

Historic Preservation Board

Wednesday, July 17, 2024 at 5:00 PM
Hybrid Meeting, Room 24 (Ground Floor
of City Hall) and Zoom



MEMBERS

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

HYBRID PARTICIPATION:

Remote Access Information Field

The Historic Preservation Board invites the public to attend the meeting **in person or Zoom** pursuant to the Remote Meeting Policy adopted by the Historic Preservation Board. Prior to the meeting, please check the Agenda Center <https://www.portlandmaine.gov/602/Agendas-Minutes> to view memos and reports which will be posted by the end of the day on the Friday before the Historic Preservation Board meeting

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.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/81588791424>

Or One tap mobile :

+13017158592,,81588791424# US (Washington DC)

+13052241968,,81588791424# US

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

+1 929 205 6099 US (New York)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 689 278 1000 US

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+1 253 205 0468 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 JULY 3, 2024. ALL MEMBERS WERE PRESENT.**
- 3. REPORTS OF DECISIONS AT THE MEETING HELD ON JULY 3, 2024. THERE WERE NO PROJECT TO REPORT ON.**
- 4. COMMUNICATION AND REPORTS**
- 5. PUBLIC HEARING**
 - i. Certificate of Appropriateness for Alterations; 609 CONGRESS STREET (142 HIGH STREET); Crostone Portland, LLC and The State Theater, Applicant(s). Plan Number: HPBR-002926-2024.
- 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: July 12, 2024
RE: 142 High Street (609 Congress Street) – Public Hearing – Alterations
PROJECT ID: HPBR-002926-2024
MEETING: July 17, 2024

Owner: Crostone Portland, LLC and The State Theater
Architect: Julia Tate, Simons Architects

A sign announcing the Historic Preservation Board's meeting on July 17, 2024 was posted at the property on July 5, 2024. A legal ad was published in the Portland Press Herald on July 4, 2024 and July 5, 2024, and 136 notices were sent to neighboring property owners within 100 feet of the subject property.

PROJECT SCOPE

Remove existing non-historic glazing within existing masonry opening. Install new exterior service counter and ticket windows. Install new signage at new lobby entrance.

Material Specifications:

Trim	Painted metal
Windows	Painted metal

SUMMARY OF HISTORIC CONTEXT

The State Theater Building was constructed in 1929 following the designs of local architect Herbert W. Rhodes. The six-story building dominates the northwest corner of Congress Square, and is a Landmark within the Congress Street Historic District (Figure 1). The building was built to house a grand movie theater, but was adapted for theatrical performances early in its history. The theater now plays host to a variety of live performances. The first floor has historically featured storefronts in addition to the theater entrance, while the upper stories have commercial tenants.



Figure 1: Map of Congress Street Historic District showing location of 142 High Street (609 Congress Street) with a star.

The building features a two-story limestone base and four upper stories of brick articulated with limestone pilasters and capped by a simple limestone cornice. This base is interrupted along Congress Street by the three-story arched entrance of the theater itself. The theater entrance historically featured a large, projecting marquee and tall projecting sign. The projecting sign was removed sometime mid twentieth century, and the marquee was heavily altered in the later half of the century. The marquee was made more historically accurate under the current ownership in 2018. The building features smaller canopies over the entrances for the building's upper stories, which have also been altered.

The storefronts along Congress and High Streets were originally very consistent in appearance, as can be seen in a circa 1930s image from the Maine Historical Society Collection (Figure 2). The storefronts featured recessed entrances, large plate glass windows, and small sign bands at the top of the masonry opening. The storefronts to the west of the theater entrance, and north of the upper-story entrance along High Street are still quite intact and largely follow the original design. The storefronts to the east of the theater entrance and wrapping the corner of the building have been more heavily altered with removal of some recessed entrances, changes in fenestration, elimination of integrated sign bands, and the addition of polished red granite around some entrances. A fairly thorough documenting of some of these original and altered storefronts can be found within the applicant's supporting materials (Attachment 2).



Figure 2: Detail from a circa 1930 image of the State Theater entrance from the collections of Maine Historical Society (Item 12894). Note the presence of the ticket booth beneath the marquee.

A complete description of the State Theater Building has been included as Attachment 3. Additional information on the Congress Street Historic District can be found on the city website: <https://www.portlandmaine.gov/665/Historic-Districts>

PREVIOUS REVIEW BY HISTORIC PRESERVATION BOARD

June 12, 2024, Workshop:

During the June 12 workshop, the Board expressed generally favorable views of the proposed ticket window design. Board members found that the proposed intervention was acceptable given that the section of storefront in question had already been altered and little to no historic fabric was proposed to be removed or altered. The applicant presented the Board with two options for creating the operable ticket window. The first included sliding service windows which would have require the introduction of a continuous horizontal mullion. The second utilized a through-counter transfer tray and through-window speaking port. Some Board members noted an openness to either option depending on what would be most functional for the theater operator. However, the Board generally found that the second option would be more appropriate as it

would best maintain the existing storefront rhythm, leaving a largely uninterrupted pane of glass, whereas the first option would interrupt that pattern by introducing the horizontal mullion.



Figure 3: Option 1 (left) and Option 2 (right) presented by the applicant during the June 12 workshop. Option 1 included sliding service windows with an intermittent horizontal mullion while Option 2 included through-counter transfer trays and a through-window speaking port.

The applicant had also broached the question of whether the existing ticket booth could possibly be removed to provide an additional door out of the theater. The Board was unanimous in their finding, based on the evidence of the booth's historic presence, that it was a character-defining feature of the building and that its removal would not be consistent with the Standards for Review of Alterations.

STAFF COMMENTS

The applicant is seeking final approval for the proposed new ticket windows within the existing storefront openings of the State Theater.

New ticket window

Since the workshop, the applicant has revised the design in a third and final design, which is submitted to the Board for approval. The applicant further studied the through-counter transfer tray option and determined that it would not function suitably for their typical ticketing needs. However, hearing the Board's findings that it would be most appropriate to leave the windows as uninterrupted as possible, the applicant is now proposing an option that includes a through-window speaking port and small slide-up ticket window. While not previously shown, this iteration provides the functionality of the sliding windows presented as option 1 in the workshop, while avoiding the large horizontal mullion of that same option. This version would allow the opening to

continue to read primarily as two large, vertically-oriented fixed windows, as is found in the adjacent storefront, but with two modest interventions that are subordinate to the overall glazing.

New sign

The applicant has not provided any further details on any proposed additional signage. As modest signage that meets the existing signage guidelines are typically reviewed by staff, staff have included a condition noting that the approval would not include signage and that it should be submitted separately for the appropriate review.

Historic ticket booth

Based on the Boards feedback, the applicant has chosen not pursue removal of the historic ticket booth.

ANALYSIS OF APPLICABLE REVIEW STANDARDS

Standards for Review of Alterations, 17.8.2:

Standard 1	
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 Board found that the proposed ticket windows require minimal alterations to the character defining features of the building. The applicant is not proposing to remove or destroy any historic fabric to insert the windows, though the work will alter the appearance of the non-historic storefront within an existing masonry opening.

Standard 2	
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.	
Standard Met?	Staff Comments
Yes	The applicant is not proposing to remove or destroy any historic fabric to insert the ticket windows.

Standard 3	
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.	
Standard Met?	Staff Comments
Yes	The proposed ticket windows will be slightly differentiated from the existing historic storefront windows; however, it will be largely consistent with the existing non-historic storefront windows which still respect the pattern of openings across the base of the building.

Standard 4	
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.	
Standard Met?	Staff Comments
Yes	The applicant is not proposing to remove any significant alterations to allow for installation of the ticket windows.

Standard 5	
Distinctive features, finishes, and construction techniques or examples of skilled craftsmanship which characterize a structure, object, or site shall be treated with sensitivity.	
Standard Met?	Staff Comments
Yes	The applicant is not proposing to destroy or remove any distinctive features to allow for installation of the ticket windows.

Standard 6	
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.	
Standard Met?	Staff Comments
Not Applicable	

Standard 7	
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.	
Standard Met?	Staff Comments
Not Applicable	

Standard 8	
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	

Standard 9	
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.	
Standard Met?	Staff Comments
Yes	The proposed ticket windows will be distinguishable from the existing historic and non-historic storefront windows in that it will be more deeply recessed in the opening than the existing windows. It will also feature a raised sill to allow for the service counter. The minimal size of the proposed sliding ticket window and through-window speaking port respect the overall pattern of glazing at the existing storefronts, making the alterations compatible with the building.

Standard 10	
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.	
Standard Met?	Staff Comments
Yes	The applicant is proposing this alteration in an area where the storefront was previously altered, meaning little to no historic material needs to be damaged to complete the installation. Additionally, the applicant is proposing to fit the new ticket windows and counter within the existing masonry opening, meaning that it could be removed at a future date and more historic appropriate or otherwise compatible storefront could be installed within the same opening. The Board found that this proposed approach is sufficiently reversible.

MOTION FOR CONSIDERATION

I move to CONDITIONALLY APPROVE application HPBR-002926-2024 for alterations at 142 High Street (609 Congress 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 Alterations 17.8.2 (A)-(J) with the following conditions:

- 1) This approval does not include signage and signage shall be applied for and reviewed under a separate application as needed.

ATTACHMENTS

1. Project Summary
2. Supporting Materials and Plans
3. Congress Street Historic District: Description of State Theater Building

June 24, 2024

Evan R. Schueckler, Historic Preservation Program Manager
Department of Planning and Urban Development
Portland City Hall, 4th Floor
389 Congress Street
Portland, ME 04101

RE: Alteration to 609 Congress Street (Parcel ID: 046D033)

Dear Mr. Schueckler,

We appreciated receiving board feedback at the workshop on June 12th. We are re-submitting materials here, with updates and additional information responding to the Board's comments. We have also incorporated further theater operations considerations around ticketing equipment and phone use. Please see materials included and notes below. We look forward to hearing when this may be reviewed by the Board for a Public Hearing.

1. New Box Office Window Alteration:

- We generally understood the board could support this intervention and preferred the option with single glazed lights over the option with sliding service windows. Upon further review, the tray with covered flap ended up not being compatible with the ticketing equipment, however. The current proposal anticipates a single glazed panel with an integral speaker unit and a small, framed guillotine service panel at the counter. This will be custom ordered to fit the existing opening, and painted to match the adjacent existing windows which will remain.
- Please see lighting cut sheet attached for minimal recessed tape light at box office header frame extension and bottom of counter.
- No awning or canopy is proposed at this time. This had been studied by the design team, however there was a challenge with the canopy competing with, or blocking site lines of, the directly adjacent marquee. The design team and owners questioned whether a shallower brow-style cover would actually provide functional relief from any elements at a height of 9'-6". Additionally, as the box office is in one of two window bays, a cover over one but not both presented an unbalanced elevation to the pair, whereas a cover extending over the pair of windows did not support clear identification of the box office. Cost was also a consideration. In the end, the simplest approach was pursued. The theater operators have shared that transactions at the box office are of a short duration, and patrons are already accustomed to standing in line across the face of the building, without cover.

2. Alterations at second entrance:

As the signage will be a separate review, this is not submitted for review at this point in time, however, we understood the board could support introducing a new material to cover the existing, non-historic red speckled granite and appreciate that feedback. It is still shown in views for reference, but we will formally submit for review as part of the signage package. Area of signage is compliant with zoning requirements, however, zoning has not yet reviewed for approval.

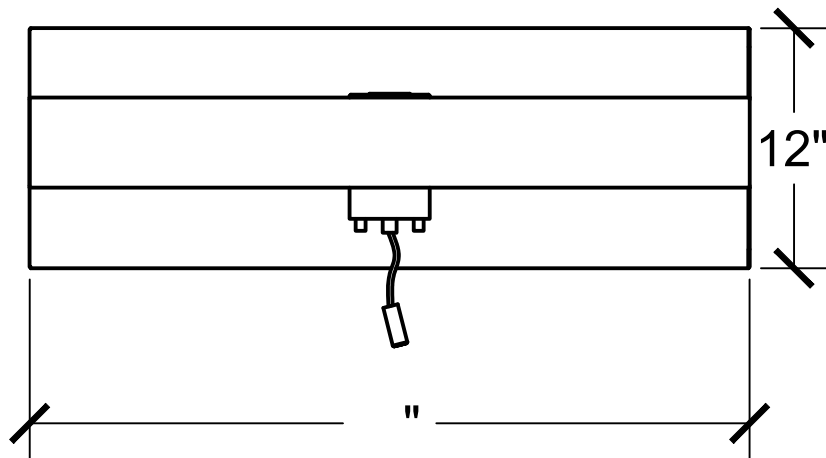
3. The current box office will remain in place and will not be occupied due to safety, security and non-accessible concerns.

Sincerely,

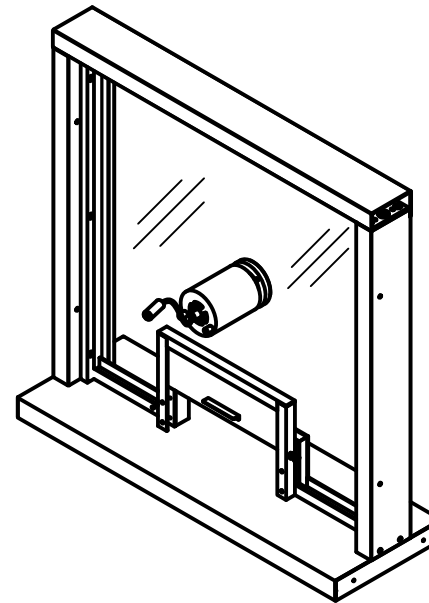
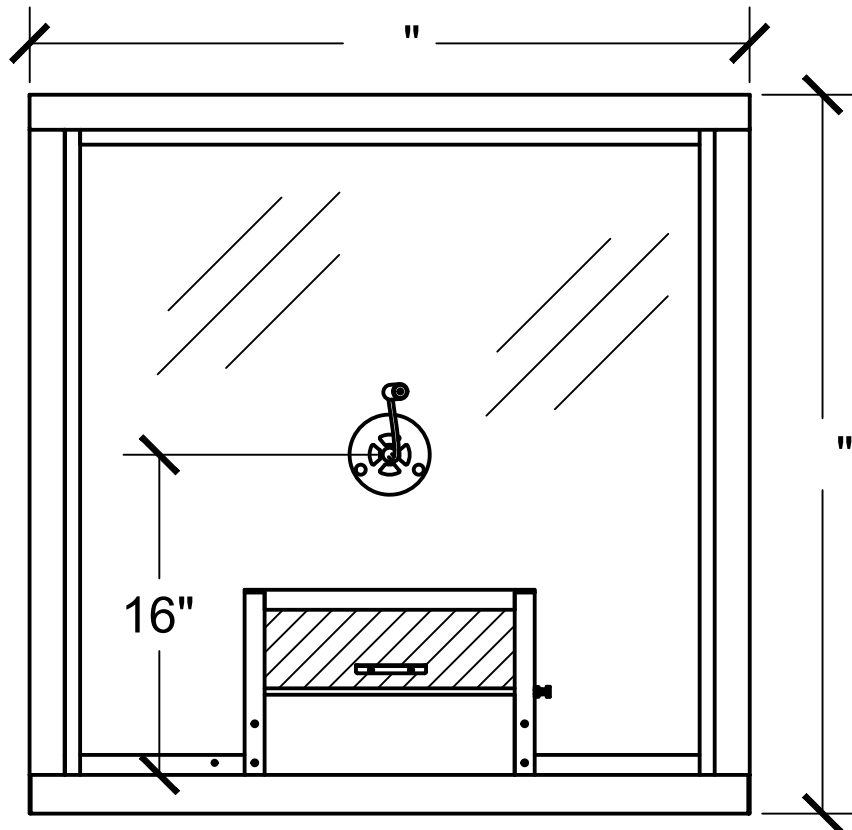


Julia Tate, RA, LEED AP
Partner + Principal, Simons Architects

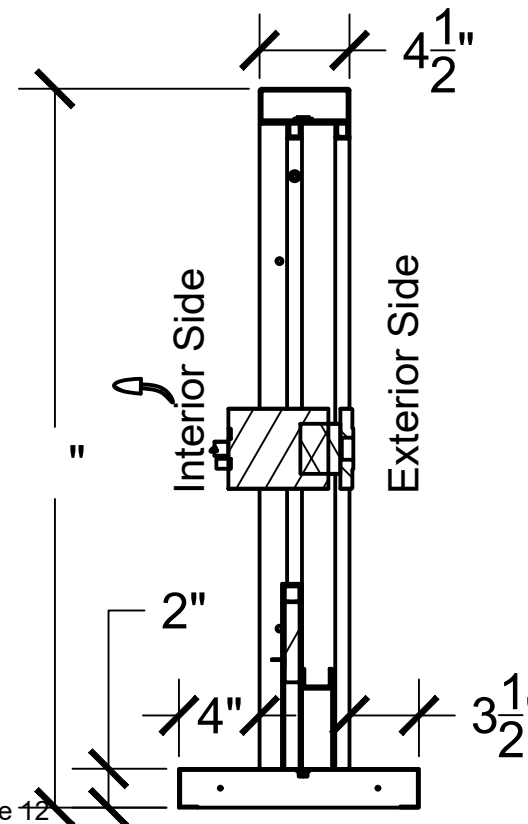
Top View



Interior Front View



Side View



COVENANT
Security Equipment

PLEASE SELECT:

1. FRAMING:

- ☐ Aluminum ☐ UL Rated Alum
☐ UL Rated Stainless

2. FRAME COLOR:

- ☐ Bronze Anodized ☐ Clear Anodized

Other: _____

3. GLAZING:

- ☐ 1/4" Tempered ☐ 1" Insulated
☐ 3/4" Poly - L1 ☐ 1-1/4" Acrylic - L1
☐ 1-1/4" Poly - L3 ☐ 1-1/4" Acrylic - L3
☐ Storm Impact Low-E

Other: _____

4. SPEAKER:

- ☐ 6" BR Speak-Thru (L3)
☐ 5" Non-BR Speak Plate
☐ SC-100 Amplified ☐ SC-100L Amplified
☐ Speak Around

Key Notes

Unit:

Ticket Window W/ Slide-up & Amp

Actual Dimension:

"(W) X "(H)

Rough Opening:

"(W) X "(H)

Service Opening Slide-Up:

12"(W) X 4"(H) (GLASS IS LEVEL 1 3/4")

Engineer Notes

Date drawn: 7/24/20

Drawn by: Avasquez

File name: FILL IN TW Slide Up Amp Cov.dwg

Page: 1 of 2

Scale: 1:10

NOTE: THIS DRAWING EMBODIES A CONFIDENTIAL PROPRIETY DESIGN ORIGINATED AND OWNED BY COVENANT SECURITY EQUIPMENT SUBMITTED UNDER A CONFIDENTIAL RELATIONS ALL PATENT, MANUFACTURING, SALE RIGHTS REGARDING THE SAME ARE RESERVED EXCEPT TO THE EXTENT RIGHTS ARE EXPRESSLY GRANTED TO OTHERS. THE RECIPIENT AGREES BY ACCEPTING HIP. THESE DRAWINGS NOT TO SUPPLY OR DISCLOSE ANY INFORMATION REGARDING THEM TO ANY UNAUTHORIZED PERSON.

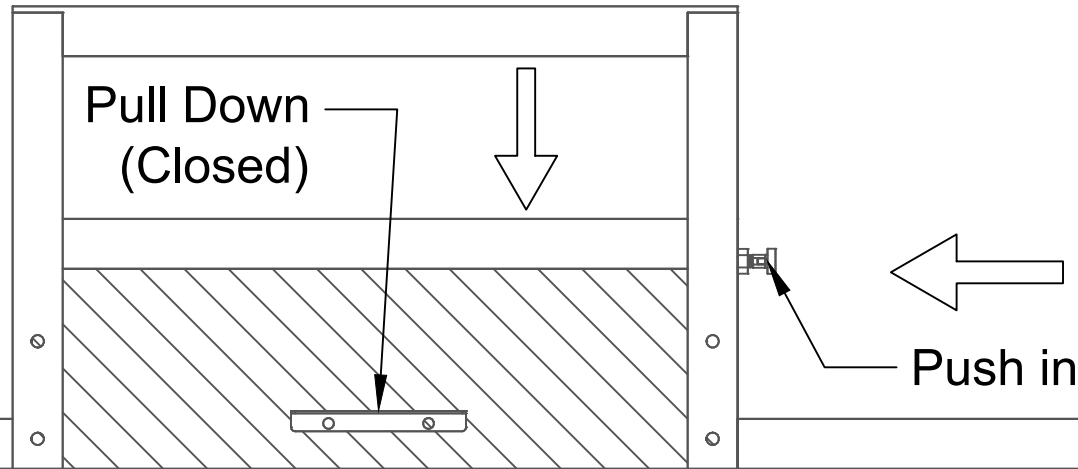
SIGNATURE: _____

DATE: _____

Interior View



COVENANT
Security Equipment



PLEASE SELECT:

1. FRAMING:

- ☐ Aluminum ☐ UL Rated Alum
☐ UL Rated Stainless

2. FRAME COLOR:

- ☐ Bronze Anodized ☐ Clear Anodized

Other: _____

3. GLAZING:

- ☐ 1/4" Tempered ☐ 1" Insulated
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☐ 1-1/4" Poly - L3 ☐ 1-1/4" Acrylic - L3
☐ Storm Impact Low-E

Other: _____

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Engineer Notes

Date drawn: 7/24/20

Drawn by: Avasquez

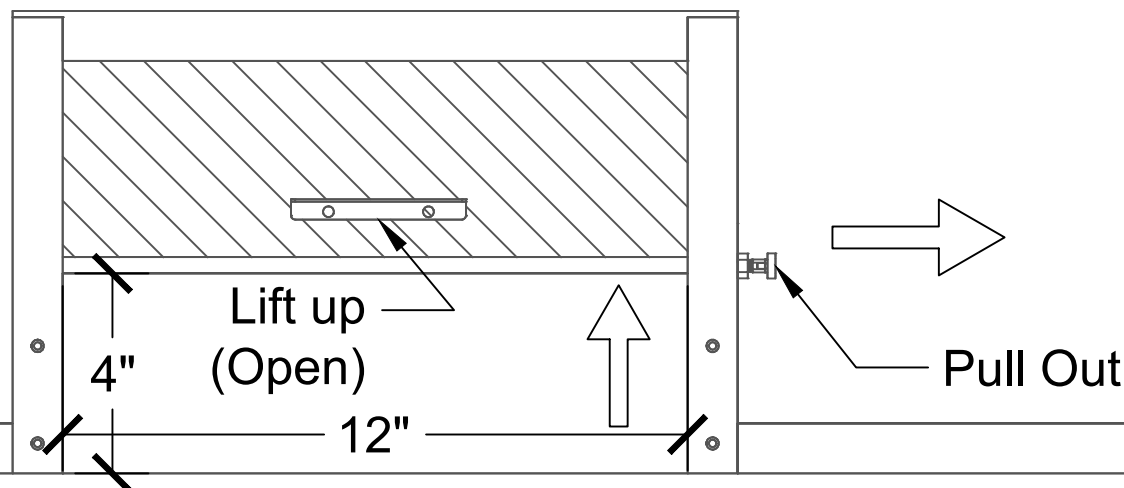
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Page: 2 of 2

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Held up
by Magnets



SIGNATURE: _____

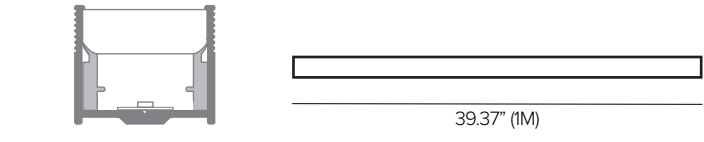
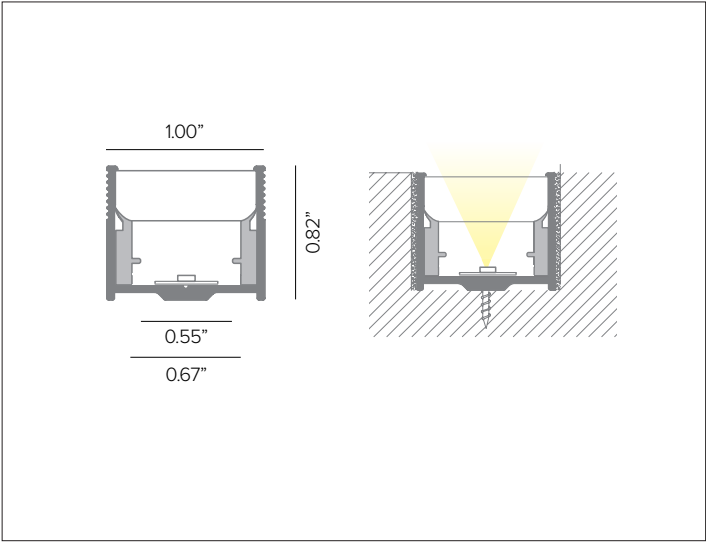
DATE: _____

PRINTCGUS PROFILE

Recessed Aluminum Profile



Shown with PRINTC-GUS profile and KTPRINTC-G end cap.



Rigid high impact resistant PMMA profile complete with two part white plastic diffuser lens and aluminum channel for surface or recessed mounting.

Part No. **PRINTC-GUS**

ACCESSORIES



Description PRINTC-GUS end cap kit. 2pcs without hole and 2pcs with hole for connection cable.

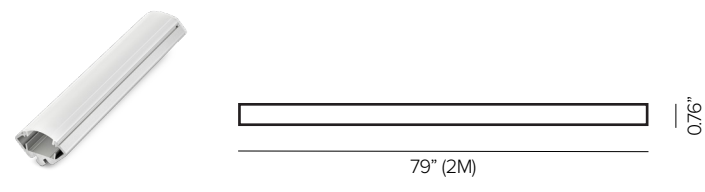
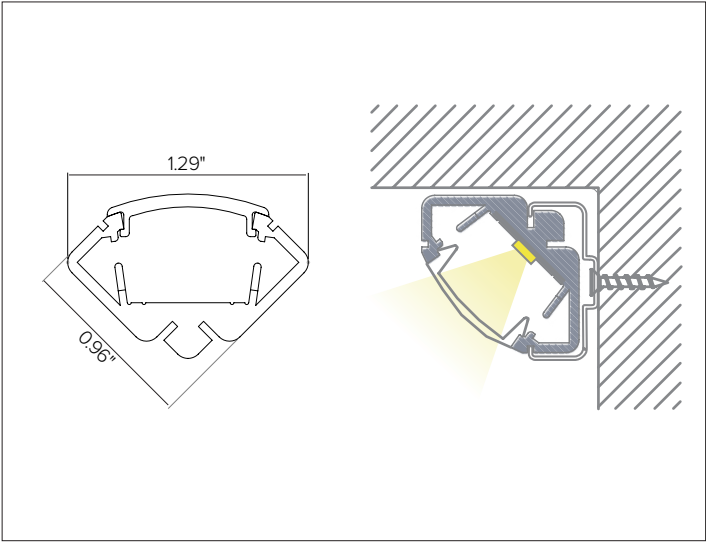
Part No. **KTPRINTC-G**

PRAN-U PROFILE

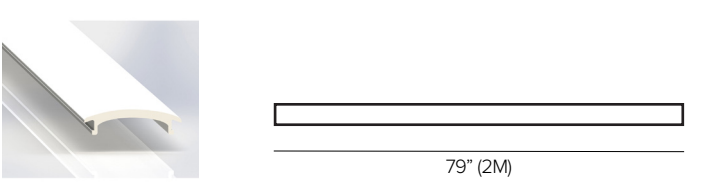
45° Corner Aluminum Universal Profile



Shown with PRAN-U profile and KTPRAN-UEC end cap.

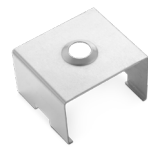


Universal 45° corner anodized aluminum rigid profile complete with lens.				
Lens	Opal Diffused	Asymmetric	Graze	Flood
Optic	120°	89° x 92°	94°x24°	103° x 38°
Part No.	PRAN-U	PRAN-UASYM	PRAN-U30	PRAN-U60



Replacement lens (OPTIONAL).				
Lens	Opal Diffused	Asymmetric	Graze	Flood
Optic	120°	89° x 92°	94°x24°	103° x 38°
Part No.	PRU-LENS	PRULENSASYM	PRULENS30	PRULENS60

ACCESSORIES



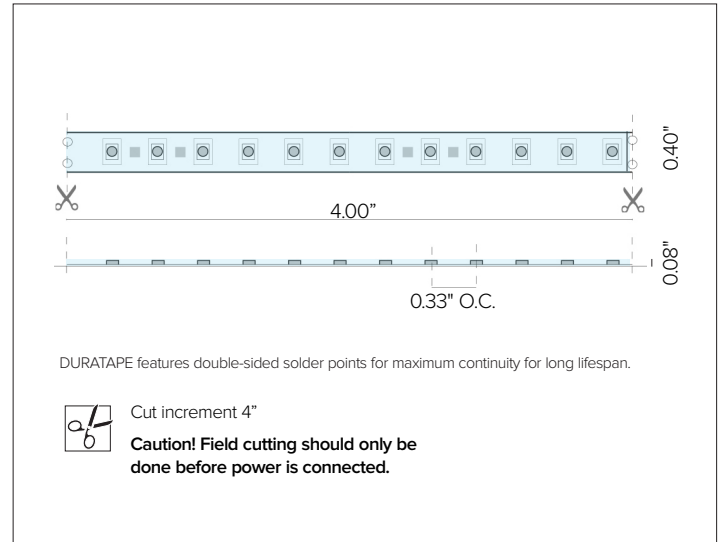
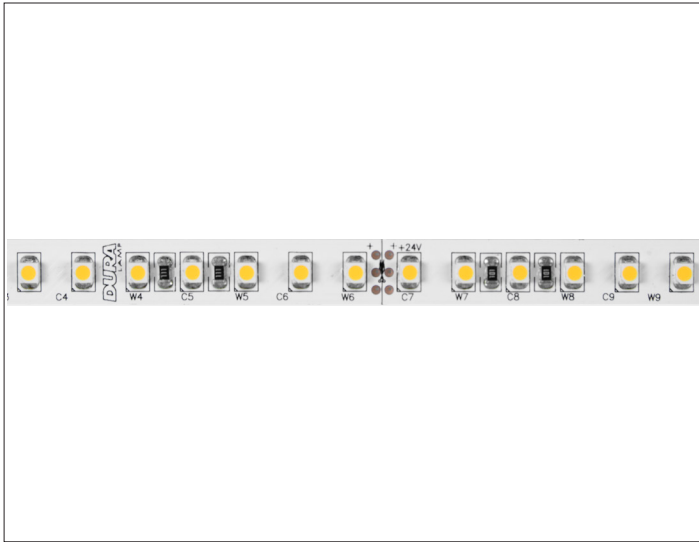
Description	Stainless steel mounting clips, 10pcs. Recommended to use 4pcs for per each 2M profile.
Part No.	KTPRAN-UCL



Description	PRAN-U end cap kit, silver finish. 5pcs without hole and 5pcs with hole for connection cable.
Part No.	KTPRAN-UEC

DURATAPE ESSENTIAL WHITE IP67

Energy Efficient Low Voltage Strip Light



CONCEPT

Energy efficient high/mid/low output narrow spaced essential white LED linear strip light for continuous consistent color.

MECHANICAL CHARACTERISTICS

Materials	LED strip with fully extruded silicon jacket. Features double sided solder points for maximum conductivity and durability. 2-circuit substrate for optimum heat dissipation, minimizing voltage drop while increasing run lengths per power feed, standardizing electrical flow over entire length of the strip for maximum product reliability.
Functionality	Ideal for linear applications such as cove, under-counter/cabinet, millwork, and detailed lighting accents.
Installation	Field cuttable. Manufacturer pre-assembled to specific project lengths with factory attached end prep assemblies to be mounted or inserted into thermally protective profiles, see available options. Suitable for MRI installations. Driver to be mounted outside of MRI room and to be use with PVC or aluminum profiles only. To be installed with adhesive or MRI safe hardware only, no factory provided mounting hardware to be used.
Protection	Strip jacket rated at IP67.

CERTIFICATIONS

cULus Class 2 Listed
Tested in accordance with LM-79-08
Energy efficient for California installations.
RoHS compliant
^ACEC T24 JA8-2019-E certified, 3.9W with DEL60PWM or DELX601241CPWM drivers.

WARRANTY

5 year limited warranty

SUSTAINABILITY

DURATAPE products are packaged with environmentally friendly materials. The strip reel is comprised of cardboard and the strip bag is produced with 80% paper materials and 20% recycled plastics necessary for anti-static packaging.

ELECTRICAL CHARACTERISTICS

Power Connection	Factory attached end prep, see available options. Remote Class 2 120V-277V AC power supply required, see available options.
Wattage	1.5W/ft / 3.0W/ft / 3.9W/ft / 4.4W/ft
Voltage	24V DC
Trigger Time	< 0.2s
Number of cycles	100,000
Operating Temp.	-25°C / +35°C
Max Continuous Length	Field trimmable every 4". 36ft / 1.5W/ft 22ft / 3.0W/ft 19ft / 3.9W/ft 16ft / 4.4W/ft

SOURCE

LEDs	36 LEDs/ft
Spacing	0.33" O.C.
TM30	CCT (Nominal) CRI Rf Rg R9 DUV SDCM
	2700K 98 95 102 96 0.0009 2
	3000K 98 95 102 97 0.0012 2
	3500K 97 90 98 98 0.0016 2
	4000K 96 90 98 98 0.0023 2

Strip & LED Details	Model	W/LED	Delivered Lumens*		Viewing Angle
			3000K	4000K	
	1.5W/ft	0.04W	91Lm/ft	137Lm/ft	108°
	3.0W/ft	0.08W	259Lm/ft	274Lm/ft	108°
	3.9W/ft	0.10W	351Lm/ft	366Lm/ft	108°
	4.4W/ft	0.12W	412Lm/ft	427Lm/ft	108°

* Meets Title 24 High efficacy rating.

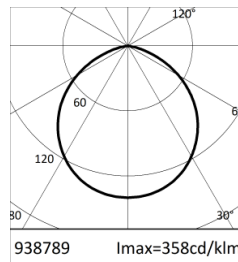
Efficacy	100Lm/W max. Refer to photometric graphs for specific values.
Lifetime	1.5W / 3.0W: L70/B20 >60,000hrs at max TA +25°C 3.9W: L70/B20 >50,000hrs at max TA +25°C 4.4W: L70/B20 >40,000hrs at max TA +25°C

DURATAPE ESSENTIAL WHITE IP67

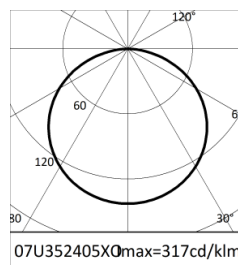
PHOTOMETRY

IES FILES SHOWN AT 1M (3.28FT) LENGTHS

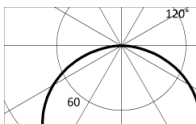
1.5W/FT



2700K		H(m)	D(m)	E _{max} (lx)	
-			108°		
Fixture Power	5W	1	2.74	140	
Source Flux	390lm	2	5.47	35	
Fixture Flux	390lm	3	8.21	16	
Efficacy	78lm/W	4	10.94	9	
938789	I _{max} =358cd/klm	I _{max}	140cd	5	13.68

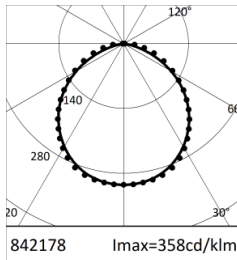


3500K		H(m)	D(m)	E _{max} (lx)	
-			108° 109°		
Fixture Power	5W	1	3.57	142	
Source Flux	450lm	2	7.13	36	
Fixture Flux	450lm	3	10.70	16	
Efficacy	90lm/W	4	14.27	9	
07U352405X	I _{max} =317cd/klm	I _{max}	143cd	5	17.83

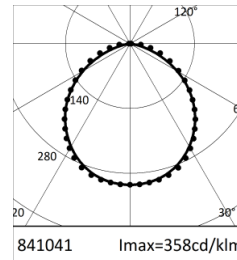


4000K		H(m)	D(m)	E _{max} (lx)	
-			108° 109°		
Fixture Power	5W	1	3.57	142	
Source Flux	450lm	2	7.13	36	
Fixture Flux	450lm	3	10.70	16	
Efficacy	90lm/W	4	14.27	9	
938758	I _{max} =317cd/klm	I _{max}	143cd	5	17.83

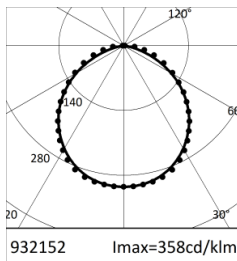
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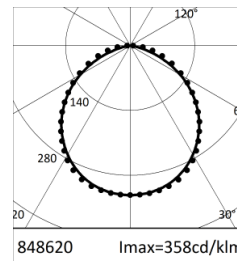
2700K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	9W	1	2.74	2.79	304
Source Flux	850lm	2	5.47	5.57	76
Fixture Flux	850lm	3	8.21	8.36	34
Efficacy	94lm/W	4	10.94	11.14	19
842178	I _{max} =358cd/klm	I _{max}	304cd	5	13.68



3000K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	9W	1	2.74	2.79	304
Source Flux	850lm	2	5.47	5.57	76
Fixture Flux	850lm	3	8.21	8.36	34
Efficacy	94lm/W	4	10.94	11.14	19
841041	I _{max} =358cd/klm	I _{max}	304cd	5	13.68

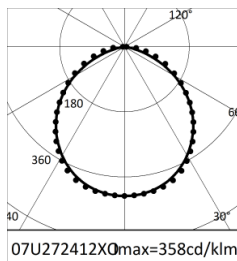


3500K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	9W	1	2.74	2.79	304
Source Flux	850lm	2	5.47	5.57	76
Fixture Flux	850lm	3	8.21	8.36	34
Efficacy	94lm/W	4	10.94	11.14	19
932152	I _{max} =358cd/klm	I _{max}	304cd	5	13.68

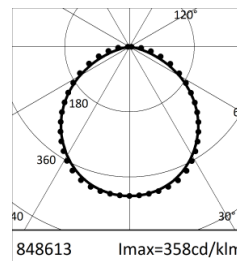


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-			108°	109°	
Fixture Power	9W	1	2.74	2.79	322
Source Flux	900lm	2	5.47	5.57	81
Fixture Flux	900lm	3	8.21	8.36	36
Efficacy	100lm/W	4	10.94	11.14	20
848620	I _{max} =358cd/klm	I _{max}	322cd	5	13.68

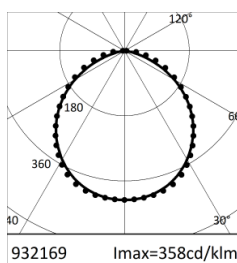
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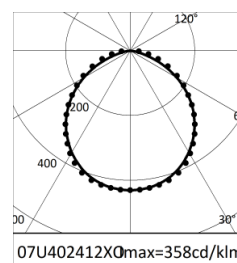
2700K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	12W	1	2.74	2.79	412
Source Flux	1150lm	2	5.47	5.57	103
Fixture Flux	1150lm	3	8.21	8.36	46
Efficacy	96lm/W	4	10.94	11.14	26
07U272412X	I _{max} =358cd/klm	I _{max}	412cd	5	13.68



3000K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	12W	1	2.74	2.79	412
Source Flux	1150lm	2	5.47	5.57	103
Fixture Flux	1150lm	3	8.21	8.36	46
Efficacy	96lm/W	4	10.94	11.14	26
848613	I _{max} =358cd/klm	I _{max}	412cd	5	13.68



3500K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	12W	1	2.74	2.79	412
Source Flux	1150lm	2	5.47	5.57	103
Fixture Flux	1150lm	3	8.21	8.36	46
Efficacy	96lm/W	4	10.94	11.14	26
932169	I _{max} =358cd/klm	I _{max}	412cd	5	13.68



4000K		H(m)	D1(m)	D2(m)	E _{max} (lx)
-			108°	109°	
Fixture Power	12W	1	2.74	2.79	430
Source Flux	1200lm	2	5.47	5.57	107
Fixture Flux	1200lm	3	8.21	8.36	48
Efficacy	100lm/W	4	10.94	11.14	27
07U402412X	I _{max} =358cd/klm	I _{max}	430cd	5	13.68

STATE THEATER LOBBY EXPANSION

609 CONGRESS STREET

EXISTING CONDITIONS OF THE CONGRESS BUILDING

@ INTERSECTION OF CONGRESS STREET | FREE STREET | HIGH STREET | OCTOBER 2023



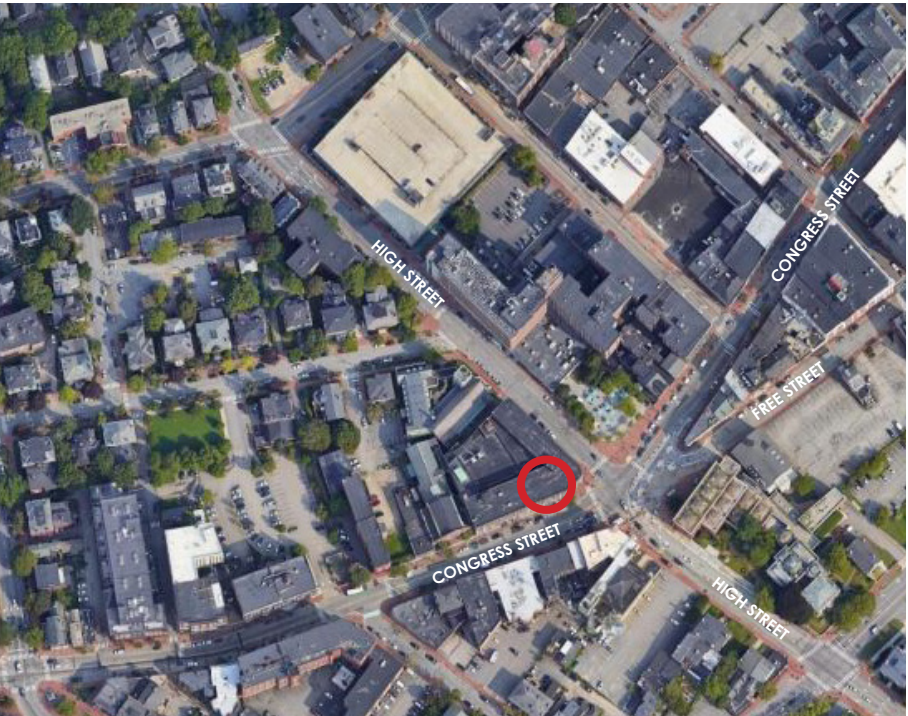
--- area of proposed scope for exterior work

PARTIAL CONGRESS STREET FACADE

c.2018



AERIAL LOCATION PLAN | NTS



BUILDING CONTEXT | LOCATION

historic preservation Public Hearing | 07.17.2024

HISTORIC BANK ENTRANCE | 609 CONGRESS ST
c. 1962



HISTORIC CONTEXT

historic preservation Public Hearing | 07.17.2024

HISTORIC BANK ENTRANCE | 609 CONGRESS ST
c. 1970



HISTORIC CONTEXT

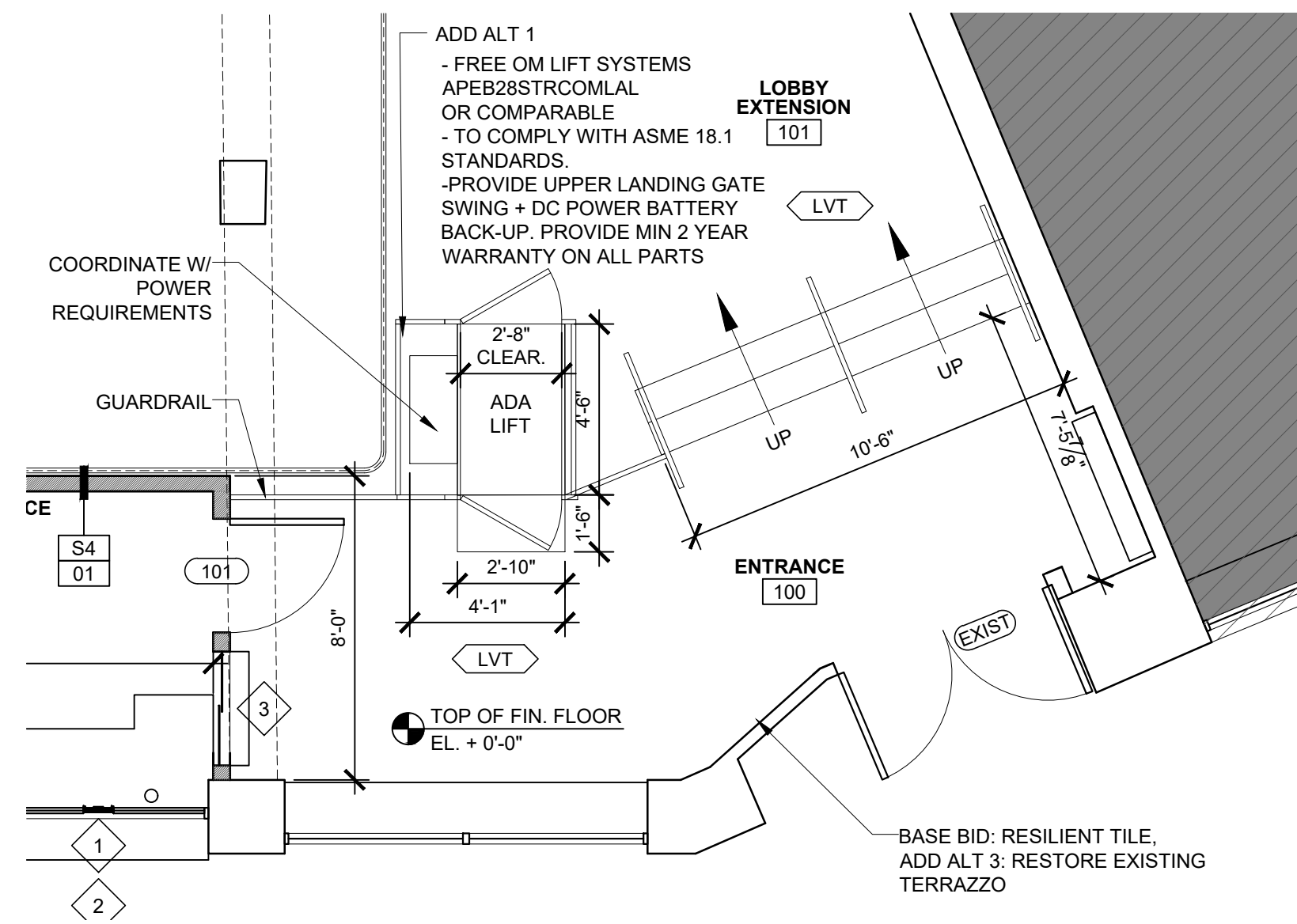
historic preservation Public Hearing | 07.17.2024

HISTORIC STATE THEATER ENTRANCE
c. 1979

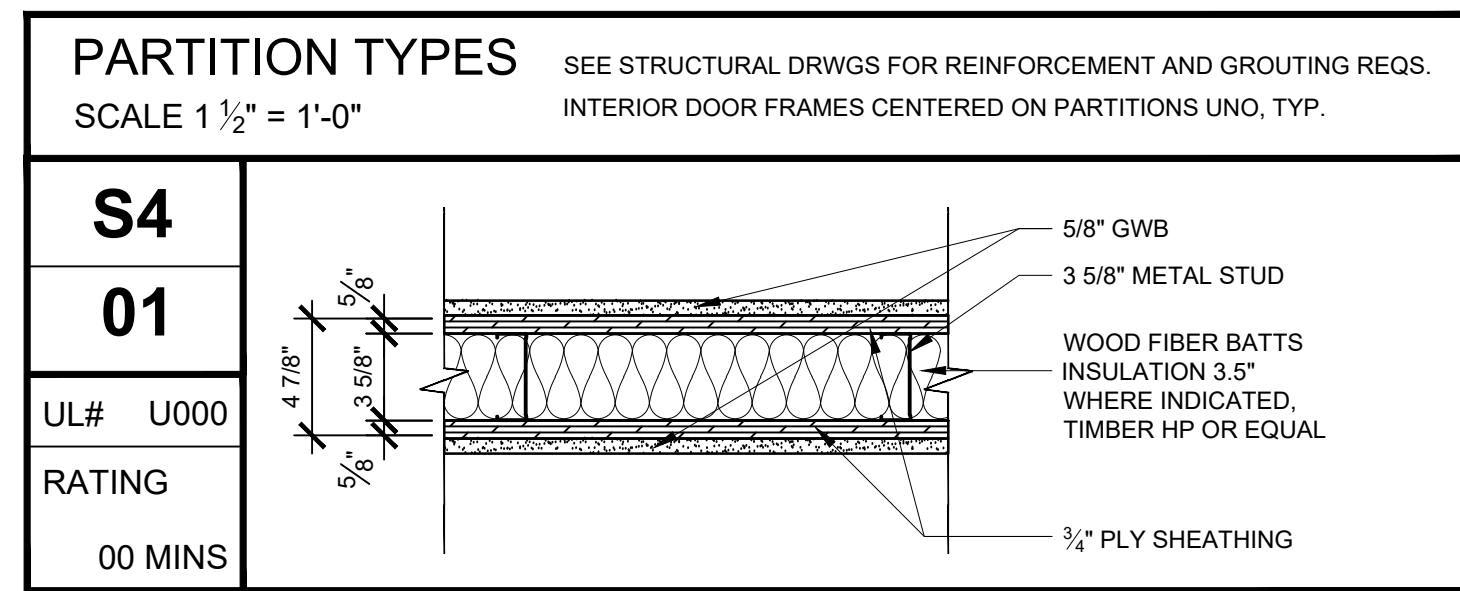


HISTORIC CONTEXT

historic preservation Public Hearing | 07.17.2024



2 PARTIAL FLOOR PLAN - ADD ALT ADA LIFT
SCALE: 1/4" = 1'-0"



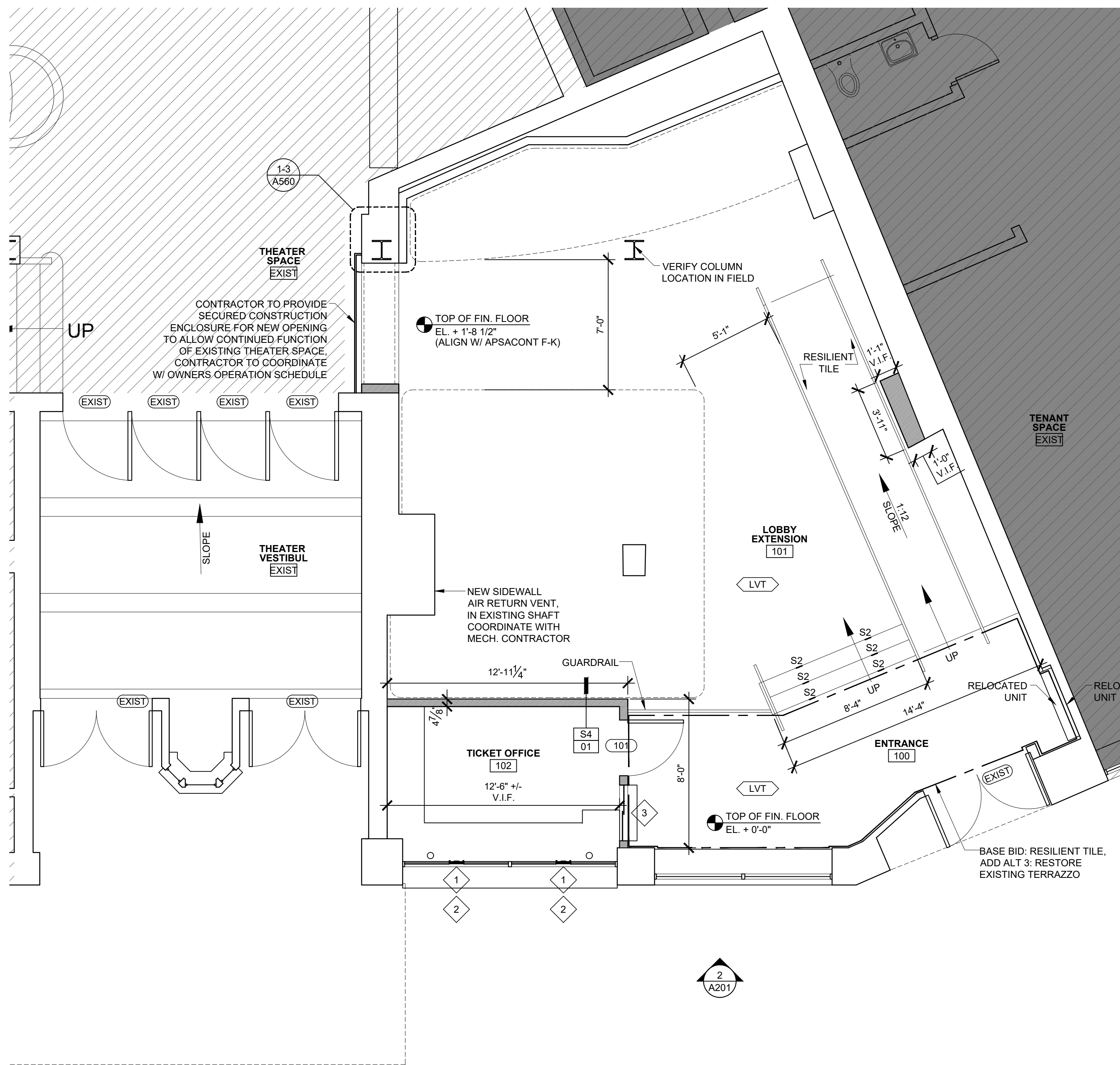
GENERAL NOTES

- NEW WALL
- EXISTING WALL
- OUTSIDE AREA OF WORK
- THEATER OCCUPIED SPACE
- NON-THEATER OCCUPIED SPACE
- ADA CLEARANCE

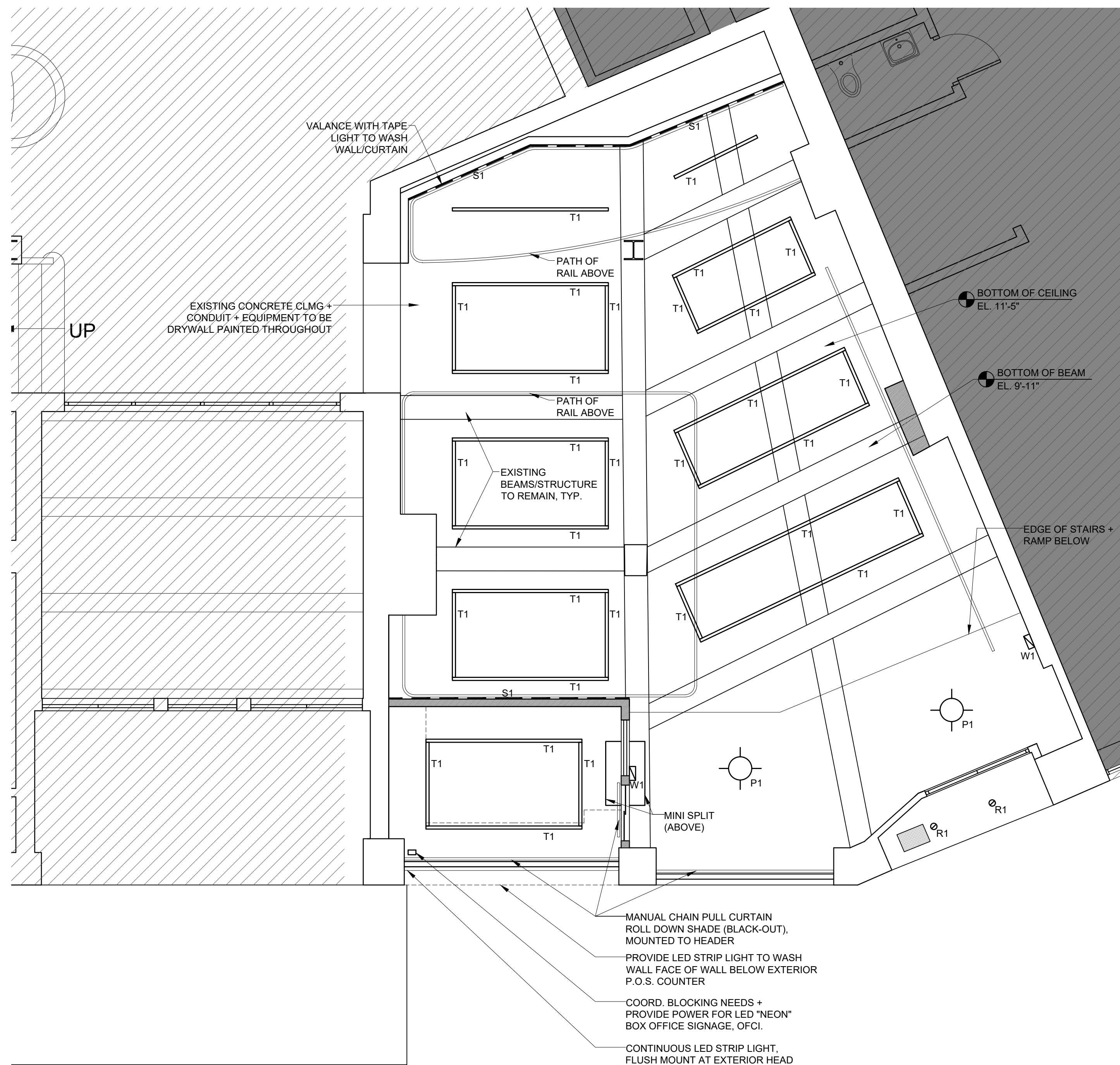
- THEATER OPERATION TO BE MAINTAINED THROUGH DURATION OF CONSTRUCTION
- SEE A551 FOR FINISH LEGEND
- PROVIDE STEP LIGHTS IN FACE OF RISERS
- MEP + FA ARE DESIGN ASSIST BY OWNERS SUB-CONTRACTORS.

LIGHTING LEGEND

- P1: PENDANT LIGHT FIXTURE
- S1: WALL WASHER LIGHT FIXTURE
- R1: RECESSED LIGHT
- T1: TRACK LIGHT
- W1: WALL MOUNTED LIGHT
- S2: STEP LIGHT



1 PROPOSED FLOOR PLAN
SCALE: 1/4" = 1'-0"



3 REFLECTED CEILING PLAN
SCALE: 1/4" = 1'-0"



75 York Street
Portland, Maine 04101
simonsarchitects.com
207.772.4656



1 DEPOSIT STREET, SUITE 23
FREEPORT, MAINE 04032
TEL: 800-242-1989

PROJECT NAME:

**STATE THEATER
LOBBY EXPANSION**

609 CONGRESS STREET
PORTLAND, MAINE 04101

SEAL:

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REVISION:

1	DATE
2	DATE
3	DATE
4	DATE
5	DATE
6	DATE

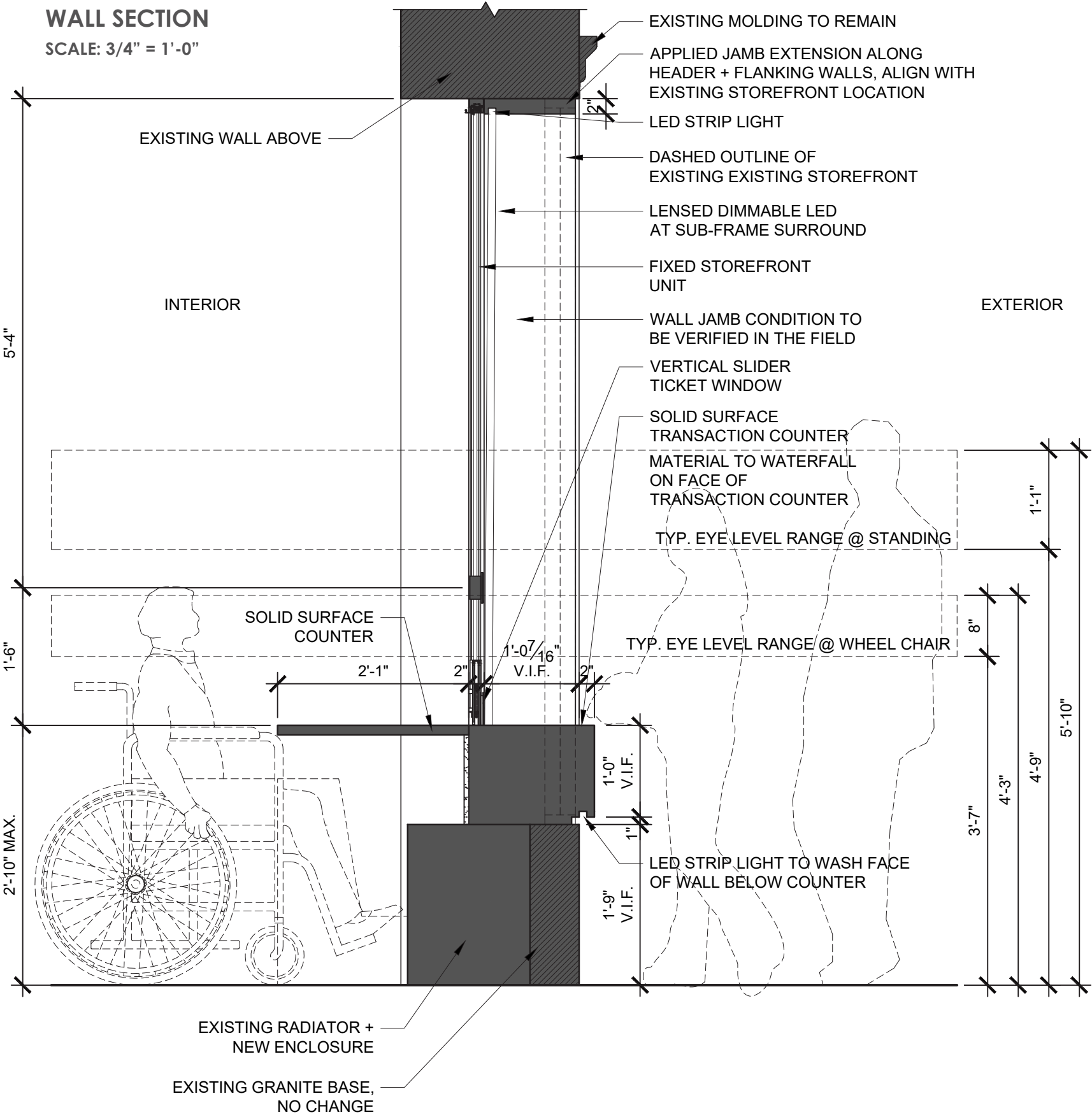
DATE OF ISSUE: JULY 17, 2024

PROJECT NUMBER: 2021-0240

STATUS: HISTORIC PRESERVATION PUBLIC HEARING

**FIRST LEVEL
FLOOR PLANS**

A101



PORT CITY MUSIC HALL

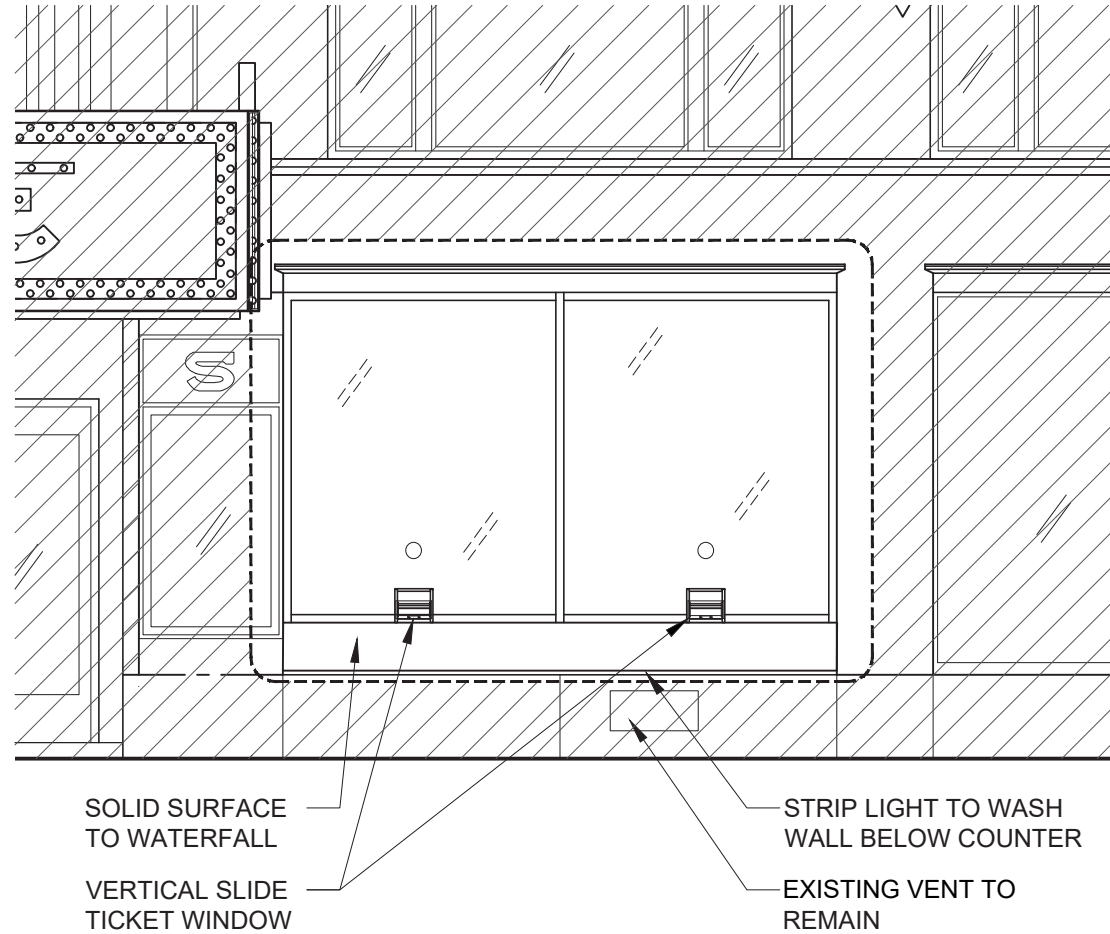


ELEVATION
SCALE: 1/4" = 1'-0"

TICKET WINDOW



TO BE ORDERED IN CUSTOM SIZE
+ COLOR TO MATCH EXISTING
ADJACENT WINDOWS



PROPOSED BOX OFFICE POINT OF SALES COUNTER
historic preservation Public Hearing | 07.17.2024



EXISTING CONDITIONS + RENDERINGS

historic preservation Public Hearing | 07.17.2024



RENDERING

historic preservation Public Hearing | 07.17.2024



RENDERING

historic preservation Public Hearing | 07.17.2024





STATE THEATER ENTRANCE | 609 CONGRESS ST
c. 2018



HISTORIC CONTEXT

historic preservation Public Hearing | 07.17.2024

Portland Historic Resources Inventory

Property Address: 615 Congress Street – Congress (State Theater) Building

CSHD Map Key # 133

Local Rating: Landmark (Contributing)

National Register: Contributing – Spring Street Historic District

Date of Placement: Local 08/01/90 National 04/03/70

Architectural Description/Historic Significance:

Congress (State Theater) Building

1929

The prominent, six-story Congress (State Theater) Building at the northwest corner of Congress and High Streets was built in 1929. Designed by Herbert W. Rhodes in the Colonial Revival style, it is a very simple example of the style. From the time of its construction, it has contained retail businesses and office tenants, as well as the State Theatre. The Theatre's elaborate Spanish Revival interior was created at a time of extravagance in theatre design and remains today remarkably untouched. Restoration of the State Theatre has preserved Portland's last great movie palace and has helped to revitalize upper Congress Street.

The building features ten storefront bays on the Congress Street elevation, a diagonal corner storefront, and six more storefronts facing High Street. Dominating the Congress Street façade is the main entrance to the theatre, which is three stories in height.

The Theatre entrance is recessed into the building, defined by a large marquee. Huge chains support the marquee from the building. The second and third story portions of the entrance are framed by limestone pilasters; a cornice of urns, scrolls and moldings, and a simple but impressive stone arch. Within the frame is an elaborate window arrangement of arches and circles. All combine to make this Spanish Revival entrance unique in Portland.

The remainder of the building is stately in proportion and basic in execution. The storefronts were originally all identical, with recessed side entrances, granite bulkheads, large display windows in bronze frames, bronze doors and uniform metal sign panels with awning bars above the windows.

The storefronts are separated by stone piers, which support a plain stone lower cornice. The stone is used as the primary material at the second floor, surrounding large Chicago-style windows, each with a transom window in the same three-part configuration, centered above each storefront. The stonework is capped by a large rolled cornice to terminate the two-story base of the building. The third through sixth floors feature simple brick construction with double-hung windows in pairs or in threes. The only interruption of the brick is in the form of stone pilasters, which visually support the undecorated limestone cornice.

In addition to the Theatre entrance, there is a main building (upper floors) entrance on Congress Street. This doorway features a simple metal canopy over a recessed double door with sidelights. Another entrance on High Street also accesses and elevator to all floors.

Windows in the third through fifth floors were replaced with aluminum units in the 1990s. The second story windows were replaced in 2007, with review and approval by the Historic Preservation Board. Elaborate copper creating was removed without approval from the top of the street-facing facades in 2006, reportedly to prevent it from falling. Its restoration should be a high priority.



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: July 12, 2024
RE: ReCode, Phase II, Proposed Changes to the Historic Preservation Ordinance,
Second Workshop
MEETING: July 17, 2024

A legal ad announcing the Historic Preservation Board's meeting on July 17, 2024 was published in the Portland Press Herald on July 4, 2024 and July 5, 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

PREVIOUS REVIEW BY HISTORIC PRESERVATION BOARD

May 29, 2024, Workshop:

During the May 29 workshop, the Board began review of the draft revisions to the Historic Preservation Ordinance. Historic Preservation & Planning Staff provided an introductory presentation providing background on ReCode as a whole, and highlighting some proposed changes and topics for discussion. Staff had received a number of questions in advance of the meeting from Board members, and these questions were addressed in the staff memo provided in advance of the meeting.

The Board focused on several topics including the relationship between the Historic Preservation Review Standards and the underlying zoning, the wording of the standards for review, review of roof-mounted solar installations, the authority of the Board to review applications for Certificates of Economic Hardship, and the category of Landmark for designation of individual properties.

STAFF COMMENTS

After the first workshop, staff received requests from several Board members for an additional workshop on ReCode. In preparation for this meeting, it was requested that Board members provide staff with questions, comments, or topics of particular interest. Staff received responses from several Board members and have broken these down into two categories: discrete questions which can be addressed directly and themes that should be flagged for further discussion during the workshop.

Additionally, staff have received comments from the Maine Historic Preservation Commission, which are included as Attachment 5. Staff has provided responses in Attachment 5; however, several items require discussion by the Board. These items have been included below under the topics for discussion.

A number of public comments on the draft language have been received since the draft was released. Staff responses to all of these comments are included under Attachment 6.

DISCRETE QUESTIONS FROM THE BOARD:

TABLE 1: HPB Questions + Comments re ReCode Second Wave Draft	
<i>Designations</i>	
16.2.2 <i>Criteria for designations.</i> Planning Board and City Council final vote on designation removes requirements to consider criteria and only comprehensive plan. This seems like it would have a huge effect on how they vote by removing the HP criteria from consideration. I would like to discuss the effects of this change in greater detail.	<i>The proposed language for Planning Board and Council consideration is as follows:</i> <i>“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.” (Emphasis added).</i> <i>The intention is that the Planning Board and Council would weigh the criteria for designation (with the recommendation of the Historic Preservation Board) along with the Comprehensive Plan, as is the process under the current language.</i>

<i>COA review process</i>	
<i>Modernizing noticing requirements for quicker scheduling and more affordable noticing.</i> If a project is tabled or takes multiple workshops, it's unfortunate that current noticing requirements put such a time and monetary burden on the applicant. Perhaps the postcards and newsprint ads of the first meeting invite abutters to register for email/text/digital noticing of subsequent meetings? Let's at least have the Code give us the flexibility to modernize noticing in the future.	<i>Staff do not find that noticing requirements are currently driving the turnaround between meetings, but rather that the need for time to produce revised drawings and for staff to review revised plans necessitates time between meetings.</i> <i>Staff are considering removing the requirement for legal ad notice of individual projects below a certain scale in an effort to reduce the cost of review for small projects. Legal ad notice could be provided for meetings generally, with only projects of a particular scale (such as Historic Designations or Major Site Plans) being listed separately. Staff believe this could substantially reduce the cost of reviews for property owners.</i>
<i>Considering Materials Finish and Tone as an Architectural Device.</i> In most cases, we don't want or need to regulate color, but increasingly, it's being used as an architectural device to make building elements more recessive. The HP program should not be picking specific colors, but making tone, materials treatment/finish, or maintenance as conditions of approval should be allowed when they are used as architectural devices to meet the standards. And yes, the board should weigh how practical enforcement would be when a condition is made. (This is not "always paint it green", it's "fourth story painted a recessive color".)	<i>Standard 17.8.3(B.4) (16.7.3(B.4) in the draft) already affords the Board broad review of materials:</i> <i>"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."</i> <i>The exclusion of paint color from review is consistent with the approach taken on historic buildings as well, given that repainting is considered ordinary maintenance and not subject to review. This means that requiring certain paint colors or families of colors would be essentially unenforceable. Where Board members have concerns about an applicant's use of paint color as a device, they should focus discussion on whether other elements (such as texture, scale, assembly, and composition of materials) are achieving an appropriate effect. It's also worth noting that integral colors such as with masonry or unpainted metal are subject to review by the Board.</i>
<i>Consent Agenda Items for Change Orders.</i> With new CoA's being valid for three years, increasingly we'll have applicants come back to the office for significant change orders ("You approved an iron fence... The supplier went out of business and I can't find a reasonable replacement. Can I just install this wood fence I found instead?") Let's not subject a past applicant to a new public hearing for a change order.	<i>Draft language under 16.6.14 is intended to provide clear thresholds for determining whether changes to approved plans are subject to administrative or Board review. Generally, if a change affects something that could otherwise be reviewed administratively, it will not return to the Board merely by the nature of the overall project having been reviewed by the Board. However, if an applicant where to substantially alter their plans (a substantial reorganization in the façade or increase in scale) the project may need to return to the Board for review and would follow the normal review process.</i>

TOPICS FOR DISCUSSION:

Landmark Category/Classification (16.2.1)

As stated under 16.2.1(A), a landmark may have *particular* or *individual* significance. When overlapping with a district, a landmark could have both particular and individual significance. Outside of districts, a landmark must at least have individual significance and could also have particular significance. The three categories of historic designations are not intended to be hierarchical. However, with the notion of particular significance, the category of landmark has been applied to stand-out buildings within historic districts.

Landmark designation is the appropriate mechanism for historically designating individual properties. The ordinance does allow for discontinuous districts, but practically speaking the Board may 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.

It is also worth noting that landmark is not a classification within a historic district or historic landscape district, but rather a separate designation that has been applied overlapping the district. All landmark structures that are also within historic districts or historic landscape districts would be considered contributing to the district as well. Additional language will be added to clarify this.

Criteria for Designation (16.2.2)

Maine Historic Preservation Commission staff have identified that the existing Historic Designation Criteria are not consistent with the National Register Criteria. Staff have noted that the six existing criteria have been a component of the Historic Preservation Ordinance since its establishment in 1990, and no significant changes were proposed under ReCode for 16.2.2(A.1-A.6). However, based on conversations with Maine Historic Preservation Commission staff, City staff are recommending some small changes to the existing criteria for designation as outlined below.

Staff would also suggest that the Board consider whether, as part of this update, the criteria for designation should be more heavily modified to clearly align with the National Register Criteria. There are some potential advantages to paralleling the National Register criteria, such as being able to point more explicitly to National Register guidance on the interpretation and application of the criteria and assessment of integrity. However, these six criteria have been utilized in Portland since the establishment of the Historic Preservation Program.

Current Criteria with Proposed Changes

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 ~~heritage development~~ of the City of Portland, State of Maine, New England region, or the United States.
4. Significant architecture. ~~Exemplification Embodiment~~ of a significant architectural type, style, or design, period, or method of construction. ~~distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.~~
5. Significant designer. Identification as a ~~significant example of~~ 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.

National Register Criteria

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded, or may be likely to yield, information important in prehistory or history.

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

In an effort to streamline and reinforce the existing protections afforded to properties that are listed on the National Register of Historic Places, staff had originally proposed to revise the protections to include an automatic prohibition on demolition of such structures with several exemptions that could be pursued by property owners. Staff have since received comments from Maine Historic Preservation Commission staff that this approach is not consistent with National Park Service guidance, which is that no protections should be automatically afforded to National Register-listed properties by municipalities.

Staff explored revising this section to include a demolition delay provision; this would achieve the same goals of the original language, creating an opportunity for the public to weigh in on the potential loss of known significant buildings that are not locally designated, allowing time for the community, advocates, and city staff to work with the property owner to explore alternatives to demolition, and providing property owners with reasonable and predictable paths towards demolition where warranted. However, staff were further advised by Maine Historic Preservation Commission staff that a demolition delay would similarly be inconsistent with National Park Service guidance.

Staff are therefore looking for Board input on this part of the ordinance. For instance, the existing provisions of the code that automatically initiate the local historic designation process could be retained, or the code could be revised to leave the question of initiating the designation of a National Register-listed property to the same groups that can normally initiate designations, including two members of the Board.

Reviewable activities (16.6.1)

Based on Board feedback, staff are proposing to change Certificate of Appropriateness to Certificate of Approval. Staff is recommending that the Board consider Historic Preservation Approval, which aligns with terminology for other approvals in the Land Use Code (i.e. Site Plan Approval).

As discussed at the first workshop, the published draft mistakenly reads as if a certificate would be required only for work also requiring a building permit. The intention of the draft was not to substantially reduce the applicability of Historic Preservation review given that significant exterior alterations (such as removal of character-defining trim or details) can be completed without a building permit. Staff therefore suggest a revision to the introduction to the applicability section as follows:

"A certificate of approval shall be required prior to undertaking any new construction, additions, exterior alterations, site alterations, signage, or the relocation of structures affecting any property within the boundaries of a historic designation as identified in Table 16-A. The issuance of a certificate of approval shall also be a condition precedent to the issuance of any permit authorizing any

such work as noted above. Notwithstanding the above, the following activities shall be considered exempt:" (see 16.6.1(A-L) For the proposed list of exemptions)

Exempt activities (16.6.1)

Several Board members expressed concerns over the proposed exemption for roof-mounted solar energy systems. The basis for the proposed change is in light of fairly robust solar installation standards that already exist within the code (see 6.4.38 (A) & (C) of the draft code), as well as a desire to simplify the review of an important tool in increasing the sustainability of Portland's historic structures. In light of Board comments and based on feedback from the Maine Historic Preservation Commission on this issue, staff are proposing to provide some additional clarification on what would be exempt:

"1. Roof-mounted solar energy systems where the system:

- Is consistent with all other city requirements,
- Is installed reversibly with no damage to any historic roofing materials,
- Is installed on only non-street-facing roof planes on landmarks or contributing properties, and
- Any associated electrical equipment is installed on non-street-facing elevations.

Several board members suggested that review of solar should be extended to Landmarks; however, staff have concerns that requiring a higher threshold for review of Landmarks may create a deterrent for property owners interested in landmarking their properties.

Upon further internal discussion, staff are also interested in including an exemption for heat pumps/other exterior ground-mounted HVAC equipment. At present, heat pumps require a significant portion of staff time to review when the majority of cases could likely be addressed through a few standard conditions. Staff are proposing that the following be exempt:

"1. Ground-mounted Heat Pumps and HVAC equipment where:

- Exterior units are installed back from any open space between the street and any associated building or at least 30' from public rights-of-way, whichever is greater, and
- Any associated line hides, conduit, vents, and other equipment or penetrations are installed on non-street-facing elevations.

Standards for Review. (16.7)

During the first workshop, several Board members commented on the tone and phrasing of the Standards for Review of Alterations, noting that they tend to be negative or prohibitive. The recommendation was made that the standards could be reworded to be more positive and directive. Staff will be revising the wording of the standards to incorporate these comments. Additionally, Staff have received some comments from Maine Historic Preservation Commission staff on some areas where the existing alteration standards are inconsistent with the Secretary of

the Interior's Standards for Rehabilitation. Language will be revised as necessary to address these comments.

The Board also discussed the relationship between the underlying zoning and the Standards for Review of New Construction and points of friction that have arisen during various reviews. The Board was divided on whether to limit the Board's authority to control scale and form, and whether members would like to see additional variances to the base zoning be grantable by the Board. Scale and form are important components of design and should be considered by the Board, just as they are by the Planning Board, in reviewing the compatibility of proposed new construction. The draft language relating to the underlying zoning under 16.7.3-A.6 has proven to be easily misinterpreted and is recommended to be removed.

In the interest of clarity and consistency across the land use code, staff are not proposing any new zoning tools or processes that would create additional exemptions or variances from the underlying zoning specific to Historic Preservation. Existing variances to zoning are contained within 2.3.11 and applicants may avail themselves of those as relevant. As proposed, the underlying zoning remains the starting point for projects. Through design review with the Historic Preservation Board or Planning Board, projects are further refined based on the applicable review standards which may or may not result in adjustments to the building envelope. In certain instances, this may result in the zoning envelope being molded to fit the surrounding context. In other instances, no reduction of the permitted zoning envelope may be necessary and the Board may rely on composition of the façade and detailing.

Considering the Board's discussion of the how to assess compatibility, Staff are seeking Board feedback on the question of whether some of the language within the Standards for Review of New Construction could be adjusted. The current standards often refer to compatibility with "structures, objects, public ways, and places to which it is visually related." Staff would propose that this could be modified to compatibility with the "contributing buildings, structures, objects, and sites of the Historic Designation." This would add greater clarity that consideration of precedent should be limited to contributing buildings, but also that the broader context of a district as a whole may be referenced, rather than just buildings in the immediate vicinity/eyesight.

Economic Hardship

Several Board members questioned the proposed change that would make the Historic Preservation Board the reviewing authority for Certificates of Economic Hardship. Staff provided some background at the first workshop that the proposed change was intended to acknowledge the Board's expertise in examining questions around the feasibility of rehabilitation and reuse of historic structures. This is a common approach in many other Historic Preservation Programs, including Biddeford, Bangor, and Lewiston in Maine.

However, staff have received some public comment requesting that the Zoning Board of Appeals remain the reviewing authority for Certificates of Economic Hardship. Additionally, MHPC has

recommended that the review of Certificates of Economic Hardship remain under the Zoning Board of Appeals. Staff still find the proposed change to be reasonable, but look to the Board for final input on the matter.

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)
5. MHPC Staff Comments and City Staff Responses
6. Guidelines for the Certified Local Government Program in Maine
7. National Register Bulletin: How to Apply the National Register Criteria
8. Public Comment and Staff Responses

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/5a75f43a692ebee1159413d/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 curblin and the edge of the sidewalk closest to the street.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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.



DEFINITIONS

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

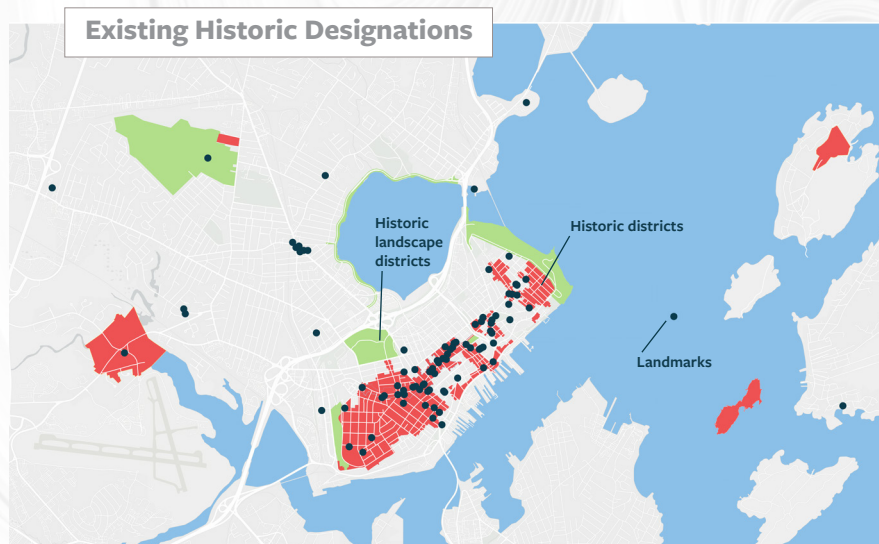
The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of any

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.

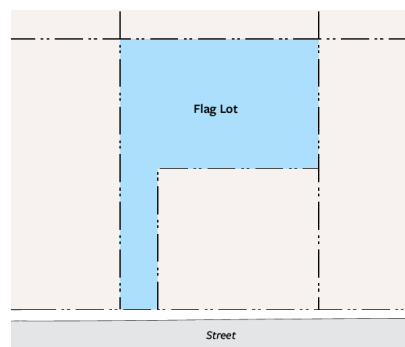


FIGURE 3-A: FLAG LOT

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 archeological 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~~ nominate 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.

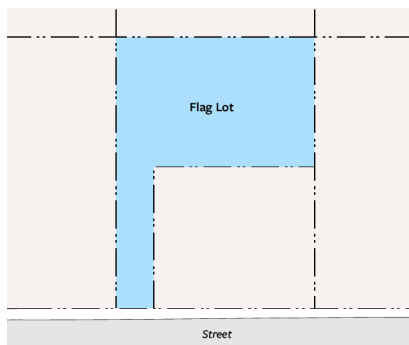


FIGURE 3-A: FLAG LOT

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.

16.2.2 16.2.1 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.

16.516.3 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~~ Nomination 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~~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 30~~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.

~~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.

16.8.6~~16.8.5~~ Determination of no reasonable use **issuance**

A. If the determination of the Historic Preservation Board of Appeals is that ~~the~~a denial of the certificate of appropriateness ~~or the prohibition on demolition under subsection 16.3.6~~ has resulted in the ~~denial~~loss 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~~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.

Maine Historic Preservation Commission Staff Comment and City Staff Responses - July 12, 2024

Article	Topic	Comment	RESPONSE
2. Administration	2.2.1 Composition	The demonstrated interests of the Board Members does not align with the requirements of the State CLG guidelines as outlined on Page 6 of the guidelines.	Language around the composition of the Board and qualifications of the members will be adjusted to align with the CLG Guidelines (see 2.B.a.2, Page 6 of the CLG Guidelines)
2. Administration	2.2.9 Jurisdiction and Authority	A number of the minimum duties for a CLG body as outlined in the state CLG guidelines are missing from this section.	In conversation with MHPC Staff, the following were identified as not being addressed through the draft text (see 2.B.b in the CLG Guidelines, page 7): 8) acting as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and 9) working toward the continuing education of citizens within the CLG's jurisdiction regarding historic preservation issues and concerns. Jurisdiction and Authority will be revised to address the above requirements
3. Definitions	General	As stated in the state CLG guidelines: "definitions- must, at a minimum, include definitions of designation and protection (i.e. Historic District, Historic Landmark, Historic Site) that meet federal statutory definitions. However, the list of definitions should include any term that may be subjective or may not be recognized by everyone;" Looking at the new land use codes/ordinance, there are multiple definitions related to the historic preservation field that are missing from this section.	A definition for archaeological site will be added under article 3. A Historic Preservation-specific definition for site will be added under article 3. A Historic Preservation-specific definition for object will be added under article 3.
3. Definitions	Buildings, Sites, Structures, Objects, and Districts	The National Register of Historic Places classifies (and defines) historic properties as Buildings, Sites, Structures, Objects, and Districts. The definition section of Portland's ordinance defines both Building and Structure with some overlapping characteristics. Why is this? The National Register definition of Building and Structure are distinctly different.	Language will be revised to consistently include building as distinct from structure.
16. Historic Preservation	16.2 Historic Designations	The National Register of Historic Places classifies (and defines) historic properties as Buildings, Sites, Structures, Objects, and Districts. The definition section of Portland's ordinance defines both Building and Structure with some overlapping characteristics. Why is this? The National Register definition of Building and Structure are distinctly different. Please note that this is a repeat from the definition section. However; our office would like to stress the importance of the National Park Service classifications and definitions within the field of historic preservation.	Language will be revised to consistently include building as distinct from structure.
16. Historic Preservation	16.2.2 Criteria for Designation	The criteria for designation should align and be consistent with the Secretary of the Interior's Standards for Identification and Registration.	The proposed criteria are the same as the existing which were established in 1990 and previously certified. The Board will be asked to consider whether to retain our existing criteria or if the criteria should be revised to align more closely with the National Register. At minimum, small adjustments will be made to better align the criteria with the National Register. Reference may be made to the National Register Bulletin to provide better guidance.

Maine Historic Preservation Commission Staff Comment and City Staff Responses - July 12, 2024

Article	Topic	Comment	RESPONSE
16. Historic Preservation	16.2.2 Criter for Designation	It appears that a designation criterion for archaeological sites is missing.	Under the current and draft language, archaeological significance is captured under the other criteria as an type of significance. See above.
16. Historic Preservation	16.2.2(B)	The National Register of Historic Places criteria includes seven aspects of integrity: "location, design, setting, materials, workmanship, feeling, and association." Some of these are missing from this section.	Integrity will be revised to align with the seven aspects of integrity laid out in the National Register Bulletin. Reference will be made to the National Register Bulletin to provide better guidance.
16. Historic Preservation	16.2.2(C)	Considering the effect of a proposed historic designation with the framework of the Comprehensive Plan is not consistent with Maine's CLG program guidelines. This provision introduces a criterion that has nothing to do with either the proposed designation's historic, architectural or archaeological significance or its integrity. Furthermore, this provision does not align with the Secretary of Interior's Standards for Identification and Registration. As stated in Chapter 9 of the National Park Service's Historic Preservation Fund Grant Manual, 2007: Designation is defined as "the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government. Designation includes the identification and registration of resources according to State or local criteria which must be consistent with the Secretary of the Interior's Standards for Identification and Registration. Adoption of the National Register criteria is encouraged." In addition, this type of provision bears a resemblance to the concept of "Projects of Special Merit" that existed in an earlier form of Portland's historic preservation ordinance. That provision was one of the factors that prevented Portland from becoming a Certified Local Government.	Consideration of the Comprehensive Plan by the Planning Board and Council has been a component of the Historic Preservation ordinance since its establishment in 1990. (See 17.4.1(D) & 17.5.8(B)) This was previously certified by MHPC and NPS.
16. Historic Preservation	16.3.7(D)	This section is not consistent with Maine's CLG guidelines if 16.2.2.C. is incorporated into the ordinance.	Consideration of the Comprehensive Plan by the Planning Board and Council has been a component of the Historic Preservation ordinance since its establishment in 1990. (See 17.4.1(D) & 17.5.8(B)) This was previously certified by MHPC and NPS.
16. Historic Preservation	16.3.8(B)	If alterations were made after the designation but without the Historic Preservation Board's approval, what penalty will the owner face?	This section is intended to address resources that may have been overlooked during the original designation process, in particular significant site features or accessory structures. The proposed language is meant to be a clarification of existing language located under 17.7.1(B) Under 16.10 completing work without having recieved an approval would constitute a violation of the code. The owner could be subject to fines of \$100 per day until corrected. Additionally, future approvals could be withheld.

Maine Historic Preservation Commission Staff Comment and City Staff Responses - July 12, 2024

Article	Topic	Comment	RESPONSE
16. Historic Preservation	16.5 Protections for Properties Listed on the National Register of Historic Places	16.5 The National Park Service advises that actions taken at the local level to protect National Register listed or eligible properties need to go through the local designation process. They should not be automatically afforded protection at the local level simply by virtue of their having been listed or determined eligible by the actions of other governmental entities (i.e. the NPS or the Maine Historic Preservation Commission). Since National Register listing does not subject an owner to any restrictions (except and unless they are involved in a federal undertaking that may affect an historic property), there should be no automatic strings attached to the property at the time of listing. This entire section should be deleted. As stated in Chapter 9 of the National Park Service's Historic Preservation Fund Grant Manual, 2007: "Protection is defined as the "a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to a local government becoming a Certified Local Government. The CLG's local protection review process of the Act applies only to properties designated pursuant to State or local laws and procedures. This would not include properties listed on or determined eligible for the National Register of Historic Places unless such properties also were designated under the appropriate State or local process."	This section will be revised to eliminate any automatic regulations placed upon properties based on their having been listed on the National Register of Historic Places.
16. Historic Preservation	16.6.1(I)	Roof mounted Solar should be a reviewed activity and reviewed with the SOI's Standards	Language will be revised to include an exemption for roof-mounted solar that are consistent with the requirements that are typically applied during reviews (such as not damaging any historic roofing, or being located on non-street-facing roof planes). Installations that do not meet those requirements would be subject to review.
16. Historic Preservation	16.7 Standards for Review of Application for Certificate of Appropriateness	Even though the SOI's Standards are spelled out, it is recommended to reference them since there are several SOI's Standards regarding sustainability, flood adaptation, and rehabilitation. There is mention about archaeology within Section 16, but only a small paragraph that discusses possible mitigation. We suggest that this section be expanded to describe what exactly mitigation may be required by the HPB	Language will be revised to make reference to the Secretary of the Interior's Standards for Rehabilitation specifically.
16. Historic Preservation	16.7.2 (E)	Is there a definition for "sensitivity"?	The standard will be revised to align with Secretary of the Interior Standards for Rehabilitation
16. Historic Preservation	16.7.3(A.6)	This provision does not appear to be consistent with the SOI's Standards	This provision will be removed.

Maine Historic Preservation Commision Staff Comment and City Staff Responses - July 12, 2024

Article	Topic	Comment	RESPONSE
16. Historic Preservation	16.8 Certificate of Economic Hardship	Why has this Section been moved from the Board of Appeals to Historic Preservation? This not a responsibility other CLG communities in Maine currently have under their jurisdiction. We recommend that this stays with the Board of Appeals.	There is no requirement that Certificates of Economic Hardship be reviewed by the Zoning Board of Appeals. The rationale behind the change was that the Historic Preservation Board has the expertise to interrogate the evidence pertaining to the viability of rehabilitation of a Historic Structure in a way that the Zoning Board of Appeals does not. We have recieved mixed feedback on this question from the Board and will look to them for final consideration of whether they agree with the notion that the Historic Preservation Board is best equiped to interograte questions of hardship.

GUIDELINES
FOR THE
CERTIFIED LOCAL
GOVERNMENT PROGRAM
IN
MAINE

Maine Historic Preservation Commission

September 1985
Revised September 2000
Revised March 2019

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1. STATEMENT OF PURPOSE

The purposes of the Certified Local Government Program, as outlined in Chapter 9 of the National Park Service's Historic Preservation Fund Grants Manual, are: (1) to ensure the broadest possible participation of local governments in the national historic preservation program while maintaining standards consistent with the National Historic Preservation Act (Act), and the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation;" (2) to enrich, develop, and help maintain the preservation of prehistoric and historic sites, structures, objects, buildings, and districts by establishing and maintaining local historic preservation programs in partnership with the State Historic Preservation Officer (Maine Historic Preservation Commission); and, (3) to provide financial and technical assistance to further these purposes. Such partnerships will help to assure that:

- historic preservation issues are understood and addressed at the local level and integrated into the local planning and decision-making processes at the earliest possible opportunity;
- local interests and concerns are integrated into the identification, evaluation, nomination, and protection processes of the Maine Historic Preservation Commission (MHPC);
- information concerning local historic preservation issues is provided to the MHPC and to the public;
- local historic resources legislation and historic preservation commissions are established in municipalities where they do not yet exist and are updated, if necessary, where they already exist; and
- information in the Maine Historic Resources Inventory can be made available to the local community to use in identifying and defining community and neighborhood development and conservation areas.

By participating in the identification, evaluation, and protection of historic resources within their communities, Certified Local Governments (CLG):

- assume a leadership role in the preservation of historic resources in their community;
- have an advisory role in the National Register of Historic Places (National Register) nomination review process;

- participate in statewide historic preservation planning;
- are eligible to compete for grant funds from the annual CLG pass-through;
- receive technical and advisory services from MHPC;
- receive state-wide and national acknowledgment of the quality of the local historic preservation program; and
- make a written commitment to their own citizens and the citizens of Maine that their local heritage is important and worth protecting.

2. FEDERAL MINIMUM REQUIREMENTS FOR CERTIFICATION

Any general purpose political subdivision of the state of Maine that also meets the criteria set forth in this document is eligible to apply for certification.

36 CFR Part 61.6 (e) of the National Historic Preservation Act (Act), as amended, contains five broad standards which must be met by a local government seeking certification. The local government:

- must enforce appropriate state or local legislation for the designation and protection of historic properties;
- must establish an adequate and qualified historic preservation review commission by state or local legislation;
- must maintain a system for the survey and inventory of historic properties that furthers the purposes of the Act;
- must provide for adequate public participation in the local historic preservation program, including the process of recommending properties to the National Register; and
- must satisfactorily perform the responsibilities delegated to it under the Act.

The following sub sections outline how these requirements are met through the guidelines set forth by the MHPC. A more in-depth explanation of these federal standards can be found in Chapter 9, Section D of the Historic Preservation Fund Grants Manual (most recent version).

A. MINIMUM REQUIREMENTS FOR LOCAL LEGISLATION

Local legislation for designation and protection of historic properties by CLGs in Maine is required and must contain the following components:

- 1) **statement of purpose**- should give a brief overview of why the ordinance was created and its intent. This should be carefully considered; a statement of purpose may be used to determine whether a decision related to the ordinance is justifiable;
- 2) **definitions**- must, at a minimum, include definitions of designation and protection (ie. Historic District, Historic Landmark, Historic Site) that meet federal statutory definitions. However, the list of definitions should include any term that may be subjective or may not be recognized by everyone;
- 3) **specific purposes, membership, and duties of review body** (Historic Preservation Commission or Review Board)- appointment procedures for members, qualifications of members, terms of appointment, duties and powers;
- 4) **criteria for designation** - the identification and registration standards for evaluation of local landmarks and/or districts being considered for designation. These standards shall be consistent with the Secretary of the Interior's Standards for Identification and Registration. Adoption of the National Register criteria is encouraged;
- 5) **designation procedures** for local landmarks and districts- process for applying the criteria for designation to properties and/or districts and registering these resources in local historic preservation legislation. Individual property designations should be with the property owner's consent. Historic district designations should be with the consent of the majority of the property owners within the district;

- 6) **public hearings and notification**- provisions for assuring public inclusion and allowing comment on proposed amendments, notifications, and reviews;
- 7) **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;
- 8) the **Secretary of the Interior's Standards for the Treatment of Historic Properties** (most current revision) should form the basis of the criteria developed for decisions by the local commission concerning alteration, demolition or new construction;
- 9) **procedure and specific time frames for review and consideration of alternatives**- should include description of the necessary application materials needed for the issuance of a Certificate of Appropriateness;
- 10) **penalties for non-compliance**; and,
- 11) **appeal procedures** -both non-compliance and appeal procedures may be included elsewhere in a municipality's ordinance if the historic preservation ordinance is part of the overall zoning ordinance. If this is the case, reference should be made in the historic preservation section of where both procedures can be found in the zoning ordinance.

As a general guideline the statute must contain criteria which will substantially achieve the purpose of designating and protecting historic resources including prehistoric and historic archaeological sites, buildings, objects and structures of historical significance in order that any work affecting them undertaking will meet appropriate preservation standards.

B. ESTABLISH AN ADEQUATE LOCAL REVIEW COMMISSION

The Act defines a historic preservation review commission as a "board, council, commission, or other similar collegial body established by state or local legislation as provided in Section 101(C) (1) (B), and the members of which are appointed, unless otherwise provided by state or local legislation, by the chief elected official of the jurisdiction concerned from among:

- * individuals who meet “the Secretary’s (Historic Preservation) Professional Qualification Standards” in the disciplines of history, historic or prehistoric archaeology, and architectural history, to the extent such professionals are available in the community concerned; and
- * persons having a demonstrated interest, competence, or knowledge in historic preservation as will provide for an adequate and qualified commission; and
- * when a professional discipline is not represented in the commission membership, the commission will document an adequate search for the requisite professional member (i.e., advertisements in local newspapers, etc.) and document how they will seek expertise in the appropriate disciplines from persons meeting the Secretary’s (Historic Preservation) Professional Qualification Standards, as appropriate.

a. Requirements of Local Review Commissions

Minimum requirements for local review commissions for CLGs in Maine are:

- 1) Each CLG shall have a commission with a minimum of five (5) members (except that communities with less than approximately 5,000 population may have as few as three members on the commission);
- 2) All members of the commission shall have a demonstrated interest, knowledge, or training in historic preservation or closely related fields. Where professionals are available in the community qualifications will conform to the Secretary of the Interior's Historic Preservation Professional Qualifications Standards. Information on the credentials of the commission members must be kept on file and available to the public;
- 3) Each commission member is encouraged to attend at least one informational or educational meeting, when available, sponsored by the MHPC, pertaining to the work and functions of the local review commission or to historic preservation. These orientation and training sessions shall also be designed to provide a working knowledge of the roles and operations of Federal, State and local preservation programs;

- 4) Terms of office of commission members shall be staggered and of three (3) years duration (except as provided in the initiation of a commission). There need not be a limit on the number of consecutive terms served by any one member. The Commission shall have an established rule of procedure, including a code of conduct;
- 5) The local appointing authority shall act within sixty (60) days to fill a vacancy, including expired terms; and
- 6) An annual report of the activities of the commission shall be submitted to the MHPC. For information on the requirements of the annual report, see Appendix A.

b. Duties of Local Review Commissions

Duties of local review commissions which shall be carried out in coordination with those of the MHPC include at a minimum:

- 1) review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction;
- 2) review all new construction affecting designated historic properties and/or districts within its jurisdiction to determine if locally designated historic properties will be affected;
- 3) review all proposed National Register nominations for properties within its jurisdiction;
- 4) conducting or causing to be conducted a continuing survey of cultural resources in the community according to guidelines established by the MHPC;
- 5) making recommendation for designation of local landmarks and historic districts to the appropriate local governing body and keeping records of such decisions;

- 6) establishing and using written guidelines for the preservation of designated local landmarks and historic districts in decisions on requests for permits for new construction, alterations, demolition, relocation, additions to, or other actions affecting listed landmarks and buildings within historic districts;
- 7) acting in an advisory role to other officials and departments of local government regarding the protection of local cultural resources;
- 8) acting as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and
- 9) working toward the continuing education of citizens within the CLG's jurisdiction regarding historic preservation issues and concerns.

C. SURVEY STANDARDS

CLG's must establish a process for undertaking a survey of the cultural resources within their jurisdiction. Where surveys have already been undertaken or are underway, a process for the continuation, maintenance and organization of this survey data must be defined. The inventory of survey data should be maintained in a secure public facility. All survey activities must be coordinated with and be complimentary to the Statewide Historic Preservation Plan.

As described in Chapter 6 Section H.1 of the National Park Service's Historic Preservation Fund Grants Manual, "Survey is activity directly pertinent to the location, identification, and evaluation of historic and archeological resources. Inventory activity relates to the maintenance and use of previously gathered information on the absence, presence, and (c) of historic and archaeological resources within the State."

The MHPC will provide the framework and guidelines to assist the CLG in undertaking any architectural survey within its community. Architectural surveys must follow guidelines outlined in the MHPC's Above Ground Survey Manual and be coordinated with the MHPC's Survey Coordinator.

All surveyed architectural properties will be entered into the Cultural and Architectural Resources Management Application (CARMA) database, which is available to the public. Hard copies of the survey forms, maps, and survey reports shall be submitted to the MHPC.

With regard to archaeological surveys, these resources are protected under Chapter 27 of the Maine Revised Statutes Annotated, sections 371-378 (27MRSA § 371-378). Specific site locations

are not for public knowledge due to the sensitivity of the resource. The MHPC archaeology staff can provide GIS layers to towns for enforcement of shoreline zoning. Due to the nature of the archaeological information, any archaeological investigations should be completed by a professional archaeologist approved by the MHPC. Prior to any of this work being undertaken, the MHPC shall be notified.

D. PUBLIC PARTICIPATION

General

All meetings of the historic preservation commission must be publicly announced, be open to the public, and have a previously available agenda. Public notice must be provided prior to any special meetings. Minutes of all meetings, including description of all decisions and actions of the commission and the reasons for making these decisions, must be kept on file and available for public inspection.

In regard to the confidentiality of the location of sensitive historic resources, Section 304 of the National Historic Preservation Act may apply if public disclosure of said information will: 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners.

National Register Nominations

The MHPC and the CLG will work together to provide ample opportunity for public participation in the nomination of properties to the National Register. All reports submitted by the CLG to MHPC regarding the eligibility of properties shall include assurances of public input.

3. CERTIFIED LOCAL GOVERNMENT PARTICIPATION IN THE NATIONAL REGISTER PROCESS

In accordance with the Act, the CLG shall submit a report to the MHPC regarding the eligibility of each property or district proposed for nomination to the National Register within their jurisdiction. This report shall include the recommendation of the local preservation commission and the chief elected official. The report must discuss the property's eligibility under the National Register criteria and the recommendations based on the property's eligibility. A copy of the report prepared by the CLG for the MHPC shall be made available for public inspection within the local jurisdiction.

When a commission considers a National Register nomination and other actions which are normally evaluated by a professional in a specific discipline and that discipline is not represented on the commission, the commission shall seek expertise in this area before rendering its decision. The MHPC suggests that local governments try to find interested individuals with expertise to serve on the commission. Qualified professionals may be found by consulting with the MHPC staff. Alternately, commissions should explore the possibility of sharing this expertise among several communities.

The CLG will be involved in the National Register process in the following manner:

- a. Before a property within the jurisdiction of the CLG may be considered by the State for nomination to the Secretary of the Interior for inclusion in the National Register, the State Historic Preservation Officer (SHPO) shall notify the owner, the applicable chief local elected official, and the local historic preservation commission in accordance with 36 CFR 61, 36CFR 60 and State procedures and/or guidelines. The SHPO will notify the chief elected local official and the commission at least 60, but no more than 120 calendar days prior to State Review Board considerations. After providing a reasonable opportunity for public comment, the commission shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty calendar days of notice from the SHPO, the chief local elected official shall transmit the report of the commission and his/her recommendation to the SHPO. After receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 101(a) of the Act. The State may expedite such process with the concurrence of the CLG.
 1. If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the SHPO shall take no further action, unless within thirty days of the receipt of such recommendation by the SHPO an appeal is filed in accordance with Section 101 (c)(2) of the Act and 36 CFR 60. If either or both the commission and the local chief elected official recommend that the property is eligible for nomination, the SHPO will present the nomination to the State Review Board in accordance with the procedures in 36 CFR 60, and 36 CFR 61.
- b. The CLG may contract with qualified professionals to prepare National Register nominations. All nominations will be reviewed by MHPC for completeness and accuracy. In cases where a National Register nomination is prepared and processed

directly by or through a CLG and the CLG recommendation and report are submitted to the State Historic Preservation Officer with the nomination package, the CLG notification procedures outlined in 3.a. do not apply.

- c. CLG notification procedures do not apply when a Federal agency nominates a property under its ownership or control. CLGs are encouraged to coordinate with Federal agencies to the extent practical, however, in the consideration of such nominations.

4. PROCESS FOR CERTIFICATION OF LOCAL GOVERNMENTS

- a. The chief elected official of the appropriate local governing body shall request certification from the MHPC. The request shall include: 1) the legal instrument (s) creating the commission; 2) a written assurance that the local government fulfills all the requirements outlined above; 3) a copy of the local historic preservation ordinance; 4) a list and accompanying maps of the areas designated as historic districts or individual landmarks; and 5) resumes for each of the members of the historic preservation commission.
- b. The SHPO shall respond to the chief elected official within sixty days of receipt of an adequately documented written request. If the application is not complete, MHPC will so inform the applicant within thirty days.
- c. If the SHPO determines that the local government fulfills the requirements for certification, the MHPC will enter into a written certification agreement with the local government which specifies the duties delegated to the local government. The State Historic Preservation Officer will forward a copy of the signed certification agreement between the local government and the SHPO to the United States Secretary of the Interior, or designee, and shall respond to the local government within fifteen days of the Secretary's response.
- d. The local government shall be certified to participate in the CLG program when certified by the SHPO and the Secretary of the Interior.

- e. Once a local government is certified it remains certified without further action unless, after substantive review, the MHPC recommends and proceeds with decertification or the local government requests that it no longer wishes to be certified.

5. PROCESS FOR MONITORING AND DECERTIFICATION OF CERTIFIED LOCAL GOVERNMENTS

- a. The MHPC shall conduct periodic review (not less than once every 4 years) and monitoring of CLGs to assure that each government is meeting the required standards.
- b. The MHPC shall review the annual reports submitted by CLGs, records of the administration of any funds allocated from the Historic Preservation Fund (HPF), and other pertinent documents such as Programmatic Memoranda of Agreement where appropriate. (Evaluations will be made against the performance standards which will be provided separately and incorporated into each CLG agreement.)
- c. The CLG shall make all pertinent records and materials available to the MHPC.
- d. If the MHPC finds the CLG's performance in carrying out its historic preservation responsibilities inadequate at any time during the year or makes that finding after review of the CLG's annual yearend report, the MHPC shall document that assessment in writing and recommend steps that the CLG may take to improve its performance. The MHPC will provide advice and assistance to CLGs when performance is inadequate. The CLG shall have a period of not less than 30 nor more than 120 days, depending on the corrective measures required, to implement improvements. The SHPO may elect to extend this period in unusual circumstances. If the MHPC determines that sufficient improvement has not been made after the specified time period, the MHPC will recommend decertification of the Local Government to the Secretary of the Interior. This recommendation will cite specific reasons for the request. If the Secretary does not object within 30 working days of receipt, the decertification will be considered approved.
- e. Local certified governments may petition the SHPO to be decertified voluntarily and without prejudice.

- f. Upon decertification, CLG grant funding to the local government may be terminated.

6. TRANSFER OF HISTORIC PRESERVATION FUNDS TO CERTIFIED LOCAL GOVERNMENTS

A minimum of 10% of the State's annual appropriation from the HPF of the Department of the Interior will be designated for funding projects by CLGs as provided by Congress. All grants in Maine will be awarded on a 60/40 matching basis (federal/local). Funding of specific projects or activities must meet federal and state criteria for use of CLG funds. CLGs receiving HPF grants from the CLG share shall be considered subgrantees of the State.

All CLGs within the state are eligible to receive funds from the CLG pass-through. However, the SHPO is not required to award funds to all governments that are eligible to receive funds. MHPC shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded. Awards will be based on priorities established in the state historic preservation plan.

Project application forms, sample contracts, selection criteria, and funding priorities will be available in the MHPC grants manual. The criteria will be coordinated with those used to select survey, planning and development grants during a specific fiscal year. Funds must be applied for annually. Funding in any prior year does not guarantee continued funding.

Each CLG intending to seek funds must complete a project application and budget form by the annual deadline. Application forms, annual MHPC priorities for funding and criteria for awarding survey, planning and development grants will be made available each year. Applications for grants must be received by the deadlines described in the materials for funding in the next fiscal year. MHPC will review all applications and make a tentative decision within ninety days of that date. A final decision must await approval of the MHPC annual grant by the National Park Service.

In general, eligible activities will include any project which furthers the goals of identification, evaluation, registration, and protection of the community's cultural resources. This would include survey, nomination of properties to the National Register, public education programs, planning studies, research, preservation, rehabilitation, or restoration efforts, and the development of a comprehensive historic preservation plan.

All CLGs which receive funding are considered subgrantees of the State and shall adhere to all requirements of the HPF Grants Manual and maintain an adequate financial management system as specified in Office of Management and Budget circular A-102 Attachment, "Standards for Grantee Financial Management Systems," as well as any specific requirements mandated by Congress regarding the use of such funds. Local financial management systems shall be auditable in accordance with the General Accounting Office's Standards for Audit of Governmental Organizations Programs, Activities & Functions. The MHPC is responsible for proper accounting of HPFs grants to CLGs in accordance with Office of Management and Budget circular A-133 entitled "Audit Requirements." Grants made from the HPF cannot be used as matching share for other federal grants, except for HUD, unless authorized. Only direct costs may be charged as part of the project unless the CLG has a current indirect cost rate approved by a cognizant Federal agency.

Use of federal funds will be limited by all existing restrictions imposed by the federal government. The intent of HPF assistance is to augment, not replace, existing local commitment to historic preservation activities.

Local governments may be certified and may participate in the review and approval of National Register nominations whether or not they elect to apply for grants from the HPF.

Once a local government is certified it remains certified, without further action, unless officially decertified. Grants for CLGs, on the other hand, are awarded on a yearly competitive basis, according to availability. Because a local government is given a grant one year does not mean a grant will be available the following year.

7. AMENDMENTS TO NATIONAL PARK SERVICE-APPROVED STATE PROCEDURES

With the exception of changes required as a result of National Park Service (NPS) directives or regulatory changes, the MHPC will follow appropriate consultation procedures as described below when amending NPS-approved State certification and Pass-Through CLG Procedures:

- * For proposed amendments affecting the major requirements for becoming a CLG or operating a CLG program, or the policy for allocating Pass-Through funds, the MHPC will consult with local governments, local historic preservation commissions, and all other parties likely to be interested in the CLG program and CLG issues; it will consider local preservation needs and capabilities, and invite comments on the proposed amendment from local governments,

commissions, and parties in the state likely to be interested. The MHPC will allow for a 60-day period for public comment on the proposed amendment.

- * For minor changes, technical corrections, and changes required by NPS policy directives, the MHPC will send a written notification to all CLGs.

If the NPS approves the amendment (s), the MHPC will: notify all CLGs in writing; and send amended certification agreements to NPS for each CLG affected by the amendment of the State procedures within 120 calendar days.

Glossary

Unless otherwise noted (*), the following terms are defined by the NPS in the HPF Grant Manual, June 2007 Release.

Archaeological Site.* A bounded geographic location containing the physical evidence of previous human occupation including but not limited to structures, artifacts, graphics (paintings or drawings) and discarded material including plants or animals.

Building. A man-made construction created to shelter human activity, such as a house, barn, church, hotel or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

Chief Elected Local Official. 1) The elected head of a local government. 2) The mayor, county judge, county executive, or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which a property is located.

Contributing Property (Resource). 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 (i.e. a National Register eligible property or resource).

Evaluation. Evaluation is the process of determining whether identified properties meet defined criteria of significance and therefore should be included in an inventory of historic properties determined to meet the criteria. (From NPS: https://www.nps.gov/history/local-law/arch_stnds_3.htm)

Local Landmark.* Any site, building, or structure of particular archaeological, historic or architectural 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.

Historic District. A geographically definable area, urban or rural, that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united 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 Preservation. "historic preservation," or "preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation and education and training regarding the foregoing activities or any combination of the foregoing activities.

Historic Preservation Fund. The source from which monies are appropriated to fund the program of matching grants-in-aid to the States (and other authorized grant recipients) for carrying out the purposes of the National Historic Preservation Act of 1966, as amended.

Historic Property. Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register, including artifacts, records, and material remains related to such a property or resource

Identification. Identification is undertaken for the purpose of location historic properties and is composed of a number of activities which include, but are not limited to archival research, informant interview, field survey, and analysis. Within a comprehensive planning process identification is normally undertaken to acquire property-specific information needed to refine a particular historic context or to development any new historic contexts.

Integrity. The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Inventory. 1) A listing of historic properties determined to meet specified criteria of significance. 2) A list or compilation of what is known about resources within a specified jurisdiction. An inventory includes historic properties and other properties that have been evaluated but found to be not significant in relation to the specified criteria.

Maine Historic Resources Inventory.* Established in the early 1970s, the inventory presently contains records for over 52,000 above ground resources and over 10,000 prehistoric and historic archaeological sites located within the state of Maine.

National Register Criteria. The established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

National Register of Historic Places (National Register). The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, or culture, maintained by the Secretary of the Interior under authority of Section 101 (a)(1)(A) of the National Historic Preservation Act of 1966, as amended.

Nomination (to Nominate). to nominate is to propose that a district, site, building, structure or object be listed in the National Register or, where a private owner or a majority of owners object to listing, the property be determined eligible by submitting a nomination form, with accompanying maps and photographs with adequately document the property and are technically and professional correct and sufficient.

Object. A material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Preservation. 1) see historic preservation. 2) 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. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

Protection. 1) the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss, or attack, or to cover or shield the

property from danger of injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archaeological sites, the protective measure may be temporary or permanent. 2) Also, “protection” means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to Section 101 (c) of the National Historic Preservation Act of 1966, as amended.

Reconstruction. The act or process of depicting, by means of new construction, the form features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replication its appearance at a specific period of time and in its historic location.

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.

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 periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

Secretary of the Interior's Standards and Guidelines. The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation provide technical information about historic preservation activities and methods. The Standards and Guidelines are prepared under the authority of Section 101 (f), (g) and (h) and Section 110 of the National Historic Preservation Act of 1966, as amended. The subjects covered in the Standards and Guidelines include: Preservation Planning, Identification, Evaluation, Registration, Historic Research and Documentation, Architectural and Engineering Documentation, Archaeological Documentation, Treatment of Historic Properties, Professional Qualifications and Preservation Terminology.

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.

Structure. A man-made construction built for the purposes other than shelter. It can be an engineering project large in scale, such as a bridge or tunnel.

APPENDIX A: FORMS

Annual Report Requirements

Annual reports are to be submitted to MHPC for each federal fiscal year: October 1- September 30th and must include the following:

A. Local Legislation:

1. Copies of any new ordinances, amendments, regulations, by-laws, or guidelines enacted during this period.
2. List of new historic district or landmark designations. Please also submit a copy of a map showing site locations.
3. Number of cases reviewed under the authority of the local ordinance with a summary of the
4. action taken:

Alterations:	Approved_____	Denied_____
Demolitions:	Approved_____	Denied_____
New Construction:	Approved_____	Denied_____

B. Historic Preservation Commission and Staff:

1. Number of historic preservation commission meetings held during this period.
2. Indication of number of meetings which each historic preservation commission members attended.
3. Summary of how the historic preservation commission obtained qualified professional expertise in the review of nominations or other actions normally evaluated by a professional if such expertise is not available on the commission.
4. Indication of the professional training session which each historic preservation commission member and professional staff member attended during this period.
5. Any changes to the membership of the historic preservation commission. For vacancies, please indicate length of vacancy, how an attempt was made to obtain qualified professionals to fill any vacancies, and how the new appointees evidence demonstrated interest, competence, or knowledge of historic preservation. In addition, please submit a resume for any new commission members, including any professionals.
6. Summary of how the CLG employed, contracted with, or maintained access to, on at least a part-time basis, a qualified professional in historic preservation.

C. Survey and Inventory:

1. Number of new historic resource forms completed.
2. If the municipality is completely surveyed describe the process to re-evaluate existing survey information and procedure to keep it up to date.

D. Public Participation:

1. Outline of public notification procedures.
2. A copy of a historic preservation commission meeting's minutes.

E. National Register Nominations:

1. List of National Register nominations reviewed by the commission.
2. All minutes relating to the review of National Register nominations.

F. Narrative Summary:

Please include a narrative statement of successes and problems encountered during the year.

Resume Form:

Historic Preservation Commission Member Background Material and Qualifications

Address:	Phone:
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Email:

☐ Architecture	☐ Other	If other, please specify:
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Time:	Days:
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Why do you want to be a member of your municipality's review board or commission?

Application for Certified Local Government Status

Local Government Information

Name of Municipality:

Chief Elected Official:

Phone:

Mailing address of Municipality:

City:

State:

ZIP Code:

Email:

Staff Information

Name of Contact Person that will be overseeing Commission:

Position:

Phone:

Fax:

Email:

Historic Preservation Commission Information

Name of Historic Preservation Commission:

Name of Chairman:

Phone:

Address:

State:

ZIP Code:

Email:

Time and Place of Commission Meetings

Where:

Time:

Days:

Other Members of the Commission

Name

Email, if any

Phone

Application for Certified Local Government Status

Members of the Commission (cont.)

MODEL CLG CERTIFICATION APPLICATION CHECKLIST

State: _____

Jurisdiction: _____

Date submitted to State: _____

Date approved by State: _____

(1) Application meets the Federal definition of local government and has the authority to enforce acceptable legislation for the designation and protection of historic properties.

(2) Applicant has established a historic preservation review commission consisting of ____ members. This meets State procedure requirements for number of members.

There are ____ lay members.

There are ____ professional members qualified in the fields of

_____, _____, _____,

_____, _____, _____,

This meets State procedures requirements for professional membership

(3) All commission members have a demonstrated, positive interest, competence, or knowledge in historic preservation.

(4) Professional members of the commission have been appointed to the extent available in the community, and we have reviewed resumes that document professional qualifications acceptable under the Secretary of the Interior's Historic Preservation Professional Qualification Standards. If not, the applicant satisfactorily documented an adequate search for the requisite professional members and how it will obtain access to expertise when needed.

(5) The role and responsibility of the local government have been specified in detail in the enclosed agreement, including:

A. The four basic responsibilities:

1. Enforcing State or local legislation for the designation and protection of historic resources _____
2. Maintaining a system for survey and inventory of historic properties. _____
3. Provide for adequate public participation in the historic preservation program. _____
4. Reviewing National Register nominations through a qualified local commission. _____

B. Additional responsibilities:

1. Required of all CLGs in Maine:
 - a. Maintain adequate financial management systems. _____
 - b. Adhere to all requirements of the Historic Preservation Fund Grants Manual. _____
 - c. Adhere to any requirements mandated by Congress regarding use of federal historic preservation funds. _____
 - d. Adhere to requirements outlined in the Guidelines for the Certified Local Government Program in Maine. _____
2. Attachment requirements.

- a. Letter of request for certification from the chief elected official, including assurances that CLG requirements will be met. _____
- b. A copy of the historic preservation ordinance as adopted by the governing body. _____
- c. A clearly defined map indicating the location of any historic resources already identified, including boundaries of any district or districts, and a list of all properties. _____
- d. A sample notice of public meetings of the commission (if available). _____
- e. A sample copy of an agenda and minutes of a commission meeting (if available). _____
- f. A sample notice to an applicant of a decision of the commission. _____
- g. A copy of the rules of procedure of the historic commission. _____
- (6) The CLG contact person, including title/position, mailing address, and telephone number. _____
- (7) The Certification Agreement has been signed by SHPO and Chief Elected Local Official. _____
- (8) Any other information relevant to this application: _____

STATE REVIEWER:

Signature

Name and Title

Date

CERTIFICATION AGREEMENT
BETWEEN
THE STATE OF MAINE
BY AND THROUGH THE
MAINE HISTORIC PRESERVATION COMMISSION
AND THE _____

WHEREAS the Congress of the United States, in order to extend the state and federal preservation partnership to the local level, has required approved state historic preservation programs to cooperate with local governments in developing local historic preservation programs and establishing Certified Local Governments under §101(c)(1) of the National Historic Preservation Act of 1966, as amended (the Act); and

WHEREAS Certified Local Government (CLG) status provides communities with the opportunity to enhance the local government's role in historic preservation by formalizing and strengthening the local historic preservation program and its links with the Maine Historic Preservation Commission (the Commission); and

WHEREAS the CLG will prepare and review National Register nominations for local approval prior to State Review Board consideration and will qualify to compete for at least 10% of the fund annually allocated to the Commission through the Historic Preservation Fund of the Department of the Interior (HPF) which the Commission is required to set aside for CLGs; and

WHEREAS the State of Maine by and through the Maine Historic Preservation Commission has promulgated "Guidelines for Certified Local Government Programs" (the Guidelines) and desires to assist the _____ in becoming certified and to detail the specific responsibilities of the _____ as a Certified Local Government; and

WHEREAS the _____ desires to participate in the certified local government program by becoming a certified local government and thereby receive the benefits of participation in the designation of properties for nomination to the National Register and eligibility to apply to the State Historic Preservation Officer for matching funds:

NOW THEREFORE, in consideration of the mutual benefits derived here from, the State of Maine, by and through the Maine Historic Preservation Commission, 55 Capitol Street, Augusta, Maine 04333, pursuant to the requirements of the Act and 36 CFR § 61.6, covenant and agree on this ____ day of _____, 20__, that the _____, as a Certified Local Government, acknowledges and assumes the following responsibilities:

1. Enforce the local legislation for the designation and protection of historic properties in accordance with the Guidelines, and in accordance with the rules and regulations which have been or may be promulgated by the Commission;
2. Establish pursuant to local law an adequate and qualified historic preservation review commission composed of professional and lay members who have demonstrated interest, competence, or knowledge in historic preservation in accordance with Part 4 of the Guidelines;
3. Maintain a system for the survey and inventory of historic properties pursuant to the guidelines and formats established by the Commission in accordance with Part 5 of the Guidelines;
4. Participate in the National Register Program in Maine through the preparation and review of National Register nominations prior to State Review Board consideration in accordance with the procedures and time schedules in Part 6 of the Guidelines;
5. Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register, in accordance with Part 7 of the Guidelines;
6. Keep such records as the Secretary of the Interior, the Commission, or the State Historic Preservation Officer (SHPO) shall prescribe, including records which fully disclose the disposition by the _____ of the proceeds of funds received, the total cost of the project or undertaking in connection with the funding, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit;
7. Maintain adequate financial management systems in accordance with the standards specified in OMB Circular A-102, Attachment G, "Standards for Grantee Financial Management Systems";

8. Maintain a financial system which is auditable in accordance with the General Accounting Office's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions";
9. Adhere to all requirements of the "Historic Preservation Fund Grants Manual" which sets forth administrative procedures and policies for Historic Preservation Fund (HPF) grants awarded by the Secretary of the Interior;
10. Adhere to any requirements mandated by Congress or the Commission regarding the use of funds from Historic Preservation Fund Grants;
11. Not apply transferred HPF monies as a matching share for any other federal grant unless meeting the established exceptions;
12. Participate in Commission training sessions designed to provide a working knowledge of the CLG's responsibilities under the Maine National Register Program, and an understanding of the rules and operations of federal, state and local preservation programs;
13. Fully cooperate with the Commission in its annual review of the CLG and submit to the Commission office the annual reports of the CLG, records of administration of funds allocated from the HPF, and other documents as necessary, in accordance with Part 9 of the Guidelines (see Appendix "A");
14. Upon notification by the Commission that the performance of the CLG is not up to satisfactory level, implement improvements within 180 days or the Commission shall recommend decertification of the local government to the Secretary of the Interior, in accordance with Part 9 of the Guidelines;
15. Satisfactorily perform the responsibilities designated to it under the Act and adhere to all applicable provisions of the Guidelines.

Signed as of the date first stated herein

STATE OF MAINE

State Historic Preservation Officer

Maine Historic Preservation Commission

Chief Elected Local Official

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NATIONAL REGISTER BULLETIN

Technical information on the the National Register of Historic Places:
survey, evaluation, registration, and preservation of cultural resources



U.S. Department of the Interior
National Park Service
Cultural Resources
National Register, History and Education

How to Apply the National Register Criteria for Evaluation



The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to tribes.

The National Park Service preserves unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

This material is partially based upon work conducted under a cooperative agreement with the National Conference of State Historic Preservation Officers and the U.S. Department of the Interior.

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Cover

*(Top Left) **Criterion B - Frederick Douglass Home, Washington, D.C.** From 1877-1899, this was the home of Frederick Douglass, the former slave who rose to become a prominent author, abolitionist, editor, orator, and diplomat. (Walter Smalling, Jr.)*

*(Top Right) **Criterion D - Francis Canyon Ruin, Blanco vicinity, Rio Arriba County, New Mexico.** A fortified village site composed of 40 masonry-walled rooms arranged in a cluster of four house blocks. Constructed ca. 1716-1742 for protection against raiding Utes and Comanches, the site has information potential related to Navajo, Pueblo, and Spanish cultures. (Jon Samuelson)*

*(Bottom Left) **Criterion C - Bridge in Cherrytree Township, Venago County, Pennsylvania.** Built in 1882, this Pratt through truss bridge is significant for engineering as a well preserved example of a type of bridge frequently used in northwestern Pennsylvania in the late 19th century. (Pennsylvania Department of Transportation)*

*(Bottom Right) **Criterion A - Main Street/Market Square Historic District, Houston, Harris County, Texas.** Until well into the 20th century this district marked the bounds of public and business life in Houston. Constructed between the 1870s and 1920s, the district includes Houston's municipal and county buildings, and served as the city's wholesale, retail, and financial center. (Paul Hester)*

PREFACE

Preserving historic properties as important reflections of our American heritage became a national policy through passage of the Antiquities Act of 1906, the Historic Sites Act of 1935, and the National Historic Preservation Act of 1966, as amended. The Historic Sites Act authorized the Secretary of the Interior to identify and recognize properties of national significance (National Historic Landmarks) in United States history and archeology. The National Historic Preservation Act of 1966 authorized the Secretary to expand this recognition to properties of local and State significance in American history, architecture, archeology, engineering, and culture, and worthy of preservation. The National Register of Historic Places is the official list of these recognized properties, and is maintained and expanded by the National Park Service on behalf of the Secretary of the Interior.¹

The National Register of Historic Places documents the appearance and importance of districts, sites, buildings, structures, and objects signifi-

cant in our prehistory and history. These properties represent the major patterns of our shared local, State, and national experience. To guide the selection of properties included in the National Register, the National Park Service has developed the National Register Criteria for Evaluation. These criteria are standards by which every property that is nominated to the National Register is judged. In addition, the National Park Service has developed criteria for the recognition of nationally significant properties, which are designated National Historic Landmarks and prehistoric and historic units of the National Park System. Both these sets of criteria were developed to be consistent with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, which are uniform, national standards for preservation activities.²

This publication explains how the National Park Service applies these criteria in evaluating the wide range of properties that may be significant in local, State, and national history.

It should be used by anyone who must decide if a particular property qualifies for the National Register of Historic Places.

Listing properties in the National Register is an important step in a nationwide preservation process. The responsibility for the identification, initial evaluation, nomination, and treatment of historic resources lies with private individuals, State historic preservation offices, and Federal preservation offices, local governments, and Indian tribes. The final evaluation and listing of properties in the National Register is the responsibility of the Keeper of the National Register.

This bulletin was prepared by staff of the National Register Branch, Interagency Resources Division, National Park Service, with the assistance of the History Division. It was originally issued in draft form in 1982. The draft was revised into final form by Patrick W. Andrus, Historian, National Register, and edited by Rebecca H. Shrimpton, Consulting Historian.

Beth L. Savage, National Register and Sarah Dillard Pope, National Register, NCSHPO coordinated the latest revision of this bulletin. Antionette J. Lee, Tanya Gossett, and Kira Badamo coordinated earlier revisions.

¹Properties listed in the National Register receive limited Federal protection and certain benefits. For more information concerning the effects of listing, and how the National Register may be used by the general public and Certified Local Governments, as well as by local, State, and Federal agencies, and for copies of National Register Bulletins, contact the National Park Service, National Register, 1849 C Street, NW, NC400, Washington, D.C., 20240. Information may also be obtained by visiting the National Register Web site at www.cr.nps.gov/nr or by contacting any of the historic preservation offices in the States and territories.

²The *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* are found in the *Federal Register*, Vol. 48, No. 190 (Thursday, September 29, 1983). A copy can be obtained by writing the National Park Service, Heritage Preservation Services (at the address above).

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I. INTRODUCTION

The National Register is the nation's inventory of historic places and the national repository of documentation on the variety of historic property types, significance, abundance, condition, ownership, needs, and other information. It is the beginning of a national census of historic properties. The National Register Criteria for Evaluation define the scope of the National Register of Historic Places; they identify the range of resources and kinds of significance that will qualify properties for listing in the National Register. The Criteria are written broadly to recognize the wide variety of historic properties associated with our prehistory and history.

Decisions concerning the significance, historic integrity, documentation, and treatment of properties can be made reliably only when the resource is evaluated within its historic context. The historic context serves as the framework within which the National Register Criteria are applied to specific properties or property types. (See *Part V* for a brief discussion of

historic contexts. Detailed guidance for developing and applying historic contexts is contained in *National Register Bulletin: How to Complete the National Register Registration Form* and *National Register Bulletin: How to Complete the National Register Multiple Property Documentation Form*.)

The guidelines provided here are intended to help you understand the National Park Service's use of the Criteria for Evaluation, historic contexts, integrity, and Criteria Considerations, and how they apply to properties under consideration for listing in the National Register. Examples are provided throughout, illustrating specific circumstances in which properties are and are not eligible for the National Register. This bulletin should be used by anyone who is:

- Preparing to nominate a property to the National Register,
- Seeking a determination of a property's eligibility,
- Evaluating the comparable significance of a property to those listed in the National Register, or
- Expecting to nominate a property as a National Historic Landmark in addition to nominating it to the National Register.

This bulletin also contains a summary of the National Historic Landmarks Criteria for Evaluation (see *Part IX*). National Historic Landmarks are those districts, sites, buildings, structures, and objects designated by the Secretary of the Interior as possessing national significance in American history, architecture, archeology, engineering, and culture. Although National Register documentation includes a recommendation about whether a property is significant at the local, State, or national level, the only official designation of national significance is as a result of National Historic Landmark designation by the Secretary of the Interior, National Monument designation by the President of the United States, or establishment as a unit of the National Park System by Congress. These properties are automatically listed in the National Register.

II. THE NATIONAL REGISTER CRITERIA FOR EVALUATION

CRITERIA FOR EVALUATION:³

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded, or may be likely to yield, information important in prehistory or history.

CRITERIA CONSIDERATIONS:

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties *will qualify* if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- b. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

- c. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or
- d. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- g. A property achieving significance within the past 50 years if it is of exceptional importance.

³The Criteria for Evaluation are found in the *Code of Federal Regulations, Title 36, Part 60*, and are reprinted here in full.

III. HOW TO USE THIS BULLETIN TO EVALUATE A PROPERTY

For a property to qualify for the National Register it must meet one of the National Register Criteria for Evaluation by:

- **Being associated with an important historic context** *and*
- **Retaining historic integrity of those features necessary to convey its significance.**

Information about the property based on physical examination and documentary research is necessary to evaluate a property's eligibility for the National Register. Evaluation of a property is most efficiently made when following this sequence:

1. Categorize the property (Part IV).
A property must be classified as

a district, site, building, structure, or object for inclusion in the National Register.

2. **Determine which prehistoric or historic context(s) the property represents** (Part V). A property must possess significance in American history, architecture, archeology, engineering, or culture when evaluated within the historic context of a relevant geographic area.
3. Determine whether the property is significant under the National Register Criteria (Part VI). This is done by identifying the links to important events or persons, design or construction features, or information potential that make the property important.

4. Determine if the property represents a type usually excluded from the National Register (Part VII). If so, determine if it meets any of the Criteria Considerations.

5. Determine whether the property retains integrity (Part VIII). Evaluate the aspects of location, design, setting, workmanship, materials, feeling, and association that the property must retain to convey its historic significance.

If, after completing these steps, the property appears to qualify for the National Register, the next step is to prepare a written nomination. (Refer to *National Register Bulletin: How to Complete the National Register Registration Form*.)

IV. HOW TO DEFINE CATEGORIES OF HISTORIC PROPERTIES

The National Register of Historic Places includes significant properties, classified as buildings, sites, districts, structures, or objects. It is not used to list intangible values, except in so far as they are associated with or reflected by historic properties. The National Register does not list cultural events, or skilled or talented individuals, as is done in some countries. Rather, the National Register is oriented to recognizing physically concrete properties that are relatively fixed in location.

For purposes of National Register nominations, small groups of properties are listed under a single category, using the primary resource. For example, a city hall and fountain would be categorized by the city hall (building), a farmhouse with two outbuildings would be categorized by the farmhouse (building), and a city park with a gazebo would be categorized by the park (site). Properties with large acreage or a number of resources are usually considered districts. Common sense and reason should dictate the selection of categories.

BUILDING

A building, such as a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. "Building" may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.

Buildings eligible for the National Register must include all of their basic structural elements. Parts of buildings, such as interiors, facades, or wings, are not eligible independent of the rest of the existing building. The

whole building must be considered, and its significant features must be identified.

If a building has lost any of its basic structural elements, it is usually considered a "ruin" and is categorized as a site.

Examples of buildings include:

*administration building
carriage house
church
city or town hall
courthouse
detached kitchen, barn, and privy
dormitory
fort
garage
hotel
house
library
mill building
office building
post office
school
social hall
shed
stable
store
theater
train station*

STRUCTURE

The term "structure" is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter.

Structures nominated to the National Register must include all of the extant basic structural elements. Parts of structures can not be considered eligible if the whole structure remains. For example, a truss bridge is composed of the metal or wooden truss, the abutments, and supporting

piers, all of which, if extant, must be included when considering the property for eligibility.

If a structure has lost its historic configuration or pattern of organization through deterioration or demolition, it is usually considered a "ruin" and is categorized as a site.

Examples of structures include:

*aircraft
apiary
automobile
bandstand
boats and ships
bridge
cairn
canal
carousel
corncrib
dam
earthwork
fence
gazebo
grain elevator
highway
irrigation system
kiln
lighthouse
railroad grade
silo
trolley car
tunnel
windmill*

OBJECT

The term “object” is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment.

Small objects not designed for a specific location are normally not eligible. Such works include transportable sculpture, furniture, and other decorative arts that, unlike a fixed outdoor sculpture, do not possess association with a specific place.

Objects should be in a setting appropriate to their significant historic use, roles, or character. Objects relocated to a museum are inappropriate for listing in the National Register.

Examples of objects include:

*boundary marker
fountain
milepost
monument
sculpture
statuary*

SITE

A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.

A site can possess associative significance or information potential or both, and can be significant under any or all of the four criteria. A site need not be marked by physical remains if it is the location of a prehistoric or historic event or pattern of events and if no buildings, structures, or objects marked it at the time of the events. However, when the location of a prehistoric or historic event cannot be conclusively determined because no other cultural materials were present or survive, documentation must be carefully evaluated to determine whether the traditionally recognized or identified site is accurate.

A site may be a natural landmark strongly associated with significant prehistoric or historic events or patterns of events, if the significance of the natural feature is well documented through scholarly research. Generally, though, the National Register excludes from the definition of “site” natural waterways or bodies of water that served as determinants in the location of communities or were significant in the locality’s subsequent economic development. While they may have been “avenues of exploration,” the features most appropriate to document this significance are the properties built in association with the waterways.

Examples of sites include:

*battlefield
campsite
cemeteries significant for information
potential or historic association
ceremonial site
designed landscape
habitation site
natural feature (such as a rock formation)
having cultural significance
petroglyph
rock carving
rock shelter
ruins of a building or structure
shipwreck
trail
village site*

DISTRICT

A district possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

CONCENTRATION, LINKAGE, & CONTINUITY OF FEATURES

A district derives its importance from being a unified entity, even though it is often composed of a wide variety of resources. The identity of a district results from the interrelationship of its resources, which can convey a visual sense of the overall historic environment or be an arrangement of historically or functionally related properties. For example, a district can reflect one principal activity, such as a mill or a ranch, or it can encompass several interrelated activities, such as an area that includes industrial, residential, or

commercial buildings, sites, structures, or objects. A district can also be a grouping of archeological sites related primarily by their common components; these types of districts often will not visually represent a specific historic environment.

SIGNIFICANCE

A district must be significant, as well as being an identifiable entity. It must be important for historical, architectural, archeological, engineering, or cultural values. Therefore, districts that are significant will usually meet the last portion of Criterion C plus Criterion A, Criterion B, other portions of Criterion C, or Criterion D.

TYPES OF FEATURES

A district can comprise both features that lack individual distinction and individually distinctive features that serve as focal points. It may even be considered eligible if all of the components lack individual distinction, provided that the grouping achieves significance as a whole within its historic context. In either case, the majority of the components that add to the district’s historic character, even if they are individually undistinguished, must possess integrity, as must the district as a whole.

A district can contain buildings, structures, sites, objects, or open spaces that do not contribute to the significance of the district. The number of noncontributing properties a district can contain yet still convey its sense of time and place and historical development depends on how these properties affect the district’s integrity. In archeological districts, the primary factor to be considered is the effect of any disturbances on the information potential of the district as a whole.

GEOGRAPHICAL BOUNDARIES

A district must be a definable geographic area that can be distinguished from surrounding properties by changes such as density, scale, type, age, style of sites, buildings, structures, and objects, or by documented differences in patterns of historic development or associations. It is seldom defined, however, by the limits of current parcels of ownership, management, or planning boundaries. The boundaries must be based upon a shared relationship among the properties constituting the district.

DISCONTIGUOUS DISTRICTS

A district is usually a single geographic area of contiguous historic properties; however, a district can also be composed of two or more definable significant areas separated by nonsignificant areas. A discontinuous district is most appropriate where:

- Elements are spatially discrete;
- Space between the elements is not related to the significance of the district; and
- Visual continuity is not a factor in the significance.

In addition, a canal can be treated as a discontinuous district when the system consists of man-made sections of canal interspersed with sections of river navigation. For scattered archeological properties, a discontinuous district is appropriate when the deposits are related to each other through cultural affiliation, period of use, or site type.

It is not appropriate to use the discontinuous district format to include an isolated resource or small group of resources which were once connected to the district, but have since been separated either through demolition or new construction. For example, do not use the discontinuous district format to nominate individual buildings of a downtown commercial district that have become isolated through demolition.

Examples of districts include:

*business districts
canal systems
groups of habitation sites
college campuses
estates and farms with large acreage/
numerous properties
industrial complexes
irrigation systems
residential areas
rural villages
transportation networks
rural historic districts*



Ordeman-Shaw Historic District, Montgomery, Montgomery County, Alabama. Historic districts derive their identity from the interrelationship of their resources. Part of the defining characteristics of this 19th century residential district in Montgomery, Alabama, is found in the rhythmic pattern of the rows of decorative porches. (Frank L. Thierrnonge, III)

V. HOW TO EVALUATE A PROPERTY WITHIN ITS HISTORIC CONTEXT

UNDERSTANDING HISTORIC CONTEXTS

To qualify for the National Register, a property must be significant; that is, it must represent a significant part of the history, architecture, archeology, engineering, or culture of an area, and it must have the characteristics that make it a good representative of properties associated with that aspect of the past. This section explains how to evaluate a property within its historic context.

The significance of a historic property can be judged and explained only when it is evaluated within its historic context. Historic contexts are those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made clear. Historians, architectural historians, folklorists, archeologists, and anthropologists use different words to describe this phenomena such as trend, pattern, theme, or cultural affiliation, but ultimately the concept is the same.

The concept of historic context is not a new one; it has been fundamental to the study of history since the 18th century and, arguably, earlier than that. Its core premise is that resources, properties, or happenings in history do not occur in a vacuum but rather are part of larger trends or patterns.

In order to decide whether a property is significant within its historic context, the following five things must be determined:

- The facet of prehistory or history of the local area, State, or the nation that the property represents;
- Whether that facet of prehistory or history is significant;
- Whether it is a type of property that has relevance and importance in illustrating the historic context;
- How the property illustrates that history; and finally
- Whether the property possesses the physical features necessary to convey the aspect of prehistory or history with which it is associated.

These five steps are discussed in detail below. If the property being evaluated does represent an important aspect of the area's history or prehistory *and* possesses the requisite quality of integrity, then it qualifies for the National Register.

HOW TO EVALUATE A PROPERTY WITHIN ITS HISTORIC CONTEXT

Identify what the property represents: the theme(s), geographical limits, and chronological period that provide a perspective from which to evaluate the property's significance.

Historic contexts are historical patterns that can be identified through consideration of the history of the property and the history of the surrounding area. Historic contexts may have already been defined in your area by the State historic preservation office, Federal agencies, or local governments. In accordance with the National Register Criteria, the historic context may relate to one of the following:

- An event, a series of events or activities, or patterns of an area's development (Criterion A);
- Association with the life of an important person (Criterion B);
- A building form, architectural style, engineering technique, or artistic values, based on a stage of physical development, or the use of a material or method of construction that shaped the historic identity of an area (Criterion C); or
- A research topic (Criterion D).

⁴ For a complete discussion of historic contexts, see *National Register Bulletin: Guidelines for Completing National Register of Historic Places Registration Forms*.

Determine how the theme of the context is significant in the history of the local area, the State, or the nation.

A theme is a means of organizing properties into coherent patterns based on elements such as environment, social/ethnic groups, transportation networks, technology, or political developments that have influenced the development of an area during one or more periods of prehistory or history. A theme is considered significant if it can be demonstrated, through scholarly research, to be important in American history. Many significant themes can be found in the following list of Areas of Significance used by the National Register.

AREAS OF SIGNIFICANCE

Agriculture
Architecture
Archeology
 Prehistoric
 Historic—Aboriginal
 Historic—Non-Aboriginal
Art
Commerce
Communications
Community Planning and Development
Conservation
Economics
Education
Engineering
Entertainment/Recreation
Ethnic Heritage
 Asian
 Black
 European
 Hispanic
 Native American
 Pacific Islander
 Other
Exploration/Settlement
Health/Medicine
Industry
Invention
Landscape Architecture
Law
Literature
Maritime History
Military
Performing Arts
Philosophy
Politics/Government
Religion
Science
Social History
Transportation
Other

Determine what the property type is and whether it is important in illustrating the historic context.

A context may be represented by a variety of important property types. For example, the context of "Civil War Military Activity in Northern Virginia" might be represented by such properties as: a group of mid-19th century fortification structures; an open field where a battle occurred; a knoll from which a general directed troop movements; a sunken transport ship; the residences or public buildings that served as company headquarters; a railroad bridge that served as a focal point for a battle; and earthworks exhibiting particular construction techniques.

Because a historic context for a community can be based on a distinct period of development, it might include numerous property types. For example, the context "Era of Industrialization in Grand Bay, Michigan, 1875 - 1900" could be represented by important property types as diverse as sawmills, paper mill sites, salt refining plants, flour mills, grain elevators, furniture factories, workers housing, commercial buildings, social halls, schools, churches, and transportation facilities.

A historic context can also be based on a single important type of property. The context "Development of County Government in Georgia, 1777 - 1861" might be represented solely by courthouses. Similarly, "Bridge Construction in Pittsburgh, 1870 - 1920" would probably only have one property type.

Determine how the property represents the context through specific historic associations, architectural or engineering values, or information potential (the Criteria for Evaluation).

For example, the context of county government expansion is represented under Criterion A by historic districts or buildings that reflect population growth, development patterns, the role of government in that society, and political events in the history of the State, as well as the impact of county government on the physical development of county seats. Under Criterion C, the context is represented by properties whose architectural treatments reflect their governmental functions, both practically and symbolically. (See *Part VI: How to Identify the Type of Significance of a Property.*)

Determine what physical features the property must possess in order for it to reflect the significance of the historic context.

These physical features can be determined after identifying the following:

- Which types of properties are associated with the historic context,
- The ways in which properties can represent the theme, and
- The applicable aspects of integrity.

Properties that have the defined characteristics are eligible for listing. (See *Part VIII: How to Evaluate the Integrity of a Property.*)

PROPERTIES SIGNIFICANT WITHIN MORE THAN ONE HISTORIC CONTEXT

A specific property can be significant within one or more historic contexts, and, if possible, all of these should be identified. For example, a public building constructed in the 1830s that is related to the historic context of Civil War campaigns in the area might also be related to the theme of political developments in the community during the 1880s. A property is only required, however, to be documented as significant in one context.

COMPARING RELATED PROPERTIES

Properties listed in the National Register must possess significance when evaluated in the perspective of their historic context. Once the historic context is established and the property type is determined, it is not necessary to evaluate the property in question against other properties if:

- It is the sole example of a property type that is important in illustrating the historic context or
- It clearly possesses the defined characteristics required to strongly represent the context.

If these two conditions do not apply, then the property will have to be evaluated against other examples of the property type to determine its eligibility. The geographic level (local, State, or national) at which this evaluation is made is the same as the level of the historic context. (See *Part V: How to Evaluate a Property Within Its Historic Context*.)

LOCAL, STATE, AND NATIONAL HISTORIC CONTEXTS

Historic contexts are found at a variety of geographical levels or scales. The geographic scale selected may relate to a pattern of historical development, a political division, or a cultural area. Regardless of the scale, the historic context establishes the framework from which decisions about the significance of related properties can be made.

LOCAL HISTORIC CONTEXTS

A local historic context represents an aspect of the history of a town, city, county, cultural area, or region, or any portions thereof. It is defined by the importance of the property, not necessarily the physical location of the property. For instance, if a property is of a type found throughout a State, or its boundaries extend over two States, but its importance relates only to a particular county, the property would be considered of local significance.

The level of context of archeological sites significant for their information potential depends on the scope of the applicable research design. For example, a Late Mississippian village site may yield information in a research design concerning one settlement system on a regional scale, while in another research design it may reveal information of local importance concerning a single group's stone tool manufacturing techniques or house forms. It is a question of how the available information potential is likely to be used.

STATE HISTORIC CONTEXTS

Properties are evaluated in a State context when they represent an aspect of the history of the State as a whole (or American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the Virgin Islands). These properties do not necessarily have to belong to property types

found throughout the entire State: they can be located in only a portion of the State's present political boundary. It is the property's historic context that must be important statewide. For example, the "cotton belt" extends through only a portion of Georgia, yet its historical development in the antebellum period affected the entire State. These State historic contexts may have associated properties that are statewide or locally significant representations. A cotton gin in a small town might be a locally significant representation of this context, while one of the largest cotton producing plantations might be of State significance.

A property whose historic associations or information potential appears to extend beyond a single local area might be significant at the State level. A property can be significant to more than one community or local area, however, without having achieved State significance.

A property that overlaps several State boundaries can possibly be significant to the State or local history of each of the States. Such a property is not necessarily of national significance, however, nor is it necessarily significant to all of the States in which it is located.

Prehistoric sites are not often considered to have "State" significance, per se, largely because States are relatively recent political entities and usually do not correspond closely to Native American political territories or cultural areas. Numerous sites, however, may be of significance to a large region that might geographically encompass parts of one, or usually several, States. Prehistoric resources that might be of State significance include regional sites that provide a diagnostic assemblage of artifacts for a particular cultural group or time period or that provide chronological control (specific dates or relative order in time) for a series of cultural groups.

NATIONAL HISTORIC CONTEXTS

Properties are evaluated in a national context when they represent an aspect of the history of the United States and its territories as a whole. These national historic contexts may have associated properties that are locally or statewide significant representations, as well as those of national significance.

Properties designated as nationally significant and listed in the National Register are the prehistoric and historic units of the National Park System and those properties that have been designated National Historic Landmarks. The National Historic Landmark criteria are the standards for nationally significant properties; they are found in the *Code of Federal*

Regulations, Title 36, Part 65 and are summarized in this bulletin in *Part IX: Summary of National Historic Landmarks Criteria for Evaluation*.

A property with national significance helps us understand the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential. It must be of exceptional value in representing or illustrating an important theme in the history of the nation.

Nationally significant properties do not necessarily have to belong to a property type found throughout the entire country: they can be located in only a portion of the present political boundaries. It is their historic context that must be important nationwide. For example, the American Civil War

was fought in only a portion of the United States, yet its impact was nationwide. The site of a small military skirmish might be a locally significant representation of this national context, while the capture of the State's largest city might be a statewide significant representation of the national context.

When evaluating properties at the national level for designation as a National Historic Landmark, please refer to the National Historic Landmarks outline, *History and Prehistory in the National Park System and the National Historic Landmarks Program 1987*. (For more information about the National Historic Landmarks program, please write to the Department of the Interior, National Park Service, National Historic Landmarks, 1849 C Street, NW, NC400, Washington, DC 20240.)

VI. HOW TO IDENTIFY THE TYPE OF SIGNIFICANCE OF A PROPERTY

INTRODUCTION

When evaluated within its historic context, a property must be shown to be significant for *one or more of the four Criteria for Evaluation - A, B, C, or D* (listed earlier in *Part II*). The Criteria describe how properties are significant for their association with important events or persons, for their importance in design or construction, or for their information potential.

The basis for judging a property's significance and, ultimately, its eligibility under the Criteria is *historic context*. The use of historic context allows a property to be properly evaluated in a nearly infinite number of capacities. For instance, Criterion C: Design/Construction can accommodate properties representing construction types that are unusual or widely practiced, that are innovative or traditional, that are "high style" or vernacular, that are the work of a famous architect or an unknown master craftsman. *The key to determining whether the characteristics or associations of a particular property are significant is to consider the property within its historic context.*

After identifying the relevant historic context(s) with which the property is associated, the four Criteria are applied to the property. Within the scope of the historic context, the National Register Criteria define the kind of significance that the properties represent.

For example, within the context of "19th Century Gunpowder Production in the Brandywine Valley," Criterion A would apply to those properties associated with important events in the founding and development of the industry. Criterion B would apply to those properties associated with persons who are significant in the founding of the industry or associated with important inventions related to gunpowder manufacturing. Criterion C would apply to those buildings, structures, or objects whose architectural form or style reflect important design qualities integral to the industry. And Criterion D would apply to properties that can convey information important in our understanding of this industrial process. If a property qualifies under more than one of the Criteria, its significance under each should be considered, if possible, in order to identify all aspects of its historical value.

NATIONAL REGISTER CRITERIA FOR EVALUATION*

The National Register Criteria recognize different types of values embodied in districts, sites, buildings, structures, and objects. These values fall into the following categories:

Associative value (Criteria A and B): Properties significant for their association or linkage to events (Criterion A) or persons (Criterion B) important in the past.

Design or Construction value (Criterion C): Properties significant as representatives of the manmade expression of culture or technology.

Information value (Criterion D): Properties significant for their ability to yield important information about prehistory or history.

*For a complete listing of the Criteria for Evaluation, refer to Part II of this bulletin.

CRITERION A: EVENT

Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.

UNDERSTANDING CRITERION A: EVENT

To be considered for listing under Criterion A, a property must be associated with one or more events important in the defined historic context. Criterion A recognizes properties associated with single events, such as the founding of a town, or with a pattern of events, repeated activities, or historic trends, such as the gradual rise of a port city's prominence in trade and commerce. The event or trends, however, must clearly be important within the associated context: settlement, in the case of the town, or development of a maritime economy, in the case of the port city. Moreover, the property must have an important association with the event or historic trends, and it must retain historic integrity. (See *Part V: How to Evaluate a Property Within its Historic Context.*)

Several steps are involved in determining whether a property is significant for its associative values:

- Determine the nature and origin of the property,
- Identify the historic context with which it is associated, and
- Evaluate the property's history to determine whether it is associated with the historic context in any important way.

APPLYING CRITERION A: EVENT

TYPES OF EVENTS

A property can be associated with either (or both) of two types of events:

- A specific event marking an important moment in American prehistory or history and
- A pattern of events or a historic trend that made a significant contribution to the development of a community, a State, or the nation.

Refer to the sidebar on the right for a list of specific examples.

ASSOCIATION OF THE PROPERTY WITH THE EVENTS

The property you are evaluating must be documented, through accepted means of historical or archeological research (including oral history), to have existed at the time of the event or pattern of events *and* to have been associated with those events. A property is *not* eligible if its associations are speculative. For archeological sites, well reasoned inferences drawn from data recovered at the site can be used to establish the association between the site and the events.

SIGNIFICANCE OF THE ASSOCIATION

Mere association with historic events or trends is not enough, in and of itself, to qualify under Criterion A: the property's specific association must be considered important as well. For example, a building historically in commercial use must be shown to have been significant in commercial history.

EXAMPLES OF PROPERTIES ASSOCIATED WITH EVENTS

Properties associated with specific events:

- *The site of a battle.*
- *The building in which an important invention was developed.*
- *A factory district where a significant strike occurred.*
- *An archeological site at which a major new aspect of prehistory was discovered, such as the first evidence of man and extinct Pleistocene animals being contemporaneous.*
- *A site where an important facet of European exploration occurred.*

Properties associated with a pattern of events:

- *A trail associated with western migration.*
- *A railroad station that served as the focus of a community's transportation system and commerce.*
- *A mill district reflecting the importance of textile manufacturing during a given period.*
- *A building used by an important local social organization.*
- *A site where prehistoric Native Americans annually gathered for seasonally available resources and for social interaction.*
- *A downtown district representing a town's growth as the commercial focus of the surrounding agricultural area.*

TRADITIONAL CULTURAL VALUES

Traditional cultural significance is derived from the role a property plays in a community's historically rooted beliefs, customs, and practices. Properties may have significance under Criterion A if they are associated with events, or series of events, significant to the cultural traditions of a community.⁵

Eligible

- A hilltop associated in oral historical accounts with the founding of an Indian tribe or society is eligible.
- A rural community can be eligible whose organization, buildings, or patterns of land use reflect the cultural traditions valued by its long-term residents.
- An urban neighborhood can be eligible as the traditional home of a particular cultural group and as a reflection of its beliefs and practices.

Not Eligible

- A site viewed as sacred by a recently established utopian or religious community does not have traditional cultural value and is not eligible.



Criterion A - The Old Brulay Plantation, Brownsville vicinity, Cameron county, Texas. Historically significant for its association with the development of agriculture in southeast Texas, this complex of 10 brick buildings was constructed by George N. Brulay, a French immigrant who introduced commercial sugar production and irrigation to the Rio Grande Valley. (Photo by Texas Historical Commission).

⁵For more information, refer to *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

CRITERION B: PERSON

Properties may be eligible for the National Register if they are associated with the lives of persons significant in our past.

UNDERSTANDING CRITERION B: PERSON⁶

Criterion B applies to properties associated with individuals whose specific contributions to history can be identified and documented. Persons "significant in our past" refers to individuals whose activities are demonstrably important within a local, State, or national historic context. The criterion is generally restricted to those properties that illustrate (rather than commemorate) a person's important achievements. (The policy regarding commemorative properties, birthplaces, and graves is explained further in *Part VIII: How to Apply the Criteria Considerations*.)

Several steps are involved in determining whether a property is significant for its associative values under Criterion B. First, determine the importance of the individual. Second, ascertain the length and nature of his/her association with the property under study and identify the other properties associated with the individual. Third, consider the property under Criterion B, as outlined below.

EXAMPLES OF PROPERTIES ASSOCIATED WITH PERSONS

Properties associated with a Significant Person:

- The home of an important merchant or labor leader.
- The studio of a significant artist.
- The business headquarters of an important industrialist.



Criterion B - The William Whitney House, Hinsdale, DuPage County, Illinois. This building is locally significant for its historical association with William Whitney, the founder of the town of Hinsdale, Illinois. Whitney, a citizen of New York State, moved to Illinois, established the town, and while living here between 1870 and 1879 was a prominent local businessman and politician. (Photo by Frederick C. Cue).

⁶For further information on properties eligible under Criterion B, refer to *National Register Bulletin: Guidelines for Evaluating and Documenting Properties Associated with Significant Persons*.

APPLYING CRITERION B: PERSON

SIGNIFICANCE OF THE INDIVIDUAL

The persons associated with the property must be *individually* significant within a historic context. A property is not eligible if its only justification for significance is that it was owned or used by a person who is a member of an identifiable profession, class, or social or ethnic group. It must be shown that the person gained importance within his or her profession or group.

Eligible

- The residence of a doctor, a mayor, or a merchant is eligible under Criterion B if the person was significant in the field of medicine, politics, or commerce, respectively.

Not Eligible

- A property is not eligible under Criterion B if it is associated with an individual about whom no scholarly judgement can be made because either research has not revealed specific information about the person's activities and their impact, or there is insufficient perspective to determine whether those activities or contributions were historically important.

ASSOCIATION WITH THE PROPERTY

Properties eligible under Criterion B are usually those associated with a person's *productive* life, reflecting the time period when he or she achieved significance. In some instances this may be the person's home; in other cases, a person's business, office, laboratory, or studio may best represent his or her contribution. Properties that pre- or post-date an individual's significant accomplishments are usually not eligible. (See *Comparison to Related Properties*, below, for exceptions to this rule.)

The individual's association with the property must be documented by accepted methods of historical or archeological research, including written or oral history. Speculative associations are not acceptable. For archeological sites, well reasoned inferences drawn from data recovered at the site are acceptable.

COMPARISON TO RELATED PROPERTIES

Each property associated with an important individual should be compared to other associated properties to identify those that best represent the person's historic contributions. The best representatives usually are properties associated with the person's adult or *productive* life. Properties associated with an individual's formative or later years may also qualify if it can be demonstrated that the person's activities during this period were historically significant or if no properties from the person's productive years survives. Length of association is an important factor when assessing several properties with similar associations.

A community or State may contain several properties eligible for associations with the same important person, if each represents a different aspect of the person's productive life. A property can also be eligible if it has brief but consequential associations with an important individual. (Such associations are often related to specific events that occurred at the property and, therefore, it may also be eligible under Criterion A.)

ASSOCIATION WITH GROUPS

For properties associated with several community leaders or with a prominent family, it is necessary to identify specific individuals and to explain their significant accomplishments.

Eligible

- A residential district in which a large number of prominent or influential merchants, professionals, civic leaders, politicians, etc., lived will be eligible under Criterion B if the significance of one or more specific individual residents is explicitly justified.
- A building that served as the seat of an important family is eligible under Criterion B if the significant accomplishments of one or more individual family members is explicitly justified.

Not Eligible

- A residential district in which a large number of influential persons lived is not eligible under Criterion B if the accomplishments of a specific individual(s) cannot be documented. If the significance of the district rests in the cumulative importance of prominent residents, however, then the district might still be eligible under Criterion A. Eligibility, in this case, would be based on the broad pattern of community development, through which the neighborhood evolved into the primary residential area for this class of citizens.
- A building that served as the seat of an important family will not be eligible under Criterion B if the significant accomplishments of individual family members cannot be documented. In cases where a succession of family members have lived in a house and collectively have had a demonstrably significant impact on the community, as a family, the house is more likely to be significant under Criterion A for association with a pattern of events.

ASSOCIATION WITH LIVING PERSONS

Properties associated with living persons are usually not eligible for inclusion in the National Register. Sufficient time must have elapsed to assess both the person's field of endeavor and his/her contribution to that field. Generally, the person's active participation in the endeavor must be finished for this historic perspective to emerge. (See Criteria Considerations C and G in *Part VII: How to Apply the Criteria Considerations*.)

ASSOCIATION WITH ARCHITECTS/ARTISANS

Architects, artisans, artists, and engineers are often represented by their works, which are eligible under Criterion C. Their homes and studios, however, can be eligible for consideration under Criterion B, because these usually are the properties with which they are most personally associated.

NATIVE AMERICAN SITES

The known major villages of individual Native Americans who were important during the contact period or later can qualify under Criterion B. As with all Criterion B properties, the individual associated with the property must have made some specific important contribution to history. Examples include sites significantly associated with Chief Joseph and Geronimo.⁷

⁷ For more information, refer to *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

CRITERION C: DESIGN/CONSTRUCTION

Properties may be eligible for the National Register if they embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.



Richland Plantation, East Feliciana Parish, Louisiana. Properties can qualify under Criterion C as examples of high style architecture. Built in the 1830s, Richland is a fine example of a Federal style residence with a Greek Revival style portico. (Photo by Dave Gleason).

UNDERSTANDING CRITERION C: DESIGN/ CONSTRUCTION

This criterion applies to properties significant for their physical design or construction, including such elements as architecture, landscape architecture, engineering, and artwork. To be eligible under Criterion C, a property must meet *at least one* of the following requirements:

- Embody distinctive characteristics of a type, period, or method of construction.
- Represent the work of a master.
- Possess high artistic value.

- Represent a significant and distinguishable entity whose components may lack individual distinction.

The first requirement, that properties “embody the distinctive characteristics of a type, period, or method of construction,” refers to the way in which a property was conceived, designed, or fabricated by a people or culture in past periods of history. “The work of a master” refers to the technical or aesthetic achievements of an architect or craftsman. “High artistic values” concerns the expression of aesthetic ideals or preferences and applies to aesthetic achievement.

Resources “that represent a significant and distinguishable entity whose components may lack individual distinction” are called “districts.” In the Criteria for Evaluation (as published in the *Code of Federal Regulations* and reprinted here in Part II), districts are

defined within the context of Criterion C. Districts, however, can be considered for eligibility under all the Criteria, individually or in any combination, as is appropriate. For this reason, the full discussion of districts is contained in Part IV: *How to Define Categories of Historic Properties*. Throughout the bulletin, however, districts are mentioned within the context of a specific subject, such as an individual Criterion.



Grant Family House, Saco vicinity, York County, Maine. Properties possessing high artistic value meet Criterion C through the expression of aesthetic ideals or preferences. The Grant Family House, a modest Federal style residence, is significant for its remarkably well-preserved stenciled wall decorative treatment in the entry hall and parlor. Painted by an unknown artist ca. 1825, this is a fine example of 19th century New England regional artistic expression. (Photo by Kirk F. Mohney).

EXAMPLES OF PROPERTIES ASSOCIATED WITH DESIGN/ CONSTRUCTION

Properties associated with design and construction:

- A house or commercial building representing a significant style of architecture.
- A designed park or garden associated with a particular landscape design philosophy.
- A movie theater embodying high artistic value in its decorative features.
- A bridge or dam representing technological advances.

APPLYING CRITERION C: DESIGN/ CONSTRUCTION

DISTINCTIVE CHARACTERISTICS OF TYPE, PERIOD, AND METHOD OF CONSTRUCTION

This is the portion of Criterion C under which most properties are eligible, for it encompasses all architectural styles and construction practices. To be eligible under this portion of the Criterion, a property must clearly illustrate, through "distinctive characteristics," the following:

- The pattern of features common to a particular class of resources,
- The individuality or variation of features that occurs within the class,
- The evolution of that class, or
- The transition between classes of resources.

Distinctive Characteristics: "Distinctive characteristics" are the physical features or traits that commonly recur in individual types, periods, or methods of construction. To be eligible, a property must clearly contain enough of those characteristics to be considered a true representative of a particular type, period, or method of construction.

Characteristics can be expressed in terms such as form, proportion, structure, plan, style, or materials. They can be general, referring to ideas of design and construction such as basic plan or form, or they can be specific, referring to precise ways of combining particular kinds of materials.

Eligible

- A building eligible under the theme of Gothic Revival architecture must have the distinctive characteristics that make up the vertical and picturesque qualities of the style, such as pointed gables, steep roof pitch, board and batten siding, and ornamental bargeboard and veranda trim.
- A late Mississippian village that illustrates the important concepts in prehistoric community design and planning will qualify.
- A designed historic landscape will qualify if it reflects a historic trend or school of theory and practice, such as the City Beautiful Movement, evidencing distinguished design, layout, and the work of skilled craftsmanship.

Not Eligible

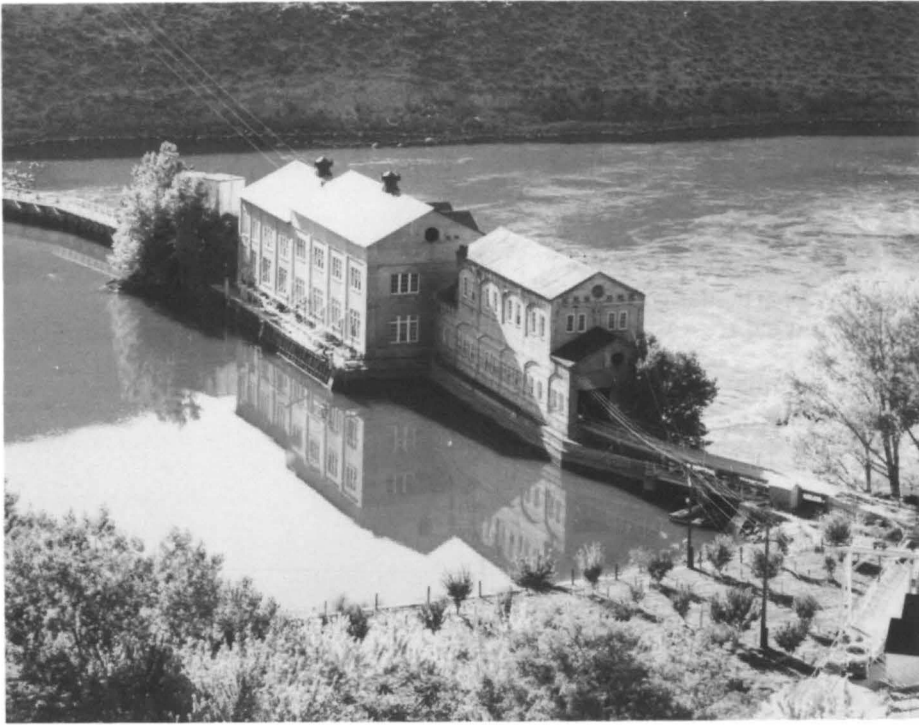
- A commercial building with some Art Deco detailing is not eligible under Criterion C if the detailing was added merely as an afterthought, rather than fully integrated with overall lines and massing typical of the Art Deco style or the transition between that and another style.
- A designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system will not qualify.

Type, Period, and Method of Construction: "Type, period, or method of construction" refers to the way certain properties are related to one another by cultural tradition or function, by dates of construction or style, or by choice or availability of materials and technology.

A structure is eligible as a specimen of its type or period of construction if it is an important example (within its context) of building practices of a particular time in history. For properties that represent the variation, evolution, or transition of construction types, it must be demonstrated that the variation, etc., was an important phase of the architectural development of the area or community in that it had an impact as evidenced by later buildings. A property is not eligible, however, simply because it has been identified as the only such property ever fabricated; it must be demonstrated to be significant as well.

Eligible

- A building that has some characteristics of the Romanesque Revival style and some characteristics of the Commercial style can qualify if it illustrates the transition of architectural design and the transition itself is considered an important architectural development.
- A Hopewellian mound, if it is an important example of mound building construction techniques, would qualify as a method or type of construction.
- A building which illustrates the early or the developing technology of particular structural systems, such as skeletal steel framing, is eligible as an example of a particular method of construction.



Swan Falls Dam and Power Plant, Murphy vicinity, Ada County, Idaho. Significant works of engineering can qualify under Criterion C. Built between 1900-1907 the Swan Falls Dam and Power Plant across the Snake River is one of the early hydroelectric plants in the State of Idaho. (Photo by H.L. Hough).



Looney House, Asheville vicinity, St. Clair County, Alabama. Examples of vernacular styles of architecture can qualify under Criterion C. Built ca. 1818, the Looney House is significant as possibly the State's oldest extant two-story dogtrot type of dwelling. The defining open center passage of the dogtrot was a regional building response to the southern climate. (Photo by Carolyn Scott).

HISTORIC ADAPTATION OF THE ORIGINAL PROPERTY

A property can be significant not only for the way it was originally constructed or crafted, but also for the way it was adapted at a later period, or for the way it illustrates changing tastes, attitudes, and uses over a period of time.

A district is eligible under this guideline if it illustrates the evolution of historic character of a place over a particular span of time.

Eligible

- A Native American irrigation system modified for use by Europeans could be eligible if it illustrates the technology of either or both periods of construction.
- An early 19th century farmhouse modified in the 1880s with Queen Anne style ornamentation could be significant for the modification itself, if it represented a local variation or significant trend in building construction or remodeling, was the work of a local master (see *Works of a Master* on page 20), or reflected the tastes of an important person associated with the property at the time of its alteration.
- A district encompassing the commercial development of a town between 1820 and 1910, characterized by buildings of various styles and eras, can be eligible.

WORKS OF A MASTER

A master is a figure of generally recognized greatness in a field, a known craftsman of consummate skill, or an anonymous craftsman whose work is distinguishable from others by its characteristic style and quality. The property must express a particular phase in the development of the master's career, an aspect of his or her work, or a particular idea or theme in his or her craft.

A property is not eligible as the work of a master, however, simply because it was designed by a prominent architect. For example, not every building designed by Frank Lloyd Wright is eligible under this portion of Criterion C, although it might meet other portions of the Criterion, for instance as a representative of the Prairie style.

The work of an unidentified craftsman is eligible if it rises above the level of workmanship of the other properties encompassed by the historic context.

PROPERTIES POSSESSING HIGH ARTISTIC VALUES

High artistic values may be expressed in many ways, including areas as diverse as community design or planning, engineering, and sculpture. A property is eligible for its high artistic values if it so fully articulates a particular concept of design that it expresses an aesthetic ideal. A property is not eligible, however, if it does not express aesthetic ideals or design concepts more fully than other properties of its type.

Eligible

- A sculpture in a town square that epitomizes the design principles of the Art Deco style is eligible.
- A building that is a classic expression of the design theories of the Craftsman Style, such as carefully detailed handwork, is eligible.
- A landscaped park that synthesizes early 20th century principles of landscape architecture and expresses an aesthetic ideal of environment can be eligible.
- Properties that are important representatives of the aesthetic values of a cultural group, such as petroglyphs and ground drawings by Native Americans, are eligible.

Not Eligible

- A sculpture in a town square that is a typical example of sculpture design during its period would not qualify for high artistic value, although it might be eligible if it were significant for other reasons.
- A building that is a modest example (within its historic context) of the Craftsman Style of architecture, or a landscaped park that is characteristic of turn of the century landscape design would not qualify for high artistic value.

A Significant and Distinguishable Entity Whose Components May Lack Individual Distinction. This portion of Criterion C refers to districts. For detailed information on districts, refer to *Part IV* of this bulletin.

CRITERION D: INFORMATION POTENTIAL

Properties may be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history.

UNDERSTANDING CRITERION D: INFORMATION POTENTIAL

Certain important research questions about human history can only be answered by the actual physical material of cultural resources. Criterion D encompasses the properties that have the potential to answer, in whole or in part, those types of research questions. The most common type of property nominated under this Criterion is the archeological site (or a district comprised of archeological sites). Buildings, objects, and structures (or districts comprised of these property types), however, can also be eligible for their information potential.

Criterion D has two requirements, which must *both* be met for a property to qualify:

- The property must have, or have had, information to contribute to our understanding of human history or prehistory, and
- The information must be considered important.

Under the first of these requirements, a property is eligible if it has been used as a source of data and contains more, as yet unretrieved data. A property is also eligible if it has not yet yielded information but, through testing or research, is determined a likely source of data.

Under the second requirement, the information must be carefully evaluated within an appropriate context to determine its importance. Information is considered “important” when it is shown to have a significant bearing on a research design that addresses such areas as: 1) current

data gaps or alternative theories that challenge existing ones or 2) priority areas identified under a State or Federal agency management plan.

APPLYING CRITERION D: INFORMATION POTENTIAL

ARCHEOLOGICAL SITES

Criterion D most commonly applies to properties that contain or are likely to contain information bearing on an important archeological research question. The property must have characteristics suggesting the likelihood that it possesses configurations of artifacts, soil strata, structural remains, or other natural or cultural features that make it possible to do the following:

- Test a hypothesis or hypotheses about events, groups, or processes in the past that bear on important research questions in the social or natural sciences or the humanities; or
- Corroborate or amplify currently available information suggesting that a hypothesis is either true or false; or
- Reconstruct the sequence of archeological cultures for the purpose of identifying and explaining continuities and discontinuities in the archeological record for a particular area.

BUILDINGS, STRUCTURES, AND OBJECTS

While most often applied to archeological districts and sites, Criterion D can also apply to buildings, structures, and objects that contain important information. In order for these types of properties to be eligible under Criterion D, they themselves must be, or must have been, the principal source of the important information.

Eligible

- A building exhibiting a local variation on a standard design or construction technique can be eligible if study could yield important information, such as how local availability of materials or construction expertise affected the evolution of local building development.

Not Eligible

- The ruins of a hacienda once contained murals that have since been destroyed. Historical documentation, however, indicates that the murals were significant for their highly unusual design. The ruins can not be eligible under Criterion D for the importance of the destroyed murals if the information is contained only in the documentation.



Criterion D - Champe-Fremont 1 Archeological Site, Omaha vicinity, Douglas County, Nebraska. This archeological site, dating from ca. 1100-1450 A.D., consists of pit houses and storage pits which have the potential to yield important information concerning the subsistence patterns, religious and mortuary practices, and social organization of the prehistoric residents of eastern Nebraska. (Nebraska State Historical Society)

ASSOCIATION WITH HUMAN ACTIVITY

A property must be associated with *human activity* and be critical for understanding a site's historic environment in order to be eligible under Criterion D. A property can be linked to human activity through events, processes, institutions, design, construction, settlement, migration, ideals, beliefs, lifeways, and other facets of the development or maintenance of cultural systems.

The natural environment associated with the properties was often very different from that of the present and strongly influenced cultural development. Aspects of the environment that are pertinent to human activities should be considered when evaluating properties under Criterion D.

Natural features and paleontological (floral and faunal) sites are not usually eligible under Criterion D in and of themselves. They can be eligible, however, if they are either directly related to human activity or critical to understanding a site's historic environment. In a few cases, a natural feature or site unmarked by cultural materials, that is primarily eligible under Criterion A, may also be eligible under Criterion D, if study of the feature, or its location, setting, etc. (usually in the context of data gained from other sources), will yield important information about the event or period with which it is associated.

ESTABLISHING A HISTORIC CONTEXT

The information that a property yields, or will yield, must be evaluated within an appropriate historic context. This will entail consulting the body of information already collected from similar properties or other pertinent sources, including modern and historic written records. The researcher must be able to anticipate if and how the potential information will affect the definition of the context. The information likely to be obtained from a particular property must confirm, refute, or supplement in an important way existing information.

A property is *not* eligible if it cannot be related to a particular time period or cultural group and, as a result, lacks any historic context within which to evaluate the importance of the information to be gained.

DEVELOPING RESEARCH QUESTIONS

Having established the importance of the information that may be recovered, it is necessary to be explicit in demonstrating the connection between the important information and a specific property. One approach is to determine if specific important research questions can be answered by the data contained in the

property. Research questions can be related to property-specific issues, to broader questions about a large geographic area, or to theoretical issues independent of any particular geographic location. These questions may be derived from the academic community or from preservation programs at the local, regional, State, or national level. Research questions are usually developed as part of a "research design," which specifies not only the questions to be asked, but also the types of data needed to supply the answers, and often the techniques needed to recover the data.

Eligible

- When a site consisting of a village occupation with midden deposits, hearths, ceramics, and stratified evidence of several occupations is being evaluated, three possible research topics could be: 1) the question of whether the site occupants were indigenous to the area prior to the time of occupation or recent arrivals, 2) the investigation of the settlement-subsistence pattern of the occupants, 3) the question of whether the region was a center for the domestication of plants. Specific questions could include: A) Do the deposits show a sequential development or sudden introduction of Ceramic Type X? B) Do the dates of the occupations fit our expectations based on the current model for the reoccupation behavior of slash-and-burn agriculturalists? C) Can any genetic changes in the food plant remains be detected?

Not Eligible

- A property is not eligible if so little can be understood about it that it is not possible to determine if specific important research questions can be answered by data contained in the property.

ESTABLISHING THE PRESENCE OF ADEQUATE DATA

To support the assertion that a property has the data necessary to provide the important information, the property should be investigated with techniques sufficient to establish the presence of relevant data categories. What constitutes appropriate investigation techniques would depend upon specific circumstances including the property's location, condition, and the research questions being addressed, and could range from surface survey (or photographic survey for buildings), to the application of remote sensing techniques or intensive subsurface testing. Justification of the research potential of a property may be based on analogy to another better known property if sufficient similarities exist to establish the appropriateness of the analogy.

Eligible

- Data requirements depend on the specific research topics and questions to be addressed. To continue the example in "Developing Research Questions" above, we might want to ascertain the following with reference to questions A, B, and C: A) The site contains Ceramic Type X in one or more occupation levels and we expect to be able to document the local evaluation of the type or its intrusive nature. B) The hearths contain datable carbon deposits and are associated with more than one occupation. C) The midden deposits show good floral/faunal preservation, and we know enough about the physical evolution of food plants to interpret signs that suggest domestication.

Not Eligible

- Generally, if the applicable research design requires clearly stratified deposits, then subsurface investigation techniques must be applied. A site composed only of surface materials can not be eligible for its potential to yield information that could only be found in stratified deposits.

INTEGRITY

The assessment of integrity for properties considered for information potential depends on the data requirements of the applicable research design. A property possessing information potential does not need to recall *visually* an event, person, process, or construction technique. It is important that the significant data contained in the property remain sufficiently intact to yield the expected important information, if the appropriate study techniques are employed.

Eligible

- An irrigation system significant for the information it will yield on early engineering practices can still be eligible even though it is now filled in and no longer retains the appearance of an open canal.

Not Eligible

- A plowed archeological site contains several superimposed components that have been mixed to the extent that artifact assemblages cannot be reconstructed. The site cannot be eligible if the data requirements of the research design call for the study of artifacts specific to one component.

PARTLY EXCAVATED OR DISTURBED PROPERTIES

The current existence of appropriate physical remains must be ascertained in considering a property's ability to yield important information. Properties that have been partly excavated or otherwise disturbed and that are being considered for their potential to yield additional important information must be shown to retain that potential in their remaining portions.

Eligible

- A site that has been partially excavated but still retains substantial intact deposits (or a site in which the remaining deposits are small but contain critical information on a topic that is not well known) is eligible.

Not Eligible

- A totally collected surface site or a completely excavated buried site is not eligible since the physical remains capable of yielding important information no longer exist at the site. (See *Completely Excavated Sites*, on page 24, for exception.) Likewise, a site that has been looted or otherwise disturbed to the extent that the remaining cultural materials have lost their important depositional context (horizontal or vertical location of deposits) is not eligible.
- A reconstructed mound or other reconstructed site will generally not be considered eligible, because original cultural materials or context or both have been lost.

COMPLETELY EXCAVATED SITES

Properties that have yielded important information in the past and that no longer retain additional research potential (such as completely excavated archeological sites) must be assessed essentially as historic sites under Criterion A. Such sites must be significant for associative values related to: 1) the importance of the data gained or 2) the impact of the property's role in the history of the development of anthropology/ archeology or other relevant disciplines. Like other historic properties, the site must retain the ability to convey its association as the former repository of important information, the location of historic events, or the representative of important trends.

Eligible

- A property that has been excavated is eligible if the data recovered was of such importance that it influenced the direction of research in the discipline, as in a site that clearly established the antiquity of the human occupation of the New World. (See Criterion A in *Part VI: How to Identify the Type of Significance of a Property* and *Criteria Consideration G* in *Part VII: How to Apply the Criteria Considerations*.)

Not Eligible

- A totally excavated site that at one time yielded important information but that no longer can convey either its historic/ prehistoric utilization or significant modern investigation is not eligible.

VII. HOW TO APPLY THE CRITERIA CONSIDERATIONS

INTRODUCTION

Certain kinds of properties are not usually considered for listing in the National Register: religious properties, moved properties, birthplaces and graves, cemeteries, reconstructed properties, commemorative properties, and properties achieving significance within the past fifty years. These properties *can* be eligible for listing, however, if they meet special requirements, called Criteria Considerations, in addition to meeting the regular requirements (that is, being eligible under one or more of the four Criteria and possessing integrity). *Part VII* provides guidelines for determining which properties must meet these special requirements and for applying each Criteria Consideration.

The Criteria Considerations need to be applied only to *individual* properties. Components of eligible districts do not have to meet the special requirements unless they make up the majority of the district or are the focal point of the district. These are the general steps to follow when applying the Criteria Considerations to your property:

- Before looking at the Criteria Considerations, make sure your property meets one or more of the four Criteria for Evaluation and possesses integrity.
- If it does, check the Criteria Considerations (next column) to see if

the property is of a type that is usually excluded from the National Register. The sections that follow also list specific examples of properties of each type. If your property clearly *does not* fit one of these types, then it does not need to meet any special requirements.

- If your property *does* fit one of these types, then it must meet the special requirements stipulated for that type in the Criteria Considerations.

CRITERIA CONSIDERATIONS*

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past fifty years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a. a religious property deriving primary significance from architectural or artistic distinction or historical importance; or

- b. a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- c. a birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or
- d. a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, from association with historic events; or
- e. a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- f. a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or,
- g. a property achieving significance within the past 50 years if it is of exceptional importance.

*The Criteria Considerations are taken from the Criteria for Evaluation, found in the *Code of Federal Regulations, Title 36, Part 60*.

CRITERIA CONSIDERATION A: RELIGIOUS PROPERTIES

A religious property is eligible if it derives its primary significance from architectural or artistic distinction or historical importance.

UNDERSTANDING CRITERIA CONSIDERATION A: RELIGIOUS PROPERTIES

A religious property requires justification on architectural, artistic, or historic grounds to avoid any appearance of judgment by government about the validity of any religion or belief. Historic significance for a religious property cannot be established on the merits of a religious doctrine, but rather, for architectural or artistic values or for important historic or cultural forces that the property represents. A religious property's significance under Criterion A, B, C, or D must be judged in purely secular terms. A religious group may, in some cases, be considered a cultural group whose activities are significant in areas broader than religious history.

Criteria Consideration for Religious Properties applies:

- If the resource was constructed by a religious institution.
- If the resource is presently owned by a religious institution or is used for religious purposes.
- If the resource was owned by a religious institution or used for religious purposes during its Period of Significance.
- If Religion is selected as an Area of Significance.

Examples of Properties that MUST Meet Criteria Consideration A: Religious Properties

- A historic church where an important non-religious event occurred, such as a speech by Patrick Henry.
- A historic synagogue that is significant for architecture.
- A private residence is the site of a meeting important to religious history.
- A commercial block that is currently owned as an investment property by a religious institution.
- A historic district in which religion was either a predominant or significant function during the period of significance.

Example of Properties that DO NOT Need to Meet Criteria Consideration A: Religious Properties

- A residential or commercial district that currently contains a small number of churches that are not a predominant feature of the district.
- A town meeting hall that serves as the center of community activity and houses a wide variety of public and private meetings, including religious service. The resource is significant for architecture and politics, and the religious function is incidental.
- A town hall, significant for politics from 1875 to 1925, that housed religious services during the 1950s. Since the religious function occurred after the Period of Significance, the Criteria Consideration does not apply.

APPLYING CRITERIA CONSIDERATION A: RELIGIOUS PROPERTIES

ELIGIBILITY FOR HISTORIC EVENTS

A religious property can be eligible under Criterion A for any of three reasons:

- It is significant under a theme in the history of religion having secular scholarly recognition; or
- It is significant under another historical theme, such as exploration, settlement, social philanthropy, or education; or
- It is significantly associated with traditional cultural values.

RELIGIOUS HISTORY

A religious property can be eligible if it is directly associated with either a specific event or a broad pattern in the history of religion.

Eligible

- The site of a convention at which a significant denominational split occurred meets the requirements of Criteria Consideration A. Also eligible is a property that illustrates the broad impact of a religious institution on the history of a local area.

Not Eligible

- A religious property cannot be eligible simply because was the place of religious services for a community, or was the oldest structure used by a religious group in a local area.

OTHER HISTORICAL THEMES

A religious property can be eligible if it is directly associated with either a specific event or a broad pattern that is significant in another historic context. A religious property would also qualify if it were significant for its associations that illustrate the importance of a particular religious group in the social, cultural, economic, or political history of the area. Eligibility depends on the importance of the event or broad pattern and the role of the specific property.

Eligible

- A religious property can qualify for its important role as a temporary hospital during the Revolutionary War, or if its school was significant in the history of education in the community.

Not Eligible

- A religious property is not significant in the history of education in a community simply because it had occasionally served as a school.

TRADITIONAL CULTURAL VALUES

When evaluating properties associated with traditional cultures, it is important to recognize that often these cultures do not make clear distinctions between what is secular and what is sacred. Criteria Consideration A is not intended to exclude traditional cultural resources merely because they have religious uses or are considered sacred. A property or natural feature important to a traditional culture's religion and mythology is eligible if its importance has been ethnohistorically documented and if the site can be clearly defined. It is critical, however, that the activities be documented and that the associations not be so diffuse that the physical resource cannot be adequately defined.⁸

Eligible

- A specific location or natural feature that an Indian tribe believes to be its place of origin and that is adequately documented qualifies under Criteria Consideration A.

ELIGIBILITY FOR HISTORIC PERSONS

A religious property can be eligible for association with a person important in religious history, if that significance has scholarly, secular recognition or is important in other historic contexts. Individuals who would likely be considered significant are those who formed or significantly influenced an important religious institution or movement, or who were important in the social, economic, or political history of the area. Properties associated with individuals important only within the context of a single congregation and lacking importance in any other historic context would not be eligible under Criterion B.

Eligible

- A religious property strongly associated with a religious leader, such as George Whitefield or Joseph Smith, is eligible.

⁸ For more information on applying Criteria Consideration A to traditional cultural properties, refer to *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties*.

ELIGIBILITY FOR ARCHITECTURAL OR ARTISTIC DISTINCTION

A religious property significant for its architectural design or construction should be evaluated as are other properties under Criterion C; that is, it should be evaluated within an established architectural context and, if necessary, compared to other properties of its type, period, or method of construction. (See "Comparing Related Properties" in Part V: *How to Evaluate a Property Within Its Historic Context*.)

Eligible

- A historic camp meeting district that meets the requirements of Criterion C for its significance as a type of construction is eligible.

ELIGIBILITY FOR INFORMATION POTENTIAL

A religious property, whether a district, site, building, structure, or object, is eligible if it can yield important information about the religious practices of a cultural group or other historic themes. This kind of property should be evaluated as are other properties under Criterion D, in relation to similar properties, other information sources, and existing data gaps.

Eligible

- A 19th century camp meeting site that could provide information about the length and intensity of site use during revivals of the Second Great Awakening is eligible.
- Rock cairns or medicine wheels that had a historic religious mythological function and can provide information about specific cultural beliefs are eligible.

ABILITY TO REFLECT HISTORIC ASSOCIATIONS

As with all eligible properties, religious properties must physically represent the period of time for which they are significant. For instance, a recent building that houses an older congregation cannot qualify based on the historic activities of the group because the current building does not convey the earlier history. Likewise, an older building that housed the historic activities of the congregation is eligible if it still physically represents the period of the congregation's significance. However, if an older building has been remodeled to the extent that its appearance dates from the time of the remodeling, it can only be eligible if the period of significance corresponds with the period of the alterations.

Eligible

- A church built in the 18th century and altered beyond recognition in the 19th century is eligible only if the additions are important in themselves as an example of late 19th century architecture or as a reflection of an important period of the congregation's growth.

Not Eligible

- A synagogue built in the 1920s cannot be eligible for the important activities of its congregation in the 18th and 19th centuries. It can only be eligible for significance obtained after its construction date.
- A rural 19th century frame church recently sheathed in brick is not eligible because it has lost its characteristic appearance and therefore can no longer convey its 19th century significance, either for architectural value or historic association.



Criteria Consideration A - Religious Properties. A religious property can qualify as an exception to the Criteria if it is architecturally significant. *The Church of the Navity in Rosedale, Iberville Parish, Louisiana, qualified as a rare example in the State of a 19th century small frame Gothic Revival style chapel.* (Robert Obier)

CRITERIA CONSIDERATION B: MOVED PROPERTIES

A property removed from its original or historically significant location can be eligible if it is significant primarily for architectural value or it is the surviving property most importantly associated with a historic person or event.

UNDERSTANDING CRITERIA CONSIDERATION B: MOVED PROPERTIES

The National Register criteria limit the consideration of moved properties because significance is embodied in locations and settings as well as in the properties themselves. Moving a property destroys the relationships between the property and its surroundings and destroys associations with historic events and persons. A move may also cause the loss of historic features such as landscaping, foundations, and chimneys, as well as loss of the potential for associated archeological deposits. Properties that were moved *before* their period of significance do not need to meet the special requirements of Criteria Consideration B.

One of the basic purposes of the National Register is to encourage the preservation of historic properties as living parts of their communities. In keeping with this purpose, it is not usual to list artificial groupings of buildings that have been created for purposes of interpretation, protection, or maintenance. Moving buildings to such a grouping destroys the integrity of location and setting, and can create a false sense of historic development.

APPLYING CRITERIA CONSIDERATION B: MOVED PROPERTIES

ELIGIBILITY FOR ARCHITECTURAL VALUE

A moved property significant under Criterion C must retain enough historic features to convey its architectural values and retain integrity of design, materials, workmanship, feeling, and association.

Examples of Properties that MUST Meet Criteria Consideration B: Moved Properties

- A resource moved from one location on its original site to another location on the property, during or after its Period of Significance.
- A district in which a significant number of resources have been moved from their original location.
- A district which has one moved building that makes an especially significant contribution to the district.
- A portable resource, such as a ship or railroad car, that is relocated to a place incompatible with its original function.
- A portable resource, such as a ship or railroad car, whose importance is critically linked to its historic location or route and that is moved.

Examples of Properties that DO NOT Need to Meet Criteria Consideration B: Moved Properties

- A property that is moved prior to its Period of Significance.
- A district in which only a small percentage of typical buildings in a district are moved.
- A moved building that is part of a complex but is of less significance than the remaining (unmoved) buildings.
- A portable resource, such as a ship or railroad car, that is eligible under Criterion C and is moved within its natural setting (water, rails, etc.).
- A property that is raised or lowered on its foundations.

ELIGIBILITY FOR HISTORIC ASSOCIATIONS

A moved property significant under Criteria A or B must be demonstrated to be the surviving property most importantly associated with a particular historic event or an important aspect of a historic person's life. The phrase "most importantly associated" means that it must be the single surviving property that is most closely associated with the event or with the part of the person's life for which he or she is significant.

Eligible

- A moved building occupied by an business woman during the majority of her productive career would be eligible if the other extant properties are a house she briefly inhabited prior to her period of significance and a commercial building she owned after her retirement.

Not Eligible

- A moved building associated with the beginning of rail transportation in a community is not eligible if the original railroad station and warehouse remained intact on their original sites.

SETTING AND ENVIRONMENT

In addition to the requirements above, moved properties must still have an orientation, setting, and general environment that are comparable to those of the historic location and that are compatible with the property's significance.

Eligible

- A property significant as an example of mid-19th century rural house type can be eligible after a move, provided that it is placed on a lot that is sufficient in size and character to recall the basic qualities of the historic environment and setting, and provided that the building is sited appropriately in relation to natural and manmade surroundings.

Not Eligible

- A rural house that is moved into an urban area and a bridge that is no longer situated over a waterway are not eligible.

ASSOCIATION DEPENDENT ON THE SITE

For a property whose design values or historical associations are directly dependent on its location, any move will cause the property to lose its integrity and prevent it from conveying its significance.

Eligible

- A farm structure significant only as an example of a method of construction peculiar to the local area is still eligible if it is moved within that local area and the new setting is similar to that of the original location.

Not Eligible

- A 19th century rural residence that was designed around particular topographic features, reflecting that time period's ideals of environment, is not eligible if moved.

PROPERTIES DESIGNED TO BE MOVED

A property designed to move or a property frequently moved during its historic use must be located in a historically appropriate setting in order to qualify, retaining its integrity of setting, design, feeling, and association. Such properties include automobiles, railroad cars and engines, and ships.

Eligible

- A ship docked in a harbor, a locomotive on tracks or in a railyard, and a bridge relocated from one body of water to another are eligible.

Not Eligible

- A ship on land in a park, a bridge placed in a pasture, or a locomotive displayed in an indoor museum are not eligible.

ARTIFICIALLY CREATED GROUPINGS

An artificially created grouping of buildings, structures, or objects is not eligible unless it has achieved significance since the time of its assemblage. It cannot be considered as a reflection of the time period when the individual buildings were constructed.

Eligible

- A grouping of moved historic buildings whose creation marked the beginning of a major concern with past lifestyles can qualify as an early attempt at historic preservation and as an illustration of that generation's values.

Not Eligible

- A rural district composed of a farmhouse on its original site and a grouping of historic barns recently moved onto the property is not eligible.

PORTIONS OF PROPERTIES

A moved *portion* of a building, structure, or object is not eligible because, as a fragment of a larger resource, it has lost integrity of design, setting, materials, workmanship, and location.

CRITERIA CONSIDERATION C: BIRTHPLACES OR GRAVES

A birthplace or grave of a historical figure is eligible if the person is of outstanding importance and if there is no other appropriate site or building directly associated with his or her productive life.

UNDERSTANDING CRITERIA CONSIDERATION C: BIRTHPLACES AND GRAVES

Birthplaces and graves often attain importance as reflections of the origins of important persons or as lasting memorials to them. The lives of persons significant in our past normally are recognized by the National Register through listing of properties illustrative of or associated with that person's productive life's work. Birthplaces and graves, as properties that represent the beginning and the end of the life of distinguished individuals, may be temporally and geographically far removed from the person's significant activities, and therefore are not usually considered eligible.

Examples of Properties that MUST Meet Criteria Consideration C: Birthplaces and Graves

- *The birthplace of a significant person who lived elsewhere during his or her Period of Significance.*
- *A grave that is nominated for its association with the significant person buried in it.*
- *A grave that is nominated for information potential.*

Examples of Properties that DO NOT Need to Meet Criteria Consideration C: Birthplaces and Graves

- *A house that was inhabited by a significant person for his or her entire lifetime.*
- *A grave located on the grounds of the house where a significant person spent his or her productive years.*

APPLYING CRITERIA CONSIDERATION C: BIRTHPLACES AND GRAVES

PERSONS OF OUTSTANDING IMPORTANCE

The phrase "a historical figure of outstanding importance" means that in order for a birthplace or grave to qualify, it cannot be simply the birthplace or grave of a person significant in our past (Criterion B). It must be the birthplace or grave of an individual who was of outstanding importance in the history of the local area, State, or nation. The birthplace or grave of an individual who was one of several people active in some aspect of the history of a community, a state, or the Nation would not be eligible.

LAST SURVIVING PROPERTY ASSOCIATED WITH A PERSON

When an geographical area strongly associated with a person of outstanding importance has lost all other properties directly associated with his or her formative years or productive life, a birthplace or grave may be eligible.

ELIGIBILITY FOR OTHER ASSOCIATIONS

A birthplace or grave can also be eligible if it is significant for reasons other than association with the productive life of the person in question. It can be eligible for significance under Criterion A for association with important events, under Criterion B for association with the productive lives of *other* important persons, or under Criterion C for architectural significance. A birthplace or grave can also be eligible in rare cases if, after the passage of time, it is significant for its commemorative value. (See Criteria Consideration F for a discussion of commemorative properties.) A birthplace or grave can also be eligible under Criterion D if it contains important information on research, e.g., demography, pathology, mortuary practices, socioeconomic status differentiation.



Criteria Consideration C - Birthplaces. *A birthplace of a historical figure is eligible if the person is of outstanding importance and there is no other appropriate site or building associated with his or her productive life. The **Walter Reed Birthplace**, Gloucester vicinity, Gloucester County, Virginia is the most appropriate remaining building associated with the life of the man who, in 1900, discovered the cause and mode of transmission of the great scourge of the tropics, yellow fever. (Virginia Historic Landmarks Commission)*

CRITERIA CONSIDERATION D: CEMETERIES

A cemetery is eligible if it derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.

UNDERSTANDING CRITERIA CONSIDERATION D: CEMETERIES

A cemetery is a collection of graves that is marked by stones or other artifacts or that is unmarked but recognizable by features such as fencing or depressions, or through maps, or by means of testing. Cemeteries serve as a primary means of an individual's recognition of family history and as expressions of collective religious and/or ethnic identity. Because cemeteries may embody values beyond personal or family-specific emotions, the National Register criteria allow for listing of cemeteries under certain conditions.

Examples of Properties that MUST Meet Criteria Consideration D: Cemeteries

- A cemetery that is nominated individually for Criterion A, B, or C.

Examples of Properties that DO NOT Need to Meet Criteria Consideration D: Cemeteries

- A cemetery that is nominated along with its associated church, but the church is the main resource nominated.
- A cemetery that is nominated under Criterion D for information potential.
- A cemetery that is nominated as part of a district but is not the focal point of the district.

APPLYING CRITERIA CONSIDERATION D: CEMETERIES

PERSONS OF TRANSCENDENT IMPORTANCE

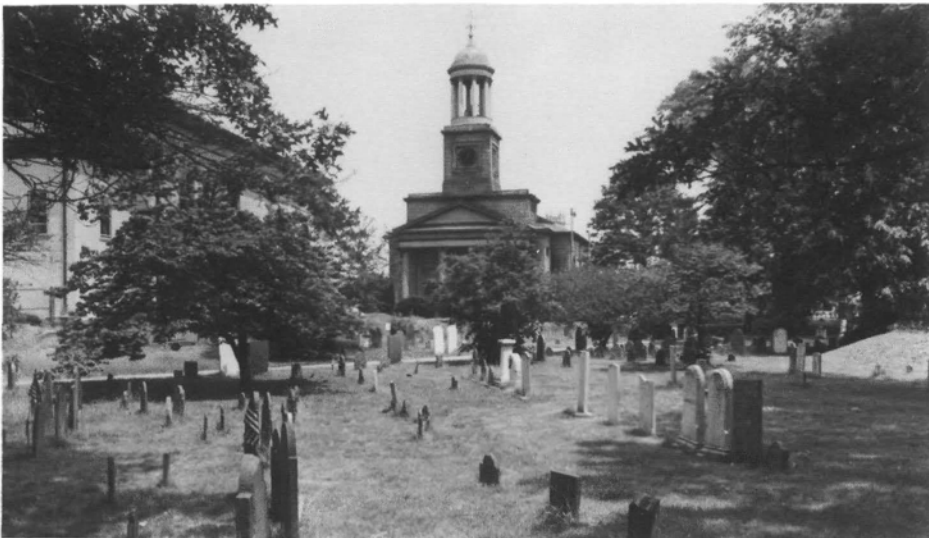
A cemetery containing the graves of persons of transcendent importance may be eligible. To be of transcendent importance the persons must have been of great eminence in their fields of endeavor or had a great impact upon the history of their community, State, or nation. (A single grave that is the burial place of an important person and is located in a larger cemetery that does not qualify under this Criteria Consideration should be treated under Criteria Consideration C: Birthplaces and Graves.)

Eligible

- A historic cemetery containing the graves of a number of persons who were exceptionally significant in determining the course of a State's political or economic history during a particular period is eligible.

Not Eligible

- A cemetery containing graves of State legislators is not eligible if they simply performed the daily business of State government and did not have an outstanding impact upon the nature and direction of the State's history.



Criteria Consideration D - Cemeteries. *The Hancock Cemetery, Quincy, Norfolk County, Massachusetts meets the exception to the Criteria because it derives its primary significance from its great age (the earliest burials date from 1640) and from the distinctive design features found in its rich collection of late 17th and early 18th century funerary art. (N. Hobart Holly)*

ELIGIBILITY ON THE BASIS OF AGE

Cemeteries can be eligible if they have achieved historic significance for their relative great age in a particular geographic or cultural context.

Eligible

- A cemetery dating from a community's original 1830s settlement can attain significance from its association with that very early period.

ELIGIBILITY FOR DESIGN

Cemeteries can qualify on the basis of distinctive design values. These values refer to the same design values addressed in Criterion C and can include aesthetic or technological achievement in the fields of city planning, architecture, landscape architecture, engineering, mortuary art, and sculpture. As for all other nominated properties, a cemetery must clearly express its design values and be able to convey its historic appearance.

Eligible

- A Victorian cemetery is eligible if it clearly expresses the aesthetic principles related to funerary design for that period, through such features as the overall plan, landscaping, statuary, sculpture, fencing, buildings, and grave markers.

Not Eligible

- A cemetery cannot be eligible for design values if it no longer conveys its historic appearance because of the introduction of new grave markers.

ELIGIBILITY FOR ASSOCIATION WITH EVENTS

Cemeteries may be associated with historic events including specific important events or general events that illustrate broad patterns.

Eligible

- A cemetery associated with an important Civil War battle is eligible.
- A cemetery associated with the settlement of an area by an ethnic or cultural group is eligible if the movement of the group into the area had an important impact, if other properties associated with that group are rare, and if few documentary sources have survived to provide information about the group's history.

Not Eligible

- A cemetery associated with a battle in the Civil War does not qualify if the battle was not important in the history of the war.
- A cemetery associated with an area's settlement by an ethnic or cultural group is not eligible if the impact of the group on the area cannot be established, if other extant historic properties better convey association with the group, or if the information that the cemetery can impart is available in documentary sources.

ELIGIBILITY FOR INFORMATION POTENTIAL

Cemeteries, both historic and prehistoric, can be eligible if they have the potential to yield important information. The information must be important within a specific context and the potential to yield information must be demonstrated.

A cemetery can qualify if it has potential to yield important information provided that the information it contains is not available in extant documentary evidence.

Eligible

- A cemetery associated with the settlement of a particular cultural group will qualify if it has the potential to yield important information about subjects such as demography, variations in mortuary practices, or the study of the cause of death correlated with nutrition or other variables.

INTEGRITY

Assessing the integrity of a historic cemetery entails evaluating principal design features such as plan, grave markers, and any related elements (such as fencing). Only that portion of a historic cemetery that retains its historic integrity can be eligible. If the overall integrity has been lost because of the number and size of recent grave markers, some features such as buildings, structures, or objects that retain integrity may be considered as individual properties if they are of such historic or artistic importance that they individually meet one or more of the requirements listed above.

NATIONAL CEMETERIES

National Cemeteries administered by the Veterans Administration are eligible because they have been designated by Congress as primary memorials to the military history of the United States. Those areas within a designated national cemetery that have been used or prepared for the reception of the remains of veterans and their dependents, as well as any landscaped areas that immediately surround the graves may qualify. Because these cemeteries draw their significance from the presence of the remains of military personnel who have served the country throughout

its history, the age of the cemetery is not a factor in judging eligibility, although integrity must be present.

A national cemetery or a portion of a national cemetery that has only been set aside for use in the future is not eligible.

CRITERIA CONSIDERATION E: RECONSTRUCTED PROPERTIES

A reconstructed property is eligible when it is accurately executed in a suitable environment *and* presented in a dignified manner as part of a restoration master plan *and* when no other building or structure with the same associations has survived. All three of these requirements must be met.

UNDERSTANDING CRITERIA CONSIDERATION E: RECONSTRUCTED PROPERTIES

“Reconstruction” is defined as the reproduction of the exact form and detail of a vanished building, structure, object, or a part thereof, as it appeared at a specific period of time. Reconstructed buildings fall into two categories: buildings wholly constructed of new materials and buildings reassembled from some historic and some new materials. Both categories of properties present problems in meeting the integrity requirements of the National Register criteria.

Examples of Properties that MUST Meet Criteria Consideration E: Reconstructed Properties

- A property in which most or all of the fabric is not original.
- A district in which an important resource or a significant number of resources are reconstructions.

Examples of Properties that DO NOT Need to Meet Criteria Consideration E: Reconstructed Properties

- A property that is remodeled or renovated and still has the majority of its original fabric.

APPLYING CRITERIA CONSIDERATION E: RECONSTRUCTED PROPERTIES

ACCURACY OF THE RECONSTRUCTION

The phrase “accurately executed” means that the reconstruction must be based upon sound archeological, architectural, and historic data concerning the historic construction and appearance of the resource. That documentation should include both analysis of any above or below ground material and research in written and other records.

SUITABLE ENVIRONMENT

The phrase “suitable environment” refers to: 1) the physical context provided by the historic district and 2) any interpretive scheme, if the historic district is used for interpretive purposes. This means that the reconstructed property must be located at the same site as the original. It must also be situated in its original grouping of buildings, structures, and objects (as many as are extant), and that grouping must retain integrity. In addition, the reconstruction must not be misrepresented as an authentic historic property.

Eligible

- A reconstructed plantation manager’s office building is considered eligible because it is located at its historic site, grouped with the remaining historic plantation buildings and structures, and the plantation as a whole retains integrity. Interpretation of the plantation district includes an explanation that the manager’s office is not the original building, but a reconstruction.

Not Eligible

- The same reconstructed plantation manager’s office building would not qualify if it were rebuilt at a location different from that of the original building, or if the district as a whole no longer reflected the period for which it is significant, or if a misleading interpretive scheme were used for the district or for the reconstruction itself.

RESTORATION MASTER PLANS

Being presented “as part of a restoration master plan” means that: 1) a reconstructed property is an essential component in a historic district and 2) the reconstruction is part of an overall restoration plan for an entire district. “Restoration” is defined as accurately recovering the form and details of a property and its setting as it appeared at a particular period by removing later work or by replacing missing earlier work (as opposed to completely rebuilding the property). The master plan for the entire property must emphasize restoration, not reconstruction. In other words, the master plan for the entire resource would not be acceptable under this consideration if it called for reconstruction of a majority of the resource.

LAST SURVIVING PROPERTY OF A TYPE

This consideration also stipulates that a reconstruction can qualify if, in addition to the other requirements, no other building, object, or structure with the same association has survived. A reconstruction that is part of a restoration master plan is appropriate only if: 1) the property is the only one in the district with which a particular important activity or event has been historically associated or 2) no other property with the same associative values has survived.

RECONSTRUCTIONS OLDER THAN FIFTY YEARS

After the passage of fifty years, a reconstruction may attain its own significance for what it reveals about the period in which it was built, rather than the historic period it was intended to depict. On that basis, a reconstruction can possibly qualify under any of the Criteria.

Eligible

- A reconstructed plantation manager’s office is eligible if the office were an important component of the plantation *and* if the reconstruction is one element in an overall plan for restoring the plantation *and* if no other building or structure with the same associations has survived.
- The reconstruction of the plantation manager’s office building can be eligible only if the majority of buildings, structures, and objects that comprised the plantation are extant and are being restored. For guidance regarding restoration see the *Secretary of the Interior’s Standards for Historic Preservation Projects*.

CRITERIA CONSIDERATION F: COMMEMORATIVE PROPERTIES

A property primarily commemorative in intent can be eligible if design, age, tradition, or symbolic value has invested it with its own historical significance.

UNDERSTANDING CRITERIA CONSIDERATION F: COMMEMORATIVE PROPERTIES

Commemorative properties are designed or constructed after the occurrence of an important historic event or after the life of an important person. They are not directly associated with the event or with the person's productive life, but serve as evidence of a later generation's assessment of the past. Their significance comes from their value as cultural expressions at the date of their creation. Therefore, a commemorative property generally must be over fifty years old and must possess significance based on its own value, not on the value of the event or person being memorialized.

Examples of Properties that MUST Meet Criteria Consideration F: Commemorative Properties

- *A property whose sole or primary function is commemorative or in which the commemorative function is of primary significance.*

Examples of Properties that DO NOT Need to Meet Criteria Consideration F: Commemorative Properties

- *A resource that has a non-commemorative primary function or significance.*
- *A single marker that is a component of a district (whether contributing or non-contributing).*

APPLYING CRITERIA CONSIDERATION F: COMMEMORATIVE PROPERTIES

ELIGIBILITY FOR DESIGN

A commemorative property derives its design from the aesthetic values of the period of its creation. A commemorative property, therefore, may be significant for the architectural, artistic, or other design qualities of its own period in prehistory or history.

Eligible

- A commemorative statue situated in a park or square is eligible if it expresses the aesthetics or craftsmanship of the period when it was made, meeting Criterion C.
- A late 19th century statue erected on a courthouse square to commemorate Civil War veterans would qualify if it reflects that era's shared perception of the noble character and valor of the veterans and their cause. This was commonly conveyed by portraying idealized soldiers or allegorical figures of battle, victory, or sacrifice.

ELIGIBILITY FOR AGE, TRADITION, OR SYMBOLIC VALUE

A commemorative property cannot qualify for association with the event or person it memorializes. A commemorative property may, however, acquire significance after the time of its creation through *age*, *tradition*, or *symbolic* value. This significance must be documented by accepted methods of historical research, including written or oral history, and must meet one or more of the Criteria.

Eligible

- A commemorative marker erected by a cultural group that believed the place was the site of its origins is eligible if, for subsequent generations of the group, the marker itself became the focus of traditional association with the group's historic identity.
- A building erected as a monument to an important historical figure will qualify if through the passage of time the property itself has come to symbolize the value placed upon the individual and is widely recognized as a reminder of enduring principles or contributions valued by the generation that erected the monument.
- A commemorative marker erected early in the settlement or development of an area will qualify if it is demonstrated that, because of its relative great age, the property has long been a part of the historic identity of the area.

Not Eligible

- A commemorative marker erected in the past by a cultural group at the site of an event in its history would not be eligible if the marker were significant only for association with the event, and it had not become significant itself through tradition.
- A building erected as a monument to an important historical figure would not be eligible if its only value lay in its association with the individual, and it has not come to symbolize values, ideas, or contributions valued by the generation that erected the monument.
- A commemorative marker erected to memorialize an event in the community's history would not qualify simply for its association with the event it memorialized.

INELIGIBILITY AS THE LAST REPRESENTATIVE OF AN EVENT OR PERSON

The loss of properties directly associated with a significant event or person does not strengthen the case for consideration of a commemorative property. Unlike birthplaces and graves, a commemorative property usually has no direct historic association. The commemorative property can qualify for historic association only if it is clearly significant in its own right, as stipulated above.

CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE LAST FIFTY YEARS⁹

A property achieving significance within the last fifty years is eligible if it is of exceptional importance.

UNDERSTANDING CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE LAST FIFTY YEARS

The National Register Criteria for Evaluation exclude properties that achieved significance within the last fifty years unless they are of exceptional importance. Fifty years is a general estimate of the time needed to develop historical perspective and to evaluate significance. This consideration guards against the listing of properties of passing contemporary interest and ensures that the National Register is a list of truly historic places.

Examples of Properties that MUST Meet Criteria Consideration G: Properties that Have Achieved Significance Within the Last Fifty Years

- A property that is less than fifty years old.
- A property that continues to achieve significance into a period less than fifty years before the nomination.
- A property that has non-contiguous Periods of Significance, one of which is less than fifty years before the nomination.
- A property that is more than fifty years old and had no significance until a period less than fifty years before the nomination.

Examples of Properties that DO NOT Need to Meet Criteria Consideration G: Properties that Have Achieved Significance Within the Last Fifty Years

- A resource whose construction began over fifty years ago, but the completion overlaps the fifty year period by a few years or less.
- A resource that is significant for its plan or design, which is over fifty years old, but the actual completion of the project overlaps the fifty year period by a few years.
- A historic district in which a few properties are newer than fifty years old, but the majority of properties and the most important Period of Significance are greater than fifty years old.

⁹ For more information on Criteria Consideration G, refer to *National Register Bulletin: Guidelines for Evaluating and Nominating Properties that Have Achieved Significance Within the Last Fifty Years*.

APPLYING CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE PAST FIFTY YEARS

ELIGIBILITY FOR EXCEPTIONAL IMPORTANCE

The phrase “exceptional importance” may be applied to the extraordinary importance of an event or to an entire category of resources so fragile that survivors of any age are unusual. Properties listed that had attained significance in less than fifty years include: the launch pad at Cape Canaveral from which men first traveled to the moon, the home of nationally prominent playwright Eugene O’Neill, and the Chrysler Building (New York) significant as the epitome of the “Style Moderne” architecture.

Properties less than fifty years old that qualify as exceptional because the entire category of resources is fragile include a recent example of a traditional sailing canoe in the Trust Territory of the Pacific Islands, where because of rapid deterioration of materials, no working Micronesian canoes exist that are more than twenty years old. Properties that by their nature can last more than fifty years cannot be considered exceptionally important because of the fragility of the class of resources.

The phrase “exceptional importance” does not require that the property be of national significance. It is a measure of a property’s importance within the appropriate historic context, whether the scale of that context is local, State, or national.

Eligible

- The General Laundry Building in New Orleans, one of the few remaining Art Deco Style buildings in that city, was listed in the National Register when it was forty years old because of its exceptional importance as an example of that architectural style.

HISTORICAL PERSPECTIVE

A property that has achieved significance within the past fifty years can be evaluated only when sufficient historical perspective exists to determine that the property is exceptionally important. The necessary perspective can be provided by scholarly research and evaluation, and must consider both the historic context and the specific property’s role in that context.

In many communities, properties such as apartment buildings built in the 1950s cannot be evaluated because there is no scholarly research available to provide an overview of the nature, role, and impact of that building type within the context of historical and architectural developments of the 1950s.

NATIONAL PARK SERVICE RUSTIC ARCHITECTURE

Properties such as structures built in a rustic style by the National Park Service during the 1930s and 1940s can be evaluated because a broad study, *National Park Service Rustic Architecture* (1977), provides the context for evaluating properties of this type and style. Specific examples were listed in the National Register prior to reaching fifty years of age when documentation concerning the individual properties established their significance within the historical and architectural context of the type and style.

VETERANS ADMINISTRATION HOSPITALS

Hospitals less than fifty years old that were constructed by the Veterans Bureau and Veterans Administration can be evaluated because the collection of forty-eight facilities built between 1920 and 1946 has been analyzed in a study prepared by the agency. The study provided a historic and architectural context for development of veteran’s care within which hospitals could be evaluated. The exceptional importance of specific individual facilities constructed within the past fifty years could therefore be determined based on their role and their present integrity.

COMPARISON WITH RELATED PROPERTIES

In justifying exceptional importance, it is necessary to identify other properties within the geographical area that reflect the same significance or historic associations and to determine which properties *best* represent the historic context in question. Several properties in the area could become eligible with the passage of time, but few will qualify now as exceptionally important.

POST-WORLD WAR II PROPERTIES

Properties associated with the post-World War II era must be identified and evaluated to determine which ones in an area could be judged exceptionally important. For example, a public housing complex may be eligible as an outstanding expression of the nation’s post-war urban policy. A military installation could be judged exceptionally important because of its contribution to the Cold War arms race. A church building in a Southern city may have served as the pivotal rallying point for the city’s most famous civil rights protest. A post-war suburban subdivision may be the best reflection of contemporary siting and design tenets in a metropolitan area. In each case, the nomination preparer must justify the *exceptional* importance of the property relative to similar properties in the community, State, or nation.

ELIGIBILITY FOR INFORMATION POTENTIAL

A property that has achieved significance within the past fifty years can qualify under Criterion D only if it can be demonstrated that the information is of exceptional importance within the appropriate context and that the property contains data superior to or different from those obtainable from other sources, including other culturally related sites. An archeological site less than fifty years old may be eligible if the former inhabitants are so poorly documented that information about their lifeways is best obtained from examination of the material remains.

Eligible

- Data such as the rate of adoption of modern technological innovations by rural tenant farmers in the 1950s may not be obtainable through interviews with living persons but could be gained by examination of homesites.

Not Eligible

- A recent archeological site such as the remains of a Navajo sheep corral used in the 1950s would not be considered exceptionally significant for its information potential on animal husbandry if better information on the same topic is available through ethnographic studies or living informants.

HISTORIC DISTRICTS

Properties which have achieved significance within the past fifty years can be eligible for the National Register if they are an integral part of a district which qualifies for National Register listing. This is demonstrated by documenting that the property dates from within the district's defined Period of Significance and that it is associated with one or more of the district's defined Areas of Significance.

Properties less than fifty years old may be an integral part of a district when there is sufficient perspective to consider the properties as historic. This is accomplished by demonstrating that: 1) the district's Period of Significance is justified as a discrete period with a defined beginning and end, 2) the character of the district's historic resources is clearly defined and assessed, 3) specific resources in the district are demonstrated to date from that discrete era, and 4) the majority of district properties are over fifty years old. In these instances, it is not necessary to prove exceptional importance of either the district itself or the less-than-fifty-year-old properties. Exceptional importance still must be demonstrated for district where the majority of properties or the major Period of Significance is less than fifty years old, and for less-than-fifty-year-old properties which are nominated individually.

PROPERTIES MORE THAN FIFTY YEARS IN AGE, LESS THAN FIFTY YEARS IN SIGNIFICANCE

Properties that are more than fifty years old, but whose significant associations or qualities are less than fifty years old, must be treated under the fifty year consideration.

Eligible

- A building constructed early in the twentieth century (and having no architectural importance), but that was associated with an important person during the 1950s, must be evaluated under Criteria Consideration G because the Period of Significance is within the past fifty years. Such a property would qualify if the person was of exceptional importance.

REQUIREMENT TO MEET THE CRITERIA, REGARDLESS OF AGE

Properties that are less than fifty years old and are not exceptionally important will *not* automatically qualify for the National Register once they are fifty years old. In order to be listed in the National Register, all properties, regardless of age, must be demonstrated to meet the Criteria for Evaluation.

VIII. HOW TO EVALUATE THE INTEGRITY OF A PROPERTY

INTRODUCTION

Integrity is the ability of a property to convey its significance. To be listed in the National Register of Historic Places, a property must not only be shown to be significant under the National Register criteria, but it also must have integrity. The evaluation of integrity is sometimes a subjective judgment, but it must always be grounded in an understanding of a property's physical features and how they relate to its significance.

Historic properties either retain integrity (this is, convey their significance) or they do not. Within the concept of integrity, the National Register criteria recognizes seven aspects or qualities that, in various combinations, define integrity.

To retain historic integrity a property will always possess several, and usually most, of the aspects. The retention of specific aspects of integrity is paramount for a property to convey its significance. Determining *which* of these aspects are most important to a particular property requires knowing why, where, and when the property is significant. The following sections define the seven aspects and explain how they combine to produce integrity.

SEVEN ASPECTS OF INTEGRITY

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association

UNDERSTANDING THE ASPECTS OF INTEGRITY

LOCATION

Location is the place where the historic property was constructed or the place where the historic event occurred. The relationship between the property and its location is often important to understanding why the property was created or why something happened. The actual location of a historic property, complemented by its setting, is particularly important in recapturing the sense of historic events and persons. Except in rare cases, the relationship between a property and its historic associations is destroyed if the property is moved. (See Criteria Consideration B in *Part VII: How to Apply the Criteria Considerations*, for the conditions under which a moved property can be eligible.)

DESIGN

Design is the combination of elements that create the form, plan, space, structure, and style of a property. It results from conscious decisions made during the original conception and planning of a property (or its significant alteration) and applies to activities as diverse as community planning, engineering, architecture, and landscape architecture. Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials.

A property's design reflects historic functions and technologies as well as aesthetics. It includes such considerations as the structural system; massing; arrangement of spaces; pattern of fenestration; textures and colors of surface materials; type, amount, and style of ornamental detailing; and arrangement and type of plantings in a designed landscape.

Design can also apply to districts, whether they are important primarily for historic association, architectural value, information potential, or a combination thereof. For districts significant primarily for historic association or architectural value, design concerns more than just the individual buildings or structures located within the boundaries. It also applies to the way in which buildings, sites, or structures are related: for example, spatial relationships between major features; visual rhythms in a streetscape or landscape plantings; the layout and materials of walkways and roads; and the relationship of other features, such as statues, water fountains, and archeological sites.

SETTING

Setting is the physical environment of a historic property. Whereas location refers to the specific place where a property was built or an event occurred, setting refers to the *character* of the place in which the property played its historical role. It involves *how*, not just *where*, the property is situated and its relationship to surrounding features and open space.

Setting often reflects the basic physical conditions under which a property was built and the functions it was intended to serve. In addition, the way in which a property is positioned in its environment can reflect the designer's concept of nature and aesthetic preferences.

The physical features that constitute the setting of a historic property can be either natural or manmade, including such elements as:

- Topographic features (a gorge or the crest of a hill);
- Vegetation;
- Simple manmade features (paths or fences); and
- Relationships between buildings and other features or open space.

These features and their relationships should be examined not only within the exact boundaries of the property, but also between the property and its *surroundings*. This is particularly important for districts.

MATERIALS

Materials are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The choice and combination of materials reveal the preferences of those who created the property and indicate the availability of particular types of materials and technologies. Indigenous materials are often the focus of regional building traditions and thereby help define an area's sense of time and place.

A property must retain the key exterior materials dating from the period of its historic significance. If the property has been rehabilitated, the historic materials and significant features must have been preserved. The property must also be an actual historic resource, not a recreation; a

recent structure fabricated to look historic is not eligible. Likewise, a property whose historic features and materials have been lost and then reconstructed is usually not eligible. (See Criteria Consideration E in *Part VII: How to Apply the Criteria Considerations* for the conditions under which a reconstructed property can be eligible.)

WORKMANSHIP

Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. It is the evidence of artisans' labor and skill in constructing or altering a building, structure, object, or site. Workmanship can apply to the property as a whole or to its individual components. It can be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It can be based on common traditions or innovative period techniques.

Workmanship is important because it can furnish evidence of the technology of a craft, illustrate the aesthetic principles of a historic or prehistoric period, and reveal individual, local, regional, or national applications of both technological practices and aesthetic principles. Examples of workmanship in historic buildings include tooling, carving, painting, graining, turning, and joinery. Examples of workmanship in prehistoric contexts include Paleo-Indian clovis projectile points; Archaic period beveled adzes; Hopewellian birdstone pipes; copper earspools and worked bone pendants; and Iroquoian effigy pipes.

FEELING

Feeling is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character. For example, a rural historic district retaining original design, materials, workmanship, and setting will relate the feeling of agricultural life in the 19th century. A grouping of prehistoric petroglyphs, unmarred by graffiti and intrusions and located on its original isolated bluff, can evoke a sense of tribal spiritual life.

ASSOCIATION

Association is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character. For example, a Revolutionary War battlefield whose natural and manmade elements have remained intact since the 18th century will retain its quality of association with the battle.

Because feeling and association depend on individual perceptions, their retention *alone* is never sufficient to support eligibility of a property for the National Register.

ASSESSING INTEGRITY IN PROPERTIES

Integrity is based on significance: why, where, and when a property is important. Only after significance is fully established can you proceed to the issue of integrity.

The steps in assessing integrity are:

- Define the **essential physical features** that must be present for a property to represent its significance.
- Determine whether the **essential physical features are visible** enough to convey their significance.
- Determine whether the property needs to be **compared with similar properties**. And,
- Determine, based on the significance and essential physical features, **which aspects of integrity** are particularly vital to the property being nominated and if they are present.

Ultimately, the question of integrity is answered by whether or not the property retains the **identity** for which it is significant.

DEFINING THE ESSENTIAL PHYSICAL FEATURES

All properties change over time. It is not necessary for a property to retain all its historic physical features or characteristics. The property must retain, however, the essential physical features that enable it to convey its historic identity. The essential physical features are those features that define both *why* a property is significant (Applicable Criteria and Areas of Significance) and *when* it was significant (Periods of Significance). They are the features without which a property can no longer be identified as, for instance, a late 19th century dairy barn or an early 20th century commercial district.

CRITERIA A AND B

A property that is significant for its historic association is eligible if it retains the essential physical features that made up its character or appearance during the period of its association with the important event, historical pattern, or person(s). If the property is a site (such as a treaty site) where there are no material cultural remains, the setting must be intact.

Archeological sites eligible under Criteria A and B must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to convey important associations with events or persons.

CRITERION C

A property important for illustrating a particular architectural style or construction technique must retain most of the physical features that constitute that style or technique. A property that has lost some historic materials or details can be eligible if it retains the majority of the features that illustrate its style in terms of the massing, spatial relationships, proportion, pattern of windows and doors, texture of materials, and ornamentation. The property is not eligible, however, if it retains some basic features conveying massing but has lost the majority of the features that once characterized its style.

Archeological sites eligible under Criterion C must be in overall good condition with excellent preservation

of features, artifacts, and spatial relationships to the extent that these remains are able to illustrate a site type, time period, method of construction, or work of a master.

CRITERION D

For properties eligible under Criterion D, including archeological sites and standing structures studied for their information potential, less attention is given to their overall condition, than it they were being considered under Criteria A, B, or C. Archeological sites, in particular, do not exist today exactly as they were formed. There are always cultural and natural processes that alter the deposited materials and their spatial relationships.

For properties eligible under Criterion D, integrity is based upon the property's potential to yield specific data that addresses important research questions, such as those identified in the historic context documentation in the Statewide Comprehensive Preservation Plan or in the research design for projects meeting the *Secretary of the Interior's Standards for Archeological Documentation*.

INTERIORS

Some historic buildings are virtually defined by their exteriors, and their contribution to the built environment can be appreciated even if their interiors are not accessible. Examples of this would include early examples of steel-framed skyscraper construction. The great advance in American technology and engineering made by these buildings can be read from the outside. The change in American popular taste during the 19th century, from the symmetry and simplicity of architectural styles based on classical precedents, to the expressions of High Victorian styles, with their combination of textures, colors, and asymmetrical forms, is readily apparent from the exteriors of these buildings.

Other buildings "are" interiors. The Cleveland Arcade, that soaring 19th century glass-covered shopping area, can only be appreciated from the inside. Other buildings in this category would be the great covered train sheds of the 19th century.

In some cases the loss of an interior will disqualify properties from listing

in the National Register—a historic concert hall noted for the beauty of its auditorium and its fine acoustic qualities would be the type of property that if it were to lose its interior, it would lose its value as a historic resource. In other cases, the overarching significance of a property's exterior can overcome the adverse effect of the loss of an interior.

In borderline cases particular attention is paid to the significance of the property and the remaining historic features.

HISTORIC DISTRICTS

For a district to retain integrity as a whole, the majority of the components that make up the district's historic character must possess integrity even if they are individually undistinguished. In addition, the relationships among the district's components must be substantially unchanged since the period of significance.

When evaluating the impact of intrusions upon the district's integrity, take into consideration the relative number, size, scale, design, and location of the components that do not contribute to the significance. A district is not eligible if it contains so many alterations or new intrusions that it no longer conveys the sense of a historic environment.

A component of a district cannot contribute to the significance if:

- it has been substantially altered since the period of the district's significance *or*
- it does not share the historic associations of the district.

VISIBILITY OF PHYSICAL FEATURES

Properties eligible under Criteria A, B, and C must not only retain their essential physical features, but the features must be visible enough to convey their significance. This means that even if a property is physically intact, its integrity is questionable if its significant features are concealed under modern construction. Archeological properties are often the exception to this; by nature they usually do not require visible features to convey their significance.

NON-HISTORIC EXTERIORS

If the historic *exterior* building material is covered by non-historic material (such as modern siding), the property can still be eligible *if* the significant form, features, and detailing are not obscured. If a property's exterior is covered by a non-historic false-front or curtain wall, the property will not qualify under Criteria A, B, or C, because it does not retain the visual quality necessary to convey historic or architectural significance. Such a property also cannot be considered a contributing element in a historic district, because it does not add to the district's sense of time and place. If the false front, curtain wall, or non-historic siding is removed and the original building materials are intact, then the property's integrity can be re-evaluated.

PROPERTY CONTAINED WITHIN ANOTHER PROPERTY

Some properties contain an earlier structure that formed the nucleus for later construction. The exterior property, if not eligible in its own right, can qualify on the basis of the interior property *only if* the interior property can yield significant information about a specific construction technique or material, such as rammed earth or tabby. The interior property *cannot* be used as the basis for eligibility if it has been so altered that it no longer contains the features that could provide important information, or if the presence of important information cannot be demonstrated.

SUNKEN VESSELS

A sunken vessel can be eligible under Criterion C as embodying the distinctive characteristics of a method of construction if it is structurally intact. A *deteriorated* sunken vessel, no longer structurally intact, can be eligible under Criterion D if the remains of either the vessel or its contents is capable of yielding significant information. For further information, refer to *National Register Bulletin: Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places*.

Natural Features

A natural feature that is associated with a historic event or trend, such as a rock formation that served as a trail marker during westward expansion, must retain its historic appearance, unobscured by modern construction or landfill. Otherwise it is not eligible, even though it remains intact.

COMPARING SIMILAR PROPERTIES

For some properties, comparison with similar properties should be considered during the evaluation of integrity. Such comparison may be important in deciding what physical features are essential to properties of that type. In instances where it has not been determined what physical features a property must possess in order for it to reflect the significance of a historic context, comparison with similar properties should be undertaken during the evaluation of integrity. This situation arises when scholarly work has not been done on a particular property type or when surviving examples of a property type are extremely rare. (See **Comparing Related Properties** in *Part V: How to Evaluate a Property within its Historic Context*.)

RARE EXAMPLES OF A PROPERTY TYPE

Comparative information is particularly important to consider when evaluating the integrity of a property that is a rare surviving example of its type. The property must have the essential physical features that enable it to convey its historic character or information. The rarity and poor condition, however, of other extant examples of the type may justify accepting a greater degree of alteration or fewer features, provided that enough of the property survives for it to be a significant resource.

Eligible

- A one-room schoolhouse that has had all original exterior siding replaced and a replacement roof that does not exactly replicate the original roof profile can be eligible if the other extant rare examples have received an even greater degree of alteration, such as the subdivision of the original one-room plan.

Not Eligible

- A mill site contains information on how site patterning reflects historic functional requirements, but parts of the site have been destroyed. The site is not eligible for its information potential if a comparison of other mill sites reveals more intact properties with complete information.

DETERMINING THE RELEVANT ASPECTS OF INTEGRITY

Each type of property depends on certain aspects of integrity, more than others, to express its historic significance. Determining which of the aspects is most important to a particular property requires an understanding of the property's significance and its essential physical features.

CRITERIA A AND B

A property important for association with an event, historical pattern, or person(s) ideally might retain *some* features of all seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association. Integrity of design and workmanship, however, might not be as important to the significance, and would not be relevant if the property were a site. A basic integrity test for a property associated with an important event or person is whether a historical contemporary would recognize the property as it exists today.

For archeological sites that are eligible under Criteria A and B, the seven aspects of integrity can be applied in much the same way as they are to buildings, structures, or objects. It is important to note, however, that the site must have *demonstrated* its ability to convey its significance, as opposed to sites eligible under Criterion D where only the potential to yield information is required.

Eligible

A mid-19th century waterpowered mill important for its association with an area's industrial development is eligible if:

- it is still on its original site (**Location**), and
- the important features of its setting are intact (**Setting**), and
- it retains most of its historic materials (**Materials**), and
- it has the basic features expressive of its design and function, such as configuration, proportions, and window pattern (**Design**).

Not Eligible

A mid-19th century water-powered mill important for its association with an area's industrial development is not eligible if:

- it has been moved (**Location**, **Setting**, **Feeling**, and **Association**), or
- substantial amounts of new materials have been incorporated (**Materials**, **Workmanship**, and **Feeling**), or
- it no longer retains basic design features that convey its historic appearance or function (**Design**, **Workmanship**, and **Feeling**).

CRITERION C

A property significant under Criterion C must retain those physical features that characterize the type, period, or method of construction that the property represents. Retention of design, workmanship, and materials will usually be more important than location, setting, feeling, and association. Location and setting will be important, however, for those properties whose design is a reflection of their immediate environment (such as designed landscapes and bridges).

For archeological sites that are eligible under Criterion C, the seven aspects of integrity can be applied in much the same way as they are to buildings, structures, or objects. It is important to note, however, that the site must have *demonstrated* its ability to convey its significance, as opposed to sites eligible under Criterion D where only the *potential* to yield information is required.

Eligible

A 19th century wooden covered bridge, important for illustrating a construction type, is eligible if:

- the essential features of its design are intact, such as abutments, piers, roof configuration, and trusses (**Design**, **Workmanship**, and **Feeling**), and
- most of the historic materials are present (**Materials**, **Workmanship**, and **Feeling**), and
- evidence of the craft of wooden bridge technology remains, such as the form and assembly technique of the trusses (**Workmanship**).
- Since the design of a bridge relates directly to its function as a transportation crossing, it is also important that the bridge still be situated over a waterway (**Setting**, **Location**, **Feeling**, and **Association**).

Not Eligible

For a 19th century wooden covered bridge, important for its construction type, replacement of some materials of the flooring, siding, and roofing would not necessarily damage its integrity. Integrity would be lost, however, if:

- the abutments, piers, or trusses were substantially altered (**Design**, **Workmanship**, and **Feeling**) or
- considerable amounts of new materials were incorporated (**Materials**, **Workmanship**, and **Feeling**).
- Because environment is a strong factor in the design of this property type, the bridge would also be ineligible if it no longer stood in a place that conveyed its function as a crossing (**Setting**, **Location**, **Feeling**, and **Association**).

CRITERION D

For properties eligible under Criterion D, setting and feeling may not have direct bearing on the property's ability to yield important information. Evaluation of integrity probably will focus primarily on the location, design, materials, and perhaps workmanship.

Eligible

A multicomponent prehistoric site important for yielding data on changing subsistence patterns can be eligible if:

- floral or faunal remains are found in clear association with cultural material (**Materials** and **Association**) and
- the site exhibits stratigraphic separation of cultural components (**Location**).

Not Eligible

A multicomponent prehistoric site important for yielding data on changing subsistence patterns would not be eligible if:

- floral or faunal remains were so badly decomposed as to make identification impossible (**Materials**), or
- floral or faunal remains were disturbed in such a manner as to make their association with cultural remains ambiguous (**Association**), or
- the site has lost its stratigraphic context due to subsequent land alterations (**Location**).

Eligible

A lithic scatter site important for yielding data on lithic technology during the Late Archaic period can be eligible if:

- the site contains lithic debitage, finished stone tools, hammerstones, or antler flakers (**Material** and **Design**), and
- the site contains datable material (**Association**).

Not Eligible

A lithic scatter site important for yielding data on lithic technology during the Late Archaic period would not be eligible if:

- the site contains natural deposits of lithic materials that are impossible to distinguish from culturally modified lithic material (**Design**) or
- the site does not contain any temporal diagnostic evidence that could link the site to the Late Archaic period (**Association**).

IX. SUMMARY OF THE NATIONAL HISTORIC LANDMARKS CRITERIA FOR EVALUATION

A property being nominated to the National Register may also merit consideration for potential designation as a National Historic Landmark. Such consideration is dependent upon the stringent application of the following distinct set of criteria (found in the *Code of Federal Regulations*, Title 36, Part 65).

NATIONAL HISTORIC LANDMARKS CRITERIA

The quality of national significance is ascribed to districts, sites, buildings, structures, and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering, and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association, and:

1. That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or
2. That are associated importantly with the lives of persons nationally significant in the history of the United States; or
3. That represent some great idea or ideal of the American people; or
4. That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or
5. That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or
6. That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

NATIONAL HISTORIC LANDMARK EXCLUSIONS

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past fifty years are not eligible for designation. If such properties fall within the following categories they may, nevertheless, be found to qualify:

1. A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or
2. A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or
3. A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

4. A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building, or structure directly associated with the productive life of that person exists; or
5. A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or an exceptionally significant event; or
6. A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or
7. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or
8. A property achieving national significance within the past 50 years if it is of extraordinary national importance.

COMPARING THE NATIONAL HISTORIC LANDMARKS CRITERIA AND THE NATIONAL REGISTER CRITERIA

In general, the instructions for preparing a National Register nomination and the guidelines stated in this bulletin for applying the National Register Criteria also apply to Landmark nominations and the use of the Landmark criteria. While there are specific distinctions discussed below, *Parts IV and V* of this bulletin apply equally to National Register listings and Landmark nominations. That is, the categories of historic properties are defined the same way; historic con-

texts are identified similarly; and comparative evaluation is carried out on the same principles enumerated in *Part V*.

There are some differences between National Register and National Historic Landmarks Criteria. The following is an explanation of how each Landmark Criterion compares with its National Register Criteria counterpart:

CRITERION 1

This Criterion relates to National Register Criterion A. Both cover properties associated with events. The Landmark Criterion, however, requires that the events associated with the property be *outstandingly* represented by that property and that the property be related to the broad national patterns of U.S. history. Thus, the quality of the property to convey and interpret its meaning must be of a higher order and must relate to national themes rather than the narrower context of State or local themes.

CRITERION 2

This Criterion relates to National Register Criterion B. Both cover properties associated with significant people. The Landmark Criterion differs in that it specifies that the association of a person to the property in question be an important one and that the person associated with the property be of *national* significance.

CRITERION 3

This Criterion has no counterpart among the National Register Criteria. It is rarely, if ever, used alone. While not a landmark at present, the Liberty Bell is an object that might be considered under this Criterion. The application of this Criterion obviously requires the most careful scrutiny and would apply only in rare instances involving ideas and ideals of the highest order.

CRITERION 4

This Criterion relates to National Register Criterion C. Its intent is to qualify exceptionally important works of architecture or collective elements of architecture extraordinarily significant as an ensemble, such as a historic

district. Note that the language is more restrictive than that of the National Register Criterion in requiring that a candidate in architecture be "a specimen exceptionally valuable for the study of a period, style, or method of construction" rather than simply embodying distinctive characteristics of a type, period, or method of construction. With regard to historic districts, the Landmarks Criterion requires an entity that is distinctive and exceptional. Unlike National Register Criterion C, this Criterion will not qualify the works of a master, *per se*, but only such works which are exceptional or extraordinary. Artistic value is considered only in the context of history's judgement in order to avoid current conflicts of taste.

CRITERION 5

This Criterion does not have a strict counterpart among the National Register Criteria. It may seem redundant of the latter part of Landmark Criterion 4. It is meant to cover collective entities such as Greenfield Village and historic districts like New Bedford, Massachusetts, which qualify for their collective association with a nationally significant event, movement, or broad pattern of national development.

CRITERION 6

The National Register counterpart of this is Criterion D. Criterion 6 was developed specifically to recognize archeological sites. All such sites must address this Criterion. The following are the qualifications that distinguish this Criterion from its National Register counterpart: the information yielded or likely to be yielded must be of *major* scientific importance by revealing new cultures, or by shedding light upon periods of occupation *over large areas* of the United States. Such sites should be expected to yield data affecting *theories, concepts, and ideas* to a *major degree*.

The data recovered or expected to be recovered must make a major contribution to the existing corpus of information. Potentially recoverable data must be likely to revolutionize or substantially modify a major theme in history or prehistory, resolve a substantial historical or anthropological debate, or close a serious gap in a major theme of U. S. history or prehistory.

EXCLUSIONS AND EXCEPTIONS TO THE EXCLUSIONS

This section of the National Historic Landmarks Criteria has its counterpart in the National Register's "Criteria Considerations." The most abundant difference between them is the addition of the qualifiers "national," "exceptional," or "extraordinary" before the word significance. Other than this, the following are the most notable distinctions:

EXCLUSION 2

Buildings moved from their original location, qualify only if one of two conditions are met: 1) the building is nationally significant for

architecture, or 2) the persons or events with which they are associated are of *transcendent* national significance and the association is consequential.

Transcendent significance means an order of importance higher than that which would ordinarily qualify a person or event to be nationally significant. A consequential association is a relationship to a building that had an evident impact on events, rather than a connection that was incidental and passing.

EXCLUSION 3

This pertains to the site of a structure no longer standing. There is no counterpart to this exclusion in the National Register Criteria. In order for such a property to qualify for Landmark designation it must meet the second condition cited for Exclusion 2.

EXCLUSION 4

This exclusion relates to Criteria Consideration C of the National Register Criteria. The only difference is that a burial place qualifies for Landmark designation only if, in addition to other factors, the person buried is of *transcendent* national importance.

When evaluating properties at the national level for designation as a National Historic Landmark, please refer to the National Historic Landmarks outline, *History and Prehistory in the National Park System and the National Historic Landmarks Program*, 1987. (For more information about the National Historic Landmarks program, please write to Department of the Interior, National Park Service, National Historic Landmarks, 1849 C Street, NW, NC400, Washington, DC 20240.)

X. GLOSSARY

Associative Qualities - An aspect of a property's history that links it with historic events, activities, or persons.

Code of Federal Regulations - Commonly referred to as "CFR." The part containing the National Register Criteria is usually referred to as 36 CFR 60, and is available from the National Park Service.

CLG - Certified Local Government.

Culture - A group of people linked together by shared values, beliefs, and historical associations, together with the group's social institutions and physical objects necessary to the operation of the institution.

Cultural Resource - See Historic Resource.

Evaluation - Process by which the significance and integrity of a historic property are judged and eligibility for National Register listing is determined.

Historic Context - An organizing structure for interpreting history that groups information about historic properties that share a common theme, common geographical area, and a common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic properties, based upon comparative historic significance.

Historic Integrity - The unimpaired ability of a property to convey its historical significance.

Historic Property - See Historic Resource.

Historic Resource - Building, site, district, object, or structure evaluated as historically significant.

Identification - Process through which information is gathered about historic properties.

Listing - The formal entry of a property in the National Register of Historic Places. See also, Registration.

Nomination - Official recommendation for listing a property in the National Register of Historic Places.

Property Type - A grouping of properties defined by common physical and associative attributes.

Registration - Process by which a historic property is documented and nominated or determined eligible for listing in the National Register.

Research Design - A statement of proposed identification, documentation, investigation, or other treatment of a historic property that identifies the project's goals, methods and techniques, expected results, and the relationship of the expected results to other proposed activities or treatments.

XI. LIST OF NATIONAL REGISTER BULLETINS

The Basics

How to Apply National Register Criteria for Evaluation *

Guidelines for Completing National Register of Historic Places Form

Part A: How to Complete the National Register Form *

Part B: How to Complete the National Register Multiple Property Documentation Form *

Researching a Historic Property *

Property Types

Guidelines for Evaluating and Documenting Historic **Aids to Navigation** *

Guidelines for Identifying, Evaluating and Registering **America's Historic Battlefields**

Guidelines for Evaluating and Registering Historical **Archeological Sites**

Guidelines for Evaluating and Documenting Historic **Aviation Properties**

Guidelines for Evaluating and Registering **Cemeteries and Burial Places**

How to Evaluate and Nominate **Designed Historic Landscapes** *

Guidelines for Identifying, Evaluating and Registering Historic **Mining Sites**

How to Apply National Register Criteria to **Post Offices** *

Guidelines for Evaluating and Documenting **Properties Associated with Significant Persons**

Guidelines for Evaluating and Documenting **Properties That Have Achieved Significance Within the Last Fifty Years** *

Guidelines for Evaluating and Documenting **Rural Historic Landscapes** *

Guidelines for Evaluating and Documenting **Traditional Cultural Properties** *

Nominating Historic **Vessels and Shipwrecks** to the National Register of Historic Places

Technical Assistance

Defining Boundaries for National Register Properties*

Guidelines for Local Surveys: A Basis for Preservation Planning *

How to Improve the Quality of Photographs for National Register Nominations

National Register Casebook: Examples of Documentation *

Using the UTM Grid System to Record Historic Sites

To order these publications, write to: National Register of Historic Places, National Park Service, 1849 C St., NC 400, NW, Washington, D.C. 20240, or e-mail at: nr_reference@nps.gov. Publications marked with an asterisk (*) are also available in electronic form at www.cr.nps.gov/nr.

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Name	Date	Source	Article	Topic	Comment	RESPONSE
Greater Portland Landmarks	5/28/24	Email	2. Administration	2.2.9. Jurisdiction and Authority	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 Guidelines for the CLG Program in Maine From 3.b. Duties of Local Review Commissions: 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.	The goal with the revisions to this section of the ordinance was to clarify the role of the Historic Preservation Board as distinct from the purpose of the historic preservation program and the historic preservation ordinance. Survey is identified as an ongoing purpose of the Historic Preservation Program under 16.1, "...identify, preserve, and enhance distinctive areas, sites, structures, and objects that have historic, cultural, architectural, and archaeological significance." Records are required to be maintained under 2.2.8. Records of designations shall be maintained by the planning authority under 16.3.5(D). Generally, the maintaining of records is a given and accepted function of government. The role of the Historic Preservation Board in serving in an advisory capacity is still captured under 2.2.9 (F), (G), & (H). The role of the program and Board in serving as a resource to the public is a given function and does not need to be called out specifically as an authority of the Board. However, changes will be made to this section insofar as CLG requires it.
Greater Portland Landmarks	5/28/24	Email	2. Administration	2.2.9(E)	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?	Staff look to the Board for final input on whether they find that the Historic Preservation Board or the Zoning Board of Appeals is best suited to reviewing these applications.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	General	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.	Terms will be reviewed for consistency prior to final revision.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"building alteration"	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 significant change and does not appear to meet the minimum requirements for a Local Review Commission per the Guidelines for the CLG Program in Maine to review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction.	Minor and major alterations and site alterations have been defined in Table 16-A. A change to Section 16.6.1 is suggested to clarify that review will be required for work beyond that requiring a building permit.

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Name	Date	Source	Article	Topic	Comment	RESPONSE
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"district"	Not defined	Historic district and historic landscape district are defined separately under 16.2.1.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"historic rehabilitation"	The existing definition is the same as the definition from the Guidelines for the CLG Program in Maine: 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 Guidelines for the CLG Program in Maine. 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.	Terms will be reviewed for consistency prior to final revision.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"new construction"	Not defined	New construction is a commonly understood phrase that does not need to be defined.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"object"	Not defined	Staff will add 'site' and 'object' back into the land use code and will be revising the definitions of 'site' and 'object' within the context of the historic preservation ordinance within Article 3 to ensure improved clarity.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"preservation"	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 Guidelines for the CLG Program in Maine 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, Preservation, Rehabilitation, Restoration, and Reconstruction.	The term is not used in the ordinance outside of the overarching phrase historic preservation, the scope of which is laid out in the purpose statement or under the jurisdiction and authority of the Historic Preservation Board. A definition is not necessary.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"relocation"	This is a good, revised definition, as it addresses a resource’s orientation.	No response necessary.
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"restoration"	We believe strongly this should be defined. The minimum requirements for local legislation (A.2.) in the Guidelines for the CLG Program in Maine 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, Preservation, Rehabilitation, Restoration, and Reconstruction.	The term is not used in the ordinance therefore a definition is not necessary.

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Name	Date	Source	Article	Topic	Comment	RESPONSE
Greater Portland Landmarks	5/28/24	Email	3. Definitions	"site"	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 Guidelines for the CLG Program in Maine 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. The NPS definition: 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. From the Guidelines for the CLG Program in Maine: 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.	Staff will add 'site' and 'object' back into the land use code and will be revising the definitions of 'site' and 'object' within the context of the historic preservation ordinance within Article 3 to ensure improved clarity.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	General	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.	The integration of definitions within the article is intended to improve the article's ease of use. Where necessary terms can not be embedded within the text, additional revisions will be suggested to Article 3 to accommodate HP-related definitions.
Chamber of Commerce	5/29/24	Email	16. Historic Preservation	General	We welcome the opportunity to provide written comments on behalf of our members regarding the proposed amendments to Article 16 of the City of Portland’s Land Use Code being advanced under the ReCode initiative. Increasing the production of housing of all types is the top policy initiative of the Chamber, and as you know, your Board plays an important role in the permitting of housing within Portland’s historic districts. It is imperative that the amendments advanced to Article 16 through ReCode affirmatively further the goals of our comprehensive plan and the priorities of our elected officials, both of which strongly prioritize the creation of thousands of units of housing over the next decade.	The proposed revisions to Article 16 are intended to clarify many of the city's existing review procedures and thereby improve the review process.
Chamber of Commerce	5/29/24	Email	16. Historic Preservation	General	The draft before you from staff advances several key changes that we believe will streamline review of alterations, adaptive reuse, and new construction within Portland’s historic districts. Most importantly, the clarification of standards of review and scope of jurisdiction are welcome amendments that will go a long way towards removing subjectivity from the current process that leads to delays that cost applicants considerable amounts of time and money. Additionally, we appreciate the elimination of the existing criteria for designation on Page 55 of the redline PDF that currently allow for historic districts to be assembled through the amalgamation of various building types regardless of the individual merit of structures and even if the proposed district is “composed of a wide variety of resources”. This change significantly limits potential for abuse in the designation of districts which do not contain any sufficient cohesiveness among style, period, or type of building, and which are only currently able to be designated based off this vague standard. Finally, we appreciate the addition of the new criteria in 16.2.2.C that clarifies the applicability of all sections of the comprehensive plan when making designation decisions.	As drafted, historic districts may still be composed of a wide variety of resources provided that it can be demonstrated that they are united by past events, culturally, or aesthetically and collectively meet at least one of the criteria for designation. See 16.2.1(B). The ability of the Planning Board and Council to weigh all components of the comprehensive plan in establishing historic designations has been a component of the ordinance since its adoption in 1990 (See 17.4.1(D) & 17.5.8(B), existing language)

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Name	Date	Source	Article	Topic	Comment	RESPONSE
Chamber of Commerce	5/29/24	Email	16. Historic Preservation	General	With that said, we do want to raise some concerns that persist with the current draft. The largest disappointment in this draft as written is that it continues to provide jurisdiction to the Board for review authority over new construction and alterations to non-contributing buildings where more than 40% of the façade is altered. The Board rightly has jurisdiction around alterations and additions to historic structures which we do not question. However, in recent years the subjective deliberativeness that the Board has applied to new construction within historic districts has significantly exacerbated permitting delays and cost increases for developers of new housing, such that policymakers would be wise to revisit if these applications are still well suited to come before it for review. Since 2020, the Board has reviewed 19 applications for new construction within historic districts, nine of which have involved at least three meetings with the board, and four of which have not come back to the board after having been put through one to two workshops. That means that of those 19 applications, just six were processed in what can be considered a reasonable review period of one workshop and one public hearing. In some cases, applicants have had to come to the board more than four times for projects as small a five-unit multifamily building. These unacceptable delays present considerable cost challenges for developers of small multifamily buildings within historic districts, undermining citywide goals of increasing production of this type of gentle density within our historic neighborhoods.	A significant reduction in the authority of the Board, such as eliminating review of new construction or alterations to noncontributing buildings, has not been part of the approach to updating the Historic Preservation ordinance. Applicants choose not to pursue final approval of projects for a variety of reasons, many of which are unrelated to historic preservation review. The City's 2023 study <i>Trends in Portland's Historic Districts</i> found, among other impacts, that, "<i>Despite lower levels of construction, retention of existing housing has led housing densities in historic districts to increase at similar rates as elsewhere. This is accounted for through a mix of new construction, retention of existing residential units, and repurposing of historic structures for higher densities (single family to two family or commercial to residential conversions, for instance).</i>" (page 6, https://portland.civilspace.io/en/projects/historic-preservation-impact-study). According to the City's housing dashboard, since 2020, 1,492 housing units have been approved within Portland's historic districts and 670 have been completed. including Maine's tallest building at 201 Federal Street which include 263 new homes (https://www.portlandmaine.gov/1462/Housing-Dashboard).
Brian Scios	5/31/24	Email	16. Historic Preservation	General	I'm writing to voice my strong opposition to the rewriting of ReCode that would essentially put historic preservation at risk in Portland. If you decide to move forward with existing language that would weaken the oversight of the Historic Preservation Board, many damages caused by this will be IRREVERSIBLE and I'm afraid the treasured history and soul of Portland will be at risk. Time and time again we've seen other cities maintain a high bar for historical preservation while balancing the need for growth, development and tax revenue. I urge you to use those cities as examples to model off of for our own great city of Portland.	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.
Sandra Radis	6/7/24	Email	16. Historic Preservation	General	Please do not change the preservation code! We love Portland for the care the city takes to protect history, please do no change this code for one organization's desires. It is wrong.	The draft revisions are intended to simplify and clarify the ordinance in the interest of strengthening the City's historic preservation program. The intent and authority of the program is not changing.
Teresa Pierce	6/7/24	Email	16. Historic Preservation	General	I oppose weakening the historic preservation language in the ReCode. Let's not in five, ten, 25 years realize that we have lost Historic Portland, we can never get it back. As a resident of the greater Portland community I value the history and culture of the community, the proposed language destroys the current Historic Preservation ordinance, codifies the city council's recent action on 142 Free St., and puts Portland out of compliance with standards required by the Maine Historic Preservation Commission and National Park Service. These are things we should not put in jeopardy.	The draft revisions are intended to simplify and clarify the ordinance in the interest of strengthening the City's historic preservation program. The intent and authority of the program is not changing.
Robert Kahn	6/7/24	Email	16. Historic Preservation	General	I am totally against RECODE's language that guts the Historic Preservation Ordinance. Why was this unnecessary attack on the ordinance included? It was pointless and divisive. Also, graphic examples (proposed changes next to existing conditions) need to be offered to the public so that we can visually compare the before to proposed after. The heights and density seem to be excessive. Is the code attempting to develop future dense tenement slums like in New York City?	The draft revisions are intended to simplify and clarify the ordinance in the interest of strengthening the City's historic preservation program. The intent and authority of the program is not changing.
Victoria Bonebakker	6/10/24	Email	16. Historic Preservation	General	The proposed ReZone plan guts the current protections and would destroy the integrity of Portland's historic districts, whose character enhances the attractiveness of the city for its residents and also draws tourists as well as new residents, supporting the business community and the tax base. Jeopardizing, and in some cases destroying, Portland's historic character will weaken the city irreparably. The plan needs to be amended!!	The draft revisions are intended to simplify and clarify the ordinance in the interest of strengthening the City's historic preservation program. The intent and authority of the program is not changing.

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Dugan Murphy	6/12/24	Email	16. Historic Preservation	General	I understand some of the changes will have the effect of weakening Portland's historic preservation ordinance and I think doing that is a big mistake. Portland has a major housing crisis right now and a good way to remedy that seems to be encouraging development of surface parking, allowing higher densities of development, and removing requirements for parking. The answer is neither making it easier to demolish contributing buildings in historic districts, nor is it stripping review responsibilities from the Historic Preservation Review Board. This is important to me because Portland's livability is so dependent on the human scale of our historic districts. This is what kept me here when I became an adult and had to decide whether to move away or stay in the Portland area! Furthermore, the integrity of those historic districts bring tourists here, which is the basis for my livelihood and makes it possible to continue living here. Please create a development code that encourages development that integrates well with our historic districts. That will enhance walkability, livability, bikeability, and transit viability.	The draft revisions are intended to simplify and clarify the ordinance in the interest of strengthening the City's historic preservation program. The intent and authority of the program is not changing.
Peter Murray	6/12/24	Form	16. Historic Preservation	General	The Recode proposals appear to significantly weaken and undermine what has been a very successful historic preservation program in the City of Portland. "If it ain't broke, don't fix it!" Some years ago Portland made the decision that preservation of historically significant structures and areas of the City will enhance the attractiveness of the City for purposes of economic development, as a place to visit (tourism) and as a desirable environment for its inhabitants. Portland's historic preservation ordinance has generated a number of historic districts in key areas of the city, for the most part on the Portland Peninsula. Protections afforded contributing structures in these districts have maintained the historic authenticity and amenity of these parts of Portland and have generated millions of dollars of investment in tax credit supported restoration and reuse of contributing buildings - all to the benefit of the City. There is no reason why a regime that has been so successful should be weakened or diluted by the various recode provisions that would 1) allow criteria other than historic authenticity to be considered in declassifying contributing structures, 2) allow dimensional standards of the zoning ordinance to override considerations of historic compatibility, 3) dilute interim protections pending evaluation of a pending historic district designation, or 4) restrict historic review of changes that do not require building permit. There is no showing that any of these changes are needed. All of them tend to undermine the quality of the historic fabric of the City. Some might even jeopardize qualification of Portland's districts for Federal dollars and tax credits. Please leave the Historic Preservation ordinance as it is!	The draft revisions are intended to simplify and clarify the ordinance in the interest of strengthening the City's historic preservation program. The intent and authority of the program is not changing.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.1 Purpose	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 Guidelines for the CLG Program in Maine 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 Guidelines, 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.	A change to the purpose statement is suggested as follows: 16.1 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 survey, identify, historically designate, and protect areas, sites, structures, and objects of historic, cultural, architectural, or archaeological significance. B. Establishing standards for the review of alterations and new construction affecting historic designations. C. Encouraging compatible rehabilitation and new construction affecting historic designations preventing the unnecessary loss of the community's significant character without stifling change and development. D. Providing a resource of information and expertise to help those interested in rehabilitation or new construction affecting historic designations. E. Fostering civic pride in the city's history as represented in the City’s Historic Designations.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.1 Categories of Designations	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. See also comments on Chapter 3 above. 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.	The language will be revised to consistently use Building, Structure, Site, Object, or Area, as appropriate to the context. All significance is framed within the Criteria for Designation. The criteria cover the these modifiers.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.1(A) "landmark"	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 Guidelines for the CLG Program in Maine. From the Guidelines for the CLG Program in Maine: Any site, building, or structure of particular archaeological, historic or architectural 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 may be classified as contributing or noncontributing. 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.	All significance is framed within the criteria for designation. The criteria cover the these modifiers. Language will be added to clarify that Landmark is a separate designation that is applied overlapping historic districts or historic landscape districts. All landmark structures that are also within historic districts or historic landscape districts will be considered contributing to the district as well.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.1 (B) "historic district"	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, unified by past events 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.	Language will be revised to include "united by past events" and better align with the National Register.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.1(C) "historic landscape district"	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.	No response necessary.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.2 Criteria for Designation	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.	Weighing the comprehensive plan would include the weighing of the historic preservation goals of the plan by nature.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.2 Criteria for Designation	17.4.1(B) 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.	This language is redundant to the proposed definition (which follows the model of the National Register) in that it still identifies that there must be a "concentration, linkage, or continuity" and that the district be "united."

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.2 Criteria for Designation	17.4.1(C) 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.	This language is redundant to the proposed definition which requires a "concentration, linkage or continuity of natural or man-made components." The significance would be framed within the criteria for designation.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.2(A)	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”.	Revisions are suggested to strike the word "minimum" from all references, using "criteria for historic designation" or "historic designation criteria"
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.2(B)	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.	Integrity is defined within the body of the ordinance under 16.2.2(B) as conveying its significance.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.2(B)	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 “make it worthy of preservation or restoration” 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.A.”	Condition is distinct from integrity. Integrity is a building's ability to convey its significance (p. 44 of the National Register Bulletin: How to Apply the National Register Criteria for Evaluation). Condition is a building's state in terms of its ability to continue to serve a function/purpose. The National Register Bulletin does not identify condition as an aspect of integrity. Other National Park Service guidance states, "A measure of integrity is not the same as an assessment of condition. The National Register recognizes seven aspects or qualities that define integrity: location, design, setting, materials, workmanship, feeling, and association. Researchers assess historic integrity by evaluating whether a property reflects the spatial organization, physical components, and historic associations that is attained during the period(s) of significance. A measure of integrity is not the same as an assessment of condition." (https://www.nps.gov/articles/000/cultural-landscapes-national-register-significance-integrity.htm#:~:text=Researchers%20assess%20historic%20integrity%20by,as%20an%20assessment%20of%20condition.) Based on feedback from Maine Historic Preservation Commission staff, Integrity will be further revised to include all seven aspects of integrity referenced by the National Register. Integrity is defined within the body of the ordinance under 16.2.2(B) as conveying its significance.
Chamber of Commerce	6/1/24	Email	16. Historic Preservation	16.2.2(B)	In the draft proposed 16.2.2.B why is “condition” being removed as a criteria for a nominated area, site, structure or object?	See above.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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.	Historic designation is intended as an overarching term that encompasses landmarks, historic districts, and historic landscape districts. Where language refers to specific categories of historic designations, they are called out specifically.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.3(A)	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”	Revisions are suggested to clarify that landmarks as designations may overlap with districts or stand alone.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.3(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 Section 16.2.3. Classifications within historic designations. 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”. Section 16.3. Nomination, Consideration, and Historic Designation 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 Guidelines for the CLG Program in Maine 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: From the Guidelines for the CLG Program in Maine: 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 Greater Portland Landmarks proposed corrections to the left in red)	Contributing classifications could also be applied to buildings, structures, sites, or objects within the boundaries of landmarks. This is consistent with the approach taken under the National Register where individual National Register listings include lists of contributing and noncontributing resources. This approach was also taken under the recent local landmark designation of the B&M Cannery. The notion of "contributing" is generally self-explanatory. The contributing and noncontributing classifications are defined through the parameters given for determining such a classification within the body of the ordinance under 16.2.3. Revisions are suggested to correct verb tenses. Revisions are also suggested to clarify the distinction between the nomination materials and reports issued by the Historic Preservation Board and Planning Board, which would include findings and recommended changes to any nomination. Revisions are also suggested to ensure consistency in this language throughout.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.3(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 district 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 "designation report”. 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.	The contributing and noncontributing classifications are defined through the parameters given for determining such a classification within the body of the ordinance under 16.2.3. Landmarks can contain multiple structures and objects (for example a primary structure and associated accessory structures). This is consistent with individual National Register listings and the approach previously taken at the B&M Cannery, a local landmark.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.3(C)	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.	If a building is not contributing, then it would be noncontributing. Under 16.3.8, there is a presumption of contributing classification where a building, structure, site or object was not previously classified. This is consistent with existing language. 16.3.8 adds a framework for finding buildings, structures, sites, or objects of no significance or integrity as noncontributing. The Historic Preservation Board would still retain the authority to approve removal of portions of structures under the certificate of approval process. The Board could find that portions or elements of structures are not distinctive or character-defining and therefore approve their removal as consistent with the standards for review.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.2.3(C)	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.	See above.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3 Nomination, Consideration, and Historic Designation	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.	See 2.2.7(B)1
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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, in writing, 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 signed by at least two members of the historic preservation board should be required, and signatures for public nominations should be a minimum requirement.	Revisions are suggested to require that all nominations be in writing.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3.3 HPB review	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.	Revisions to add "one or more workshops."
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3.3(D)	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.	The information to be provided in the nomination materials is detailed under 16.3.2(A). See above regarding the contents of the nomination and subsequent reports. Revisions are suggested to add the provisions under 17.7.5(B) under 16.3.3(E).
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3.6 "demolition"	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.	Staff find this sufficient.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3.7 Amendment or rescission of designation	The language in staff proposed 16.3.7 Amendment or rescission of designation is a significant change 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 NOT to meet the minimum requirements for a Local Review Commission per the Guidelines for the CLG Program in Maine.	Staff find it appropriate that if the Planning Board and City Council should weigh the comprehensive plan in establishing designations, the comprehensive plan should also be weighed in amendments. The current language already allows for the comprehensive plan to be considered for reclassifications under 17.5.8(B). The proposed language creates a single clear and consistent process for all amendments.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3.7(A)	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 Guidelines for the CLG Program in Maine.	See above clarifying that landmarks are separate designations that may overlap historic districts or historic landscape districts.
Chamber of Commerce	6/2/24	Email	16. Historic Preservation	16.3.8 Presumption of contributing classification	In the draft proposed 16.3.8 why is there a presumption that structures or objects in an area or site are contributing? Shouldn’t all structures have the test of the standards in 16.2.2 applied and explicitly listed in the City Council order before they are locked into a potentially irreversible designation as contributing?	This language is consistent with 17.7.1(B), but has been relocated and refined for improved clarity.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.3.8 Presumption of contributing classification	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 Guidelines for the CLG Program in Maine.	Area is not currently defined within the ordinance. Staff find the notion of an "area" to be self-explanatory. Under the proposed language, buildings are not distinguished from structures, but as noted above, revisions are suggested to add "buildings" consistently within the designation language. If a building or structure was unlawfully altered after the date of designation, that would constitute a separate violation under the ordinance's requirement for a COA before permitting and or undertaking any exterior alterations. To insert that here would create an unnecessary redundancy. Language will be added to clarify that alterations will need to have been completed lawfully.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.4 Interim Protections	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.	Staff find that this is an appropriate change.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.4 Interim Protections	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.	Revisions are suggested to add the provisions under 17.5.2(E) under 16.4.2 or 16.4.3.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.4 Interim Protections	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.	Staff find that this is an appropriate change.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.5 Protections for Properties listed on the National Register of Historic Places	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 Guidelines for the CLG Program in Maine set out minimum duties of the local review commission to “review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction”. Guidelines for the CLG Program in Maine 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.	Based on feedback and comments from MHPC staff, this section will be removed or revised to eliminate any automatic regulations placed upon properties based on their having been listed on the National Register of Historic Places. Staff will seek Board feedback on whether the provision automatically initiating local Historic Designation should be retained.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.5(D)	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 NOT meet the CLG guidelines and should be removed as an exception.	Based on feedback and comments from MHPC staff, this section will be removed or revised to eliminate any automatic regulations placed upon properties based on their having been listed on the National Register of Historic Places.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	Time limits	We believe general language that will move the process along in good faith or expeditiously should be included.	Time limits on processes have been removed across the code unless otherwise required by state statute. The intent is always to move processes expeditiously and there is no need to include additional language.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6 Review Process for Certificates of Appropriateness	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 appropriateness" also has the effect of mystifying what is the approval of a proposed change to a property reviewable under the historic preservation ordinance. The Historic Preservation Board has suggested renaming this a "certificate of approval."
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6 Review Process for Certificates of Appropriateness	17.7.7 Certificate of non-applicability is not defined	Certificates of non-applicability are proposed to be removed from the ordinance.
Jeff Sherman	5/10/2024	Konveio	16. Historic Preservation	16.6.1 Applicability	Installation of energy efficient windows should be exempt.	Windows are often distinctive and character-defining features of historic structures. Their replacement should be carefully reviewed. Historic Preservation staff regularly work with property owners to review the design and details of energy efficient replacement windows to ensure that they preserve the historic design of the original windows.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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 major change. With this staff-proposed language and 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 Guidelines for the CLG Program in Maine to review alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction	The intent was not to significantly reduce the scope of what work is subject to review. Revisions are suggested to clarify that review is not limited to those projects requiring a building permit.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.1 Applicability Exemptions	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: 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. 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.	The changes to this part of the ordinance are intended to provide much greater clarity as to what is reviewed and by whom, as well as to streamline review for common projects that advance other city goals and projects that are otherwise subject to city-led project development processes. Revisions to right-of-way will be considered by staff.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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.	The intention is to make clear that modest alterations can also be reviewed by staff and approved if they are found to meet the applicable standards for review. Under 16.6.2(B), the Planning Authority may escalate projects due to anticipated impacts or where staff cannot determine that the project would meet the applicable standards. Applicants would also be allowed to request review by the Board for any project under 16.6.2(C).
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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.	The proposed thresholds are intended to streamline reviews for common project types, easing the time and administrative burden for applicants.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.3 Historic Preservation Pre-App Meeting	This is a good addition.	No response necessary.
Greater Portland	5/28/24	Email	16. Historic Preservation	16.6.5 Costs of review	Does this change reflect similar board language for ZBA or PB?	This language is generally similar to language included within site plan.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.6 Lapse in Application	Does this change reflect similar board language for ZBA or PB?	This language is generally similar to language included within site plan.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.7 Administrative Review	The existing ordinance states that a project must meet the standards of Section 17.8 and the Historic Resources Design Manual. 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 AND Historic Resources Design Manual, 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.	Projects are required to meet the standards for review. The Design Manual is supplemental, providing guidance and serving as a resource.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.7 Administrative Review	Why is staff proposing to eliminate the option to use the consent agenda with staff reviews?	Review of substantive applications is not appropriate under the consent agenda. Where staff do not find that they can determine that a project meets the standards for review, the Planning Authority may escalate a project to the Board for review under 16.6.2(B).
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.8 Historic Preservation Board Review	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 Historic Resources Design Manual, 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)	Projects are required to meet the standards for review. The Design Manual is supplemental, providing guidance and serving as a resource. There are no examples of existing historic designations that have included specific criteria or guidelines. There is nothing preventing the Board from developing guidlines on specific topics or for specific designations, but those would again only be supplemental and serve as a resource for the Board and applicants in interpreting the standards within that context.
Chamber of Commerce	5/30/24	Email	16. Historic Preservation	16.6.8(C)	Consider adding to the end of the subsection “and provide direction to the applicant regarding issues to be addressed to bring the application into compliance with the relevant standards of Section 16.7.” This necessary addition will clarify that the Board must provide feedback at workshops specific to the standards. In several recent cases of the Board feedback, the applicant has been left with subjective criticisms from various Board members that do not directly address which standards the member believes the applicant is not complying with, creating confusion that leads to needless additional rounds of workshops. Board feedback in workshops must be explicitly tied to the relevant standards to reduce the number of workshops needed.	Revisions are suggested to add clarity here.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.12. Issuance of a CoA	Currently a 14-day time period, proposed to be removed.	Time limits on processes have been removed across the code unless otherwise required by state statute. The intent is always to move processes expeditiously.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.12(A)	Currently located under 17.3 Administration, Section 1 ‘Costs’.	No response necessary.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.6.13 Expiration of approvals	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?	Reviewing requests for extensions is an unnecessary administrative burden. Three years is intended to provide applicants with sufficient time to begin projects given ongoing challenges with securing financing, acquiring materials, and scheduling contractors. The proposed is consistent with proposed language under the site plan ordinance.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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.	No response necessary.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	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.	Projects are required to meet the standards for review. The Design Manual is supplemental, providing guidance and serving as a resource.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.7 Standards for Review of Application for Certificate of Appropriateness	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.	A statement of the purpose and role of the Historic Resources Design Manual is included under 16.7.1(A).

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Chamber of Commerce	6/3/24	Email	16. Historic Preservation	16.7 Standards for Review of Application for Certificate of Appropriateness	This draft removes all references to the Historic Design Manual. Is the intent that this manual will no longer be applied as a consideration when reviewing an application and that only the standards within the code will be applied?	Projects are required to meet the Standards for Review. The Design Manual is supplemental, providing guidance and serving as a resource.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.7.2(A) Compatible Use	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."	This change is proposed given that Historic Preservation does not review or regulate use. The current language suggests that it does. This clarifies that the function of the review is to minimize the alterations regardless of what allowable use a property owner may be pursuing.
Chamber of Commerce	5/31/24	Email	16. Historic Preservation	16.7.3(A)	Strike all standards in this section except for 16.7.3.A.6. That subsection is a welcome addition to the code, but its addition obviates the need for subsections 16.7.3.A.1-16.7.3.A.5. This draft wisely makes clear that the Board is unable to impose standards on the applicant that would require reductions to the building envelope beyond restrictions present in the base zoning, and thus there no longer need to be standards that even mention the ability for the Board to analyze dimensional components of a building like height and width. This current source of confusion has been a key driver to the lengthy review process the Board has undertaken on applications for new construction and making explicit that the Board cannot force an applicant to reduce height and width or increase setbacks and step backs must be clear and enforceable. If the Board is to continue to have jurisdiction over new construction, the standards in sections 16.7.3.B & 16.7.3.	Scale and form are important components of design and should be considered by the Board in reviewing the compatibility of proposed new construction. The draft language relating to the underlying zoning under 16.7.3(A)6 has proven to be easily misinterpreted and is proposed for removal.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.7.3(A)	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 should remain as is, 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.	Scale and form are important components of design and should be considered by the Board in review the compatibility of proposed new construction. The draft language relating to the underlying zoning under 16.7.3(A)6 has proven to be easily misinterpreted and is proposed for removal.
Jeff Sherman	5/10/2024	Konveio	16. Historic Preservation	16.7.3(A.6) Height Restrictions	The height restrictions should be eliminated. There are already height restrictions in the underlying zones.	Scale and form are important components of design and should be considered by the Board in review the compatibility of proposed new construction. The draft language relating to the underlying zoning under 16.7.3(A)6 has proven to be easily misinterpreted and is proposed for removal.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.7.3(A.6) Applicability of underlying zoning	This would be a major change 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.	The draft language relating to the underlying zoning under 16.7.3(A)6 has proven to be easily misinterpreted and is proposed for removal.

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Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.7.3(C.4) Streetscape, pedestrian improvements	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.	See above. The changes to this part of the ordinance are intended to provide much greater clarity as to what is reviewed and by whom, as well as to streamline review for common projects that advance other city goals and projects that are otherwise subject to city-led project development processes. Revisions to right-of-way will be considered by staff.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.8 Certificate of Economic Hardship	Not defined	Certificate of Economic Hardship is defined within the text under 16.8(A).
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	16.8 Certificate of Economic Hardship	This is a significant change. How do other Maine CLG communities handle this provision?	Staff will look to the Board for final consideration of whether they agree with the notion that the Historic Preservation Board is best equipped to interrogate questions of hardship.
Greater Portland Landmarks	5/28/24	Email	16. Historic Preservation	17.3.3(C)	The existing notice requirement for non-contributing structures in a nominated or designated district has been removed in the staff proposed draft. 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.	Demolition of noncontributing structures is by right. Requirement to provide notice is unnecessary.
Karen Foster	6/7/2024	Konveio	16. Historic Preservation	Composition of principal facades	Would this require review for non-permanent signs placed on sidewalks, such as UPP parking lot signs on upper Park St.?	Sandwich boards and other non-permanant signage are not subject to review.