CITY OF PORTLAND, MAINE
PLANNING BOARD

Sean Dundon, Chair
Brandon Mazer, Vice Chair
Bob Dunfey
David Eaton
David Silk
Austin Smith
Maggie Stanley

AGENDA
PORTLAND PLANNING BOARD MEETING

The Portland Planning Board will hold a meeting on Tuesday, December 17, 2019, Council Chambers, 2nd Floor, City Hall, 389 Congress Street. **Public comments will be taken for each item on the agenda during the estimated allotted time and written comments should be submitted to planningboard@portlandmaine.gov**.

Note: This is a workshop meeting only.

1. ROLL CALL AND DECLARATION OF QUORUM

2. COMMUNICATION AND REPORTS

3. REPORT OF ATTENDANCE AT THE MEETING HELD ON DECEMBER 10, 2019

All members were present.

4. REPORT OF DECISIONS AT THE MEETING HELD ON DECEMBER 10, 2019

i. Level III Site Plan and Conditional Use; 1884 Forest Avenue; John Chau, Applicant. Eaton moved and Stanley seconded a motion to table this item . Vote 6-1 (Mazer recused).

WORKSHOP - 4:30 PM

i. ReCode The Planning Board will hold a workshop on Phase 1 of the ReCode, the process of rewriting the City's Land Use Code. The workshop will include an introduction to draft use and dimensional requirement provisions of the ReCode as well as an overview of revisions to draft introductory and administrative provisions.

EVENING WORKSHOP - 7:00 PM

i. R-6 Design Standards The Planning Board will hold an evening workshop to review proposed revisions to the City of Portland Design Manual related to the R-6 Zone design standards.

MEMORANDUM
PLANNING AND URBAN DEVELOPMENT DEPARTMENT
PLANNING DIVISION

To:	Sean Dundon, Chair, and Members of the Portland Planning Board
From:	Christine Grimando, Acting Director
	Nell Donaldson, Director of Special Projects
	Matt Grooms, Senior Planner
Date:	December 13, 2019
Re:	ReCode Update
Meeting Date:	December 17, 2019

I. INTRODUCTION

Following adoption of *Portland's Plan 2030*, staff in the Department of Planning & Urban Development initiated ReCode Portland, an effort to rethink, restructure, and redraft the city's 961-page land use code to better align with the goals and objectives of the city's comprehensive plan. Phase I of the ReCode effort is focused on reformatting, streamlining, and reorganizing the existing code into a more legible and user-friendly document. Phase II, which is anticipated to formally begin after a revised code is adopted by the City Council under Phase I, will involve the process of carefully examining the code in light of policy goals expressed through *Portland's Plan,* and rewriting the policy in the code to better align with that vision.

In early November, the Planning Board began its formal review of the product of Phase I of the ReCode, the first public draft of the restructured land use code. This followed a series of meetings with the Council's Ad Hoc ReCode Committee, which was formed to offer broad policy guidance to the Planning Board on the ReCode. The Board's November workshop focused on the first four articles of the draft code: Introductory Provisions, Administration, Definitions, and Nonconforming Uses, Structures, and Lots. In the wake of the November workshop, staff released the first four articles of the draft code for public comment on the ReCode website (www.recodeportland.me). Simultaneously, staff continued its internal review of the draft code across city departments, including Permitting & Inspections, Parking, and Corporation Counsel. It is important to note that this internal review is ongoing, and is expected to continue as the public review proceeds through the Planning Board process.

As noted in the November Planning Board meeting, staff has planned a series of workshops with the Board to guide the public review of the draft ReCode, each targeting a set of articles of the new code in sequence. The idea is to give the Board and the public digestible pieces of the new code before making a recommendation on the entire code. At each workshop, edits to the articles reviewed in the prior workshop will be presented, such that the document is drafted and redrafted in an iterative manner as the review progresses. In this vein, the purpose of the December 17 workshop is twofold: to review edits to the first four articles of the draft code resulting from Planning Board, public, and internal staff comment, and to introduce the next three articles of the draft code – Zones, Uses, and Dimensional Standards.

II. RECODE: REVISIONS TO ARTICLES 1 to 4

At the November 7 Planning Board workshop, staff heard comments from the Board and the public on not only the content of the draft revised code, but also the formatting and organization. Following the meeting, staff also received comments from members of the public through the ReCode website (*Attachment 1*). Much like the feedback from the workshop, these public comments focused on both formatting and content. Simultaneously, staff in the Zoning

Administrator's office and Corporation Counsel continued to review Articles 1-4 and offered their own feedback on the drafts.

A number of the comments from all sources, for instance those regarding typos, capitalization, formatting, or lesser notes regarding word choice, were relatively minor in nature and have been integrated into the revised versions of Articles 1-4 presented here (*Attachment 2*). Other comments, however, were more substantive. A number of these, including potential changes to provisions related to non-conforming structures or uses and noticing requirements, for example, relate to the type of broader policy conversations that are anticipated under Phase II. Others directly affect the logic and legibility of this revised code or advise on elements of the code that may have been missing, and merited further work on the part of staff. These include:

A. **Definitions.** In the wake of the Planning Board workshop, staff reviewed the relationship between existing definitions in the code, new draft definitions, the International Building Code, and related state law. Several sets of definitions, including wetland-related definitions, lot-related definitions, and subdivision definitions, are still being reviewed by Corporation Counsel and Zoning and have not been comprehensively updated in the draft here, pending further review, but will appear in a future iteration of the draft. Dwelling-related definitions, however, have been revised in coordination with Corporation Counsel and Zoning to provide more clarity and better match the use regulations of Article 6. Similarly, street-related definitions have been reviewed in detail to ensure that they are compatible with policy elsewhere in the draft code. Where resolution has been reached, edits to these terms can be seen in the revised drafts.
B. ***Non-conforming Uses, Structures, & Lots.*** Staff has added language relating to the reconstruction of non-conforming structures, which exists in the current code but was edited by the Zoning Administrator's office.

III. RECODE: REORGANIZATIONOF ARTICLES 5 to 7

As noted previously, articles within the new code are not intended to function in isolation, and have been drafted so that each individual element works in concert with other sections of the code. This structure eliminates the need for redundant sections that are repeated throughout the existing code. For example, a large portion of the current code is organized by zoning district, which means that lengthy lists of uses, dimensional standards, and performance standards are repeated over the course of the code. The draft ReCode instead organizes these elements of the ordinance thematically, separating purpose statements, uses, and dimensional standards into separate articles:

A. **Zones:** Establishes the individual zoning districts and zoning map by reference, and provides an overview of the purpose of each zone.
B. **Use Standards**: Lists all uses organized by zone, designating individual uses as either permitted by-right or conditional. This article also includes standards for specific uses, conditional uses, and accessory uses, and concludes with a consolidated list of performance standards.
C. **Dimensional Requirements**: This article provides an overview of the rules of measurement within the City, such as, for example, how to calculate average grade, a building's footprint and lot coverage and includes all dimensional requirements arranged by zone. The article concludes with space and bulk exceptions.

This reorganization represents a significant change from the current code. Currently, most regulations related to a particular zone can be found in one location, with some substantive exceptions (signs, parking, for instance). This represents one logical way to structure a code; however, the new structure, in addition to being more space efficient, lends itself to a more consistent and uniform code and makes the code not only easier to read and digest, but easier to administer. The reorganization of zone-specific standards, and the conversion of text to greater reliance on tables, represents one of the most significant structural changes to the Code, and the consolidation of an enormous quantity of redundant standards.

This workshop includes an introduction to Articles 5 to 7 of the ReCode: Zones, Use Standards, and Dimensional Standards (*Attachment 3*). These articles represent the heart of the traditional 'zoning' elements of the existing code. As with previous articles that the Board has reviewed, most of the language that has been integrated into these three articles currently exists in various places in the code, and has simply been lifted and reorganized into the current

format. However, by virtue of the significant reorganization of much of the current zone-based content into unified use and dimensional tables, use standards, conditional use standards, and performance standards, there have also been cases where language has been simplified for purposes of consistency. In some instances, new language has also been added to address gaps.

A. Zones

The Zones article of the ReCode consolidates existing rules about the establishment of the zoning map, rules of interpretation, and contract and conditional zoning language with the purpose statements for each of the city's base zoning districts. The vast majority of this article reflects the existing code. However, some modifications include the following:

1. *Zones:* The existing B-1 and B-1b zoning attempts to regulate use and form in complex and at times conflicting ways, where the application of use and dimensional standards is contingent upon adjacent zoning, a property's location on- or off-peninsula, and the floor (ground-level or upper floor) in which a use is being considered, with the aim of encouraging a specific form of mixed-use development B-1b zone, consisting of an activated ground level commercial space with residential uses occupying upper floors. In the course of reorganizing the use and dimensional standards, this language presented significant problems. Recognizing the limited scope of the B-1b zone and its inherent similarities with the B-1 in terms of purpose, the ReCode attempts to greatly simplify the B-1/B-1b standards by consolidating the two zones into one B-1 zone. The purpose statements of the zones have been collapsed but maintains central themes of both original zones: focusing on small, neighborhood scale development, housing density, and mixed-use.
2. *Purpose Statements:* Generally speaking, the purpose statements have been lightly edited for language that is either irrelevant given the current application of the zone or not pertinent to the zone's purpose. For instance, small residential lot language has been removed from the R-6 zone, off-peninsula/on-peninsula distinctions have been removed where outdated, B-6 provisions which speak to the establishment of dimensional requirements have been struck, and references to outdated uses have been eliminated. Of note, a new RPZ purpose statement has been drafted, as none exists in the current code.

B. Use Standards

The Use Standards article of the ReCode is designed to incorporate all existing use-related language, and to clarify distinctions between principal uses (both permitted and conditional), accessory uses, and temporary uses, which are sometimes conflated in parts of the current code. The draft Use Standards article covers the following topics:

1. *Applicability, Determination of Use, Change of Use:* The Use Standards article introduces new blanket language intended to introduce the article, establish the authority of the use tables, allow mixed uses, and regulate changes of use. Recognizing that uses evolve over time, the introduction to this article also adds language loosely based on the existing B-2 and I-M zoning to permit uses not listed in the use tables on the basis of performance standards.
2. *Principal Use Tables:* The most significant change in the Use Standards article is the introduction of tables to regulate permitted and conditional uses across the city's zones. These tables generally reflect existing policy with some minor variations:
    a. In the process of creating the use tables, closely aligned use categories were collapsed in the interest of simplification and consistency. For instance, professional, business, and general office uses were consolidated with 'offices of building tradesmen' into one 'general office' category; personal and business services were combined into 'general services;' hotels, motels, and inns were combined as 'hotels;' and major and minor auto service stations were collapsed into one category. Where use regulations varied across zones with respect to these uses, they were generalized so as to be consistent city-wide.

   b. The current code uses floor area limitations to manage the intensity of some uses, such as places of assembly and retail in the B-1, by zone. The draft Use Standards extend this concept to general office uses, general service uses, industrial uses, and retail more broadly, introducing floor area thresholds into the use table. Generally, existing floor area limits have been replicated in the use tables as presented, although in the case of the city's island zones, square footage caps have been added for retail establishments, where previously there were none.

3. *Supplemental Use Standards:* The current code often permits uses so long as such uses conform to given standards, with many of the standards repeated across zones, sometimes with minor variations. These standards have generally been consolidated in the supplemental use standards section of the Use article. Where significant deviations between two sets of like standards currently exist, such deviations are largely maintained in the draft code. Supplemental standards that don't fit in a use or dimensional table are here for such uses as bed & breakfasts, marijuana-related uses, and campground. An effort to adopt additional lodging house standards is underway, and some if this effort will eventually live in this section of the Code, as well.
4. *Conditional Use Standards:* Likewise, the current code often allows conditional uses subject to additional, use-specific conditional use standards, which are repeated across zones with minor variations. For instance, off-street parking is permitted as a conditional use in several mixed-use zones, with conditional use standards that vary in wording, but not necessarily intent, across each zone. In cases such as these, the standards have been consolidated where possible for ease of administration. Similarly, auto-related conditional use standards that appear in some zones regulating auto service stations and auto dealerships, for instance, have been generalized across zones.
5. *Accessory Uses:*
   a. In order to clarify the distinction between principal and accessory uses, which are often conflated in the existing code, new language related to accessory uses has been drafted in Article 6. This language describes standards qualifying accessory uses, which were generally adapted based on existing principles in the ordinance. Of note, the new language limits the footprint of accessory uses.
   b. In addition, the draft Article 6 introduces some new accessory-use specific standards, such as revised, consolidated standards for Accessory Dwelling Units (ADUs). The ADU language was developed with significant input of the City Council's ReCode Committee, and was drafted with the aim of standardizing ADU provisions and reducing barriers to ADU production city-wide. Similarly, the accessory use provisions introduce standardized language regulating drive-throughs, with specific provisions related to drive-throughs in particular zones. Lastly, new tasting room language has been drafted in the accessory use provisions, based on the recent work of the Zoning Administrator's office and Business Licensing.
6. *Temporary Uses:* The existing code includes language in various sections that addresses temporary uses. In the interest of consolidating these uses, a section has been drafted in Article 6.
7. *Performance Standards:* Last, the draft Article 6 consolidates and standardizes existing performance standard-related language, which is repeated with minor variations across all zones in the existing code. As with the use tables, by virtue of simplification, some minor variations between approaches in differing zones have been eliminated. For instance, noise-related performance standard language varies by zone, with what appear to be more comprehensive and recent standards appearing in some zones and much simpler standards appearing in others. The critical element of these standards, the noise limits, has been retained in the draft ReCode; the language surrounding measurement has been standardized for ease of administration.

C. Dimensional Standards

As with Use Standards, the Dimensional Standards article of the ReCode represents a major change from the existing code. Currently, all dimensional standards are listed within each zoning section, resulting in redundant language over the course of the code. Dimensional exceptions are located in another section of the code entirely. The draft Dimensional Standards article includes the following elements:

1. *Applicability:* As with Use Standards, the article begins with new language introducing the dimensional standards with a general statement regarding applicability.
2. *Rules of Measurement:* The current code includes some definitions which relate to dimensional standards, which are currently dispersed within Section 14-47, general definitions. The draft Article 7 relocates all of these dimensional rules, or 'Rules of Measurement,' to the Dimensional Standards article, adds several rules, and clarifies these rules where necessary, marking another important organizational leap for the new code. For instance, the draft Dimensional Standards article includes new rules, based on current practice, for measuring 'average grade,' 'building footprint,' 'building width,' 'landscaped open space ratio,' and 'lot coverage.' Simultaneously, it adds clarifying language around measuring setbacks, stepbacks, and street frontage. It should be noted that these Rules of Measurement have been developed with the assistance of Zoning and Corporation Counsel; their review of the rules is ongoing, and there may be some text changes in future iterations.
3. *Dimensional Tables:* As with Use Standards, Dimensional Standards attempts to take all existing dimensional regulation and consolidate it into several tables, grouped by zone type. These tables also reflect existing dimensional language that exists within use standards in the current code, and purposefully do not reflect some dimensional language which is more appropriately consolidated within other regulatory mechanisms, such as the Downtown and the B-7 Height Overlay maps. The dimensional tables include some changes. For instance, new building width requirements for the R-6 zone, which are the outgrowth of on-going efforts, over multiple years, to track development patterns in the R-6 zone and respond where necessary. If the ReCode initiative was not underway, R-6 analysis would be ongoing and would come to the Board independently, but the timing of the proposed changes offers an opportunity to bundle the review of them into the larger ReCode effort. The December 17 workshop on modifications to the Design Manual for the R-6 zone is a parallel effort to the dimensional changes offered here. Of note, the B-1 dimensional standards have also been modified slightly to reflect consolidation and offer one base density requirement, rather than a bifurcated density standard based on location and use. The B-2 density requirements have also been updated to allow for the same base residential density as the B-1. Setbacks have been modified in the B-4 zone, where they are currently written to approximate the residential zones. Lastly, Floor-Area-Ratio (FAR)-based dimensional standards, which are currently sporadically applied and are often established based on adjacent zoning, have been eliminated. These changes are not just organizational, but represent substantive changes, and warrant dedicated workshop discussion.
4. *Space and Bulk Exceptions:* Last, the Dimensional Standards article groups dimensional exceptions with dimensional standards. As with other standards, some of these, including setback exceptions and height exceptions have been simplified and/or modified to more accurately reflect current practice.

V. PUBLIC COMMENT

As noted above, public comment on the drafts of Articles 1-4 is included in *Attachment 1*. A total of 15 public comments were submitted using the web-based document review platform, which provide feedback on the new structure and format, and raise a number of more significant policy questions, such as the role of the land-use code in addressing the climate crisis, regulation of development on Munjoy Hill, qualifications for Planning Board members and appellate jurisdiction of the Planning Board. In addition, two written public comments were received by staff following the 11/7 Planning Board workshop *(Attachments 4* and *5)*. These raise questions about changes to dimensional standards and the process for ReCode review.

VI. NEXT STEPS

In addition to incorporating feedback from this workshop, staff will continue to gather public comment on the revised drafts of Articles 1-4 and the draft Articles 5-7 as presented here via the ReCode website. Staff anticipates returning to the Planning Board with revisions to Articles 1-7 and drafts of the next slate of articles in early 2020.

VII. ATTACHMENTS

1. Public Comment on Articles 1, 2, 3, & 4
2. Revised Draft ReCode, Articles 1, 2, 3, & 4
3. Draft ReCode, Articles 5, 6, & 7
4. PC-1. Ben Walter 11-8-19
5. PC-2. Karen Snyder 12-13-19

Att. 1

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#001

Posted by **Karen Snyder** on **12/12/2019** at **12:02pm**
Type: Question
Agree: 0, Disagree: 0
Now that Recode Phase 1 is on it's way, below are questions and concerns collected from various Munjoy Hill property owners regarding the Recode efforts. When and how will the below concerns be addressed during the Recode/Zoning overhaul that is occurring at City Hall?

1. Will this Recode Portland language replace the Munjoy Hill Overlay District language implemented in June 2018? If yes, how? Many Munjoy Hill residents want the Conservation language of the Munjoy Hill Overlay District to remain (if proven effective) after we went to so much work to get it enacted.

However, there are specific problems with the Munjoy Hill Overlay District language and should be addressed with very clear language to stop the problems occurring below.

1) The combining of lots for teardown should be prohibited.
2) The developers have to do no more than say “no” to preferably preserved. They need to provide credible evidence that it would cost too much to preserve a building, environmental impact of demolition, or provide credible effort to find a buyer who would preserve it. The developers should not be able to just wait for 1 year and be able to demolition especially if it is a contributing building.
3) There should be a clear definition of preferably preserved.
4) There should be required “designation report” defining the characteristics of the immediate neighborhood, which a replacement building must meet.
5) The HP Board and Planning Board should be able to interpret the ordinance as keeping them from using size (scale and mass) as a reason to turn down a project.
6) The mid grade calculation must be removed. The "mid grade calculation" to achieve a greater height than what zoning allows is a loop hole and MUST be closed. Peaks Island's ordinance on grade calculation does NOT use mid grade to loophole in order to achieve higher heights. Portland's grade calculation should be changed to Peak's Island's grade calculation.
7) Language is needed to ensure that Design standards are equally enforceable as zoning standards. No “grey” areas.
NEW: Clarification of Maximum height is 45 feet if affordable housing is put in. Does this mean they can go to 44.10” if they do NOT have affordable housing???

2. Will the different Zoning be rewritten or just streamlined for consistency. For example, will R-6 zone definition remain or be rewritten?

3. There is an overall general feeling by local residents that the current R-6 Infill Design standards are acceptable if it can address the issues below and if enforced consistently. Below are some of the areas need further clarification in order to reduce the current conflict between developers and local residents. Therefore, please address

each sub-issue below.

1) Language is needed in prohibiting the combination of combining lots to build these oversized cubes that do NOT fit the neighborhood overall context.
2) There should be more specific language in the Alternate Design Standard on what majority of principles met means. For example, it is recommended that it should be clear what a majority in percentage form. Such as state 75% of the principles should be met and Principle A and B have to be always met.
3) Language is needed to ensure that Design standards are equally enforceable as zoning standards. No “grey” areas.
4) The mid grade calculation must be removed. The "mid grade calculation" to achieve a greater height than what zoning allows is a loop hole and MUST be closed. Peaks Island's ordinance on grade calculation does NOT use mid grade to loophole in order to achieve higher heights. Portland's grade calculation should be changed to Peak's Island's grade calculation.
5) The HP Board and Planning Board should be able to interprets the ordinance as keeping them from using size (scale and mass) as a reason to turn down a project.

4. Concern over the influence PSA has in Planning Dept with PSA’s proposed design standard re-write efforts when their agenda which is profit motivated rather than neighborhood preservation focused which is in direct conflict to local residents efforts to preserve and stabilize neighborhoods.

5. Per Comprehensive plan, neighborhoods are supposed to be preserved. How can neighborhoods be preserved with zoning ordinances for height, street tree removal, etc are constantly being waived at the protest of local residents?
• We would like the new zoning to cease/stop the ability for current zoning ordinances such as height, street tree removal to stop being waived by Planning Board or by Historic Preservation Board.
• What is the use of zoning ordinances if the developer can just get it changed? Local residents are getting frustrated with all the zoning ordinances being waived

6. There should be clear language to address that a building permit is required before a demo permit and that construction starts after demolition is made after a specific time period or the builder is fined. This is because 25 Monument was demolition in mid 2018 and it is still an empty lot for more than 6 months. When asked Jeff Levine what as the status of this property, he was evasive and said they were still going through the building permit application.

In conclusion, It doesn’t mean the zoning ordinance language is wrong or outdated. It means the City is being heavily influenced by developers and grabbing for more than what they should and the city is allowing these waivers even at the protest of abutting property owners and local residents while ruining Portland's livability and desirability besides dismantling the neighborhood.

I would appreciate responses to the above issues and how will they be addressed.

#002

Posted by **Karen Snyder** on **12/12/2019** at **12:10pm**
Type: Question
Agree: 0, Disagree: 0
How will the Munjoy Hill Conservation Overlay District be affected by the redesign?

#003

Posted by **Karen Snyder** on **12/12/2019** at **12:09pm**
Type: Observation
Agree: 0, Disagree: 0
The reason by the City for the R-6 zoning change in 2015 was to:
1) Provide greater housing opportunities.
2) Enable Infill of small parcels
3) Have standards in place that make it possible for new construction to be consistent with the historic pattern of development.

What has happened is the EXACT opposite to what the original reason for the 2015 R6 Zone change.
1) More than 40 affordable housing units have been removed to be replace with 100 primarily luxury seasonal condos costing from 500K to 1.5 million
2) The some of the new construction does NOT fit the historic pattern of development and is a blight in the neighborhood.

City needs to focus housing policies on assiting the working class and middle class rather than provide loopholes for developers to continue building luxury seasonal condos. Portland's population is decreasing even though there were 2,300 Level Site 3 housing units built since 2015. This 2015 R6 zone changed FAILED the citizens of Portland.

#004

Posted by **Patrick Boothe** on **11/20/2019** at **2:57pm**
Type: Observation
Agree: 1, Disagree: 0
I love how you can click on the Chapters and jump to the chapter! Sooooo much better!

1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this Chapter 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, the relationship of private development to the public realm and 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 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

#005

Posted by **Elizabeth Parsons** on **11/28/2019** at **8:52am**

Type: Question

Agree: 3, Disagree: 0

To what extent will the CIty Council's recent declaration of a climate emergency inform the new Land Use Code?

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 Fractions

Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

1.8.6 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.

#006

Posted by **Benjamin McCall** on **11/15/2019** at **1:48pm**

Type: Suggestion

Agree: 1, Disagree: 0

It would be helpful to expound on the term "private agreement" and add examples, e.g., private restrictive covenants, condominium rules and regulations, etc.

1.8.7 Gender

Words denoting one gender apply to all genders.

1.8.8 Abbreviations

Building Authority. Either the Director of the Department of Permitting and Inspections or his/her designee.

Council. The Portland City Council.

Planning Authority. Either the Director of the Department of Planning and Urban Development or his/her designee.

Public Works Authority. Either the Director of the Department of Public Works or his/her designee.

1.9 AMENDMENTS

1.9.1 Authority

The City Council may amend this Land Use Code and the Zoning Map incorporated herein.

1.9.2 Procedure

007

A. **Application.** 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. 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.

B. **Required neighborhood meeting.** 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 outreach under Article 13.

C. The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.

D. 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.

E. The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or Zoning Map.

1.9.3 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.

1.10 TRANSITION RULES

1.10.1 Existing uses

A. 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.

B. 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

#007

Posted by **Patrick Boothe** on **11/20/2019** at **3:35pm**

Type: Suggestion

Agree: 0, Disagree: 0

Minor syntax comment: The font size of subsection "A" is physically larger than "1.9.2" above. In terms of readibility, a lower case "a" or a lower case "i" would be more intuitive, in my opinion, to make clear that this subsection is subordinate, and only applicable to the section above (1.9.2). I also appreciate how there is no more than three numbers and one letter elements in the syntax for all chapters. The way NFPA 101 does it with up to five numbers in a row (i.e. "16.1.1.8.3") is too difficult to follow easily.

This comment is obviously typical throughout but this is the first instance. Minor comment but might as well include since you've made it so easy to add comments! Thank You!

nonconforming use and is controlled by the provisions of Article 4.

1.10.2 Continuation

In the event that a use, lot, structure, sign, or site feature, deemed legally conforming prior to the effective date of the Land Use Code no longer meets all standards set forth in the Land Use Code, that use, lot, structure, sign, or site feature shall now be deemed non-conforming and shall be 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 elected 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.

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 his or her 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. The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross examination at hearings.

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.A., Section 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 concurring 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

#008

Posted by **Elizabeth Parsons** on **11/28/2019** at **8:49am**

Type: Question

Agree: 0, Disagree: 0

What sorts of experience, perspective, and expertise are expected of Planning Board members? There is a statement about this in the Historic Preservation Board section but not here in the Planning Board section.

at any one time. The Planning Authority staff 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 member 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 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, his or her 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.A., Section 401 et seq. shall be informational only and shall not be deliberative in nature, shall not be used by the Board or committee for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board or committee for the formulation of tentative or final decisions on any matter.
2. 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 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 10 calendar days in advance of the 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.

B. **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 section 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.A., Section 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

C. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of his or her 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 his or her 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 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; and

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 or Historic Preservation Board.

009

2.1.11 Administrative appeal procedures

A. **Notice of appeal.** An appeal may be taken to the Planning Board by any person affected by a decision of the Planning Authority. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority a notice of appeal specifying the grounds thereof. The notice 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 notice of appeal. The Planning Authority shall forthwith transmit to the reviewing 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 reviewing Boards in accordance with the provisions of this article.

C. **Action**. Within 30 days following the close of the public hearing, the reviewing 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 an approval 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 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 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

#009

Posted by **Benjamin McCall** on **11/15/2019** at **4:42pm**

Type: Suggestion

Agree: 0, Disagree: 0

I would suggest that the Planning Board shouldn't have appellate jurisdiction, but that appeals from these decisions should either be directly to Superior Court, or to the Zoning Board of Appeals.

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 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.

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 his or her designated staff representative shall attend all its 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 his or her 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 16.4.

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 action of the Historic Preservation Board to the applicant.

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 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 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 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; 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 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; and

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.

2.3 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 one hundred 120 days after expiration of their term.

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 his/her 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.

B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. 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 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 his/her 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 such 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 hearing s 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;
7. For purpose of this section, 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 similarly interested party 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 deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council and shall file the decision with the City Clerk within five days of such decision.

2.3.9 Jurisdiction and authority

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

A. To hear and decide appeals from, and review orders, decisions, , or the failure to act by the Building Authority pursuant to this Land Use Code, except that decisions relating to enforcement of the shoreland zoning provisions of this Chapter are not appealable to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B;

B. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to use variance; dwelling unit conversion; space and bulk such as lot size, density, and side yard; parking; loading; and signs; and

C. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeal procedures

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 Section 2.3.7.

C. **Standard of review.** The standard of review for orders, decisions, or the failure to act by the Building Authority pursuant to this Land Use Code shall be de novo. The appellant shall bear the burden of proof.

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 Section 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 property would cause undue hardship. The words "undue hardship" as used in this subsection mean:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and
4. That 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 handicap under 5 M.R.S.A. Section 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 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;

#010

Posted by **Patrick Boothe** on **11/20/2019** at **3:41pm**
Type: Suggestion
Agree: 1, Disagree: 0
To piggyback on Benjamin's comment. Would it be reasonable to hyperlink defined terms in the body of sections to their location in the land use code (particularly as some are in different Chapters). It would be similar to the hyperlinks you have for the table of contents. Wikipedia does this well as an example. Another option is a "hover-over-the-link" where you could simply hover over a word and either define it directly or a least say "go to Chapter 3 (or Chapter x) for definition"

> Reply by **Patrick Boothe** on **11/20/2019** at **3:43pm**
> *Agree: 0, Disagree: 0*
> *Articles...not Chapters

#011

Posted by **Benjamin McCall** on **11/15/2019** at **5:16pm**
Type: Observation
Agree: 0, Disagree: 0
"Lot area" and "lot coverage" are undefined in draft Article 3. It would be helpful if they could be defined, or alternatively, if this section could be amended to specify whether these terms include standards like landscaped area, or other similar categories.

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; and
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

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 zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial 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-6.
   c. Mixed-use/Office: B-1, 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. 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.
5. No variance shall be granted from the minimum lot sizes set forth in Section 4.3.1 for lots in the IR-1 and IR-2 zones.
6. No variance shall be granted from the requirements in Section 6.4.11.

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 six months, or such other time as may be fixed at the time granted not to exceed 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. One or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. 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 six months, or such other time as may be fixed at the time granted not to exceed two years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby.

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.A. Section 4353(5).

2.3.12 Successive applications

Whenever any application, appeal, or other request filed pursuant to this section 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 officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

2.3.13 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 section or the conditions under which the relief was granted have not been complied with.

2.3.14 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.

012

3 DEFINITIONS

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.A. §§ 2911, 2912.

Affordable housing. The percentage of income a household is charged in rent and other housing expenses or must pay in monthly mortgage payments (including condominium/HOA fees, mortgage insurance, other insurance and real estate taxes), does not exceed 30% of a household's income, or other amount established in city regulations that does not vary significantly from this amount.

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

Auto service station. A business selling gasoline, diesel, or propane fuel or providing motor vehicle repair services 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.

#012

Posted by **Patrick Boothe** on **11/20/2019** at **2:51pm**
Type: Suggestion
Agree: 1, Disagree: 0
Recommend adding a list of all definitions found specific in this Chapter 3 or other cross reference mechanism. This is particularly useful when some definitions appear in other Chapters. As an example, refer to section 802 of the 2015 IBC or section 1002 where pertinent definitions specific to a chapter are either listed or at least noted where to find elsewhere

> Reply by **Patrick Boothe** on **11/20/2019** at **3:43pm**
> *Agree: 0, Disagree: 0*
> *Articles...not Chapters

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 educational institutions, social service agencies, or business headquarters.

Balloon. A brightly colored bag made of flexible material, inflated with air or other gas and sealed, often to make it rise in the air.

Banner. A flexible, non-adhesive sign of lightweight fabric or similar material typically supported at two or more points and attached to a building, wall, or fence or otherwise suspended down or across its face for temporary advertising purposes. Does not include national, state, or municipal flags.

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 in which more than two but not more than nine guest rooms are used to provide or offer overnight accommodations for transient guests. An owner, manager, or operator shall live in the building as a permanent resident. No cooking facilities shall be permitted in any of the guest rooms. The only meal which may be offered is breakfast, which shall be offered only to overnight guests.

Billboard. A permanent structure for the display of off-premises advertising.

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.

Blasting permit. A permit issued by the City Fire Department to allow blasting operations within the City.

Blasting plan. The plan for conduct of any blasting operation where over 300 cubic yards of material shall be removed.

Blasting submittal. The plan for conduct of any blasting operation where between 50 and three 300 cubic yards of material shall be removed.

Buildable Area. The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

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 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 structure.

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 message. A message conveyed by any sign that is solely intended to interest, entice, or solicit any person to participate in commercial transactions with a business, including offers of goods, cash, discounts on products or services, or other items, including the offering of free goods or services made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction.

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.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

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

The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses and/or disabled persons and their spouses.

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

Developer. Any person or other legal entity, but not including an established lending institution unless it is an active participant in a common promotional scheme, who, whether acting as principal or agent, records a declaration of condominium that includes real estate, any portion of which was previously a rental unit.

Development fees. Site plan review and inspection fees; subdivision review and inspection fees; administrative fees; impact fees, and construction and permit fees as described in Chapter 6 of the City of Portland Code of Ordinances. Development fees does not include any fees charged for reviews conducted by a party other than the city.

Direct Illumination. Illumination resulting from light emitted directly from a light bulb or light fixture, not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.

Drive-through. A commercial 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. A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multi-family dwellings, but not including hotels, lodging houses, or sheltered care group homes..

Dwelling unit. One or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling. The term includes dwellings in single family, two-family, and multi-family buildings. When the term is used in Article 17, it also includes rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

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

Dwelling, single-family. A building used exclusively for occupancy by one family.

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 right-of-way which is located between the curbline and the edge of the sidewalk closest to the street.

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

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

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

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

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

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

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

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

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

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

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; and
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 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.

Historical plaque. A sign that memorializes a person, event, former use of a place, or something else of historical significance.

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 areas 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. Any surface which does not absorb rain and includes all buildings, roads, sidewalks, parking areas, and any area paved with bricks, concrete, or asphalt.

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: bakeries, breweries, bottling, coffee roasters, commercial kitchens, pharmaceuticals, machine shops, precision instruments, watchmakers, 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.

Laser Light Display. A display that emits light through the use of a laser beam(s).

LED (Light Emitting Diode). A semiconductor diode that emits light when a voltage is applied to it.

Living Unit. An independent self-contained dwelling unit that does not include kitchen facilities.

Lodging house. A house, building or portion thereof containing two or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis.

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.

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; and
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 AMI;
B. The unit is sold to a household earning 100% or less of AMI; and
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.

Lot. A parcel or area of land that is designated as an individual unit for use, development or ownership that is either a) a lot of record, recorded in the Cumberland County Registry of Deeds which at the time of record complied with applicable ordinances; or b) a contiguous combination of such lots of record under common ownership; or c) a newly

established parcel meeting all the dimensional requirements of the zone in which it is located.

Luminance. The intensity of visible light emitted or reflected from a unit area of a surface, such as the face of a sign measured in nits.

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.A. Section 4358 for the placement of single-component manufactured housing.

Manufactured housing park unit space. The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

Manufactured housing subdivision or development. A parcel of land approved by the Planning Board under 30-A M.R.S.A. Section 4358 for

the placement of single-component manufactured housing on individual owned lots.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 22 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.A. §2422 or 28-B M.R.S.A., §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.A. §2422 or 28-B M.R.S.A., §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 Sates Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multiple-component manufactured housing. Manufactured housing which is constructed and transported in two or more sections of substantially similar size that must be mated to form a habitable dwelling. For purposes of planned residential unit development and multiplex development, multiple-component manufactured housing shall be considered a dwelling unit.

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

Multiplex. A residential development consisting of three or more horizontally or vertically attached, or a series of such attached dwelling units and the construction of at least one building.

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and

services, usually owned and operated by a public or nonprofit group or agency.

Neon. An illumination source created when a glass tube filled with neon or other similar gas emits light when energized. The tube can be bent to form letters, symbols, or other shapes. See "Direct Illumination".

Nit. The standard unit used to measure the luminance of a surface, such as the face of a sign. One nit is equivalent to one candela (i.e. the light output of a common wax candle) per square meter.

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.

Normal high-water mark of coastal waters. That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

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, 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. School for children generally younger than those attending elementary school , which may also encompass daycare facilities providing care and protection for children.

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 article and other applicable codes and ordinances.

Raceway. A sign mounting structure used to enclose electrical components (such as transformers and wiring) for signs.

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, Winooski

Recording plat. The completed subdivision plat in form for approval and recording.

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, not including 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 with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Right-of-way. A legal right, established by usage or grant, to pass along a specific route.

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

Rooming unit. A room or suite of rooms in a house, building or portion thereof rented as living and sleeping quarters, but without full kitchens or bathrooms. In a suite of rooms, each room which provides sleeping accommodations shall be counted as one rooming unit for the purpose of this article. Each rooming unit in a lodging house shall have kitchen privileges unless all meals are provided on a daily basis. There shall be no more than two persons residing in each rooming unit.

Self-storage facility. Fully enclosed buildings 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.A. § 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.

Single-component manufactured housing. Manufactured housing which is constructed and transported in one section. For purposes of planned residential unit development and multiplex development, single-component manufactured housing shall not be considered a dwelling unit, except in the FH Flexible Housing Zone.

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 Article 19.

Sign, blade. A permanent 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 with the exposed face of the sign in a plane parallel to the vertical face of the 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 (see Sign, animated) 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, 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 is capable 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.

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.

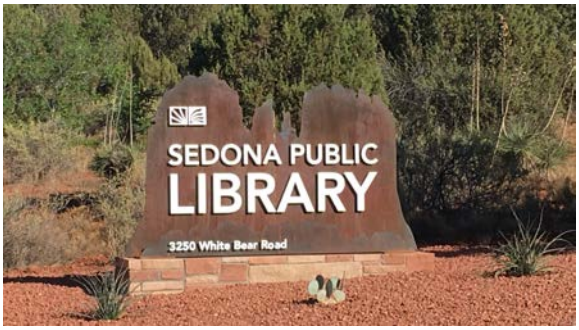
Sign, internally illuminated. Any sign in which the source of light is entirely enclosed within the sign and not directly visible.

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, pennant. A temporary sign made of flexible materials longer than it is wide, often triangular in shape, and frequently displayed with other pennants on a string.

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 composed of single-color or two-color LEDs, including signs with fixed and changeable copy.

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 and 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 an H-shaped wire frame used for example, for advertising by local businesses or by election campaigns (Synonym: Lawn Sign).

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 structure. 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.

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.

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.

Solar energy system, height. The total vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the highest part of the system.

Solar energy system, size. The physical size of the panels based on total airspace occupied over the ground, or the grid area for ground mounted arrays. Calculation of physical size may differ from calculation of impervious surface area.

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

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

Special needs independent living 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 right-of-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 public right-of-way.

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 handcrafted, 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. The division of a lot, tract or parcel of land into 3 or more lots, including lots of forty acres or more, within any 5-year period whether accomplished by sale, lease, development, buildings or otherwise and as further defined in 30 A M.R.S.A. Section 4401. The term subdivision shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph. A dwelling unit shall include any part of a structure which, through sale or lease, is intended for human habitation, including single family and multi-family housing condominiums, time share units and apartments.

Subdivision, non-residential. A subdivision which is not intended for human habitation, such as a commercial or industrial subdivision.

Subdivision plat. A plan of the proposed subdivision for presentation to the Planning Board and the public.

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 wind anemometer tower. A temporary structure which may be installed for no more than two years for data collection purposes and which supports devices for measuring wind speed, direction and other characteristics to assess wind energy potential and design issues for any permanent wind energy installation; often termed "meteorological towers" or "met towers".

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.

Tract (or parcel) of land. All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

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 tied 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.

Vicinity sketch. A sketch of the proposed location of a development project or subdivision, not necessarily drawn to scale, showing the proximity of the project to surrounding streets and highways.

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.

Water body. Any river or stream.

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. 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).

Wetlands associated with shoreland zones. A freshwater or coastal wetland.

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

A. Accessory wind energy system. Roof-mounted or freestanding wind energy system measuring no higher than 10' feet above the highest point of the roof or 45' feet for freestanding systems.

B. Minor wind energy system. Freestanding system measuring between 45' feet and 85' feet in height.

C. Major wind energy system. Free standing system measuring between 85' feet and 160' feet in height.

Wind energy system, total height. The vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the tip of the wind generator blade or any other part of the system at its highest point. Where located on roof tops, the height shall be the total of the building and the wind energy system taken together.

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 which:

A. The rent is affordable to a household earning 100% or less than of AMI
B. The unit is rented to a household earning 100% or less of AMI; and
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 120% or less of AMI;
B. The unit is sold to a household earning 120% or less of AMI; and
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.

4 NONCONFORMING USES, STRUCTURES, & LOTS

4.1 CONTINUATION

Any building, structure, lots, or use, that was legally existing at the time of its creation and made nonconforming by the provisions of this ordinance or any amendment thereto may be continued although such building, structure, lot, or use does not conform with the provisions of this ordinance.

4.2 NONCONFORMING USES

4.2.1 Increase in nonconforming use

A. A structure whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the extent of nonconformity, except as provided for in (B), below.

B. A nonconforming use on premises outside of a building shall not be extended or allowed to occupy additional land area.

C. No alterations, modifications, or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of a structure, unless such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition which is determined by the Board of Appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.

D. Except as expressly provided herein, any alteration, modification, or addition permitted under this subsection shall be in compliance with all other applicable sections of this Land Use Code. Nothing within this subsection shall be construed to permit an increase in the number of units in a building which is nonconforming as to the number of dwelling units or will become nonconforming as a result of such alteration, modification, or addition.

4.2.2 Change of nonconforming use

When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this subsection, a use shall be deemed to have been so changed when an existing nonconforming use is terminated and a permitted use is commenced and continued for a period of seven days. Any change of use in violation of this article shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:

A. In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.

B. In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.

C. In a residential zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.

D. In a residential zone, from any use permitted in any other residential zone to any use permitted in a more restrictive residence zone. For the

purpose of this subsection, an R-6 zone shall be deemed the least restrictive and an R-2 zone shall be deemed the most restrictive, with the intervening zones restricted in order of zone number.

4.2.3 Discontinuance of use of land for ninety days

A nonconforming use of land where no buildings or only incidental or accessory buildings are employed together with such use shall not be changed to any other nonconforming use, and if such use is discontinued for a period of 90 days, it shall not be reestablished.

4.2.4 Discontinuance of use of property

If a legally nonconforming non-residential use is discontinued for a period of 12 months or if a legally nonconforming residential use is discontinued for a period of 24 months, such discontinuance shall constitute an abandonment of the use and the property shall not thereafter be occupied or used except in conformity with the provisions of this Land Use Code. A nonconforming use of land which is incidental or accessory to such nonconforming use shall be considered as being discontinued at the same time as the nonconforming use of the structure. In cases of foreclosure or similar situations involving a legally nonconforming use, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. If the Planning Authority extends the period for resuming the nonconforming use, any associated existing nonconformities of structures and land shall also be extended. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period of time for nonconforming properties.

4.3 NONCONFORMING LOTS

4.3.1 Undeveloped lots of record

A lot that is unbuildable because it does not meet the space and bulk requirements for the zone in which it is located, shall be considered a buildable lot if it meets the minimum standards provided below:

A. The lot is a lot of record as of June 5, 1957, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A, or R-6 zones; (ii) can meet the applicable yard dimensions; (iii) has minimum street frontage of 40 feet or has a means of access previously approved by the city council as provided elsewhere in this article; and (iv) has a minimum lot size of 5,000 square feet, or the applicable minimum lot size and frontage in that zone, whichever is less. 013

B. The lot is a lot of record that was described in a subdivision plat approved by the Planning Board after June 5, 1981, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones; and (ii) can meet the applicable yard dimensions..

C. The lot is a lot of record that conformed to the applicable lot size and width requirements and street frontage as of June 5, 1984, and can meet the applicable yard dimensions.

D. The lot is a lot of record as of July 15, 1985, and (i) is in the IR-1 or IR-2 zones; (ii) is held under separate and distinct ownership from adjacent lots; (iii) meets the applicable street frontage requirements; (iv) meets the applicable yard dimensions; and (v) can be met and provided further that a lot in the IR-1 zone shall have a minimum area of 10,000 SF and a lot of the IR-

#013

Posted by **john phelan** on **11/22/2019** at **4:57pm**
Type: Observation
Agree: 0, Disagree: 0
That minimum lot size it to small! Cramming houses together destroys the rural character that we need. I very much enjoy seeing the new modern buildings going up on the peninsula but find it abhorrent when the last cow pasture in Portland turns into suburbia.

This is a pretty big lurch from the 2030 plan. I think I need to move

2 zone shall have a minimum area of 6,500 SF unless it is served by both public sewer and public water, in which case it shall have a minimum area of 5,000 SF. A lot in the IR-1, IR-2 and I-B zones that was described in a subdivision plat approved by the Planning Board after July 15, 1982, shall be considered a buildable lot, provided that the applicable yard dimensions can be met.

E. Contiguous lots of record under common ownership shall be deemed to be separate lots, provided that they either meet the minimum lot area and minimum frontage of the zone in which they are located, or the minimum applicable standards of this subsection. Any nonconformities of structures and buildings, existing prior to June 5, 1957, on developed lots of record shall be considered lawfully existing nonconformities.

4.4 NONCONFORMING BUILDINGS/STRUCTURES

4.4.1 Restoration or reconstruction

A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be maintained, repaired, reconstructed, restored or rebuilt only where:

A. The restoration or reconstruction is of a building which is lawfully nonconforming only as to lot area, setbacks, or any other dimensional requirements; and

B. Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and where no alterations, modifications, or additions will be made except as provided in this article and as permitted in subsection 4.4.3.; and

C. Restoration or reconstruction is commenced within one year for a nonconforming non-residential structure, or two years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental and is diligently pursued to completion without expiration of permits. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period for restoration or reconstruction of non-conforming structures; and

D. Restoration or reconstruction necessitated by decay must be commenced within one year of the demolition of the building and diligently pursued to completion without expiration of permits; and

E. Any reconstruction, under this provision, in the R-6 zone on a lot with 10,000 square feet or less, other than the exact restoration of a previously existing building on the site, shall comply with the applicable standards contained within the City of Portland Design Manual; and

4.4.2 Alteration or modification

Alteration or modification may be made to a building which is lawfully nonconforming as to space and bulk or any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity, except as provided elsewhere in this article, and as permitted under 4.4.3. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams

or other water bodies, which shall be regulated in accordance with Subsection4.4.4.

4.4.3 Building extensions

Existing principal buildings which are lawfully nonconforming as to dimensional requirements may be enlarged subject to the following provisions:

A. No modification to an existing nonconforming building shall increase any existing nonconformity of a lot, use or structure, except as provided in (D) below.

B. No modification to an existing nonconforming building shall create new noncompliance with any provision of this Land Use Code.

C. Existing buildings that are lawfully nonconforming as to required minimum setbacks may be vertically or horizontally expanded provided the area of expansion meets all current dimensional requirements, except as provided in (D) below.

D. A vertical expansion above a portion of a building that is lawfully nonconforming as to minimum setbacks may be permitted a one-time increase of one additional story provided:
   1. No portion of the expansion horizontally extends beyond the nonconforming portion of the first story of the structure.
   2. Any portion of a vertical expansion above the permitted one additional story shall meet the required minimum setback.

4.4.4 Expansions in the Shoreland zone

A non-conforming structure may be added to or expanded if such addition or expansion does not increase the nonconformity of the structure and is in accordance with the following provisions:

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or tributary stream or the upland edge of a wetland that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection 4.2.1, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

B. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by Building Authority, basing its decision the criteria specified in subsection (C) below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

C. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Building Authority, and provided that the applicant demonstrates that

the present subsurface sewage disposal system meets the requirements of state law, the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with state law, such rules, and all applicable sections of the City of Portland Code of Ordinances. In no event shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback requirements to the greatest practical extent, the Building Authority shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback are in order to relocate a structure, the Building Authority shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
2. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
3. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

D. Buildings in existence on January 1, 1989, and located in Shoreland zones may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland or tributary stream, provided that a minimum setback of 40 feet is maintained and that the existing floor area or volume is not increased by more than 30%, and shall not create any undue environmental impact or flood prone condition.

4.4.5 Nonconformity as to number of dwelling units

A. **Purpose.** The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses.

B. **Application.** Application for validation of such nonconforming dwelling units shall be on a form provided by the Building Authority. The application fee will be $300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:

1. A plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature, and
2. A floor plan for each unit in the dwelling, whether or not it is the subject of the application.

C. **Eligibility.** In order for a nonconforming dwelling unit to be validated by administrative action of the Building Authority as authorized herein, the Building Authority must find, based on competent evidence, supported by public records, that:

1. The nonconforming dwelling units were either in existence April 1, 2005, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use;
2. The applicant neither constructed nor established the non-conforming dwelling units;
3. The nonconforming dwelling units comply with or can be made to comply with current standards of Chapter 10 of the City of Portland Code of Ordinances, including the National Fire Protection Association Life Safety Code and the National Fire Protection Association 1: Fire Prevention Code, as amended;
4. Each of the nonconforming dwelling units complies with, or can be made to comply with, provisions of the Chapter 6 of the City of Portland Code of Ordinances, as amended, including, but not limited to, the minimum standards for space and occupancy, the minimum plumbing standards, and the minimum ventilation standards.
5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5/R-5A, R-6/R-6A, R-7, B-1, B-2/B-2b/B-2c, and IS-FBC zones.

In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources)), that the conditions of subsections C(1), C(2), c(3), C(4), or C(5) can be met, the Building Authority may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.

Notice to abutters. Upon receipt of a completed application, the Building Authority will provide the owners of abutting properties and the owners of property situated within 300 feet of the structure notice of the application, along with a notice that they may object to the Building Authority's acting on the application and require the applicant to appeal to the Board of Appeals. The notice shall advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Building Authority within 10 days of the date of the notice sent to them. The failure of any property owner to receive the notice described above shall not invalidate any action by the Building Authority. The Building Authority shall promptly notify the applicant of receipt of the objection, that the Building Authority is without authority to proceed, and advise the applicant that, within 30 days from receipt of the letter, an application may be filed

to have the matter reviewed by the Board of Appeals as a conditional use.

D. **Approval of application.** The Building Authority may approve the application, provided that the evidence presented satisfies all of the requirements of this section and provided that no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Building Authority. Upon approval of the application, final inspection by the Building Authority certifying the units as in compliance with all applicable codes, and receipt of an additional fee in the amount of $100.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Building Authority will issue a certificate of occupancy.

E. **Disapproval of application.** In the event the application is not approved by the Building Authority or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within 30 days from the decision of the Building Authority or objection, may appeal the matter to the Board of Appeals as a conditional use.

F. **Action by Board of Appeals.** The Board of Appeals shall treat applications filed under this subsection as an application for a conditional use, applying the standards applicable to conditional uses as well as the requirements of this subsection.

G. **Dimensional and parking requirements.** In making decisions under this subsection, neither the Building Authority nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in the zones where the nonconforming dwelling units are situated.

H. **Exclusions.** The provisions of this subsection shall not apply to rooming units, but shall apply to efficiency apartments under Chapter 6 of the City of Portland Code of Ordinances. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this subsection as legal, nonconforming uses, except in strict compliance with each requirement of this subsection.

I. **Prior judicial and administrative action.** Decisions of any court or administrative body, including but not limited to, the Building Authority, the Planning Board, or the Board of Appeals, made prior to the effective date of this subsection and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this subsection.

4.4.6 Enclosure of porches in required setbacks

Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any setback required by this article may be enclosed if the major portion of the enclosure is of glass.

4.5 NONCONFORMITY AS TO OFF STREET LOADING

A building which is nonconforming as to the requirements for off-street loading shall not be enlarged or added to, unless off street loading is provided sufficient to satisfy the requirements of Article 18 for both the addition or enlargement and the original building or structure.

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1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this Chapter 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 ~~private~~ development to the public realm, ~~and~~ 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 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

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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 Fractions

Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

1.8.6 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.

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1.8.7 Gender

Words denoting one gender apply to all genders.

1.8.8 Abbreviations

Building Authority. Either the Director of the Department of Permitting and Inspections or his/her designee.

Council. The Portland City Council.

Planning Authority. Either the Director of the Department of Planning and Urban Development or his/her designee.

Public Works Authority. Either the Director of the Department of Public Works or his/her designee.

1.9 AMENDMENTS

1.9.1 Authority

The City Council may amend this Land Use Code and the Zoning Map incorporated herein.

1.9.2 Procedure

A. **Application.** 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. 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.

B. **Required neighborhood meeting.** 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 outreach under Article 13.

C. The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.

D. 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.

E. The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or Zoning Map.

1.9.3 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.

1.10 TRANSITION RULES

1.10.1 Existing uses

A. 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.

B. 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

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nonconforming use and is controlled by the provisions of Article 4.

1.10.2 Continuation

In the event that a use, lot, structure, sign, or site feature, deemed legally conforming prior to the effective date of the Land Use Code no longer meets all standards set forth in the Land Use Code, that use, lot, structure, sign, or site feature shall now be deemed non-conforming and shall be controlled by the provisions of Article 4.

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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~~elected~~ 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.

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 his or her 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. ~~The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross examination at hearings.~~

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.A., Section 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 ~~concurring~~ 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

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at any one time. The Planning Authority staff 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 ~~member~~ 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 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, his or her 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.A., Section 401 et seq. shall be informational only and shall not ~~be deliberative in nature, shall not be used by the Board or committee for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board or committee for the formulation of tentative or~~result in final decisions on any matter.
2. 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.

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2. Land Use Code or Zoning Map amendment. Notice of public hearing shall be publicly posted 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 10 calendar days in advance of the 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.

B. **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.A., Section 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

C. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of his or her 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 his or her 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

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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,

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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; and

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 ~~or Historic Preservation Board~~.

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2.1.11 Administrative appeal procedures

A. **Notice of appeal.** An appeal may be taken to the Planning Board by any person affected by a decision of the Planning Authority. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority a notice of appeal specifying the grounds thereof. The notice 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 notice of appeal. The Planning Authority shall forthwith transmit to the ~~reviewing~~ 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 ~~reviewing~~ Planning Board~~s~~ in accordance with the provisions of this article.

C. **Action**. Within 30 days following the close of the public hearing, the ~~reviewing~~ 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 an approval 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 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.

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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.

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 his or her designated staff representative shall attend all its 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 his or her 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 16.5.

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 ~~action~~ 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

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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 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 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 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; 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;

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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 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; and

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.

2.3 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 one hundred 120 days after expiration of their term.

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 his/her 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.

B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. The secretary shall fulfill the duties provided by statute and

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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 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 his/her 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 ~~such~~ 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

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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;
7. For purpose of this section, 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 similarly interested party 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

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conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council and shall file the decision with the City Clerk within five days of such decision.

2.3.9 Jurisdiction and authority

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

A. To hear and decide appeals from, and review orders, decisions, or the failure to act by the Building Authority pursuant to this Land Use Code, except that decisions relating to enforcement of the shoreland zoning provisions of this Chapter are not appealable to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B;

B. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to use variance; dwelling unit conversion; space and bulk such as lot size, density, and side yard; parking; loading; and signs; and

C. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeal procedures

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 Section 2.3.7.

C. **Standard of review.** The standard of review for orders, decisions, or the failure to act by the Building Authority pursuant to this Land Use Code shall be de novo. The appellant shall bear the burden of proof.

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 Section 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 property would cause undue hardship. The words “undue hardship” as used in this subsection mean:

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1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and
4. That 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 handicap under 5 M.R.S.A. Section 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 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

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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; and
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

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 zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial 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-6.
   c. Mixed-use/Office: B-1, 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. 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.
5. No variance shall be granted from the minimum lot sizes set forth in Section 4.3.1 for lots in the IR-1 and IR-2 zones.

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6. No variance shall be granted from the requirements in Section 6.4.11.

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 six months, or such other time as may be fixed at the time granted not to exceed 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. One or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. 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 six months, or such other time as may be fixed at the time granted not to exceed two years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby.

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.A. Section 4353(5).

2.3.12 Successive applications

Whenever any application, appeal, or other request filed pursuant to ~~this~~ section 2.3 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 officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

2.3.13 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 section or the conditions under which the relief was granted have not been complied with.

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2.3.14 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.

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3 DEFINITIONS

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.A. §§ 2911, 2912.

Affordable housing. Housing for which ~~T~~the percentage of income a household is charged in rent and other housing expenses or must pay in monthly mortgage payments (including condominium/HOA fees, mortgage insurance, other insurance and real estate taxes), does not exceed 30% of a household's income, or other amount established in city regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by ~~Article III,~~ 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 ~~roof~~.

Auto service station. A business selling gasoline, diesel, or propane fuel or providing motor vehicle repair services 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.

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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.

~~**Balloon.** A brightly colored bag made of flexible material, inflated with air or other gas and sealed, often to make it rise in the air.~~

Banner. A flexible, non-adhesive sign of lightweight fabric or similar material typically supported at two or more points and attached to a building, wall, or fence or otherwise suspended down or across its face for temporary advertising purposes. Does not include national, state, or municipal flags.

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 ~~in which more than~~ two ~~but not more than~~and nine guest rooms; is ~~are~~ used to provide or offer overnight accommodations for transient guests; has ~~. A~~an owner, manager, or operator ~~shall~~ living~~e~~ in the building as a permanent resident; does not provide~~. No~~ cooking facilities ~~shall be permitted~~ in any of the guest rooms; and does not provide meals other than~~. The only meal which may be offered is~~ breakfast, which shall be offered only to overnight guests.

Billboard. A permanent structure for the display of off-premises advertising.

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.

Blasting permit. A permit issued by the City Fire Department to allow blasting operations within the City.

Blasting plan. The plan for conduct of any blasting operation where over 300 cubic yards of material shall be removed.

Blasting submittal. The plan for conduct of any blasting operation where between 50 and three 300 cubic yards of material shall be removed.

~~**Buildable Area.** The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.~~

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

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removing from or otherwise affecting the exterior appearance of a structure.

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 message. A message conveyed by any sign that is solely intended to interest, entice, or solicit any person to participate in commercial transactions with a business, including offers of goods, cash, discounts on products or services, or other items, including the offering of free goods or services made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction.

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

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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.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

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

The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses and/or disabled persons and their spouses.

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

~~**Developer.** Any person or other legal entity, but not including an established lending institution unless it is an active participant in a common promotional scheme, who, whether acting as principal or agent, records a declaration of condominium that includes real estate, any portion of which was previously a rental unit.~~

Development fees. Site plan review and inspection fees; subdivision review and inspection fees; administrative fees; impact fees, and construction and permit fees as described in Chapter 6 of the City of Portland Code of Ordinances. Development fees does not include any fees charged for reviews conducted by a party other than the city.

Direct Illumination. Illumination resulting from light emitted directly from a light bulb or light fixture, not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.

Drive-through. A ~~commercial~~ 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.** A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multi-family dwellings, but not including hotels, lodging houses, or sheltered care group homes..~~

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Dwelling unit. One or more rooms ~~with private bath and kitchen facilities comprising an independent self-contained dwelling unit.~~ forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities. ~~The term includes dwellings in single family, two-family, and multi-family buildings. When the term is used in Article 17, it also includes rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.~~

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

Dwelling, single-family. A building ~~used exclusively for occupancy by one family~~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 ~~right-of-way~~ which is located between the curbline and the edge of the sidewalk closest to the street.

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

Explosives. Any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities, or packaging that an ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the

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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:

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; and
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.

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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.

Historical plaque. A sign that memorializes a person, event, former use of a place, or something else of historical significance.

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 areas 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. ~~Any surface which does not absorb rain and includes all buildings, roads, sidewalks, parking areas, and any area paved with bricks, concrete, or asphalt~~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: 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

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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.

Laser Light Display. A display that emits light through the use of a laser beam(s).

LED (Light Emitting Diode). A semiconductor diode that emits light when a voltage is applied to it.

~~**Living Unit.** An independent self-contained dwelling unit that does not include kitchen facilities.~~

Lodging house. A house, building or portion thereof containing two or more rooming units and providing such units, as well as common areas, ~~, with or without meals,~~ to individuals on not less than a ~~weekly or~~ monthly basis for compensation. ~~A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis.~~

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 lot of record, recorded in the Cumberland County Registry of Deeds which at the time of record complied with applicable ordinances; or b) a contiguous combination of such lots of record under common ownership; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

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; and
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 AMI;
B. The unit is sold to a household earning 100% or less of AMI; and

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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.

Luminance. The intensity of visible light emitted or reflected from a unit area of a surface, such as the face of a sign measured in nits.

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.A. Section 4358 for the placement of single-component manufactured housing.

Manufactured housing park unit space. The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

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Manufactured housing subdivision or development. A parcel of land approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing on individual owned lots.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 22 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.A. §2422 or 28-B M.R.S.A., §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.A. §2422 or 28-B M.R.S.A., §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 Sates Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multiple-component manufactured housing. Manufactured housing which is constructed and transported in two or more sections of substantially similar size that must be mated to form a habitable dwelling. For purposes of planned residential unit development and multiplex development, multiple-component manufactured housing shall be considered a dwelling unit.

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

Multiplex. A residential development consisting of three or more horizontally or vertically attached dwelling units, or a series of such attached dwelling units and the construction of at least one building.

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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.

Neon. An illumination source created when a glass tube filled with neon or other similar gas emits light when energized. The tube can be bent to form letters, symbols, or other shapes. See "Direct Illumination".

Nit. The standard unit used to measure the luminance of a surface, such as the face of a sign. One nit is equivalent to one candela (i.e. the light output of a common wax candle) per square meter.

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.

Normal high-water mark of coastal waters. That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

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.

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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, 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. School for children generally younger than those attending elementary school~~-~~, which may also encompass daycare facilities providing care and protection for children.

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 ~~article~~ Land Use Code and other applicable codes and ordinances.

Raceway. A sign mounting structure used to enclose electrical components (such as transformers and wiring) for signs.

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, Winooski

Recording plat. The completed subdivision plat in form for approval and recording.

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.

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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~~, not including~~ 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 with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

~~**Right-of-way.** A legal right, established by usage or grant, to pass along a specific route.~~

Roadway. That portion of a ~~right-of-way~~ 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. ~~A room or suite of rooms in a house, building or portion thereof rented as living and sleeping quarters, but without full kitchens or bathrooms.~~ In a suite of rooms, each room ~~which~~ that provides sleeping accommodations shall be counted as one rooming unit for the purpose of this ~~article~~Chapter. ~~Each rooming unit in a lodging house shall have kitchen privileges unless all meals are provided on a daily basis. There shall be no more than two persons residing in each rooming unit.~~

Self-storage facility. ~~Fully~~ A fully enclosed building~~s~~ 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.A. § 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.

Single-component manufactured housing. Manufactured housing which is constructed and transported in one section. For purposes of planned residential unit development and multiplex development, single-component manufactured housing shall not be considered a dwelling unit, except in the FH Flexible Housing Zone.

Sign. A structure, device, figure, display, message placard or other contrivance, or any part thereof,

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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 Article 19.

Sign, blade. A permanent 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 with the exposed face of the sign in a plane parallel to the vertical face of the 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.

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Sign, cont.

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 (see Sign, animated) 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, 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 is capable 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.

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 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.

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Sign, cont.

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, pennant. A temporary sign made of flexible materials longer than it is wide, often triangular in shape, and frequently displayed with other pennants on a string.

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 composed of single-color or two-color LEDs, including signs with fixed and changeable copy.

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 and 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 an H-shaped wire frame used for example, for advertising by local businesses or by election campaigns (Synonym: Lawn Sign).

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Sign, cont.

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.

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

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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.

~~**Solar energy system, height.** The total vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the highest part of the system.~~

Solar energy system, size. The physical size of the panels based on total airspace occupied over the ground, or the grid area for ground mounted arrays. Calculation of physical size may differ from calculation of impervious surface area.

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

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

Special needs independent ~~living~~ 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

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any stream designated within a Stream Protection Zone.

Street. A public ~~right-of-~~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 ~~public right-of-way~~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 handcrafted, 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. The division of a lot, tract or parcel of land into three or more lots, including lots of forty acres or more, within any 5-year period whether accomplished by sale, lease, development, buildings or otherwise and as further defined in 30 A M.R.S.A. Section 4401. The term subdivision shall also include the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph. A dwelling unit shall include any part of a structure which, through sale or lease, is intended for human habitation, including single family and multi-family housing condominiums, time share units and apartments.

Subdivision, non-residential. A subdivision which is not intended for human habitation, such as a commercial or industrial subdivision.

Subdivision plat. A plan of the proposed subdivision for presentation to the Planning Board and the public.

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 wind anemometer tower.** A temporary structure which may be installed for no more than~~

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~~two years for data collection purposes and which supports devices for measuring wind speed, direction and other characteristics to assess wind energy potential and design issues for any permanent wind energy installation; often termed "meteorological towers" or "met towers".~~

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.

Tract (or parcel) of land. All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

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.

Vicinity sketch. A sketch of the proposed location of a development project or subdivision, not

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necessarily drawn to scale, showing the proximity of the project to surrounding streets and highways.

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.

Water body. Any river or stream.

~~**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. 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).

~~**Wetlands associated with shoreland zones.** A freshwater or coastal wetland.~~

Wind energy system. A wind energy generator and all associated facilities. Wind energy systems shall include the following:

A. Accessory wind energy system. Roof-mounted or freestanding wind energy system measuring no higher than 10 ft. above the highest point of the roof or 45 ft. for freestanding systems.
B. Minor wind energy system. Freestanding system measuring between 45 ft. and 85 ft. in height.
C. Major wind energy system. Free standing system measuring between 85 ft. and 160 ft. in height.

~~**Wind energy system, total height.** The vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the tip of the wind generator blade or any other part of the system at its highest point. Where located on roof tops, the height shall be the total of the building and the wind energy system taken together.~~

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.

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Workforce housing unit for rent. A dwelling unit which:

A. The rent is affordable to a household earning 100% or less than of AMI
B. The unit is rented to a household earning 100% or less of AMI; and
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 120% or less of AMI;
B. The unit is sold to a household earning 120% or less of AMI; and
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.

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4 NONCONFORMING USES, STRUCTURES, & LOTS

4.1 CONTINUATION

Any building, structure, lots, or use, that was legally existing at the time of its creation and made nonconforming by the provisions of this ordinance or any amendment thereto may be continued although such building, structure, lot, or use does not conform with the provisions of this ordinance.

4.2 NONCONFORMING USES

4.2.1 Increase in nonconforming use

A. A structure whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the extent of nonconformity, except as provided for in (~~B~~C), below.

B. A nonconforming use on premises outside of a building shall not be extended or allowed to occupy additional land area.

C. No alterations, modifications, or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of a structure, unless such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition which is determined by the Board of Appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.

D. Except as expressly provided herein, any alteration, modification, or addition permitted under this subsection shall be in compliance with all other applicable sections of this Land Use Code. Nothing within this subsection shall be construed to permit an increase in the number of units in a building which is nonconforming as to the number of dwelling units or will become nonconforming as a result of such alteration, modification, or addition.

4.2.2 Change of nonconforming use

When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this subsection, a use shall be deemed to have been so changed when an existing nonconforming use is terminated and a permitted use is commenced and continued for a period of seven days. Any change of use in violation of this article shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:

A. In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.

B. In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.

C. In a residential zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.

D. In a residential zone, from any use permitted in any other residential zone to any use permitted in a more restrictive residence zone. For the

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purpose of this subsection, an R-6 zone shall be deemed the least restrictive and an R-2 zone shall be deemed the most restrictive, with the intervening zones restricted in order of zone number.

4.2.3 Discontinuance of use of land

A nonconforming use of land where no buildings or only incidental or accessory buildings are employed together with such use shall not be changed to any other nonconforming use, and if such use is discontinued for a period of 90 days, it shall not be reestablished.

4.2.4 Discontinuance of use of property

If a legally nonconforming non-residential use is discontinued for a period of 12 months or if a legally nonconforming residential use is discontinued for a period of 24 months, such discontinuance shall constitute an abandonment of the use and the property shall not thereafter be occupied or used except in conformity with the provisions of this Land Use Code. A nonconforming use of land which is incidental or accessory to such nonconforming use shall be considered as being discontinued at the same time as the nonconforming use of the structure. In cases of foreclosure or similar situations involving a legally nonconforming use, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. If the Planning Authority extends the period for resuming the nonconforming use, any associated existing nonconformities of structures and land shall also be extended. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period of time for nonconforming properties.

4.3 NONCONFORMING LOTS

4.3.1 Lots of record

A lot that is unbuildable because it does not meet the space and bulk requirements for the zone in which it is located shall be considered a buildable lot if it meets the minimum standards provided below:

A. The lot is a lot of record as of June 5, 1957, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A, or R-6 zones; (ii) can meet the applicable ~~yard~~ setback dimensions; (iii) has minimum street frontage of 40 feet or has a means of access previously approved by the ~~city~~ City C~~c~~ouncil as provided elsewhere in this ~~article~~Land Use Code; and (iv) has a minimum lot size of 5,000 square feet, or the applicable minimum lot size and frontage in that zone, whichever is less.

B. The lot is a lot of record that was described in a subdivision plat approved by the Planning Board after June 5, 1981, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones; and (ii) can meet the applicable ~~yard~~ setback dimensions~~.~~.

C. The lot is a lot of record that conformed to the applicable lot size ~~and~~, lot width, ~~requirements~~ and street frontage requirements as of June 5, 1984, and can meet the applicable ~~yard~~ setback dimensions.

D. The lot is a lot of record as of July 15, 1985, and (i) is in the IR-1 or IR-2 zones; (ii) is held under separate and distinct ownership from adjacent lots; (iii) meets the applicable street frontage requirements; (iv) meets the applicable ~~yard~~ setback dimensions; and (v) ~~can be met and~~ provided further that a lot in the IR-1 zone shall have a minimum area of 10,000 SF and a lot of

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the IR-2 zone shall have a minimum area of 6,500 SF unless it is served by both public sewer and public water, in which case it shall have a minimum area of 5,000 SF. A lot in the IR-1, IR-2 and I-B zones that was described in a subdivision plat approved by the Planning Board after July 15, 1982, shall be considered a buildable lot, provided that the applicable ~~yard~~ setback dimensions can be met.

E. Contiguous lots of record under common ownership shall be deemed to be separate lots, provided that they either meet the minimum lot area and minimum frontage of the zone in which they are located, or the minimum applicable standards of this subsection.

~~E.~~F. Any nonconformities of structures and buildings, existing prior to June 5, 1957, on developed lots of record shall be considered lawfully existing nonconformities.

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4.4 NONCONFORMING BUILDINGS/STRUCTURES

4.4.1 Restoration or reconstruction

A. A lawful nonconforming non-residential structure may be maintained, repaired, or reconstructed in kind within a one-year period or within a two-year period for a lawful non-conforming residential structure, but no alterations, modifications or additions shall be made to it, except as provided in subsections 4.4.2 and 4.4.3.

~~F.~~B. A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be maintained, repaired, reconstructed, restored or rebuilt only where:

1. The restoration or reconstruction is of a building which is lawfully nonconforming only as to lot area, setbacks, or any other dimensional requirements; and
2. Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and where no alterations, modifications, or additions will be made except as provided in this article and as permitted in subsections 4.4.2 and 4.4.3.; and
3. Restoration or reconstruction is commenced within one year for a nonconforming non-residential structure, or two years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental and is diligently pursued to completion without expiration of permits. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period for restoration or reconstruction of non-conforming structures; and
4. Restoration or reconstruction necessitated by decay must be commenced- within one year of the demolition of the building and diligently pursued to completion without expiration of permits; and
5. Any reconstruction, under this provision, in the R-6 zone on a lot with 10,000 square feet or less, other than the exact restoration of a previously existing building on the site, shall comply with the applicable standards contained within the *City of Portland Design Manual*.

4.4.2 Alteration or modification

Alteration or modification may be made to a building which is lawfully nonconforming as to

~~space and bulk or~~ any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity, except as provided elsewhere in this article, and as permitted under 4.4.3. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams or other water bodies, which shall be regulated in accordance with Subsection4.4.4.

4.4.3 Building extensions

Existing principal buildings which are lawfully nonconforming as to dimensional requirements may be enlarged subject to the following provisions:

A. No modification to an existing nonconforming building shall increase any existing nonconformity of a lot, use or structure, except as provided in (D) below.

B. No modification to an existing nonconforming building shall create new noncompliance with any provision of this Land Use Code.

C. Existing buildings that are lawfully nonconforming as to required minimum setbacks may be vertically or horizontally expanded provided that the area of expansion meets all current dimensional requirements, except as provided in- (D) below.

D. A vertical expansion above a portion of a building that is lawfully nonconforming as to minimum setbacks may be permitted a one-time increase of one additional story provided that:

1. No portion of the expansion horizontally extends beyond the nonconforming portion of the first story of the structure.
2. Any portion of a vertical expansion above the permitted one additional story shall meet the required minimum setback.

4.4.4 Expansions in the Shoreland zone

A non-conforming structure may be added to or expanded if such addition or expansion does not increase the nonconformity of the structure and is in accordance with the following provisions:

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or tributary stream or the upland edge of a wetland that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection 4.2.1, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

B. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by Building Authority, basing its decision the criteria specified in subsection (C) below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with

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subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

C. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Building Authority, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law, the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with state law, such rules, and all applicable sections of the City of Portland Code of Ordinances. In no event shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback requirements to the greatest practical extent, the Building Authority shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback are in order to relocate a structure, the Building Authority shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
2. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
3. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

D. Buildings in existence on January 1, 1989, and located in Shoreland zones may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland or tributary stream, provided that a minimum setback of 40 feet is maintained and that the existing floor area or volume is not increased by more than 30%, and shall not create any undue environmental impact or flood prone condition.

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4.4.5 Nonconformity as to number of dwelling units

A. **Purpose.** The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses.

B. **Application.** Application for validation of such nonconforming dwelling units shall be on a form provided by the Building Authority. The application fee will be $300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:

1. A plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature, and
2. A floor plan for each unit in the dwelling, whether or not it is the subject of the application.

C. **Eligibility.** In order for a nonconforming dwelling unit to be validated by administrative action of the Building Authority as authorized herein, the Building Authority must find, based on competent evidence, supported by public records, that:

1. The nonconforming dwelling units were either in existence April 1, 2005, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use;
2. The applicant neither constructed nor established the non-conforming dwelling units;
3. The nonconforming dwelling units comply with or can be made to comply with current standards of Chapter 10 of the City of Portland Code of Ordinances, including the National Fire Protection Association Life Safety Code and the National Fire Protection Association 1: Fire Prevention Code, as amended;
4. Each of the nonconforming dwelling units complies with, or can be made to comply with, provisions of the Chapter 6 of the City of Portland Code of Ordinances, as amended, including, but not limited to, the minimum standards for space and occupancy, the minimum plumbing standards, and the minimum ventilation standards.
5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5/R-5A, R-6/R-6A, R-7, B-1, B-2/B-2b/B-2c, and IS-FBC zones.

In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources)), that the conditions of subsections C(1), C(2), c(3), C(4), or C(5) can be met, the Building Authority may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.

D. **Notice to abutters**. Upon receipt of a completed application, the Building Authority will provide the owners of abutting properties and the owners of property situated within 300 feet of the structure notice of the application, along with a notice that they may object to the Building Authority's acting on the application

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and require the applicant to appeal to the Board of Appeals. The notice shall advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Building Authority within 10 days of the date of the notice sent to them. The failure of any property owner to receive the notice described above shall not invalidate any action by the Building Authority. The Building Authority shall promptly notify the applicant of receipt of the objection, that the Building Authority is without authority to proceed, and advise the applicant that, within 30 days from receipt of the letter, an application may be filed to have the matter reviewed by the Board of Appeals as a conditional use.

E. **Approval of application.** The Building Authority may approve the application, provided that the evidence presented satisfies all of the requirements of this section and provided that no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Building Authority. Upon approval of the application, final inspection by the Building Authority certifying the units as in compliance with all applicable codes, and receipt of an additional fee in the amount of $100.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Building Authority will issue a certificate of occupancy.

F. **Disapproval of application.** In the event the application is not approved by the Building Authority or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within 30 days from the decision of the Building Authority or objection, may appeal the matter to the Board of Appeals as a conditional use.

G. **Action by Board of Appeals.** The Board of Appeals shall treat applications filed under this subsection as an application for a conditional use, applying the standards applicable to conditional uses as well as the requirements of this subsection.

H. **Dimensional and parking requirements.** In making decisions under this subsection, neither the Building Authority nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in the zones where the nonconforming dwelling units are situated.

I. **Exclusions.** The provisions of this subsection shall not apply to rooming units, but shall apply to efficiency apartments under Chapter 6 of the City of Portland Code of Ordinances. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this subsection as legal, nonconforming uses, except in strict compliance with each requirement of this subsection.

J. **Prior judicial and administrative action.** Decisions of any court or administrative body, including but not limited to, the Building Authority, the Planning Board, or the Board of Appeals, made prior to the effective date of this subsection and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this subsection.

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4.4.6 Enclosure of porches in required setbacks

Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any setback required by this article may be enclosed if the major portion of the enclosure is of glass.

4.5 NONCONFORMITY AS TO OFF STREET LOADING

A building which is nonconforming as to the requirements for off-street loading shall not be enlarged or added to, unless off street loading is provided sufficient to satisfy the requirements of Article 18 for both the addition or enlargement and the original building or structure.

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5 ZONES

5.1 ESTABLISHMENT OF ZONES

In order to carry out the provisions of this Land Use Code, the city of Portland shall be divided into the zones in Table 5-A.

5.2 ZONING MAP

The zones in Table 5-A are shown upon a map filed in the Department of Planning and Urban Development, City of Portland, Maine. Such zoning map, with amendments, is hereby adopted as the official zoning map of the City of Portland and as part of this Land Use Code.

5.2.1 Zone boundaries when uncertain

Where uncertainty exists with respect to the boundaries of the various zones, as shown on the zoning maps, the following rules shall apply:

A. Unless otherwise indicated, zone boundary lines are the center lines of streets, alleys, parkways, waterways, or rights-of-way of public utilities and railroads or such lines extended.

B. Unless otherwise shown, lines within blocks less than 200 feet wide are median lines between their sides, and lines within blocks 200 feet or more wide are 100 feet distant from the less restricted side of the block.

C. The depictions of the Shoreland zone and Stream Protection zone on the shoreland zoning maps are illustrative of the general location of such zones. The actual boundaries of these zones shall be determined by measurement of the distance indicated on the maps and in this Land Use Code from the normal high-water line of the water body or the upland edge of wetlands. Where such measurement is not the same as the location of

TABLE 5-A: ZONES

Residential	R-1, R-2, R-3, R-4, R-5, R-5a, R-6, R-6a
Island	IR-1, IR-2, IR-3
	I-B Island Business
Mixed-Use	B-1 Neighborhood Business
	B-2, B-2b, and B-2c Community Business
	B-3, B-3b, and B-3c Downtown Business
	B-4 Commercial Corridor
	B-5 and B-5b Urban Commercial
	B-6 Eastern Waterfront
	B-7 Mixed Development
Office	O-P Office Park
	R-P Residence Professional
Industrial & Airport	I-L and I-Lb Low-Impact
	I-M, I-Ma, and I-Mb Moderate Impact
	I-H and I-Hb High Impact
	A-B Airport Business
Open Space	RPZ Resource Protection
	R-OS Recreation and Open Space
Waterfront	EWPZ Eastern Waterfront Port
	WCZ Waterfront Central
	WPDZ Waterfront Port Development
Overlay Zones	Compact Urban Residential (R-7)
	Downtown Entertainment Overlay
	Fort Sumner Park Height Overlay
	Helistop Overlay
	Institutional Overlay (IOZ)
	Maine Medical Center IOZ
	Munjoy Hill Neighborhood Conservation
	Island Transfer Station Overlay
	Pedestrian Activities District Overlay
	Stream Protection Overlay
	University of Southern Maine Overlay
	Waynflete School Overlay
Form-Based	IS-FBC India Street Form-Based Code
Other	Floodplain Management
	Shoreland

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the boundary on the zoning map, the measurement shall control, unless the zoning map indicates that the zone boundary shall follow an existing property line.

5.2.2 Extension of zone lines

Where a zone boundary line divides a lot in single or joint ownership of record at the time such line is established, the provisions of this Land Use Code for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided that the lot has at least 20 feet of street frontage in the less restrictive zone when taken together with adjacent premises which are under the same or equivalent ownership or control. If such boundary line divides a business or industrial zone from a residential zone, no frontage on a street other than the principal business street in the less restrictive zone may be taken into consideration in connection with the right herein granted. This section shall not apply to differing dimensional requirements, including height, within a zoning district.

5.3 CONDITIONAL OR CONTRACT ZONING

5.3.1 Authority and purpose

Pursuant to 30-A M.R.S.A. Section 4503(9), conditional or contract zoning is hereby authorized for rezoning of property where, for reasons such as the unusual nature or unique location of the development proposed, the City Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Conditional or contract zoning shall be limited to where a rezoning is requested by the owner of the property to be rezoned. Nothing in this section shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.

5.3.2 In the I-H zone

A conditional or contract rezoning shall only be approved in the I-H or I-Hb zones if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the following standards:

A. The proposed development is consistent with the comprehensive plan.
B. The proposed development is consistent with the purposes of the underlying zone.
C. The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal.
D. All plans must include complete information of processes, materials or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

5.3.3 Hearing

The Planning Board shall conduct a public hearing in accordance with Article 2 prior to any property being rezoned under this section.

5.3.4 Conditions and restrictions

Conditions and restrictions imposed under the authority of this section shall relate only to the

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physical development and operation of the property and may include, by way of example:

A. Limitations on the number and types of uses permitted;
B. Restrictions on the scale and density of development;
C. Specifications for the design and layout of buildings and other improvements;
D. Schedules for commencement and completion of construction;
E. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
F. Preservation of open space and buffers, and protection of natural areas and historic sites;
G. Contributions toward the provision of municipal services required by the development; and
H. Provisions for enforcement and remedies for breach of any condition or restriction.

5.3.5 Amendments

Except as expressly modified in any contract or conditional rezoning agreement, the use and occupancy of any property within the City of Portland used or occupied pursuant to a contract or conditional rezoning agreement otherwise shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

5.3.6 Enforcement

Notwithstanding language in any contract or conditional zoning to the contrary, any violation of a conditional or contract zone shall be enforced pursuant to 30-A M.R.S.A. §4452, as may be amended from time to time, or in any other manner available by law. No alleged violation of a contract or conditional rezoning may be prosecuted until the City has delivered written notice of the alleged violation(s) to the owner or operator of the property that is subject to the contract or conditional rezoning and given the owner or operator an opportunity to cure the violation(s) within 30 days of receipt of the notice. In addition, if such an enforcement action should result in a finding that the terms of the conditional or contract zone have been violated, then the City may act to modify or rescind the conditional or contract zone and to rezone the property.

5.4 BASE ZONE PURPOSE STATEMENTS

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TABLE 5-B: RESIDENTIAL ZONE PURPOSE STATEMENTS

R-1	To provide for lower density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.
R-2	To provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.
R-3	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels.
R-4	To preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multi-family dwellings and other compatible development at medium densities.
R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family, two-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially-sized parcels.
R-5A	To provide for moderate-density residential development in off-peninsula locations that can provide a unique residential living experience with a high degree of natural site amenities; and to provide areas of the city in the general proximity of the peninsula that have the capability for adequate municipal services, including traffic corridors with adequate traffic capacity, that can appropriately accommodate a more intensive use of land than other lower-density zoned land and be compatible with surrounding neighborhoods; and to increase affordable housing opportunities in off-peninsula locations by providing a moderate-density zone.
R-6	To set aside areas on the peninsula for housing characterized primarily by multi-family dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses.
R-6A	To encourage neighborhood livability with higher density multi-family housing on large parcels located off the peninsula along major public transportation routes, near service areas, and in infill areas.

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TABLE 5-C: ISLAND ZONE PURPOSE STATEMENTS

IR-1	To provide for low-intensity residential, recreational, and rural uses in the less developed areas of the islands in order to preserve the rustic character of the islands, to protect groundwater resources and natural and scenic areas, and to permit only appropriate low-intensity development in areas lacking adequate public facilities and services.
IR-2	To protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services. Expansion or extension of an existing IR-2 zone should be strictly limited, generally focused toward areas adjacent to existing village IR-2 areas, and restricted by such factors as adequacy of access, whether adequate water will be available for private use and for fire protection, and whether soils in the area are adequate for subsurface water disposal or whether public sewers are available. IR-2 rezoning on substantially sized parcels should not be considered for those sites that should be more appropriately zoned otherwise.
IR-3	To allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes. The following guidelines shall be considered, among others, in establishing an IR-3 zone: A. An IR-3 zone should have a minimum land area of 20 acres; B. A site for an IR-3 zone should be able to accommodate higher density development by providing buffers from surrounding areas on a substantially-sized parcel for which natural amenities are capable of being conserved in a development plan for the site; C. IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed; D. The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and E. The development plan should have the capability of meeting the development review standards of the zone.
I-B	To provide limited areas on the islands for retail and service establishments that primarily serve the needs of the local island market area.

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TABLE 5-D: MIXED-USE ZONE PURPOSE STATEMENTS

B-1	To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. Uses that are complimentary, quiet, and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment are encouraged, and should be designed for the pedestrian scale and to provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. This zone encourages mixed-use buildings, such as commercial first floor with residential uses above or combined retail/office uses in a multi-story structure. The zone also provides the opportunity for high residential density. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.
B-2	To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing, and services serving the adjoining neighborhoods and the larger community. The zone provides a broad range of goods and services with a mixture of large and small buildings, such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.
B-2b	To provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists or where a neighborhood-compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood-oriented building pattern. The B-2b should provide locations for moderate to high-density housing in urban neighborhoods along arterials.
B-2c	To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.
B-3 & B-3b	To maintain and enhance the role of the downtown as the business and commercial center of the region; to enhance and promote the orderly expansion of retail and service businesses downtown, satisfying the related needs of the city's resident, working, and visitor populations; to encourage increased housing opportunity downtown for a diverse residential population; to enhance the pedestrian environment through the encouragement of intensive mixed-use activities, through the enhancement and maintenance of public and private open space, and through the enlivenment and increased attractiveness of the street environment; to encourage excellence in urban design; to preserve and capitalize on the unique character and historic fabric of the downtown through the encouragement of reuse of significant existing structures; to provide opportunity for an enhanced presence and integration of the arts and cultural activities; to reinforce the role of the downtown as a meeting place for community residents and visitors alike from all walks of life and all socio- economic groups; to provide adequate parking and transportation facilities which promote accessibility, enhance and encourage development opportunity, and enhance and protect the pedestrian environment; In the Pedestrian Activities District (PAD) Overlay Zone, to create continuity of pedestrian-oriented uses along streets where such uses predominate and along streets which, over time, will establish and maintain a strong retail and pedestrian-oriented use pattern; and to provide for the relocation of residents who are displaced by development.

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TABLE 5-D (CONT.): MIXED-USE ZONE PURPOSE STATEMENTS

B-3c	In addition to the purpose of the B-3 and B-3b zone, to promote the safety, quiet enjoyment, and general welfare of citizens residing in a dense urban neighborhood by decreasing the conflicts between residential uses and loud late-night activities. The B-3c zone recognizes that the business uses appropriate in this zone are constrained by the proximity of multi-unit elderly housing.
B-4	To provide appropriate locations in the city for the development and operation of businesses catering primarily to highway-oriented trade along major arterials, as well as to provide appropriate locations for large-scale commercial uses that require larger land areas to accommodate their operations.
B-5 & B-5b	To provide areas of the peninsula near the downtown where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B- 5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed-use development and more efficient reuse of existing land and buildings. It is anticipated that the dense, mixed-uses of the B-5 and B-5b zones will rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.
B-6	To establish a zoning district for the upland portion of the Eastern Waterfront area. To allow development that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. The zone promotes a range of uses to achieve twenty-four hour urban vitality and shared use of parking infrastructure.
B-7	To establish a zoning district for urban areas in which the City has adopted master plans for redevelopment. Certain areas, including but not limited to Bayside, lie at the perimeter of the established downtown and contain significant redevelopment opportunities. The B-7 zone encourages these districts to acquire a distinctly urban form through dense development featuring a mix of uses such as housing, retail, offices, research and development, and artisan studios and that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. Use of multi-modal transportation is strongly encouraged and is advanced by the installation of bicycle amenities, such as bicycle racks and storage areas. The zone promotes a wide range of uses in high quality structures and public open spaces to achieve 24-hour urban vitality and shared parking infrastructure.

TABLE 5-E: OFFICE ZONE PURPOSE STATEMENTS

O-P	To provide substantial areas for integrated development of offices in a park- or campus-like setting which are of the highest quality, are well-designed and maintained, and are compatible with their natural surroundings.
R-P	To provide appropriate location for the development and operation of low-intensity business uses, including offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or to serve as a transition or buffer zone between residential and more intensive nonresidential zones.

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TABLE 5-F: INDUSTRIAL AND AIRPORT ZONE PURPOSE STATEMENTS

I-L & I-Lb	To provide areas in which low-impact industrial uses, and limited other uses serving employees and residents of the surrounding neighborhood, will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and higher impact industrial zones, or will stand alone as a smaller scale industrial district. The I-L zone is located adjacent to residential neighborhoods, business uses and other industrial uses where the low-intensity nature of the uses, as well as their strict performance standards, will ensure the compatibility of the uses with other adjacent industrial and nonindustrial uses. Performance standards for uses in the I-L zone are designed to maintain compatibility between low impact industrial uses and neighboring nonindustrial and industrial uses.
I-M, I-Ma, & I-Mb	To provide zones in areas of the city in which low and moderate impact industries and transportation-related uses will coexist. I-M and I-Ma zones are located on arterials or collectors. The I-Mb zone is similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic. The purpose of the I-M, I-Ma and I-Mb industrial zones is also to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure. Industrial uses in these moderate impact industrial zones may require separation from higher-impact uses.
I-H & I-Hb	To provide areas suitable for higher impact industrial uses than are permitted in other industrial zones and other uses that are capable of demonstrating, through design, layout and topography, their compatibility with, or non-intrusion on, existing or future higher impact industrial uses on adjacent or neighboring I-H zoned properties. Due to the intensity of use, the I-H zones are intended for uses which may require extensive outdoor storage and usage and may utilize heavy equipment. Processes may require separation from residential or sensitive environmental areas. The I-H zones are separated from other nonindustrial uses as well as natural or constructed features. High impact industrial uses will be of a higher intensity, with a greater lot coverage, than the other zones.
A-B	To provide an area for the development of airport-related enterprises. Appropriate uses permitted in this zone are those customarily associated with the operation of the airport terminal and individual airlines and accessory uses to provide for the comfort and convenience of the airport's patrons and employees.

TABLE 5-G: NATURAL RESOURCE AND OPEN SPACE ZONE PURPOSE STATEMENTS

RPZ	To preserve and protect open space for its natural resource value and to allow limited use of these open spaces for non-intensive recreational purposes.
R-OS	To preserve and protect open space as a limited and valuable resource; to permit the reasonable use of open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development; to provide a suitable location for large-scale regional sports and athletic facilities; and to develop an open space system throughout the City, which provides the highest quality parks, plazas, and pedestrian environment.

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6 USE STANDARDS

6.1 APPLICABILITY

The use of buildings, structures, and land are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

6.2 DETERMINATION OF USE

6.2.1 Use tables

Tables 6-1 to 6-6 shall determine if a use is permitted (●), conditional (◐), or not permitted ( ), as a principal use within a zone. Unless otherwise noted, where a use is listed in terms of square footage, square footage figures shall correspond to the total floor area of the use.

6.2.2 Unlisted uses

A. Uses not expressly listed as permitted or conditional in Tables 6-1 to 6-6 are prohibited as principal uses except that a use may be permitted subject to meeting the following performance-based standards:
   1. The proposed use is consistent with the purposes of the zone;
   2. The proposed use is closely related to a permitted use in terms of character, scale, and external impacts; and
   3. The buildings and structures associated with the proposed use are designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts.

B. The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above standards. If it is determined that the use does not meet the above criteria, it shall not be permitted.

C. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a permitted or conditional use.

6.2.3 Multiple uses

A site may contain more than one principal use, so long as each principal use is allowed within the zone.

6.3 CHANGE OF USE

A change of use from one use in these tables to another is governed by the requirements of the new use. The use of any part of any building, structure, or property shall not be changed to any other use, whether principal or accessory and whether alterations in the building, structure, or property are involved or not, until a permit and certificate of occupancy authorizing such change of use has first been secured from the Building Authority in accordance with Chapter 6 of the City of Portland Code of Ordinances.

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TABLE 6-A: PERMITTED AND CONDITIONAL USES IN RESIDENTIAL ZONES

		R-1	R-2	R-3	R-4	R-5/R-5A	R-6/R-6A	Use Standards
Residential	Single-family dwellings	●	●	●	●	●	●	
	Two-family dwellings				●	●	●	
	Multi-family dwellings			◐		◐[1]/●[2]	●	6.5.6.G
	Multiplex				◐	●[1]		6.4.12
	Handicapped family units	●	●	●	●	●	●	
	Planned Residential Unit Developments			●[4]		●[4]		
	Special needs independent dwelling units				●	●[1]	●	
	Lodging houses					◐[1,3]	●	6.4.9
	Sheltered care group homes	◐	◐	◐	◐	◐	◐	6.5.6.K
Institutional	Congregate care facilities					●[2]		6.5.6.F
	Elementary, middle, and secondary schools	◐	◐	◐	◐	◐[1]	◐	
	Governmental uses	●	●	●	●	●	●	
	Hospitals			◐		◐[1]	◐	
	Intermediate care facilities	◐	◐	◐		◐[1]/●[2]	◐	
	Long-term and extended care facilities	◐	◐	◐		◐[1]/●[2]	◐	6.5.6.F
	Places of assembly (<10,000 SF)	◐	◐	◐	◐	◐[1]	◐	
	Places of assembly (>10,001 SF)	◐	◐	◐	◐	◐[1]	◐	
	Preschool facilities	◐	◐	◐	◐	◐	◐	6.5.6.I
	Post-secondary schools					◐[1]	◐	6.5.6.F
Comm.	Bed and breakfasts						●/◐[5]	6.4.4
	General offices (<5,000 SF)						◐	6.5.6.C
	Hostels						●/◐[6]	6.4.8
Other	Agriculture	●	●					
	Cemeteries	●	●		●		●	
	Off-street parking			◐	◐	◐[1]		6.5.6.H
	Parks and open spaces	●	●	●	●	●	●	
	Raising of domesticated animals	◐						6.5.6.J
	Solar energy system (minor)	●	●	●	●	●	●	6.4.15
	Utility substations	◐	◐	◐	◐	◐	◐	6.5.6.L

1 In R-5 zone only.
2 In R-5A zone only.
3 Conversions of existing two-family or multiplex structures into lodging houses are permitted as a conditional use, provided that the lodging house shall not be located within 500 ft. of another as measured along street lines.
4 Must consist of horizontally attached dwelling units in the R-3 zone and horizontally or vertically attached dwelling units in the R-5 zone, or a series of such dwelling unit, with all land owned and used in common.
5 Permitted if a conversion of a structure existing as of 3/3/97 to up to four guest rooms and conditional if a conversion of the same to five to nine rooms.
6 Permitted if for no more than 10 overnight transient guests and conditional if for between 11 and 20 overnight transient guests. An owner, manager, or operator shall be a permanent resident of the building.

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TABLE 6-B: PERMITTED AND CONDITIONAL USES IN ISLAND ZONES

		IR-1	IR-2	IR-3[1]	I-B	Use Standards
Residential	Single-family dwellings	●	●	●[2]	●	
	Two-family dwellings				◐	6.5.6.G
	Multi-family dwellings				◐	
	Handicapped family unit	●	●	●	●	
	Planned Residential Unit Developments	●	●			
	Lodging houses		◐[3]	●[3]	●[3]	
Institutional	Elementary, middle, and secondary schools	◐	◐	●	◐	6.5.6.F[6]
	Educational facilities (including seasonal camps)	◐	◐			
	Governmental uses	◐	◐	●	◐	
	Places of assembly (<10,000 SF)	◐	◐	●	◐	
	Places of assembly (>10,001 SF)	◐	◐		◐	
	Preschool facilities	◐	◐	●	◐	6.5.6.I
Commercial/Servic	Auto service stations				◐	6.5.6.A
	Bed and breakfasts				●[4]	
	General services (<5,000 SF)				●	
	Hotels			●[5]	◐[5]	
	Restaurants			●	●	
	Retail (<10,000 SF)			●	●	
	Studios for artists and craftspeople				●	
Other	Agriculture	●				
	Boathouses and storehouses for fishing equipment	●	●	●	●	
	Campgrounds	◐		●		6.4.5
	Cemeteries	◐	◐			
	Marinas and yacht clubs			●	●	
	Off-street parking				●	
	Parks and open spaces	●	●	●	●	
	Raising of domesticated animals	◐				6.5.6.J
	Solar energy system (minor)	●	●	●	●	6.4.15
	Utility substations	◐	◐	●		6.5.6.L
	Wharves, piers, docks, and landing ramps	◐	◐	●	●	

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1 All uses within the IR-3 permitted only within a PUD.
2 Single-family attached permitted provided that new construction shall be limited to no more than six attached dwellings per building.
3 With greater than two but no more than nine rooms.
4 Permitted on Peaks Island only.
5 Maximum 50 rooms.
6 The standards of 6.5.6.G shall not apply to institutional uses within the I-B zone. In the IR-1 and IR-2 ones, institutional uses are subject to the standards of 6.5.6.G only if the total land area of the use is two acres or more.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

		B-1	B-2/B-2b/B-2c	B-3/B-3-b/B-3c[1]	B-4	B-5/B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●	●		●	●	●	
	Two-family dwellings	●	●	●		●	●	●	
	Multi-family dwellings	●	●	●		●	●	●	
	Handicapped family units			●		●	●	●	
	Combined living/working spaces	●	●	●	●	●	●	●	
	Lodging houses	●	●	●	●	●		●	6.4.9
Institutional	Clinics	●	●	●		●		●	
	Cultural facilities			●	●	●	●	●	
	Elementary, middle, and secondary schools	●	●	●		●	●	●	
	Emergency shelters			◐	◐	◐			6.5.6.B
	Governmental uses	●	●	●	●	●		●	
	Intermediate care facilities		●						
	Long-term and extended care facilities		●						
	Places of assembly (< 10,000 SF)	●	●	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	●	
	Preschool facilities	●	●	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	●	
Commercial /Service	Adult business establishments		●[2]	●[2]					6.4.2
	Auto, boat, and related dealerships		◐		●				6.5.6.A
	Auto service stations		◐[3]		●	●			6.5.6.A
	Bars		●[4]	●[4]	●	●	●	●	6.4.3
	Bed and breakfasts	●	●	●				●	6.4.4, 6.4.6
	Exhibition, meeting, and convention halls			●		●	◐	●	
	Funeral homes		●		●				
	General services (<5,000 SF)	●	●	●	●	●	●	●	6.4.6
	General services (>5,000 SF)		●	●	●	●	●	●	
	General offices (<5,000 SF)	●	●	●	●	●	●	●	6.4.6
	General offices (>5,000 SF)		●	●	●	●	●	●	
	Hostels	●		●		●		●	6.4.6, 6.4.8
	Hotels		●	●	●	●	●[5]	●	
	Marijuana retail store		●/◐[6]	●	●			●	6.4.10
	Recreation and amusement centers				●	●		●	
	Registered marijuana dispensary		●/◐[6]	●	●			●	6.4.10
	Repair services		●	●	●	●	●	●	
	Restaurants	●	●	●	●	●	●	●	6.4.3, 6.4.6
	Retail (< 5,000 SF)	●	●	●	●	●	●	●	6.4.6, 6.4.13
	Retail (5,001 – 25,000 SF)		●	●	●	●	●	●	6.4.13

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TABLE 6-C (CONT.): PERMITTED AND CONDITIONAL USES IN MIXED USE ZONES

		B-1[13]	B-2/B-2b/B-2c	B-3/B-3b/B-3c[1]	B-4	B-5/B-5b	B-6	B-7	Use Standards
Industrial	Retail (>25,001 SF)		●	●	●	●	●	●	6.4.14
	Small-scale marijuana caregiver		●	●	●			●	6.4.10
	Theaters and performance halls		●	●	●	●	●	●	
	Veterinary services		●		●				
	Communication studios		●	●	●	●	●	●	
	Dairies		●[7]		●				
	High-tech manufacturing							◐	6.5.6.D
	Intermodal transportation facilities					●	●	●	
	Laboratory and research facilities		◐		●		◐	●	6.5.6.E
	Low impact industrial (<10,000 SF)		●[8]	◐	●	●	●	●	6.5.6.E
	Low impact industrial (>10,000 SF)		●[8]		●	◐			
	Marijuana testing facilities				●				6.4.10
	Marijuana manufacturing facilities				●				
	Marijuana cultivation facilities (<2,000 SF plant canopy)				●				
	Marijuana cultivation facilities (2,001-7,000 SF plant canopy)				●				
	Printing and publishing		◐[9]	●	●	●	●	◐	
	Studios for artists and craftspeople	●	●	●	●	●	●	●	
	Tow lots				●				6.4.15
	Warehousing, storage, and distribution		◐[10]		●	●[10]	◐[10, 11]	◐[10, 11]	6.5.6.E
Other	Marine uses					●	●		6.4.12
	Correctional pre-release facilities				●				6.4.7
	Off-street parking			●/◐[12]		●	◐	◐	6.5.6.H
	Parks and open spaces	●	●	●	●	●	●	●	
	Solar energy system (minor)	●	●	●	●	●	●	●	6.4.14
	Solar energy system (major)				◐				
	Utility substations	●	●	◐	●	●	●	◐	6.5.6.L
	Wind energy system (minor)		◐	◐	◐	◐	◐	◐	6.4.17

[1] See PAD Overlay for additional use regulations.
[2] Permitted in the B-2 and B-3 only.
[3] Permitted in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in B-2b and B-2c.
[4] Not permitted in the B-2c and B-3c zones.
[5] Hotels shall be limited to no more than 150 rooms.
[6] Permitted in the B-2 zone. Conditional in the B-2b and B-2c.
[7] Permitted only if an expansion of an existing dairy.
[8] Permitted with a retail component only. Low-impact industrial uses greater than 10,000 SF are permitted in the B-2 only.
[9] Printing and publishing of 10,000 SF or less, or expansion of printing and publishing establishments greater than 10,000 SF in existence as of 4/4/88, shall be treated as a conditional use.
[10] Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage not permitted in the B-2/B-2b/B-2c zones, B-6 zone, and B-7 zone.
[11] Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment.
[12] Structured parking shall be permitted. Surface parking shall be treated as a conditional use.

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TABLE 6-D: PERMITTED AND CONDITIONAL USES IN OFFICE PARK & RESIDENCE PROFFESIONAL ZONES

		OP[1]	RP[2]	Use Standards
	Any residential use permitted in the nearest residential zone		●	
	Preschool facilities	●	◐	6.5.6.I
	Funeral homes		●	
	General offices	●	●	
Industrial	High tech manufacturing	◐		6.5.6.D
Industrial	Laboratory and research facilities	●		
Industrial	Printing and publishing	●		
Industrial	Studios for artists and craftspeople		●	
Other	Parks and open space	●	●	
Other	Solar energy system (minor)	●	●	6.4.15
Other	Utility substations		●	
Other	Wind energy system (minor)	◐		6.4.17

[1] All permitted and conditional uses in the O-P zone, with the exception of parks and open spaces, solar energy systems, and wind energy systems, shall be allowed only within an office park subject to the standards of 6.9.3.

[2] Any conditional use that is permitted as a conditional use in the nearest residential zone shall be permitted as a conditional use in the R-P zone. All conditional use standards of the residential zone shall apply.

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TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B[1]	Use Standards
Institutional	Airports				●[2]	
	Preschool facilities	●	●			
	Emergency shelters	◐	◐	◐		6.5.6.B
	Intermediate care facilities		●[3]			
	Places of assembly (<10,000 SF)	●				
Commercial/Services	Bars				●	
	General services (<5,000 SF)				●	
	General services (>5,000 SF)				●	
	General offices (<5,000 SF)	●[4]	●			
	General offices (>5,000 SF)	●[4]	●			
	Hotels				●	
	Recreation and amusement centers	●	●			
	Repair services	●	●	●		
	Restaurants				●	
Industrial	Animal-related services	●[5]				
	Construction & engineering services	●	●	●		
	Dairies	●	●	●		
	Fish waste processing			●		
	Food & seafood processing, packing, and distribution		●	●		
	High-impact industrial uses			●		
	Intermodal transportation facilities	●	●	●		
	Laboratory and research facilities	●	●	●		
	Low-impact industrial	●	●	●		
	Lumber yards	●	●	●		
	Marijuana testing facility	●	●	●		6.4.10
	Marijuana manufacturing facility	●	●	●		
	Marijuana cultivation facility (<2,000 SF plant canopy)	●	●	●		
	Marijuana cultivation facility (2,001-7,000 SF plant canopy)		●	●		
	Marijuana cultivation facility (>7,001 SF plant canopy)			●		
	Printing and publishing	●	●	●		
	Recycling and solid waste disposal facilities		●[6]	●[6]		
	Studios for artists and craftspeople	●	●			
	Telecommunication towers			●		
	Tow lots		●	●		6.4.16
	Warehousing, storage, and distribution facilities	●[7]	●	●		

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TABLE 6-E (CONT.): PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

	I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B[1]	Use Standards
Correctional pre-release facilities		●[8]	●[8]		6.4.7
Marinas	●				
Off-street parking				●	
Solar energy system (minor)	●	●	●	●	6.4.14
Solar energy system (major)		●	●	◐	
Utility substations	●	●	●		
Wind energy system (minor)	◐	●	●	●	6.4.17
Wind energy system (major)		●	●	◐	

[1] Permitted uses on lots within airport restricted access areas shall be limited to those which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.
[2] Including airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.
[3] Permitted in existing structures not designed for industrial, amusement, warehouse or manufacturing uses as of 9/15/14 or later. Such structures may be reused or expanded to establish a facility of no more than 30 persons plus staff.
[4] Only back office uses permitted.
[5] Not including outdoor kennel facilities.
[6] Permitted within an enclosed structure only.
[7] Must be less than 10,000 SF in floor area. No outdoor storage permitted. Self-storage not permitted in the I-L/I-Lb zone.
[8] Not permitted in the I-Ma, I-Mb, or I-Hb zones.

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TABLE 6-F: PERMITTED AND CONDITIONAL USES IN R-OS and RPZ

	R-OS	RPZ	Use Standards
Cemeteries	●		
Educational, scientific, or interpretive facilities		●	
Marinas	●		
Parks and open space	●[1]	●[2]	
Solar energy system (minor)	◐		6.4.15
Solar energy system (major)	◐		
Utility substations	●/◐[3]		6.5.6.L, 6.5.7.A
Wharves, piers, docks, and landing ramps	●	●	
Wind energy system (minor)	◐		6.4.17
Wind energy system (major)	◐		

[1] Including active recreational uses, such as playgrounds, golf courses, fields, pools, courts, community gardens, marinas, and sports complexes and passive uses, such as arboretums and picnic areas. Accessory uses within structures of 2,500 SF or more shall be treated as a conditional use under Section 6.4.7.

[2] Including non-intensive recreational uses, such as trails, soil and water conservation activities, and wildlife management activities.

[3] Including sewage pumping and treatment facilities only. Water pumping stations shall be treated as a conditional use.

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6.4 SUPPLEMENTAL USE STANDARDS

The following standards shall apply to the following uses, whether permitted or conditional.

6.4.1 In general

A. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than 35 feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this subsection. For purposes of this subsection, street shall be as defined in Article 3, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the Building Authority:

1. A deed from the owner of such lot conveying to the city all his or her right, title and interest in and to such street or any portion thereof; and
2. An agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the Corporation Counsel and to encumber and run with the land.

B. For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the *City of Portland Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:

1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority; and
2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth under Articles 13 and 14. Also as set forth in Articles 13 and 14, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (2) shall not apply to the erection of any single-family dwelling on

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any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.

C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
   1. Dingley Court and
   2. Morgan Court.

6.4.2 Adult business establishments

A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects; and

B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6.4.3 Bars and restaurants in the B-6 zone

A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street; and

B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 am and 11 pm each day and food service and consumption shall be the primary function of the restaurant.

6.4.4 Bed and breakfasts

A. In the R-6 and R-6A zones, the minimum gross floor area for bed and breakfasts shall be 2,000 SF for the first three guest rooms and 500 SF for each additional guest room;

B. In all mixed-use zones except the B-1 zone, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
   1. In the B-2/B-2b/B-2c zones, the meeting facility must be less than 4,000 SF; and
   2. In the B-3/B-3b/B-3c zones, the building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 SF in floor area on that date.

6.4.5 Campgrounds

A. Campgrounds shall not include recreational vehicles;

B. Campgrounds shall be licensed by the State of Maine Department of Human Services;

C. No tent shall be located within 75 feet of the perimeter of site; and

D. The land area of the campground shall not be less than the equivalent of 5,000 SF of land area per tent site exclusive of the roadway network.

6.4.6 Commercial uses in the B-1 zone

A. Commercial uses shall be permitted provided that such uses generate less than 100 peak hour vehicle trips per 2,000 SF of floor area and less than 100 peak hour vehicle trips in total.

B. Retail and restaurant uses shall not operate between the hours of 11 p.m. and 6 a.m., and shall not accept deliveries or services between the hours of 10 p.m. and 7 a.m. For restaurants,

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food service and consumption shall be the primary function.

C. Beverage dealers shall be permitted as a retail use provided that the maximum total floor area for redemptions as an accessory use, including the storage of spent containers, shall be no greater than 500 SF or 10% of the total floor area of the facility, whichever is less.

6.4.7 Correctional pre-release facilities

A. No correctional prerelease facility shall be located within 1,000 feet of another, as measured in a radius from the center of the lot.

B. If a facility requires state or federal licensing, staffing of the facility shall be as required by such license. If a facility does not require state or federal licenses, there shall be a minimum of one staff person for every 10 residents or fraction thereof. The facility shall provide 24-hour supervision of program participants.

6.4.8 Hostels

A. An operations plan must be submitted demonstrating that no unaccompanied minors under the age of 18 shall be permitted in the facility;

B. The length of stay for transient guess shall not exceed 15 days within any 60-day period;

C. In the R-6 zone, for hostels greater than 10 guests, a minimum of 250 SF of land area shall be required per hostel guest; and

D. In the B-1 zone, no more than 20 overnight transient guests shall be permitted.

6.4.9 Lodging houses

A. Lodging houses, except for lodging houses located in the IR-2, IR-3, and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as a part of the common areas where all meals are provided on a daily basis.

6.4.10 Marijuana-related uses

A. The following standards apply to the following marijuana-related uses:

1. Marijuana cultivation facilities,
2. Marijuana manufacturing facilities,
3. Marijuana products,
4. Marijuana retail stores,
5. Marijuana testing facilities,
6. Small-scale marijuana caregivers, and
7. Registered dispensaries.

B. Location criteria

1. No marijuana cultivation facility, marijuana manufacturing facility, marijuana testing facility, small-scale marijuana caregiver, marijuana store or registered dispensary may be located within 500 feet of a pre-existing public school, private school, or a public preschool program, as defined by 20-A M.R.S.A. §1. Distance shall be measured from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.
2. No marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may be located within 300 feet of the following residential zones: R-1, R-2, R-3, R-4, R-5/R-5A, R-6/R-6A, or R-7. Distance shall be measured from the nearest outer wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana related

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facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.

C. Supplemental standards
   1. Marijuana-related uses may only be permitted within a fully enclosed building.
   2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
   3. No drive-through service is permitted for marijuana-related uses.
   4. No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises where sold.
   5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that at a minimum addresses the following:
      a. wastewater;
      b. disposal of waste; and
      c. security at the premises.
   6. A ventilation plan shall be included for marijuana cultivation facilities, marijuana manufacturing facilities, and small-scale marijuana caregivers that provides for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases and particulate matter from marijuana or its processing or cultivation to be effectively confined to the premises.
   7. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.

D. For purposes of this ordinance, any approval issued for a marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility operated pursuant to 22 M.R.S. § 2421 et seq. shall be deemed to constitute approval for the same corresponding marijuana cultivating, manufacturing, or testing facility use operating under 28 M.R.S. § 101 et seq. Notwithstanding the above, no marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may operate without the applicable state and City license.

6.4.11 Marine uses

A. In the B-5/B-5b and B-6 zones, marine uses shall include marine products wholesaling and retailing; harbor and marine supplies and services;

B. In the B-5/B-5b zones, marine uses shall include marine repair services and machine shops; shipbuilding and facilities for the construction, maintenance, and repair of vessels; marine museums and aquariums; boat repair yards; boat storage; and seafood processing, packing, and distribution for human consumption; and

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C. In the B-6 zone, marine uses shall include underground marine fuel storage provided that such storage shall be used solely for the purpose of fueling vessels.

6.4.12 Multiplexes

A. No open outside stairways or fire escapes above the ground floor shall be constructed; and

B. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.

6.4.13 Planned unit development in the IR-3

In addition to other applicable reviews, no development shall occur nor shall any new use be established in the IR-3 zone unless the Planning Board finds that the final development plan for the site is in compliance with the following standards:

A. The development shall demonstrate a reasonably unified response to the design possibilities of the site, by virtue of such elements as the design and layout of buildings and lots, circulation plan, open space, drainage, and orientation to achieve energy conservation or solar access, to form a functionally integrated whole.

B. The design and layout of the development and buildings shall be reasonably compatible with the surrounding neighborhood by virtue of such features as architectural style, exterior finish, scale, circulation, open space, landscaping, and preservation of natural site amenities.

C. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as accessibility to residents, recreation, conservation of existing public rights of access to shoreland areas and scenic natural areas, orientation to achieve energy conservation or solar access, preservation of natural site amenities, and use as a buffer between the development and the surrounding neighborhood.

D. The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.

E. A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.

F. The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.

G. Adequate provision for off island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the

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project: compaction and reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

H. All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.

I. The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (1) or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.

J. The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.

K. The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.

L. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.

M. The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.

N. The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife,

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botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

O. If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this section, planned unit development standards, and site plan and subdivision review requirements.

P. The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.

6.4.14 Retail in the B-3/B-3b/B-3c and B-5/B-5b zones

Retail shall not include wholesale and bulk purchase lumber and construction supply sales.

6.4.15 Solar energy systems

A. All solar energy systems shall meet the technical, safety, and maintenance standards in the *City of Portland Technical Manual*.

B. Solar panel placement should minimize or negate any solar glare impacting nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar energy system.

C. All applicants are encouraged to ensure the maximum solar energy generation from their system by obtaining solar access easements. Solar access easements may be filed consistent with Maine State law.

D. Solar energy systems shall be located away from and screened from public ways and nearby residential/institutional uses to the extent possible and shall be designed so as to minimize impacts on significant scenic views.

E. Layout and fencing shall be integrated with the landscape to the extent possible and shall minimize the removal of existing vegetation to the extent possible.

F. Major solar energy systems shall be prohibited within any designated historic landscape district.

6.4.16 Tow lots

Tow lots must be at least 300 ft. from any residential zone or conforming residential use.

6.4.17 Wind energy systems

A. All wind energy generation equipment shall be approved under a certification program approved by the U.S. Department of Energy such as the Underwriters Laboratories, Germanishcer Lloyd Wind Energies, or other similar certifying organizations. Experimental, homebuilt, and prototype models shall not be permitted.

B. Wind energy systems and associated facilities, including foundations and support structures, electrical connections and control equipment, associated site improvements, and construction techniques, shall be designed,

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engineered, and installed to comply with all applicable local, state, and federal construction and electrical regulations and Federal Aviation Administration regulations. Applicable state and local approvals shall be obtained prior to installation of any wind energy system.

C. The support structure (e.g. tower, pole) for freestanding wind generating systems shall not be climbable for a minimum height of 12 feet above the surrounding ground level or accessible surface. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

D. All moving components of a wind energy system shall be a minimum of 12 feet from ground level or accessible surface.

E. All on-site electrical wiring associated with the proposed wind energy system shall be located within the tower/pole/supporting structure and underground. Above ground on-site connections near substations or to the electric grid shall be allowed.

F. The use of guy wires is discouraged. If required, they shall be located away from pedestrian routes/access points and marked with visible, reflective, colored objects, such as flags, reflectors, or tape, which shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.

G. No wind energy system shall be located within 250 feet of any significant wildlife habitat, as defined by Maine Department of Environmental Protection/Maine Department of Inland Fisheries and Wildlife under provisions of the Natural Resources Protection Act (Title 38, M.R.S.A. § 480, et seq.) including wildlife habitat for species appearing on the official state and federal list of endangered or threatened animal species.

H. For all wind energy systems over 45 feet in height above the ground or over 100kW, evidence shall be provided that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife, and the Maine Natural Area Program, have been notified of the location, height and design of the proposed wind energy system at least 3 weeks prior to any final determination under this provision. Any comments received therefrom shall be addressed to the satisfaction of these state authorities prior to any final determination under this provision.

I. Wind energy systems shall be designed to avoid electromagnetic interference with the transmission or reception of radio, telephone, television, microwave, navigational or similar signals to neighboring areas.

J. Wind energy systems and associated facilities shall use non-reflective materials and neutral colors and textures that blend in with the surrounding environment. Ground-mounted systems and associated facilities shall be landscaped to integrate the proposed wind energy system into the existing landscape/streetscape.

K. No part of the system may be illuminated, except as required by the Federal Aviation Administration (FAA) or other authorities for safety and security purposes. Where lighting is required, it shall be at the lowest intensity allowable with fixtures shielded and directed to minimize glare and visibility from the ground.

L. There shall be no signs, advertisements, flags, or decorative items on a wind energy system or

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any associated facilities, except for the manufacturer's/installer's/owner's identification (not exceeding one SF in size), appropriate warning signs, or lights if required by the FAA.

M. Wind energy systems shall be prohibited within any historic district, except the Congress Street Historic District where it coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark.

6.5 CONDITIONAL USES

6.5.1 Conditional use review procedure

A. **Review authority.** The Zoning Board of Appeals shall review all conditional use applications, with the exception that the Planning Board shall review:

1. All conditional use applications in the B-3/B-3b/B-3c, B-5/B-5b, B-6, and B-7 zones;
2. All conditional use applications associated with projects that are otherwise before the Planning Board; and
3. Conditional use applications for specific uses for which the Planning Board is identified as the review authority under Subsection 6.5.6.

B. **Application.** Applications for conditional use review shall be submitted to the Building Authority for all Zoning Board of Appeals reviews and the Planning Authority for all Planning Board reviews. A nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the review authority.

C. **Public hearing.** A public hearing shall be set, advertised and conducted by the review authority in accordance with Article 2 of this chapter.

D. **Action**. Within 30 days following the close of the public hearing, the review authority shall render its decision, in a manner and form specified by Article 2 of this chapter, approving the conditional use, approving the conditional use subject to conditions as specified in Subsection 6.5.3, or denying it. The failure of the review authority to act within 30 days shall be deemed an approval of the conditional use, unless such time period is mutually extended in writing by the applicant and the review authority. Within five days of such decision or the expiration of such period, the Building Authority or Planning Authority shall mail notice of such decision or failure to act to the applicant and, if a conditional use is authorized, list therein any and all conditions imposed by the review authority.

6.5.2 General conditional use standards

The review authority shall, after review of the application, approve a conditional use upon a finding that the proposed conditional use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zone. The review authority shall find that this standard is satisfied if it finds that:

A. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than

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would normally occur at surrounding uses or other allowable uses in the same zone; and

B. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and

C. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

D. The proposed use will meet any additional zone or use-specific standards identified in this article.

6.5.3 Conditions on conditional use approvals

The review authority may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use. Violation of such conditions shall be a violation of this article.

6.5.4 Effect of issuance of a conditional use approval

The approval of a conditional use shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the City of Portland Code of Ordinances, including but not limited to a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

6.5.5 Limitations on conditional use approvals

No conditional use approval shall be valid for a period longer than six months from the date of approval, or such other time, not to exceed two years, as may be fixed at the time granted, unless the conditional use has been commenced or a building permit is issued and construction has begun within that period and is thereafter diligently pursued to completion; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby. A conditional use approval shall be deemed to authorize only the particular use for which it was issued and such approval shall automatically expire and cease to be of any force or effect if such use shall for any reason be discontinued for a period of 12 consecutive months or more.

6.5.6 Supplemental use-specific conditional use standards

In addition to the general conditional use standards, the following standards shall apply to specific conditional uses:

A. **Automobile, boat, and related dealerships and auto service stations**

1. The Planning Board shall be the reviewing authority;
2. Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed, and maintained so as to ensure the safety of

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the public. Such signs shall advertise only services or goods available on the premises;

3. No ingress and egress driveways shall be located within 30 ft. from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public; and
4. A landscaped buffer, no less than five feet wide, shall be located along street frontages (excluding driveways). The, buffer shall consist of a variety of plantings in accordance with the *City of Portland Technical Manual*; and
5. Car washes shall be designed to avoid the tracking of residual waters into the street.

B. Emergency shelters

1. The facility shall provide adequate space for conducting security searches and other assessments;
2. The facility shall be designed with a centralized shelter operations office on each level providing sight lines to sleeping areas;
3. A management plan adequately outlining the following areas shall be provided: management responsibilities; process for resolving neighborhood concerns; staffing; access restrictions; on-site surveillance; safety measures; controls for resident behavior and noise levels; and monitoring reports.
4. Adequate access to and from METRO service shall be provided. The facility shall be within a ¼ mile of a METRO line, or shall be within ½ mile of a METRO line and provide adequate indoor space to permit all shelter guests day shelter, as well as implement strategies to help residents utilize transit;
5. The facility shall provide on-site services to support residents, such as case management, life skills training, counseling, employment and educational services, housing assistance, or other programs;
6. Suitable laundry, kitchen, pantry, bicycle storage, and secure storage facilities for shelter stayers shall be provided on-site; and
7. An outdoor area for guest use shall be provided on-site with adequate screening to protect privacy of guests.

C. General office in the R-6 & R-6A zones

1. For the use of any building designed or constructed for residential use, which was in use as a residence on April 18, 1984, or thereafter:
   a. Offices shall serve a member of a recognized profession and be maintained for the conduct of that profession. Professional office uses do not include veterinary offices.
   b. A professional office shall not be located within 500 ft. of another as measured along the street line to the respective property lines.
   c. A building with one or more professional offices shall have at least 50% of the total floor area of the building devoted to residential uses.
   d. The total number of individuals working in a building of professional

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offices shall not exceed the equivalent of four full time employees.

e. Any additions or exterior alterations shall be compatible with the architecture of the building and maintain the residential appearance of the building. Construction of a new building shall be compatible with the architectural character of the surrounding area.

2. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets.

D. High-tech manufacturing

1. A minimum of one-third of the total square footage devoted to manufacturing shall be conducted in a laboratory environment, in a controlled environment with specialized air handling systems that exceed levels for pressurization and filtration found in office environments and traditional manufacturing facilities;
2. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary;
3. In the B-7, accessory warehousing is permitted. Where warehousing cannot be located on the same lot because the land area is too small to accommodate the warehousing on the same lot, one remote warehouse may be located within 600 feet of the principal use referenced above;
4. In the O-P zone, truck traffic serving a single manufacturing business or institution shall not exceed, on a regular basis, more than two tractor-trailer truck deliveries per week and provided that no deliveries are accepted between 7:00 p.m. and 7:00 a.m.

E. Industrial uses

1. In the B-2, B-2b and B-2c zones:
   a. The Planning Board shall be the reviewing authority;
   b. The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street; and
   c. The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of the site plan ordinance for screening between land uses and the *City of Portland Technical Manual*.
2. In the B-3/B-3b/B-3c zones:
   a. The floor area devoted to industrial use shall not exceed 10,000 square feet; for a building in existence on March 11, 1991, the floor area shall not exceed 10,000 square feet or 50 percent of the total floor area, whichever is greater;
   b. The associated vehicular loading, unloading, parking, circulation and

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traffic volumes on the site and on adjacent public streets will not have a more intensive impact than any use on the site within the last 5 years;

c. Any buildings located in a PAD overlay zone shall be subject to the requirements of that zone in addition to the requirements of this subsection; and

d. For buildings that either were not in existence on March 11, 1991, or were in existence on that date but were either in use for any permitted use in the B-3 zone or were designed or constructed for any such use:

i. No tractor trailer trucks or longer vehicles shall be associated with the proposal;

ii. The proposal shall exclude warehousing and storage as a principal use;

iii. The use shall not generate more than six delivery or service trips per day between 7:00 a.m. and 7:00 p.m.

3. In the B-5/B-5b zones:

a. Truck loading and access and vehicle parking shall be located in the rear or side yard of the site where possible;

b. Street frontage shall be designed for pedestrian scale or interest; and

c. Shared infrastructure to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities and driveways, shall be utilized.

F. Institutional uses (excluding preschools)

1. The Planning Board shall be the reviewing authority;

2. In the case of expansion of existing institutional uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential area; and

3. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or July 15, 1985 in the IR-1 and IR-2 zones, or thereafter;

4. In the case of a use or use expansion which constitutes a combination of the conditional institutional uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative;

5. In the case of community halls:

a. The structure was in existence as of January 4, 2010.

b. The structure was built for institutional or other non-residential uses;

c. The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and

d. A parking management plan shall be submitted for review and approval by the Planning Board; and

6. In the case of private club or fraternal organizations, any such establishment serving alcoholic beverages or in possession of a license for serving

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alcoholic beverages shall meet the minimum lot size requirement for places of assembly greater than 10,000 SF;

7. In the case of a post-secondary school within the R-5 zone and not including the USM Overlay Zone, such school may build principal structures to a height of 55 feet if the following standards can be met:
   a. Minimum lot size: 10 acres which may include adjacent land owned by the institution on both sides of a public street.
   b. Minimum setback between buildings on-site: 20 feet.
   c. Minimum setback from external property boundary: 30 feet, except that parking garages over 35 feet in height must be located 50 feet from external property boundaries when adjacent to an adjoining residential use.
   d. The area between the structure and adjoining residential uses must be adequately screened with appropriate landscaping or other features to buffer the building and effects thereof (i.e. noise, light, etc) from abutting properties.
8. In the IR-1 and IR-2 zones, institutional uses shall be subject to the above conditional use standards if the total land area of the site is two acres or more.

G. Multi-family

1. In the I-B zone:
   a. Multi-family buildings shall have a maximum of four units;
   b. No open outside stairways or fire escapes above ground floor shall be constructed or have been constructed in the immediately preceding five years;
   c. A below grade dwelling unit shall be permitted only if access is provided directly to the outside of the building;
   d. Density shall be determined by the most restrictive abutting residential zone, except for those lots which are served by public water and sewer, where density shall be determined by the least restrictive abutting residential zone. If no residential zone is abutting, density shall be determined by the nearest residential zone. Residential uses shall meet the requirements of such abutting or nearest residential zone;
   e. Any additions or exterior alterations shall be compatible with the original architecture of the building. The exterior design of new construction, including the architectural style, facade materials, roof pitch, building form, and height shall be compatible with neighboring properties;
   f. No existing dwelling unit shall be decreased to less than 1,000 square feet of floor area;
   g. No additional dwelling unit shall have less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic;
   h. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with all applicable federal, state and local regulations; and

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i. The proposed conversion has sufficient water for the needs of the dwellings and will not cause an unreasonable burden on an existing water supply nor adversely affect groundwater resources.

2. In the R-3 and R-5 zones. Alteration of a structure existing and not in residential use as of January 1, 1984 to three or more dwelling units shall be permitted as a conditional use in the R-3 and R-5 zones, provided that:
   a. No open outside stairways or fire escapes above the ground floor shall be constructed or have been constructed in the immediately preceding five years;
   b. 3,000 SF of land area per dwelling unit shall be required;
   c. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
   d. Any addition or exterior alteration, such as change in façade materials, building form, or roof pitch, shall be designed to be compatible with the architectural style of the structure;
   e. In the R-3 zone, any addition or exterior alteration shall be limited to a gross floor area equal to or less than 25% of the total existing floor area as of June 13, 2018; and
   f. Paved areas shall be designed to be compatible in size and scale with neighboring properties in the area and properly screened from adjacent streets.

H. Off-street parking
   1. In the R-3, R-4, and R-5 zones:
      a. Off-street parking must be designed to satisfy the parking requirement of a use located in and conforming with the provisions of a nearby business or industrial zone.
      b. The lot on which the parking is proposed must be located wholly within 300 feet, measured along lines of public access, from the use which requires the off-street parking;
      c. The lot where the off-street parking is proposed shall be under the control of the owner of the use which requires the off-street parking. Evidence of such control by deed or lease shall be required before the certificate of occupancy is issued. If such control should be abrogated, the parking use thus allowed shall automatically revert to a nonconforming use in violation of this article and shall be terminated forthwith.
      d. Conditions may be imposed to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this article. Such conditions may include limits on the period of such use.
   2. Structured parking the B-6 and B-7 zones:
      a. Parking garages shall incorporate first floor retail space or other non-parking and active use along all street frontages.

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b. The requirement for first floor mixed use may be waived upon demonstration that the project meets one or more of the following criteria:
   i. The applicant demonstrates that steepness of grade or the character of the adjacent street will not support retail or first-floor mixed use in the foreseeable future.
   ii. The first floor of the garage is set back a minimum of 35 feet from the street right-of-way and its design does not provide an impediment for development of such space for mixed-use in the future. Such space (between the garage and the street) shall, in the interim, not be used for surface parking.
   iii. The applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, provided that the structure of the garage is designed to accommodate retail and or mixed uses in the future. In these cases, the Planning Board will need to find that, on the street-level deck of a proposed parking garage, a minimum of 20 feet horizontal distance of depth from the street and nine feet finished floor-to-finished ceiling clearance could house future retail and or mixed use. The applicant will further need to demonstrate that the garage design anticipates the future development of utilities and circulation necessary for non-parking uses. Where a parking garage fronts on more than one public street and where there is an existing change in grade elevation of over 5% across the footprint of the garage, the nine-foot floor-to-ceiling requirement of this section only applies to the street with higher traffic volumes.

c. Where the Board allows a waiver of first floor mixed use, garages shall display architecture that enhances the pedestrian experience and disguises the parking use to the extent possible. Use of traditional storefront design concepts and traditional building materials is encouraged.

3. Surface parking in the B-3, B-6, and B-7 zones:
   a. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.
   b. Surface parking, including parking aisles, shall be located at least 35 feet from a street. The 35-foot setback need not apply in the case of a property in which 80% of the street frontage has a building within 10 feet of the street frontage and shall not apply to driveways perpendicular to the street providing access to the site.

I. Preschool facilities
   1. The facility shall be located in a structure in which there is one or more occupied

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residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory to the principal nonresidential use;

2. The maximum capacity shall be 12 children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection (5) below are met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory thereto;
3. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts;
4. Solid waste shall be stored in covered containers. Such containers shall be screened on all sides;
5. Preschool facilities located either in structures that have been in residential use within the past five years or in existing accessory structures and that serve between 13 and 24 children shall meet the following additional standards:
   a. The facility shall provide a minimum of 75 square feet of outdoor play area per child;
   b. The play area shall be located in the side and rear yards only and shall not be located in front yards;
   c. Outside play areas shall be separated from abutting properties by a fence at least 48 inches in height;
   d. A 10-foot-wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;
   e. The minimum lot size for a preschool located in a residential or existing accessory structure and serving more than 12 children shall be 20,000 square feet;
   f. The maximum number of children in a preschool facility located in a residential or existing accessory structure shall be 24; and
   g. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

J. **Raising of domesticated animals for non-commercial purposes**

1. No animals may be kept on any lot less than three acres or closer than 100 feet to any street or lot line, except domesticated chickens as regulated in Chapter 5.
2. This use may not create any odor, noise, health or safety hazards, or other nuisance to neighboring properties.
3. Raising of pigs or reptiles is not permitted.

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K. Sheltered care group homes

1. A sheltered care group home shall not be located within 500 ft. of another, as measured along street lines to the respective property lines;
2. The facility shall make provision for adequate on-site staffing in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of 1 staff person for every 10 residents or fraction thereof.
3. The Board of Appeals or Planning Board may impose conditions upon a conditional use permit concerning the creation or operation of a sheltered care group home including but not limited to the following: site and building maintenance; lighting, fencing, and other appropriate security measures; screening and buffering of parking areas; compatibility of any additions or alterations with the existing residential structure; compatibility of new structures with the architectural character of the surrounding area; and limitation on the duration of a sheltered care group home permit.

L. Utility substations

1. Utility substations shall be as small in size as practicable.
2. Substations shall be suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood. The remainder of the lot not consumed by the utility substation and its related access; and shall be designed and designated for future development;
3. If greater than 100 SF in the B-7 zone, the structure shall be set back at least 35 feet from the street right-of-way except in the case of a lot having frontage on Marginal Way and I-295 provided the minimum 35-foot setback is met along Marginal Way; and
4. In the B-7 zone, the substation equipment shall be fully enclosed within a structure.

M. Wind energy systems

1. Wind energy systems within recreation open space zones (including the Island Transfer Station Overlay Zone) are allowed as a condition use only where they are co-olocated within public industrial or utility facilities.
2. Systems shall be screened with a vegetated buffer from public areas and residential buildings.

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6.5.7 Supplemental zone-specific conditional use standards

In addition to the general conditional use standards and supplemental use-specific conditional use standards, the following standards shall apply to conditional uses within certain zones:

A. R-OS Zone

1. The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state comprehensive outdoor recreation plan, as such plans may from time to time be created or revised.
2. Buildings and structures shall not obstruct significant scenic views presently enjoyed

by nearby residents, passersby, or users of the site.

3. Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

6.6 ACCESSORY USES

6.6.1 In general

A. Accessory uses shall be permitted in conjunction with permitted or conditional principal uses. Accessory uses must be:
   1. Customarily found in association with the principal uses,
   2. Generally consistent with the impacts of the primary use,
   3. Secondary in nature, clearly incidental and subordinate to the principal uses in terms of area and function,
   4. Located on the same lot as the principal use unless otherwise permitted, and
   5. Consistent with the intent of the zone.

B. No accessory use or uses within a building shall occupy more than a combined total of 25 per cent of the floor area of the principal building, with the exception of required off-street parking, unless otherwise provided in Subsection 6.6.2 below.

C. No accessory use or uses not within a building shall occupy more than a combined total of 25 per cent of the unbuilt lot area, or of the required rear yard area, with the exception of off-street parking or as otherwise provided in Subsection 6.6.2.

6.6.2 Standards for specific accessory uses

A. Accessory Dwelling Units (ADUs)

1. Accessory Dwelling Units (ADUs) shall be permitted on all lawfully conforming and non-conforming lots with legal use identified as either single- or two-family dwellings. ADUs shall comply with all dimensional standards of the underlying zone unless otherwise provided below.
2. One ADU shall be permitted per qualifying property.
3. The owner(s) of the residence in which the accessory dwelling unit is created must occupy at least one of the dwelling units, with the exception of legally non-conforming lots on Peaks Island.
4. On Peaks Island, neither the accessory unit or principal unit shall be used for short-term rentals as defined under Section 6-150.1 of the City of Portland Code of Ordinances.
5. The appearance of the principal structure as either a single- or two-family structure shall not be significantly altered to reflect the addition of a new dwelling unit. When an ADU is significantly visible from public ways, the building design shall:
   a. Be clearly subordinate to the principal structure(s) in scaleand position in relationship with the street and principal structure(s).
   b. Not include a separate entrance along the front façade of an existing single- or two-family structure; or outside stairways or fire escapes above the ground floor.
6. Under circumstances where an existing non-conforming structure is converted to an ADU, the design of the ADU shall take into consideration to the extent

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practicable the privacy of adjacent properties.

7. The developer of an ADU shall record a deed restriction requiring that the ADU and at least one other unit on-site remain under common ownership.
8. ADUs shall comply with all dimensional requirements of the underlying zone except:
    a. Lot coverage and lot area per dwelling unit requirements.
    b. Within the IR-1 Island Residential zone, the minimum lot area shall be 70,000 SF, except on Peaks Island where this standard shall not apply.
    c. Within the IR-2 Island Residential zone, the minimum lot area shall be 30,000 SF, except on Peaks Island where this standard shall not apply.
9. An ADU shall be limited to a gross floor area of 800 SF or 2/3 of the gross floor area of the principal unit(s), whichever is the lesser amount.
10. ADUs created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
    a. Shall be rented to households earning up to 100% AMI and are subject to income verification as further outlined in Subsection 17.2.3.
    b. Shall be rented for no more than the rent permitted at 80% AMI under the Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing.
    c. Shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing for a term of not less than 20 years.
    d. Shall provide the occupant of the affordable unit a written description of the occupancy requirements for the unit.

B. Amusement devices. Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two such machines or devices on the premises.

C. Antennas, discs, transmitting and receiving equipment. Building-mounted antennas, discs, and other transmitting and receiving equipment shall be:

1. No taller than 15 feet above the highest structural steel of the building roof;
    a. Setback no less than 15 feet from the building perimeter; and
    b. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.

D. Drive-throughs. Drive-throughs shall be permitted as an accessory use in the B-4 zone. Drive-throughs shall be reviewed as conditional accessory uses in the B-2 and B-2c zones, B-3 zone, B-6 zone, and B-7 zone. In all other zones, drive-throughs shall be prohibited. Where a conditional use, drive-throughs shall be subject to the provisions of Subsection 6.5.2 and the following additional review standards:

1. In general:

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a. The Planning Board shall be the reviewing authority.
b. Features such as windows, vacuum cleaners, menu/order boards, and stacking lanes must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than 40 feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than 25 feet from the right-of-way;
c. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets;
d. Any speakers, intercom systems, or other audible means of communication shall not play pre-recorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater;
e. Site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in the *City of Portland Technical Manual*;
f. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, and noise. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts;
g. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access; and
h. The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.

2. In the B-3 zone, drive-throughs shall only be permitted when accessory to a bank. Drive-throughs shall be subject to the Downtown Urban Design Guidelines.
3. In the B-6 zone, drive-throughs shall only be permitted when accessory to a bank and located in the interior of parking structures. Drive-up vehicle circulation

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shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

4. In the B-7 zone:
   a. The drive-through must be accessory to a banking service occupying a minimum floor area of 4,000 SF;
   b. The drive-through must be attached to or included within a building with a minimum floor area of 20,000 SF, except that for lots of less than 20,000 SF and in existence as of March 9, 2005, a drive-up may be included in a building of less than 20,000 SF; and
   c. The drive-up facility must be attached or included within a building and/or addition meeting the minimum height of four stores in the Bayside Height District A and three stories in the Bayside Height Districts B and C. For the purposes of this conditional use, the minimum height exceptions for the B-7 zone shall not apply;
   d. The first floor of the building must include banking or other retail storefront uses with storefront windows, entries, and interior public space oriented to and visible from the street, with front entry access facing the street and directly accessible from the public sidewalk;
   e. Drive-up vehicle circulation shall not be located between the building and any adjacent public streets;
   f. The drive-up shall be limited to two vehicle drive-through lanes; and
   g. The location of any drive-up shall be limited to the geographic area between Somerset/Kennebec Streets/I-295/Franklin Street/Forest Avenue.

E. Home occupations

1. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.
2. Home occupations must be conducted entirely within the dwelling unit by one or more persons residing within the dwelling unit.
3. In connection with the operation of a home occupation, , the following requirements shall be met:
   a. A home occupation shall not occupy more than 500 SF of floor area or more than 25 % of the total floor area of such a dwelling unit, whichever is less, or in the case of licensed family day care homes, or home babysitting services, to accommodate not more than six children plus two children after school and having no nonresidential employees;
   b. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
   c. Storage of materials related to the home occupation shall count as a part of the occupancy limitations above, but shall not constitute a dominant

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part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;

d. Exterior signs shall be limited to one non-illuminated sign not exceeding a total area of two SF, affixed to the building and not projecting more than one foot beyond the building;

e. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs;

f. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;

g. There shall be no more than one nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;

h. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;

i. No motor vehicle exceeding a gross vehicle weight of 6,000 pounds shall be stored on the property in connection with the home occupation.

4. No residence shall be occupied, altered or used for any home occupation except the following:

a. Accountants and auditors;
b. Answering services (telephone);
c. Architects;
d. Artists and sculptors;
e. Authors and composers;
f. Computer programming;
g. Custodial services;
h. Custom furniture repair and upholstering;
i. Dentists, doctors, therapists, and health care practitioners;
j. Direct mail services;
k. Dressmakers, seamstresses and tailors;
l. Engineers;
m. Family planning services;
n. Hairdressers (limited to no more than two hair dryers);
o. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
p. Interior decorators;
q. Lawyers, justices of the peace and notary publics;
r. Licensed family day care home or babysitting services;
s. Musicians or music teachers, including group instruction not to exceed six students at any time but not including performances or band rehearsals, which shall meet the following additional requirements:
   i. Electronic amplification is prohibited;
   ii. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all

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times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;

iii. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.

t. Office facility of a minister, rabbi, or priest;

u. Photographic studios;

v. Professional counseling and consulting services;

w. Professional research services;

x. Sales persons provided that no retail or wholesale transactions are made on the premises;

y. Small appliance repair;

z. Snow plowing provided that only one snow plow vehicle is stored on or generated from the site;

aa. Special tutoring or instruction (not to exceed three pupils at any given time);

bb. Stenographic and other clerical services.

cc. Small-scale marijuana caregiver, except that no more than one small-scale caregiver may operate out of any one dwelling unit.

5. A home occupation that is not listed in subsection (3) but is similar to and no more objectionable than those home occupations listed, shall be permitted as a conditional use subject to the requirements of Section 6.5 of this article. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.

F. **Makers' markets in the IL-b zone.** Makers' markets, including periodic or seasonal sale of handcrafted and limited production products for final consumption, which may include prepared or raw foods, shall be permitted as an accessory use in the IL-b zone, provided that:

1. Such sales are located within a lawfully conforming principal permitted use;
   a. Such sales occupy an area no larger than 45% of the floor area devoted to the principal use;
   b. Such sales by any single vendor or group of vendors shall occur for no more than a total of 28 hours a week collectively;
   c. Such products are produced or permitted to be produced in the IL zone; and
   d. Such products are sold by the producer of the product or their designee.

G. **Tasting rooms in industrial zones.** Tasting rooms shall be permitted as accessory uses on the premises of facilities where beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food are produced, provided that:

1. Service of food in the facility is limited to that which does not constitute a full course meal.
2. No more than 10% of the beverage menu in tasting rooms accessory to beverage production or 10% of the food menu in tasting rooms accessory to food

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production is produced or manufactured off-site.

H. **Solar energy generation**. Roof-mounted, building-integrated, or small-scale ground-mounted solar energy arrays shall be permitted as accessory uses within all zones except the stream protection zone, the recreation open space zone where co-located with public industrial or utility infrastructure and within identified historic landscapes, subject to the following conditions.

1. Accessory solar energy systems shall comply with all general use standards for solar energy systems as stated under Section 6.4.15 of this article and with the dimensional requirements as stated under article 7.5.6.A.
2. Small-scale ground-mounted solar arrays shall occupy less than 1,000 square feet of ground area.

I. **Subletting.** The letting of rooms within an existing dwelling unit in any residential zone, shall be permitted as an accessory use provided that:

1. There shall be no more than two persons occupying such room or rooms;
2. There shall be not more than two rooms per dwelling unit occupied for such use; and
3. There shall be no increase in the bathroom and/or kitchen facilities in the dwelling, and no such facility shall have been constructed in the immediately preceding two years.

J. **Wind energy generation.** Freestanding and roof-mounted wind energy systems shall be permitted as accessory uses within all zones except the Stream Protection zone, within historic districts except where the Congress Street Historic District coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark, subject to the following conditions:

1. Accessory wind energy systems shall comply with all general use standards for wind energy systems as stated under Subsection 6.4.17 of this article.
2. Freestanding wind energy systems shall measure no higher than 45' feet in height.
3. Roof-mounted wind energy systems shall measure no higher than 10' feet above the highest part of the roof.
4. Properties shall be limited to one free-standing wind energy system and/or three roof or building mounted wind energy systems.
5. Accessory wind energy systems shall either be located on the rear half of a building or structure, or within the rear yard and shall be sited to maximize existing vegetative or other screening from nearby residential buildings and public ways. The location shall minimize changes to existing topography and natural vegetation which would result from construction or maintenance of the system.

6.7 TEMPORARY USES

6.7.1 In general

Temporary uses may be permitted from time to time as determined by the Planning Authority. In addition to regulations pertaining to temporary uses contained elsewhere in the City of Portland Code of Ordinances, the following standards shall apply for specific temporary uses.

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6.7.2 Standards for specific temporary uses

A. **Temporary parking.** Parking of vehicles may be permitted by a temporary certificate of occupancy for a limited period of time not to exceed one year in anticipation of future development.

B. **Temporary private tenting.** Temporary private tenting with one tent accessory to a principal residential use is permitted in the IR-1 and IR-2 zones provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use.

C. **Temporary sales.** No "garage sale," "lawn sale," "attic sale," "rummage sale," or other similar casual sale of tangible personal property which is advertised by any means whatsoever whereby the public at large is or can be made aware of such sale, shall be deemed to be accessory if such sale occurs after sales have been conducted on the same premises for six or more days previously during the calendar year.

D. **Temporary stands**

1. No premises shall be used for business purposes consisting of temporary stands, booths, platforms or vehicles intended for the sale of merchandise or other mercantile purposes, if any part of such stand, booth, platform or vehicle is proposed to be located nearer than 125 ft. to any residential zone, except that a single stand with no more than 200 SF of floor area for the sale of agricultural products produced on the premises shall be permitted as accessory to a permitted agricultural use.
2. A single produce stand shall be permitted on the premises of a community garden for the sale of flowers, vegetables, herbs, or fruit produced on the premises, provided that the stand is no more than 100 SF in floor area or open table area and is located a minimum of five feet from any property line; that sales are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year round. If the community garden is owned or operated by a non-profit organization, sales of flowers, vegetables, herbs or fruit produced in other gardens or farms in Maine owned or operated by said organization shall be permitted within the same limitations listed above. For purposes of this section, community garden means a parcel of open land used for the cultivation of flowers, vegetables, herbs, or fruit by a group of city residents either jointly as a single plot or through individual garden plots or beds.
3. A single produce stand shall be permitted on the premises of a non-profit organization incorporated pursuant to the laws of the State of Maine with the permission of the owner and on the premise of public schools with the permission of the school department; provided that the stand is for the sale of local fruit, vegetables, flowers, seedlings and plants produced by the seller; that the stand is no more than one hundred (100)

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square feet in floor area or open table area and is located a minimum of five feet from any property line; that sales on the premises are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year-round.

4. In the IR-1 and IR-2 zones, a single stand with no more than 200 SF of floor area for the sale of agricultural products produced on the premises or the sale of fish or shellfish caught by the occupant of the premises shall be permitted as a temporary use.

E. **Truck load sales.** Truck load sales shall not extend beyond three consecutive days nor occur more frequently than three times a calendar year.

6.8 PERFORMANCE STANDARDS

6.8.1 Design

In the B-7 zone, all buildings shall have a minimum of one operable public pedestrian entrance facing the street frontage of the lot. Such building entrances shall comply with the B-7 Design Standards.

6.8.2 Development in the R-OS zone

All development in the Recreation and Open Space zone shall comply with the following development standards:

A. All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

B. Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

C. Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.

D. Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.

E. Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.

F. The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

6.8.3 Discharges

No discharge shall be permitted at any point into any private sewage disposal system, or stream, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the Public Works Authority. No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the

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Department of Public Works in accordance with Chapter 24 of the City of Portland Code of Ordinances. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of Chapter 24.

6.8.4 Electromagnetic interference

In any industrial zone, there shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference.

6.8.5 Exterior lighting

All exterior lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties.

6.8.6 Heat, glare, radiation

Heat, glare, or radiation shall be imperceptible without instruments at lot boundaries and shall not present a safety hazard.

6.8.7 Historic resources

The exterior design of proposed or renovated structures located within historic districts shall be subject to the historic preservation provisions of Article 16. The exterior design of proposed or renovated structures located adjacent to historic districts or historic resources shall be subject to historic preservation requirements of Article 13.

6.8.8 Landscaping and screening

A. In all mixed-use zones, the O-P zone, and the R-P zone, sites shall be landscaped to screen parking and accessory site elements, including storage and solid waste receptacles, from the right-of-way, public open space, or abutting residential zones.

B. In the I-H and I-Hb zones, where a front yard abuts an arterial or a major collector street, it shall be landscaped. Rear yards, side yards and the perimeter of any parking area for greater than 15 vehicles shall be landscaped if visible from a right-of-way, public open space or residential zone.

6.8.9 Noise

A. The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as shown in Table 6-G, measured at or within the boundaries of any residential zone.

B. In addition to the sound level standards established in Table 6-G, all uses shall employ best practicable sound abatement techniques to prevent tonal sounds, or sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time, and impulse sounds, or sound events characterized by brief excursions of sound pressure, each with a duration of less than one second. If such tonal and impulse sounds cannot be prevented, uses shall employ best practicable sound abatement techniques to minimize the impact of such sounds in residential zones.

C. Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least 4 feet

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above the ground surface. In measuring sound levels under this subsection, sounds with a continuous duration of less than 60 seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of 60 seconds or more shall be measured on the basis of the energy average sound level over a period of 60 seconds (LEQ1).

TABLE 6-G: NOISE STANDARDS

Zone	Daytime/Evening (7 am-9 pm)	Nighttime (9 pm-7 am)
I-B	60 dBA	55 dBA
R-P	55 dBA	55 dbA
O-P	60 dBA	60 dBA
B-1	55 dBA	55 dBA
B-2/B-2b/B-2c	60 dBA	55 dBA
B-3/B-3b/B-3c	60 dBA	55 dBA
B-4	65 dBA	60 dBA
B-5, B-6. B-7[1]	60 dBA	50 dBA
I-L/I-Lb[1]	60 dBA	50 dBA
I-M/I-Mb[1]	70 dBA	55 dBA
I-H/I-Hb[1]	75 dBA	55 dBA
A-B	60 db	60 dBA
IS-FBC	60 dBA	55 dBA

[1] Daytime/evening noise regulations shall extend until 10 pm, after which time nighttime noise regulations shall apply.

D. Exemptions:

1. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth above of this section. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed 50 dBA.
2. The following uses and activities shall also be exempt from the requirements of Table 6-G:
   a. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
   b. Traffic noise on public roads or noise created by aircraft and railroads.
   c. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
   d. Emergency construction or repair work by public utilities, at any hour.
   e. Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to concerts, parades, sporting events, and fireworks displays.

6.8.10 Odor

A. It shall be a violation of this article to create an odor nuisance.

1. An odor nuisance shall be considered to exist when 10 confirmed complaints occur in an area within two separate 24-hour periods. The 10 confirmed complaints must originate from 10 different households in an area zoned residential or from 10 different individuals in a commercial or industrial facility. The Permitting & Inspections Director shall only respond to a complainant who

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confirms that the odor is detectable at the time of the actual complaint. In order to confirm a complaint, the Permitting & Inspections Director or its designee shall first determine that an odor is detectable in the area of the complaint. The Building Authority or its designee shall interview the complainant to verify that the detectable odor is in fact the odor that resulted in the complaint. If the complainant verifies the odor as the source of the complaint, then the Permitting & Inspections Director shall notify the owner or operator of the alleged odor source either in person or by telephone within 1 working day, with a written confirmation within 7 working days of the complaint. In the event that the Permitting & Inspections Director is unable to contact the owner or operator of the alleged odor source in person or by telephone within 1 working day, then the Permitting & Inspections Director shall send written notice to the operator within 7 working days of the complaint.

2. In the event that 10 complaints are confirmed as set forth in subsection 1. in two separate 24 hour periods within a 90-day period, the Permitting & Inspections Director shall cause a certified odor inspector to investigate any odor complaints received in the next 30 days following the receipt of the tenth confirmed complaint from the second 24 hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next 30 days, then a new odor nuisance must be established after that time in accordance with the requirements of this section. The certified odor inspector shall do the following in response to a complaint under this subsection:
   a. Verify that an odor is detectable in the area of the complaint and confirm that it is the odor that resulted in the complaint;
   b. Quantify the intensity of the odor on the eight point in butanol intensity scale as defined in regulations promulgated by the Planning & Urban Development Director to establish training and technical standards to support this subsection; and
   c. Track the odor to its source.

B. When the certified odor inspector determines that a violation has occurred because an odor has exceeded the maximum ambient odor levels set forth in this section, the Permitting & Inspections Director shall notify the owner or operator either by telephone or in person of the violation within 1 working day of the violation. The Permitting & Inspections Director shall confirm this notification in writing within 7 working days of this initial notice. In the event that the Permitting & Inspections Director is unable to contact the owner or operator by telephone or in person within the required time period, then it will send written notification within 7 working days of the violation.

C. Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:
   1. Implement odor reduction procedures immediately upon notification by the Permitting & Inspections Director that the

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facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;

2. Submit to the Permitting & Inspections Director, within 30 days of the written notice of violation, an odor reduction plan which is designed to reduce ambient odors attributable to emissions from that source to the maximum allowable intensity for that zone. The plan shall include a detailed summary of the measures that the owner or operator will take to mitigate the community annoyance and estimated dates for completion of those measures. In the event that it will take longer than 30 days to develop the odor reduction plan, the owner or operator of the facility shall submit within the thirty-day time period a schedule for the development of the odor reduction plan. The Permitting & Inspections Director shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and
3. Implement the plan in accordance with the schedule approved by the Permitting & Inspections Director.

D. The maximum ambient intensity standard for odors generated by uses located in the industrial zones shall not exceed the following levels when the odor is measured in the zone indicated:

1. 4.0 in any industrial or mixed-use zone for odors resulting from uses in industrial or mixed-use zones.
2. 3.0 in any residential zone for odors resulting from uses in industrial or mixed-use zones.

6.8.11 Outdoor effects

A. In all mixed-use, office, and industrial zones and the IS-FBC zone, uses shall be operated within a completely enclosed structure, except for those customarily operated in open air.

B. In the mixed-use and IS-FBC zones, open air activities shall be those licensed by the city. There shall be no outdoor kennels.

C. No building in any zone shall be erected, altered or used as a garage for the storage of more than three motor vehicles or for the business of repairing motor vehicles, if any part of either old or new building when completed would be closer than five feet to any part of any church, public or private hospital or school; or if any part of either old or new building when completed would be less than 15 feet from the boundary line of any lot upon which any part of any church, public or private hospital or school is located. No existing garage used for the storage of more than three motor vehicles or for the business of repairing motor vehicles shall be deemed to become a nonconforming use through the subsequent erection of such church, hospital or school closer than the aforesaid distance to such a garage.

D. No open exterior stairways or fire escapes shall be constructed above the ground floor, except that the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a conforming or lawfully nonconforming dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life

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safety codes, provided that the owner demonstrates to the Building Authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair;
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other affected facades of the building and plans or drawings of the proposed egress stairs;

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6.8.12 Outdoor storage

Outdoor storage shall comply with the requirements of Table 6-H.

TABLE 6-H: OUTDOOR STORAGE STANDARDS

B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-7, O-P, R-P, A-B[1], and IS-FBC	There shall be no exterior storage with the exception of fully enclosed receptacles for solid waste disposal. In the B-3 zones, such receptacles shall be screened from public streets.
B-4, B-5/B-5b, B-6, and Industrial	Outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by raising materials above ground, separating materials, preventing stagnant water, or by some other means. In the B-4, B-5/B-5b, and B-6 zones, no outdoor storage shall be permitted in the front setback, except for storage for plant and tree nurseries. In the B-5/B-5b and B-6 zones, any storage of new materials, finished products, or related equipment must be suitably screened from the public way and abutting properties by a landscaped buffer or solid fence at least five feet in height.
B-1 and B-2	Vehicles or truck trailers with or without wheels shall not be used for on-site storage. In the B-2 zone, there shall be an exception where such storage is located in a designated loading zone identified on an approved site plan; or such storage is not visible from the street or adjacent residences during winter months.
B-5	Outdoor storage of rental and moving equipment shall be located on the site and not within a public right-of-way or sidewalk. A curb, guard rail or other barrier shall be provided to contain such equipment and storage on the site as well as out of landscape buffer areas. A landscape buffer shall be provided. Outdoor storage of rental and moving equipment must be accessory to a building in existence as of the date of this ordinance. Exterior lighting shall not exceed that which is necessary for security purposes.

[1] Does not apply to airports.

6.8.1 Relocation of displaced residents

In the B-3, B-3b, and B-3c zones, any development which results in the displacement of residents of dwelling units currently located on the development site shall meet the requirements of Article 17.5.

6.8.1 Smoke

Smoke shall not be emitted at a density in excess of the opacity level designated in Table 6-I, as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

TABLE6-I: SMOKE STANDARDS

Zone	Opacity level
R-P	20%
O-P	
B-1	
B-2/B-2b/B-2c	
B-3/B-3b/B-3c	
B-4	30%
B-5/B-5b	40%
B-6	
B-7	
Industrial zones	
IS-FBC	20%

6.8.2 Storage of vehicles

A. In all residential zones, all island zones, the R-P zone, and the B-3 zone, only one unregistered motor vehicle may be stored outside for a period not exceeding 30 days.

B. In other mixed-use zones, storage of unregistered motor vehicles for more than 10 days and outdoor storage of used automobile tires shall be prohibited.

6.8.3 Traffic

Development in the I-M, I-Ma and I-Mb zones shall utilize streets classified as arterials by the Maine Department of Transportation to the greatest extent possible.

6.8.4 Waste disposal

A. All solid waste disposal, including materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in fully enclosed, covered containers or receptacles. In all non-residential zones with the exception of the industrial zones, such containers or receptacles shall be within designated, screened areas. Containers or receptacles shall not leak or otherwise permit liquids or solids to escape from the container or be transferred beyond lot boundaries by natural causes or forces. Areas attracting large numbers of insects or vermin are prohibited.

B. Where food processing is permitted, all food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within 48 hours of its generation. All enclosed and exterior food processing waste storage areas shall be cleaned and sanitized on a regular basis.

6.8.5 Vibration

A. In any mixed-use zone, the O-P, and the R-P zones, vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile-supported pier.

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B. In all industrial zones, any use creating earthshaking vibrations, with the exception of airports, shall be controlled in such a manner as
C. vibrograph or similar instrument at the property boundaries.

to prevent transmission beyond lot lines of vibrations causing a displacement of .003 or greater on one inch, as measured by a

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7 DIMENSIONAL STANDARDS

7.1 APPLICABILITY

Construction, alterations, and additions to structures and buildings are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

7.2 RULES OF MEASUREMENT

Building footprint. The lot area contained within the outermost perimeter of the building envelope including cantilevered portions of the building, projections, and porches, decks, and similar attached structures integral to the building and contributing to its mass, but excluding roof overhangs.

Building width. The width of a building at its widest point as measured parallel to the street.

Floor area. The total floor space enclosed by exterior or standard fire walls of a building, exclusive of vent shafts and courts.

Grade, average. The average of finished grades measured at the ground level adjoining all corners of a structure.

Grade, pre-development. Average grade, existing on October 1, 2000, at the corners of the foundation of the proposed structure.

Height. The vertical measurement from average grade, or the pre-development grade on the islands, to the highest point of a structure. For buildings, height shall be measured to the roof beams in flat roofs; to the highest point of the roof beams or the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose the level of the eaves shall be taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

Impervious surface ratio. The proportion of a site covered by impervious surfaces, calculated by dividing the total impervious surface area by the lot area. For the purposes of this measurement, impervious surface shall be as defined by the Maine Department of Environmental Protection.

Landscaped open space ratio. The proportion of lot area covered by landscaped open space, calculated by dividing the total landscaped open space area by the lot area. For the purposes of this measurement, landscaped open space shall not include rooftop gardens.

Lot area. The area of a lot enclosed within the boundary lines of a lot.

Lot coverage. The proportion of lot area covered by building footprint and the footprint of accessory detached structures.

Lot width. The distance measured between side lot lines through that part of the principal building where the lot is narrowest.

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Net land area. The land area arrived at by subtracting from lot area the square footage of the following:

A. Existing water bodies measured by the area between the top of the banks at the normal high-water mark;
B. Wetlands; and
C. Slopes of 25% or greater. Where a slope of 25% or greater was altered to less than 25% within the two years immediately preceding a development proposal, such slope shall also be subtracted from the lot area.

Setback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure, except as otherwise permitted in this code of ordinances. A setback shall be measured from a line parallel to the lot line drawn through the point of a structure nearest to such lot line. This measurement shall be taken at right angles from such parallel line. When measuring setbacks, setbacks shall be interpreted to include setbacks of structures from property lines and setbacks of principal structures from one another. No principal structure shall occupy the minimum setback of another principal structure. Setbacks shall not apply to fences, flagpoles, raised garden beds, and other similar structures. When setbacks are established in relationship to height, the height in stories or feet of that part of the principal structure adjoining a yard shall be used in determining the required setback.

Setback, front. A setback along the front lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between the front lot line and any structure. In the case of lots with frontages on two or more streets, the orientation of the principal entry to the principal building shall prevail. In the case of lots without frontage on a street, the property line that parallels the nearest developed street shall be considered the front.

Setback, rear. A setback along the rear lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between the rear lot line and any structure.

Setback, side. A setback along a side lot line extending from the front lot line to the rear lot line, the width of which shall be the shortest horizontal distance between the side lot line and any structure.

Stepback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure that occurs at a prescribed height above the ground. Stepbacks shall apply to all attached accessory structures, including the minimum necessary housing of elevators, stairways, tanks fans, or other building operating equipment not intended for human occupancy.

Story. That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four feet above the floor does not exceed two-thirds of the floor area of the story immediately below it. A story which exceeds 18 feet in height shall be counted as two stories. A basement shall be counted as a story for the purpose of height measurement where more than

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one-half of its height is above the average level of the adjoining ground.

Street frontage. The distance for which a lot line adjoins a public street, from one lot line intersecting said street to the furthest distant lot line intersecting the same street.

7.3 DIMENSIONAL STANDARDS

Tables 7-A to 7-H shall establish the dimensional standards for each zone.

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TABLE 7-A: RESIDENTIAL ZONE DIMENSIONAL STANDARDS

			R-1	R-2	R-3[2]	R-4	R-5[2]	R-5A[5]	R-6[7]	R-6A[1]
Lot area (min.)	Place of assembly	Governmental	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF			
		Hospital			10 ac.		5 ac.		2 ac.	
		Intermediate or long-term, extended care facility	3 ac.	3 ac.	2 ac.		2 ac.	1.5 ac.	1 ac.[8]	
		Lodging house					9,000 SF			
		Multiplex				9,000 SF	9,000 SF			
		<10,000 SF	1 ac.	1 ac.	1 ac.	15,000 SF	.5 ac.		10,000 SF	
		>10,000 SF	2 ac.	2 ac.	2 ac.	30,000 SF	1 ac.		15,000 SF	
		Post-secondary school		2 ac.			2 ac.			
		Elementary, Middle, and Secondary school	2 ac.	2 ac.	2 ac.	30,000 SF	30,000 SF		30,000 SFc	
		Raising of animals	3 ac.							
		Residential	15,000 SF	10,000 SF	6,500 SF[5]	6,000 SF	6,000 SF[3]	6,000 SF /2 ac. max[6]	2,000 SF	4 ac.
		All other uses	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF		2,000 SF	
Lot Area per Dwelling Unit (min.)			15,000 SF	10,000 SF	6,500 SF	3,000 SF	3,000 SF	1,600 SF	725 SF	
Lot Area per Rooming Unit (min.)							1,000 SF		250 SF	
Lot Area per Multiplex Unit (min.)						3,000 SF for first 3, 6,000 SF thereafter	4,500 SF			
Lot Area per SNILU (min.)						2,400 SF	3,600 SF			
Street Frontage (min.)			75 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	20 ft.	
Lot Width (min.)			100 ft.	80 ft.	65 ft.	60 ft.	60 ft. 90 ft. for multiplex	60 ft.	20 ft.	
Front Setback (min.)			25 ft. Or average depth of adjacent front yards	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	5 ft.	
Rear Setback (min.)			25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	10 ft..	
		Detached Accessory <250 SF	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	
Side Setback (min.)		<1.5 stories to 1.5 stories	12 ft.	12 ft.	8 ft.	10 ft.	8 ft.	10 ft.	5 ft.[9, 10]	<45 ft.: 10 ft.
		2 stories	14 ft.	14 ft.	14 ft.	14 ft.	12 ft.	14 ft.		
		2.5 stories	16 ft.	16 ft.	16 ft.	16 ft.	14 ft.	16 ft.		>45 ft.: 15 ft.
		Detached Accessory <250 SF	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.		
		On Side Street (min.)	20 ft. Or depth of front yard directly abutting the lot.	20 ft.	20 ft.	20 ft.	15 ft.	20 ft.	None	

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TABLE 7-A (CONT.): RESIDENTIAL ZONE DIMENSIONAL STANDARDS

		R-1	R-2	R-3[2]	R-4	R-5[2]	R-5A[5]	R-6	R-6A
Stepbacks (when property line abuts a residential zone)(min.)								10 ft. from side property line and 15 ft. from rear property line[11]	
Structure Height (max.)		35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	45 ft.[12]	65 ft.
	Detached Accessory	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	
Building width (max.)								1- and 2-family: 30 ft.[13]	
								3+-family, 3 stories: 60 ft.[13]	
								3+-family, 4 stories: 45 ft.[13]	
Lot Coverage (max.)		20%	20%	35%	30%	40%	30%	60%	
Landscaped Open Space Ratio (min.)								20	
Width of garage opening on front façade (max.)								9 ft. or 40% of building width, whichever is greater, and in no case more than 20 ft.	

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[1] All R-6 dimensional standards apply in the R-6A unless otherwise indicated.
[2] See separate table for PRUD standards.
[3] Single family homes may be built on small lots in the R-5 under small residential lot dimensional requirements under certain conditions. See separate table for R-5 Small Residential Lot dimensional requirements.
[5] For R-5A, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities, unless noted otherwise in the table above. See PRUD table for PRUD standards.
[6] Applies to 1-, 2-, and 3-family dwellings only.
[7] Alterations to single-family, two-family, and multi-family dwellings in existence as of 6/15/15 shall not result in the creation of any additional dwelling unit of less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic; and shall not result in any existing dwelling unit being reduced in size to less than 1,000 square feet of floor area, exclusive of common areas and storage in basement and attic.
[8] Except for long-term and extended care facilities: 10,000 SF for the first 9 residents plus 750 SF for each additional resident, up to a total of 2 ac.
[9] Except that a side setback in the R-6 zone may be reduced to zero, provided that the cumulative side yards are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.
[10] Subdivisions consisting of horizontally attached dwellings on individual lots are not required to have side yards between such dwellings where a party wall condition will exist. Horizontally attached dwellings located within a single lot shall be required to meet the applicable side setback requirements at the external lot boundaries of the subdivision and internal lot boundaries between such dwellings that are not attached to each other. No minimum lot size width shall be required for individual lots underlying townhouse (horizontally attached) dwelling types. The applicable minimum lot area per dwelling shall apply to each lot.
[11] Does not apply on side streets.
[12] Except as provided under the Fort Sumner Park Height Overlay and Munjoy Hill Conservation Overlay.
[13] Or average of building widths of principal facades within the same block (both sides of the street), except in the case of attached buildings or townhouses, where these building widths apply but for an unlimited run.

TABLE 7-B: PRUD DIMENSIONAL STANDARDS

	R-3	R-5	R-5A[3]
Gross Lot Area (min.)	3 ac.	2 ac.	2 ac.
Net Land Area per Dwelling Unit (min.)	6,500 SF	3,000 SF	1,600 SF[4, 5]
Units/Building (max.)	PRUD < 5 ac.: 2 PRUD > 5 ac.: 6	12	
Average Number of Units/Building (max.)	PRUD > 5 ac.: 5		
Structure Height (max.)	35 ft.	35 ft.	55 ft.
Building Length (max.)	Without garages: 100 ft. With integral garages: 140 ft.	140 ft.	
Length of Accessory Garage Structure (max.)		60 ft.	
Building Setback from External Subdivision Property Lines (min.)	3 or fewer D.U. in building: 25 ft. 4 or more D.U. in building: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.
Distance between detached PRUD Dwelling Units (min.)	16 ft.		
Recreation Open Space Area (min.)[2]	300 SF/D.U.	300 SF/D.U	200 SF/D.U.[4]
Habitable Space Elevation	No habitable space in a PRUD shall be below grade, except basements that are a part of and below above-ground unit		

[2] Recreation open space area shall be designated on the site for recreation purposes. Such recreation areas shall be usable, level graded, dry, accessible and properly drained. At minimum, a contiguous area of 6,000 SF with a minimum dimension of 50 ft. shall be provided. Such recreation areas shall be located at least 25 ft. from dwelling units.
[3] In the R-5A zone, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities unless otherwise noted.
[4] Does not apply to intermediate, extended, or long-term care facilities but does apply to PRUDs, congregate care, and 3+-family buildings.
[5] Minimum land area per intermediate care facility resident: 8,000 SF gross land area for first 35 residents, plus 350 SF for each additional resident.
For PRUD standards in island zones, see Table 7-D.

TABLE 7-C: R-5 SMALL RESIDENTIAL LOT DEVELOPMENT DIMENSIONAL STANDARDS[1]

Lot Area (min.)		5,000 SF
Side Setback (min.)		7 ft.[2]
	Detached Accessory Ground Coverage < 250 SF	5 ft.
	Side Yard on Side Street	10 ft.
Lot Width (min.)		40 ft.
Street Frontage (min.)		40 ft.
Lot Coverage (max.)		50%

[1] Single family homes may be built on small lots in the R-5 under small residential lot development dimensional requirements if the lot is: vacant; or used exclusively for parking; contains structure(s) not used for residential purposes; or is created from a single lot division of a developed lot and results in a lot meeting the small residential lot dimensional requirements with the remaining developed portion meeting the standard dimensional requirements of the R-5 zone.
[2] The width of one side setback may be reduced 1 ft. for every foot that the other side yard is correspondingly increased, but no side yard shall be less than 4 ft. in width.

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TABLE 7-D: ISLAND ZONE DIMENSIONAL STANDARDS

		IR-1	IR-2	IR-3	I-B *Served by Public Water & Sewer*	I-B *Not Served by Public Water & Sewer*
Lot Area (min.)[11]	Bed and Breakfast				5,000 SF for 3 guest rooms plus 5,000 SF/additional room	10,000 SF/guest room
	Campgrounds	10 ac.		5,000 SF/campsite, but not less than 10 ac.		
	Hotels			10,000 SF/guest room	5,000 SF for 3 guest rooms plus 5,000 SF/additional room	10,000 SF/guest room
	Lodging House		10,000 SF/lodging room	10,000 SF/lodging room	5,000 SF for 3 lodging rooms, plus 5,000 SF/additional room	10,000 SF/lodging room
	Place of Assembly >10,000 SF	30,000 SF	30,000 SF	35,000 SF[7]	20,000 SF[7]	
	Place of Assembly <10,000 SF	15,000 SF	15,000 SF			
	PRUD/PUD (gross lot area)	5 ac.[3]	5 ac.[3]	20 ac.		
	Raising of Animals	3 ac.				
	Residential	40,000 SF[1,2]	20,000 SF[2]	42,500 SF[6]	20,000 SF	20,000 SF
	Restaurant			35,000 SF	10,000 SF	20,000 SF
	Retail				None	20,000 SF
	Seasonal Camps	10 ac.		35,000 SF		
	Schools/Educational Facilities	40,000 SF	20,000 SF		20,000 SF	
	All other uses			35,000 SF	20,000 SF	
Lot Area per Dwelling Unit (min.)		None[4]	None[4]	42,500 SF[8]		
Street Frontage (min.)		100 ft.[5]	70 ft.[5]	70 ft.[9]	40 ft.	
Lot Width (min.)		100 ft.[5]	80 ft.[5]	80 ft.	40 ft.	
Front Setback (min.)		30 ft.[5]	25 ft. or the average of adjacent front yards[5]	25 ft.[10]	20 ft. or avg. depth of adjacent front yards	
Rear Setback (min.)		30 ft.[5]	25 ft.[5]	25 ft.[10]	10 ft.	
Rear Setback (min.)	Detached Accessory Ground Coverage < 250 SF	10 ft.[5]	10 ft.[5]	10 ft.[10]		

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TABLE 7-D (CONT.): ISLAND ZONE DIMENSIONAL STANDARDS

		IR-1	IR-2	IR-3	I-B *Served by Public Water & Sewer*	I-B *Not Served by Public Water & Sewer*
Side Setback (min.)		20 ft.[5]	20 ft.[5,]	20 ft. [10]	10 ft.	
	Detached Accessory Ground Coverage < 250 SF	15 ft.[5]	15 ft. [5]	15 ft. [10]	10 ft.	
	On Side Street	20 ft.[5]	20 ft.[5,]	20 ft. [10]	10 ft.	
Structure Height (max.)		35 ft.	35 ft.; For Little Diamond Island: 27 ft.	35 ft.	35 ft.	
	Accessory Detached	18 ft.	18 ft.	18 ft.	18 ft.	
	Lot Coverage (max.)	20%	20%	20%	50%	

[1] 60,000 SF if not served by public water.
[2] For PRUDs, minimum lot area shall be reduced up to 50% provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.
[3] PRUDs shall consist of detached dwellings.
[4] Except 1 dwelling unit per 40,000 SF of net land area for PRUDs in IR-1 and 20,000 SF of net land area in for PRUDs IR-2.
[5] For PRUDS, standard shall be reduced up to 50%.
[6] Except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of 35,000 SF per dwelling unit, provided that the Planning Board finds that the development meets the following criteria: a. The minimum lot size per dwelling unit shall be reduced by 5,000 SF if a public off-island water source provides 75% of the water needs of the development. b. The minimum lot size per dwelling unit shall be reduced by 2,500 SF if the development provides appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of all private motor vehicles exclusive of construction and common service vehicles.
[7] For private clubs and fraternal organizations only.
[8] The maximum density for a PUD shall be based on the applicable minimum lot size for each use as measured in terms of net area. For purposes of calculating density, if separately described lots exceed the applicable minimum lot size, the excess area shall not be credited toward the minimum lot size for any other use.
[9] Except where the Planning Board finds that the development has an adequate street network to permit access for pedestrians and emergency service vehicles.
[10] When adjoining any external property boundary.
[11] In the IR-3, the minimum lot area for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two or more residential uses contained in a building, the minimum lot area shall be the larger of the applicable minimum lot sizes.

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TABLE 7-E: MIXED-USE ZONE DIMENSIONAL STANDARDS

		B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Lot Area (min.)	**School**	20,000 SF			10,000 SF			
	Place of Assembly	10,000 SF						
Lot Area per Dwelling Unit (min.)	**On-Peninsula**	435 SF	435 SF					
	Off-Peninsula	1,000 SF	1,000 SF, except 435 SF if active street frontage[3]					
Street Frontage (min.)		20 ft.	20 ft.	15 ft.	60 ft.			
Front Setback (from all street frontages) (max.)		10 ft., or the average front yard depth of the nearest developed lots if < 10 ft.	10 ft.	5 ft.	20 ft.	None, except 10 ft. in B-5b	10 ft.[7]	10 ft.
Rear Setback (min.)	**Principal**	None, except 10 ft. if abutting a residential zone	10 ft.		20 ft.			
	Accessory	None, except 5 ft. if abutting a residential zone	5 ft.		7 ft.			
Side Setback (min.)	**Principal**	None, except 5 ft. if abutting residential zone	None		10 ft.			
	Accessory		5 ft.					
Stepbacks (above 35 ft. when property line abuts a residential zone) (min.)		Side: 10 ft.	Side: 5 ft.					
		Rear: 15 ft.	Rear: 15 ft.					
Length of Building Wall at Maximum Setback (min.)							70% of street frontage or 25% of building perimeter[8]	75% of street frontage or 25% of building perimeter
Structure Height (max.)		On-Peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor and residential above[1] Off-Peninsula: 35 ft.	45 ft., except: 50 ft. if first floor is occupied by a commercial use. 65 ft. in B-2 and B-2c zones on lots >5 ac. if required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft.	See Downtown Height Overlay Map	65 ft.	65 ft., except in B-5b along W. Commercial St. south of Danforth St.[5] and 120 ft. on Thompson's Point[6]	65 ft. or See B6 Building Height Overlay Map	See Bayside Height Overlay Map

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TABLE 7-E (CONT.): MIXED-USE ZONE DIMENSIONAL STANDARDS

	B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Floor Area (max.)	Non-residential uses on first floor: 10,000 SF total[2] Restaurants (public area): 2,000 SF Clinics: 3,000 SF	Laboratory and research facilities, warehousing, and printing & publishing: 10,000 SF	None, except 15,000 SF for each floor above 125 ft.			Laboratory and research facilities and warehousing: 15,000 SF Exhibition halls: 20,000 SF	
Lot coverage (max.)			25% for portions of structures exceeding 125 ft. in height[4]				
Impervious Surface Ratio (max.)	90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%		80%			

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[1] The commercial first floor uses shall utilize at least 75 % of the first-floor frontage along Congress Street and shall have an average depth of at least 20 ft.
[2] Uses in structures which existed prior to the date of enactment of the B-1 zone are exempt.
[3] A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable: the primary building façade shall be within 10 ft. feet of the front lot line; there shall be no parking on the lot within 35 ft. of the front lot line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals and the remaining minimum 75% shall have an average depth of a minimum of 20 ft. for residential or commercial uses; and all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.
[4] Except that no floor area shall be required to be less than 10,000 SF.
[5] For parcels of land in the B-5b zone located along W. Commercial St. south of Danforth St.: West of the projection of the centerline of the Fletcher St. right-of-way, the maximum building height shall be 45 ft.; and, east of the projection of the centerline of the Fletcher St. right-of-way and west of the projection of the centerline of the Emery St. right-of-way, the maximum building height shall be 55 ft. A projection of the centerline of a street is defined by extending the centerline of the referenced street right-of-way along its most southerly block to the centerline of W. Commercial St. Furthermore, notwithstanding other sections of this ordinance, no rooftop structure located between the projections of the centerlines of Emery St. and Fletcher St. shall exceed a height of 62 ft as measured from average grade of the building.
[6] Thompson's Point is defined as the contiguous parcels of upland occupying the peninsula bounded on the east by Route 295, on the north by the Mountain Division Rail right-of-way, and on the south and west by the Fore River and its associated wetlands. Nearby lands accessed from Hobart and Osgood Streets are not included.
[7] Does not apply to parking garages and public transportation facilities... Notwithstanding required setbacks, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension shall build to the key building envelopes shown on the B6 Building Height Overlay & Building Envelopes map. Buildings located in the easternmost key building envelope shall not have a maximum front setback and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, be set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right-of-way.
[8] For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 ft.

TABLE 7-F: OFFICE PARK & RESIDENCE PROFESSIONAL ZONE DIMENSIONAL STANDARDS

		O-P	R-P[1]
Lot Area (min.)		1.5 ac.	6,000 SF
Street Frontage (min.)		100 ft.	60 ft.
Lot Width (min.)		100 ft.	60 ft.
Front Setback (min.)		50 ft.	20 ft., or avg. depth of adjacent front yards[2]
Rear Setback (min.)	**Principal**	50 ft	20 ft.
	Accessory		7 ft.
Side Setback (min.)	**Principal**	25 ft., except 40 ft. where side yard abuts residential zone or use	1 story: 10 ft.
			2 stories: 12 ft.
			3+ stories: 14 ft.
	Accessory		7 ft.
	On Side Street		1-2 stories: 15 ft.
			3+ stories: 18 ft.
Structure Height (max.)		55 ft., except 75 ft., including rooftop appurtenances, on lots within office park subdivisions which are > 50 ac. if each minimum setback is increased by 1 ft. for each 1 ft. of height above 55 ft.	45 ft.
Floor Area (max)		High-tech manufacturing: 20,000 SF	
Impervious Surface Ratio (max.)		60%	70%
Pavement Setback (min.)		15 ft.	

[1] Residential uses shall meet the requirements of the nearest residential zone.
[2] The front yard of a lot existing as of April 4, 1988, which lot is less than 100 ft. deep, need not be deeper than 10% of the depth of the lot.

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TABLE 7-G: INDUSTRIAL & AIRPORT ZONE DIMENSIONAL STANDARDS

	I-L/I-Lb		I-M/I-Ma/I-Mb		I-H/I-Hb		A-B
Lot Size (min.)							20,000 SF
Street Frontage (min.)	60 ft.		60 ft.		60 ft.		50 ft.[1]
Lot Width (min.)							50 ft.
Front Setback (min.)	I-L:	25 ft.	I-M/I-Ma:	1 ft. for each ft. of building height	I-H:	25 ft.	None, except 20 ft. if property has frontage on Westbrook St.
	I-Lb:	None	I-Mb:	None	I-Hb:	None	
Rear Setback (min.)	I-L:	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma:	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H:	35 ft.	None., except 50 ft. if abutting residential zone or use[2]
	I-Lb:	None, except 25 ft. when abutting residential zone	I-Mb:	None, except 25 ft. when abutting residential zone	I-Hb:		
Side Setback (min.)	I-L:	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma:	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H:	35 ft.	None, except 25 ft. if abutting residential zone or use[2]
	I-Lb:	None, except 25 ft. when abutting residential zone	I-Mb:	None, except 25 ft. when abutting residential zone	I-Hb:		
Structure Height (max.)	45 ft.		I-M/I-Mb:	75 ft.	75 ft.		75 ft., except 45 ft. within 100 ft. of a residential zone
			I-Ma:	45 ft.			
Impervious Surface Ratio (max.)	I-L:	65%	I-M/I-Ma:	75%	I-H:	85%	70%[1]
	I-Lb:	100%	I-Mb:	100%	I-Hb:	100%	
Pavement Setback(min.)	15 ft.		10 ft.		10 ft.		

[1] Except for lots in airport restricted access areas, which shall not be subject to this provision.
[2] No structure may extend beyond the building line established for any runway or taxiway. If provided, rear and side yards must not be less than 5 ft. in width.
[3] Shall not apply to entrance drives.

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TABLE 7-H: OPEN SPACE ZONE DIMENSIONAL STANDARDS

		R-OS[1]	RPZ
Lot Area (min.)			20,000 SF
Lot Frontage on Street or Shoreline (min.)			100 ft.
Lot Width (min.)			100 ft.
Shoreline Setback (min.)			75 ft.[3]
Front Setback (min.)		25 ft.	25 ft.
Rear Setback (min.)		25 ft.	75 ft.[4]
Side Setback (min.)	**Principal**	12 ft.	15 ft.
	Accessory		5 ft.
	On Side Street		20 ft.
Structure Height (max.)	**Principal**	35 ft., except 45 ft. if more than 1,000 ft. from a shoreland zone.	25 ft.
	Accessory		15 ft.
Floor Area (max.)			10% of lot area[5]
Impervious Surface Ratio (max.)		25%[2]	

[1] Public open spaces less than 2 ac. and on the peninsula are not required to meet the R-OS dimensional standards.
[2] Except 75% for sports complexes and 100% for sewage treatment facilities.
[3] Does not apply to permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishing gear.
[4] Does not apply to a boathouse or storehouse for fishing gear.
[5] For principal building or group of buildings. Individual buildings shall be no greater than 10,000 SF in size.

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7.4.1 Additional dimensional standards

A. **Corner clearance.** No shrub, wall, fence, sign, or pile of material higher than 3 1/2 feet above the lowest elevation at the curbline shall be permitted on a corner lot within the area of a triangle formed by a line connecting the curblines of the intersecting streets at points 25 feet from the corner, unless said obstruction is reviewed by the Public Works Authority and found not to be a traffic or public safety hazard.

B. **Fences.** In residential zones, no wall or fence within 15 feet of the street shall be more than four feet in height.

C. **Swimming pools.** Outdoor swimming pools as accessory uses shall be subject to the following dimensional standards:

1. No swimming pool shall be sited in the front yard.
2. No part of any swimming pool shall be located closer than ten feet from the principal structure, nor closer than ten feet from side or rear lot lines.

7.5 SPACE AND BULK EXCEPTIONS

7.5.1 Height

A. **Buildings in the Bayside Gateway Urban Height District A.** Buildings in the Bayside Gateway Urban Height District A as depicted on the Bayside Height Overlay Map may be greater than 125 feet but no more than 165 feet in height provided that:

1. Such buildings shall be reviewed by the Planning Board as conditional uses under Section 6.5 of this Land Use Code.
2. Such buildings shall be sited to minimize encroachment into designated view

corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as referenced in the Bayside Height Study Map and the B-7 design standards; and

3. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than a ratio of building height to width of adjacent streets, trails and open spaces equivalent to 1.5 to 1, except that the Planning Board may modify this requirement for master development plans or major site plans provided that the following conditions are met:
   a. Each building exceeding 125 feet shall contain at least 20 dwelling units per building.
   b. Building wall stepback requirement along public street frontage for buildings with frontage on one street: Minimum 10 foot stepback between third and fifth stories and a minimum 10 foot stepback between the 125 and 145 foot level.
   c. Building wall stepback requirement along public street frontage for buildings with frontage on multiple streets: Above paragraph (b) requirement along longest building façade street wall, and of the remaining street walls the same requirement as paragraph (b) or a 15 foot wide streetscape improvements area containing a public sidewalk, landscaping and other streetscape improvements within the abutting street right-of-way and/or private property along the remaining street frontage. A building with frontage on four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.
   d. The Planning Board shall have the authority to waive one or more of the required stepbacks provided the following is met:
      i. The depth of the building lot precludes a building having an average minimum lot depth dimension of 170 feet; or
      ii. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level;
   e. In the event such a waiver is granted the Planning Board may require the applicant to mitigate the impacts of the waiver by requiring the following:

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i. Along all public street frontages and public open spaces, all buildings (regardless of height) shall maintain a pedestrian scale through the use of building elements at the street level as listed in this standard along no less than 60% of the building's horizontal length.

ii. Along all public street frontages and public open space for the building(s) over 125 feet, a canopy, awning or similar permanent architectural feature to provide pedestrian protection and wind mitigation shall be provided within the first 35 feet of height.

iii. In order to preserve view corridors and to maintain a varied skyline, all buildings above 125 feet within a single development site should be separated to avoid the appearance of a tall, solid block massing. In accordance with this policy, development sites of 500 feet or greater as measured parallel to Marginal Way, the aggregate building façade widths above 85 feet shall not exceed 50% of the total development site distance parallel to Marginal Way. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the 50% building requirement in aggregate for all such buildings over 125 feet in height in the Master Development Plan, provided that view corridors are retained as each phase is built.

iv. The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.

4. Such buildings provide publicly accessible and usable open space, meeting the B-7 urban design standards, of at least 10% of the building lot area; and

5. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the 10% open space requirement. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development plan shall be entitled to meet the 10% percent open space requirement of in aggregate for all such buildings over 125 feet in height, provided that the open space shall not fall below 10% percent at any built phase or combination of built phases; and

6. Such development shall comply with all other requirements and design standards as required by this article.

B. Ground-mounted solar energy systems. Where the total height of the support structure plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall

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be 20 feet above the ground as measured from the base of the support.

C. **Public art.** Except in residential zones, public art that has been individually accepted by the City Council for inclusion within the public art collection, pursuant to Article 20, shall not be subject to the height limitations within the underlying zone.

D. **Rooftop appurtenances.** Rooftop appurtenances for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, deck railings, skylights, steeples, roof signs, flag poles, chimneys, smokestacks, radio or television masts, telecommunications equipment, water tanks, or silos may be erected above the height limitations herein prescribed.

E. **Roof-mounted solar energy systems.** Photovoltaic panels and thermal water heating panels, whether parallel or angled to a pitched or gable roof, may be erected above the height limitation for principal or accessory buildings as follows:

1. In all residential zones: Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to five feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.
2. In B-4 and Industrial zones: Up to four feet above the maximum height allowed in the underlying zone. In the case of flat roofs, there are no height limits.
3. In all other zones: Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to eight feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.

F. **Telecommunication towers.** Ground-mounted telecommunication towers may be erected above the height limitations within the underlying zone.

G. **Wind energy systems.** Wind energy systems may be erected above the height limitation for principal buildings within the underlying zone.

7.5.2 Length of building wall at maximum setback

A. **In the B-6 zone.** Buildings located in the easternmost key building envelope shall not be subject to the building wall requirement.

B. **In the B-7 zone.** Additions to and relocations of designated historic structures or structures determined to be eligible under Article 16 shall be exempt from the building wall requirement.

7.5.3 Lot area

A. **Institutional uses in residential zones.** No minimum lot area shall be required for institutional uses in residential uses in the following cases:

1. Uses existing as of June 1, 1983;
2. Expansion on to land abutting the lot on which the principal use is located;
3. Expansion onto land other than the lot on which the principal use is located to the

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extent that such expansion consists of the reuse of surface parking area or nonresidential structures existing and in nonresidential use as of June 1, 1983, provided that such reuse is contained within the lot of record of such structure or parking area as of June 1, 1983; or

4. Expansion onto land other than the lot on which the principal use is located of no more than 15% of the total contiguous land area of the existing use, or one acre, whichever is less, within any five-year period.

B. **Residential lots not served by public sewers.** A lot in an unsewered residential district shall meet the provisions of the state Minimum Lot Size Law, 12 M.R.S.A. Section 4807 et seq., or the applicable minimum lot area, whichever is larger, except that the minimum lot size may be reduced on the islands in Casco Bay as provided in subsection (C).

C. **In island zones.** In issuing any permit for new development in island zones:

1. The Building or Planning Authority shall require that any lot located in the IR-1 zone shall be at least 40,000 SF in area and in the IR-2, IR-3, and I-B zones be at least 20,000 SF in area when the lot is to be serviced by a subsurface wastewater disposal system, except those lots which are located in a subdivision approved by the Planning Board after June 8, 1968 and excluding Peaks Island.
2. Excluding Peaks Island from this subsection (2), any property owner whose lot does not meet the minimum lot size requirements outlined in (1) above may, for purposes of this subsection only, merge two or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:
   a. No structure shall be permitted on this property;
   b. No parking or storage of vehicles or machinery shall be permitted on this property at any time;
   c. No area of this property shall be paved.
   d. No exterior storage for commercial use shall be permitted on this property; and
   e. The easement deed shall reference the lot which is benefited by this

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conservation easement. No conservation easement shall be used to benefit more than one lot.

3. Conservation easements shall only be granted over lots which conform either to the provisions of Section 4.3.1 or to the minimum lot sizes set forth in Table 7-D. Conservation easements shall not be granted over any lot which is encumbered by any other easement which prohibits all construction on that lot. A conservation easement may also name as a holder or grant a third-party right of enforcement to a nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property. Nothing in this subsection shall be construed to allow an owner of a currently existing and developed lot to convey or permit a portion of that lot to be used to fulfill the requirements of this subsection if such conveyance would render the existing lot nonconforming under the terms of this Land Use Code. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of Section 4.3.1.
4. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the replacement system shall meet the applicable state requirements. The land area requirements in subsection (1) of this section shall not apply to such a replacement system.
3. For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

7.5.4 Lot coverage

A. **Lot surrounded by streets or alleys.** Where a lot containing ten thousand 10,000 square feet or less is completely surrounded by rights-of-way, the lot coverage may be increased 20%.

7.5.5 Setbacks

A. **Setbacks in residential and R-P zones.** In any residential zone and the R-P zone, the width of one side setback may be reduced one foot for every foot that the other side setback is correspondingly increased, but no side setback shall be less than the minimum required for a one-story building.

B. **Setbacks in the O-P zone.** The Planning Board may reduce by up to 50 % the minimum setback if another yard within the lot is correspondingly increased so that the combined minimum yards on all four sides equal 150 ft. If two or more buildings are located on one lot, only the requirements of the front, rear or side setbacks that adjoin any external property boundary must be met, provided a sufficient fire line is provided.

C. **Projections in required setback areas.** Any setback may be occupied by a one-story entrance porch not enclosed, with or without a

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roof, if the area of the porch does not exceed 50 SF nor the projection from the building exceed six feet. A basement bulkhead of similar size, but not more than 24 inches in height, is also permitted. A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required setback a distance of not more than two feet.

D. **Pavement setbacks.** Pavement setbacks shall not apply to entrance drives.

E. **Corner lot setbacks.** In case a principal residential structure has its front yard upon the long side of a corner lot, the rear setback may be reduced to a depth not less than the required side setback on the lot, provided that the aggregate of the widths of both sides and depths of front and rear yards is not less than the similar aggregate of required dimensions of all setbacks if the front yard were faced on the short side of the lot.

F. **Maximum front setback exceptions.**

1. Maximum front setbacks shall not apply to utility substations and secondary building components.
2. In the B-2/B-2b/B-2c zones:
   a. Building additions do not have to meet maximum front setback requirements.
   b. The Planning Board or Planning Authority may approve a different front setback for irregularly shaped lots or lots with frontage greater than 40 ft. in width provided the front setback is met to the maximum extent practicable.
   c. If a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no maximum setback is required.
   d. If existing structures are within 20 ft. of the street or meet the front setback maximum and the remainder of the lot has less than 40 ft. of frontage, then no maximum setback is required.
   e. The Planning Board or Planning Authority may waive the maximum front setback for utility substations and alternative energy installations.

   Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by the City arborist, and a combination of landscaping no less than four ft. deep, ornamental brick or stone walls, or ornamental fencing.
3. In the B-3/B-3b/B-3c zones: The Planning Board may require or approve an additional setback to comply with the design standards of Article 13 and the *City of Portland Design Manual.*
4. In the B-6 zone: For lots fronting on more than one street in the B-6 zone, the front setback can be increased more than 10 feet if all of the following conditions are met:
   a. The increased setback occurs at the intersection of the streets;
   b. The increased setback area is the primary pedestrian entrance to the building;

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c. 75 % of the total building wall length facing the abutting streets shall be setback no greater than 10 feet. All building wall segments which make up the increased setback shall be included in the calculation of the total building wall length; and

d. For new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two streets with the highest traffic volume.

5. In the B-7 zone.

a. Parking structures, public transportation facilities, utility substations, secondary building components such as truck loading docks, mechanical equipment enclosures, and refrigeration units are not subject to the maximum front setbacks.

b. The maximum front setback may be increased to more than 10 feet if all of the following conditions met:

i. 75% of the total building wall length of an individual building facing the abutting streets is setback no greater than 10 feet; and

ii. The increased setback area shall include a functional and accessible public pedestrian entrance into the building that faces the street, unless a public pedestrian entrance already exists along the same street; and

iii. The increased setback shall not be used for surface parking.

c. For a corner lot having frontage on two streets, the maximum setback shall apply to both streets. In the case of a lot having frontage on two or more street corners, newly constructed buildings shall be sited at street corners and meet the maximum setback requirement prior to other freestanding buildings being constructed on the lot which shall also meet the maximum street setback. In the case of a corner lot having frontage on a third street (but not a corner) the maximum setback need not apply to the third street.

d. In the case of a lot having frontage on two streets but not on a corner, the maximum setback shall apply to all streets but in the case of a lot having frontage on three streets but not on a corner, the maximum setback shall apply to only two streets. For purposes of this subsection only, the first building on a lot shall meet the maximum setback on at least one street with future buildings required to meet the maximum setback on the remaining street(s).

e. In the case of a lot in which a minimum 75% of the total lot frontage has a building within ten feet of the street, other buildings may be located on the lot more than 10 feet from the street. In the case of a lot having

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frontage on Marginal Way and I-295, the property edge along I-295 shall not be considered street frontage.

f. The maximum building setback shall not apply to vertical building expansions in the following cases:
   i. The upper floors of a building in which the lower floors meet the maximum setback and the minimum height requirement.
   ii. The building existed as of March 9, 2005 and meets the minimum height requirement.
   iii. A building not meeting the maximum street setback and the minimum height requirement may vertically expand a total of one floor from March 9, 2005.
   iv. In the case of a building in which at least 50% of the building wall(s) abutting street(s) is within 20 ft. of the street.
   v. Additions to parking garages existing as of March 9, 2005.

g. Additions to buildings existing as of March 9, 2005 that are nonconforming as to the maximum setback need not conform to the maximum street setback provided the cumulative building footprint since March 9, 2005 does not exceed 50% of the existing building footprint. Such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of March 9, 2005 and to vertical expansions as provided for in subsection (f).

h. Lots having frontage on streets in which the curve of the street frontage precludes a rectangular-shaped building along the street line, for purposes of calculating the setback, the average setback of the building from the street line may be used, but in no event shall the average setback along the length of the building edge exceed an average setback of 15 ft. nor shall the maximum setback exceed 20 ft. The increased setback shall not be used for surface parking, vehicular loading or vehicular circulation.

i. Additions to and relocations of designated historic structures or structures determined to be eligible by the historic preservation committee shall be exempt from the maximum setback requirement.

G. Minimum setback exceptions for lots of record.

1. In the case of a lot of record existing as of June 5, 1957 in the R-1, R-2, R-3, R-4, R-5, R-5A, and R-6 zones and less than 100 ft. deep, the front setback need not be deeper than 20% of the depth of the lot.
2. In the case of a lot of record existing as of June 5, 1957 in a residential zone, the required side setback for principal structures may be reduced in order to provide a buildable width of up to 24 feet, but in no case shall the resulting side yards

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be less than the following:

R-1, R-2	12 ft.
R-3. R-5	8 ft.
R-4, R-5A	10 ft.

H. **Setbacks for wind energy systems.**

1. Wind energy systems and associated facilities shall meet all setbacks for principal structures for the zone in which the system is located. Where setbacks vary, the largest setback shall apply. All parts of the wind energy system, including associated facilities and guy wires, shall be at least 10 feet from the property line (except where connecting to the grid), any utility line (in any direction) or other easement/right-of-way. The setback from utility lines, easements and right-of-way lines may be reduced where the owner/benefitted party provides written permission.
2. Roof-mounted wind energy systems shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than four times the height of the system as measured from the roof surface at the point of attachment. For systems in and adjacent to waterfront zones, business zones (except B-1 and I-B), office park zone, industrial zones, island transfer station zone, and ROS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the height of the system, where the system is incorporated into the architecture of the building and a certified engineer confirms that it would not present and public safety risk. The setback shall be measured to the center of the wind generator base.
3. Freestanding wind energy systems with a total height of less than 85 feet shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than 1.1 times the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than twice the total height of the system. The setback distance shall be measured to the center of wind generator base.
4. Freestanding wind energy systems with a total height of greater than 85 feet shall be set back away from property boundaries and street right-of-way lines by a distance equal to or greater than twice the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than four times the total height of the system.
5. For freestanding wind energy systems in and adjacent to waterfront zones, business zones (except B-1 and I-B), office park zone, industrial zones, island transfer station zone, and ROS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the total height of the system where determined that the minimum required setback would be contrary to the public interest.

I. **Setback exceptions for purposes of exterior egress.** Notwithstanding any other provision of

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this Code of Ordinances, the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life safety codes, provided that the owner demonstrates to the building authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair;
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other affected facades of the building and plans or drawings of the proposed egress stairs; and
3. The stairway and associated landings are designed to occupy the least amount of area required to meet life safety requirement.

7.5.6 Stepbacks

A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required stepback a distance of not more than two feet.

7.5.7 Street frontage

In the IR-1 and IR-2 zones, a lot of record as described in Subsection 4.3.1 and lots created after July 15, 1985, which are not part of a subdivision need not provide street frontage if access is available by means of a permanent easement or right-of-way which existed as of July 15, 1985. Such easement or right-of-way shall have a minimum width of 16 feet and a minimum travel width of eight feet except that an easement or right-of-way providing access for three or more lots or providing the only means of access to a parcel or parcels of three acres or more, shall meet the construction requirements of Chapter 25, Article III of the City of Portland Code of Ordinances. In the IR-1 zone, such easement or right-of-way shall conform to the requirements contained within the City of Portland Technical Manual. In the IR-2 zone, such easement or right-of-way shall be a minimum of 32 feet wide. Such easement or right-of-way shall be sufficient to permit municipal service delivery.

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Att. 4

Portland Maine Yes. Google's good here.

Helen Donaldson <hcd@portlandmaine.gov>

Follow up on ReCODE Planning Board Workshop

Ben Walter <bwalter@cwsarch.com> Fri, Nov 8, 2019 at 4:10 PM
To: "Christine Grimando (cdg@portlandmaine.gov)" <cdg@portlandmaine.gov>, "Helen (Nell) Donaldson (hcd@portlandmaine.gov)" <hcd@portlandmaine.gov>, Grooms Matthew <mgrooms@portlandmaine.gov>

Hi Christine, Nell and Matt,

First, I want to thank you for your great work moving Portland's ReCode process forward – I REALLY love the direction you are taking and can envision the long term benefits that await the city. I know it's a huge effort and your thoughtful and conscientious approach will prove to be a great benefit for decades to come.

I remember, when I was about half my age in the early 90s, having a conversation with Joe Grey about how challenging the zoning ordinance was but also how complicated the fixes would be. He said don't hold your breath.

I believe that we have all learned over the past 60 years that uniformity isn't always a benefit to supporting natural, prosperous and organic communities. On the other hand, I grew up in a very large city (of now 6M residents now) that had NO zoning and can clearly understand the disaster that resulted in.

Successful zoning can be analogized to being a good parent where you do your best to steer you kids down a healthy path to posture them for success but only so far as to afford them the opportunity to make good decisions and freedom to evolve into who they really are. This is where the rigidity of old school zoning (Portland's included) has, in many areas, failed. Fortunately that will soon be behind us.

Like most New England cities and towns, Portland has many unique historical development patterns that don't fit into any one mold, and that should be recognized and supported.

I wanted to reiterate a few of the current ordinance's zoning challenges I mentioned last nights; specifically the many case where the zoning language doesn't support the best qualities of the historical built environment.

A few (of many) specific issues include:

1. It's hard to understand how Portland zone lines were determined. I'm guessing it was a little haphazard, or politically motivated. For example, There are areas zoned R-3 (single family) that have a large number of low density multifamily structures (not permitted in the zone) and should have been zoned R-5 (single family and multi-unit). This condition is rampant as far as I can tell.

2. Most apparent, there are substantial portions of the R-3 and R5 where the large majority of properties were made non-conforming with respect to setbacks (others requirements) when the zoning ordinance was adopted. In the majority cases, and as an example, small 50' wide x 100' deep lots, more or less, that were developed around the turn of the 19th century don't conform with the more suburban nature of the R-3 and R-5 dimensional requirements. On these lots the predominant pattern was to build a house up to essentially a zero side lot-line on one site of the lot (maybe 2'+/- to accommodate for eave overhangs) and put the drive way on the other side of the lot. This pattern allowed for a ~32' wide by ~40' long (or more) house. If these were built today the 32' wide house would be required to be 24' wide to meet the

required 8’ side yard setbacks and considerably out of form character with the neighborhood. Many houses were developed most of the way or close to the rear property line, without a back yard, but many were not. The adopted zoning makes horizontal extensions provisions on these property both out of character with the neighborhood and mostly non-functional. Updated zoning should support reinforcing the historic fabric of the neighborhood.

3. There are many other issues like this that need to be reviewed. I’m sure the list of considerations will be exhausting, but it will be beneficial.

You have your work cut out for you. I’d be happy to talk through any of these issues with you if that would be helpful.

Secondly, separately and selfishly, as I mentioned at last night’s meeting, and in full discloser because I’m stuck in one of these binds, a quick start would be to simply allow the horizontal extension of existing non-conforming side yard setbacks up to the rear-setback line provided a) the neighborhood fabric supports the extension (it’s very prevalent in my neighborhood and all of my adjacent neighbors’ houses extend close to or beyond what I’m proposing); and b) that the extension continues to retain the existing fire and maintenance access. In my case I would already have about 4 ½ feet to my property line plus the neighbor’s driveway. These seem to be the only two factors to consider.

Also, I am leery about filing for an Interpretation, Hardship or Practical Difficulty appeal if the odds seem favorable that this change might be coming in either by either a near-term separate zoning language change or a few years down the road as part of the overall re-zoning document. If it seems it will be part of your re-zoning proposal, or at least that the Planning Department supports this type of change, I may be willing to not file the appeals, take my chances and build the future addition’s platform as a temporary ‘deck’ (capable of supporting the future addition) for now and wait it out. Either way its more complicated than I had hoped for, but I will need to make that decision soon. I would like to hear your thoughts.

Thanks for your help.

Ben

Benedict B. Walter, AIA

President | Licensed Architect ME NH GA

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Portland Maine Yes. Google's good here.

Helen Donaldson <hcd@portlandmaine.gov>

Fwd: 12/17/2019-Recode - Dimensional/R6 Design Manual All ready Going to Planning Board When NOT addressed in RECODE subcommittee?

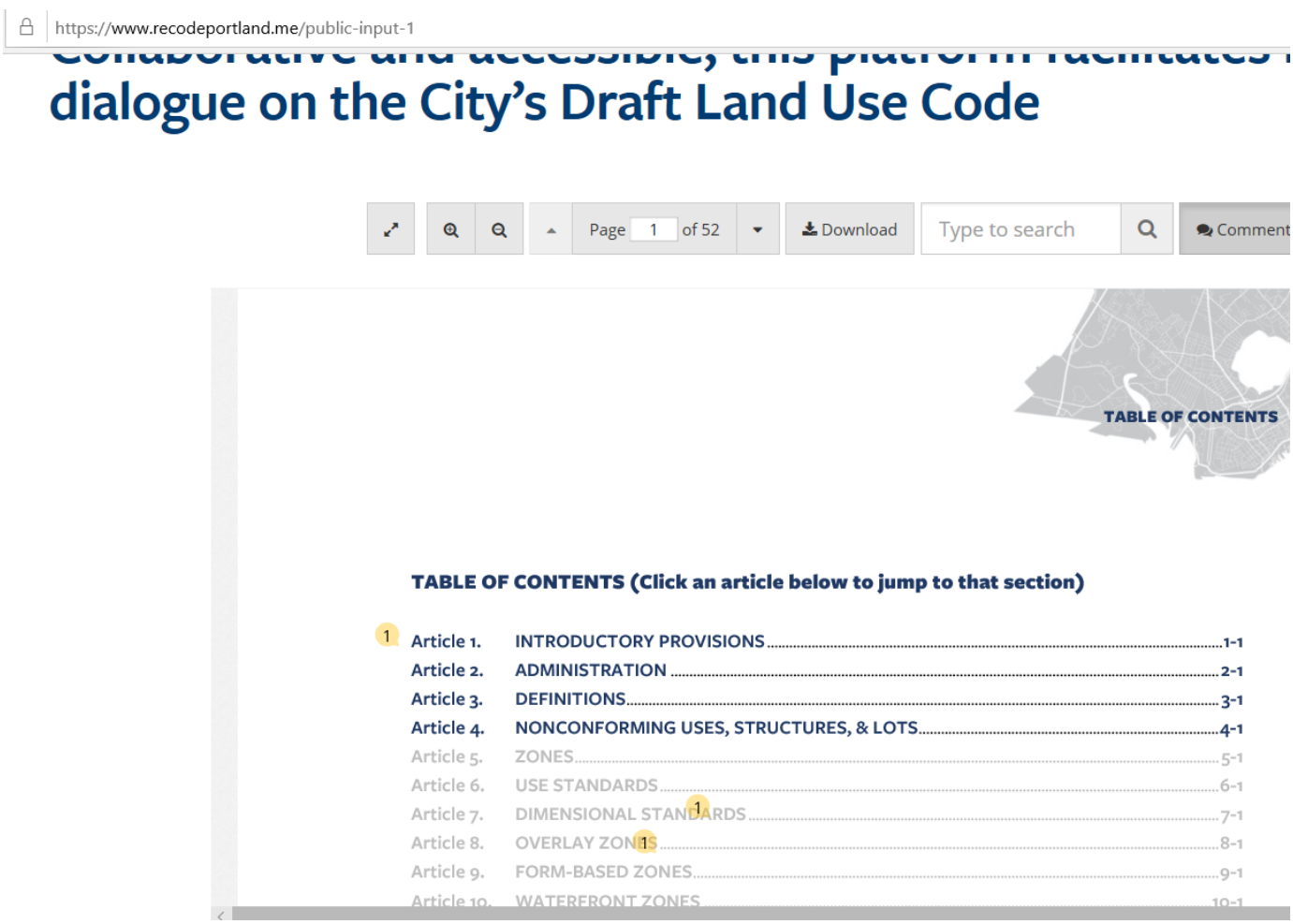
1 message

jmy <jmy@portlandmaine.gov> Fri, Dec 13, 2019 at 9:40 AM
To: Christine Grimando <cdg@portlandmaine.gov>, Caitlin Cameron <ccameron@portlandmaine.gov>, Helen Donaldson <hcd@portlandmaine.gov>

I will save this to the R-6 folder/public comment

On Thursday, December 12, 2019 at 3:32:55 PM UTC-5, Karen Snyder wrote:

> Dear Planning Board Members,
>
> It has been brought to my attention that next week Recode recommendations for dimensional standards and R-6 Design Manual will be brought to the Planning Board next week on 12/17/2019 when it has not even been addressed in any Recode subcommittee meetings.
>
> From what I can understand, the last Recode subcommittee meeting held was 10/28/019 and it addressed ADUs, reducing parking requirements for future developments, and definitions. In addition, there was also a presentation by a developer from Atlanta, Eric Kronberg, who proposed to eliminate single family zoning and to eliminate parking for cheaper housing in which he did not provide any substantiated facts on this. The next day, Eric Kronberg, then presented at the 1st YIMBY session on 10/29/2019.
>
> The last Recode Subcommittee agenda of 10/28/2019 is below:
> https://portlandme.civicclerk.com/web/UserControls/DocPreview.aspx?aoid=624
>
> Therefore, I am quite surprised that there was a City notice yesterday 12/11/2019 to say that Recode dimensional standard recommendations and R6 Design Standards will be presented at a Planning Board Workshop next week on Tuesday, 12/17/2019.
>
> I am especially surprised since the following has NOT occurred.
>
> 1) There was no Recode subcommittee that even addressed the proposed dimensional standards or R-6 Design Standards. However, there is no Planning Board workshop agenda yet of the proposed Recode changes being presented next week but we only have tomorrow to make public comment for next week workshop to put on record. This means we have less than 1/2 day to see these proposed recommendations and comment on them .
>
> 2) The City Planning Department did not contact any neighborhood organization to address this very important issues which affect long term residents every day.
>
> 3) I sent my concerns to Recode subcommittee on the R-6 Design standards 3 times and each time I was rebuffed, or ignored, or was told that it will be addressed in the future... but it never has been addressed.
>
> 4) The City feedback link shown below implies that the first 4 articles are being addressed OR input is available to be entered for the first 4 articles which makes since these articles have been addressed in a Recode subcommittee meeting.



Consequently, why haven't the dimensional standards and R-6 Design Manual issues follow proper due process like the other Recode issues and have been addressed in Recode Subcommittee meeting rather than going directly to Planning Board workshop?

It would be advised to have a Recode subcommittee meet to address the proposed dimensional standards and R-6 Design manual changes rather than be rushed to Planning Board without proper democratic due process in which the proposed changes in a Recode subcommittee.

Regards,
Karen Snyder
Munjoy Hill Property Owner

Memorandum
Planning and Urban Development Department
Planning Division

To: Sean Dundon, Chair and Members of the Planning Board
From: Caitlin Cameron, Urban Designer
Date: December 13, 2019
Re: City of Portland Design Manual: R-6 Design Principles & Standards
Meeting Date: December 17, 2019

I. INTRODUCTION

This first Planning Board workshop regarding revisions to the *R-6 Design Principles & Standards* is focused on the compatibility of new construction with the existing fabric of the R-6 neighborhoods. In addition to Staff evaluating design outcomes, as well as receiving robust feedback from residents and developers about the standards currently in place, the Planning Board indicated to staff earlier this year that they'd appreciate evaluation of potential changes to the R-6 portions of the City's Design Manual. This, in combination with the Munjoy Hill Neighborhood Conservation Overlay and the pending Munjoy Hill Historic District, represent years of combined effort to guide contemporary new development in these neighborhoods to be compatible with the context of existing residential neighborhoods of Munjoy Hill and others in the R-6 zone. The proposed revisions to the design standards seek to maintain that policy direction and improve the built outcomes towards community goals.

The Planning staff have several goals with these revisions to be responsive to the types of projects we are seeing and the challenges we have had in interpreting the standards:

- broaden the standards to better apply to all types of projects in the R-6 (single-family, two-family, multi-family, major additions/alterations) where previously, the standards were written to apply to small building types
- revise standards that are prescriptive in a way that are overly specific, restrictive, or redundant
- revise the standards to be more flexible and therefore remove the need, in most cases, for the Alternative Design Review

These revisions are being presented in tandem with ReCode policy documents, including some proposals around Site Plan application definitions and R-6 dimensional requirements.

II. BACKGROUND

The design standards for the R-6 zone were created in 2004 to cover small infill projects – at the time, the R-6 zone had a special provision for small infill on lots of 10,000 sf or less. From the beginning, these design standards were intended to encourage designs compatible with the traditional, vernacular context of buildings. It is clear from content of the R-6 design standards and the level of detail and prescription in them that there was a desire for new construction to maintain the existing character (built character includes scale, form, relationship to the street, material, façade composition).

Subsequently, the standards were revised in 2007 to create the "Alternative Design Review" as it became apparent that many new, contemporary projects struggled to meet each and every prescriptive design standard. The Alternative Design Review process was added in response to feedback from the Planning Board, the Housing Committee, and input from stakeholders such as the Portland Society of Architects (now Portland Society for Architecture) which formed a committee to draft design standards. Almost every project that is reviewed under the current *R-6 Infill Development Design Principles & Standards* falls into the category of Alternative Design Review, which reveals that the current standards are not aligned with or representative of the contemporary architecture and development landscape. If Alternative Design Review forms nearly the entirety of all reviews, it is no longer functioning as an alternative, but the default.

It is also important to note that the standards were originally written with the intention of being applied to small-scale residential projects – one and two-family, possibly triple-decker buildings. It is difficult to apply these standards to mid-scale multi-family buildings because the character they try to emulate is not always applicable to that building scale and type.

The recent increase in development activity in R-6 neighborhoods creates the need to reexamine the design review process and standards and their interpretation. During discussion and adoption of the Munjoy Hill Neighborhood Conservation Overlay in 2017, Planning Board members requested staff consider changes to the *R-6 Design Principles & Standards*, especially with the goal of removing the Alternative Design Review process. At that time, there was also, and continues to be, substantial community discussion around the characteristics and scale of new development compared with the existing built fabric – the general consensus has been a desire to maintain the existing neighborhood character and look at how planning tools such as zoning, historic districts, and design review can impact that goal.

In the context of revisions to the R-6 zone, the increase in development activity in the R-6 zones, and desire to create more housing in Portland, the *R-6 Design Principles & Standards* need to consider all types of projects being built within this zone. In addition to the several years of community discussions, staff have 6+ years experience applying the R-6 design standards and find there are ways to improve the clarity and interpretation of these standards.

The decision to revise the design standards comes from all of these contributing factors:

- the goal of improving the clarity and ability to interpret the standards
- to create standards that can be applied to all building types found in this zone
- to remove the need, through improvements to the standards, for an Alternative Design Review which had become default rather than alternative
- and to strengthen the ability to use the standards to create contextual built outcomes that better reflect the characteristics of the R-6 neighborhoods

III. PROCESS

The proposed design revisions are the product of internal staff conversations based on 6+ years of applying the existing standards, incorporating several years of public and stakeholder comments and discussion during past R-6 and Munjoy Hill public meetings, and with discussion and input from a working group of design professionals who have experience applying the standards either to applications or as regulators:

- Maggie Stanley, architect, member of the Portland Planning Board
- Lauren Reiter, architect
- Julia Tate, architect, member of the Portland Historic Preservation Board

Planning staff so far received five public comments or inquiries regarding these amendments from stakeholders from East Bayside and Munjoy Hill. The comments expressed concern about public involvement in the revision process and allowing adequate time to review and contribute to the revisions. Some comments suggested the revisions are minimal or do not reflect the recent concerns of the Munjoy Hill community with regards to building scale and character.
The Planning Board workshop process is a public opportunity to make available, present, and hear feedback on these revisions. Staff would like to hear whether the Board feels more workshops or alternative public process is necessary to vet these changes.

Staff intended to advance these revisions in advance of the overhaul of the *City of Portland Design Manual* in order to be responsive to the community's concerns over new development in the R-6 zones – this was viewed as a discreet but urgent section.

IV. PROPOSED AMENDMENTS TO THE DESIGN MANUAL

The revisions are proposed to meet the goals and objectives as outlined above. This sections will summarize those amendments.

The principle statements found in the R-6 design standards are time-honored design principles that are universally applicable, especially in the case of design review for a context of established, traditional neighborhoods. The original standards were written based on observation of the predominant characteristics in the R-6 zones with the intention of having new buildings emulate that traditional architecture.

Staff found that the organization and categories within the design principles and standards to still be relevant and well-organized. Therefore, the categories and many of the principle statements remain the same. The majority of revisions are to the standards. Revisions fall into a couple categories:

- Remove overly prescriptive based on traditional building patterns, some of which are no longer relevant to contemporary living patterns and building techniques, introduction of building systems and car parking, and innovation in materials, technology, techniques. – where some standards had quantifiable standards, these are now references and suggested parameters rather than a strict requirement.
- Clarification of intent
- Make more explicit predominant characteristics to be observed and emulated
- Incorporate and distinguish between multi-family standards and those for smaller buildings
- Removing or consolidating standards where there was some redundancy or replication

Summary of revisions:

I. Purpose – reiteration of the impact of new development within existing context and the desire to create compatible infill

II. Applicability
   - clarify what projects are subject to these standards
   - Add reference to "multi-family" projects and how the standards apply
   - Add reference to "major additions/alterations" and how the standards apply

III. Context
   - Created this section to strengthen the explanation of "neighborhood" and what is meant by context
   - language compiled from other sections of the document
   - mostly unchanged in content and is expanded to provide clarity on how context and building typology is defined and considered

IV. Submittal Requirements
   - added some submittal items to this section to make clear what is expected of applicant and in order for staff to receive the appropriate materials in order to conduct review

V. Design Principles and Standards

a. Overall Context
   - Mostly unchanged
   - Addition of "multi-family" explanation

b. Massing

- Strengthening and clarification how massing is defined
- Additional standard for mulit-family buildings where massing and scale are especially relevant to compatibility with smaller scale context; Historically, the review and planning authority has determined that larger scale buildings can be compatible with massing variation.
- Clarification of what roof forms to reference, distinction between primary and subsidiary roofs
- Removal of specific pitch requirements
- New standard regarding rooftop appurtenances

c. Orientation to the Street

- Added description of predominant patterns
- Removed quantitative requirements to allow flexibility

d. Proportion and Scale

- Clarify the intent for this section
- Remove the strict quantitative standards to provide flexibility
- Expand the "porches" section to apply to similar building elements

e. Balance – no changes

f. Articulation

- Some revised language that provides examples rather than strict requirements
- Remove the redundant language regarding Main Entries, articulation which appear elsewhere in the standards

g. Materials

- Re-titled standards to differentiate the goals of these standards
- Addition of standards related to building type and use of contemporary materials as secondary/tertiary materials

V. ALTERNATIVE DESIGN REVIEW AND HISTORIC PRESERVATION

Currently, almost every Site Plan application subject to design review in the R-6 zone must go through "Alternative Design Review" because the existing design standards are prescriptive and make it difficult for contemporary buildings to meet each and every standard. The intention with the proposed revisions is to remove the need for the "Alternative Design Review" while keeping the goals and objectives of the R-6 principles. Staff propose to remove the "Alternative Design Review" process for all projects except those eligible as described in the *Munjoy Hill Neighborhood Conservation Overlay*.

Currently review and approval of Alternative Design Review is determined by the review authority (as outlined in Sec. 14-523. Required Approvals and Applicability); generally, single- and two- family projects are reviewed and approved by Planning staff, and multi-family projects are reviewed and approved by the Planning Board with review comments and recommendations provided by Planning staff. The "Alternative Design Review" for projects within the *Munjoy Hill Neighborhood Conservation Overlay* are reviewed in a public meeting format with the Historic Preservation Board as the

review authority and the R-6 Development Principles & Standards as the applicable criteria. That process will continue to function as described in the MHNCO ordinance, until there's been adequate opportunity to discuss the MHNCO as a whole. There may be no need for this provision for the MHNCO going forward, but staff are proposing to leave this section intact in the Design Manual for the time being so as not to preempt a broader discussion of MHNCO.

Without the Alternative Design Review, projects must meet all principle and standards to be considered compliant with the R-6 Design Principles & Standards – that is a principal reason for creating some flexibility with the proposed revisions.

R-6 proposals within historic districts are subject to the Historic Preservation Design Manual and would be reviewed by Historic Preservation staff or board.

R-6 proposals within 100' of historic districts or landmarks are subject to the R-6 Development Principles & Standards with an advisory review from Historic Preservation. This may include staff or board review depending on the proposal.

VI. COMPREHENSIVE PLAN

There are several goals and strategies in *Portland's Plan 2030* with implications for design policy and residential buildings:

- The Historic Resources Policy Guide supports investment in existing buildings, as well as compatible infill construction: *Stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development.*

- The Housing Policy Guide supports a diverse and increased housing stock, recognizing this will necessarily involve new construction as well as investment in existing buildings: *Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.*

- The Housing Policy Guide also encourages quality, sustainable design: *Encourage quality, sustainable design in new housing development.*

- The Environment Policy Guide has much to say about building to high energy standards and encouraging alternative technologies for both new construction and rehabilitation of existing structures: *Encourage landowners and developers to incorporate sustainable design, materials, and practices in rehabilitation of historic resources and in new construction.*

- The plan also recognizes the environmental, health, economic, and civic importance of dense, walkable neighborhoods like those on Munjoy Hill in multiple sections, including Future Land Use, Environment, Housing (including the *Density by Design* callout, pg 49) and Vision. For instance, the Environment Policy Chapter states: *Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.*

Portland's Plan recognizes that a healthy, authentic city includes walkable, complete neighborhoods, and that these will include some combination of new construction, renovation of existing buildings, and where fitting, preservation. The R-6 Design Principles & Standards seek to guide new residential construction in a way that responds to the goals of neighborhood compatibility while accommodating housing growth. The objective of these amendments is to provide standards that are clearer and easier to interpret towards design of buildings that help the R-6 neighborhoods retain their key characteristics while they grows and change.

VII. NEXT STEPS

Planning Board and public feedback and direction is welcome to further refine and enhance the amendments going forward. \Comments and direction from the December 17 Planning Board workshop will be incorporated into the Design Manual amendments potentially with input from the working group.

Staff would like direction on whether subsequent workshops or other public meetings should be held or whether a public hearing is appropriate to move forward.

VIII. ATTACHMENTS

1. City of Portland Design Manual Amendments – (k) Residential Development Located in the R-6 Zone
2. City of Portland Design Manual Amendments – Appendix 7: R-6 Design Principles & Standards
3. Public Comment received through 12/13/19

(k) ~~SMALL~~ **RESIDENTIAL ~~LOT~~ DEVELOPMENT LOCATED IN THE R-6 ZONE**

(1) **STANDARDS.** ~~Small~~ New residential ~~lot~~ development, major additions and alterations (as defined in Appendix 7) located in the R-6 zone ~~on lots of ten thousand (10,000) square feet or less~~ shall provide a high degree of architectural quality and compatibility with the surrounding neighborhood as demonstrated by compliance with the principles and standards of the R-6 Infill Development Principles and Standards, promulgated by the Planning Board and contained in Appendix 7 of this manual. ~~Any proposal required to obtain a certificate of appropriateness under Portland's historic preservation ordinance is exempt from the R-6 design review standard.~~

Enacted 04-13-04
Revisions Approved 02-23-7
Revisions Approved 05-08-18
Revisions Approved ??-??-20

~~Design Certification Program~~ R-6 ~~Infill Development~~ Design Principles & Standards

I. PURPOSE

All developers, no matter how small their project, have a responsibility beyond simply meeting the needs of their end users. They have a public responsibility to add to and enhance the neighborhoods in which their projects are built. The impact of a new project is amplified within dense, compact, urban neighborhoods.

New residential construction within Portland's compact R-6 zones should relate to the predominant character defining features of the neighborhood. ~~The design of new development is critical, particularly elements such as the orientation and placement of a building on a site; relationship to the street; and mass, form and materials.~~ The intent of the R-6 design principles and standards is ~~*Design Certification Program* aims~~ to ensure that infill housing development ~~makes a positive contribution to the City's neighborhoods. The intent is to ensure that infill housing~~ is compatible with the existing neighborhood character, and meets a high standard of building design, while allowing for diversity of design.

II. APPLICABILITY

New residential construction and major addition and alteration p~~P~~rojects subject to site plan review will be reviewed for consistency with *R-6 ~~Infill Development~~ Design Principles and Standards*. Although the R-6 zoning regulation governs dimensional standards for development, building envelopes that meet the zoning requirements may not automatically meet the design standards – both standards must be met. These principles and standards are interdependent and should be considered holistically. The applicant must demonstrate that a proposal is consistent with the Design Principles. The standards are time-honored ways of achieving the Principles. ~~The City's Design Manual contains examples of buildings that are consistent with the aims of the Design Certification Program.~~

Unless otherwise indicated, the R-6 Design Principles and Standards shall apply to the front façade and those portions of the building that are readily visible from the public way. On corner properties or where the architecture has a visual impact upon multiple adjacent public spaces, both public facades will be evaluated with equal care.

*MULTI-FAMILY refers to buildings of three or more residential units. Multi-family standards within the *R-6 Design Principles and Standards* shall be applied to buildings of three or more residential units in the R-6 zone and are in addition to the R-6 standards. Where there is conflict between the standards, Multi-family standards prevail as applied to multi-family buildings.

III. CONTEXT

Unless otherwise indicated, the R-6 Design Principles and Standards shall define "Neighborhood" as the context of buildings within a two-~~-~~block radius of the site. Special attention shall be given to the existing buildings on both sides of the street within the block of the proposed site. If the building is proposed on a corner lot, then buildings on the adjoining block shall also be considered. The Planning Authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site. The Planning Authority may determine the neighborhood to be greater than a two-block radius, due to unique characteristics of a given site. In such case, the Planning Authority shall determine the scope of the neighborhood.

Each infill project will have a unique context of surrounding structures and sites with some strong, unifying characteristics, and some that are subtle and less obvious. The more definite and easily discernable traits within an established neighborhood should serve as a basis for a design solution, which can reinforce the predominant characteristics of the surrounding development patterns. Special attention shall be given to the existing streetscape and buildings on both side of the street within the block of the proposed site that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. Where there is less discernable predominant characteristics, design review will look to buildings of similar use, scale, and type within the context as reference for traditional characteristics to reference and relate to.

Building typology and use are also important factors – different standards apply depending on building type (Single or Two-family, Multi-family, Addition). The design review shall refer to buildings in the neighborhood of comparable size, scale, and use to that which is being proposed when determining the predominant characteristics to relate to. The Planning Authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site.

IV~~I~~. SUBMITTAL REQUIREMENTS

In order to illustrate the building design, ~~T~~the applicant shall submit in accordance with final application requirements of the Site Plan Ordinance (Sec. 14-525):

- A~~a~~ site plan ~~and~~
- B~~b~~uilding elevations with materials labeled
- Floor plans ~~in accordance with final application requirements of the Site Plan Ordinance (Sec. 14-525).~~
- Representation of the materials – samples, renderings, illustrations, etc.

In order to illustrate the proposal in relationship to the neighborhood context ~~for a proposal~~, the applicant shall submit:

- A plan showing the proposed building footprint in relation to the neighborhood buildings
- Renderings, street elevations, photomontages, photographs or other visual tools to depict the proposal~~buildings~~ within its context~~a two block radius of the site in order to~~

~~determine the building elements that contribute to and are compatible with the predominant character defining architectural features of the neighborhood.~~

To describe the project and how it meets the design standards, the applicant shall submit:

- A brief written narrative
- Diagrams, illustrations, or similar if applicable

~~Special attention shall be given to the existing buildings on both sides of the street within the block of the proposed site. If the building is proposed on a corner lot, then depictions of buildings on the adjoining block shall also be required.~~

~~The Planning Authority may request that consideration be made of buildings in the neighborhood that are comparable in size, scale and use to that which is being proposed, or that consideration be made of the characteristics of buildings which were originally designed for a similar use to that which is proposed. The Planning Authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site. The Planning Authority may determine the neighborhood to be greater than a two block radius, due to unique characteristics of a given site. In such case, the Planning Authority shall determine the scope of the neighborhood.~~

~~Samples of the proposed exterior materials may be requested by the Planning Authority.~~

V. DESIGN PRINCIPLES AND STANDARDS

PRINCIPLE A ***Overall Context***

A building design shall contribute to and be compatible with the predominant character-defining architectural features of the neighborhood.

Explanatory Note: The central idea behind good design in an established neighborhood is to reinforce positive features of the surrounding area, which provide its unique identity. To a large degree, the scale, mass, orientation, and articulation of an infill building should be compatible with that of the buildings that surround it.

Compatibility refers to the recognition of patterns and characteristics which exist in a given setting and the responsiveness of a new design with respect to these established patterns and characteristics. While there is no one specific solution for a given setting, there are a number of building characteristics which can be used to gauge visual compatibility of new residential construction in an existing neighborhood. These characteristics include design elements such as:

1. Scale and Form: height, massing, proportion of principal facades, roof shapes and scale of the architectural features of the structure.

2. Composition of Principal Facades: proportion of facades; orientation of openings; ratio of solids to openings; rhythm of fenestration; entrance porches and other projections; and relations of materials, texture and color.

3. Relationship to the Street: walls of continuity; rhythm of spacing and structures on streets; and orientation of principal elevations and entrances to the street.

~~Each infill project will have a unique context of surrounding structures and sites with some strong, unifying characteristics, and some that are subtle and less obvious. The more definite and easily discernable traits within an established neighborhood should serve as a basis for a design solution, which can reinforce the positive characteristics of the surrounding development patterns. On corner properties, where the architecture has a greater visual impact upon adjacent public spaces, both public facades will be evaluated with equal care.~~

STANDARD A-1 **Scale and Form** Relate the scale and form of the new building or addition to those found in residential buildings within the neighborhood in a way that is complimentary and respectful to the established patterns. ~~a two-block radius of the site,~~ that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. ~~Special attention shall be given to the existing building forms on both sides of the street within the block of the proposed site.~~

*MULTI-FAMILY: Multi-family buildings are not expected to replicate the scale and form of single or two-family buildings; the scale and form shall relate to buildings of a similar type within the neighborhood. However, the building design shall respect the scale and form of its surrounding context and mitigate scale impacts on smaller, neighboring buildings through scale, massing, and form decisions.

STANDARD A-2 **Composition of Principal Facades** Relate the composition of the new building façade, including rhythm, size, orientation and proportion of window and door openings, to the facades of residential buildings within the neighborhood~~a two-block radius of the site~~ that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. ~~Special attention shall be given to the existing facades on both side of the street within the block of the proposed site.~~

*MULTI-FAMILY: Reference the façade composition of multi-family buildings of a similar type and scale within the neighborhood for this standard.

STANDARD A-3 **Relationship to the Street** Respect the rhythm, spacing, and orientation of residential structures along the~~a~~ street ~~within a two-block radius of the site~~ that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. ~~Special attention shall be given to the existing streetscape on both side of the street within the block of the proposed site~~.

*MULTI-FAMILY: Although a proposed multi-family building may be larger in scale than the existing fabric, it must still respect the rhythm, spacing, and orientation of the residential structures along the street where there is an established pattern – this especially relates to the location of driveways and structured parking. Where there is no clear or consistent pattern, the proposed building should maintain a similar relationship to the street as the neighboring buildings.

PRINCIPLE B ***Massing***

The massing of the building reflects and reinforces the traditional building character of the neighborhood through a well-composed form, shape, and volume.

Explanatory Note: Massing is a significant factor that contributes to the character of a building. The building's massing (as defined by its bulk, size, physical volume, scale, footprint, shape and form) should be harmonious with the massing of existing buildings in a two-block radius. The massing of a building can be defined as the overall geometry (length, width, and height) of its perceived form. The overall height of the form (actual and perceived) as well as the geometry of its roof is of particular importance in defining the massing of a building.

STANDARD B-1 **Massing** The building's massing (as defined by its bulk, size, physical volume, scale, shape and form) should be harmonious with the massing of existing buildings of the same type in the neighborhood a two block radius. Special attention shall be given to the existing building massing on both sides of the street within the block of the proposed site. R-6 neighborhoods are typically defined by simple massing and forms.
*MULTI-FAMILY: Multi-family buildings are often larger in scale than traditional, existing buildings. In order to relate the new building design to the neighborhood buildings, the massing shall reference the scale, proportion, and form of existing buildings of a similar type. This may mean that the overall massing is varied to create massing components of a scale and proportion that relates to the existing buildings in context. Review shall include how the building footprint relates to the surrounding neighborhood.

STANDARD B -2 **Roof Forms** Roof forms shall refer to the architectural forms found within buildings of the same type/scale within the neighborhood a two-block radius of the site that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. Special attention shall be given to the existing roof forms on both side of the street within the block of the proposed site. R-6 neighborhoods are typically defined by simple roof forms. Additions and alterations are typically introduced as subsidiary to the main roof form by placing away from the public right-of-way and by being of a height and scale clearly subsidiary to the main roof.
*MULTI-FAMILY: Multi-family buildings are not expected to use the roof forms found in single and two-family buildings. However, roof forms and proportions shall refer to those found within the neighborhood in buildings of the same type. Roof forms shall also consider and mitigate scale impacts on the streetscape and neighboring buildings.

STANDARD B -3 **Main Roofs and Subsidiary Roofs**
The building shall have a clear main roof form. Subsidiary roof forms and dormers shall be clearly subordinate to the main form in size, space and number. Where a building has multiple rooflines (e.g., main roof, dormer roof, porch roof, etc.) there shall not be more that two roof pitches or outlines overall.

STANDARD B-4 **Rooftop Appurtenances** Rooftop appurtenances should be recessive and limited in number and shall be incorporated into or deferential to the main roof form. These elements shall compatible with the neighborhood in number, placement, height, and treatment.

STANDARD B-54 **Roof Pitch** Gable roofs shall be symmetrical with a pitch similar to what is found in context (typically ~~of~~ between 7:12 and 12:12). Hip roofs with a shallow pitch and flat roofs shall have a pronounced cornice line~~cornice of at least 12 inches in width~~. The slope of the roof may be either parallel or perpendicular to the street. Monopitch (shed) roofs are allowed when designed to use simple forms that are contextually appropriate.~~only if they are attached to the wall of the main building~~. ~~No mono pitch roofs shall be less than 7:12, except for porch roofs.~~ There is no minimum pitch for porch roofs.

STANDARD B-65 **Massing Variation**~~**Facade Articulation**~~ Provide variety in the massing by incorporating at least two ~~or more~~ of the following architectural elements. Such features shall be applied to the front façade and those portions of the building that are readily visible from the public way.

1. Gables or dormers.
2. Balconies.
3. Recessed entries.
4. Covered porches, covered entries or stoops.
5. Bay windows. In the case of horizontally attached dwelling units, at least one-half of the ground floor units shall have a bay window to receive credit as a design feature.

*MULTI-FAMILY: Multi-family buildings with building footprints larger than those found in the context are further required to vary the overall massing to create massing components that relate to the scale, forms, and proportions of the existing neighborhood buildings.

STANDARD B-~~6~~7 **Garages** Garages and structured parking should be visually and physically subordinate and recessive to the principal façade and main building form. Attached and detached garages are allowed provided that the street-facing façade of the garage is recessed behind the façade of the main structure so as to be clearly subordinate~~by a minimum of four feet~~. However, if the garage is integrated into the building form, the garage door may be included into the front façade of the dwelling providing that there are at least one story of living space over the garage. ~~In this instance, the garage door width may be no more than 40% of the width of the building's overall façade width, except that no garage door need be reduced to less than 9 feet in width. Standard C-2 is not required if there is no living space on the ground level.~~

PRINCIPLE C Orientation to the Street

The building's façade shall reinforce a sense of the public realm of the sidewalk while providing a sense of transition into the private realm of the home.

Explanatory Note: An important component of the neighborhood's character is the relation of dwellings to the sidewalk and the street. Design of dwellings can enhance the pedestrian friendliness and sociability of the streetscape while protecting the privacy of the residents' internal home life. Vernacular buildings in the R-6 context typically include the characteristic of approachability.

STANDARD C-1 **Entrances** Emphasize and orient the main entrance to the street. The main entrance of the structure shall either face the street or be located on the side and be clearly visible from and directly accessible to the principal street frontage. ~~articulated through the use of architectural detailing and massing features such as a porch, stoop, portico, arcade, recessed entry, covered entry, trim or be located on the side and be accessed by a covered porch that extends to the front of the building, at the primary street frontage.~~

STANDARD C-2 **Visual Privacy** Ensure the visual privacy of occupants of dwellings through design strategies relevant to the neighborhood. These design strategies could include~~such means as~~ vertical separation (such as placing the window sill height at least 48" above the adjoining sidewalk grade; providing the finished floor elevation of a residence a minimum of 24" above sidewalk elevation; placing living space on upper floors), through front yard setback and landscape buffers, or through incorporating transition spaces like porches along the front side of the building façade design; or other measures.

STANDARD C-3 **Transition Spaces** Create a transition space between the street and the ~~front door~~main entrance with the use of elements relevant to the neighborhood (such ~~features~~ as porches, stoops, ~~porticos, arcades,~~ recessed entries, covered entries, ~~trim,~~ sidewalk gardens ~~or similar elements~~).

PRINCIPLE D ***Proportion and Scale within Façade Composition***

Building proportions must be harmonious and individual building elements shall be human scaled.

Explanatory Note: Throughout the history of architecture certain proportions have become known as classical proportions which have endured as aesthetically pleasing regardless of the style of architecture or the culture of origin (such as simple or rational proportions of 1:1, 2:1, 3:2, 4:3, etc. or irrational proportions of square root of 2 and the golden ratio). Scale has to do with the size of the architectural components in relation to the overall building size~~, and also in relation to the predominant character defining architectural features of the neighborhood.~~.

STANDARD D-1 **Windows** The majority of windows shall be ~~rectangular and vertically~~ proportioned to relate to those proportions found within the neighborhood~~.~~ (t~~T~~he use of classical proportions is encouraged). Windows in the R6 neighborhood context are traditionally rectangular and vertically proportioned. Special accent windows may be ~~circular, square or regular polygons~~introduced with limited use where justified by building program or façade composition. ~~Doorways, windows and other openings in the façade (fenestrations) shall have a proportional relationship to the overall massing of the building.~~

STANDARD D-2 **Fenestration** Doorways, windows and other openings (fenestration) shall be scaled appropriately to the overall massing of the building. The area of fenestration of the front façade (and for corner lots, both street-facing facades), the solid-to-void ratio and relationship shall be comparable to that found ~~at least 12% of the total facade area~~ on facades of buildings of the same type in the context. ~~Appropriately scaled windows or other building openings shall be included on all sides of a building.~~

STANDARD D-3 **Building Elements**~~**Porches** When porches are attached to the front facade, [or for porches that are required as an open space amenity under Section 14-139(f)] the porches shall extend along a horizontal line at least 20% of the front façade. Porches and balconies must have a minimum depth of 6 feet and a minimum square footage of 48 square feet. The depth may be reduced to 5 feet provided that the square footage is increased to 60 square feet.~~ Individual building elements (such as porches, balconies, stoops, circulation towers, or similar) shall be scaled appropriately for the overall façade while also creating functional space. Such elements should not dominate the façade and should reflect proportions, scales, and relationships and placement found in the neighborhood.

~~1. For porches and balconies that are required as open space amenities under Section 14-139(f), a porch or deck may have entries to two or more units provided that the required dimensions and square footage allocations are met.~~

PRINCIPLE E Balance

The building's façade elements must create a sense of balance by employing local or overall symmetry and by appropriate alignment of building forms, features and elements.

Explanatory Note: Balance refers to the composition of façade elements. Symmetry refers to the balanced distribution of equivalent forms and spaces about a common line (axis) or point (center). Overall symmetry refers to arrangements around an axis line that bisects the building façade equally. Local symmetry refers to arrangements around an axis line that focuses on a particular building element (e.g., a porch or bay window). A balanced façade composition generally employs overall or local symmetry. Alignment refers to the position of building elements with each other and with the building form as determined by scale, mass, roofline, slopes, etc.

STANDARD E-1 **Window and Door Height** The majority of window~~'s~~ and door~~'s~~ head heights shall align along a common horizontal datum line.

STANDARD E-2: **Window and Door Alignment** The majority of windows shall stack so that centerlines of windows are in vertical alignment.

STANDARD E-3: **Symmetricality** Primary window compositions (the relationship of two or more windows) shall be arranged symmetrically around the building façade's centerline (overall symmetry) or around another discernable vertical axis line.

PRINCIPLE F Articulation

The design of the building is articulated to create a visually interesting and well~~-~~composed residential façade.

Explanatory Note: Articulation refers to the manner in which the shapes, volumes, architectural elements and materials of a building's surface are differentiated yet work together.

A well-composed building articulation adds visual interest and individual identity to a home while maintaining an overall composition.

STANDARD F-1 **Articulation** Buildings shall provide surface articulation by employing ~~such~~ features found in the neighborhood (such as eaves/rakes/overhanging rooflines, pronounced cornice lines, offsets to the façade planes, balconies and railings, dimensional trim, window reveals, or similar elements) appropriate to the style, scale, and type of ~~the~~ building. Trim and details shall be designed and detailed consistently on the facades visible from the public right of way.

STANDARD F-2 **Window Types** Window patterns shall be composed of no more than two window types and sizes except where there is a design justification for alternate window forms. R-6 neighborhoods are typically defined by a limited number of window types and sizes, typically two types and sizes.

STANDARD F-3 **Visual Cohesion** Excessive variations in ~~siding material~~facade design (including window type, pattern, material type, material placement) shall not be allowed if such changes disrupt the visual cohesion of the façade or differs significantly from the predominant character of the neighborhood. ~~Materials shall be arranged so that the visually heavier material, such as masonry or material resembling masonry, is installed below lighter material, such as wood cladding.~~

STANDARD F-4 **Delineation between Floors** Buildings shall delineate to some degree the boundary between ~~each~~ floors of the structure through such features as belt courses, cornice lines, porch roofs, material variation, window alignment~~head trim~~, or similar architectural features.

STANDARD F-5: **Porches, Balconies, etc.** Porches, decks, balconies, stoops and entryways shall be architecturally integrated into the overall design of the building in a manner that compliments its massing, material, and details while providing articulation and visual interest to the facade. Multilevel porches and balconies on front facades shall not obscure the architectural features of the façade. ~~Use of rail/baluster systems with appropriate openings between rails, stepping back balconies from the front plane of the building face, or other appropriate design features shall be employed to achieve this standard.~~

STANDARD F-6: **Main Entries** Main entries shall be emphasized and shall be integrated architecturally into the design of the building, through the use of detailing relevant to the context (such as special materials, side lights, trim, canopy, and/or lighting) and massing features relevant to the context (such as a porch, stoop, recessed entry, or covered entry) ~~using such features as porch or stoop forms, porticos, recessed entries, trim or a combination of such features,~~ so that the entry is ~~oriented to~~ clearly discernable from the street.

~~STANDARD F-8: **Articulation** Provide articulation to the building by incorporating the following architectural elements. Such features shall be on all façades facing and adjacent to the street.~~

~~1. Eaves and rakes shall have a minimum projection of 6 inches.~~

~~2. All exterior façade trim such as that used for windows, doors, corner boards and other trim, shall have a minimum width of 4 inches except for buildings with masonry exteriors.~~

~~3. If there are off sets in building faces or roof forms, the off sets shall be a minimum of 12 inches.~~

~~4. Pronounced and decorative cornices.~~

PRINCIPLE G Materials

Building facades shall u~~stiliz~~e appropriate building materials that are harmonious with the character defining materials and architectural features of the neighborhood.

STANDARD G-1 **Material~~s~~ Selection** Use materials and treatments for the exterior walls (including foundation walls) and roofing that are harmonious with the neighborhood in scale, texture, character or finish. R-6 neighborhoods are typically defined by simple material palettes using fine-grain materials such as clapboard, brick, and occasionally shingle or other masonry types. ~~those in buildings within a two-block radius of the site that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood.~~ Special attention shall be given to the existing building~~s forms~~ on both sides of the street within the block of the proposed site.

STANDARD G-2 **Material Placement and Façade Design** The ~~selection~~placement of façade materials shall be consistent with the façade design and appropriate to their nature. For example, brick facing should not appear to be thin layers on the façade, or to overhang without apparent support. Materials shall be arranged so that the visually heavier material, such as masonry or material resembling masonry, is installed below lighter material, such as wood cladding. In addition, material placement shall reflect the predominant characteristics of the neighborhood, typically a single material used consistently throughout with occasional accents or details highlighting architectural features. Buildings shall not rely solely on material placement to mitigate the scale of the building, create visual interest, or otherwise relate the building with its context.

STANDARD G-3 **Materials and Building Type** Material selection and placement should be appropriate to the building scale and type but also reflect the material character on buildings of a similar scale and type within the neighborhood.

STANDARD G-4 **Accent Materials** Secondary, detail, or accent materials that differ from neighborhood context in scale, texture, character or finish may be used to create architecture that is reflective of its own time. These materials must be clearly subordinate in placement and extent of use to the primary materials.

~~STANDARD G-3 **Chimneys** Chimneys shall be of brick, finished metal, stone or boxed-in and clad with materials to match the building.~~

~~STANDARD G-4 **Window Types** A variety of window treatments and skylights are acceptable. However, within a single building the types of windows shall be limited to two types, and window detailing shall be consistent throughout.~~

~~STANDARD G-5 **Patios and Plazas** Patios and plazas shall be constructed of permanent materials such as concrete, brick or stone.~~

MAJOR ADDITIONS AND ALTERATIONS STANDARDS

The *R-6 Design Principles & Standards* shall apply to additions and alterations when the proposed changes to the building impact the scale, massing, roof form, orientation to the street, or significantly alters (more than 50%) the overall façade composition as viewed from the public way.

IV. ALTERNATIVE DESIGN REVIEW (revised 5.8.18)

Alternative Design Review process shall only be applied to projects within and as described in the Munjoy Hill Neighborhood Conservation Overlay district. Projects not within that overlay are not eligible for Alternative Design Review.

The Standards listed above are time-honored ways of achieving the Design Principles. With exceptional care, though, it is possible to apply a design approach that meets the Principles through alternatives that vary from the Standards, while maintaining and relating to the predominant character-defining architectural elements of the neighborhood, such as the building location on the site, its relationship to the street, and its mass, form, and materials. New construction under the Alternative Design Review should result in exemplary design and be compatible with the surrounding buildings in a two-block radius, in size, scale, materials and siting, but with consideration to building type, as well as the general character of the established neighborhood. The review authority may determine the neighborhood to differ from a two-block radius, due to unique characteristics of a given site or proposal. In such case, the review authority shall determine the scope of the neighborhood.

In review, special attention shall be given to the existing buildings on both sides of the street within the block of the proposed site. If the building is proposed on a corner lot, then depictions of buildings on the adjoining block shall also be required. The review authority should consider buildings in the neighborhood that are comparable in size, scale, type, and use to that which is being proposed, or that consideration be made of the characteristics of buildings which were originally designed for a similar use to that which is proposed. The review authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site. In addition, when evaluating a proposed project, the review authority may grant design flexibility when social and environmental public benefits are proposed as part of the project. Examples include designs that accommodate sustainable design best practices, alternative energy sources, green roofs, or affordable housing units that may require a design character that varies from the predominant built patterns. The applicant shall provide documentation of the contextual characteristics as guidance for review.

An applicant may propose an alternative design approach and request an Alternative Design Review Design Certificate. The Planning Authority under an Alternative Design Review may grant a Design Certificate to approve a design not meeting one or more of the individual standards provided that all of the conditions listed below are met. In the case of an Alternative Design Review within the Munjoy Hill Neighborhood Conservation Overlay District, the Historic Preservation Board shall be the review authority and may grant a Design Certificate provided all of the conditions listed below are met. The final decision whether to issue an Alternative Design Review Design Certificate is at the discretion of the review authority and may only be appealed to the Historic Preservation Board.

A. The proposed design is consistent with all of the Principle Statements.

B. The majority of the Standards within each Principle are met.

C. The guiding principle for new construction under the alternative design review is to be compatible with the surrounding buildings in a two block radius in terms of size, scale, materials and siting, as well as the general character of the established neighborhood, thus Standards A-1 through A-3 shall be met.

D. The design plan is prepared by an architect registered in the State of Maine.

Google Groups

12/17/2019-Recode - Dimensional/R6 Design Manual All ready Going to Planning Board When NOT addressed in RECODE subcommittee?

Karen Snyder <karsny@yahoo.com> Dec 12, 2019 3:32 PM
Posted in group: **Planning Board**

Dear Planning Board Members,

It has been brought to my attention that next week Recode recommendations for dimensional standards and R-6 Design Manual will be brought to the Planning Board next week on 12/17/2019 when it has not even been addressed in any Recode subcommittee meetings.

From what I can understand, the last Recode subcommittee meeting held was 10/28/019 and it addressed ADUs, reducing parking requirements for future developments, and definitions. In addition, there was also a presentation by a developer from Atlanta, Eric Kronberg, who proposed to eliminate single family zoning and to eliminate parking for cheaper housing in which he did not provide any substantiated facts on this. The next day, Eric Kronberg, then presented at the 1st YIMBY session on 10/29/2019.

The last Recode Subcommittee agenda of 10/28/2019 is below:
https://portlandme.civicclerk.com/web/UserControls/DocPreview.aspx?aoid=624

Therefore, I am quite surprised that there was a City notice yesterday 12/11/2019 to say that Recode dimensional standard recommendations and R6 Design Standards will be presented at a Planning Board Workshop next week on Tuesday, 12/17/2019.

I am especially surprised since the following has NOT occurred.

1) There was no Recode subcommittee that even addressed the proposed dimensional standards or R-6 Design Standards. However, there is no Planning Board workshop agenda yet of the proposed Recode changes being presented next week but we only have tomorrow to make public comment for next week workshop to put on record. This means we have less than 1/2 day to see these proposed recommendations and comment on them .

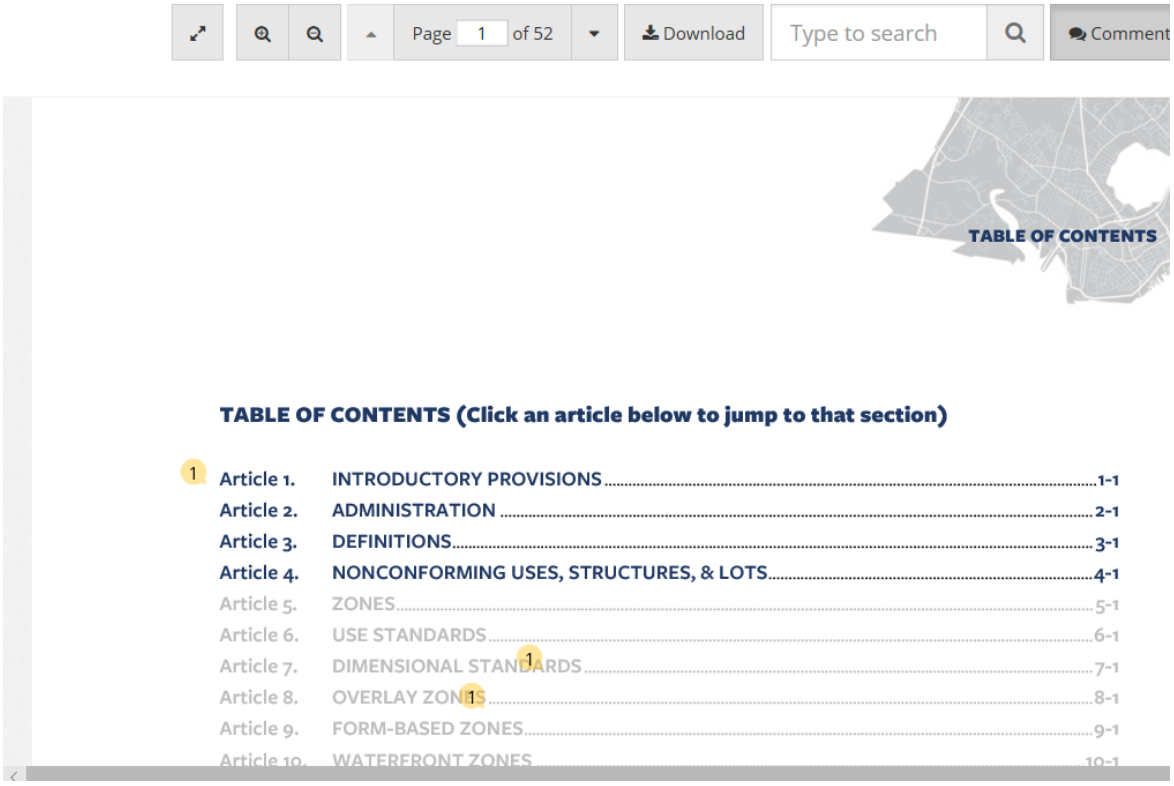
2) The City Planning Department did not contact any neighborhood organization to address this very important issues which affect long term residents every day.

3) I sent my concerns to Recode subcommittee on the R-6 Design standards 3 times and each time I was rebuffed, or ignored, or was told that it will be addressed in the future... but it never has been addressed.

4) The City feedback link shown below implies that the first 4 articles are being addressed OR input is available to be entered for the first 4 articles which makes since these articles have been addressed in a Recode subcommittee meeting.

https://www.recodeportland.me/public-input-1

dialogue on the City's Draft Land Use Code



Consequently, why haven't the dimensional standards and R-6 Design Manual issues follow proper due process like the other Recode issues and have been addressed in Recode Subcommittee meeting rather than going directly to Planning Board workshop?

It would be advised to have a Recode subcommittee meet to address the proposed dimensional standards and R-6 Design manual changes rather than be rushed to Planning Board without proper democratic due process in which the proposed changes in a Recode subcommittee.

Regards,
Karen Snyder
Munjoy Hill Property Owner

Google Groups

R-6 Design Standards

Barbara Vestal <vestal@chesterandvestal.com> Dec 12, 2019 11:29 PM
Posted in group: **Planning Board**

Chair Dundon and Planning Board Members,

I am writing to express my strong concern about the current draft of the R-6 design standards. It is my understanding that Ms. Cameron worked on this set of revisions during the summer. That should have given plenty of time for the planning department to engage in some discussion with stakeholders. To the best of my knowledge none of the neighborhood organizations that include R-6 land area were even alerted to the fact that these were forthcoming. The first notice was a postcard received on Wednesday Dec. 11th notifying us that they would be on the Planning Board agenda the following Tuesday Dec 17th and that the proposed materials would be posted late on Friday Dec 13th. I would like to know precisely who has been involved in the revisions to these design standards to date. I would also like to know whether it is the City's intent to make any additional effort to reach out to the neighborhoods that are critically affected by these standards?

Through the rapid efforts of East Bayside Neighborhood Organization, which kindly coordinated with others, I was able to get a look at the set of proposed revisions late today. Based on an initial examination, I am disappointed that the changes do not appear to reflect any step back to examine what these design guidelines should be and do; this is just another layer of wordsmithing without taking a broad view.

There are two positive aspects: 1) they eliminate the distinction between under and over 10,000 square feet, taking away the incentive for developers to consolidate smaller lots; and 2) they reiterate the standard that has applied since at least June 2018: that projects have to meet both zoning and design standards. Maybe if it is repeated as clearly as it is in the draft, the City will start enforcing its legal ability to require a developer to reduce overall scale if that it what is required to meet the design standards.

Unfortunately, I believe these two positive aspects are greatly outweighed by the negatives. I think neighborhood stakeholders are entitled to an explanation, and a reexamination of the following provisions:

1. This draft states that projects requiring Historic Preservation review are no longer exempt from these design standards. What is the rationale? Do projects have to meet both sets of standards? Who is the judge of that?
2. There is a new slippery definition of the "neighborhood" to which a proposed project is to relate, deleting the 2 block radius and leaving it to the "Planning Authority" to decide upon the area to be considered. What is the rationale for this? What was wrong with the 2 block radius? Is there a way to fix the perceived problem without giving unfettered discretion to the planning authority?
3. There are now many exceptions for 3 or more unit developments, which will probably comprise most of the controversial developments. In a new provision, they are no longer expected to replicate the scale and form of the surrounding buildings if they are 1 and 2 family buildings. Where did that come from? The are now supposed to be compared to similar sized buildings elsewhere in an elastic neighborhood. Why is the concept of requiring them to fit into the immediate context of the area in which they propose to build being eliminated? What relevance does a 16 unit building many blocks away have to how a particular proposed16 unit building will fit into the immediate area? Is compatibility with its surroundings no longer the goal? Based upon what?
4. The A-3 standard now says that where there is no clear or consistent pattern, the development can vary from the immediate context. Why not instead require something more positive -- e.g by requiring it to relate to the more positive character-defining features which are represented in the immediate context, or it those are lacking to the more positive character-defining features in the broader neighborhood?
5. The provision on garages proposes to eliminate the 40% maximum width of the front facade which would be taken up by a garage door. This was considered an important provision to avoid having garage door dead space on the entire ground floor. Why is this proposed to be eliminated?
6. In C-2 it seems to be saying that all of the living space can be on upper stories as a means of achieving privacy. This is directly contrary to the provision in the prior set of standards trying to achieve active ground floor uses. What is the rationale for this?

These minimally revised design standards seem to offer some additional clarity, but on the whole they seem to be moving against good design which would weave new development into the architectural and social fabric of the neighborhood by allowing a consideration of scale, mass, and other immediate context-specific considerations. It is a real missed opportunity not to spend more time with these standards to identify what is not working now, and to figure out how they can be revised to reverse the highly-defended, dead space and isolation that characterizes the new developments. Similarly it is a mistake to require large multifamily development to only be compared against other large multifamily structures, particularly when the immediate context does not consist of other large multifamily structures.

I feel like my critique is merely scratching the surface. Much more process should be allowed for the City to engage with stakeholders to examine and work with these design standards. If the City gets them right they could be an important positive tool to manage new development in a thoughtful way. If the City compounds the problem by not engaging with a full range of stakeholders and rushing to adopt revisions which seem to favor multifamily development without regard to the immediate context, it will squander what could have been an important opportunity to reduce neighborhood tensions.

Regards,
Barbara Vestal

--
Barbara A. Vestal, Esq.
Chester & Vestal, PA
107 Congress Street
Portland, Maine 04101
(207) 772-7426 - phone
(207) 761-5822 - facsimile

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Google Groups

Re: R-6 Design Standards

Rob Whitten <rob@whittenarchitects.com> Dec 13, 2019 7:51 AM
Posted in group: **Planning Board**

Good morning Barbara,
Thank you for your response to the proposed R-6 zoning. As drafted, they do not address the neighborhood design concerns which have been raised since the 2015 revisions.
A public process with sufficient notice will allow all parties to evaluate and propose a successful long term solution.
Rob.

Sent from my iPhone

On Dec 12, 2019, at 11:29 PM, Barbara Vestal <vestal@chesterandvestal.com> wrote:

Chair Dundon and Planning Board Members,

I am writing to express my strong concern about the current draft of the R-6 design standards. It is my understanding that Ms. Cameron worked on this set of revisions during the summer. That should have given plenty of time for the planning department to engage in some discussion with stakeholders. To the best of my knowledge none of the neighborhood organizations that include R-6 land area were even alerted to the fact that these were forthcoming. The first notice was a postcard received on Wednesday Dec. 11th notifying us that they would be on the Planning Board agenda the following Tuesday Dec 17th and that the proposed materials would be posted late on Friday Dec 13th. I would like to know precisely who has been involved in the revisions to these design standards to date. I would also like to know whether it is the City's intent to make any additional effort to reach out to the neighborhoods that are critically affected by these standards?

Through the rapid efforts of East Bayside Neighborhood Organization, which kindly coordinated with others, I was able to get a look at the set of proposed revisions late today. Based on an initial examination, I am disappointed that the changes do not appear to reflect any step back to examine what these design guidelines should be and do; this is just another layer of wordsmithing without taking a broad view.

There are two positive aspects: 1) they eliminate the distinction between under and over 10,000 square feet, taking away the incentive for developers to consolidate smaller lots; and 2) they reiterate the standard that has applied since at least June 2018: that projects have to meet both zoning and design standards. Maybe if it is repeated as clearly as it is in the draft, the City will start enforcing its legal ability to require a developer to reduce overall scale if that it what is required to meet the design standards.

Unfortunately, I believe these two positive aspects are greatly outweighed by the negatives. I think neighborhood stakeholders are entitled to an explanation, and a reexamination of the following provisions:

1. This draft states that projects requiring Historic Preservation review are no longer exempt from these design standards. What is the rationale? Do projects have to meet both sets of standards? Who is the judge of that?
2. There is a new slippery definition of the "neighborhood" to which a proposed project is to relate, deleting the 2 block radius and leaving it to the "Planning Authority" to decide upon the area to be considered. What is the rationale for this? What was wrong with the 2 block radius? Is there a way to fix the perceived problem without giving unfettered discretion to the planning authority?
3. There are now many exceptions for 3 or more unit developments, which will probably comprise most of the controversial developments. In a new provision, they are no longer expected to replicate the scale and form of the surrounding buildings if they are 1 and 2 family buildings. Where did that come from? The are now supposed to be compared to similar sized buildings elsewhere in an elastic neighborhood. Why is the concept of requiring them to fit into the immediate context of the area in which they propose to build being eliminated? What relevance does a 16 unit building many blocks away have to how a particular proposed16 unit building will fit into the immediate area? Is compatibility with its surroundings no longer the goal? Based upon what?
4. The A-3 standard now says that where there is no clear or consistent pattern, the development can vary from the immediate context. Why not instead require something more positive -- e.g by requiring it to

relate to the more positive character-defining features which are represented in the immediate context, or it those are lacking to the more positive character-defining features in the broader neighborhood?

5. The provision on garages proposes to eliminate the 40% maximum width of the front facade which would be taken up by a garage door. This was considered an important provision to avoid having garage door dead space on the entire ground floor. Why is this proposed to be eliminated?
6. In C-2 it seems to be saying that all of the living space can be on upper stories as a means of achieving privacy. This is directly contrary to the provision in the prior set of standards trying to achieve active ground floor uses. What is the rationale for this?

These minimally revised design standards seem to offer some additional clarity, but on the whole they seem to be moving against good design which would weave new development into the architectural and social fabric of the neighborhood by allowing a consideration of scale, mass, and other immediate context-specific considerations. It is a real missed opportunity not to spend more time with these standards to identify what is not working now, and to figure out how they can be revised to reverse the highly-defended, dead space and isolation that characterizes the new developments. Similarly it is a mistake to require large multifamily development to only be compared against other large multifamily structures, particularly when the immediate context does not consist of other large multifamily structures.

I feel like my critique is merely scratching the surface. Much more process should be allowed for the City to engage with stakeholders to examine and work with these design standards. If the City gets them right they could be an important positive tool to manage new development in a thoughtful way. If the City compounds the problem by not engaging with a full range of stakeholders and rushing to adopt revisions which seem to favor multifamily development without regard to the immediate context, it will squander what could have been an important opportunity to reduce neighborhood tensions.

Regards,
Barbara Vestal

--
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Google Groups

r-6 Design Standards

Wayne@waynevalzania.com <Wayne@waynevalzania.com> Dec 13, 2019 8:25 AM
Posted in group: **Planning Board**

Chair Dundon and Planning Board Members,

I am writing to register my extreme dismay with the rewrite of the R-6 Design Standards that has come to my desk. Not only are the proposed R-6 Standards counter to the many discussions, workshops, and neighborhood presentations, in our case typically held at the East End School, all of which I have attended, but the timing seems nefarious. With no prior notice, this massively important and long discussed change is under the radar and on the fast track while everyone is distracted by the holidays.

Quite simply, I think this is bad public policy, and is not what we expect from you as elected representatives of your constituents.

Disappointed and Furious,

Wayne Valzania

27 Merrill Street

Portland, ME 04101

207-274-4918

Google Groups

Need for Neighborhood and City Council Involvement in Proposed Changes to R-6 Design Standards

Barbara Vestal <vestal@chesterandvestal.com> Dec 13, 2019 11:04 AM
Posted in group: **Planning Board**

Hello Mayor Synder and Councilor Ray,

I am writing because I am extremely concerned about the truncated process that is being employed to make changes to the R-6 Design Standards. I am also concerned about possible changes to the R-6 zoning ordinance through the ReCode process. On December 11th, an e-notification was sent about two Planning Board workshops to be held on Tuesday, December 17th on these topics. Other than saying the materials would be available some time on Friday, Dec. 13th, no additional information was presented.

The City has not engaged in any outreach to neighborhood stakeholders. Comments were not solicited from the relevant neighborhood organizations on revisions to the R-6 Design Standards, nor were we given any advance notice of the proposed changes. City staff may have worked with a limited group of developer-oriented advocates in developing this rewrite; to the best of my knowledge, they did not work with any neighborhood residents or representative groups. This lack of any effort to work with neighborhood residents to understand the issues from our perspective is disheartening, particularly when the application (or lack thereof) of the existing design standards has been a major source of contention in recent project reviews.

The City needs to be transparent and collaborative in making changes to the R-6 design review standards. They are so consequential to the shape of future development on Munjoy Hill, and in other peninsula neighborhoods. This rewrite could and should be an opportunity to try to resolve some of the development controversy by reaching agreement on the underlying principles that should manage the new development. The City will be squandering this opportunity to improve the standards and reach a consensus if it pushes these currently proposed changes through without engaging in a robust process.

At this point, it is unclear whether the Planning Board intends to just hold a workshop on December 17th and then a public hearing in January, and vote to enact the amendments to the design standards as proposed. It would seem that this is so consequential and the changes so substantive that the entire City Council should be involved in the decision-making process. (There are several existing design standards. Some design standards are adopted by the Council; in the past some have been adopted by the Planning Board.) These policy decisions on the appropriate design standards for the R-6 portion of the City should not just be left to the Planning Board. Again, I don't know whether that is the intent. There is a lack of information and communication.

I am hereby requesting that there be a much more robust process to identify what changes should be made in the R-6 Design Standards, one which engages a full range of stakeholders, and eventually concludes with a vote of the City Council. It is improper for the Planning Board to be making these major policy decisions by itself. The Planning Board should just be implementing policy decisions made by the Council, not making these policy decisions themselves.

(I suffer from a similar lack of publicly available information about what ReCode changes may be in the works for the R-6 zone. However since it involves zoning, the ReCode amendments will have to involve the City Council.)

Thank you for your attention to this request. Any information you can provide about the process the City intends to follow would be useful.

Regards,

Barbara Vestal

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