
- B.** The Planning Board shall deny the appeal unless it finds that the action of the Historic Preservation board was arbitrary or capricious or was not based on substantial evidence. Review by the Planning Board under this subsection is intended to be appellate in nature. Except where the Planning Board determines that injustice would result, the Planning Board shall determine the appeal without considering any facts or arguments which were not presented to the Historic Preservation Board. Where the Planning Board finds it necessary to consider such new evidence in order to do substantial justice, it shall remand the matter to the Historic Preservation Board for further consideration, unless it determines that

the resulting delay is likely to result in undue hardship to the applicant.

- C. Planning Board decision.** The Planning Board's decision on an appeal from a decision of the Historic Preservation Board shall be final with respect to the application or matter initially presented to the Historic Preservation Board. An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the board is limited to the making of a recommendation.

2.3 ZONING BOARD OF APPEALS

2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of the City or any of its agencies or departments. Members shall serve without compensation.

2.3.2 Appointments

- A. Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall serve until their successors are duly elected and qualified provided, however, that such service shall not extend to over 120 days after expiration of their term. Members may serve for three consecutive three-year terms.

- B. Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing.

2.3.4 Officers

- A. Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair.
- B. Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. The secretary shall fulfill the duties provided by statute and this article and have such other duties as may be provided by the rules of the board.
- C. Pro tempore officers.** In the absence of both the chair and the secretary, the board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving as chair, the board shall elect a secretary pro tempore from among its number and the secretary pro tempore shall have all the powers

of the secretary during the secretary's absence or service as chair.

2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at least four members of the board shall be necessary to grant any request or application or to sustain any appeal. ~~Any matter that receives fewer than four votes shall be deemed to have been denied. The~~ vote of a majority of the members present shall be necessary to authorize any action by the board.

2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which ~~he or she has~~ they have an interest. Any question of whether a member has a conflict of interest sufficient to disqualify ~~him or her~~ them shall be decided by a majority vote of the members, except the member who is being challenged. Where such a vote results in a tie, the challenged member shall be deemed disqualified.

2.3.7 Meetings and procedures

- A. Staff.** The Building Authority or their designee shall serve as staff to the Board of Appeals.
- B. Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the board. Special meetings shall be called by the chair at the request of any two members of the board or at the request of the City Council. All meetings and hearings of the board shall be open to the public. For all matters properly brought before the Board of Appeals, the board shall select a reasonable time and place for a public hearing

following the submission of the subject application.

- C. Notice.** The Building Authority shall give notice of public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:

1. In all cases, to the petitioner.
2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant.
3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning Board and City Council by reasonable means.
4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine ~~Commission of the~~ Department of Environmental Protection at least 20 days prior to action by the board. Any comments received from the Commissioner or their designee prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract.
6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property.
7. For purposes of this subsection, the owners of property shall be considered to be the parties listed by the ~~Assessor's~~ Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the board.
8. The cost of noticing shall be charged to the applicant.

- D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the board upon good cause being shown.

1. *Conduct of hearings.*
 - a. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.

- b. The applicant and any abutter or similar person with standing shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.
- 2. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.

2.3.8 Records and decisions

- A. **Record.** The recording of testimony, if any, and all exhibits, papers, applications, and requests filed in any proceeding before the Board of Appeals and the decision of the board shall constitute the record.
- B. **Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall hand deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council within seven days of such decision, and shall also file the decision with the City Clerk.

2.3.9 Jurisdiction and authority

The Board of Appeals shall have the following jurisdiction and authority:

- A. To hear and decide appeals from the granting or denial of any permit required by Chapter 6, Article ~~11~~, or Chapter 10 of the City of Portland Code of Ordinances.
- B. To hear and decide appeals from any decision or order made by the Building Authority pursuant to the provisions of this Land Use Code or any other chapter of the City of Portland Code of Ordinances, except that decisions relating to enforcement of the Shoreland Zone provisions of this chapter may not be appealed to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B and 30-A M.R.S. §§ 2691 & 4483.
- C. To review interpretations of the Zoning Administrator or their designee, except that decisions on such interpretations shall be advisory only and shall not be appealable.
- D. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to terms related to use; dwelling unit conversion; space and bulk, such as lot size, density, and setbacks; parking; loading; and signs.
- E. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeals

- A. **Application procedures.** Application for any appeal to the board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in

such form as prescribed by the Building Authority.

- B. Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Subsection 2.3.7.
- C. Standard of review.** The standard of review for appeals pursuant to Subsections 2.3.9(A), (B), and (C) shall be de novo. The appellant shall bear the burden of proof.
- D. Conditions and limitations on rights granted by appeal.** Any right granted by the Board of Appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.3.11 Variances

A. Application procedures

1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
2. A public hearing shall be set, advertised, and conducted by the Board of Appeals in accordance with Subsection 2.3.7.
3. All decisions by the board shall be rendered in a manner and form not inconsistent with the statutes of this state.
4. When a decision affects property located within the Shoreland Overlay Zone, the Zoning Board of Appeals shall cause written notice of its decision to be mailed or hand-delivered to the Department of

Environmental Protection within seven days of the board's decision.

- B. Undue hardship variance.** An undue hardship variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his or her property would cause undue hardship. The words “undue hardship” as used in this subsection mean the following:

1. The land in question cannot yield a reasonable return unless a variance is granted.
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
3. The granting of a variance will not alter the essential character of the locality.
4. The hardship is not the result of action taken by the applicant or prior owner.

C. Disability variance

1. *By the Board of Appeals.* Notwithstanding the provisions of subsection (B) above, the board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures

necessary for access to or egress from the dwelling” shall include railing, wall, or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S. § 4553.

2. *By the Building Authority.* Notwithstanding the provisions of subsections (B) and (C(1)) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability.

D. Practical difficulty variance. Notwithstanding the provisions of subsections (B) and (C) above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, lot coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a

practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood.
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties.
3. The practical difficulty is not the result of action taken by the applicant or a prior owner.
4. No other feasible alternative is available to the applicant, except a variance.
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment.
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S. § 435, nor within a Shoreland Zone or flood hazard area, as defined in this Land Use Code.

E. Specified variances prohibited

- ~~1. No use permitted in medium- and high-density residential zones shall be permitted in low-density residential zones. No use permitted in mixed-use or office zones shall be permitted in any residential zone. No use permitted in industrial and airport zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial or airport zone. The general use categories are listed below:~~

- ~~a. Low density residential: IR 1, IR 2, IR 3, R 1, R 2, R 3.~~
- ~~b. Medium and high density residential: R 4, R 5/R 5a, R 6/R 6a.~~
- ~~c. Mixed Use/Office: B 1/B 1b, B 2/B 2b/B 2c, B 3/B 3b/B 3c, B 4, B 5/B 5b, B 6, B 7, I B, R P, O P.~~
- ~~d. Industrial: I L/I Lb, I M/I Ma/I Mb, I H/I Hb, A B.~~

~~2-1.~~ A variance may only be granted with respect to the generally applicable space and bulk requirements of the zone in which the property is located and not from any provision that allows a deviation from those requirements.

~~3-2.~~ No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.

~~4-3.~~ No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.

~~5-4.~~ No variance shall be granted which would be greater than the minimum variance

necessary to relieve the undue hardship or the hardship of the applicant.

~~6. No variance shall be granted from the minimum lot sizes set forth in Subsection 4.3.1 for lots in the IR 1 and IR 2 zones.~~

~~7. No variance shall be granted from the requirements in Subsection 6.4.1.~~

F. Conditions on variances; variances less than requested.

Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening, and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

G. Limitations on variances. No variance permitting the erection or alteration of a building shall be valid for a period longer than two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than two years, unless an occupancy permit is issued and a use commenced within such period.

H. Recording of variances. No variance shall be valid unless, within 90 days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S. § 4353(5).

2.3.12 Violations

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this chapter or the conditions under which the relief was granted have not been complied with.

~~2.3.13 Appeals~~

2.3.13 Reconsideration

The Board of Appeals may reconsider any decision within 45 days of its decision. A request to the board to reconsider a decision must be filed within 10 days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The board may conduct additional hearings and receive additional evidence and testimony. Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

2.3.14 Appeals

Any aggrieved party may take an appeal, within 45 days of the vote of the original decision, from any final decision of the Board of Appeals~~may be taken by any aggrieved party~~ to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure and 30-A M.R.S. §§ 2691 & 4483, except as otherwise specifically provided in this article.

3 DEFINITIONS

Accessory dwelling unit. A dwelling unit subordinate in size to the principal residential structure(s) on a lot and located either within the principal residential structure(s) or in an accessory structure.

Adjacent grade (within the floodplain). For the purposes of calculating floor elevation in areas of special flood hazard, the natural elevation of the ground surface prior to the construction next to the proposed wall of a structure.

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S. §§ 2911, 2912.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses (including utilities such as electric, heat, water, sewer, and/or trash

that the household pays separately from rent) or must pay in ~~monthly ownership cost (including but not limited to~~ mortgage payments (including, condominium/HOA fees, mortgage insurance, other insurance, and real estate taxes), does not exceed 30% of a household’s income, or other amount established in City regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. Land and associated structures used for the growing of crops and raising of domesticated animals to provide food and other products for sale, personal consumption, donation, and/or educational purposes. Agriculture includes single-family dwellings and any additional dwellings that are accessory to the principal use of agriculture. Agriculture also includes farmstands used to sell crops grown on the premises.

Airport. Land, water, or any human-made object or facility located thereon, which is used or intended to be used for landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. Airports may include airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

Airport restricted access areas. Runways, taxiways, and other areas of an airport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building.

Area of ~~shallow~~ flooding. Area designated AO and AH zone on the Flood Insurance Rate Map (FIRM) with a 1 % or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of ~~special~~ flood hazard. The land in the ~~flood plain~~floodplain having a 1% or greater chance of flooding in any given year as specifically identified in the most recently adopted FEMA Flood Insurance Study for the City of Portland.

Auto service station. A business selling fuel for vehicles and propane, or providing services specific

to charging electric vehicles, or providing motor vehicle repairs including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair, or similar activities. Such businesses may also include car-washes and/or vacuums.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-~~course~~ meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Base flood. The flood having a 1% chance of being hereof or exceeded in any given year (i.e., a 100-year storm).

Basement. Area of building that includes a floor that is subgrade (below ground level) on all sides.

Bed and breakfast. A detached dwelling that contains no more than nine guest rooms; is used to provide or offer overnight accommodation for transient guests; has an owner, manager, or operator living in the building as a permanent resident; does not provide cooking facilities in any of the guest rooms; and ~~does not provide meals other than breakfast, which shall be offered only to overnight guests.~~provides meals on-site.

Beverage container redemption center. A facility established with the primary purpose of accepting empty beverage containers from consumers and paying or otherwise providing the refund value of such containers.



Breakaway wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without damage to the elevated portion of the building or supporting foundation system.

Building. A roofed and walled structure built for permanent use.

Building, accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint, floor area, or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removal of features otherwise affecting the exterior appearance of a building.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Child care center. Per 22 M.R.S. §8301-A(1-A)(A), a child care center is a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for.

Child care facility, small. Per 22 M.R.S. §8301-A(1-A)(E), a small child care facility is a house or other place, not the residence of the operator, in which a person maintains or otherwise carries out a regularly scheduled program, for any part of a day, providing care and protection for 3 to 12 children between 6 weeks and 12 years of age.

Clinic. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists, or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.

Coastal AE Zone. The portion of the coastal high hazard area, ~~The~~ with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

Coastal high hazard area. An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity waters,

including but not limited to, hurricane wave washwave action from storms or tsunamis. The area is seismic sources. Coastal high hazard areas are designated on the flood insurance rate map as Zone V-30-VE and Zone AE bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM).

Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit, or emergency purposes, but not including pleasure craft used principally for recreational purposes.

Common circulation drives. Private driveways, roadways and circulation areas accessible to all on-site tenants and/or occupants of a lot within the Waterfront Central Zone providing access from/to the public street network.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances. A community hall may also be referred to as a neighborhood center.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S. § 560 et seq., or its equivalent, as it may from time to time be amended.

Construction and engineering services. Offices for businesses in the conduct of any landscape or building trade or craft, together with land and/or structures used for the storage of equipment, vehicles, machinery, and/or materials related to and used by the trade or craft. Construction and engineering services with no storage of equipment, vehicles, machinery, and/or materials are considered general office uses.

Containment wall. Wall surrounding all sides of an above ground tank to contain any spills or leaks.

Critical systems. Mechanical, electrical, plumbing, fire protection, life safety, and communication systems required for the uninterrupted and safe operation and occupancy of a building.

Cultural facility. A facility open to the public, providing access to cultural exhibits and activities including but not limited to museums, cultural or



historical centers, non-commercial galleries. A cultural facility may include accessory services such as, but not limited to, retail sales of related items.

Disturbed area. All land areas of a site that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a site. Construction equipment movement, laydown areas, parking for a site, and tree removal is considered disturbed area. Disturbed area does not include routine maintenance but does include redevelopment and new impervious area. Replacement of a building is not considered routine maintenance and is therefore considered disturbed area.

Drive-through. A facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities.

Dwelling, four-family. A single building containing four dwelling units.

Dwelling, live/work. A principal structure that combines a dwelling unit with a permitted commercial use that is used by one or more of the residents. A live/work dwelling may also include the combination of a dwelling unit with arts-related activities, such as painting, photography, sculpture, music, and film, used by one or more of the residents. Live/work dwellings are subject to the standards for the individual uses contained within this Code. Any area used for commercial space in a live/work dwelling cannot be converted to residential living space if the commercial component is no longer operating.

Dwelling, multi-family. A single building containing five or more dwelling units.

Dwelling, multi-family conversion. A single building containing five or more dwelling units, converted from an existing dwelling of four or fewer units, or an existing structure in nonresidential use.

Dwelling, single-family. A single building containing one dwelling unit.

Dwelling, three-family. A single building containing three dwelling units.

Dwelling, townhouse. A structure consisting of two or more dwelling units, the interior of which is configured in a manner such that dwelling units are attached horizontally, separated by a party wall, and each dwelling unit is located on a separate lot with a separate exterior entrance.

Dwelling, two-family. A single building containing two dwelling units.

Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities.

Dwelling unit, accessory. A dwelling unit subordinate in size to the principal residential structure(s) on a lot and located either within the principal residential structure(s) or in an accessory structure.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling, or grading of soil, earth, loam, sand, gravel, rock, and other mineral deposits.

Easement. A right, privilege, or liberty which one has in land owned by another for some special and definite purpose.

Elevation certificate. An official form (FEMA form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

Emergency operations. Operations conducted for the public health, safety, or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to individuals experiencing homelessness in a dormitory-style or per-bed arrangement.

Entrance, principal. A main point of access for pedestrians into a building. Buildings may have more than one principal entrance.

Essential services. The construction, alteration, or maintenance of gas, electrical, or communication facilities; steam, fuel, electric power, or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles, and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection, or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants, and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Façade. An exterior building wall, from grade to the top of the parapet or eaves. A facade incorporates the full width of a building elevation, including any projections or recesses occurring across an elevation.

Façade, blank. A building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Family child care provider. Per 22 M.R.S. §8301-A(1-A)(C), a family child care provider is a person

who provides day care in that person's home on a regular basis, for consideration, for children under 13 years of age who are not the children of the provider or who are not residing in the provider's home.

Farmstand. A temporary structure, used for the sale of food or non-food crops grown on the premises.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Flood or flooding.

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

B. The collapse or subsidence of land along a shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined above.

Flood boundary and floodway map. The official map issued by the Federal Emergency Management Agency (FEMA) on which the boundaries of the flood have been designated. This may alternatively be referred to as a flood hazard boundary map.

Flood elevation study. An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood insurance rate map. The official map (FIRM) on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the risk premium zones applicable to the city.

Floodplain or floodprone area. Any land area susceptible to being inundated by water from any source (see Flood or Flooding).

Floodplain management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but

not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing. Any combination of structural or nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real estate, to water and sanitary facilities, structures, and their contents.

~~**Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated on the flood boundary and floodway map. When not designated on the flood boundary and floodway map, it is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the flood plain, as measured from the normal high water mark to the upland limit of the flood plain.~~

Floodway encroachment lines. The lines marking the limits of floodways on federal, state, and local floodplain maps.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills

and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Forested wetland. A freshwater wetland dominated by woody vegetation that is six meters (approximately 20 feet) tall or taller.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Freshwater wetland. Freshwater swamps, marshes, bogs, and/or similar areas which are both: Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning map. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

~~**Forested wetland.** A freshwater wetland dominated by woody vegetation that is six meters tall (approximately 20 feet) or taller.~~

Functionally-dependent use (within the floodplain). A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Garage/yard sale. A temporary event held on residential property, during which the owner or occupant offers used personal items, such as clothing, furniture, and household goods, for sale to the public.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures. Such an office may or may not offer services to the public. An office is not materially involved in fabricating, assembling, or warehousing of physical products for the retail or wholesale market, nor engaged in the repair of products or retail services.

General services. Establishment primarily engaged in rendering frequent or recurring services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, beauty shops, barber shops, nail salons, electronics repair shops, and the like.

Greenhouse/nursery (retail). An establishment where flowers, shrubbery, trees, and other horticultural and floricultural products are

propagated and sold, which may include gardening and landscape supplies and products, such as hardware, garden tools and utensils, paving stones and bricks, bulk materials such as mulch, straw, and stone, and other related items for sale.

Green roof. A roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane.

Group home. A housing facility for 9 to 12 persons with disabilities that is approved, authorized, certified, or licensed by the State.

Hazard tree. A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and

any other developed area where people frequently gather and linger.

Helistop. An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Highest Astronomical Tide. The elevation of the highest predicted astronomical tide expected to occur at a specific tide station over the National Tidal Datum Epoch, or NTDE.

Historic rehabilitation. The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common spaces for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A commercial facility that provides sleeping accommodation for a fee and customary lodging services. Related accessory uses may include, but are not limited to, meeting facilities, restaurants,

bars, and recreational facilities for the use of guests. A hotel has common facilities for reservations, cleaning services, combined utilities, and on-site management and reception.

Impervious surface. Area covered with low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious surfaces 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. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious.

Impound lot. A facility that provides temporary outdoor storage for vehicles that are to be claimed by titleholders or their agents. An impound lot is typically used for the storage of wrecked motor vehicles usually awaiting insurance adjustment or transport to a repair shop. Impound lot does not include impound facilities owned and used by governmental authorities.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished or semi-finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial, and lower-impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting,

and odors. High-impact industrial includes fish-waste processing.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished or semi-finished products from previously prepared material, where such activities are conducted wholly within an enclosed building. Low-impact industrial uses do not include the processing of raw materials or salvaging operations. Low-impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Laboratory and research facility. A building or group of buildings used for the purpose of conducting research, investigation, testing, and experimentation in any field of science, medicine, or technology and including facilities such as but not limited to administrative offices, laboratories, and service or machine shops to serve the facility. Laboratory and research facilities do not include manufacturing of products for sale.

Limit of Moderate Wave Action (LiMWA). The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical

high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

Locally-established datum. For purposes of the floodplain ordinance, an elevation established for a specific site to which other elevation at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

Lodging house. A house, building or portion thereof containing ~~two~~five or more rooming units, as well as common areas, and providing such units to individuals on not less than a monthly basis for compensation.

Lodging house common areas. Portions of a lodging house which are available for use by ~~all~~ residents of the lodging house. Lodging house common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as lodging house common areas.

Lot. ~~AA lawfully created~~ parcel or area of land that is designated as an individual unit for use, development, or ownership that is either: a) ~~a parcel or area of land that is~~ separately described in a deed or on a plan recorded in the Cumberland County

Registry of Deeds; b) a contiguous combination of such lots under common ownership and designated as one unit for development; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

Lot, through. A lot that fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.

Lot, flag. A lot platted so that the main building site area (the “flag”) is set back from the street on which it fronts, and includes an access strip (the “pole”) connecting the main building site with the street.

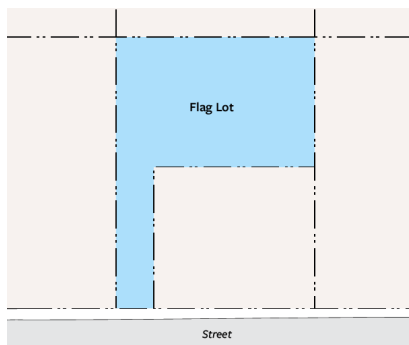


FIGURE 3-A: FLAG LOT

Lot of record. A nonconforming parcel or area of land that: a) is separately described in a deed or on a plan recorded in the Cumberland County Registry of Deeds as of the date designated in the relevant provision of this chapter and b) conformed to the requirements of this chapter as of the date designated in the relevant provision of this chapter.

Lowest floor. ~~(within the floodplain).~~ The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant

enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of ~~this division~~ Article 12.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD).
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD).
- B. The unit is sold to a household earning 100% or less of AMI.



- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

Manufactured housing. A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, 2 types of manufactured housing are included. Those 2 types are:

- A. Those units constructed after June 15, 1976, commonly called “newer mobile homes,” that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit. This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the

National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

- B. Those units commonly called “modular homes” that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

Marijuana, cultivation facility. A cultivation facility required to be licensed pursuant to 28-B M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings, and marijuana seeds, for use or sale.

Marijuana, manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana, plant canopy. As defined by 28-B M.R.S. § 102.

Marijuana product. As defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marijuana, registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. § 2422.

Marijuana, registered patient. As defined by 22 M.R.S. § 2422.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants, and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. ~~A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet.~~ A marijuana retail store shall not include a registered dispensary.

Marijuana, small-scale caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than: 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S. § 2422 or 28-B M.R.S. § 102.

Marina. A commercial operation providing floats, slips, and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Market garden. An area of land or a facility, managed and maintained by an individual, group, or

business to grow and harvest food and non-food crops to be sold for profit on-site, off-site, or both. Market gardens may be located outdoors or fully enclosed within a permanent building. Market gardens do not include the cultivation of marijuana.

Mean high tide. The mean height of tidal high waters at a particular point or station over a period of time to such length that increasing its length does not appreciably change this mean. For tidal waters, the cycle of change covers a period of 19 years, and mean high tide is defined as the average of the high waters over a 19 period.

Mean sea level: (within the floodplain). For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on the City's FIRM are referenced.

Mid-block permeability. A continuous, open-air corridor at least 20' in width that physically or visually connects two streets or public rights-of-way and provides a break in the street wall. The corridor must be unobstructed and open to the sky.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

National Geodetic Vertical Datum (NGVD). The national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea

level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.

Neighborhood nonresidential reuse. Select nonresidential uses located within a residential neighborhood to serve nearby residents, and occupying a structure which is nonresidential in its original construction and/or current principal use.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

~~**Non-native invasive species of vegetation.** Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.~~

Nonconforming lot. A lot which, at the effective date of adoption or amendment of this Code, does not meet the minimum lot area or minimum street frontage requirements of the zone in which it is located.

Nonconforming structure. A structure which does not meet applicable dimensional requirements but which is allowed solely because it was in lawful

existence at the time this Code or subsequent amendments took effect.

Nonconforming use. Use of buildings, structures, or land which is not allowed in the zone in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Code or subsequent amendments took effect.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

North American Vertical Datum (NAVD). The national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth’s crust, glacial rebound and subsidence, and the increasing use of satellite technology.

Office park. A development of one or more buildings designed to accommodate offices, laboratory and research facilities, high-tech manufacturing, and similar uses with no outdoor storage. An office park may also include hotels,

medical/dental offices, and supportive commercial uses for the primary convenience of office park workers and visitors, including limited retail, general services, financial institutions, child care centers and small child care facilities, and restaurants.

Off-peninsula. All land located north of I-295.

100-year flood. See base flood.

On-peninsula. All land located south of I-295.

Open space. Land and water areas designed and reserved for use as active or passive recreation areas or for preservation purposes.

Open space, public. Open space maintained for the use of the general public. Public open space may include parks, plazas, and public seating areas.

Outlet stream. Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Park. ~~AA noncommercial public~~ facility that serves the recreational needs of residents and visitors. Park includes, but is not limited to, playgrounds, ballfields, golf courses, gymnasiums, ~~football playing fields, soccer fields, basketball courts, tennis courts,~~ dog parks, skateboard parks, pools, community gardens, marinas, sports complexes, and passive

recreation areas. Parks may also include non-commercial indoor or outdoor facilities, including zoos and amphitheaters, accessory services such as, but not limited to, restaurant and retail establishments, and temporary outdoor uses such as festivals and performances.

Party wall. Any partition wall common to two adjacent or attached buildings.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, private club, fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, private club or non-profit social and recreational facility, or place of religious assembly where ~~eight~~ or fewer people, not including the permanent residents of a single-family dwelling, assemble. A place of assembly may include accessory uses, such as childcare facilities or preschools, meeting rooms, food preparation and dining areas, auditoriums, and/or classrooms.

Post-secondary school. A facility for post-secondary higher learning that grants associate or bachelor's degrees. The institution may also have research facilities and/or professional schools that grant master and doctoral degrees. Post-secondary schools may also include additional uses as part of

the principal use, such as dormitories, cafeterias, restaurants, retail sales, indoor or outdoor recreational facilities, preschool facilities, and similar uses.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this Land Use Code and other applicable codes and ordinances.

Real estate project sales office/model unit.

A residential unit or other structure within a development that is temporarily used for display purposes as an example of dwelling units available for sale or rental in a residential development and/or sales or rental offices for dwellings within the development.

Recent ~~flood plain~~floodplain soils. Recent ~~flood plain~~floodplain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, and Winooski.

Recreational vehicle. A vehicle that is:

A. Built on a single chassis;

B. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;

C. Designed to be self-propelled or permanently towable by a motor vehicle; and,

D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities. Such facilities may limit admission either to members or to persons paying an entrance fee. Recreation and amusement centers do not include sports complexes or stadiums.

Recycling facility. A facility engaged exclusively in the collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation and treatment of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

Residential care facility (small). A facility which provides, on a regular basis, medical or non-medical care and services for up to 12 individuals: in separate dwelling or rooming units. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services.

Residential care facility (large). A facility which provides, on a regular basis, medical or non-medical care and services for 13 or more individuals: in

separate dwelling or rooming units. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service establishment with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Riprap. Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

Roadway. That portion of a street between the regularly established curblines, or that part of a street or alley devoted to vehicular or bicycle traffic.

Rooming unit. One or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes by an individual or a family, but not designed for food preparation. In a suite of rooms, each room that provides sleeping accommodation shall be counted as one rooming unit for the purpose of this chapter.

Sapling. A tree species that is less than two inches in diameter at four and one half feet above ground level.

Sea Level Rise-Base Flood Elevation (SLR-BFE). 13 feet NAVD88, or the predicted height of flood waters that may occur as the result of a 100 year storm in conjunction with 3.9 feet of base sea level rise.

Sea Level Rise-Design Flood Elevation (SLR-DFE). The minimum elevation required for a finished ground floor level in the Coastal Flood Resilience Overlay Zone (CFROZ).

Sea Level Rise-Design Flood Elevation - Critical (SLR-DFE-C). The SLR-DFE for all critical uses, including the critical systems serving those uses.

Sea Level Rise-Design Flood Elevation – Non-critical (SLR-DFE-NC). The SLR-DFE for non-critical uses, including the critical systems serving those uses.

Seedling. A young tree species that is less than four and one half feet in height above ground level.

Self-storage facility. A facility for the storage of personal property, where individual renters control and access individual storage spaces. Self-storage facilities may be designed with individual storage spaces located within a fully enclosed, climate controlled building, with individual storage spaces accessed from the outdoors, or with a combination of storage spaces. Administrative offices for the facility, and retail sales of related items, such as moving supplies may be included.



Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A.M.R.S. § 251.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Sign. A structure, device, figure, display, message placard, or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended, or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, religious, or social information, or direct or attract attention to an object, person, institution, business, product, service, message, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or illumination.

Sign, animated. Flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind.

Sign, awning. Any sign that is part of or attached to an awning, ~~canopy, or other fabric, plastic, or structural protective cover~~ over a door, entrance, window, storefront, or outdoor service area.

Sign, A-Frame. A pedestrian-oriented self-supporting sign that is not permanently affixed to a structure or the ground.

Sign, bandit. Any advertising sign that is placed on public property or on private property without the consent of the property owner or as authorized in this article.

Sign, blade. A permanent, pedestrian-scaled sign mounted either to the wall of building by means of a bracket or attached to the underside of a lintel, arch, or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.

Sign, building identification. A sign consisting of letters or numbers applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.

Sign, building-mounted. Sign attached to, connected to, erected against the wall, parapet, or fascia of a building or structure.

Sign, bus shelter. As specified in 23 M.R.S.A. §1908-A, any outdoor sign visible to the traveling public from public right-of-way that is affixed to a publicly-owned bus shelter operated by a transit agency.

Sign, cabinet. A permanent building-mounted or freestanding sign with its text and/or logo symbols and artwork on a translucent face panel that is mounted within a metal frame or cabinet either that

contains the lighting fixtures which illuminate the sign face from behind.

Sign, canopy. A sign that is printed, painted, or affixed to a canopy, typically used to accent building entries.

Sign, center identification. A sign identifying the name of a building, office park, or shopping center only.

Sign, changeable copy. A sign that is designed so that characters, letters, numbers, or illustrations can be manually or mechanically changed or rearranged without altering the face or surface of the sign. For the purposes of this article, a sign whose message changes more than eight times per day is considered an animated sign and not a changeable copy sign.

Sign, directional. A sign erected to inform the viewer of the approximate route, direction, or location of a facility or use.

Sign, direct illumination. Illumination resulting from light emitted directly from [an exposed](#) light bulb or light fixture, and not light diffused through translucent signs or reflected from other surfaces such as the ground or building face.

Sign, directory. A permanent sign which provides information in a list, roster, or directory format.

Sign, Electronic Message. A sign or portion of a sign that utilizes computer-generated messages or some other electronic means of changing its characters, letters, numbers, illustrations, display, color, and/or light intensity, including animated

graphics and video, by electronic or automatic means. An Electronic Message Sign is not a Single- or Two-Color LED Sign.

Sign, externally-illuminated. A sign whose illumination is reflected from its source by the sign surface to the viewer's eye, the source of light not being visible to the viewer. ([See Section 19.7.3\(C\).](#))

Sign, feather banner. A temporary sign that is taller than it is wide and made of a flexible material (typically cloth, nylon, or vinyl) and mounted to a pole to fly freely.

Sign, freestanding. A permanent sign that is erected or mounted on its own self-supporting permanent structure or base detached from any supporting elements of a building.

Sign, fuel pump topper. A temporary sign affixed to the top of an operable fuel dispensing pump used to advertise goods offered for sale on the same parcel on which the fuel pump is located.

Sign, incidental. A sign which provides incidental information, including security, credit card acceptance, business hours, open/closed, directions to services and facilities, or menus.

Sign, individual letter. A cut-out or etched letter or logo which is individually mounted on a building wall or freestanding sign.

Sign, internally illuminated. Any sign in which the source of light is entirely enclosed [or backlit \(halo\)](#) within the sign and not directly visible.

Sign, landmark. A permanent sign indicating individual historic landmarks, local historic districts, or otherwise determined by the City to have attained a high degree of community, cultural, aesthetic, or historic significance.

Sign, logo. A stylized group of letters, words, numbers, or symbols used to represent and distinguish a business, product, or organization.

Sign, marquee. A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.

Sign, monument. A permanent freestanding sign with a solid base that is at least 60% the width of the sign face.

Sign, off-premise. Any sign that directs attention to a business, commodity, service, entertainment, product, structure, use, or property different from a structure or use existing on the property where the sign is located, and/or any sign on which space is rented, donated, or sold by the owner of said sign or property for the purpose of conveying a message.

Sign, permanent. A sign ~~constructed of durable materials and~~ intended to exist for the duration of time that the use or occupant is located on the premises.

Sign, pole. An elevated permanent sign typically supported by one or two poles, posts, or columns that do not meet the base width requirements for a monument sign.

Sign, projecting. A permanent sign that is attached to and extends perpendicular from a building from the wall.

Sign, service island canopy. A permanent sign mounted on or under a service island canopy, including on a fascia.

Sign, single-color or two-color LED. A permanent or temporary sign or portion of a sign composed of single-color or two-color LEDs that displays static or changeable sign messages using characters, letters, and numbers only. Examples of these signs include, but are not limited to, "open" or "closed" signs, time and temperature" signs, or signs indicating the number of available spaces in a parking garage.

Sign, temporary. A sign ~~constructed of paper, cloth, or similar expendable material,~~ which is intended for a ~~definite and~~ limited period of display and which is designed to be moved easily and is not permanently affixed to a structure, sign area, or window.

Sign, wall. A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of wall or fascia to which it is affixed or erected.

Sign, wall banner. A temporary sign constructed of cloth, bunting, plastic, paper, or similar non-rigid material, and securely attached to the wall or support structure for which it is advertising. Flags are not considered temporary wall banners.

Sign, window. A permanent or temporary sign posted, painted, placed, or affixed in or on a

window, or otherwise exposed to public view through a window.

Sign, Yard, Type I. A small temporary sign typically constructed of corrugated plastic and supported on a wire frame used, for example, for advertising by local businesses or by election campaigns.

Sign, Yard, Type II. A temporary sign mounted on a single post installed securely in the ground with a small sign hanging from a cross-bar mounted parallel to the ground.

Sign, Yard, Type III. A temporary large sign mounted on two posts installed securely in the ground.

Sign copy. Any graphic, word, numeral, symbol, insignia, text, sample, model, device, or combination thereof that is primarily intended to advertise, identify, or notify.

Sign face. The exterior surface of a sign, exclusive of structural supports, on which is placed the sign copy.

Sign substructure. The supports, uprights, bracing and/or framework of a sign.

Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

Social service center. A service establishment that provides assistance for those recovering from chemical or alcohol dependency; survivors of abuse

seeking support; those transitioning from homelessness or prior incarceration; and those with health and disability concerns. It does not include in-patient, overnight, or living quarters for recipients of the service or for the staff. Such service does not include medical examinations or procedures, or medical detoxification, dispensing of drugs or medications, or other treatments normally conducted in a medical office.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems. Solar energy systems shall include the following:

- A. Solar energy system, accessory.** A system as defined above, where power generation is incidental to a principal use. Accessory solar energy systems include building-integrated systems of any size, and building-mounted, roof-mounted, or ground-mounted systems of less than 1,000 square feet in area.
- B. Solar energy system, minor.** A system as defined above, between 1,000 and 9,999 square feet in area, where power generation is considered a principal use. Minor solar energy systems may take the form of either a building-mounted or roof-mounted solar array or a ground-mounted system.

C. Solar energy system, major. A system as defined above, of 10,000 square feet or more in area, where power generation is considered a principal use. Major solar energy systems may take the form of either a building-mounted or roof-mounted solar array, or a ground-mounted system.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Solid waste disposal facility. A solid waste facility for the incineration or landfilling of solid waste or refuse-derived fuel. Facilities that burn material-separated, refuse-derived fuel, either alone or in combination with fuels other than municipal solid waste or refuse-derived fuels, are not solid waste disposal facilities.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

Special Flood Hazard Area. [See area of special flood hazard.](#)

Specialty food service. A business that specializes in the sale of certain food products and/or the on-site production of items, such as a delicatessen, bakery, candy maker, meat market, catering business, cheesemonger, coffee roaster, or fishmonger, and may offer areas for ancillary retail sales or eating and drinking areas that serve the products processed on-site. Specialty food service includes preparation, processing, canning, or packaging of food products where all processing is completely enclosed and there are no outside impacts. Specialty food service does not include production of alcohol.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held.

Stadium. A commercial structure with tiers of seats and/or viewing areas around and/or adjacent to a field, court, or stage, intended to be used for the viewing of athletic events, entertainment, concerts, and other public gathering purposes. Stadiums may be indoor or outdoor.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock, or other mineral deposits upon a site for the purpose of storage, warehousing, or reserving for future use.

~~**Storm-damaged tree.** A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.~~

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the Shoreland Zone of another water body or wetland. When a stream meets the Shoreland Zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Street. A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street, cul-de-sac or dead end. A street with only one outlet.

Street line. The line of demarcation between private property and a street.

Structure. Anything temporarily or permanently located, built, constructed, or erected for the support, shelter, or enclosure of persons, animals, goods, or property of any kind or anything located, built, constructed, or erected on or in the ground or on another structure. The term includes ~~structures temporarily or permanently located, such as decks, patios,~~ and satellite dishes. Structure does not include fences, poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors. ~~Outside of or subsurface wastewater disposal systems.~~ Inside the Shoreland Zone, patios and at-grade walkways shall ~~not~~ be considered structures.

Structure, accessory. A structure on a lot that is incidental and subordinate in area, extent, and/or use to the principal structure on the lot. A lot may have more than one accessory structure.

Structure, principal. The main structure on a lot having the predominant area, extent, or use. A lot may have more than one principal structure.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture, or other arts, or the practice of arts such as music or dance, or the production of custom, hand-crafted, or limited production of products such as furniture, wood, clay, and metal products, publications, and similar low-impact arts and crafts activities.

Subdivision. As defined in 30 A M.R.S. § 4401 and 4402.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

Temporary contractor’s office and contractor’s yard. A short-term, portable, or modular structure utilized as a watchman’s quarters, construction office, or equipment shed during the construction of a new development. This may include a contractor’s yard where materials and equipment are stored in conjunction with a construction project.

Temporary outdoor sales. Temporary uses, which may include temporary structures where goods are sold, such as but not limited to arts and crafts fairs, flea markets, rummage sales, consignment auctions, and holiday sales such as Christmas tree lots and pumpkin sales lots. Temporary outdoor sales does not include garage/yard sales, or outdoor sales related to a retail goods establishment where such goods are part of the establishment’s regular items offered for purchase.

Temporary outdoor storage container. Temporary self-storage containers, delivered to a residence or business for the purpose of storing items, and subsequently picked up and stored at an off-site location until scheduled for retrieval.

Tenant. Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Tidal waters. All waters affected by tidal action during the highest annual tide.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

Tree. A woody perennial plant with a well-defined trunk(s) at least two inches in diameter at four and one half feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.

Tree, feature mature. A tree that meets at least one of the following criteria:

- A.** Any tree that is on the Register of Big Trees promulgated by the Maine Department of Agriculture, Conservation & Forestry (the “Big Tree List”)
- B.** Certain trees 24” in diameter or greater (diameter at breast height or DBH) as identified by the City Arborist
- C.** Ornamental trees 12” in diameter or greater (diameter at breast height or DBH) as identified by the City Arborist
- D.** Rare tree specimen to include either a tree species classified as rare or endangered at either the state or federal level, and/or stands

of native trees that are rare or threatened as identified by the City Arborist.

Tree, ornamental. Any tree, shrub, or other plant grown primarily for decorative purposes and whose mature height can be expected to be between three feet and 25 feet.

Tree, shade. Any tree, evergreen or deciduous, planted primarily for its high crown of foliage and whose mature height can be expected to exceed 25 feet.

Tree, storm-damaged. A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Tree, street. Tree planted in the public right-of-way and/or private roadway.

Tributary stream. A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest ~~annual~~ astronomical tide level,

including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters (approximately 20 feet) tall or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four inches in diameter, measured at four and one-half feet above ground level.

Vegetation, climate resilient northeast native. Plants identified as native to the northeast as identified by the Northeast Regional Invasive Species & Climate Changes (RISCC) Network or a Maine licensed landscape architect.

Vegetation, Maine native. Vegetation including grass seed mixtures, identified as native to Maine from lists maintained by the U.S. Department of Agriculture Hardiness Zones by the Maine Cooperative Extension, Wild Seed Project, Regional Soil and Water Conservation District, Maine YardScaping Program, or a Maine licensed landscape architect.



Vegetation, non-native invasive species. Species of vegetation listed by the Maine Department of Agriculture, Conservation, and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Veterinary services. An establishment for the treatment of animals, where animals may be boarded during their convalescence

Very low-income household. A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Warehousing and distribution facility. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers. Warehousing and distribution facilities do not include self-storage facilities.

Watercourse. Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed, and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in,

coastal or inland waters and which cannot be located away from these waters.

Wetlands (outside of shoreland zones). Those areas which have two or more of the following:

- A.** A water table at or near the surface during the growing season;
- B.** Very poorly drained soils, including Sebago mucky peat; or
- C.** Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and Wildlife Service publication of Wetland Plants of the State of Maine (1986).

Wind energy system. A system of components that converts the kinetic energy of the wind into electrical or mechanical power. A wind energy system comprises all necessary components including turbines, energy storage, power conditioning, control systems, transmission systems (where appropriate) and structural support systems to provide electricity or mechanical power for residential, commercial, industrial, utility, or governmental use. Wind energy systems shall include the following:

- A. Wind energy system, accessory:** A system as defined above, where power generation is incidental to a principal use. Accessory wind energy systems include roof-mounted systems, and ground-mounted systems less than 45 feet in height.
- B. Wind energy system, minor:** A system as defined above, where power generation is considered a principal use. Minor wind energy systems are ground-mounted systems

measuring between 45 feet and 85 feet in height.

- C. **Wind energy system, major:** A system as defined above, where power generation is considered a principal use. Major wind energy systems are ground-mounted systems measuring between 85 feet and 160 feet in height.

Wholesale. Sale for resale, not for direct consumption.

Workforce housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less than of AMI.
- B. The unit is rented to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale. A dwelling unit for which:

- A. The purchase price is affordable to a household earning 80% or less of AMI.
- B. The unit is sold to a household earning 80% or less of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

16.17 HISTORIC PRESERVATION

16.1 PURPOSE

The purpose of this article is to promote the educational, cultural, economic, and general welfare of the City of Portland by :

~~Creating a mechanism to identify, preserve, and enhance distinctive areas, sites, structures, and objects that have historic, cultural, architectural, and archaeological significance and establishing standards for the review of construction within and affecting designated historic properties to:~~
~~Providing a resource of information and expertise to help those interested in rehabilitation or new construction in a district or restoring a landmark.~~
~~Applying review standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible new construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles.~~
~~Fostering civic pride in the city's history and development patterns as represented in such distinctive areas, sites, structures, and objects.~~
~~Protecting and enhancing neighborhood character.~~
~~Stabilizing and improving the values of designated properties and areas.~~
~~Protecting and enhancing the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers.~~
~~Fostering and encouraging encourage preservation, restoration, and rehabilitation, and new construction that respects the historic, cultural, architectural, and archaeological significance of distinctive areas, sites, structures, and objects.~~

16.2 DEFINITIONS

~~**Alteration.** Any act or process requiring a building permit and any other act or process not requiring a building permit but specifically listed in this article as a reviewable action, including without limitation the repair, reconstruction, demolition, or relocation of any structure or object, or any part of a structure or object.~~

~~**Certificate of Appropriateness.** A certificate issued by the Planning Authority evidencing approval of specific plans for alteration of a structure, site, or designated historic landscape or new construction on a site in accordance with this article.~~

~~**Certificate of Economic Hardship.** A certificate issued by the Planning Authority evidencing a hardship variance approved by the Zoning Board of Appeals in accordance with Article 2.~~

~~**Certificate of Non-Applicability.** A certificate issued by the Planning Authority evidencing a determination that specific plans for alteration of a structure, site, or designated historic landscape or new construction on a site do not require approval under this Article.~~

~~**Contributing.** A classification applied to a site, structure, or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district.~~

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

District. A historic district or historic landscape district.

Historic district. A geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

Historic landscape district. A geographically definable area possessing a significant concentration, linkage, or continuity of landscape components which are united by human use and past events or aesthetically by design, plan or physical development.

Historic Resources Design Manual. A manual including guidelines for meeting historic preservation ordinance review standards and other information.

Landmark. Any property, site, structure, or object of particular historic, architectural, or archaeological significance to Portland, the State of Maine and/or the United States relating to its cultural, social, economic, political, or architectural heritage, or which is associated with historic persons, important events or themes in local, state, or national history.

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

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

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

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

Preservation. The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic

materials and features rather than the extensive replacement and new construction.

Rehabilitation.—The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural value.

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

Restoration. The act or process of accurately depicting the form, features, and character of the property as it appeared at a particular period of time by means of the removal of features from other period in its history and reconstruction of missing features from the restoration period.

Site. The location of a significant event, an archaeological site, a landscape or traditional cultural property, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.

16.3 ADMINISTRATIVE PROCEDURES

16.2.1 Costs

A.—Any project may be subject to fees as established by the City Council to cover administrative costs and the costs of Historic Preservation Board review. Applicants shall also pay a fee to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services. The fee shall

be based on the hours of review and processing time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant.

B.A. Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.

C.A. No Certificate of Appropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.

16.2.216.2.1 Notice of public meeting

A.—For all Certificate of Appropriateness applications that are subject to Historic Preservation Board review, the applicant shall be responsible for posting a notice of public meeting sign on the property where the development is to occur. The dimensions, construction, and content of the sign shall be in accordance with standards established by the Planning Authority.

B.A. The sign shall be posted at least 10 days prior to the public workshop or hearing date, and shall be removed from the site no more than three days following the date of the meeting.

C.A. Once the required notice of public meeting signage is posted, the applicant shall submit a completed certification of posting form to the Planning Authority.

D.A. In the event that a required notice of public meeting sign is knocked over or made illegible,

~~it shall be the responsibility of the applicant to promptly reset or replace the sign, though failure to do so shall not invalidate the review.~~

16.2.3 Notices and public comment

- ~~A. Except as provided in Subsection 17.7.5, notice of proceedings upon any application for a Certificate of Appropriateness shall be given only when the proposed activity otherwise constitutes major site plan. Notice of such proceedings also shall be furnished to any persons interested in historic preservation who have registered with the Planning Authority, and to the Historic Preservation Board and/or the Planning Board when the proceeding is pending before a different body. The failure to give any notice required by this article shall not affect the validity of any action taken.~~
- ~~B. The Historic Preservation Board, the Planning Board, the Board of Appeals, and the City Council shall each invite public comment at a public meeting in accordance with their respective rules, prior to any final action being taken under this article.~~
- ~~C. The Planning Authority shall advise the Historic Preservation Board and the Planning Board of any demolition permit application received by the Planning Authority as to structures or objects that have been classified as noncontributing within nominated or designated districts, but there shall be no Historic Preservation Board review of such permit applications.~~

16.2 CATEGORIES AND CRITERIA FOR HISTORIC DESIGNATIONS

16.2.1 Categories of historic designations

- ~~A. **Landmark.** A discrete site, structure, or object and any associated area found to have~~

particular or individual significance or prominence. Landmarks may be in or outside of historic districts or historic landscape districts.

- ~~B. **Historic district.** A geographically defined area possessing a significant concentration, linkage, or continuity of sites, structures, or objects united historically or aesthetically by design, plan, or physical development. The defined area may comprise individual elements separated geographically but linked by association or history.~~

- ~~C. **Historic landscape district.** A geographically defined area possessing a significant concentration, linkage, or continuity of natural or man-made landscape components which are united by past events, or aesthetically by design, plan or physical development. The defined area shall be owned in its entirety by a unit of federal, state, or local government, or any combination of such ownership at the time of nomination.~~

16.2.2 Minimum ~~c~~Criteria for designation

- ~~A. The Historic Preservation Board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an Any area, site, structure, or object nominated for historic designation by ordinance as a landmark or district must be found to demonstrate at least one of the following:~~
- ~~1. *Significant aspect of heritage.* Its vValue as a significant example of the cultural, historic, architectural, archaeological, or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.~~

2. Significant events or activities. ~~Its~~ Location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property.
 3. Significant persons. ~~Its~~ Identification with a person or persons who significantly contributed to the cultural, historic, architectural, archaeological, or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States.
 4. Significant architecture. ~~Its~~ Exemplification of a significant architectural type, style, or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.
 5. Significant designer. ~~Its~~ Identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States.
 6. Significant theme. ~~Its~~ Representation of a significant cultural, historic, architectural, archaeological, or related theme expressed through distinctive areas, sites, structures, or objects that may or may not be contiguous.
- ~~B. In the case of a nominated historic district, the Historic Preservation Board shall also determine whether there is an interrelationship of resources within it which creates an identifiable entity, even if composed of a wide variety of resources. A~~
- ~~district must convey a visual sense of the overall historic environment or be a grouping of historically or functionally related properties. A historic district can comprise both individually distinctive historic resources and historic resources that may lack individual distinction but which contribute to the significance and visual character of the district as a whole.~~
- ~~C. In the case of a nominated historic landscape district, the Historic Preservation Board shall also consider its significance as a geological, natural, or designed landscape associated with the development, heritage, or culture of the City of Portland, State of Maine, New England region, or the United States.~~
- ~~D. The Planning Board and City Council shall apply the criteria of (A), (B), and (C) above as well as historic preservation goals included in the Comprehensive Plan, but shall also consider the effect of such designation on other aspects of the Comprehensive Plan of the City.~~
- 16.2.3 Integrity of landmarks and historic districts**
- B. Any nominated area, site, structure, or object must also be found to retain area, structure, or object that meets the criteria in Section 17.4.1 ~~must also have~~ sufficient integrity of location, design, ~~condition~~, materials, and workmanship to ~~make it worthy of preservation or restoration~~ convey its significance with respect to the applicable criteria as defined in Subsection 16.2.2.
- 16.2.4 Designation of historic landscape districts**

An historic landscape district may be nominated and considered for designation only if the entire area of the district is owned by a unit of federal, state, or local government, or any combination of such ownership.

C. The Planning Board and City Council shall also consider the effect of the proposed historic designation within the framework of the apply the criteria of (A), (B), and (C) above as well as historic preservation goals included in the Comprehensive Plan when making a recommendation or decision on a nomination; but shall also consider the effect of such designation on other aspects of the Comprehensive Plan of the City.

16.2.3 Classifications within historic designations

- A. The sites, structures, or objects within a nominated historic designation may be classified as contributing or noncontributing.
- B. A contributing classification shall only be applied to an area, site, structure, or object which:
 - 1. Were built at least 50 years prior to the date of district designation, or were built within a period of significance specified in the designation application;
 - 2. Are found to have a relationship with or physically embody the qualities that give the historic designation cultural, historic, architectural, or archaeological significance as embodied in the minimum criteria specified in the designation report; and
 - 3. Retain sufficient integrity to communicate that significance as defined in Subsection 16.2.2(B).

C. If an area, site, structure, or object does not meet the above it will be categorized as noncontributing.

~~16.5~~16.3 NOMINATION, CONSIDERATION, AND HISTORIC DESIGNATION

16.3.1 Procedure

The provisions of this section shall govern the nomination, consideration, and designation of landmarks, historic districts, and historic landscape districts.

~~16.3.2 Initiation of a~~16.3.2 Initiation of a historic designation

- A. Nomination of a historic designation ~~a~~ area, site, structure, or object for consideration of designation as a landmark, historic district, or historic landscape district shall be submitted to the Planning Authority. Nominations shall include the following information by the following:
 - 1. A statement of how the proposed historic designation meets the criteria under Subsection 16.2.2.
 - 2. A map showing the location and proposed boundaries of the historic designation.
 - 3. A draft list of the constituent sites, structures, or objects, indicating their degree of cultural, historic, architectural, or archaeological significance and their classification as contributing, noncontributing, or landmark within the proposed historic designation.
- B. Nominations may be initiated by the following:
 - 1. Any two members of the Historic Preservation Board on their own initiative, by written notice to the Planning Authority, or

- ~~1.2. The Planning Authority, or~~
- ~~2.3. In the case of a landmark, By written petition of anyone or more owners of the affected property, in the case of a landmark, or~~
- ~~3.4. In the case of a historic district or historic landscape district, By written petition of one or more owners of an affected property in the case of a district, provided a minimum of two members of the Historic Preservation Board must sponsor the nomination petition.~~
- C. ~~In the case of a nomination initiated or sponsored by the Historic Preservation Board, such nomination may be made verbally at a Historic Preservation Board meeting or via signed, written statement to the Planning Authority. A nomination shall be completed and filed with the Planning Authority with all required signatures for the nomination to be pending.~~
- D. Upon nomination, the Planning Authority shall notify the owner(s) ~~or owners~~ of the ~~subject property or properties. nomination and shall transmit the nomination to the Historic Preservation Board for its preliminary consideration at a scheduled meeting, which in no event shall be held later than 60 days following nomination.~~
- ~~E.A. If documentation and analysis that is necessary for the consideration of a given designation has not been provided at the time of nomination, such documentation shall be completed prior to further consideration by the Historic Preservation Board of the nominated landmark, district, or historic landscape.~~
- ~~F. At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the Historic Preservation Board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the Historic Preservation Board that the structure is eligible for a permit shall be conclusive.~~
- 16.3.3 Notification of nomination and public hearing**
Historic Preservation Board review and recommendation
- A. ~~A public hearing on the nomination shall be held by the Historic Preservation Board following one or more preliminary workshops of the Historic Preservation Board.~~
- A. ~~The hearing shall be~~ conducted in accordance with procedures adopted by the Historic Preservation Board. ~~In the case of additional workshops, these shall be agreed to by the Historic Preservation Board and the nominators.~~
- B. The Historic Preservation Board shall consider all testimony or evidence relating to the designation criteria in Subsection 17.416.2.2 from any person who makes written submissions or appears at the public hearing. The owner of a nominated landmark or of property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in Subsection 17.416.2.2.
- C. If the Historic Preservation Board finds that documentation and analysis that is necessary for the consideration of the nomination a given

designation has not been provided at the time of part of the nomination, such documentation shall be provided completed prior to further consideration by the Historic Preservation Board of the nominated landmark, district, or historic landscape.

16.3.4 Recommendation by Historic Preservation Board

~~C.~~ Within 45 days following the close of the public hearing, the Historic Preservation Board shall make recommendation to the City Council in the case of a landmark, or to the Planning Board in the case of a historic district or historic landscape district, upon the evidence as to whether the area, site, structure, or object ~~nominated landmark or district~~ meets the criteria for designation in Subsection ~~17.416.2.2~~. Such recommendation shall be approved by at least four members of the Historic Preservation Board and shall be accompanied by a report to the City Council and/or Planning Board containing the following information:

D. findings by the Historic Preservation Board as to whether the criteria in Subsection 16.2.2 for historic designation have been met, as well as any recommended changes to the scope of the nominated historic designation.

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

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

Proposed design guidelines for review of alteration or construction may be recommended. The specific design guidelines may provide explanation by text and/or

schematic examples of visual compatibility for purposes of complying with Section 17.8.

Relationship of the nominated landmark or district to the ongoing effort by the Historic Preservation Board to identify and nominate areas, sites, structures, and objects that meet the criteria for designation.

A map showing the location of the nominated landmark and/or the boundaries of the nominated district.

A list, including the address, of every site, structure, and object in each nominated historic district indicating their degree of cultural, historic, architectural, or archaeological significance by classification as a landmark, contributing, or noncontributing. Where a motion either in favor of a recommendation or in opposition to a recommendation results in a vote of fewer than four members, the item shall automatically be tabled to the next regularly scheduled meeting.

Notification of Historic Preservation Board recommendation

The recommendation of the Historic Preservation Board, including a copy of the report, shall be transmitted to the City Council in the case of a landmark and to the Planning Board in the case of a district. Notice of the recommendation shall be sent by mail to the owner of a nominated landmark and to all owners within a nominated district within 14 days following adoption of the recommendation and report.

If the recommendation of the Historic Preservation Board is that the property or district not be designated, the nomination process shall terminate and no new nomination

shall be submitted for the identical property or area for a period of one year from the date of termination, except upon a showing of substantial and material newly discovered information.

16.3.516.3.4 Determination by Planning Board review and recommendation

A. The Planning Board shall hold a public hearing to review the nomination and recommendation, upon receipt of a recommendation and a report from the Historic Preservation Board concerning nomination of a historic district or historic landscape district, may hold one or more workshops pursuant to the provisions of Article 2. The Board may hold one or more workshops prior to the public hearing. After review of the Historic Preservation Board recommendation and report, the Planning Board shall hold a public hearing.

A.

B. All meetings, hearings, and deliberations of the Planning Board to consider the recommendation and report of the Historic Preservation Board shall be held in conformity with Article 2.

C. The Planning Board may request that the chair of the Historic Preservation Board, or a member designated by the chair, to appear at any meeting, hearing or deliberation to explain any the recommendation or report.

C.

D. A public hearing shall be scheduled within 30 days of the Planning Board's final workshop. At the conclusion of Following the close of the public hearing, the Planning Board shall make a recommendation to the City Council upon the evidence as to its final determination including

written findings as to whether the nomination ed district meets the criteria for designation in Subsection 17.416.2.2. Such recommendation A copy of the determination of the Planning Board shall be sent by regular mail to all owners within a nominated district within 14 days following the determination.

E.

F. Planning Board recommendation to City Council

D. The recommendation of the Planning Board regarding a nominated district shall be filed with the City Clerk within 14 days. It shall be accompanied by:

1. a copy of the report and recommendation of the Historic Preservation Board.
2. Findings by the Planning Board as to whether the criteria in Subsection 16.2.2 for historic designation have been met, as well as any recommended changes to the scope of the nominated historic designation.
1. , including any specific proposed design guidelines applicable to the nominated landmark or district. The recommendation of the Planning Board may include proposed changes in other City ordinances, policies, infrastructure, or recommendations with respect to the Comprehensive Plan of the City relating to the proposed designation.

16.3.616.3.5 Action by City Council consideration

A. Within 60 days after the filing of a Planning Board recommendation, or Following the receipt of a Historic Preservation Board

recommendation in the case of a landmark nomination, or Planning Board recommendation in the case of a historic district or historic landscape district nomination, on the nomination with the City Clerk pursuant to Section 17.5.6, the City Council shall approve designate the landmark or district or reject the historic designation. Any designation may include specific design guidelines for the designated landmark or district.

- A. The designating order shall include a map of the location and boundaries of the historic designation.
- B. ~~D~~Designation ~~of a district~~ shall be accompanied by a list, including the address, of ~~every~~ sites, structures, and objects in the ~~historic designation district~~. ~~Every~~ Sites, structures, or objects ~~may shall~~ be assigned a classification of landmark, contributing, or noncontributing, indicating their degree of cultural, historic, architectural, or archaeological significance under Subsection 16.2.3.
- B. This list may be amended thereafter by the City Council upon recommendation from the Historic Preservation Board and Planning Board under the same procedures as set forth above. Where there are no express findings by the City Council in the designation ordinance, there shall be a presumption that the City Council found that all requirements of Section 17.4 were met.
- C. Notice of the proposed action of the City Council shall be provided by mail to the nominator and the owner of the nominated landmark and/or of all properties adjacent thereto prior to City Council action.

~~D.C.~~ Notice of City Council action ~~to the same persons~~ shall be sent ~~to all owners of or within the boundaries of a historic designation~~ within ~~1430~~ days following the City Council action. ~~A copy of each designation and any design guidelines shall be sent to the Planning Board, the Historic Preservation Board, and the Planning Authority.~~

E.D. A complete schedule record of the historic designation, maps of the historic designation boundary, and copies of all application materials and reports ~~all landmarks and districts, including design guidelines and a listing of landmark and contributing structures,~~ shall be maintained by the Planning Authority and shall be made available ~~to the public online or for public inspection and copying~~ and during ordinary business hours.

16.3.6 Designation

- A. Upon designation, all sites, structures, and objects within the boundary of the historic designation shall be subject to the provision of this article.
- A.B. Demolition, including any act or process that totally destroys any landmark or contributing structure or object, shall be prohibited, with the exception of:
 1. This article shall not apply to a Any structure or object which has been ordered demolished by the municipal officers or a court, in accordance with 17 M.R.S. §- 2851 et seq., its equivalent, as it may be amended from time to time, or to
 2. A any structure or object which has been partially destroyed and is determined by the Planning Authority to represent an immediate hazard to the public health or

safety, which hazard cannot be abated by reasonable measures specified by the Planning Authority, including without limitation securing apertures and/or erecting fencing.

3. Any structure or object which is the subject of a certificate of economic hardship under Section 16.8.

16.3.7 Amendment or rescission of designation

- A. Amendment shall be defined as a change to the historic designation boundary or reclassification of a site, structure, or object as contributing or non-contributing in its entirety.
- B. Rescission shall be defined as the complete removal of a historic designation.
- C. Amendment or rescission of any historic designation shall be upon the request of a person or persons authorized to nominate the property or properties affected as set forth in Subsection 16.3.2, or upon request of the City Council.
- ~~A.D. Amendment or rescission, and shall follow the procedure set forth in Section 17.516.3 for designation. The City Council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the Historic Preservation Board, Planning Board, and City Council shall be limited to those provided in Subsection 16.25-17.4.1(A) and (B) and Subsection 17.4.2. Amendments may include reclassification of a portion of a contributing property to noncontributing status, refinement or correction of design guidelines, maps, and other parts of any designation.~~

16.3.8 Presumption of contributing classification

- A. Where the designation classifies an area or site as contributing, but does not specify the classification of a structure or object in the area or on the site, there shall be a presumption that the structure or object is contributing, unless:
 1. Documentation can be provided to the Planning Authority that a structure or object was constructed within 50 years of or after the date of historic designation, or after the stated period of significance, or
 - ~~2.~~ The Historic Preservation Board holds a public hearing and finds that the structure or object has been substantially altered within 50 years of or after the date of historic designation, or after the stated period of significance.

~~16.3.8 Time limits~~

~~If any time limit in the nomination and designation process as provided in Sections 17.4 or 17.5 is not met, the validity of any designation and the interim protection provided by Section 17.6 shall not be affected, provided the Historic Preservation Board, Planning Board or City Council announce the delay and the basis for such in a public meeting, as well as the date to which the matter will be rescheduled.~~

~~16.6~~16.4 INTERIM PROTECTION FOR NOMINATIONS NOMINATED HISTORIC DESIGNATIONS RESOURCES

16.4.1 ~~Nominated landmarks and districts~~Minimum maintenance

From the time of nomination until the City Council ~~Historic Preservation Board~~ acts upon such nomination or the nomination is withdrawn, all

~~areas, sites, structures, and objects or area~~
~~nominated but not yet designated as a landmark or~~
~~district shall be subject to all of the provisions of~~
~~Sections 17.6.9 and 17.10 governing demolition and~~
~~minimum maintenance, to the same extent as if~~
~~designated. Upon final action of the Historic~~
~~Preservation Board recommending designation, the~~
~~site, structure, object, or area nominated shall be~~
~~subject to all of the protections of this article until a~~
~~final decision on designation by the City Council~~
~~becomes effective. If the City Council rejects~~
~~designation or fails to designate a property, that~~
~~property shall no longer be subject to the provisions~~
~~of Sections 17.9 and 17.10 of this article.~~

A.

~~A. — Alteration or new construction commenced~~
~~pursuant to a building permit issued prior to~~
~~nomination shall not require a Certificate of~~
~~Appropriateness, unless such permit has~~
~~expired, been canceled or revoked. No project~~
~~for which any application is pending and which~~
~~has received substantive review by the Planning~~
~~Board prior to nomination shall be affected by~~
~~nomination. Substantive review, as used in this~~
~~paragraph, shall include workshop review of any~~
~~completed application under Article 14 and~~
~~Article 15 of the Land Use Code.~~

16.4.2 Protection from demolition

~~From the time of nomination until the City Council~~
~~acts upon such nomination or the nomination is~~
~~withdrawn, all demolition permit applications for~~
~~any area, site, structure, or object nominated but~~
~~not yet designated shall be denied unless the owner~~
~~has received a certificate of economic hardship~~
~~under Section 16.8.~~

16.716.5 PROTECTIONS FOR PROPERTIES

LISTED ON THE NATIONAL REGISTER OF
HISTORIC PLACES

A. ~~Upon receipt of notice from the National Park~~
~~Service or the Maine Historic Preservation~~
~~Commission to the City that a property or area~~
~~has been listed on the National Register of~~
~~Historic Places or has been determined to be~~
~~eligible for listing on the National Register, the~~
~~City shall deny any demolition permit~~
~~application for any structure or object within~~
~~the listed property or area unless:~~

- ~~1. The owner has received a certificate of~~
~~economic hardship under Section 16.8, or~~
- ~~2. The Historic Preservation Board has held a~~
~~public hearing at the request of the owner~~
~~and found that the structure or object in~~
~~question does not have sufficient integrity~~
~~for historic designation using Subsection~~
~~16.2.2 as the standard for review, or~~
- ~~3. Documentation is provided from the~~
~~Maine Historic Preservation Commission~~
~~that the structure or object in question has~~
~~been removed from the National Register~~
~~of Historic Places, no longer retains~~
~~sufficient integrity to remain listed on the~~
~~National Register of Historic Places, or an~~
~~existing determination of eligibility is no~~
~~longer valid, or~~

~~4. — The City Council has held a public hearing~~
~~at the request of the owner and~~
~~determined that demolition of the~~
~~structure or object is consistent with the~~
~~goals of the Comprehensive Plan. after the~~
~~adoption of this article, a nomination shall~~
~~be deemed submitted to the Historic~~
~~Preservation Board for designation of such~~
~~property or area as a landmark, historic~~

- district, or historic landscape district under this article, and the procedures of Section 17.6 shall be applicable thereto.
- 2.—
- 3.— Properties eligible for listing on national register or for local designation
- 4.— A Certificate of Economic Hardship shall be obtained prior to demolition of any structure which has not been designated in accordance with this article but which has been determined by the Maine Historic Preservation Commission as eligible for listing in the National Register of Historic Places under the criteria established by 16 U.S.C. Section 470(a) or its successor statute and/or regulations made thereunder or which has been determined to be eligible for local listing under the criteria for designation of this article. The determination of eligibility for listing shall be made by the Planning Authority, which may refer such a determination to the Historic Preservation Board, and by the Board of Appeals if an appeal is taken. Upon determination of eligibility, the structure so determined shall also be subject to the provisions of Section 17.10 until a final decision by the City Council on designation becomes effective. If the City Council rejects designation or fails to designate a structure which has been determined to be eligible under the terms of this section, that structure shall no longer be subject to the provisions of Sections 17.9 and 17.10 of this article.
- 5.—4.—

16.816.6 REVIEW PROCESS FOR CERTIFICATES OF APPROPRIATENESS AND NON-APPLICABILITY

16.6.1 Certificate of AppropriatenessApplicability

Except as provided in Subsections 17.7.2 and 17.7.3, a certificate of appropriateness shall be required prior to the issuance of any permit authorizing new construction, additions, exterior alterations, site alterations, signage, or the relocation of structures affecting any property within the boundaries of a landmark, historic district, or historic landscape district as identified in Table 16-A. Notwithstanding the above, the following activities shall be considered exempt: before the following actions affecting any landmark, contributing or noncontributing structures, objects, sites, or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work:

- A.— Any exterior alteration or new construction requiring a building permit from the City of Portland, including, but not limited to the following:
- a.— Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings, and cornices.
 - b.— Moving of structures or objects on the same site or to another site.
 - c.— Construction of rooftop additions or decks.
 - d.— Alteration of accessory structures such as garages.
 - e.— Porch replacement or new construction of porches.
 - f.— Installation of exterior access stairs.
 - g.— Window or door replacement requiring enlargement of openings.

- h. ~~Installation of antennas and satellite receiving dishes.~~
- i. ~~Installation of solar collectors.~~
- 4. ~~Any exterior alteration that does not require a building permit but which involves any one of the following activities:~~
 - a. ~~Installation or replacement of either roofing or gutters where the roofing or gutters are a significant and integral feature of the structure including, but not limited to, mansard roofs, cupola roofs, ornamental slate roof features, and built in gutter systems and the installation or replacement of siding.~~
 - b. ~~Window and door replacement whether or not it requires enlargement of openings.~~
 - c. ~~Masonry work including, without limitation, tuckpointing, sandblasting, chemical cleaning.~~
 - d. ~~Site features other than vegetation including, without limitation, fencing, walls, paving, and grading. However, required review for alterations to cemeteries designated under this article shall not include review of alterations to headstones made for the purpose of recognition of additional decedents or installation of grave markers and/or tombs.~~
 - e. ~~Streetscape and pedestrian improvements within historic districts, including but not limited to installation of pedestrian lighting, alteration to road or intersection alignment, installation of public signage (other than public safety related signage).~~
 - f. ~~Landscaping within an historic landscape district.~~
 - g. ~~Exterior lighting where proposed in conjunction with commercial and~~

institutional signage or awnings or architectural lighting.

- h. ~~Exterior utilities including mechanical, HVAC, plumbing, and electrical, where placed on elevations readily visible from a public way.~~

5. ~~Installation or alteration of any exterior sign.~~

6. ~~Any relocation of a landmark or contributing structure within a district.~~

- B. ~~There shall be a rebuttable presumption that all structures within a district shall be contributing unless the designation report and Historic Resources Inventory expressly identifies otherwise. Where the Planning Authority or the owner believes that the identification is erroneous, the Historic Preservation Board shall determine whether the structure is noncontributing.~~

16.6.2 Exceptions to requirement of Certificate of Appropriateness

A Certificate of Appropriateness is not required:

- A. ~~Where a Certificate of Non Applicability has been issued within the previous 12 months.~~
- A. ~~Where the wWork consistings solely of ordinary maintenance, being acts of upkeep or repair which do not include a change in the design, material, or outer appearance of a site structure, or object, such as repainting of previously painted surfaces or in-kind replacement of materials or plantings, and/or restoration, provided that there is no substitution of materials or alteration of architectural details.~~
- B. ~~Where the work consistins solely of emergency repair of a temporary nature.~~

- C. Work approved under a valid~~here a~~ certificate of economic hardship, ~~has been issued and remains valid.~~
- ~~D. In the case of either alteration of a structure (other than a landmark) or of new construction within a district, a Certificate of Appropriateness shall not be required~~Work where the Planning Authority determines that the proposed exterior changes ~~to a structure~~ are not readily visible at pedestrian heights from any public way or public open space. ~~Where a Certificate of Appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.~~
- ~~D.E.~~ Installation of new public artworks approved or acquired through the City of Portland Public Art Program.
- ~~E.F.~~ Changes in plantings or vegetation outside of historic landscape districts and minor changes in plantings or vegetation within historic landscape districts.
- ~~F.G.~~ Alterations to existing grave markers or tombs made for the purpose of recognizing additional decedents or installation of grave markers or tombs recognizing new interments within an existing cemetery.
- ~~G.H.~~ Work in City rights-of-way.

- ~~H.I.~~ Roof-mounted solar energy systems.
- ~~J.~~ Installation of temporary structures or objects for a period of less than eight consecutive months, unless such installation otherwise meets a threshold for review established in Table 16-A.
- ~~K.~~ Demolition of non-contributing structures or objects.
- ~~L.~~ Relocation of non-contributing structures to a site outside any historic designation boundary.

~~16.6.3~~**16.6.2** ~~Alterations or new construction within historic landscape districts~~Review classifications

- ~~A.~~ Applications shall be subject to administrative or Historic Preservation Board review according to the classifications in Table 16-A.
- ~~B.~~ The Planning Authority may, due to the scope or anticipated impacts of a project, reclassify an administrative review to a Historic Preservation Board review.
- ~~C.~~ At any point in the review process, an applicant may request that the Planning Authority reclassify the application from administrative to Historic Preservation Board review.

TABLE 16-A: HISTORIC PRESERVATION REVIEW CLASSIFICATIONS

		<u>Administrative Review</u>	<u>Board Review</u>
<u>New construction and additions</u>		<u>≤ 500 SF</u>	<u>> 500 SF</u>
	<u>Dormer additions¹</u>	Affecting ≤ 40% of roof area (in SF)	Affecting > 40% of roof area (in SF)
<u>Alterations to contributing structures or objects²</u>	<u>Minor alterations</u>	All	--
	<u>Major alterations</u>	≤ 25% of any façade, or where work is based on clear documentation of the historic appearance	> 25% of any facade
	<u>Minor alterations</u>	All	--

Alterations to noncontributing structures or objects²	Major alterations	≤ 40% of any facade	> 40% of any facade
	Site alterations³	All	--
	Signage	All	--
	Relocation of structures⁴	≤ 500 SF	> 500 SF

¹ Dormer additions include any increase in building volume which does not interrupt the ridges, eaves, or rakes of an existing structure.

² Minor alterations include small or routine changes such as required by building code or modern convenience which result in minimal change in exterior appearance of an existing structure. Major alterations include changes to existing or introduction of new details or features which affect the scale, form, proportion of openings, ratio of solid to void, rhythm or placement of entrances, color or texture of materials, or relationship to the street of an existing structure or object.

³ Site alterations include the construction of permanent features such as fences and retaining walls, regrading, hardscaping, the installation of exterior utilities.

⁴ Relocations include the moving of a structure or object on its site or to another site within any historic designation boundary.

~~A certificate of appropriateness shall be obtained before any site alteration or new construction within a historic landscape district may be undertaken, except where a certificate of non-applicability has been issued or where construction or alteration is pursuant to a master plan approved by a prior certificate of appropriateness within five years of commencement and where the master plan is sufficiently detailed to guide the specific work~~

16.6.3 Historic Preservation pre-application meeting

~~Applicants are encouraged to schedule a Historic Preservation pre-application meeting with the Planning Authority prior to applying for a Certificate of Appropriateness. The purpose of this meeting is to familiarize the applicant with the City of Portland Historic Preservation submittal requirements, applicable review criteria and standards, and to confirm the level of review required. A pre-application meeting does not confer pending proceeding status under Title 1 MRSA 302. No decisions relative to the application shall be made at the pre-application meeting, nor shall any advice or~~

~~information provided by the Planning Authority be construed as a decision.~~

16.6.4 Applications for Certificate of Appropriateness

~~Application for a certificate of appropriateness shall be made on a form prepared by the City and shall be submitted to the Planning Authority along with the applicable fee. Upon receipt of an application and fee, the Planning Authority shall determine whether the application is complete and the level of review required per Table 16-A. The Planning Authority shall determine whether the scope, nature, or scale of the proposed project requires review by the Historic Preservation Board or whether it is a minor or routine project that is appropriately reviewed at the administrative level.~~

~~If the Planning Authority determines that the project should be reviewed by the Historic Preservation Board, the item shall be scheduled for the next available Historic Preservation Board meeting, provided that the notice requirements of this article can be met prior to that meeting. The Planning Authority shall transmit a copy of the~~

complete application to the Historic Preservation Board at least four days prior to their next scheduled meeting. The Planning Authority shall not issue or act upon the application until the Historic Preservation Board has completed its review and approval process. An application for a Certificate of Appropriateness shall be treated as an application for a Certificate of Economic Hardship under Section 17.9 whenever the Historic Preservation Board or the Planning Board, as applicable, determines that the proposed alteration includes any demolition which would:

Have the effect of causing the structure to no longer meet the criteria for designation of Section 17.4; or

Materially impair the significance and integrity of the structure.

Where a determination under (B) above is made by the Historic Preservation Board, the Planning Board shall review that decision as a preliminary matter, whether the Historic Preservation Board has taken final action with respect to the application or not. Upon any final determination that an application for a Certificate of Appropriateness is required to be treated as an application for a Certificate of Economic Hardship, no further action shall be taken with respect to the application until that certificate is applied for and is granted.

Where the applicant has done work or caused work to be done on a structure or a property for which a Certificate of Appropriateness is sought and such work is either not done in compliance with an approval received under this article or was performed without the approvals required under this article, no application for such structure or property shall be considered by the Planning Authority or by the Historic Preservation Board until the work done without approval is brought

into compliance with the requirements of this article. The Historic Preservation Board may waive this requirement if the Historic Preservation Board determines that the work does not alter the essential character of the structure or district and one or more of the following standards are also met:

The work was needed to bring a building into conformance with any building or safety code.

The applicant can demonstrate a good faith belief that necessary approvals had been received for the work at issue prior to the commencement of the work.

The applicant can demonstrate a good faith belief that the work done was not subject to review under this article.

Review of any application by the Planning Authority or by the Historic Preservation Board shall not constitute waiver of any future claims by the City concerning violations and shall not stop the City from prosecuting any violation.

16.6.5 Costs

Anyll projects mayshall be subject to fees as established by the City Council to cover the administrative costs and the costs of Historic Preservation Board review. Applicants shallare also required to pay a-fees to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services as needed. The fee shall be based on the hours of review and processing time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant. Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.

~~16.6.5~~16.6.6 **Lapse in application**

~~Once a completed~~An application for a certificate of appropriateness has been submitted, it shall be diligently pursued from the date of submission. Applicants shall provide additional information as requested by the Planning Authority or Historic Preservation Board when determined to be reasonably necessary to make any determination required by this article. Failure of an applicant to provide a response to the request for additional information within 120 days of the date upon which the written request was made shall cause the application to expire and be deemed null and void. attend two or more Historic Preservation Board meetings at which an application is scheduled for review shall cause the application to expire and to be deemed null and void, unless the Planning Authority determines that good cause is shown for the failure to attend. Where good cause is shown for a failure to attend, the Historic Preservation Board shall table an application to a date mutually agreed upon in writing.

In determining the existence of the circumstances specified in this article, the Historic Preservation Board, Planning Board, or Board of Appeals may require such additional documentation or evidence as they may respectively determine to be necessary, including plans, drawings, and elevations, and notwithstanding any time limit for action or decision specified in this article, it may continue a proceeding for such additional time as it reasonably takes an applicant or any other party to comply with the request for additional relevant documentation or evidence and may draw a negative inference with regard to the content of any material evidence not produced upon reasonable request.

~~Prior to issuance of any Certificate of Appropriateness, any applicant shall demonstrate sufficient right, title, or interest in the property, technical capacity, and financial capacity to complete any change proposed to be undertaken under the Certificate of Appropriateness, upon reasonable request of the Planning Authority. If the Planning Authority determines that the applicant has failed or refused to demonstrate an ability to complete the proposed activity, it shall refer the issuance to the Planning Board which shall make a final determination as to whether the applicant has demonstrated a sufficient capability to complete the proposed activity. Notwithstanding any other provision of this article, the Historic Preservation Board or Planning Board may include reasonable conditions, including the provision of adequate financial security, to ensure that actions taken under a Certificate of Appropriateness will be successfully prosecuted to completion, as approved, in a timely manner.~~

16.6.7 **Administrative Review process for Certificate of Appropriateness**

The process for review of an application for a Certificate of Appropriateness shall be as follows, except to the extent specifically provided elsewhere in this Section 17.7:

For administrative-level reviews.—An application for a certificate of appropriateness for installation or alteration of any exterior sign; minor or routine alterations; and temporary alterations, construction, or improvementssubject to administrative review shall be reviewed by the Planning Authority for compliance with the standards of Section 17.816.7. The Planning Authority may request revised plans and submittals necessary to determine compliance. The Planning Authority shall approve the

application, approve the application with conditions, or deny the application, and the *Historic Resources Design Manual*. Where staff determines that such an application meets these requirements, the Certificate of Appropriateness shall be issued by staff without presentation to the Historic Preservation Board for approval. Staff shall provide the Historic Preservation Board with written notice of staff approvals on a quarterly basis.

If staff approves an application with conditions, the applicant may request review by the Historic Preservation Board. The application shall then be subject to review by the Historic Preservation Board pursuant to Subsection 17.7.5(B).

Staff may elect to forward to the board an application found by staff to meet review standards but for which board confirmation is sought. The application shall be placed upon the next consent agenda of the Historic Preservation Board. Any member of the Historic Preservation Board may remove an application from the consent agenda for the purpose of giving it a public hearing.

If the Planning Authority determines that the application does not meet the requirements of Section 17.8 and the *Historic Resources Design Manual*, the application shall be scheduled for review by the Historic Preservation Board pursuant to Subsection 17.7.5(B), unless the applicant withdraws the application.

For purposes of this subsection only, temporary is defined as either a one-time occurrence that does not exceed 30 days or as an annual occurrence that does not exceed one 30-day period each year.

Minor or routine alterations are defined as incidental changes or additions to a building, site features, or exterior utilities which require building permits but will neither result in substantial changes

to any significant historic features nor obscure such features. In no event shall any change be deemed minor when, in the opinion of the Planning Authority, such change shall alter the historic character of the building or site.

16.6.8 Historic Preservation Board review

A. ~~For Historic Preservation Board-level~~

~~reviews.~~ An application for a certificate of appropriateness subject to Historic Preservation Board review shall be reviewed by the Historic Preservation Board for compliance with the standards of Section 16.7. The Planning Authority may request revised plans and submittals necessary to determine compliance with Section 16.7 prior to The Planning Authority shall review the application and prepare a report for the Historic Preservation Board's consideration which addresses the proposed project's compliance with the review standards in Section 17.8. The Planning Authority may schedule a Historic Preservation Board one or more preliminary workshops on the application prior to a or public hearing.

B. The Planning Authority shall schedule the project for review at a workshop or public hearing on a date that meets public noticing requirements and prepare a report for the Historic Preservation Board's consideration which addresses the proposed project's compliance with the review standards in Section 16.7.

C. In the case of applications being reviewed at a workshop or workshops prior to the public hearing, they shall be informational and not result in any formal approval or disapproval of the project. At a workshop, the Historic

Preservation Board shall review the plans and submittals, consider the staff review with respect to the review standards of this article, hear public comments and questions, and provide direction to the applicant regarding issues to be addressed.

- A. At a hearing, the Historic Preservation Board shall approve, approve with conditions, or deny the application based on the applicable review standards of Section 16.7. Should the Historic Preservation Board deny an application,
- B. Following any preliminary workshop(s) and upon determination by the Historic Preservation Board that the application is complete, the application shall be scheduled for a public hearing at the next available meeting of the Historic Preservation Board which allows for adequate notice.
- C. Following a public hearing, the Historic Preservation Board shall make a decision on the application.
- D. The Historic Preservation Board it shall enter findings of fact concerning the relationship between the application and the applicable standards of Section 17.8-16.7 within 60 days of the close of the public hearing. immediately following a denial or conditional approval of any Certificate of Appropriateness. Written notice of the determination of staff or the Historic Preservation Board on the application, including a copy of the findings of fact, shall be sent by regular mail to the applicant.

I. —

16.6.9 Review process involving major site plans
Review process involving major site plans. The process for review of an application for alteration

or new construction that is also a major site plan as defined in Article 14 shall be as follows:

Site plan review by the Planning Board and certificate of appropriateness historic preservation review by the Planning Authority or Historic Preservation Board shall, to the extent feasible, proceed concurrently. Any proposed major site plan required to obtain a certificate of appropriateness under this article shall be exempt from the design standards included in Article 13~~4~~, and shall comply with the applicable design standards of Section 16.7 ~~listed within Article 17.~~

Upon receipt of the application for a Certificate of Appropriateness, the Planning Authority shall review the application and schedule a workshop for preliminary review by the Historic Preservation Board. The Planning Authority shall prepare an analysis of the application based upon the standards in Section 17.8 for consideration at the workshop. Additional workshops may be scheduled by the Historic Preservation Board with the consent of the applicant.

Following preliminary workshop(s) and upon determination by the Historic Preservation Board that the application is complete, the Historic Preservation Board shall conduct a public hearing and make a final decision on the application. If the Historic Preservation Board finds that the application meets the applicable standards of Section 17.8, it shall issue a Certificate of Appropriateness, with or without conditions. If the action by the Historic Preservation Board is a denial or conditional approval, the Historic Preservation Board shall make findings of fact concerning the relationship between the application and the applicable standards of Section 17.8.

~~Written notice of the determination of the Historic Preservation Board on the application, including a copy of the findings of fact, if any, shall be sent by regular mail to the applicant within 14 days following its determination.~~

16.6.10 Notice of public meeting

- A. For all ~~C~~ertificate of ~~A~~ppropriateness applications that are subject to Historic Preservation Board review, the applicant shall be responsible for posting a notice of public meeting sign on the property where the development is to occur. The dimensions, construction, and content of the sign shall be in accordance with standards established by the Planning Authority.
- B. The sign shall be posted at least 10 days prior to the public workshop or hearing date, and shall be removed from the site no more than three days following the date of the meeting.
- C. Once the required notice of public meeting signage is posted, the applicant shall submit a completed certification of posting form to the Planning Authority.
- D. In the event that a required notice of public meeting sign is knocked over or made illegible, it shall be the responsibility of the applicant to promptly reset or replace the sign, though failure to do so shall not invalidate the review.

16.6.11 Conditions of approval

~~The Planning Authority or Historic Preservation Board may impose conditions upon its approval of any certificate of appropriateness to bring the application into compliance with the review standards of this article.~~

16.6.12 Issuance of certificate of appropriateness

- A. The Planning Authority shall issue the certificate of appropriateness ~~within 14 days~~ following ~~approval or approval with conditions by the Planning Authority or proposed affirmative decision by~~ the Historic Preservation Board ~~becoming final~~.
- ~~B. No ~~C~~ertificate of ~~A~~ppropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.~~
- ~~B.~~
- C. Prior to issuance of any Certificate of Appropriateness, ~~any~~the applicant shall demonstrate sufficient right, title, or interest in the property, technical capacity, and financial capacity to complete any change proposed to be undertaken under the Certificate of Appropriateness, upon reasonable request of the Planning Authority.

16.6.13 Expiration of approvals

- A. Unless work authorized by a certificate of appropriateness ~~shall be~~is commenced ~~or a building permit for the same is issued~~ within ~~three years~~six months of the ~~initial~~ date of issuance of the certificate of appropriateness, the certificate of appropriateness shall expire and shall become null and void. ~~The Planning Authority may approve additional extensions of this six month period, not to exceed a total of two years, provided that a written request for~~

extension is received prior to the expiration date of the Certificate of Appropriateness.

- B.** When the approved work also requires a site plan approval under Article 13, the expiration of the certificate of appropriateness shall be concurrent with the site plan expiration.

- A.C.** In the event of litigation arising out of the granting of a certificate of appropriateness, the certificate shall remain valid until one year after the entry of final judgment in the litigation or until the end of the ~~three~~two-year period, whichever is later.

- C.** An approval shall expire and become null and void upon the expiration of the authorization for the work, or for the development, under the applicable provisions of Chapter 6 of this Code of Ordinances or Articles 14 or 15.

16.6.13 Certificate of Non-Applicability

- A.** The Planning Authority shall issue a Certificate of Non-Applicability as to property subject to this article when requested to do so when:
1. The Planning Authority determines that none of the proposed work requires a Certificate of Appropriateness.
 2. The Planning Authority determines that all of the proposed work is ordinary maintenance, restoration, or a combination thereof.
 3. In the case of the alteration of a structure other than a landmark or of new construction within a district, where the Planning Authority determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any public way. Where a Certificate of Appropriateness is required for such changes, a Certificate of Non-Applicability

shall be issued upon request for those portions of the structure or structures not visible at such heights, provided, however, this paragraph shall not apply to alteration of a landmark or to any demolition.

- ~~4. After any appeal where the Historic Preservation Board, Planning Board or any court determines that paragraphs (1), (2) or (3) of this subsection are applicable.~~

- B.** The Planning Authority shall act upon any application for a Certificate of Non-Applicability within 14 days of receiving a complete written description of all work to be undertaken.

16.6.14 Amendments to approved certificates of appropriateness

- A.** An applicant may apply for an amendment to a certificate of appropriateness by submitting an amendment application that includes a written statement of the proposed amendment, proposed amended plans, and related submittals to the Planning Authority. If at any time before or during work approved under the procedures set forth in this Section 17.7 the applicant requests minor amendments to approved work,

- B.** The Planning Authority is authorized to may approve such minor amendments under the procedures set forth in Subsection 17.7.516.6.7, provided that the proposed such amendments:

1. Are generally consistent with the approved plans.
2. Meet all the applicable standards for review set forth in Section 16.7.
3. Do not modify the work such that Historic Preservation Board review would otherwise be required per Table 16-A.

~~16.4. Do not affect will not result in a waiver or substantial alteration of the approval or any condition or requirement of the Historic Preservation Board attached to the approval. The applicant shall supply a written statement of the proposed amendment and amended plans or drawings to the Planning Authority. The decision of the Planning Authority as to whether an amendment may be reviewed under this subsection shall be final.~~

- ~~C. Major amendments include changes that exceed the limited criteria for a minor amendment under Subsection 16.6.14(B). Review procedures shall follow those for a certificate of appropriateness Historic Preservation Board review.~~

~~16.6.15 Review process for demolition of landmarks or contributing structures within a district~~

- ~~A. Any applicant seeking demolition of a landmark or contributing structure must apply for a Certificate of Economic Hardship to the Board of Appeals in accordance with Section 17.9 of this article. Said application must be approved by the Board of Appeals before a demolition permit can be issued.~~
- ~~B. Any applicant seeking demolition of a noncontributing building as defined in this article may apply directly for a demolition permit without receiving approval from the Historic Preservation Board or a Certificate of Economic Hardship from the Board of Appeals.~~
- ~~C. Any applicant seeking demolition of a portion of a contributing or landmark structure may request that the Historic Preservation Board~~

make a determination as to whether such portion of the structure is noncontributing based on the definition of that classification contained in this article. If the board determines the portion to be noncontributing, the applicant may apply directly for a demolition permit.

~~16.9~~ **16.7 STANDARDS FOR REVIEW OF APPLICATION FOR CERTIFICATE OF APPROPRIATENESS**

~~16.7.1~~ *Historic Resources Design Manual*

- ~~A. The Historic Preservation Board may provide further guidance on how to meet the standards of this article are supplemented by in the Historic Resources Design Manual, which shall supplement this article. The Historic Resources Design Manual may include but need not be limited to maps and descriptions of landmarks and districts, a listing of properties which have been determined to be eligible for listing on the national register or for local designation, a glossary of terms and architectural styles, includes descriptions, guidelines, and illustrations of how the standards of this article will be interpreted, and all designation ordinances, reports, and design guidelines. All provisions of the Historic Resources Design Manual shall be consistent with the standards of this article and any designation ordinance adopted hereunder.~~
- ~~B. Amendments to the Historic Resources Design Manual shall be adopted by the Historic Preservation Board following a public hearing, forwarded to the City Council as a communication and shall become effective 45 days from the date on which said amendments are sent to the City Council, unless the City~~

~~Council takes official action disapproving the amendments, in whole or in part, prior to the expiration of the 45-day period.~~

~~C.B.~~ The *Historic Resources Design Manual* shall be maintained by the Planning Authority.

16.7.2 Standards for review of alteration

In considering an application ~~for a Certificate of Appropriateness~~ involving alteration, the ~~Historic Preservation Board and the Planning Board~~ reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards ~~shall~~ apply the following general standards, as further described in the *Historic Resources Design Manual*, and any design guidelines accompanying the specific designation:

- A. **Compatible use.** ~~In the case of a change of use of a property from its originally-intended purpose, e~~Every reasonable effort shall be made to ~~provide a compatible use for a property which requires~~ minimize the alteration ~~of the~~ character-defining features of the structure, object, or site and its environment ~~as they relate to the original use or to use a property for its originally intended purpose.~~
- B. **Retain historic features.** The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- C. **Historical accuracy.** All sites, structures, and objects shall be recognized as products of their own time, place, and use. Alterations that have no historical basis or create a false sense of historical development, such as adding

conjectural features or elements from other properties, shall be discouraged.

- D. **Acquired significance.** Changes which may have taken place in the course of time are evidence of the history and development of a structure, object, or site and its environment. Changes that have acquired significance in their own right shall not be destroyed.
- E. **Sensitive treatment.** Distinctive features, finishes, and construction techniques or examples of skilled craftsmanship which characterize a structure, object, or site shall be treated with sensitivity.
- F. **Repair rather than replace.** Deteriorated historic features shall be repaired rather than replaced wherever feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the feature being replaced in composition, design, texture, and other visual qualities and, where possible, materials. Repair or replacement of missing historic features should be based on accurate duplications of features, substantiated by documentary, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects.
- G. **Surface cleaning.** The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.
- H. **Archaeological resources.** Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be

disturbed, mitigation measures shall be undertaken.

- I. **Contemporary design and differentiation.** Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
- J. **Reversibility.** Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

16.7.3 Standards for review of new construction

In considering an application ~~for a Certificate of Appropriateness~~ involving new construction, the ~~reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards:~~ Historic Preservation Board and the Planning Board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the *Historic Resources Design Manual* and shall guide the board in its review.

A. Scale and form

1. *Height.* The proposed height shall be visually compatible with surrounding structures when viewed from any street or

open space and in compliance with any design guidelines.

2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways, and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches, and balconies shall be visually compatible with the structures, public ways, and places to which they are visually related.
- ~~6. *Applicability of the underlying zoning.* The review standards above shall not supersede the dimensional requirements of the underlying zoning to Congress Street Historic District. In the Congress Street Historic District, for new construction within the B-3 zone, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the B-3 zone.~~
- ~~7. *Applicability to India Street Historic District.* For new construction within the India Street Historic District, the Historic Preservation Board shall not impose conditions more restrictive than the~~

~~dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.~~

~~8.6. Applicability to the Portland Company Historic District. For new construction within the Portland Company Historic District, the height requirements of the B-6 Building Height Overlay & Building Envelopes map shall be controlling and the Historic Preservation Board shall not impose conditions more restrictive than the building height requirements of the B-6 zone.~~

B. Composition of principal facades

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways, and places to which the building is visually related.
2. *Rhythm of solids to voids in facades.* The relationship of solids to voids in the facade of a structure shall be visually compatible with structures, public ways, and places to which it is visually related.
3. *Rhythm of entrance porch and other projections.* The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways, and places to which they are visually related.
4. *Relationship of materials.* The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in the structures to which they are visually related.

5. *Signs.* Any new sign, and any change in the appearance of an existing sign located on a landmark, within a historic district, or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

C. Relationship to street

1. *Walls of continuity.* Facades and site structures, such as masonry walls, fences, and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways, and places to which such elements are visually related.
2. *Rhythm of spacing and structures on streets.* The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways, and places to which it is visually related.
3. *Directional expression of principal elevation.* A structure shall be visually compatible with the structures, public ways, and places to which it is visually related in its directional character, whether this be vertical character, horizontal character, or nondirectional character.
4. *Streetscape, pedestrian improvements.* Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to or on a landmark, within a historic district, or within a

historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

D. Other standards

1. *Compatible use.* In the case of a change of use of a property from its originally-intended purpose, eEvery reasonable effort shall be made to ~~provide a compatible use for a property which requires minimize the alteration to~~ of the character-defining features of the structure, object, or site and its environment ~~or to use a property for its originally intended purpose as they relate to the original use.~~
2. *Distinguishing original character.* The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The alteration of any historic material or distinctive architectural features should be avoided when possible.
3. *Archeological resources.* Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
4. *Contemporary design.* Contemporary design for additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that

characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, material, and character of the property, neighborhood and environment.

5. *Additions.* Wherever possible, new additions to structures and objects shall be undertaken in such a manner that, if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

16.7.4 Standards for review of alterations to ~~or redesign of~~ noncontributing structures

~~A.~~—In considering an application for a certificate of appropriateness involving alteration(s) to a noncontributing structure, the ~~standards for review of alterations set forth in Subsection 17.8.2 shall apply as applicable.~~ The intent of the review shall be ~~to ensure no further erosion of any existing architectural character of the subject structure determined to be significant by the Planning Authority or Historic Preservation Board and, where practicable, to~~ guide projects toward a more compatible relationship with the surrounding context using

~~B.A.~~ In considering an application for a Certificate of Appropriateness involving comprehensive redesign of a noncontributing structure, the standards for review of construction set forth in Subsection ~~17.8.3~~ 16.7.3 shall apply.

16.7.5 Standards for review of relocation

~~In acting upon considering an application for a Certificate of Appropriateness~~ involving relocation, the reviewing authority shall approve a certificate of appropriateness only upon finding that the

application meets the following standards~~the Historic Preservation Board and the Planning Board shall apply the following general standards and any design guidelines in the ordinance designating the landmark or district:~~

- A. Whether the historic or urban design character and aesthetic interest of the structure or object contribute to its present setting.
- B. If located within a district, whether there are definite plans for the area to be vacated and what the effect of those plans is on the character of the surrounding area. In such cases, consideration of additional design guidelines for construction to be imposed as a condition of approval is appropriate.
- C. Whether the relocation of the structure or object can be accomplished without significant damage to its physical integrity.
- D. Whether the proposed relocation area is compatible with the cultural, historical or architectural character of the structure or object.

16.7.6 Standards for review of signage

In considering an application ~~for a Certificate of Appropriateness~~ involving the installation or modification of sign(s) the reviewing authority shall approve a certificate of appropriateness only upon finding that the application meets the following standards; including awning(s) which incorporate signage;

- A. ~~s~~Signs shall be compatible with the subject building and its surrounding context ~~as detailed in the signage design guidelines included in the Historic Resources Design Manual.~~
- B. Signs shall be installed in such a manner as to minimize damage to contributing structures or ~~objects-historic resources.~~

~~A.C.~~ If there is a conflict between this standard and the requirements of Article 19, the stricter standard shall apply.

~~16.10~~16.8 CERTIFICATE OF ECONOMIC HARDSHIP

16.8.1 Applicability

- A. Any applicant who has received a denial under this article or is seeking demolition of a landmark or a contributing structure within a district may ~~apply make application~~ for a certificate of economic hardship from the ~~Board of Appeals~~Historic Preservation Board.
- B. The application shall be submitted to the Planning Authority, together with the applicable fee. In the case of a denial, the application shall be submitted within 60 days of the denial.
- ~~C.~~ ~~The Planning Authority shall transmit a copy of the application to the Board of Appeals, with copies to the Planning Board and the Historic Preservation Board, within 14 days following receipt of a properly completed application.~~

16.8.2 Standard to be applied

- A. ~~The Board of Appeals~~Historic Preservation Board shall approve an application for a certificate of economic hardship only upon a determination that the denial of ~~approval of~~ the proposed activity or ~~of~~ the proposed demolition will result in the loss of all reasonable use of the structure ~~as required by Subsections 17.9.5 and 17.9.7.~~
- B. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts of neglect of the owner or their predecessors in title under Section 16.9.

~~D.~~ In applying this standard, the Board of Appeals shall consider among other things any evidence presented concerning the following:

- ~~1.~~ Any opinions from a licensed engineer or architect with experience in renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation.
- ~~2.~~ Any estimates of the cost of the proposed alteration, construction, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Planning Board for changes necessary for it to be approved.
- ~~3.~~ Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition, or removal; after any expenditures necessary to comply with the recommendations of the Planning Board for changes necessary for it to approve a Certificate of Appropriateness; and in the case of a proposed demolition, after renovation of the existing structure for continued use.
- ~~4.~~ In the case of a proposed demolition, any estimates from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation, or rehabilitation of any existing structures or objects.

16.8.3 Information to be supplied by applicant

A. The applicant shall submit by affidavit the following information, which shall constitute an application for an application to be considered to be complete:

1. The assessed value of the property and/or the structure ~~in the case of a demolition~~ for the two most recent assessments.
2. Real property taxes paid for the previous two years.
3. The amount paid for the property by the owner, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
- ~~4.~~ The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two years.
- ~~5-4.~~ All appraisals obtained within the previous two years by the owner or applicant in connection with purchase, offerings for sale, financing, or ownership of the property, or state that none were obtained.
- ~~6-5.~~ All listings of the property for sale or rent, price asked and offers received, if any, within the previous four years, or state that none were obtained.
- ~~7-6.~~ All studies commissioned by the owner as to profitable renovation, rehabilitation, or utilization of any structures or objects on the property for alternative use, or a statement that none were obtained.
- ~~8-7.~~ For income-producing property, itemized income and expense statements from the property for the previous two years.

8. Professional assessment from a licensed engineer or architect with experience in renovation, restoration, or rehabilitation of historic buildings as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation.
 9. Estimate of the cost of the proposed alteration, construction, demolition, or removal proposed by the applicant.
 10. and an eEstimate of any additional cost that would be incurred to address findings of fact provided by the reviewing authority in issuing a denial of comply with the recommendations of the Planning Board for changes necessary for it to approve a certificate of appropriateness.
 - 9-11. A statement of the minimum extent of work necessary to allow reasonable use of the structure.
 10. Form of ownership or operation of the property, whether sole proprietorship, for profit or not for profit corporation, limited partnership, joint venture, or other.
- B. In the event that the information required to be submitted by the applicant is not reasonably available or attainable, the applicant shall file with the affidavit a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.
- C. The Planning Authority may request that third-party reviewers with applicable expertise to review materials provided by the applicant and prepare a report on their analysis of the application materials. In these cases, the cost of the third-party review shall be charged to the applicant.

~~C.D. Notwithstanding the submission of the above information, tThe Historic Preservation Board of Appeals may require additional evidence or supporting materials to inform their decision on the application as provided in Subsection 17.7.4(G).~~

16.8.4 Public hearingReview

- A. ~~The Board of AppealsHistoric Preservation Board~~ shall hold a workshop or public hearing on the application within 30 days following receipt of ~~thea~~ completed application ~~form~~. ~~Where the application requests the demolition of a landmark or a contributing structure within a district, the public hearing shall not be held less than 90 days following receipt of the completed application, unless the applicant makes a clear showing that the delay will result in undue hardship of a unique or exceptional character which could not reasonably be or have been avoided. Upon such a showing, the Planning Authority may waive all or any part of the 90-day period and schedule the hearing before the board. Undue hardship shall not include mere inconvenience or incidental financial loss. No such waiver shall be granted without the Planning Authority giving best practical notice to all persons entitled to notice of the hearing.~~
- B. ~~Where the application requests the demolition of a landmark or a contributing structure within a district, the Planning Authority shall promptly notify any persons interested in historic preservation, who have registered in writing with him or her, give notice by mail to all owners of property within 500 feet of the structure, and shall require that the applicant immediately place a notice, to be supplied by~~

the building official, in a prominent place on the structure and to maintain it there at all times during the pendency of the demolition application. The notice shall state that the structure has been proposed to be demolished by its owner and provide contact information for further information. The failure to give any notice required hereunder shall not affect the validity of any action taken by the Planning Authority or the Board of Appeals.

C. ~~The Planning Board may provide a report or any other information, documentation or evidence or request the Historic Preservation Board to assist the Board of Appeals in considering the extent of variance necessary, an appropriate incentive plan, or reasonable condition to be imposed.~~

D. ~~The Board of Appeals may continue a proceeding for such additional time as it reasonably takes an applicant, any other interested person, the Historic Preservation Board, or the Planning Board to comply with a request for additional information or evidence. The applicant shall be afforded the right to present rebuttal evidence.~~

E.A.

F.—Determination by the Board of Appeals

G.B. ~~The determination by the Historic Preservation Board of Appeals shall be made within 3045 days following close of the public hearing and submission of all information, documentation, or evidence requested by the board. The determination shall be accompanied by findings of fact.~~

D. ~~The Board of Appeals shall not grant approval of an application involving demolition unless the board determines, upon clear and~~

convincing evidence, that one or more of the following circumstances apply:

1. ~~The structure is not subject to this article.~~
2. ~~Denial of a demolition permit would result in a hardship to the property owner so great that it would effectively deprive the owner of all reasonable use of the structure. The extent of any demolition permitted shall be limited to the amount necessary to allow reasonable use of the structure. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts or neglect of the owner or his predecessors in title occurring in whole or in part after August 1, 1988.~~

16.8.5 Disapproval by Board of Appeals

If the determination of the Board of Appeals is to disapprove the application for a Certificate of Economic Hardship, the applicant shall be notified within five business days. The notice shall include a copy of the findings of fact and report.

16.8.616.8.5 Determination of no reasonable useIssuance

A. ~~If the determination of the Historic Preservation Board of Appeals is that thea denial of the certificate of appropriateness or the prohibition on demolition under subsection 16.3.6 has resulted in the denialloss of all reasonable use of the structure, or the entire property in the case of new construction, then the certificate of economic hardship shall be issued by the Planning Authority within 930 days following the determination unless during~~

that time the City Council approves an incentive plan pursuant to Subsection 17.9.8.

B. Certificates of economic hardship shall:

1. Limit the scope of work to the minimum extent necessary to allow reasonable use of the structure; and
2. Not allow for the beginning of any demolition work until the necessary approvals and permits have been attained to allow for the rehabilitation, alteration, or replacement of the structure.

C. Certificates of economic hardship shall be valid for a period of three years from the date of the determination by the Historic Preservation Board.

E. A copy of the determination of the Board of Appeals, together with the findings of fact, shall be mailed to the applicant and filed with the City Clerk, the Planning Board, and the Historic Preservation Board within 14 days following the determination of economic hardship.

F. Certificates of eEconomic hHardship shall not be transferable from the applicant to another subsequent owner of the same property.

16.8.7 Incentive plan

The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The Planning Board, in cooperation with the Historic Preservation Board and the owner, may prepare a report and recommend to the Board of Appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to, loans or grants from the City of Portland or other public or private sources; acquisition by purchase or eminent domain; building and safety code modifications to reduce cost of maintenance;

restoration, rehabilitation, or renovation; changes in applicable zoning regulations, including a transfer of development rights; or relaxation of the provisions of this article sufficient to allow reasonable use of the structure.

16.8.8 City Council consideration of incentive plan

A. Upon receipt of a report from the Board of Appeals recommending an incentive plan to assure reasonable use of the property, the City Council shall give prompt consideration to the determination of economic hardship and the report of the board, including the recommended incentive plan. The City Council shall approve or disapprove the incentive plan determined by the Board of Appeals to allow reasonable use of the structure within 90 days following the determination by the Board of Appeals.

B. A copy of the ordinance enacted by the City Council, together with the incentive plan, if any, shall be mailed to the applicant and transmitted to the Board of Appeals, the Planning Board, and the Historic Preservation Board within five business days following the enactment of the ordinance.

16.8.9 Issuance of Certificate of Economic Hardship

A. Upon receipt by the Board of Appeals of a copy of City Council action disapproving an incentive plan, or upon failure of the City Council to act to either approve or disapprove an incentive plan within the time specified, the Board of Appeals shall approve a Certificate of Economic Hardship to the applicant within 30 days. The certificate may be subject to conditions

including design guidelines for subsequent new construction not inconsistent with the standards set forth in this article and the *Historic Resources Design Manual*. The Certificate of Economic Hardship shall be valid for a period of 120 days from approval by the Board of Appeals, except as provided in Subsection 17.9.7 where an incentive plan has been proposed. Certificates of Economic Hardship shall not be transferable from the applicant to another subsequent owner of the same property.

~~B.~~ Upon presentation by the applicant of a valid Certificate of Economic Hardship to the Planning Authority, the Certificate of Appropriateness shall be issued to the applicant within 14 days.

~~16.11~~ 16.9 MAINTENANCE

16.9.1 Preservation of protected structures

A. All landmarks, and ~~all~~ contributing structures ~~and objects located in an historic district~~, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:

1. Deteriorated or inadequate foundation which jeopardizes its structural integrity.
2. Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
3. Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration which jeopardize its structural integrity.

4. Structural members of ceilings and roofs, or other horizontal structural members, which sag, split, or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
5. Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity.
6. Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation.

B. The owner or such other person shall repair such ~~building, object, or~~ structure ~~or object~~ within a specified period of receipt of a written order by the Planning Authority to correct defects or repairs to any structure ~~or object~~ as provided by (A) above, so that such structure ~~or object~~ shall be preserved and protected from further deterioration in accordance with the purposes of this article.

C. Any such order shall be in writing, shall state the actions to be taken with reasonable particularity and shall specify dates for compliance, which may be extended by the Planning Authority for reasonable periods to allow the owner to secure financing, labor or materials.

~~16.12~~ 16.10 PENALTIES

16.10.1 Fines for violation

Failure to perform any act required by this article or performance of any act prohibited by this article or of any conditions or any certificate issued

hereunder shall constitute a violation and be subject to a fine as provided in 30 A M.R.S. §4452. Each day on which there is failure to perform a required act or on which a violation exists shall constitute a separate violation for purposes of this section.

16.10.2 Withholding of future approvals

Where the applicant has done work or caused work to be done ~~not on a structure or a property for which a Certificate of Appropriateness is sought and such work is either not done in compliance with an approval received under this article or was performed without the approvals required under this article, no new application for a certificate of appropriateness such structure or property shall be considered by the Planning Authority or by the Historic Preservation Board for the site or structure associated with the violation until the work done without approval is brought into compliance with the requirements of this article. The Historic Preservation Board may waive this requirement if the Historic Preservation Board determines that the work does not alter the essential character of the structure or district and one or more of the following standards are also met:~~
The work was needed to bring a building into conformance with any building or safety code.
The applicant can demonstrate a good faith belief that necessary approvals had been received for the work at issue prior to the commencement of the work.
The applicant can demonstrate a good faith belief that the work done was not subject to review under this article.

16.10.3 Additional penalties for willful violation or gross negligence

A. In addition to the penalties authorized by Subsections ~~17.11.1~~ **16.10.1** and **16.10.2**, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

1. No permit shall be issued under Chapter 6 of this Code of Ordinances for any alteration or new construction affecting such property for a period of five years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the Planning Authority that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.
2. For a period of 25 years, any alteration or new construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural, or archaeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.
3. As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore, or replicate the structure or object on the property.

B. Paragraphs (A)(1) and (2) above shall not apply to violations which are limited to noncontributing structures.

~~16.10.4 Other remedies~~

~~Notwithstanding the provisions of Subsections 17.11.1 and 17.11.2, the City may institute appropriate~~

proceedings in law and equity to prevent or remedy any violation of this article.

~~16.10.5~~ Liberal construction of article

~~This article shall be liberally applied and construed to effectuate the purpose of preservation set forth in Section 17.1.~~

~~16.10.6~~ Exception for dangerous buildings

~~This article shall not apply to any structure which has been ordered demolished by the municipal officers or a court, in accordance with 17 M.R.S. § 2851 et seq., its equivalent, as it may be amended from time to time, or to any structure which has been partially destroyed and is determined by the Planning Authority to represent an immediate hazard to the public health or safety, which hazard cannot be abated by reasonable measures specified by the Planning Authority, including without limitation securing apertures and/or erecting fencing.~~

~~16.13~~ **16.11** APPEALS

The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of any application associated with this article, may appeal that decision in accordance with Article 2.



PO Box 17533, Portland, ME 04112

24 May 2024

RE: Proposed Portland Historic Preservation Ordinance Changes

Chair O'Brien and Members of the Historic Preservation Board,

Greater Portland Landmarks has significant concerns about some of the proposed changes to Portland's Historic Preservation Ordinance as drafted in the staff's proposed Chapter 16 draft. We believe that a number of the changes do not meet the minimum standards set out in the *Guidelines for the Certified Local Government (CLG) Program in Maine*. We also have concerns that several deletions and language changes will have a significant impact on the Board's ability to fulfill its responsibilities under the ordinance and the historic preservation goals outlined in the City's Comprehensive Plan.

Enclosed is a copy of our comments. We have noted areas where we feel the changes specifically do not address CLG requirements for local legislation. We have forwarded a copy of this document to the Maine Historic Preservation Commission. We also have questions and comments on other areas of concern that are not specifically related to CLG requirements.

The staff proposed draft required a great deal of analysis to understand what was proposed as new language and not in the existing ordinance, what existing text was proposed to be relocated, and what text in the existing document was proposed to be removed altogether. We hope that our comments assist you in your deliberations at your workshop on Wednesday the 29th.

We would like to highlight some of our major concerns:

- Proposed language that would remove or alter the purpose of the board and its responsibilities as required by the *Guidelines for Certified Local Government Programs in Maine*.
- Proposed language that would alter or eliminate the definitions of standard historic preservation terms like site or landmark.
- Proposed language that would remove interim protections and project review during the designation process.
- Proposed language that would no longer regulate activities that don't require a building permit, including removing review of projects in the ROW that would have visual impact on historic districts.
- Proposed language that would allow the dimensional requirements of the underlying zoning to supersede the historic preservation review standards in all areas designated as historic, not just Congress Street, India Street, and at the Portland Company.
- Proposed language that moves authority to review and issue a Certificate of Hardship from the Zoning Board of Appeals to the Historic Preservation Board.

- Proposed language in the standards for rescission or amendment that would allow the planning board or the city council to decide that a landmark or contributing building can be reclassified as noncontributing (and therefore demolished) based on goals, other than historic preservation, identified in the comprehensive plan.

The last item above we feel is the most significant staff proposed change that should be addressed. This is a significant change from existing and historic ordinance language and will disallow certification of this ordinance and lose CLG status for the city. Landmarks met with Planning staff on May 2, 2024 to begin to outline our concerns about proposed “Wave 2” changes to the historic preservation ordinance. Staff seemed to suggest that in 2020 changes had been made to the Rescission of Designation provision of the ordinance, and their proposed “Wave 2” language to allow the City Council to consider the comprehensive plan in rescission applications was merely reverting the ordinance back to how it was pre-2020. To the contrary, our research confirms that the substance of the current provision on amendment or rescission of a designation is largely unchanged from what was first enacted in 1990. We have attached pages from the 2019 Portland Zoning Ordinance, prior to the ReCode 2020 amendments, that clearly show the rescission standards were limited to the minimum criteria for designation and the integrity standard. Rescission standards did not include the goals of the comprehensive plan.

We hope that you will agree that the items summarized above and changes outlined in our attached comments, are indeed significant changes and that you will ask city staff to amend their proposal.

Thank you for considering our views,



Carol De Tine
Vice President of the Board of Trustees
Greater Portland Landmarks

Attachments:

Excerpted pages from 2019 Portland Zoning Code, Chapter 14

Research on evolution of the Amendment and Rescission of designation provision, 1990 to the present.

Landmarks specific comments on the staff proposed changes to Chapter 17 of the Land Use Code

Sec. 14-610. Minimum criteria for designation.

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

1. Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States;
2. Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property;
3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;
4. Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;
5. Its identification as the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States; or
6. Its representation of a significant cultural, historic, architectural, archeological or related theme expressed through distinctive areas, sites, structures or objects that may or may not be contiguous.

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

cultural, historic, architectural or archeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites, structures or objects located within it.

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

(d) The planning board and council shall apply the criteria of subsections (a), (b) and (c) but shall also consider the effect of such designation on other aspects of the comprehensive plan of the city.

(Ord. No. 235-90, 2-26-90)

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

Any area, structure or object that meets the criteria in section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration.

(Ord. No. 235-90, 2-26-90)

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

An historic landscape district may be nominated and considered for designation only if the entire area of the district is owned by a unit of federal, state or local government, or any combination of such ownership.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 2, 5-17-93)

Sec. 14-613. Reserved.

DIVISION 4. NOMINATION, CONSIDERATION AND DESIGNATION

Sec. 14-614. Procedure.

The provisions of this division shall govern the nomination, consideration and designation of landmarks and districts.

(Ord. No. 235-90, 2-26-90)

Sec. 14-615. Initiation of nomination.

(a) Nomination of an area, site, structure or object for consideration of designation as a landmark, historic district or

designation ordinance and design guidelines.

(d) Notice of council action to the same persons shall be sent within ten business days following the council action. A copy of each designation ordinance and design guidelines shall be sent to the planning board, the historic preservation board and the department. A complete schedule of all landmarks and districts, including design guidelines and a listing of landmark and contributing structures, shall be maintained by the department as part of the design manual and shall be available for public inspection and copying during ordinary business hours.

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

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

Amendment and rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the council, and shall follow the procedure set forth in division 4 for designation. The council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the committee, planning board and council shall be limited to those provided in section 14-610(a) and section 14-611. Amendments may include refinement or correction of design guidelines, maps, and other parts of any designation ordinance.

(Ord. No. 235-90, 2-26-90)

Sec. 14-624.- Sec. 14-627. Reserved.

*Editor's note - Order No. 197-03/04 adopted 9/8/04, repealed §14-625 Projects of Special Merit in its entirety.

Sec. 14-628. Time limits.

(a) Any time limit specified for any step in the process for nomination or designation of a landmark may be extended with the consent of the property owner.

(b) Any time limit specified for any step in the process for nomination or designation of a district may be extended where at least ten (10) percent of the owners of property within the boundaries of the proposed district have given written consent to the extension.

(c) Failure to comply with any time limit in the nomination

Research on the evolution of the Amendment and Rescission of Designation provision, 1990 to present

Prepared for Greater Portland Landmarks, by Barbara Vestal, May 24, 2024

When Landmarks met with Planning staff on May 2, 2024 to begin to outline our concerns about proposed “Wave 2” changes to the historic preservation ordinance, they seemed to suggest that 2020 changes had been made to the Rescission of Designation provision of the ordinance, and that the Wave 2 proposal to allow the City Council to consider the comprehensive plan in rescission applications merely changed the ordinance back to how it was pre-2020. To the contrary, my research, outlined below, confirms that **the substance of the current provision on amendment or rescission of a designation is largely unchanged from what was first enacted in 1990.**

Following immediately below are excerpts from Portland’s Historic Preservation Ordinance as it appeared City of Portland, Code of Ordinances, Land Use Code, Chapter 14, Rev. 6-21-12. (This is how it read in 2012, and as far as I believe, continued to read until 2020 ReCode I amendments.)

Sec. 14-623. Amendment and rescission of designation. Amendment and rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the council, and shall follow the procedure set forth in division 4 for designation. The council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the committee, planning board and council shall be limited to those provided in section 14-610(a) and section 14-611. Amendments may include refinement or correction of design guidelines, maps, and other parts of any designation ordinance. (Ord. No. 235-90, 2-26-90) (Vestal emphasis added)

Sec. 14-627. Reserved. -----

***Editor’s note – Order No. 197-03/04 adopted 9/8/04, repealed §14-625 Projects of Special Merit in its entirety. -----**

14-623 states that the standards for rescission are limited to section 14-610(a) and section 14-611, which are reproduced from the 2012 document, below:

Sec. 14-610. Minimum criteria for designation.

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

1. Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States; City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-610 Rev. 6-21-12 14-815

2. Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property;
3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;
4. Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;
5. Its identification as the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States; or
6. Its representation of a significant cultural, historic, architectural, archeological or related theme expressed through distinctive areas, sites, structures or objects that may or may not be contiguous.

*((b), (c) and (d), reproduced here, are **excluded** from consideration in a 14-623 rescission)*

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

(c) In the case of a nominated historic landscape district, the historic preservation board shall also consider its significance as a geologic, natural or man-made landscape feature associated with the development, heritage or culture of the City of Portland, State of Maine, New England region, or the United States. City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-610 Rev. 6-21-12 14-816

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

(This, from 2012, is also to be considered in a 14-623 rescission:)

Sec. 14-611. Integrity of landmarks and historic districts. Any area, structure or object that meets the criteria in section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration. (Ord. No. 235-90, 2-26-90)

Note that Sections 14-623, 14-610 and 14-611 as shown in these 2012 excerpts are exactly the same as were adopted by Order Number 235-90 on February 26, 1990 as part of the original ordinance. As of 6/21/12 they had not been amended. The 2012 version of the ordinance also notes that the "Projects of Special Merit" was repealed in its entirety 9/8/04. I don't believe they were amended between 2012 and 2020.

COMPARISON TO CURRENT VERSION OF THE CODE, AFTER RECODE I AMENDMENTS IN 2020:

After the ReCode I package of amendments were adopted in 2020, the rescission provision read as follows: (changes from 1990 are underlined or struck through)

17.5.9 Amendment or rescission of designation Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the City Council, and shall follow the procedure set forth in Section 17.5 for designation. The City Council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the Historic Preservation Board, Planning Board, and City Council shall be limited to those provided in Subsections 17.4.1(A) and (B) and Subsection 17.4.2. Amendments may include reclassification of a portion of a contributing property to noncontributing status, refinement or correction of design guidelines, maps, and other parts of any designation ordinance.

The underlining and strikeout show the changes that were made between the 1990 version and the current (post-ReCode I 2020 amendments) version. This is the operative law today. The changes are as follows:

1. In 1990, Division 4 was "DIVISION 4. NOMINATION, CONSIDERATION AND DESIGNATION". In 2020, it was renumbered 17.5 NOMINATION, CONSIDERATION AND DESIGNATION. No substantive change.
2. In 1990, what is now the Historic Preservation Board had lesser powers and was called the Historic Preservation Committee.
3. **There do appear to be two substantive changes made in 2020. 17.4.1 (B) was added to what could be considered in a rescission.**
4. **And "reclassification of a portion of a contributing property to noncontributing status" was specifically added to the list of examples of amendments that could be made.** The list is not intended to be exhaustive; it says "amendments may include." This would not preclude reclassification of an entire property to noncontributing status.

The current criteria of 17.4.1(A) and 17.4.2, reproduced below, seem unchanged from the 1990 criteria:

17.4.1 Minimum criteria for designation (Same as 14-610(a))

A. The Historic Preservation Board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure, or object for designation by ordinance as a landmark or district:

1. Its value as a significant example of the cultural, historic, architectural, archaeological, or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.
2. Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property.

3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archaeological, or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States.
4. Its exemplification of a significant architectural type, style, or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.
5. Its identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States.
5. Its representation of a significant cultural, historic, architectural, archaeological, or related theme expressed through distinctive areas, sites, structures, or objects that may or may not be contiguous.

And also unchanged except for the numerical references:

17.4.2 Integrity of landmarks and historic districts (Same as 14-611)

Any area, structure, or object that meets the criteria in Section 17.4.1 must also have sufficient integrity of location, design, condition, materials, and workmanship to make it worthy of preservation or restoration.

The new section that was added for consideration in the event of a rescission in the 2020 amendments is 17.4.1(B), which states as follows:

B. In the case of a nominated historic district, the Historic Preservation Board shall also determine whether there is an interrelationship of resources within it which creates an identifiable entity, even if composed of a wide variety of resources. A district must convey a visual sense of the overall historic environment or be a grouping of historically or functionally related properties. A historic district can comprise both individually distinctive historic resources and historic resources that may lack individual distinction but which contribute to the significance and visual character of the district as a whole.

SUMMARY:

According to my analysis, the ordinance provision addressing amendment or rescission of designation is largely unchanged from the original provision adopted in 1990. References to code sections have been updated as part of the 2020 ReCode renumbering of the entire ordinance. Identifications of entities have been updated (e.g. council became City Council). There are only two substantive changes that appear to have been made between 1990 and now, both in connection with ReCode I amendments in 2020. "Interrelationship of resources within a district to create an identifiable entity" has been added to "Minimum criteria for designation" and "Integrity" as another standard that may be considered by Historic Preservation, Planning and the City Council in weighing a request for rescission. And reclassification of a portion of a structure from contributing to noncontributing has been clarified being a type of amendment that could, theoretically, be a permissible rescission.

In my opinion, there is no basis to believe that exclusion of the comprehensive plan from the standards to be considered in a rescission application is a new development. The exclusion of the comprehensive plan in a rescission decision has been in place since the original adoption of the ordinance in 1990.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
		General Comment: The existing ordinance has been divided across three chapters, Chapter 2: Administration, Chapter 3, Definitions, and the remaining sections of the ordinance are proposed as the new Chapter 16. We have outlined our comments below in order of the proposed draft chapters.
	CHAPTER 2. ADMINISTRATION	
2.2.8. Responsibilities 2.2.8.C Includes “investigating” places to nominate 2.2.8.D Keeping a register 2.2.8.E. to advise and assist property owners 2.2.8.H to seek CLG funding 2.2.8.I Section 106 participation 2.2.8 J. education of residents 2.2.8 N to advise city council on easements 2.2.8.O to advise the PB on gifts and grants, etc. 2.2.8.Q recognition thru plaques, etc.	2.2.9. Jurisdiction and Authority Proposes to delete those responsibilities noted in the column to the left:	The existing ordinance includes several responsibilities for the Historic Preservation Board such as investigating places to nominate and keeping a register, as well as advising the city and public on historic preservation related issues. The staff proposed amendment includes a new Jurisdiction and Authority section which has removed several responsibilities for the Historic Preservation Board. Our concern with the proposed language is that it would remove several responsibilities for the Historic Preservation Board which are minimum requirements for a Local Review Commission per the <i>Guidelines for the CLG Program in Maine</i> <i>From 3.b. Duties of Local Review Commissions:</i> 4) conducting or causing to be conducted a continuing survey of cultural resources in the community according to guidelines established by the MHPC; 17.2.2.8.C “investigating places to nominate” meets the “continuing survey” minimum required duty of a Local Review Commission and its omission would be a loss of authority. We believe the responsibility for survey should remain a duty of the Historic Preservation program. 5) making recommendation for designation of local landmarks and historic districts to the appropriate local governing body and keeping records of such decisions; 17.2.2.8.D “Keeping a register” meets the “keeping records” minimum required duty of a Local Review Commission and its omission would be a loss of authority. 7) acting in an advisory role to other officials and departments of local government regarding the protection of local cultural resources; 17.2.2.8.N. and 17.2.2.8.O. meet this minimum required duty of a Local Review Commission, the language regarding what topics they should provide advice (easements, grants, etc) could be altered, but losing the authority to “advise” on those protection measures would be a loss of authority. 8) acting as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and 17.2.2.8.E. and 17.2.2.8.J. meet this minimum required duty of a Local Review Commission, losing the authority to “advise and assist property owners” and “educate residents” would be a loss of authority. 9) working toward the continuing education of citizens within the CLG's jurisdiction regarding historic preservation issues and concerns. 17.2.2.8.J. meets this minimum required duty of a Local Review Commission, and its omission would be a loss of authority.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
2.2.8.L Certificate of Economic Hardship: to provide testimony at Board of Appeals	2.2.9E Certificate of Economic Hardship: to review applications and issue or deny CEH.	The existing ordinance delegates authority for economic hardship hearings to the Zoning Board of Appeals. The staff proposed language assigns that duty to the Historic Preservation Board. This is a change from the current practice (which city staff claim has never been used). Our question is, do other Maine CLG communities assign this duty to Historic Preservation Boards/Committees/Commissions? If so, does MHPC know how well it has worked?
	CHAPTER 3. DEFINITIONS	
		General Comment: The impact of deleting several of the definitions cited below or using alternative definitions that are more appropriate for general land use standards appears to have not been thoroughly considered. Some definitions have been inserted as text into the body of the ordinance, which seems reasonable. However, in the relocation of the definitions, their meaning has been altered. Other definitions as noted below are no longer defined.
From Chap. 17 - Alteration. Any act or process requiring a building permit and <u>any other act or process not requiring a building permit but specifically listed in this article as a reviewable action</u> , including without limitation the repair, reconstruction, demolition, or relocation of any structure or object, or any part of a structure or object. From Chap. 3 - Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a building.	Chap. 3 - Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removal of features otherwise affecting the exterior appearance of a building.	The existing historic preservation ordinance defines Alteration as distinct from the definition of Building Alteration in the general zoning. The staff proposed language would use the general definition for all chapters of the ordinance. Our concern with the proposed amendment is that deleting the current definition of “Alteration” in the historic preservation ordinance (which included specifically listed non-building permit changes) and the use of the standard land use definition of “Building Alteration” is problematic. The definition of “Alteration” informed the current definition of Certificate of Appropriateness (required for "alteration"). The deletion of “any other act or process not requiring a building permit specifically listed in this article as a reviewable action” changes the applicability standard so that a Certificate of Appropriateness would only be required for work that would otherwise require a building permit . Alterations like painting brick, replacement of siding, re-roofing, heat pump installation, solar panel installation, installation of landscaping improvements, and projects in the ROW that do not require a building permit would not be reviewable. This is a <u>significant change</u> and does not appear to meet the minimum requirements for a Local Review Commission per the <i>Guidelines for the CLG Program in Maine</i> to review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction.
Certificate of Appropriateness.	<i>Not defined</i>	The existing historic preservation ordinance defines certificate of appropriateness, while the staff proposed draft removes this definition. Our concern is that “Certificate of Appropriateness” is a term-of-art and that there is value in retaining the definition.
Certificate of Economic Hardship.	<i>Not defined</i>	
Certificate of Non-Applicability.	<i>Not defined</i>	

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
Contributing. A classification applied to a site, structure, or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district.	See 16.2.3.B. A contributing classification shall only be applied to an area, site, structure, or object which: 1) Were Was built at least 50 years prior to the date of district designation or were was built within a period of significance specified in the designation application. 2) Are Is found to have a relationship with or physically embody es the qualities that give the historic designation cultural, historic, architectural, or archaeological significance as embodied in the minimum criteria specified in the <u>designation report</u> ; and 3) Retain sufficient integrity to communicate that significance as defined in Subsection 16.2.2(B).	The existing ordinance definition of “contributing” has been removed in the staff proposal. Instead, new language is proposed within the body of the ordinance. Our concerns with the proposed amendment are: a) That the new language lacks clarity in <i>Section 16.2.3. Classifications within historic designations</i>. Would the term “contributing” apply to historic designations generally (including individual landmarks?) or only to resources in historic districts? b) Section 16.2.3 omits “landmark” as a classification in a historic district. c) Refers to the “designation report”. <i>Section 16.3. Nomination, Consideration, and Historic Designation</i> references “report” several times but those references should be clarified to be “designation report” in order to be consistent. The minimum requirements for local legislation (A.2.) in the <i>Guidelines for the CLG Program in Maine</i> specifically state that Local legislation for designation and protection of historic properties by CLGs in Maine must contain, at a minimum, the definitions of designation and protection (ie. Historic District, Historic Landmark, Historic Site) that meet federal statutory definitions. We believe the term ‘contributing’ should be a defined term in Chapter 3 and suggest the following definition: <i>From the Guidelines for the CLG Program in Maine:</i> A property or resource that has historical significance through location, design, setting, materials, workmanship, feeling, or association, and adds to the sense of time and place and historical development in a historic property. Minor edit – verb tense in paragraphs 16.2.3.B.1. & 2. (see GPL proposed corrections to the left in red)
Demolition. Any act or process that partially or totally destroys a structure or object.	Chap.16.32.6, Demolition , including any act or process that totally destroys any landmark or contributing structure or object.	The existing ordinance definition includes partial demolition. The staff proposed ordinance is missing ‘partially or’. Our concern with the proposed language is since partial demolitions tend to occur more often than total demolitions. reference to partial demolition, not just removal of features, really should be specified in the ordinance. City staff have indicated that the proposed new definition of alteration encompasses partial demolitions with the phrase “removal of features”. That does not seem sufficient.
District.	<i>Not defined</i>	

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
Historic district. A geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.	Chap. 16.2.1, Historic district. A geographically defined area possessing a significant concentration, linkage, or continuity of sites, structures, or objects united historically or aesthetically by design, plan, or physical development. The defined area may comprise individual elements separated geographically but linked by association or history.	The existing definition includes the phrase united “by past events”. The proposed staff ordinance removes the definition and instead incorporates the definition of historic district into the body of the ordinance. Section 16.2.1. removes the phrase “united by past events”. Those left out words are important in defining how objects, sites, or structures may be categorically united and is included in the National Parks Service’s definition: NPS definition: Historic District - A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, landscapes, structures, or objects, <u>unified by past events</u> or aesthetically by plan or physical developments. A district may also be composed of individual elements separated geographically but linked by association or history. We believe the existing definition or the NPS definition is the appropriate definition to use.
Historic landscape district. A geographically definable area possessing a significant concentration, linkage, or continuity of landscape components which are united by human use and past events or aesthetically by design, plan or physical development.	Chap. 16.2.1, Historic landscape district. A geographically defined area possessing a significant concentration, linkage, or continuity of natural or man-made landscape components which are united by past events, or aesthetically by design, plan or physical development. <u>The defined area shall be owned in its entirety by a unit of federal, state, or local government, or any combination of such ownership at the time of nomination.</u>	The staff proposes to add language to the definition of historic landscape district which is taken from 17.4.3. It seems appropriate to include it within the definition of HLDs, which staff proposes to include within the body of the ordinance.
Historic Resources Design Manual.	<i>Not defined</i>	In the staff proposed draft the manual is vaguely defined in the body of the text. We believe a definition is important – or greater clarity in the body of the text is needed. See 16.6.7 and Section 16.7 for additional comments on the Historic Resources Design Manual.
		General Note: We believe that integrity, which is not defined in either the existing ordinance or in the proposed staff draft, is important to define. Other CLG communities in Maine use the following: HISTORIC INTEGRITY: The authenticity of a property’s historic identity as evidenced by the survival of physical characteristics (location, design, setting, materials, workmanship and association) that existed during the property’s prehistoric or historic period.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
Landmark. Any property, site, structure, or object of particular <u>historic, architectural, or archaeological</u> significance to Portland, the State of Maine and/or the United States relating to its cultural, social, economic, political, or architectural heritage, or which is associated with historic persons, important events or themes in local, state, or national history.	In Chapter 16.2.1, Landmark. A discrete site, structure, or object and any associated area found to have particular or individual significance or prominence. <u>Landmarks may be in or outside of historic districts or historic landscape districts.</u>	1) The existing definition includes "historic, architectural or archeological" as a modifier for particular. The staff proposes removing the definition and imbedding it within the body of the text. However, the definition of landmark incorporated in 16.2.1.A. leaves out "historic, architectural or archeological" as a modifier for particular, leaving it to read "particular or individual significance." The left-out words are important in defining what type of significance a Landmark possesses. We believe this needs to be added back to the text either as stated in the existing definition or as defined in the <i>Guidelines for the CLG Program in Maine</i>. <i>From the Guidelines for the CLG Program in Maine:</i> Any site, building, or structure of particular <u>archaeological, historic or architectural</u> significance to the municipality relating to its heritage, cultural, social, economic or political history, or which is associated with historic personages or important events in local, state or national history which has been designated in accordance with the municipality's historic preservation ordinance. 2) The staff proposed definition of Landmark states that landmarks may be in historic districts, yet in Section 16.2.3 "Classifications within Historic Designations", Section 16.2.3 A. states that the sites, structures, or objects within a nominated historic designation <u>may be classified as contributing or noncontributing</u>. This is in conflict with the definition of Landmark and current practice in Portland, and it should be clarified that within historic districts, resources may be classified as Landmark, contributing, or non-contributing.
New construction. Noncontributing. A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that:	<i>Not defined</i> See 16.2.3. C. If an area, site, structure, or object does not meet the above (in 16.2.3.B) it will be categorized as noncontributing.	
1) it does not contribute generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or	<i>From 16.2.3.B - Contributing</i> 1) Were built at least 50 years prior to the date of district designation or were built within a period of significance specified in the designation application. 2) Are found to have a relationship with or physically embody the qualities that give the historic designation cultural, historic, architectural, or archaeological	The existing definition includes three ways a resource can be considered non-contributing. The last paragraph in the existing definition includes the ability for the board to determine a portion of a building is non-contributing. The new definition is proposed by staff to be imbedded into the body of the text. The proposed definition has been altered through defining contributing buildings in section 16.2.3.B. and ceding all other buildings that do not meet the criteria in 16.2.3.B will be non-contributing. However, the removed language from the third paragraph of the existing definition removes the ability of the Historic Preservation Board to designate a portion of a site or structure as non-contributing. Having the Board retain the option to designate a portion of a site or structure as non-contributing is useful as they review proposed rehabilitation or alteration proposals. The opportunity of the Board to make this determination should not be lost and should be included either as new language in 16.2.3.B or added to 16.2.3.C.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
3) where the location, design, setting, materials, workmanship, and association have been so altered or have so deteriorated that the overall integrity of the site, structure, or object has been irretrievably lost. <u>A portion of an otherwise contributing or landmark structure may be determined by the Historic Preservation Board to be non-contributing if it meets one or more of the above conditions.</u>	significance as embodied in the minimum criteria specified in the <u>designation report</u> ; and 3) Retain sufficient integrity to communicate that significance as defined in Subsection 16.2.2(B).	
Object.	<i>Not defined</i>	
Ordinary maintenance.	<i>Defined in 16.6.1 Applicability.</i>	
Preservation.	<i>Not defined</i>	While not defined in the current ordinance, we believe strongly that “preservation” should be defined. If it is included in the general definition section, it should clarify that the definition pertains to its use in Chapter 16 and matters in other chapters pertaining to historic preservation. The minimum requirements for local legislation (A.2.) in the <i>Guidelines for the CLG Program in Maine</i> specifically state that Local legislation for designation and protection of historic properties by CLGs in Maine must contain, at a minimum, the definitions of designation and protection (ie. Historic District, Historic Landmark, Historic Site) that meet federal statutory definitions. We also believe they should include the definitions for the four treatment standards, <u>Preservation, Rehabilitation, Restoration, and Reconstruction.</u>
Rehabilitation. The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural value.	Chap. 3 - Historic rehabilitation. The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.	<i>The existing definition is the same as the definition from the Guidelines for the CLG Program in Maine:</i> Rehabilitation. The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions of features of the property which are significant to its historical, architectural, and cultural values. We are unclear why the new term “historic rehabilitation” and the new definition proposed by staff, that is virtually the same length as the current definition, is changed from that included in the <i>Guidelines for the CLG Program in Maine</i> . The term “historic rehabilitation” does not appear in Chapter 16, only “rehabilitation”. We believe the existing definition is sufficient and the prevailing definition at federal, state, and local levels. The term itself should be consistent used within the body of the ordinance and in the definition section for clarity.
Relocation. Any removal or relocation of a structure on its site or to another site.	Chap. 3 - Relocation. The act or process of taking a structure or object and moving it from its current location or orientation to a new location or orientation.	This is a good, revised definition, as it addresses a resource’s orientation.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
From Chap. 17 - Site. The location of a significant event, an archaeological site, a landscape or traditional cultural property, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. From Chap. 3 - Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.	Chap. 3 - Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.	The existing historic preservation ordinance defines “Site” as distinct from the definition of “Site” in the general zoning. The staff proposed language would use the general definition for all chapters of the ordinance. These are really two very different meanings, and in the 43 occurrences of the term ‘site’ found in the staff proposed Chapter 16 the meaning is significantly changed from the existing ordinance. It is problematic to have the definition of "site" that is used in the general ordinance, in a historic preservation context. In addition to the lack of clarity stated above, the minimum requirements for local legislation (A.2.) in the <i>Guidelines for the CLG Program in Maine</i> specifically state that Local legislation for designation and protection of historic properties by CLGs in Maine must contain, at a minimum, the definitions of designation and protection (ie. Historic District, Historic Landmark, Historic Site) that meet federal statutory definitions. We would support adding either definition below within Chapter 3. <i>The NPS definition:</i> Historic Site - The site of a significant event, prehistoric or historic occupation or activity, or structure or landscape (extant or vanished), where the site itself possesses historical, cultural, or archeological value apart from the value of any existing structure or landscape. <i>From the Guidelines for the CLG Program in Maine:</i> Site. The location of a significant event; an Archaeological Site; a landscape or traditional cultural property; or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. Other Maine cities and the NPS use “Historic Site” to differentiate the terms, which would require editing the body of the historic preservation ordinance at the 43 occurrences of the term “site”. That may be awkward, and if so, we would support a definition in Chapter 3 that included the historic preservation definition as a second meaning that ONLY applied to chapter 16 and instances in other chapters where “site” is used in the context of historic preservation.
Restoration.	<i>Not defined</i>	We believe strongly this should be defined. The minimum requirements for local legislation (A.2.) in the <i>Guidelines for the CLG Program in Maine</i> specifically state that Local legislation for designation and protection of historic properties by CLGs in Maine must contain, at a minimum, the definitions of designation and protection (ie. Historic District, Historic Landmark, Historic Site) that meet federal statutory definitions. We also believe they should include the definitions for the four treatment standards, <u>Preservation, Rehabilitation, Restoration, and Reconstruction.</u>

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
	CHAPTER 16. HISTORIC PRESERVATION	
17.1 Purpose Includes 8 paragraphs establishing purpose: fostering civic pride, resource of expertise, protecting and enhancing neighborhoods, fostering preservation etc.	16.1 Purpose Retains first paragraph and adds: <u>establishing standards for the review of construction within and affecting designated historic properties to encourage preservation, restoration, rehabilitation, and new construction that respects the historic, cultural, architectural, and archaeological significance of distinctive areas, sites, structures, and objects.</u>	The language in the existing ordinance's purpose statement has been significantly abbreviated in the staff proposed draft. Although the added language is useful, the minimum requirements for local legislation (A.2.) in the <i>Guidelines for the CLG Program in Maine</i> specifically state that a statement of purpose should give an overview of why the ordinance was created and its intent. We believe several of the paragraphs in 17.1 should remain because as stated in the <i>Guidelines</i>, a statement of purpose may be used to determine whether a decision related to the ordinance is justifiable. We believe the existing statements establishing purpose that describe fostering civic pride, resource of expertise, protecting and enhancing neighborhoods, fostering preservation, etc. should remain. We also believe a purpose statement should include advising other city boards and the City Council on land use matters related to historic preservation.
17.2 Definitions	Removed to Chapter 2, but just a select few definitions were moved – the rest deleted.	The elimination of virtually all of the definitions in the ordinance raises the opportunity for a lot of (perhaps unintentional) misinterpretation because the ordinance was carefully crafted to build on the basic definitions. See Chapter 3 Comments above.
17.3 Administrative Procedures		
17.3.3 Notices & Public Comment <i>Paragraph C.</i> The Planning Authority shall advise the Historic Preservation Board and the Planning Board of any demolition permit application received by the Planning Authority as to structures or objects that have been classified as noncontributing within nominated or designated districts, but there shall be no Historic Preservation Board review of such permit applications.	<i>No equivalent section in this chapter or Chapter 2</i>	<i>The existing notice requirement for non-contributing structures in a nominated or designated district has been removed in the staff proposed draft.</i> <i>This seems like a reasonable public notice requirement to advise the board at a regular board meeting that a demolition will be occurring in a historic district, as the public may not be aware of a building's designation status and have questions as to why a demolition is occurring. Additionally, this provision seems to meet the intent of the CLG requirements regarding public participation.</i>

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
17.4 Categories & Criteria for Designation	16.2 Historic Designations	
<i>No equivalent Section (definitions)</i>	16.2.1 Categories of Designations: A) Landmark. A discrete site, structure, or object and any associated area.... B) Historic district. A geographically defined area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by design, plan, or physical development. The defined area may comprise individual elements separated geographically but linked by association or history.	While the existing ordinance has definitions for many terms, the staff proposal imbeds several definitions within the body of the ordinance. This is reasonable, but the alteration of the definitions in some cases is problematic. For instance, it is problematic to have the wrong definition of "site" in the general ordinance, not "site" in a HP context in this section. The definition of landmark in 16.2.1.A differs from the existing definition by removing "property" and keeping "site" which is defined as all contiguous land in common ownership in the general ordinance. <i>See also comments on Chapter 3 above.</i> In addition, the definition of landmark incorporated in 16.2.1.A leaves out from the current definition "historic, architectural or archeological" as a modifier for "particular", leaving it to read "particular or individual significance." Those left out words seem to be important and should remain. 16.2.1 B in defining historic district leaves out the word "buildings" from the current definition. It should remain.
17.4.1 A. Minimum Criteria , limits consideration to those six areas in making the determination:	16.2.2.A. Criteria for consideration <i>Significant aspect of heritage.</i> <i>Significant events or activities.</i> <i>Significant persons.</i> <i>Significant architecture.</i> <i>Significant designer.</i> <i>Significant theme.</i>	The existing ordinance defines the criteria for consideration as "minimum criteria", while the staff proposed language in 16.2.2 strikes "minimum" from criteria for designation, but later references in the document (16.2.3.B.2) are made to minimum criteria. It is confusing. The terminology should be consistent throughout, using "minimum criteria".
17.4.2 Integrity of landmarks & HDs Any area, structure, or object that meets the criteria in Section 17.4.1 must also have sufficient integrity of location, design, <u>condition</u>, materials, and workmanship to <u>make it worthy of preservation or restoration</u>.	16.2.2.B Inserts Integrity paragraph from 17.4.2, but omits "condition" as a criteria of integrity. It also alters language at the end of the paragraph to: "...to convey its significance with respect to the applicable criteria as defined in Subsection 16.2.2."	The existing ordinance includes "condition" as an aspect of integrity. The staff proposed language in 16.2.2.B discussing integrity omits the term "condition". "Condition" should be considered with any discussion of integrity, as this is a national and state standard. The language in 17.4.2 omitted from the staff proposal "<u>make it worthy of preservation or restoration</u>" is standard preservation language when discussing integrity in historic preservation ordinances. The language should be returned to its original phrasing. We also believe "integrity" should be defined. The citation at the end of the proposed paragraph 16.2.2.B. should cite "applicable criteria as defined in Subsection 16.2.2.<u>A.</u>"

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
17.4.1.B Criteria for HDs In the case of a nominated historic district, the Historic Preservation Board shall also determine whether there is an interrelationship of resources within it which creates an identifiable entity, even if composed of a wide variety of resources. A district must convey a visual sense of the overall historic environment or be a grouping of historically or functionally related properties. A historic district can comprise both individually distinctive historic resources and historic resources that may lack individual distinction, but which contribute to the significance and visual character of the district as a whole.	<i>Deleted, does not appear to be an equivalent paragraph</i>	This is an important criterion for evaluating historic districts. We are unclear why this was deleted. It appears to address the National Parks Service's Standards for evaluating significance within registered historic districts.
17.4.1.C Criteria for HLDs: In the case of a nominated historic landscape district, the Historic Preservation Board shall also consider its significance as a geological, natural, or designed landscape associated with the development, heritage, or culture of the City of Portland, State of Maine, New England region, or the United States.	<i>Deleted, does not appear to be an equivalent paragraph</i>	This too is an important criterion for evaluating historic landscape districts. We are unclear why this was deleted, especially as Portland has five HLDs: Evergreen Cemetery, Eastern Prom, Deering Oaks, Western Prom, and Lincoln Park.
17.4.1.D The Planning Board and City Council shall apply the criteria of (A), (B), and (C) above as well as historic preservation goals included in the Comprehensive Plan, but shall also consider the effect of such designation on other aspects of the Comprehensive Plan of the City.	16.2.2.C. The Planning Board and City Council shall also consider the effect of the proposed historic designation within the framework of the Comprehensive Plan when making a recommendation or decision on a nomination.	The existing ordinance instructs the two bodies to apply the historic preservation goals and other aspects of the comprehensive plan. The staff proposed draft in 16.2.2 C, simplifies the reference to the comp plan by calling out the comp plan in general and eliminating that a designation should consider the "historic preservation goals included in the comp plan". We believe that the designation process should specifically consider "historic preservation goals", along with consideration of other goals in the comp plan.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
<i>No equivalent Section</i>	16.2.3 Classifications within historic designations	Does “historic designations” = historic districts? Or does it encompass HDs, HLDs, and individual landmarks? This is confusing language throughout 16.2.
	16.2.3 A. The sites, structures, or objects within a nominated historic designation may be classified as contributing or noncontributing.	In the staff proposed language “landmark” classification seems to be inappropriately omitted. Currently certified local historic districts include landmark, contributing, and non-contributing resources and we believe this should be amended to include “landmark”
From 17.2 Definitions, Contributing: A classification applied to a site, structure, or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district.	16.2.3.B Contributing: Were built at least 50 years prior to the date of district designation, or were built within a period of significance specified in the designation application; 2. Are found to have a relationship with or physically embody the qualities that give the historic designation cultural, historic, architectural, or archaeological significance as embodied in the minimum criteria specified in the <u>designation report</u> ; and 3. Retain sufficient integrity to communicate that significance as defined in Subsection 16.2.2(B).	We think there would be greater clarity if the term "contributing" were defined in Chapter 3 with a general definition such as “A contributing resource means and includes any building, other structure or site that by age, location, design, setting, materials, workmanship or association adds to the district’s sense of time and place and historical development or is capable of yielding important information about an historically significant period.” Chapter 16.2.3.B. would then set out the criteria for contributing (older than 50, sufficient integrity, etc.) The entirety of Section 16.2.3 is confusing because it seems to apply to historic designations generally, but the language seems to be discussing historic <u>district</u> designation, not individual landmarks. Is section 16.2.3 A. and 16.2.3 B. attempting to say that within a “nominated historic designation” like a Landmark, the term contributing would be applied? In a “nominated historic designation” like a Landmark, if there are multiple resources (like House Island for example) the designation is considered a district. This needs clarity, see our comment in 16.2.3 above. Landmarks are also an existing classification within a district, and there is no discussion of that classification in this section. Chapter 3. 16.2.3.B.2. refers to the "minimum criteria" in the " <u>designation report</u> ". The “designation report” contents are not clearly articulated in the staff proposed draft, contrary to the detailed contents contained in the existing ordinance, see Chap. 17.5.4.A. We believe clearly outlining the contents of the designation report is important. Also, there is inconsistent use of the term “report” and “designation report” in the proposed document that needs to be made consistent.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
From 17.2 Definitions - Noncontributing. A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that: 1) it does not contribute generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or 3) where the location, design, setting, materials, workmanship, and association have been so altered or have so deteriorated that the overall integrity of the site, structure, or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the Historic Preservation Board to be non-contributing if it meets one or more of the above conditions.	16.2.3.C If an area, site, structure, or object does not meet the above it will be categorized as noncontributing.	The definition included in the staff proposed text has altered the existing ordinance through defining contributing buildings in section 16.2.3.B. and ceding all other buildings will be non-contributing. The altered language removes the ability of the historic preservation board to designate a portion of a site or structure as non-contributing. Designating a portion of a site or structure is useful for historic preservation board as they review proposed rehabilitation or alteration proposals.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
17.5 Nomination, Consideration and Historic Designation	16.3 Nomination, Consideration and Historic Designation	
17.5.2.B. requires nominations signatures to be submitted	Not in 16.3.2 Submittals.	The existing ordinance requires nominations to be submitted with signature. There is also language in the existing ordinance which allows the historic preservation board members to make a nomination at a meeting, <u>in writing</u>, and then complete further information before it is processed. The staff proposed language in 16.3.2.A lists all the information that should be included in a nomination, but 16.3.2.C says a nomination can be made "verbally" at a HP meeting. It is inconsistent to have a verbal nomination allowed if all of the information in 16.3.2.A is required. This inconsistency should be resolved. We believe at a minimum a letter <u>signed</u> by at least two members of the historic preservation board should be required, and signatures for public nominations should be a minimum requirement.
General Note: This procedure currently has time limits to move the process along.	General Note: Time frames seem to have been eliminated.	
17.5.2.E gives opportunity for demolition during the designation consideration process with a determination as a non-contributing resource.	No such exception.	The existing ordinance language allows for HP determination of a demolition request for a non-contributing resource during the designation process, which can take months. During the designation process, the owner of a building deemed a non-contributing building by the HP Board should be entitled to the same provisions they would have if the district was already designated.
17.6.1.A Interim protectionsUpon final action of the Historic Preservation Board recommending designation, the site, structure, object, or area nominated shall be subject to all of the protections of this article until a final decision on designation by the City Council becomes effective. If the City Council rejects designation or fails to designate a property, that property shall no longer be subject to the provisions of Sections 17.9 and 17.10 of this article.	This language has been deleted.	The staff proposed draft is missing the existing interim protections that go into effect upon HPB determination and would only require minimum maintenance and protection from demolition throughout the designation review process. As proposed to be amended by staff, there would be no HPB or staff review of proposed projects while a district is being considered by the Planning Board or City Council. It is extremely important that the full interim protections enumerated in the current ordinance (17.6) upon HPB determination are retained. As we found with the Munjoy Hill Local Historic District, review of projects began as soon as the HPB determination began and projects were expediently approved, with the public having the opportunity to comment. This significantly calmed fears about the onerous nature of the review process expressed by opponents and gave members of the public that wanted a say in their neighborhood's development, an opportunity to do so.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
17.5.3 one or more workshops scheduled by HPB	16.3.3 HPB review – 1 workshop, additional workshops require consent of nominators.	The existing ordinance allows for multiple workshops during the designation process, while the staff proposed language would limit workshops to one, unless the nominators provide consent. A historic district can be nominated by members of the public and then sponsored by two members of the historic preservation board. It is unclear if the staff proposal is to require consent by all nominators (members of the public) or the two members of the HPB. Requiring all public nominators consent to additional meetings for a large district nomination would be unduly complicated. What would that process be if they were not all present at the first workshop? The intention in the proposed language is not clear. Designations might only require one workshop, particularly for individual nominations, but a large district would likely require multiple workshops to allow for public comment and time to discuss additional information that might be required during the process. We propose that Language be included that nominations should be pursued expeditiously to clearly signal the process should not be unduly drawn out.
17.5.4 explicitly states required information in the report.	16.3.3.D very general language about the report to be completed.	The staff proposed language in 16.3.3.D refers to findings by HPB as to whether the criteria have been met. Is this supposed to be the designation report? There are later references to a HPB report as well. Chapter 16.2.3.B.2. refers to the "minimum criteria" in the "designation report". The designation report contents are not clearly articulated in this proposed redraft, contrary to the level of detail contained in the existing ordinance, see Chap. 17.5.4.A. We believe clearly outlining the contents of the designation report is important so that the public, staff, and members of the board are aware of the content needed. Comparing 16.3.3.D to the existing ordinance there is a provision (17.5.5.B), that if the HPB votes not to designate, a new designation cannot be brought back for at least a year. That is struck from the proposed text.
General Note: The existing designation procedure currently requires notifications sent to owner(s) at points of determinations by HP and PB.	General Note: The proposed procedure does not seem to require notifications sent to owner(s) at points of determinations by HP and PB.	Can MHPC provide information on how other Maine CLG communities handle public notice? During several recent district nominations, like House Island and Munjoy Hill, properties have been sold during the designation process. New residents/owners that arrive during the process deserve public notice so they may participate in the process at the next public meeting. Notifications should be sent to owner(s) at the various points of determination by HP and PB.
17.5.9 Amendment or rescission of designation The standards for rescission or amendment applied by the Historic Preservation Board, Planning Board, and City Council <u>shall be limited to those provided in Subsections 17.4.1(A) and (B) and Subsection 17.4.2.</u>	16.3.7 Amendment or rescission of designation <u>Amendment or rescission shall follow the procedure set forth in Section 16.3 for designation.</u> The standards for rescission or amendment shall be limited to those provided in Section 16.2.	The language in staff proposed 16.3.7 Amendment or rescission of designation is a <u>significant change</u> from the existing language in 17.5.9. By referring to 16.2 as a whole in referencing standards for rescission or amendment, it allows the planning board or the city council to decide that a landmark or contributing building can be reclassified as noncontributing (and therefore demolished) based on goals, other than historic preservation, identified in the comprehensive plan. Proposing to amend the ordinance to introduce consideration of the comprehensive plan in amendments or rescission decisions is misguided and tantamount to reintroducing the "projects of special merit" provision that had to be removed from the ordinance in 2004 to qualify Portland's HP ordinance for CLG certification. Comprehensive plans are general scoping documents and city ordinances are the regulatory implementation of those general goals. Once the district or individual designation has been made, a rescission or amendment should be based on new evidence and the application of the enumerated standards and criteria of the ordinance, rather than broad policy goals in the comprehensive plan. This proposed language appears <u>NOT</u> to meet the minimum requirements for a Local Review Commission per the <i>Guidelines for the CLG Program in Maine</i> .

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark’s Comments
		In addition, as proposed in 16.3.7.A there is no application of amendment possible with this process for reclassification to a landmark designation downward to contributing or non-contributing (if say there was a fire or other disaster that altered its exterior appearance) because it explicitly calls out contributing and noncontributing. Is the only option in case of a landmark to remove the designation completely as a rescission? Would that potentially create a ‘donut hole” in a district boundary, which is generally to be avoided? What is MHPC position on this? We believe there should be a mechanism for all designation categories and that a rescission or amendment should be based on new evidence and the application of the standards and criteria of the ordinance, as intended by the minimum requirements for a Local Review Commission per the <i>Guidelines for the CLG Program in Maine</i> .
17.7.1 There shall be a rebuttable presumption that all structures within a district shall be contributing unless the designation report and Historic Resources Inventory expressly identifies otherwise. Where the Planning Authority or the owner believes that the identification is erroneous, the Historic Preservation Board shall determine whether the structure is noncontributing.	16.3.8 Presumption of contributing classification Where the designation classifies an <u>area</u> or site as contributing, but does not specify the classification of a structure or object in the area or on the site, there shall be a presumption that the structure or object is contributing, unless: A. Documentation can be provided to the Planning Authority that a structure or object was constructed within 50 years of or after the date of historic designation, or after the stated period of significance, or B. The Historic Preservation Board holds a public hearing and finds <u>that the structure or object has been substantially altered within 50 years of or after the date of historic designation, or after the stated period of significance.</u>	What is the definition of area in the staff proposed language? A district? What about buildings and structures? The staff proposed language in 16.3.8 differs from the existing ordinance in that it provides exceptions to the presumption of contributing status. 16.3.8.B, proposes an exception to the presumption of a contributing classification if the structure was substantially altered within 50 years. We believe there should be some requirement that it was lawfully altered, particularly if it was altered after the date of designation. An applicant should not be able to significantly alter a building without the necessary permits and still qualify for the exemption. This does not appear to meet the minimum requirements for a Local Review Commission per the <i>Guidelines for the CLG Program in Maine</i> .
17.5.10 Time Limits	<i>No equivalent paragraph</i>	We believe general language that will move the process along in good faith or expeditiously should be included.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
17.6. Interim Protections 1 - Upon final action of the Historic Preservation Board recommending designation, the site, structure, object, or area nominated shall be subject to all of the protections of this article until a final decision on designation by the City Council... 2- outlines process for pending applications and pending building permits.	16.4 Interim Protections only requiring minimum maintenance and protection from demolition until City Council decision.	The staff proposed language differs from the existing ordinance by altering the Interim protections. As proposed only minimum maintenance and protections from demolition would apply from nomination until City Council action. It proposed to delete the full protections that currently are in place as soon as the HPB recommends designation to the PB. Staff's proposal will encourage major alterations as soon as a resource is nominated but before final designation by the City Council, which can be an extended process in the case of a historic district. We believe the language "Upon final action of the Historic Preservation Board recommending designation, the site, structure, object, or area nominated shall be subject to all of the protections of this article until a final decision on designation by the City Council" should be included.
17.6.2 AND 17.6.3 National Register Listed and Eligible properties. NRHP listings become automatic nominations.	16.5 Protections for Properties listed on the National Register of Historic Places. Upon receipt of notice from the NPS or MHPC that a property or <u>area</u> has been listed on the National Register of Historic Places or has been determined to be eligible for listing on the NRHP.... Exception D. The City Council has held a public hearing at the request of the owner and determined that demolition of the structure or object is consistent with the goals of the Comprehensive Plan.	Again, what does "area" in this context mean? Historic District? Be consistent with terminology to provide clarity. This section in particular needs review by MHPC. The proposed language states that NRHP listings or properties with a DOE are not allowed to be demolished, with exceptions. The proposed language does not provide review of relocation, alterations or other actions for those properties. We confirmed that MHPC is passing DOEs along to the city, but this staff proposed language doesn't state if newly listed (or eligible) National Register properties fall under the ordinance once they are listed or as stated in the existing ordinance, that a nomination is deemed submitted and the procedures for nomination should be followed. We understand that the city has not been routinely following the existing requirement of the ordinance for local nomination. The <i>Guidelines for the CLG Program in Maine</i> set out minimum duties of the local review commission to "review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction". <i>Guidelines for the CLG Program in Maine</i> sets out that minimum requirements for local legislation include "mandatory review of alterations, demolition, building relocation or new construction (Certificates of Appropriateness)- within the boundaries of designated individual landmarks or districts or which may affect such landmarks or districts". We believe that new NRHP designations should be considered by the HPB as a nomination for local designation as the existing ordinance requires or in some other manner be protected from alterations by the ordinance as they are designated historic properties. This exception does not include any preservation criteria related to significance or integrity, nor does it weigh in the reuse potential of a building. By this standard for example, Deering High school, a NRHP-eligible building could be demolished for a new consolidated high school or any other use. We believe this does <u>NOT</u> meet the CLG guidelines and should be removed as an exception.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
17.7.1.A. Certificate of Appropriateness spells out explicitly what requires a CoA	16.6.1 Applicability	The existing ordinance is explicit in what activities require a CoA. The staff proposed language in 16.6.1 only seems to apply if a permit is otherwise required. This would no longer regulate activities that don't require a building permit. This language is a <u>major change</u>. With this staff-proposed language <u>and</u> the deletion of the current definition of "Alteration" (which included specifically listed non-building permit changes) a Certificate of Appropriateness would only be needed for work that would require a building permit. The changes to the definition of alteration which informed the current definition of Certificate of Appropriateness, which has also been removed is problematic and has significant impacts. This would be a significant change and does not appear to meet the minimum requirements for a Local Review Commission per the <i>Guidelines for the CLG Program in Maine</i> to review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction
17.7.2 Exceptions to Requirement of Certificate of Appropriateness <i>Exceptions:</i> 17.7.2 B. Where the work consists solely of ordinary maintenance and/or restoration, provided that there is no substitution of materials or alteration of architectural details.	16.6.1 Applicability <i>Exemptions:</i> 16.6.1 A. Work consisting solely of ordinary maintenance, being acts of upkeep or repair which do not include a change in the design, material, or outer appearance of a site structure, or object, such as repainting of previously painted surfaces or in-kind replacement of materials or plantings. Adds 8 Exemptions: including work in City ROW, public art, vegetation in HLDs, roof mounted solar, temp structures (8 months), demolition and relocation on non-contributing structures.	What is the reasoning behind these new exemptions? Solar installations, heat pumps, and public art should be reviewed to ensure they are installed in a manner that is reversible and removable without damaging character defining features, including historic materials. ROW exceptions: This is not the current practice and is inconsistent with the requirements in 16.7.3.C.4. Streetscape, pedestrian improvements: <i>Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to or on a landmark, within a historic district, or within a historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the Historic Resources Design Manual.</i> This would remove review of historic materials used in crosswalks, the stone gutters in Baxter Boulevard, and Belgian pavers where they exist in the ROW. We believe that the ROW exemption should be removed to preserve historic materials where possible.
<i>No equivalent Section</i>	16.6.2 Review Classifications (and Table 16-A)	- How were the numerical limitations determined? For instance, 25% could be the storefront of a 4-story or less building. Is the intention that a storefront alteration could be a staff review? - What about Landmark building reviews – are they to all be Board reviews? - Signage – does "all" include new construction? Often the board provides guidance on building signage design concepts as part of the overall design scheme.

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
<i>No equivalent Section</i>	16.6.2 Review Classifications (and Table 16-A)	We believe some of the potential staff reviews as laid out in Table 16-A should have the opportunity for public comment and review by the board, as they can alter a significant portion of a structure.
<i>No equivalent Section</i>	16.6.3 Historic Preservation Pre-App Meeting	This is a good addition.
17.7.4 Applications for CoA	16.6.4 Applications	
17.3.1.A. Any project may be subject to fees as established by the City Council to cover administrative costs and the costs of Historic Preservation Board review. Applicants shall also pay a fee to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services. The fee shall be based on the hours of review and processing time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant. 17.3.1.B Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.	16.6.5 Costs review. Applicants are also required to pay fees to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services as needed.	Does this change reflect similar board language for ZBA or PB?
17.7.4.F Once a completed application has been submitted, it shall be diligently pursued. Failure of an applicant to attend two or more Historic Preservation Board meetings at which an application is scheduled for review shall cause the application to expire and to be deemed null and void, unless the Planning Authority determines that good cause is shown	16.6.6 Lapse in Application An application for a certificate of appropriateness shall be diligently pursued from the date of submission. Applicants shall provide additional information as requested by the Planning Authority or Historic Preservation Board when determined to be reasonably necessary to make any	Does this change reflect similar board language for ZBA or PB?

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
for the failure to attend. Where good cause is shown for a failure to attend, the Historic Preservation Board shall table an application to a date mutually agreed upon in writing.	determination required by this article. Failure of an applicant to provide a response to the request for additional information within 120 days of the date upon which the written request was made shall cause the application to expire and be deemed null and void.	
17.7.5 Review Process for Certificates of Appropriateness. 17.7.5.A. ... shall be reviewed by the Planning Authority for compliance with the standards of Section 17.8 <u>and</u> the <i>Historic Resources Design Manual</i>. 17.7.5.A.2 Staff may elect to forward to the board an application found by staff to meet review standards but for which board confirmation is sought. The application shall be placed upon the next consent agenda of the Historic Preservation Board. Any member of the Historic Preservation Board may remove an application from the consent agenda for the purpose of giving it a public hearing.	16.6.7 Administrative Review ... shall be reviewed by the Planning Authority for compliance with the standards of Section 16.7. <i>deleted</i>	The existing ordinance states that a project must meet the standards of Section 17.8 <u>and</u> the <i>Historic Resources Design Manual</i>. The staff proposed language in Section 16.7.1.A, states the Historic Resources Design Manual supplements the ordinance. Although similar language exists in 17.8.1. removing the “AND” in this earlier section and just referencing Section 16.7 has changed the standards for review. We believe that projects should comply with the standards in the ordinance <u>AND</u> <i>Historic Resources Design Manual</i>, which may include additional standards specific to a designated property as part of a designation report. The Historic Resources Design Manual should be specifically incorporated by reference into the review standards, and should not just vaguely be said to “supplement” the ordinance as in the staff proposal. Why is staff proposing to eliminate the option to use the consent agenda with staff reviews?
	16.6.8 Historic Preservation Board Review A) An application for a certificate of appropriateness subject to Historic Preservation Board review shall be reviewed by the Historic Preservation Board for compliance with the standards of Section 16.7.	Please see our comment in 16.6.7 above. This section provides an opportunity to provide clear concise language about the required standards. The most comprehensive existing language is in 17.8.2. “In considering an application for a Certificate of Appropriateness involving alteration, the Historic Preservation Board and the Planning Board shall apply the following general standards, as further described in the <i>Historic Resources Design Manual</i>, and any design guidelines accompanying the specific designation” This seems like the standard to use, not just those enumerated in Section 16.7. As mentioned in our comments above, the staff language proposed in this draft is not as explicit as the existing ordinance regarding what information is in the Historic Resources Design Manual and that the manual may include resource specific criteria (See 17.8.1 and 17.8.2)

Existing H.P. Ordinance (Chapter 17)	Staff Proposed H.P. Ordinance	Greater Portland Landmark's Comments
	16.6.12. Issuance of a CoA	Currently a 14-day time period, proposed to be removed.
17.3.1.C No Certificate of Appropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.	16.6.12.A No certificate of appropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.	Currently located under 17.3 Administration, Section 1 'Costs'.
17.7.6 B Unless work authorized by a Certificate of Appropriateness shall be commenced within <u>six months</u> of the date of issuance of the Certificate of Appropriateness, the Certificate of Appropriateness shall expire and shall become null and void. The Planning Authority may approve <u>additional extensions of this six month period, not to exceed a total of two years,</u> provided that a written request for extension is received prior to the expiration date of the Certificate of Appropriateness. In the event of litigation arising out of the granting of a Certificate of Appropriateness, the certificate shall remain valid until one year after the entry of final judgment in the	16.6.13 Expiration of approvals A. Unless work authorized by a certificate of appropriateness is commenced or a building permit for the same is issued within <u>three years</u> of the initial date of issuance of the certificate of appropriateness, the certificate of appropriateness shall expire and shall become null and void. B. When the approved work also requires a site plan approval under Article 13, the expiration of the certificate of appropriateness shall be concurrent with the site plan expiration. C. In the event of litigation arising out of the granting of a certificate of appropriateness, the certificate shall remain valid until one year after the entry of final judgment in the	The expiration is proposed to change from six months to three years. This seems like a dramatic extension. Does it reflect a current administrative problem of approvals running out for projects often? Perhaps it makes sense to require that work commence within two years, the current not-to exceed amount, with the opportunity to extend for another 12-months. Is this current practice? Or does it clear up a current administrative issue? Does this change reflect similar board language for PB?

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litigation <u>or until the end of the two-year period, whichever is later.</u>	litigation or until the end of the <u>three-year period, whichever is later.</u>	
17.7.8 Amendments to approved CoA	16.6.14 Amendments	The staff proposed language in 16.6.14.B. and 16.6.14.C. is not language in the existing ordinance but seems to represent current process. We believe providing this clarifying language will help to avoid potential confusion regarding what constitutes a minor or major amendment to an approved plan and what the review process for amending an approved plan will be.
17.7.7 Cert. of Non-Applicability	<i>No equivalent section</i>	
	16.7 Standards for Review of Application for Certificate of Appropriateness	The Historic Resources Design Manual is only partially incorporated. Sections 16.7.1 and 16.7.2. describe what the Historic Resources Design Manual is, but unhelpfully say the manual supplements the ordinance and deletes the portion of the standard that says “ in review of alterations they shall review in accordance with the Historic Resources Design Manual AND any design guidelines accompanying the specific designation”. There should be consistent terminology used to define what the review standards are within the proposed text of Chapter 16. The design manual is incorporated more completely in relation to signage (19.3.4 and 16.7.3B5) and streetscapes (16.7.3 C4). Please see our comments regarding 16.6.7 and 16.6.8. above.
17.8.2.A Standards for Review of Alterations – Compatible Use Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character defining features of the structure, object, or site and its environment <u>or to use a property for its originally intended purpose.</u>	16.7.2.A. Compatible Use In the case of a change of use of a property from its originally-intended purpose, every reasonable effort shall be made to minimize the alteration of the character defining features of the structure, object, or site and its environment <u>as they relate to the original use.</u>	This staff proposed language is unclear. If the paragraph in the existing ordinance needed to be edited for brevity, we would propose that the staff proposed draft use the following NPS language, it's succinct, less words than proposed, and standard preservation language. “A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.”
17.8.3. Standards for Review of New Construction: <i>6. Applicability to Congress Street Historic District.</i> In the Congress Street Historic District, for new construction within the B- 3 zone, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the B-3 zone.	16.7.3 Standards for Review of <u>New Construction</u>: 16.7.3.A.6 Applicability of underlying zoning <u>The review standards above shall not supersede the dimensional requirements of the underlying zoning.</u>	This would be a <u>major change</u> in the review standards so that the zoning dimensional standard always trumps historic preservation board considerations in all historic districts, where currently it only applies in three specific locations: For Congress Street, with the variety of height in the district and the downtown height study, it was reasonable to let the underlying zoning determine height. The India Street Historic District and Portland Company Historic District similarly were in areas where a height study had been undertaken to examine the existing context and create a framework for the underlying zoning dimensional standards. This kind of assessment has not been done on a broad scale in other zoning districts where historic resources are located.

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7. <i>Applicability to India Street Historic District.</i> For new construction within the India Street Historic District, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure. 8. <i>Applicability to the Portland Company Historic District.</i> For new construction within the Portland Company Historic District, the height requirements of the B-6 Building Height Overlay & Building Envelopes map shall be controlling and the Historic Preservation Board shall not impose conditions more restrictive than the building height requirements of the B- 6 zone.		The Historic Preservation Board needs the flexibility to require design approaches that minimize the non-compatible scale and form that sometimes occurs when old and new structures are juxtaposed in order to meet the compatibility requirements of the ordinance. We strongly believe that the standards for review of new construction <u>should remain as is</u>, currently allowing discretion to restrict a new construction project to less than the maximum dimensions allowed by the underlying zoning, with the retention only of these three notable existing exceptions (Congress Street, India Street and Portland Company). A height and massing assessment has not been done on a broad scale in other zoning districts where historic resources are located. “New construction” is without a definition in proposed 16.7.3. Currently the definition includes "comprehensive redesign/renovation of an existing structure." This is a proposed change, and we believe a definition in Chapter 3, or definition within the text of Chapter 16 could help to provide clarity lost with the elimination of the definition.
	16.7.3C. 4 .Streetscape, pedestrian improvements. Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to or on a landmark, within a historic district, or within a historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the <i>Historic</i>.	This proposed provision is inconsistent with the proposed language in Section 16.6.1 “Applicability”. This is an appropriate provision to remain in the proposed draft and Section 16.6.1 should be revised to be made consistent with this provision. We believe that streetscape features, furniture, paving materials, and other pedestrian improvements in historic districts should continue to be reviewable. While modern streetscape elements like bus stops, crosswalks ATMs etc. have been approved, their review of location has been important and allows for public comment on projects that would not otherwise have public input. Even if the review is at the staff level, it codifies a working relationship between the Historic Preservation Program, Public Works, Transportation Planning, and others with interest in the ROW. In addition, projects like the Wharf Street paving project impact a significant character defining feature of the Old Port, and while not all the materials there are historic, it is a prominent streetscape that is valued by locals and tourists, providing an operational function for businesses and a positive pedestrian experience with outdoor dining options. Not reviewing a project such as that and as well not offering the opportunity for public input is problematic.

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17.9 Certificate of Economic Hardship To be approved by Board of Appeals	16.8 Certificate of Economic Hardship To be approved by Historic Preservation Board	This is a <u>significant change</u> . How do other Maine CLG communities handle this provision?